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Studies—State
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Same-Sex Marriage in the State Courts

Gay marriage litigation continues to occur in several states. In the first half of 2006, state courts in Washington, New York, and Georgia, and the U.S. Court of Appeals for the 8th Circuit decided controversial gay-marriage-related cases. This article, the second in a series, will update, overview and summarize those cases.

I. Washington

Andersen v. King County

In 1998, Washington state adopted its Defense of Marriage Act (“DOMA”), which amended Revised Code of Washington (“RCW”) 26.04.010 to read “Marriage is a civil contract between a male and a female who have each attained the age of eighteen years, and who are otherwise capable;” RCW 26.04.020(1)(c) prohibits marriage “when the parties are persons other than a male and a female;” and RCW 26.04.020(3) “[a] marriage between two persons that is recognized as valid in another jurisdiction is valid in this state only if the marriage is not prohibited or made unlawful under

By John Shu

subsection (1)(a), (1)(c), or (2) of this section.”

In 2004, same-sex couples from various cities in Washington sued after being denied marriage licenses. The plaintiffs claimed that the Washington State Defense of Marriage Act of 1998 was unconstitutional under the Washington State Constitution on the following grounds: equal protection, the equal rights amendment, that marriage is a fundamental right, and the privileges and immunities clause. On July 26, 2006, the Supreme Court of the State of Washington issued its ruling declaring no constitutional right to same-sex marriage. *Andersen* is particularly interesting because, unlike the other gay marriage cases, the plaintiffs argued a privileges and immunities violation.

The court was fractured, with six opinions from the justices. Justice Barbara Madsen wrote the lead opinion, with Chief Justice Gerry Anderson and Justice

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A FOCUS ON:

FDA Labeling and State Liability

By D.

Were state and federal courts to defer sufficiently to FDA determinations of drug safety, the negative consequences of the current liability regime would be much less pronounced. Yet this has often not been the case. In recent years, FDA’s legal authority and scientific expertise over drug labeling and advertising have been implicitly, although repeatedly, questioned in state and federal courts. In response, FDA has intervened in select cases where its authority and expertise may be undermined

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