

Subj: Re: [transgendernews] [LAW] Opinion: State ex. rel. Tompras v. Bd. of Election Commissioners
Date: 6/10/2004 10:37:53 PM Central Daylight Time
From: broadusk@lincolnu.edu (Kylar Broadus)
To: TexKatrina@aol.com

Kat,

I practice in Missouri and am not aware of any transexual birth certificate statute. There really isn't a true ERA provision either. Our local state rep. has been trying to get this passed for years.

Best,

Kylar Broadus

----- Original Message -----

From: Kat <TexKatrina@aol.com>

Date: Wednesday, June 9, 2004 5:52 pm

Subject: [transgendernews] [LAW] Opinion: State ex. rel. Tompras v. Bd. of Election Commissioners

- > NOTE: the key here is what constitutes 'public office', not what
- > constitutes being male or female.
- >
- > However, it is interesting to note (as noted in a footnote) that
- > Missouri has a form of an Equal Righte Amendment. It also has a
- > transexual birth certificate statute. All of that should be kept
- > in
- > mind if something like this arises involving something that IS
- > subject to the state's ERA.
- >
- > Kat
- >
- > -----
- >
- >
- > <http://www.osca.state.mo.us/Courts/PubOpinions.nsf/0f87ea4ac0ad4c0186256405005d3b8e/72d987cd77b9e85386256ead00513d02?OpenDocument>
- >
- > This slip opinion is subject to revision and may not reflect the
- > final opinion adopted by the Court.
- >
- > Opinion
- > Supreme Court of Missouri
- >
- >
- > Case Style: State ex rel. Christian D. Tompras, and Christian D.
- > Tompras, Appellant, v. Board of Election Commissioners of St.
- > Louis
- > County, Respondent, Missouri Attorney General,
- > Intervenor/Respondent.
- >
- > Case Number: SC86002
- >

> Handdown Date: 06/08/2004
>
> Appeal From: Circuit Court of St. Louis County, Hon. Bernhardt C.
> Drumm, Jr.
>
> Counsel for Appellant: Howard Shalowitz
>
> Counsel for Respondent: Kevin M. O'Keefe, Paul E. Martin, James R.
> Layton and Alana Barragan-Scott
>
> Opinion Summary:
>
> Christian Tompras, a man, attempted to file for election as a St.
> Louis County township's political party committeewoman, and the
> director of elections refused to accept his filing. Tompras sought
> a
> declaratory judgment that all laws in chapter 115 that exclude
> potential candidates from filing for, running for or holding
> elected
> office based on their gender are unconstitutional. He also sought
> to
> be placed on the ballot as a candidate for township
> committeewoman.
> The court denied all relief, and Tompras now seeks relief from
> this
> Court.
>
> AFFIRMED.
>
> Court en banc holds: (1) The only constitutional claim Tompras
> preserved was his claim challenging the validity of section
> 115.607,
> RSMo. He alleged no facts identifying a specific violation as to
> any
> other section of chapter 115 and did not specify any other statute
> by
> number.
> (2) Tompras' challenge to section 115.607, requires the office of
> political party committeewoman to be a public office. Instead, it
> is
> a political party office. Political parties' rights to govern
> themselves are protected by the first amendment guarantee of free
> association, and the state has demonstrated an exceedingly
> persuasive
> justification for the parties' rules to overcome the equal
> protection
> challenge.
>
>
> Citation:
>
> Opinion Author: PER CURIAM
>
> Opinion Vote: AFFIRMED. All concur.
>
> Opinion:
>
> Christian D. Tompras attempted to file for election as a St. Louis
> County township committeewoman. The director of elections refused
> to
> accept the filing as Tompras was a male. Tompras sued, seeking a

- > declaratory judgment that section 115.607 and all other laws in
- > chapter 115 that exclude potential candidates from filing for,
- > running for, or holding elected office based on their gender are
- > unconstitutional. He also sought a writ of mandamus to be placed
- > on
- > the ballot as a candidate for township committeewoman.
- >
- > The trial court denied all relief. Because the case involves the
- > validity of a statute, this Court has jurisdiction. Mo. Const.
- > article V, section 3. The requested declaratory judgment was
- > properly
- > denied; therefore, a writ of mandamus was properly denied. The
- > judgment is affirmed.
- >
- > As previously noted, Tompras sought a declaration that all laws in
- > chapter 115 that exclude men and women from filing for, running
- > for,
- > or holding elected office based on their gender are
- > unconstitutional.
- > He only specifically identified section 115.607. (FN1) He alleged
- > no
- > facts identifying a specific violation as to any other section of
- > chapter 115 and did not specify any other statute by number.
- >
- > Ordinarily, a constitutional question must be raised at the first
- > opportunity by specifically designating the provision claimed to
- > be
- > violated, identifying facts showing such violation, and the
- > question
- > must be preserved at each stage of review. The reason for this
- > requirement is to prevent surprise to the opposing party and to
- > permit the trial court an opportunity to fairly identify and rule
- > on
- > the issues. Magee v. Blue Ridge Professional Bldg. Co., Inc., 821
- > S.W.2d 839, 844 (Mo. banc 1991). Except as to section 115.607,
- > Tompras failed to preserve any constitutional claim as to chapter 115.
- > With respect to section 115.607, Tompras' claim that the statute
- > violates his constitutional rights requires that the office of
- > political party committeewoman be a public office. (FN2) It is
- > not.
- > State ex rel. McCulloch v. Hoskins, 978 S.W.2d 779, 782-84 (Mo.
- > App.
- > 1998).
- >
- > Section 115.607 incorporates the parties' "equal gender rules."
- > The
- > distinction between "political party office" and "public office"
- > has
- > been relied on to resolve voting rights claims made by party
- > members
- > over delegate selection and party committee qualifications.
- > Political
- > parties' rights to govern themselves are protected by the first
- > amendment guarantee of free association. Eu v. San Francisco
- > County
- > Democratic Central Committee, 489 U.S. 214, (1989). Further, the
- > state's interest in promoting the associational rights of
- > political
- > parties is sufficient to overcome an equal protection challenge to
- > the statute. See Marchioro v. Chaney, 582 P.2d 487 (Wash. 1978)
- > (upholding similar state statute under state equal rights

> amendment);
> Ricard v. Louisiana, 544 So.2d 1310 (La.App. 1989) (upholding
> similar
> state statute amended in response to Democratic Party's adoption
> of
> equal division rule and noting United States Supreme Court
> deference
> to membership rules of political parties). The state has
> demonstrated
> an exceedingly persuasive justification for the equal gender
> rules.
> See United States v. Virginia, 518 U.S. 515, (1996).
>
> The judgment is affirmed.
>
> All concur.
>
> Footnotes:
>
> FN1. Section 115.607.1, RSMo Supp. 2003, provides:
>
> 115.607. 1. No person shall be elected or shall serve as a member
> of
> a county committee who is not, for one year next before the
> person's
> election, both a registered voter of and a resident of the county
> and
> the committee district from which the person is elected if such
> district shall have been so long established, and if not, then of
> the
> district or districts from which the same shall have been taken.
> Except as provided in subsections 2, 3, 4, 5, and 6 of this
> section,
> the membership of a county committee of each established political
> party shall consist of a man and a woman elected from each
> township
> or ward in the county.
>
> FN2. Article VII, section 10 of the Missouri Constitution,
> entitled "Equality of sexes in public service," provides that
> "[n]o
> person shall be disqualified from holding office in this state
> because of sex." (Emphasis added.) This provision governs public
> office.
>
>
>
>
>
> ----- Yahoo! Groups Sponsor -----
> ~-~>
> Make a clean sweep of pop-up ads. Yahoo! Companion Toolbar.
> Now with Pop-Up Blocker. Get it for free!
> <http://us.click.yahoo.com/L5YrjA/eSIIAA/yQLSAA/siHoIB/TM>
> -----
> ~-~>
>
>
> Yahoo! Groups Links
>
> <*> To visit your group on the web, go to:

> <http://groups.yahoo.com/group/transgendernews/>
 >
 > <*> To unsubscribe from this group, send an email to:
 > transgendernews-unsubscribe@yahoogroups.com
 >
 > <*> Your use of Yahoo! Groups is subject to:
 > <http://docs.yahoo.com/info/terms/>
 >
 >
 >

----- Headers -----

Return-Path: <broadusk@lincolnu.edu>
 Received: from rly-xl06.mx.aol.com (rly-xl06.mail.aol.com [172.20.83.76]) by air-xl02.mail.aol.com (v99_r4.8) with ESMTP id MAILINXL23-73d40c928f622; Thu, 10 Jun 2004 23:37:52 -0400
 Received: from Paeon.lincolnu.edu (poseidon.lincolnu.edu [150.167.1.12]) by rly-xl06.mx.aol.com (v99_r4.3) with ESMTP id MAILRELAYINXL63-73d40c928f622; Thu, 10 Jun 2004 23:37:27 -0400
 Received: from poseidon.lincolnu.edu(150.167.1.12) by Paeon.lincolnu.edu via csmapiid 0b1a1568_bb59_11d8_8ad2_00304827c6f3_17209; Thu, 10 Jun 2004 22:40:12 -0500 (CDT)
 Received: from lincolnu.edu (localhost [127.0.0.1]) by poseidon.lincolnu.edu (iPlanet Messaging Server 5.2 Patch 1 (built Aug 19 2002)) with ESMTP id <0HZ400EAGKSSMK@poseidon.lincolnu.edu> for TexKatrina@aol.com; Thu, 10 Jun 2004 22:38:53 -0500 (CDT)
 Received: from [192.138.214.104] by poseidon.lincolnu.edu (mshttpd); Thu, 10 Jun 2004 23:38:52 -0400
 Date: Thu, 10 Jun 2004 23:38:52 -0400
 From: Kylar Broadus <broadusk@lincolnu.edu>
 Subject: Re: [transgendernews] [LAW] Opinion: State ex. rel. Tompras v. Bd. of Election Commissioners
 To: TexKatrina@aol.com
 Message-id: <8e633c84.3c848e63@lincolnu.edu>
 MIME-version: 1.0
 X-Mailer: iPlanet Messenger Express 5.2 Patch 1 (built Aug 19 2002)
 Content-type: text/html; charset=us-ascii
 Content-language: en
 Content-transfer-encoding: 7BIT
 Content-disposition: inline
 X-Accept-Language: en
 Priority: normal
 X-AOL-IP: 150.167.1.12
 X-AOL-SCOLL-SCORE: 0:XXX:XX
 X-AOL-SCOLL-URL_COUNT: 0

Subj: **Re: [transgendernews] [LAW] Opinion: State ex. rel. Tompras v. Bd. of Electio...**
 Date: 6/15/2004 6:32:29 PM Central Daylight Time
 From: broadusk@lincolnu.edu (Kylar Broadus)
 To: TexKatrina@aol.com

Hi Kat,

Thanks,

Kylar

From: TexKatrina@aol.com
To: broadusk@lincolnu.edu
Sent: Friday, June 11, 2004 12:09 AM
Subject: Re: [transgendernews] [LAW] Opinion: State ex. rel. Tompras v. Bd. of Electio...

In a message dated 6/10/2004 10:37:53 PM Central Daylight Time, broadusk@lincolnu.edu writes:

I practice in Missouri and am not aware of any transexual birth certificate statute. There really isn't a true ERA provision either. Our local state rep. has been trying to get this passed for years.

I'll defer to you regarding the Mo ERA (or lack thereof). That's just what it sounded like was being referred to in the opinion.

However, as to the birth certificate statute, it is 1984 S.B. 574, codified in pertinent part at Mo. Rev. Stat. Sec. 193.215 (9).

Kat

----- Headers -----

Return-Path: <broadusk@lincolnu.edu>
 Received: from rly-xg01.mx.aol.com (rly-xg01.mail.aol.com [172.20.115.198]) by air-xg03.mail.aol.com (v99_r4.8) with ESMTP id MAILINXG32-44340cf86f913e; Tue, 15 Jun 2004 19:32:28 -0400
 Received: from Paeon.lincolnu.edu (poseidon.lincolnu.edu [150.167.1.12]) by rly-xg01.mx.aol.com (v99_r4.3) with ESMTP id MAILRELAYINXG11-44340cf86f913e; Tue, 15 Jun 2004 19:32:19 -0400
 Received: from poseidon.lincolnu.edu (150.167.1.12) by Paeon.lincolnu.edu via csmapiid a6f9e188_bf24_11d8_922c_00304827c6f3_20444; Tue, 15 Jun 2004 18:35:25 -0500 (CDT)
 Received: from PGH009 (PGH009.lincolnu.edu [150.167.27.9]) by poseidon.lincolnu.edu (iPlanet Messaging Server 5.2 HotFix 1.26 (built Mar 31 2004)) with SMTP id <0HZD00LG9IRYXR@poseidon.lincolnu.edu> for TexKatrina@aol.com; Tue, 15 Jun 2004 18:33:34 -0500 (CDT)
 Date: Tue, 15 Jun 2004 18:32:08 -0500
 From: Kylar Broadus <broadusk@lincolnu.edu>
 Subject: Re: [transgendernews] [LAW] Opinion: State ex. rel. Tompras v. Bd. of Electio...
 To: TexKatrina@aol.com
 Message-id: <012401c45330\$f9882000\$091ba796@lincolnu.edu>
 MIME-version: 1.0
 X-MIMEOLE: Produced By Microsoft MimeOLE V6.00.2800.1409
 X-Mailer: Microsoft Outlook Express 6.00.2800.1409

Content-type: multipart/alternative;
boundary="Boundary_(ID_9JRADODGILKoLjYFtzmA)"
X-Priority: 3
X-MSMail-priority: Normal
References: <3f.2ce47f58.2dfa9893@aol.com>
X-AOL-IP: 150.167.1.12
X-AOL-SCOLL-SCORE: 0:XXX:XX
X-AOL-SCOLL-URL_COUNT: 0