
Playing Politics with Gay Marriage

by Jeremy M. Barker

ay marriage has enjoyed only a fickle presence on the front page of newspapers since San Francisco was ordered to stop issuing licenses on March 11. Gone are the joyous wedding photos of same-sex couples, only to be replaced with more dour and depressing reports on the complex legal battles being waged over marriage rights.

The fight has moved to the courts, and the results have been mixed. Although President Bush's largely political effort to pass a Constitutional amendment defining marriage as between a man and a woman failed, and in spite of several recent favorable rulings, the future of gay marriage is still highly unclear.

The biggest news on the issue in Seattle came on August 4, when King County Superior Court Judge William Downing ruled that denying same-sex couples marriages was in violation of the state constitution. In his ruling on the suit, brought by eight couples represented by the Lambda Legal Fund and the Northwest Women's Law Center, Judge Rowling wrote, "Before the Court stand eight couples who credibly represent that they are ready and willing to make the kind of commitment to partner and family for all the right kinds of reasons. All they ask is for the state to make them able." The Washington Supreme Court, however, will have to hear the case before licenses can be issued, and if the rest of the nation is any guide, their decision will be less progressive.

On August 13, the California Supreme Court voided the several thousand same-sex marriages performed in San Francisco. The ruling simultaneously sidestepped the issue of same-sex marriage itself, as it specifically addressed whether San Francisco Mayor Gavin Newsom had the right to issue the licenses. The constitutionality of denying marriage licenses to same-sex couples in California was not addressed.

In Tacoma, on August 17, a federal judge upheld the constitutionality of the Defense of Marriage Act, a national 1996 law, signed by then-President Bill Clinton, which formally defined marriage as between a man and a woman. The case came forward as part of a bankruptcy claim filed by Ann and Lee Kandu, a lesbian couple married earlier this year in Vancouver, B.C., when they tried to jointly file for bankruptcy.

Complicating the issue are election year politics. Conservatives and Republicans have generally characterized the issue as one of rogue "activist judges" rather than an issue with any serious public support. Pastor Joe Fuiten of Washington Evangelicals for Responsible Government has claimed that, "What we are seeing are very liberal, activist judges out to impose their will on society—whether society wants it or not."

This despite the fact that a recent *Seattle Times* poll found that only a slight majority of voters opposed gay marriage in the state.

Still, Rep. George Nethercutt, who's running against Democratic Sen. Patty Murray for U.S. Senate, is using the same claim. Referring to Judge Downing as an "activist judge," Nethercutt, in a campaign ad played on conservative talk-radio stations, argues that, "Ignoring tradition, common sense and the will of the people, this judge said Washington state must recognize same-sex marriages. That's wrong."

Even so, other Republicans are trying to play down the issue. Although President Bush has made his feelings crystal clear, the Republican National Convention gathered a line up of conservative speakers who are friendly to gay rights issues. One such is New York City Mayor Michael Bloomberg, who was one of the only national politicians to attempt to recognize the legitimacy of same-sex marriages performed in Massachusetts—the only state which currently legally allows them—outside of that state's jurisdiction.

In Seattle activists are organizing to press the issue. A recently formed group called Equal Rights Washington has taken the lead. In May, two older gay rights groups, Discrimination Free Washington and Basic Rights Washington, combined to form ERW with the support of the Seattle LGBT Community Center. ERW's Volunteer Coordinator, Michael McAfoose, became something of a national celebrity when on May 1 he organized a counter-protest against Rev. Jerry Falwell's anti-gay marriage gathering at Safeco Field.

ERW has become a blanket coalition for numerous groups fighting to legalize gay marriage, including the American Civil Liberties Union of Washington, who, on April 1, filed suit on behalf of 11 couples wishing to marry. "Same-sex couples who have formed families are being discriminated against solely because of their gender. Two adults who wish to enter into a life-long commitment to each other should be eligible for the legal rights of marriage, regardless of their same gender. It is a matter of basic fairness and equality," said Kathleen Taylor, ACLU-Washington's executive director, in the official press release.

Still, ERW and its allies face a long, uphill battle. With the Democratic Party having rallied behind John Kerry, who claims he opposes gay marriage, the Presidential election is unlikely to bring any increased support from Washington, D.C., no matter who wins. And with Oregon voting on a gay marriage ban this November, things could quickly take a turn for the worse. ♦