

August 2006

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## Marriage in Washington Safe—for Now

*I think it's time to end the right-wing jihad against gay and lesbian people...the state should sanction marriage for loving couples regardless of their gender. --Rep Brendan Williams (D-Olympia)*

The expression “shock and disbelief” was repeated by high profile Democrat elected officials and homosexual activists on July 26 as the Washington State Supreme Court announced its long-awaited decision on the *Defense of Marriage Act* (DOMA). Governor Gregoire said, “Something must be done to give all couples the same rights enjoyed by heterosexuals.” King County Executive Ron Sims added, “This decision will not stand the test of time. Justice won’t allow it...” Bill Dubay, Seattle gay rights activist said, “We need to hit the streets and be noticed and not go away until we get what we want.”

If there was shock in the leftist community it was that a decidedly left-leaning court in a decidedly left-leaning state ruled that the legislature has the constitutional authority to place limits on legally recognized marriages. So confident were leading “gay-rights” advocates of a courtside win, some ordered fancy cakes and wedding invitations for friends (and the press) on the eve of the big decision. State Representative Ed Murray (D-Seattle) says he had planned to marry his partner Michael Shiosaki on August 10.

But not all homosexual “marriage” advocates consider the ruling a disaster. “We went from zero votes the last time Washington couples seeking marriage appeared before the state supreme court to 5-4 now,” said Evan Wolfson, executive director of *Freedom to Marry*. “An end to marriage discrimination shimmers close within reach...”

What Wolfson knows, and the public has forgotten, is that the concept of homosexual “marriage” was tested in local courts more than 30 years ago—gaining scant interest from the press and much scorn from the legal profession.

In 1971, Paul Barwick, a former state patrol dispatcher, and John Singer, a cross-dressing federal employee, showed up at the King county auditor’s office requesting a marriage license. After being turned away by Lloyd Hara, the auditor, the couple filed suit. Observers say it was laughed out of two courts, eventually ending in 1974 when the plaintiffs ran out of energy and money at the state court of appeals.

Enter Ron Sims. In 2004, the imprudent King County executive invited homosexual couples to sue him for the right to marry in his neighborhood. This time no one was laughing. *Anderson v. King County* breezed through two lower courts. One of the judges even gushed, “The characteristics embodied by these plaintiffs are ones that our society and the institution of marriage need more of, not less.”<sup>1</sup>

Mr. Wolfson knows that while homosexual “marriage” was unanimously rejected by the State Court of Appeals in 1974, at least four members of the Washington State Supreme Court now believe it is a “civil right.” One of them is Associate Justice Mary Fairhurst.

In a scathing dissent, the liberal jurist complains that “DOMA was motivated solely by

animus towards homosexuals.”(Fairhurst dissent, pg18) Justice Fairhurst insists there is no rational basis for denying same-sex couples the right to marry. “This reasoning,” she writes, “accords with that of other state courts that have found no rational relationship between denial of the right to marry to same-sex couples and any legitimate state interest.” (Footnote 21)

Writing the lead opinion upholding DOMA, Justice Barbara Madsen draws the opposite conclusion. “Our decision,” she says, “accords with the substantial weight of authority from courts considering similar claims.”(pg3) Indeed. With the exception of Ted Kennedy’s state, she is backed by virtually every state court that has considered the matter including New York, Nebraska, Connecticut, Georgia and Tennessee—just this summer. Madsen concludes that “...in this case the State has established that DOMA was enacted to codify the common law, to promote procreation, and to encourage stable families.”(Court opinion, pg60)

Voting with Madsen to uphold the *Defense of Marriage Act* were Chief Justice Gerry Alexander and associate justices Charles Johnson, Richard Sanders and James Johnson. Joining Fairhurst in dissent were justices Bobbe Bridge, Susan Owens, and Tom Chambers. **Owens** and **Chambers** (and Alexander) are running for reelection, each facing formidable challengers in the September 19 state primary election.

The LEFT well understands that the September primary is a high stakes election. Jamie Pedersen is a lawyer who participated in *Anderson* on behalf of Lambda Legal and is a Democrat candidate for the state house seat being vacated by Ed Murray (D-Seattle) who is running for the senate. He thinks DOMA was lost in 2004 with the election defeat of liberal justice Faith Ireland at the hands of conservative Jim Johnson. With three moderate-to-liberal justices up for reelection next month, Pedersen doesn’t want a repeat. His folks are working diligently to keep all three in office.

Position 2 is a five-way race. Democrats hope to retain **Susan Owens**. Three of her four challengers are considered plants by liberal groups hoping to peel votes from a conservative former state senator **Stephen Johnson**. The contest will ultimately be settled in November unless Owens polls 51% of the primary vote on September 19.

Position 8 pits incumbent Chief Justice **Gerry Alexander** and conservative attorney **John Groen**, who has argued 17 cases before the high court. Although Alexander signed on with the majority on DOMA, he is endeared to liberals for decisions on a range of issues including property rights, criminal justice, and de facto parental rights for live-in lovers. If reelected, state law will force Alexander to retire at age 75—before the end of his term. Gov. Gregoire would appoint his replacement. This race is over on September 19.

Position 9 is also a match that will be decided in the primary. **Tom Chambers** will square off with **Jeanette Burrage**, a conservative, well-qualified former King County superior court judge.

In the meantime, the Washington State Supreme Court has extended to lawyers for gay and lesbian couples, additional time (until August 29) to challenge the DOMA ruling. As a back up, Ed Murray plans to introduce 400 bills in the next session—one for each right denied to same-sex couples who cannot marry. “We’re going to paper the place with bills,” he warns. “Brick by brick, let’s build the institution of marriage for gays and lesbians in the Washington State Legislature.”<sup>2</sup>

Need we emphasize the importance of your vote on SEPTEMBER 19?

*Rick Forcier*

Executive Director

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<sup>1</sup> Eli Sanders, *Marriage Denied*, www.thestranger.com, August 3, 2006

<sup>2</sup> Ibid.