



## Station 1 - Baehr v. Lewin

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Supreme Court of Hawaii  
Ninia Baehr, Genora Dancel, Tammy Rodrigues, Antoinette Pregil, Pat Lagon, Joseph Melilio, Plaintiffs-Appellants,  
v.  
John C. Lewin, in his official capacity as director of the Department of Health, State of Hawaii, Defendant-Appellee  
NO. 15689

May 27, 1993

Motion for Reconsideration or Clarification. (Civ. NO. 91-1394)

MOON, C.J., LEVINSON, J., NAKAYAMA, J.,\* INTERMEDIATE COURT OF APPEALS CHIEF JUDGE BURNS, IN PLACE OF LUM, FORMER C.J., RECUSED,\*\* INTERMEDIATE COURT OF APPEALS JUDGE HEEN, IN PLACE OF KLEIN, J., RECUSED

Defendant-Appellee's motion for reconsideration, or, in the alternative, for clarification, and suggestion of the appropriateness of rebriefing and reargument having been filed in the above-captioned matter on May 17, 1993, the motion is hereby granted in part, and the mandate on remand is hereby clarified as follows:

[\*646] Because, for the reasons stated in the plurality opinion filed in the above-captioned matter on May 5, 1993, the circuit court erroneously granted Lewin's motion for judgment on the pleadings and dismissed the plaintiffs' complaint, the circuit court's order and judgment are vacated and the matter is remanded for further proceedings consistent with the plurality opinion. On remand, in accordance with the "strict scrutiny" standard, the burden will rest on Lewin to overcome the presumption that **HRS § 572-1** is unconstitutional by demonstrating that it furthers compelling state interests and is narrowly drawn to avoid unnecessary abridgments of constitutional rights. See *Nagle v. Board of Educ.*, **63 Haw. 389, 392, 629 P.2d 109, 111** (1981); *Holdman v. Olim*, **59 Haw. 346, 349, 581 P.2d 1164, 1167** (1978).

Defendant-Appellee's motion is denied in all other respects.

Intermediate Court of Appeals Judge Heen, having filed a dissenting opinion in this matter, does not concur.

CONCURRING OPINION BY CHIEF JUDGE BURNS

There are three opinions in this case: (1) Levinson-Moon; (2) Burns; and (3) Heen-Hayashi. Appellee Lewin disagrees with the Levinson-Moon and Burns opinions and seeks reconsideration of both. With respect to the Levinson-Moon opinion, I concur with the decision by [\*647] Justice Levinson and Chief Justice Moon to grant the motion in part. With respect to the Burns opinion, I deny the request.

Alternatively, appellee Lewin seeks clarification of this court's mandate. The only agreement by a majority of this court is that this case involves genuine issues of material fact. In my view, that is this court's mandate. Thus far, there is no majority agreement as to what these issues are or which side has the burden to prove them. Presented with this chance to write more than I have already written in the Burns opinion about these issues and burdens, I choose to wait for the next appeal. At that time, hopefully, there will be: a complete record of a trial in which the parties have presented their evidence and arguments and the trial court has made its decisions of fact and law; and opening, answering and reply briefs fully discussing the issues and the applicable law.

Robert A. Marks, Attorney General, and Sonia Faust, Deputy Attorney General, for appellee John C. Lewin.

<sup>fn\*</sup> In place of Substitute Justice Hayashi, whose term of Substitution expired on October 30, 1992. See *Yoshizaki v. Hilo Hosp.*, **50 Haw. 40, 429 P.2d 829** (1967).

<sup>fn\*\*</sup> Chief Justice Lum retired March 31, 1993. See *Rohlfing v. Moses Akiona, Ltd.*, **45 Haw. 440, 369 P.2d 114** (1962).



Ninia Baehr and Genora Dancel



Hawaii Supreme Court

## Questions

1. Where in the United States did this event take place? When?
2. What level of government was involved (city, state, federal)?
3. What branch of government was involved (legislative, executive, judicial)?
4. Who were the plaintiffs in the case?
5. Who was the defendant in the case?
6. What was the issue involved in the case?
7. What was the decision of the case?
8. How did the decision affect the civic process and history of the Marriage Equality debate?