

Summary of *Varnum v. Brien*

Iowa Supreme Court

April 2009

The Iowa Supreme Court has the responsibility to determine if a law enacted by the legislative branch and enforced by the executive branch violates the Iowa Constitution. The court reaffirmed that a statute inconsistent with the Iowa Constitution must be declared void, even though it may be supported by strong and deep-seated traditional beliefs and popular opinion.

In addressing the case before it, the court found one constitutional principle was at the heart of the case—the doctrine of equal protection. Equal protection under the Iowa Constitution “is essentially a direction that all persons similarly situated should be treated alike.” Since territorial times, Iowa has given meaning to this constitutional provision, striking blows to slavery and segregation, and recognizing women’s rights. The court found the issue of same-sex marriage comes to it with the same importance as the landmark cases of the past.

Equal Protection Principles

Under Iowa’s tripartite system of government, courts give respect to the legislative process and presume its enactments are constitutional. The deference afforded to legislative policy-making is manifested in the level of scrutiny applied to review legislative action. In most equal protection cases, the court applies a very deferential standard known as the “rational basis” test. Under this test, “[t]he plaintiff has the heavy burden of showing the statute unconstitutional and must negate every reasonable basis upon which the classification may be sustained.” Classifications based on race, alienage, or national origin and those affecting fundamental rights are, however, evaluated under a “strict scrutiny” standard. Classifications subject to strict scrutiny are presumptively invalid and must be narrowly tailored to serve a compelling governmental interest. The court also recognized that an intermediate tier has been applied to statutes classifying persons on the basis of gender or illegitimacy. Under this level of scrutiny, a party seeking to uphold the statute must demonstrate the challenged classification is substantially related to the achievement of an important governmental objective.

Similarly Situated People

Prior to proceeding to an application of the equal protection analysis, the court addressed the County’s request that it apply a threshold test. Under this threshold test, if the plaintiffs cannot show as a preliminary matter that they are similarly situated, courts do not further consider whether their different treatment under a statute is permitted under the equal protection clause. The County asserts that plaintiffs are not similarly situated to civilly married heterosexuals because they cannot procreate naturally.

The court rejected the County's analysis, finding the threshold analysis advocated by the County results in the avoidance of a full equal protection analysis. Equal protection demands that laws treat alike all people who are "similarly situated with respect to the legitimate purposes of the law." "[S]imilarly situated" cannot mean simply 'similar in the possession of the classifying trait.' "

All members of any class are similarly situated in this respect, and consequently, any classification whatsoever would be reasonable by this test." Likewise, "similarly situated" cannot be interpreted to require plaintiffs be identical in every way to people treated more favorably by the law. "No two people or groups of people are the same in every way, and nearly every equal protection claim could be run aground [under] a threshold analysis" that requires the two groups "be a mirror image of one another." Rather, equal protection demands that the law itself must be equal. It requires that laws treat all those who are similarly situated with respect to the purposes of the law alike. Thus, the purposes of the law must be referenced for a meaningful evaluation.

The purpose of Iowa's marriage law is to provide an institutional basis for defining the fundamental relational rights and responsibilities of persons in committed relationships. It also serves to recognize the status of the parties' committed relationship. In this case, the court concluded plaintiffs are similarly situated compared to heterosexual persons; they are in committed relationships and official recognition of their status provides an institutional basis for defining their fundamental relational rights and responsibilities.

Classification Undertaken in Iowa Code Section 595.2

Having determined that the plaintiffs were similarly situated for purposes of equal protection analysis, the court next addressed the classification undertaken in Iowa's marriage statute. The plaintiffs contended the statute classifies and discriminates on the bases of gender and sexual orientation while the County argued the same-sex marriage ban does not discriminate on either basis. The court concluded that "[t]he benefit denied by the marriage statute—the status of civil marriage for same-sex couples—is so 'closely correlated with being homosexual' as to make it apparent the law is targeted at gay and lesbian people as a class." Therefore, the court proceeded to analyze the statute's constitutionality based on sexual-orientation discrimination.

Appropriate Level of Judicial Scrutiny

The next issue addressed by the court was whether sexual orientation is a suspect class entitled to a heightened level of scrutiny beyond rational basis. Four factors utilized in determining whether certain legislative classifications warrant a more demanding constitutional analysis were considered: (1) the history of invidious discrimination against the class burdened by the legislation, (2) whether the characteristics that distinguish the class indicate a typical class member's ability to contribute to society, (3) whether the distinguishing characteristic is "immutable," or beyond the class members' control, and (4) the political power of the subject class.

In its analysis, the court found each factor supported a finding that classification by sexual orientation warranted a heightened scrutiny. The court, citing historical as well

as present-day examples, concluded that gay and lesbian people as a group have long been the victim of purposeful and invidious discrimination because of their sexual orientation. There was no evidence that the characteristic that defines the members of this group—sexual orientation—bears any logical relationship to their ability to perform productively in society, either in familial relations or otherwise. Addressing the issue of immutability, the court found sexual orientation to be central to personal identity and that its alteration, if at all, could only be accomplished at the expense of significant damage to the individual's sense of self. This, the court concluded, would be wholly unacceptable for the government to require anyone to do. Finally, the court found that, despite their securing of significant legal protections against discrimination in recent years, gay and lesbian people have not become so politically powerful as to overcome the unfair and severe prejudice that produces discrimination based on sexual orientation.

Intermediate Scrutiny Standard: Governmental Objectives

Based upon the above analysis, the court proceeded to examine Iowa's same-sex marriage ban under an intermediate scrutiny standard. "To withstand intermediate scrutiny, a statutory classification must be substantially related to an important governmental objective." In determining whether exclusion of gay and lesbian people from civil marriage is substantially related to any important governmental objective, the court considered each of the County's proffered objectives in support of the marriage statute. The objectives asserted by the County were (1) tradition, (2) promoting the optimal environment for children, (3) promoting procreation, (4) promoting stability in opposite-sex relationships, and (5) preservation of state resources. In considering these objectives, the court examined whether the objective purportedly advanced by the classification is important and, if so, whether the governmental objective can fairly be said to be advanced by the legislative classification.

Maintaining Traditional Marriage

Initially, the court considered the County's argument the same-sex marriage ban promotes the "integrity of traditional marriage" by "maintaining the historical and traditional marriage norm ([as] one between a man and a woman)." The court noted that, when tradition is offered as a justification for preserving a statutory scheme challenged on equal protection grounds, the court must determine whether the reasons underlying the tradition are sufficient to satisfy constitutional requirements. These reasons, the court found, must be something other than the preservation of tradition by itself.

"When a certain tradition is used as both the governmental objective and the classification to further that objective, the equal protection analysis is transformed into the circular question of whether the classification accomplishes the governmental objective, which objective is to maintain the classification." Here, the County offered no governmental reason underlying the tradition of limiting marriage to heterosexual couples, so the court proceeded to consider the other reasons advanced by the County for the legislative classification.

Promotion of Optimal Environment to Raise Children

The second of the County's proffered governmental objectives involves promoting child rearing by a father and a mother in a marital relationship, the optimal milieu according to some social scientists. Although the court found support for the proposition that the interests of children are served equally by same-sex parents and opposite sex parents, it acknowledged the existence of reasoned opinions that dual gender parenting is the optimal environment for children. Nonetheless, the court concluded the classification employed to further that goal—sexual orientation— did not pass intermediate scrutiny because it is significantly under-inclusive and over-inclusive.

The statute, the court found, is under-inclusive because it does not exclude from marriage other groups of parents—such as child abusers, sexual predators, parents neglecting to provide child support, and violent felons—that are undeniably less than optimal parents. If the marriage statute was truly focused on optimal parenting, many classifications of people would be excluded, not merely gay and lesbian people. The statute is also under-inclusive because it does not prohibit same-sex couples from raising children in Iowa. The statute is over-inclusive because not all same-sex couples choose to raise children. The court further noted that the County failed to show how the best interests of children of gay and lesbian parents, who are denied an environment supported by the benefits of marriage under the statute, are served by the ban, or how the ban benefits the interests of children of heterosexual parents. Thus, the court concluded a classification that limits civil marriage to opposite-sex couples is simply not substantially related to the objective of promoting the optimal environment to raise children.

Promotion of Procreation

Next, the court addressed the County's argument that endorsement of traditional civil marriage will result in more procreation. The court concluded the County's argument is flawed because it fails to address the required analysis of the objective: whether *exclusion* of gay and lesbian individuals from the institution of civil marriage will result in *more* procreation. The court found no argument to support the conclusion that a goal of additional procreation would be substantially furthered by the exclusion of gays and lesbians from civil marriage.

Promoting Stability in Opposite-Sex Relationships

The County also asserted that the statute promoted stability in opposite-sex relationships. The court acknowledged that, while the institution of civil marriage likely encourages stability in opposite-sex relationships, there was no evidence to support that *excluding* gay and lesbian people from civil marriage makes opposite-sex marriage more stable.

Conservation of Resources

Finally, the court rejected the County's argument that banning same-sex marriages in a constitutional fashion conserves state resources. The argument in support of the same-sex marriage ban is based on a simple premise: civilly married couples enjoy numerous governmental benefits, so the state's fiscal burden associated with civil marriage is

reduced if less people are allowed to marry. While the ban on same-sex marriage may conserve some state resources, so would excluding any number of identifiable groups. However, under intermediate scrutiny the sexual-orientation-based classification must substantially further the conservation-of-resources objective. Here again, the court found it was over- and under-inclusive and did not substantially further the suggested governmental interest.

Religious Opposition to Same-Sex Marriage

Having addressed and rejected each specific interest articulated by the County, the court addressed one final ground believed to underlie the same-sex marriage debate—religious opposition. Recognizing the sincere religious belief held by some that the “sanctity of marriage” would be undermined by the inclusion of gay and lesbian couples, the court nevertheless noted that such views are not the only religious views of marriage. Other, equally sincere groups have espoused strong religious views yielding the opposite conclusion. These contrasting opinions, the court finds, explain the absence of any religious-based rationale to test the constitutionality of Iowa’s same-sex marriage statute. “Our constitution does not permit any branch of government to resolve these types of religious debates and entrusts to courts the task of ensuring government *avoids* them. The statute at issue in this case does not prescribe a definition of marriage for religious institutions. Instead, the statute declares, ‘Marriage is a civil contract’ and then regulates that civil contract. Thus, in pursuing our task in this case, we proceed as civil judges, far removed from the theological debate of religious clerics, and focus only on the concept of civil marriage and the state licensing system that identifies a limited class of persons entitled to secular rights and benefits associated with marriage.”

“State government can have no religious views, either directly or indirectly, expressed through its legislation. This proposition is the essence of the separation of church and state.”

“As a result, civil marriage must be judged under our constitutional standards of equal protection and not under religious doctrines or the religious views of individuals. This approach does not disrespect or denigrate the religious views of many Iowans who may strongly believe in marriage as a dual-gender union, but considers, as we must, only the constitutional rights of all people, as expressed by the process of equal protection for all. We are not permitted to do less and would damage our constitution immeasurably by trying to do more.”

Constitutional Infirmity

In concluding the marriage statute is constitutionally infirm, the court stated: “We are firmly convinced the exclusion of gay and lesbian people from the institution of civil marriage does not substantially further any important governmental objective. The legislature has excluded a historically disfavored class of persons from a supremely important civil institution without a constitutionally sufficient justification. There is no material fact, genuinely in dispute, that can affect this determination. We have a constitutional duty to ensure equal protection of the law. Faithfulness to that duty

requires us to hold Iowa's marriage statute, Iowa Code section 595.2, violates the Iowa Constitution. To decide otherwise would be an abdication of our constitutional duty. If gay and lesbian people must submit to different treatment without an exceedingly persuasive justification, they are deprived of the benefits of the principle of equal protection upon which the rule of law is founded. Iowa Code section 595.2 denies gay and lesbian people the equal protection of the law promised by the Iowa Constitution."

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