

# Foes, Friends Of Gay Marriage Anxious For Court Ruling

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by DAVID AMMONS, The Associated Press  
Sent by Tim Eyman, co-sponsor of Referendum 65  
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## ***RE: R-65 story published in newspapers throughout the state***

...The most read political column in Washington is the one written by Associated Press reporter Dave Ammons each week. Since it's the AP, numerous newspapers throughout the state published it:

*Note from pastor Kevin: If our State Supreme Court corrupts the God sanctioned covenant of marriage by extending its legal status to same sex couples, then the homosexual agenda have an increased momentum to take over our schools, neighborhoods and work places.*

*As a result, we will become like Sodom and Gomorrah and will suffer the same fate. Some would counter that the Massachusetts Supreme Court did so a couple years ago and their State has not suffered. Those who use this argument misunderstand the mercy and longsuffering of God. That is, that His judgment comes when the sinful decay is complete (Gen 18).*

OLYMPIA, Wash. (AP) - Washington's closely watched same-sex marriage case was argued before the state Supreme Court in March of last year, and the long, long wait for a decision continues. Some court-watchers are now speculating that this hot potato could stay under wraps until after the November election.

Gay marriage and gay rights were a front-burner issue in the Legislature this year, and the buzz over the Oscar-nominated "Brokeback Mountain" seemed to galvanize attention. After 30 years of debate and disputation, lawmakers finally passed a gay anti-discrimination bill - and even before the governor had signed it, initiative activist Tim Eyman began pushing for a public vote this fall.

Legislators were under the impression that the high court would hand down its opinion while they were in session this winter, possibly forcing a huge election-year debate on the touchiest social issue of the day. But the court

didn't do the expected, and the issue has faded to so "five minutes ago." Lawmakers went home two months ago, Eyman says his referendum may not have enough steam to qualify next month for the ballot, and watercooler discussions are more likely about gas prices or immigration.

Still, for those most invested in that pending high court ruling, it's nail-biting time. "It's a combination of dread and anticipation," says Rep. Jim Moeller, D-Vancouver, one of four openly gay members of the Legislature. "I always get anxious on Wednesday afternoons" when the court web site lists the cases that will come down on Thursday. "We had obviously hoped we'd have a decision by now. The whole country is watching," says Jeff Kingsbury, the Olympia city councilman who is anxious to wed his partner of 14 years. With a laugh, he adds "After all, if you plan a traditional summer marriage, it takes time."

The court, per custom, is mum. Chief Justice Gerry Alexander, who once said he hoped the court could produce an opinion during the legislative session, now says "I can safely tell you that the court is aware of the intense public interest in this case. Beyond that, we WILL rule and then you will know what each and every one of us thinks."

#### THE BACKSTORY...

Could Washington become the second state, after Massachusetts, to permit same-sex marriage? Two judges, in King and Thurston counties, have concluded that the state's ban on gay marriage violates the state constitutional requirement that all citizens be treated equally.

On March 8, 2005, the 38 plaintiffs in the case - 19 gay and lesbian couples seeking to marry - brought the challenge to the Temple of Justice. They asked the high court to throw out the state's 1998 Defense of Marriage Act (DOMA), which limits marriage to heterosexual couples.

They are using three constitutional theories, all with the common thread that equality demands open access to marriage, regardless of gender. The state's position is that there is no fundamental right to same-sex marriage and that lawmakers had a rational and compelling basis for limiting marriage to one man and one woman.

How will they rule?

The decision ultimately will hinge on how the justices interpret the constitution and its unusually strong "privileges and immunities clause," the state version of the equal protection clause of the U.S. constitution. The state Equal Rights Amendment and state and federal privacy protections also are invoked.

Scholars say both sides have strong arguments and that it's no slam-dunk for either position despite the conventional wisdom that has the court deciding for gay marriage. Most of the nine justices peppered the lawyers with questions during the oral arguments, but gave little clue about their personal views. Most court-watchers presume it's a narrowly divided court, 5-4 or possibly 6-3. "I'm not going to win it 9-0 or lose it 9-0," says Assistant Attorney General Bill Collins, who argued the state's case.

Justice Barbara Madsen, a strong presence in the center of the court, could be the swing vote - and she seemed to dismiss one of the underpinnings of the gays' case while supporting another of their legal theories, says Jamie Pedersen, a Seattle attorney active in national gay legal circles.

Both sides agree that gay marriage still doesn't enjoy majority public support, Washington's live-and-let-live ethos notwithstanding. Still, the proponents of same-sex marriage remain guardedly optimistic - and the foes generally express the gathering view that the court is prepared to throw out DOMA. "I personally believe that's what they'll do," says Gary Randall of the evangelical group Faith and Freedom Network. "I think the court may be more politicized than any of us realize."

Jeff Kemp, former Seattle Seahawks star who is active in groups that promote traditional marriage, noted that two superior courts already have cleared the way for same-sex marriage and that the Supreme Court makeup has his side worried. "It's a liberal court," says Eyman, noting comments by Republican gubernatorial candidate Dino Rossi when he decided against appealing his ultra-narrow loss to the high court. "The majority of this court is going to impose same-sex marriage."

## WHY SO LONG?

Fourteen months certainly isn't a record wait for a decision - one recent opinion had a gestation of 22 months - but the wait is stretching the patience of some. The chief justice declines to discuss the path of this particular case, but says there are many reasons why a case would take a long time.

"You have to consider whether there are a number of issues, the complexity of the issues, whether the votes change, and so forth. That could slow things down. ... Constitutional questions are always complex."

A preassigned reporting judge presents the case and a recommendation to colleagues at a closed-door conference on the same day as oral argument. If at least four other justices concur, that judge writes the majority opinion. Dissenters can write separately.

Lawyers in this case predict multiple opinions. Pedersen says it's possible that five or more justices have agreed to throw out DOMA, but don't have a majority yet on which of the constitutional theories to use as the reason. The court doubtless will want a single, solid majority opinion, not separate opinions agreeing only on the result. Likewise, dissenters almost certainly will have one or more opinions to add. It's possible that justices shift sides and change the majority as persuasive opinions are circulated, refined and written with specific justices' votes in mind.

Every word of every opinion will be carefully chosen. "This may be the most scrutinized opinion this court has ever handed down," Pedersen says. "If we win, this will be read the world over by literally millions of people. It will stretch the bounds." He and Collins, the state's attorney, say the court will make sure their opinion is tightly written so it doesn't have unintended consequences in other areas of the law. "They'll have to be thinking about the next 10 cases," Pedersen says.

Then, too, if the court throws out DOMA, they'll have to deal with the remedy. Do they toss it to the Legislature or direct counties to start issuing marriage licenses?

A number of participants think justices will sit on it until after the election, just because it's such a hot-button issue, bound to anger the losing side and segments of the voting public. "It's the classic seepage of politics into the process," Pedersen says. "They'll see the controversy and some will worry about re-election, and that's a shame."

Eyman says his conspiracy theory is that the court has the opinion buttoned down and, knowing how unpopular gay marriage is, will try to insulate their colleagues from the voters' wrath. "There's a wink and nod to protect their pals," he theorizes. "This, of course, removes the voters from the process."

Alexander and justices Tom Chambers and Susan Owens are on the ballot this fall and three more justices are on the 2008 ballot. Sometimes a case becomes campaign fodder - as when the court threw out the state's felony murder rule before an election a few years back. But the court always talks about following the constitution, the laws and the facts of the case, without fear or favor.

Both sides are using the waiting time to devise Plan B, depending on various scenarios. Kemp and Randall say the best way to overrule an adverse ruling would be to persuade the Legislature and voters to pass a state constitutional amendment banning same-gender marriage.

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There are 25 days left. 25 days to gather signatures and donate dollars to ensure that voters have the final say. The signature gathering deadline is Thursday, June 6th.

If you need more petitions, email us at: [insignia@greekwatch.com](mailto:insignia@greekwatch.com), or call us at (425) 493-8707 and let us know how many you want and where you want them sent.

Signatures and donations -- donations and signatures. That's our focus for the next 25 days.

If you have any questions, please give me a call.  
Regards, Tim Eyman