

BAEHR v. MIIKE

NO. 20371, 1999 HAW. LEXIS 391 (HAW. DEC. 9, 1999)

FACTS OF THE CASE

This case began just over nine years ago on December 17, 1990, when the plaintiffs¹ applied for civil marriage licenses from the Hawaii State Department of Health. The clerk denied the licenses solely on the grounds that the three couples were of the same sex.² In May of 1991 the plaintiffs sued the state, arguing that construing Hawaii Revised Statute (“HRS”) § 572-1³ to deny same-sex couples a marriage license is unconstitutional.⁴ A judgment for the defendant was entered on October 1, 1991, which the plaintiffs appealed to the Supreme Court of the State of Hawaii.⁵

In 1993, the Supreme Court of Hawaii vacated the lower court’s decision and, after the defendant’s motion for reconsideration or clarification, clarified the mandate. Specifically, the court stated that under the “strict scrutiny” standard, the defendant bore the burden of overcoming the presumption that the statute in question was unconstitutional by showing a narrowly-drawn compelling state interest to avoid unnecessary abridgements of constitutional rights.⁶ On remand, the Circuit Court of Hawaii held that the statute violated the equal protection clause of the Hawaii Constitution and enjoined the defendant from denying marriage licenses based solely on applicants being of the same sex.⁷

In response to the holding of the circuit court, both houses of the

1. There were six plaintiffs: Ninia Baehr, Genora Dancel, Tammy Rodrigues, Antoinette Pregil, Pat Lagon, and Joseph Melillo. Baehr v. Miike, No. 91-1394, 1996 WL 694235, at *1 (Haw. Cir. Ct. Dec. 3, 1996).

2. *Id.*

3. HAW. REV. STAT. § 572-1 (1985).

4. *Id.*

5. *Id.* at *2.

6. Baehr v. Lewin, 852 P.2d 44 (Haw. 1993), *reconsideration and clarification granted in part*, 852 P.2d 74 (Haw. 1993) (citations omitted). When the suit commenced, John Lewin was the Director of Department of Health. When Miike assumed the position of the Director of Department of Health, he was automatically substituted for Lewin.

7. Baehr, 1999 WL 694235, at *22.

Hawaii legislature passed an amendment to the Hawaii Constitution on April 29, 1997 that gave the legislature the power to reserve marriage to opposite-sex couples.⁸ The electorate ratified the amendment in November of 1998,⁹ effectively placing HRS § 572-1 on “new footing.”¹⁰ The defendant appealed once again to the Supreme Court of Hawaii.¹¹

HOLDING

The Hawaii Supreme Court reversed the circuit court judgment and found for the defendant, observing that the recent amendment validated HRS § 572-1,¹² thereby rendering the plaintiffs’ complaint moot.¹³

ANALYSIS

The marriage debate in Hawaii has resonated throughout the United States.¹⁴ Homosexual couples who wished to marry viewed Hawaii as their best hope, while opponents of same-sex marriage mounted campaigns to prevent such marriages. In the end, the courts bowed to the will of the electorate, as expressed in the constitutional amendment.

In finding for the defendant, the Supreme Court of Hawaii took judicial notice of the recently passed amendment defining marriage to be between two people of the opposite sex.¹⁵ The court observed that although the 1996 decision found a violation of the equal protection clause of the Hawaii Constitution,¹⁶ the new amendment validated HRS § 572-1 by removing it from the legal parameters of the equal protection clause, “insofar as the statute . . . purported to limit access to the marital status to opposite-sex couples” only.¹⁷

8. See 1997 HAW. SESS. LAWS H.B. 117 § 2, at 1247 (mandating that “[t]he legislature shall have the power to reserve marriage to opposite-sex couples”).

9. See Cheryl Wetzstein, *A Top Hawaii Court Ends Gay ‘Marriage’ Bid*, WASH. TIMES, Dec. 11, 1999, at A1 (observing that the amendment was approved by sixty-nine percent of the voters).

10. *Baehr v. Miike*, No. 20371 1999 Haw. LEXIS 391, at *1, *6 (Haw. Dec. 9, 1999).

11. *Id.* at *1.

12. See *id.* at *6 (reasoning that the marriage amendment took the statute “out of the ambit of the equal protection clause of the Hawai’i Constitution”).

13. *Id.* at *8.

14. See Wetzstein, *supra* note 9, at A1 (noting that at least 31 states have banned gay marriages and Congress passed the Defense of Marriage Act, which denied federal recognition of homosexual marriage and allowed states to ignore same-sex unions licensed elsewhere).

15. *Baehr*, 1999 Haw. LEXIS 391, at *5.

16. *Baehr*, 852 P.2d at 58, 60, 67.

17. *Baehr*, 1999 Haw. LEXIS 391, at *6.

After concluding that the statute in question was valid, the court turned to an examination of the relief the plaintiffs sought. Since the plaintiffs were all same-sex couples seeking access to the application process for marriage licenses,¹⁸ the court held that such relief was now unavailable in light of the amendment.¹⁹

Significantly, this action did not overrule the Hawaii Supreme Court's previous ruling of 1993, which construed HRS § 572-1 as impermissibly distinguishing applicants for marriage on the basis of gender, thus requiring a strict scrutiny standard.²⁰ In a concurring opinion, Justice Ramil argued that the majority should overrule the earlier opinion to "avoid setting precedent that is inconsistent with the fundamental principles of constitutional interpretation."²¹ He asserted that the framers never contemplated the possibility of same-sex marriage and so the majority erroneously subjected HRS § 572-1 to strict scrutiny.²² In Justice Ramil's view, it was improper for the court to usurp the role of the electorate by making its own policy decision concerning same-sex marriage.²³

Justice Ramil's concern that the court was effectuating a fundamental paradigm shift in the concept of marriage²⁴ resonated within those groups that had opposed the plaintiffs' right to marry.²⁵ In spite of the decision, proponents of homosexuals' right to marry vow that their momentum in the struggle cannot be stopped.²⁶ In sum, the question of whether Hawaii will be the first state to recognize same-sex marriage has been answered in the negative. The recent decision by the Vermont Supreme Court,²⁷ however, assures

18. *Id.* at *8.

19. *Id.*

20. *Id.* at *7. This is the case because the framers of the Hawaii Constitution intended that a proscription against discrimination based on sexual orientation be subsumed within the equal protection clause's prohibition against discrimination based on sex. *Id.* Therefore, the law required equal protection review. *Id.*

21. *Id.* at *14.

22. *See Baehr*, 1999 Haw. LEXIS 391, at *10-11 (Ramil, J., concurring) (noting that such an action establishes a "misguided precedent" for future cases that call for the interpretation of the Hawaii Constitution).

23. *See id.* at *12 (Ramil, J., concurring) (observing that the determination of what the law should be is properly left to the people).

24. *See id.* at *10 (Ramil, J., concurring) (stating that Justice Ramil saw the departure from the long-held paradigm of marriage as a union exclusively between members of the opposite sex as being an unjustified and "drastic" step, *id.* at *11).

25. *See Wetzstein*, *supra* note 9, at A1 (quoting the chairperson of Alliance for Traditional Marriage as thanking God and the high court for affirming marriage as being between one man and one woman).

26. *See Wetzstein*, *supra* note 9, at A1 (quoting an attorney for the homosexual couples).

27. *See Baker v. Vermont*, No. 98-032, 1009-97CNC, 1999 WL 1211709 (Vt. Dec. 20, 1999) (holding that same-sex couples "may not be deprived of the statutory benefits and protections

that the debate will not end here.

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afforded persons of the opposite sex who choose to marry”).