

Supreme Court, U.S.

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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No. 70-4

SALLY M. REED,

Appellant,

—v.—

CECIL R. REED, Administrator, In the Matter of the
Estate of Richard Lynn Reed, Deceased.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF IDAHO

REPLY BRIEF FOR APPELLANT

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Idaho Code, Sec. 15-314, the statute at issue in this case, remains effective until July 1, 1972. On that date a new Probate Code will become effective which does not include the challenged provision. C. 111 of the Idaho Session Laws of 1971, Vol. I, pp. 233-382. On the misguided assumption that the prospective change affects this Court's jurisdiction, appellee requests dismissal of the appeal for failure to present a substantial federal question.

Appellee does not dispute that the sec. 15-314 command, "males must be preferred to females," remains applicable to the parties in this litigation. Indeed, the effective date of the new Probate Code places beyond question the application of the male preference directive to the dispute between the parties in this case. Thus the

prospective change does not alter appellant's right, pursuant to 28 U.S.C. §1257(2), to adjudication by this Court. *Campbell v. California*, 200 U.S. 87, 91-93 (1906); see John M. Harlan, Manning the Dikes, 13 Record of the Bar of the New York City Bar Association 541, 546 (1958). Absent this Court's review, the appellant, solely on the ground of her sex, will be denied an opportunity to be heard on her application to be appointed fiduciary of an estate she is "equally entitled to administer."

With respect to the parties before the Court, the issue raised by appellant is as vital now as it was at the inception of this controversy. The federal question presented is at least as substantial as any this Court has heard: the constitutional right of a person, who is a woman, to be judged on the basis of her individual qualifications, rather than pre-judged by a male legislature's assignment of second rank status to all members of the female sex.

Significantly, a similar male preference law of the District of Columbia was eliminated by Congress on August 11, 1971. Public Law 92-88 (H.R. 7931, 92d Cong., 1st Sess.). This congressional action was prompted by awakened consciousness that preferential treatment of males over females is "outmoded and discriminatory." H.R. Rep. No. 92-178, 92d Cong., 1st Sess. 1, 3, 6 (1971).

Section 15-314 of the Idaho Code, and myriad statutes cast in the same mold still flourishing across the country, have survived into the 1970's because this Court has not yet settled the question whether the basic law of our land establishes the principle of equality before the law without regard to sex.

The myth that women are inherently disqualified for full participation in public life as independent persons is

no longer acceptable. Yet this Court's silence has deferred recognition by the law that women are full persons, entitled as men are to due process guarantees and the equal protection of the laws. The time to break the vicious cycle which sex discriminatory laws create is overdue. If a legislature can bar a woman from service as a fiduciary on the basis of once popular, but never proved, assumptions that women are less qualified than men are to perform such services, then the myth becomes insulated from attack, because the law deprives women of the opportunity to prove it false. Cf. *Carrington v. Rash*, 380 U.S. 89, 93, 96 (1965).

Sally Reed awaits a day in Court on her application to be appointed administrator; all women await this Court's affirmation that the Constitution guarantees to them, together with men, equal justice under the law.*

Respectfully submitted,

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* See President's Commission on the Status of Women, American Women 44 (1963):

Equality of rights under the law for all persons, male or female, is so basic to democracy and its commitment to the ultimate value of the individual that it must be reflected in the fundamental law of the land. The Commission believes that this principle of equality is embodied in the 5th and 14th amendments to the Constitution of the United States.

The Commission regarded as "imperative" "early and definitive court pronouncement, particularly by the U. S. Supreme Court" "to the end that the principle of equality become firmly established in constitutional doctrine." *Id.* at 45.