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Stunning Victory In Seattle

By Ann Rostow
Contributing Writer

News with a View

Our national news column this week was to lead off with the depressing information that the Show Me State installed a ban against same-sex marriage in their constitution by more than a two-to-one margin. But no sooner had the account of that vote been penned, then we learned of the remarkable and near-historic decision out of King County, Washington, where Judge William L. Downing not only ruled in favor of eight same-sex couples seeking the right to marry, but where he did so in a beautifully-written opinion that fairly sings.

"This author," wrote Downing in an acknowledgement of the difficulty of the issues at stake, "would like nothing better than to stop at this point and, with a warm and sincere pat on the back, to send all parties off to the State Supreme Court or the State legislature or both. Regrettably or not," he went on, "such an abdication of responsibility is not an option."

Downing then tackled the central issue that so many courts, both for us and against us, have managed to sidestep. Do same-sex couples have a "fundamental" right to marry?

In legal terms, a "fundamental" right cannot be breached by the state without a compelling reason. But although marriage has long been considered a fundamental right ringed by this aura of protection, our right has been defined not as the profound "right to marry," but as the ludicrous "right to marry a same-sex partner." Thus modified, courts have been able to avoid the question or simply scoff at the idea of putting same-sex couples on par with, say, interracial couples. Not Downing however.

There was no fundamental right to interracial marriage when the High Court considered that question in 1967, wrote Downing, "yet the Court analyzed the issue… in terms of the broad right to marry and found that right to have been infringed." There was no fundamental right for deadbeat dads to marry, yet when the High Court considered

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Marriage Win in Washington

By Bob Roehr
Contributing Writer

A state court in Seattle struck down as unconstitutional Washington State's defense of marriage act that restricted marriage to a man and a woman. The August 4 ruling will be stayed pending appeal to the state supreme court.

King County Superior Court Judge William L. Downing outlined the role of the courts in reviewing legislation; the legal principles behind the few cases on marriage that the US Supreme Court has decided; and just about every major argument opponents have raised in objecting to same-sex marriage.

The opinion was remarkable in its clarity in explaining the legal process and the rationale for his decision in terms understandable to the average citizen.

"When the court is asked to sit in judgment of a law, it is not to consider whether, in its view, the law is wise or consistent with sound policy...but to apply a consistent, principled and reasoned analysis in evaluating the statute's constitutionality," he wrote.

Attorney Jennifer Pizer speaks to reporters Wednesday, Aug. 4, 2004, during a news conference in Seattle, following the decision by a King County Superior Court regarding gay marriage. AP Photo/Steve Shelton

"Through this brilliant design, the constitutions empower the courts to ensure both that no group is singled out for special privileges and also that no minority is deprived of rights to which its members should be entitled. At the same time, respect for democratic lawmaking is maintained."

Downing asked, "Should the Court focus on the broad right to marry or should it, instead, focus on the more narrowly drawn right to marry someone of the same sex?" He turned to the key "right to

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HRC Moves to Add Trans to ENDA

By Bob Roehr
Contributing Writer

The Human Rights Campaign (HRC) has decided to support including protection for transgender persons in draft language of the Employment Non-Discrimination Act (ENDA) at the August 7 meeting of their board of directors.

Trans activists have worked for inclusion in ENDA from the time it was first introduced in 1994 but HRC has resisted for reasons of political strategy. Many felt that opposition from Massachusetts Democrats Sen. Ted Kennedy and Rep. Barney Frank's had been the key factor.

HRC adopted a resolution stating it "will only support ENDA if it is inclusive of sexual orientation and gender identity expression." No action is expected in this Congress but it will affect the bill when it is reintroduce next year.

"Passage of ENDA is a brass ring for our community and we're making it clear that it must have the strongest teeth possible to protect everyone," said board cochair Tim Boggs.

"It was ten years and nine days ago, 29 July 1994, that Karen Kerin and I sat in the Senate hearing room as guests of Sen. Jim Jeffords (then R-Vermont) for a committee meeting chaired by Ted Kennedy at which the current, non-tg-inclusive ENDA was first introduced," Houston trans activist Phyllis Randolph Frye wrote in a widely distributed e-mail.

"On that day, Karen and I were both prevented from testifying for tg inclusion by Kennedy's staff. After the hearing, Karen and I met with lots of people in the know, asking why tg folks were omitted. The answer was always, always, always HRC. And so the struggle with HRC began."

"And now, ten years and nine days later, THAT struggle ends. When HRC says it is LGBT inclusive, it truly is!" Frye wrote.

"This is an historic day for the transgender movement," said Mara Keisling, executive director of the National Center for Transgender Equality.

"The LGBT community's most connected organization in Congress has finally embraced transgender rights equality with those of lesbian, gay, and bisexual rights. We are confident that Congress will hear this message."

She was among those who met with the HRC board to discuss the matter. In a background paper prepared for that meeting, Keisling explained, "A primary strategy now is showing allies in Congress that the LGBT community is absolutely united behind our inclusion."

The National Gay & Lesbian Task Force adopted such a policy in January 1995 and eventually ten other national community organizations joined them. HRC was the last major hold-out.