

# Marching on

The first sexual minority case in years is heard by the U.S. Supreme Court

by Bob Roehr

Two years to the day that a million lesbians and gay men marched down the streets of Washington, D.C., the Supreme Court heard oral arguments on another march—this one in Boston.

The Irish American Gay, Lesbian and Bisexual Group of Boston had organized to celebrate its members' heritage and participate in the annual St. Patrick's Day parade. The South Boston Allied War Veterans Council, the private group organizing the activity, denied the group's application.

GLIB charged that the veteran's council discriminated against it simply because of its members' sexual orientation, something which is illegal under Massachusetts law. The group sued and won at every level of the state court. Now the parties were before the U.S. Supreme Court, where Justice Clarence Thomas joined in vigorous questioning.

The veteran's council tried to frame the case as an issue of free speech. "The central issue is whether the government can mandate the content of a privately organized parade," said attorney Lester Darling. The parade's "clearly stated purpose" was one of "traditional religious and cultural values."

"Didn't the trial judge make a finding that this was not an idea-centered parade?" asked Chief

the trial court.

He called the council's objection to the banner identifying the group "paradigmatic of discrimination."

Justice Sandra Day O'Connor put the argument into a different context, "Suppose the circus came to town and an animal rights group wanted to join with their signs?" The analogy only muddied the waters further, as courts have traditionally used different standards for commercial speech (the circus) than for political speech.

Moments later, on the marble plaza outside the court, both parties met the press. Darling reiterated his definition of the case as one of "free speech versus government intervention." He thought that messages on "any sexual theme" were "inappropriate" because they were "not family oriented."

Ward responded, "This is discrimination that they have tried to cloak in the First Amendment."

"They just don't like us because we are gay and lesbian," said Cathleen Finn, speaking for GLIB. "We are an invisible minority and we have to stand up and take our place."

Support for GLIB's legal position within the gay and lesbian community has been mixed. Tom Stoddard, former executive director of the Lambda Legal Defense and Education Fund, expressed the views of many when he said, "You lose your



Cathleen Finn (center), a spokeswoman for the Irish American Gay, Lesbian and Bisexual Group of Boston, leads the way during the group's own alternative St. Patrick's Day Parade in 1993

Justice William Rehnquist, interrupting the attorney only a minute into his presentation.

"What is the evidence to show that purpose?" asked Justice Anthony Kennedy.

Darling asserted that the trial judge was in error in making his decision. He said the veteran's council did not care about the sexual orientation of the participants but did care about "those who celebrate [Irish heritage] in the same way."

Much of the justices' questioning centered around whether the banner GLIB carried, which spelled out its name, was "identification" or a "message." "If you combine a message and a name, you have a viewpoint," argued Darling.

Not so, said John Ward, attorney for GLIB. He called the banner "self-identifying." He agreed that groups could exclude "solely on the basis of message," but held that the veteran's council hadn't done it on that basis, citing the finding of

association rights when you operate in public...they [the veteran's council] do have a right to exclude." He made the comments on the PBS program *Freedom Speaks*.

Others have raised the specter of lesbian and gay pride parades being forced to include groups such as the Ku Klux Klan should the Supreme Court rule in favor of GLIB.

Mary Bonauto, an attorney with Gay and Lesbian Advocates and Defenders who has been involved with the case from the start, does not share that concern. "Ninety-nine percent of the time I would be in support of the First Amendment, but this is clearly not a First Amendment case." She said that the council was "caught up in the net of discriminating."

The justices gave little indication how they might rule. A decision is expected before the close of this session at the end of June.

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