

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.