

Summary of SC92583, *Kelly D. Glossip v. Missouri Department of Transportation and Highway Patrol Employees' Retirement System*

Appeal from the Cole County circuit court, Judge Daniel R. Green

Argued and submitted February 27, 2013; opinion issued October 29, 2013

Attorneys: Glossip was represented by Maurice B. Graham of Gray, Ritter & Graham PC in St. Louis, (314) 241-5620; Anthony E. Rothert and Grant R. Doty of the ACLU of Eastern Missouri in St. Louis, (314) 652-3114; Stephen Douglas Bonney of the ACLU Foundation of Kansas and Western Missouri in Kansas City, (816) 756-3113; Roger K. Heidenreich of SNR Denton US LLP in St. Louis, (314) 259-5806; John A. Knight of the LGBT & AIDS Project of the ACLU Foundation in Chicago, (312) 201-9740; and Joshua A. Block of the LGBT & AIDS Project of the ACLU Foundation in New York, (212) 549-2593. The state was represented by James R. Ward and Emily A. Dodge of the attorney general's office in Jefferson City, (573) 751-3321.

Several parties filed briefs as friends of the Court. A group of Missouri law professors was represented by Michael J. F. Byrne of the Law Firm of Haden & Byrne in Columbia, (573) 442-3335, and Stephen Sanders of the University of Michigan Law School in Ann Arbor, Mich., (734) 904-2280. Certain current and former elected officials were represented by Harold L. Lowenstein, Richard B. Scherrer, Thomas B. Weaver and Winston E. Calvert of Armstrong Teasdale LLP in St. Louis, (314) 651-5070. The Law Enforcement Gays and Lesbians (LEGAL) International and its affiliated chapters were represented by Juliet A. Cox and M. Courtney Koger of Kutak Rock in Kansas City, (816) 960-0090; and Christopher R. Cox of the Lambda Legal Defense and Education Fund Inc. in Chicago, (312) 663-4413. PROMO was represented by Denise D. Lieberman, an attorney in St. Louis, (314) 780-1833.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: This case expressly does not involve a challenge to the state constitution's ban on same-sex marriage or its statutory counterpart. Rather, it involves a challenge to two statutes – the first providing benefits to a surviving spouse of a state highway patrolman killed in the line of duty, and the second providing that the word “spouse” in the first shall refer only to a marriage between a man and woman. The circuit court affirmed an administrative decision denying a man survivor benefits because he and a patrolman killed in the line of duty were not married. In a 5-2 per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri affirms the circuit court's judgment. The man acknowledges that the statute denies benefits to all unmarried couples regardless of whether the patrolman and survivor were of the same or opposite sex. As such, the statute discriminates solely on the basis of marital status, not sexual orientation, and the man did not challenge the state's prohibition against same-sex marriage. The survivor benefits statute does not violate equal protection because its spousal requirement rationally is related to legitimate state interests of limiting survivor benefits to spouses, who may be more financially dependent on the deceased patrolman than an unmarried partner, which also may serve administrative efficiency and control costs by preserving the retirement system's limited resources. This statute also is not an unconstitutional “special law”

because it applies to the open-ended class into which persons may move in and out as highway patrol employees marry, divorce or have their spouses predecease them. Further, the man does not have standing (legal ability to sue) to challenge the other statute's ban on benefits for same-sex married couples. Because he was not married, he is not disadvantaged by that statute.

Judge Richard B. Teitelman dissents. He would hold that the statutes discriminate on the basis of sexual orientation and would reverse the judgment. By tying the payment of survivor benefits to a definition of "spouse" that renders access to those benefits legally impossible only for gays and lesbians, the statutes necessarily operate to the unique disadvantage of those persons precisely because of their sexual orientation, thereby turning the legal status of marriage into a proxy for discrimination on the basis of sexual orientation. Because gays and lesbians have been subjected to historic patterns of disadvantage, the author would apply "intermediate scrutiny" review and would determine the statutes fail such review because neither the relationship between marriage and financial interdependence nor the state's interest in efficiency or cost control provides a substantial justification for categorically excluding same-sex couples from crucial benefits.

Facts: Dennis Engelhard, a state highway patrolman, was killed in the line of duty in December 2009. His same-sex domestic partner, Kelly Glossip, applied to the state retirement system for survivor benefits under section 104.140.3, RSMo Supp. 2002. The application asked Glossip to submit a copy of a valid driver's license, a death certificate and a marriage license. He submitted his driver's license, Engelhard's death certificate and an affidavit acknowledging that he and Engelhard never were married; describing their same-sex relationship, in which they had cohabitated since 1995; and stating that they had held themselves out to their families and their community as a couple in a committed, marital relationship. The retirement system denied Glossip's application for benefits based on the lack of a valid marriage certificate and two statutes. The first statute – section 104.012, RSMo Supp. 2001 – provides that, for the purposes of public retirement systems administered pursuant to chapter 104, "any reference to the term 'spouse' only recognizes marriage between a man and a woman." The second statute provides that it is the state's public policy "to recognize marriage only between a man and a woman." Glossip sought relief in the circuit court, arguing sections 104.140.3 and 104.012 are unconstitutional. He did not challenge the state constitution's ban on same-sex marriage or its statutory counterpart. The circuit court dismissed the case. Glossip appeals.

AFFIRMED.

Court en banc holds: (1) Section 104.140.3, providing survivor benefits, does not violate equal protection. Statutes are presumed constitutional, and a party challenging a statute's validity must prove the statute clearly and undoubtedly violates the constitution. Glossip was free to challenge the constitutional and statutory prohibitions against same-sex marriage, but he did not, and those unchallenged provisions do not transform section 104.140.3's spousal requirement into sexual-orientation discrimination. The statute excludes Glossip for survivor benefits not on the basis of sexual orientation but on marital status. Neither the United States Supreme Court nor this Court ever has held that marital status triggers "strict scrutiny," and Glossip does not contend the statute violates a fundamental right. As such, "rational basis" review applies. Under this review, a statute is valid as long as the classification reasonably relates to a legitimate state interest. This Court will not substitute its judgment for that of the legislature as to the wisdom, social

desirability or economic policy underlying a statute. The legislature reasonably could have concluded that limiting survivor benefits to spouses would serve the benefit's intended purpose of providing benefits to persons who are economically dependent on deceased employees and that there might be a greater incidence of such interdependence among married couples than among unmarried couples. The legislature reasonably could have concluded that so limiting benefits also would serve administrative efficiency and control costs by preserving the retirement system's limited resources. Section 104.140's history demonstrates that the spousal requirement was not enacted to harm gays and lesbians but was included when the first death benefit was enacted more than 25 years before Missouri first limited marriage to opposite-sex couples.

(2) Glossip does not have standing to challenge section 104.012 because he is not a member of the class of persons disadvantaged by that statute. It does not distinguish between same-sex couples and opposite-sex couples but only distinguishes between married couples and unmarried couples. Because Glossip was not married to Engelhard at the time of Engelhard's death, Glossip does not pass the threshold requirement and does not come within the scope of section 104.012.

(3) Section 104.140.3 also is not an unconstitutional special law. The state constitution prohibits the legislature from enacting "special laws" that apply to localities rather than to the state as a whole and that benefit individuals rather than the general public when a general law can be made applicable. The survivor benefits statute is not facially special because its spousal requirement creates an open-ended class of married couples, into which persons may move in and out as highway patrol employees marry, divorce or have their spouses predecease them. Glossip and Engelhard never were married in another state that recognizes same-sex marriage, nor did they attempt to challenge Missouri's prohibition against same-sex marriage. As such, Glossip's argument that the class is unconstitutionally close-ended is without merit.

Dissenting opinion by Judge Teitelman: The author would hold that the statutes at issue discriminate on the basis of sexual orientation and that such discrimination is not substantially related to a legitimate state purpose and, therefore, would reverse the judgment.

(1) Glossip's sole claim is that the benefits statutes violate equal protection because they use a definition of "spouse" that allows opposite-sex couples the opportunity to receive benefits while making it legally impossible for same-sex couples ever to receive benefits. As such, the state constitutional ban on same-sex marriage is essentially irrelevant to Glossip's claim. While it is correct that sections 104.140.3 and 104.012 draw a distinction on the basis of marital status, by tying the payment of survivor benefits to a definition of "spouse" that renders access to those benefits legally impossible only for gays and lesbians, the statutes necessarily operate to the unique disadvantage of gays and lesbians precisely because of their sexual orientation, thereby turning the legal status of marriage into a proxy for sexual-orientation discrimination.

(2) Because gays and lesbians have been subjected to historic patterns of disadvantage, "intermediate scrutiny" review should apply. Under this review, a classification is permissible only if it is substantially related to achieving important governmental objectives. There is no dispute that Glossip and Engelhard's relationship was long-term, committed and financially interdependent, demonstrating that the relationship between marriage and financial interdependence fails to provide a rational basis, let alone a substantial justification, for

categorically excluding same-sex couples from crucial benefits. Marriage cannot be a proxy for financial interdependence when only gays and lesbians categorically are excluded from being married legally. Further, if cost control constituted a substantial justification for denying benefits in cases subject to intermediate scrutiny, discrimination always would be justified on purely economic grounds. The state's interest in efficiency cannot justify the discriminatory treatment of one group of citizens in favor of another.

(3) Because the principal opinion concludes that Glossip lacks standing to challenge the definition of "spouse" – the "threshold inquiry" – because he and Engelhard never were married, the remainder of the principal opinion is unnecessary, non-binding dicta.