

Marriage Law Digest

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CITIZENS FOR EQUAL PROTECTION V. ATTORNEY GENERAL

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United States District Court, District of
Nebraska

May 12, 2005

In 2000, the people of Nebraska approved an amendment to the state constitution defining marriage and prohibiting the creation of an equivalent legal status. The amendment was challenged by three activist groups who charged that their ability to seek certain legislative outcomes (legal recognition of same-sex partnerships) was burdened by the amendment. They relied heavily on an attorney general opinion suggesting that a proposed bill would run afoul of the amendment because it would create a same-sex domestic partnership status. The bill was not approved by the legislature (although other bills whose constitutionality has been questioned by the attorney general have been). The attorney general noted in his brief in the case that if the bill had been slightly amended to provide the same benefits without creating a status based on a same-sex relationship, it would not have violated the Nebraska amendment.

The court first held that the marriage amendment created a deprivation of the plaintiffs' First Amendment rights to (1) intimate association and (2) participation in the political process.

The intimate association argument is premised on the theory that the amendment "potentially prohibits or at least inhibits people, regardless of sexual preference,

from entering into numerous relationships or living arrangements that could be interpreted as a same-sex relationship 'similar to' marriage."

The political participation conclusion is based on the idea that the amendment creates a significant burden on groups seeking certain legislative results.

The court also held that the marriage amendment deprived the plaintiffs of equal protection of the laws in that it deprived a narrow class of persons of a wide range of benefits. The court held that the challenged amendment was "indistinguishable" from the law challenged in *Romer v. Evans*, which invalidated all state and local laws that recognized "sexual orientation" as a protected class in anti-discrimination ordinances.

The court held that "[a] total prohibition on any future establishment or recognition of domestic partnerships, civil unions, or undefined relationships 'similar to' marriage does not advance this goal [promoting family stability] and may, in fact, prevent it."

Interestingly, while the decision purports not to weigh the validity of the amendment's definition of marriage, it invalidates both sentences of the amendment.

The court also held that the marriage amendment created an unconstitutional bill of attainder (a legislative determination of guilt of a particular group and imposition of a punishment without a jury trial). The court

concluded that the targeted group is “the specific group of people who have entered into, will enter into, or seek to enter into ‘civil unions’ and ‘domestic partnerships’” (the decision does not specify how that class would be limited). The court further holds that the punishment is the earlier identified deprivation of participation in the political process.

BUELL V. CLARA MAASS
Docket No. L-5144-03
Superior Court of New Jersey
May 11, 2005

A loss of consortium claim was made by a same-sex couple. Previous case law had not allowed these claims to be made by unmarried couples. However, the court believed two developments changed this situation.

First is a case where the New Jersey Supreme Court allowed a loss of consortium case for an engaged person. Second was the creation of a domestic partnership status for same-sex couples. Although the domestic partnership law does not provide an action for loss of consortium, the court held that the list of benefits provided by the statute was not exhaustive and that the list of greater rights in the statute should include lesser rights including the ability to make a claim for loss of consortium.

The court concluded that the plaintiffs were entitled to bring their claim for a loss of consortium.

IN RE LOVO-LARA
23 I&N Dec. 746 (BIA 2005)
Board of Immigration Appeals
May 18, 2005

A man who had undergone an operation to take on the appearance of a woman

petitioned for an immigration visa as the spouse of a male citizen. The government opposed the petition, arguing that the federal Defense of Marriage Act precluded the recognition of this marriage.

The couple had been married in North Carolina. The board held that absent language or intent in DOMA on the subject, the board would have to rely on state law to determine sex. Since North Carolina allows a person to change their sex designation after an operation, the petitioner was legally a woman and the marriage was therefore valid.

WOOD V. KENTUCKY
Civil Action No. 04-CI-01537
Franklin Circuit Court, Kentucky
May 26, 2005

Plaintiffs argued that Kentucky’s marriage amendment contained more than one subject and that the summary of the amendment on the ballot was misleading. The court held that since the ballot summary gave the text of the amendment verbatim, it was sufficient even if it did not describe every possible consequence of the amendment. The court also decided that the two sentences of the amendment (defining marriage and prohibiting the creation of equivalent statuses) were not so unrelated as to constitute a violation of the single subject rule.

DOYLE V. GOODRIDGE
SJC-09254
Massachusetts Supreme Judicial Court
May 27, 2005

A private citizen petitioned the Massachusetts Supreme Judicial Court for a stay of its order redefining marriage pending a vote on a proposed constitutional amendment that would reverse the effect of

the ruling. The court rejected the challenge saying that there had occurred no change in circumstance which justified reversing the earlier decision.