IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. .....

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

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF IDAHO

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of the State of Idaho, entered on February 11, 1970, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The opinion of the Supreme Court of the State of Idaho is reported at 465 P.2d 635. The opinion of the District Court, Fourth Judicial District, is unreported. Copies of the opinions are set out in the Appendix, *infra,* pp. 1a, 9a.

Jurisdiction

This suit originated through a petition for letters of administration filed by appellant in the Probate Court of the County of Ada, State of Idaho. The judgment of the Supreme Court of the State of Idaho was entered on February 11, 1970. A timely petition for rehearing was denied on March 24, 1970 (App., *infra,* p. 13a). Notice of Appeal to the Supreme Court of the United States was filed in the Supreme Court of the State of Idaho on June 16, 1970 (App., *infra,* p. 16a). On June 24, 1970, Mr. Justice Douglas granted a timely application to extend appellant's time to file her jurisdictional statement to and including July 22, 1970.

The jurisdiction of the Supreme Court to review this decision on appeal is conferred by Title 28 U.S.C., Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *In re Gault,* 387 U.S. 1 (1967); *Loving* v. *Virginia,* 388 U.S. 1 (1967); *Levy* v. *Louisiana,* 391 U.S. 68 (1968).

Statutes Involved

Idaho Code, Sec. 15-312 provides:

> Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, and they are respectively entitled thereto in the following order:
>
> 1. The surviving husband or wife or some competent person whom he or she may request to have appointed.

> 2. The children.
>
> 3. The father or mother.
>
> 4. The brothers.
>
> 5. The sisters.
>
> 6. The grandchildren.
>
> 7. The next of kin entitled to share in the distribution of the estate.
>
> 8. Any of the kindred.
>
> 9. The public administrator.
>
> 10. The creditors of such person at the time of death.
>
> 11. Any person legally competent.
>
> If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate.

Idaho Code, Sec. 15-314 provides:

> Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole to those of the half blood.

Question Presented

Whether Idaho Code, Sec. 15-314, which provides that as between persons equally entitled to administer an estate, males must be preferred to females, denies appellant, a woman, the equal protection of the laws.

Statement of the Case*

Richard Lynn Reed, the adopted son of appellant, Sally M. Reed, and appellee, Cecil R. Reed, died intestate on March 29, 1967, in Ada County. According to the respective petitions of his mother, Sally M. Reed, and of his father, Cecil R. Reed, his parents were his only heirs at law.

Sally M. Reed, the appellant, as the decedent's mother, filed her petition for probate of his estate on November 6, 1967. Prior to the time set for the hearing on this petition Cecil R. Reed, the father, also petitioned for letters of administration.

The cause was heard on the petitions for administration of the respective parties, and the probate court entered its order appointing appellee, Mr. Reed. The probate court in entering its order noted that each of the parties was equally entitled to letters of administration under I.C. §15-312, but that Mr. Reed was entitled to a preference by reason of I.C. §15-314, which provides that as between persons equally entitled to administer an estate, males must be preferred to females.

On April 23, 1968, Mrs. Reed appealed to the district court contending that I.C. §15-314 is unconstitutional as a violation of the Idaho Civil Rights Act (I.C. §18-7301 et seq.), the Fourteenth Amendment of the United States Constitution and Art. 1, §1 of the Idaho Constitution. The district court reversed the order of the probate court on

* The Statement of the case is taken *verbatim* from the opinion of the Supreme Court of Idaho, except for the elimination of one sentence not relevant here, and for minor modifications necessary to properly identify the parties.

the ground that I.C. §15-314 violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and returned the case to the probate court for a determination, disregarding the preference set out by I.C. §15-314, of who is entitled to the letters of administration. Mr. Reed appealed to the Supreme Court of Idaho contending that the district court erred in holding I.C. §15-314 unconstitutional.

The Idaho Supreme Court, reversing the lower court, held I.C. Section 15-314 constitutional. It said (App., *infra,* pp. 5a-6a):

> Philosophically it can be argued with some degree of logic that the provisions of I.C. §15-314 do discriminate against women on the basis of sex. However nature itself has established the distinction and this statute is not designed to discriminate, but is only designed to alleviate the problem of holding hearings by the court to determine eligibility to administer. This is one of those areas where a choice must be made, and the legislature by enacting I.C. §15-314 made the determination.
>
> The legislature when it enacted this statute evidently concluded that in general men are better qualified to act as an administrator than are women . . . "

The Question Is Substantial

Sec. 15-314 of the Idaho Code requires that, as between men and women equally entitled to serve as administrators of estates, men *must* be preferred. That statutory command violates the equal protection clause of the Fourteenth Amendment for it arbitrarily and capriciously subordinates women, as a class, to men.

The discrimination against women which is embodied in Sec. 15-314 is the same kind of arbitrary classification which has been held to deny the equal protection of the laws to Negroes [*Brown* v. *Board of Education,* 347 U.S. 483 (1954)], to aliens [*Truax* v. *Raich,* 239 U.S. 33 (1915); *Takahashi* v. *Fish and Game Commission,* 334 U.S. 410 (1948)]; to children born out of wedlock [*Levy* v. *Louisiana,* 391 U.S. 68 (1968)], to Chinese [*Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886)]; and to members of the armed forces [*Carrington* v. *Rash,* 380 U.S. 89 (1965)].

The justification for the statute put forward by the Idaho Supreme Court is twofold. One is biological, the other practical. Neither can be said to provide the rational basis required constitutionally to justify class legislation.

The biological reason relied on by the court below was said to be that "men are better qualified to act as an administrator than are women" (App., *infra,* p. 6a). The court cited no authority for this shotgun conclusion and indeed admitted it "may not be entirely accurate." Nevertheless, the court said "we are not prepared to say that it is so completely without a basis in fact as to be irrational or arbitrary." *Ibid.*

The trial court saw the issue more clearly. In face of the contention that "men ordinarily have more business

experience than women," it said, "The Court feels that this statement has no basis in fact in this modern age and society. There are occasions when a woman would be more qualified than a man and vice versa." App., *infra,* p. 11a.

Statistics support the conclusion that women are just as likely to be as knowledgeable as men in business affairs and in the problems of administering estates. Today, twenty-nine million or one-third of the nation's workers are women. Four million women are in professional or technical jobs, and another million are managers, officials or proprietors of businesses. [Handbook on Women Workers, 1969, U. S. Department of Labor, p. 90.] In addition, of course, one must also include the countless number of women who handle all the financial affairs of their families.

Notwithstanding this statistical data, as well as the common experience of mankind (or perhaps more accurately, womankind), the Idaho Supreme Court insists that "nature itself" has established the preference. App., *infra,* p. 5a. "Nature" also established the black and white races, but Sec. 15-314 would not survive very long if it required that "Of several persons claiming and equally entitled to administer, whites must be preferred to blacks."

The Court's second justification for Sec. 15-314 was that it "resolve[s] an issue that would otherwise require a hearing as to the relative merits as to which of the two or more petitioning relatives should be appointed." App., *infra,* p. 5a. That is to say, it was convenient to prefer men to women. Perhaps it is, just as it was claimed to be convenient to bar illegitimate children from recovering for the wrongful death of their mother. *Levy* v. *Louisiana,* 391 U.S. 68, 80-81 (1968) (dissenting opinion). But con-

venience does not permit a state to "draw a line which constitutes an invidious discrimination against a particular class." *Id.* at 71.

The trial court, again, saw the issue more clearly: "There are occasions when a woman would be more qualified than a man and vice versa. This would be the basis of the Court choosing one over the other when they are both equally entitled to be appointed to administer the estate." App., *infra,* p. 11a.* That observation embodies the essential notion of the Fourteenth Amendment's equal protection clause that members of a class be judged by their individual characteristics, not on the basis of characteristics they are irrationally assumed to share with others in their class. See *Stell* v. *Savannah-Chatham County Board of Education,* 333 F.2d 55 (5th Cir. 1964), cert. denied, 379 U.S. 933 (1964).

The discrimination against women, as a class, which is the essence of this appeal, is by itself so substantial a federal question that jurisdiction should be noted for that reason alone. But the discrimination inherent in this case is only one example of a wider pattern of discrimination against women which infects many areas of American society. Exploration of the broader pattern can very properly be begun in this case where the act of discrimination is very visible and easily subject to traditional constitutional standards. A few examples of other kinds of dis-

* Sec. 15-312(2), Idaho Code, requires the appointment of "The children" as administrator. Though Sec. 15-314 would require sons to be given preference to daughters, the statute is silent about selection from among several sons. Presumably, the court makes a judgment about which of several sons is best qualified. The same kind of judgment can be made as between men and women.

crimination suffered by women will indicate the pervasive nature of the problem.*

Women are denied access daily to public accommodations. They are often excluded from restaurants and taverns if not accompanied by a man. Sometimes they are excluded entirely. In *Seidenberg* v. *McSorleys' Old Ale House,* No. 69 Civil 2788 (S.D.N.Y.), a tavern notorious for its ancient rule forbidding entry of women, was ordered to end its discrimination. The Court found that the State's pervasive regulation of taverns was "sufficient State involvement to make the acts of the licensee those of the State itself."

A bill (Intro. 189) has been introduced in the New York City Council to prohibit discrimination against women in the rental of apartments.

Rejecting for Mississippi the decision in *White* v. *Crook,* 251 F. Supp. 401 (M.D. Ala. 1966), where a three-judge court held that Alabama's exclusion of women from jury service violated the equal protection clause, the Mississippi Supreme Court in *State* v. *Hall,* 187 So. 2d 861 (1966), held:

> "The legislature has the right to exclude women so that they may continue their service as mothers, wives and homemakers, and also to protect them (in some areas they are still upon a pedestal) from the filth, obscenity, and noxious atmosphere that so often pervades a courtroom during a jury trial."

Compare *Hoyt* v. *Florida,* 368 U.S. 57 (1961).

* The subject is examined in detail in Kanowitz, Women and the Law (Univ. of New Mexico Press, 1969) and Bird, Born Female (Pocket Book, 1969).

Women are not only victims of discrimination themselves, but are occasionally instruments for imposing criminal sanctions upon men for conduct which is otherwise deemed not criminal. Thus, Sec. 13-377 of the Arizona Criminal Code makes it a misdemeanor to use "vulgar, abusive or obscene language" within earshot of "any woman or child."

In New York State, Sec. 3771 (6) of the Social Services Law allows confinement of girls as a "person in need of supervision" up to age eighteen. Boys can be confined under the same law only until they are sixteen.

The law affecting marriage abounds with examples of discrimination against women.

Eleven states still place some kind of restriction on the capacity of a married woman to execute a contract. Kanowitz, *supra* at 55-56. In various states a married woman's right to serve in a position of trust is limited, as is her right to sue and be sued in her own name or to engage in business. *Id.* at 56-59.

Sixteen years after *Brown* v. *Board of Education, supra,* women can still be barred from attending public educational facilities. *Allried* v. *Heaton,* 336 S.W.2d 251, appeal dismissed, 364 U.S. 517 (1960); *Heaton* v. *Bristol,* 317 S.W. 2d 86, appeal dismissed, 359 U.S. 230 (1959). Cf. *Kirstein* v. *Rector and Visitors*, 309 F. Supp. 184 (E.D. Va. 1970).

These are only a few examples of the kinds of discrimination to which women as a class are subjected. Taken together, they constitute a widespread pattern of irrational classification based upon myths and dated notions regarding woman's role in society. The case at bar presents one issue typical of this class of cases and raises a substantial federal question which has application well beyond the confines of the particular case.

CONCLUSION

For all the reasons set forth above, jurisdiction should be noted.

Respectfully submitted,

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July 21, 1970

Counsel wish to acknowledge the assistance of Miss Eve Cary, third year law student at New York University Law School, in the preparation of this Statement.

APPENDIX

APPENDIX

Opinion of the Supreme Court of the State of Idaho

IN THE
SUPREME COURT OF THE STATE OF IDAHO

No. 10417

Boise, November 1969 Term

Filed: Feb 11 1970

Martin V. Huff, Clerk

SALLY M. REED,
Plaintiff-Respondent,

v.

CECIL R. REED, ADMINISTRATOR In the Matter of the Estate of Richard Lynn Reed, Deceased,
Defendant-Appellant.

Appeal from the District Court of the Fourth Judicial District, Ada County. Hon. Charles R. Donaldson, District Judge.

Appeal from order and judgment of district court reversing order of probate court appointing administrator. Order and judgment of district court *reversed.*

Charles S. Stout, Boise, for appellant.

Derr, Derr & Walters, Boise, and Robert F. McLaughlin, Mountain Home, for respondent.

McFADDEN, C.J.

Richard Lynn Reed, the adopted son of Sally M. Reed and Cecil R. Reed, died intestate on March 29, 1967, in Ada County. According to the respective petitions of his mother Sally M. Reed, and of his father, Cecil R. Reed, his parents were his only heirs at law.

Sally M. Reed, the respondent herein, as the decedent's mother, filed her petition for probate of his estate on November 6, 1967. Prior to the time set for the hearing on this petition, Cecil R. Reed, the father, also petitioned for letters of administration.

The Ada County probate judge deemed himself disqualified to act and the cause was heard before another probate judge, pursuant to stipulation. The cause was heard on the petitions for administration of the respective parties, and the probate court entered its order appointing appellant Reed (the father). The probate court in entering its order noted that each of the parties was equally entitled to letters of administration under I.C. § 15-312, but that Mr. Reed, the appellant, was entitled to a preference by reason of I.C. § 15-314, which provides that as between persons equally entitled to administer an estate, males must be preferred to females.

On April 23, 1968 the respondent (the mother) appealed to the district court contending that I.C. § 15-314 is unconstitutional as a violation of the Idaho Civil Rights Act (I.C. § 18-7301 et seq.), the Fourteenth Amendment of the United States Constitution and Art. 1, § 1 of the Idaho Constitution. The district court reversed the order of the probate court on the ground that I.C. § 15-314 violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and returned the case to the

probate court for a determination, disregarding the preference set out by I.C. § 15-314, of who is entitled to the letters of administration. The appellant has appealed to this court contending that the district court erred in holding I.C. § 15-314 unconstitutional.

I.C. § 15-312 provides that

> "Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, and they are respectively entitled thereto in the following order:
>
> 1. The surviving husband or wife or some competent person whom he or she may request to have appointed.
>
> 2. The children.
>
> 3. The father or mother. * * *"

This section is followed by I.C. § 15-314 which provides that

> "Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole to those of the half blood."

Since, then, under I.C. § 15-312 a father and mother are "equally entitled" to letters of administration, the father has a preference by virtue of I.C. § 15-314.

This court has said before that the priorities established by I.C. § 15-312 are mandatory, leaving no room for discretion by the court in the appointment of administrators. Vaught v. Struble, 63 Idaho 352, 120 P.2d 259 (1941). Similarly the preference given males by I.C. § 15-314 is also mandatory; the statute itself says that males *must* be preferred to females. Other courts construing similar

provisions have also held that the preference is mandatory. In re Coan's Estate, 64 P. 691 (Cal. 1901).

The respondent, however, contends that I.C. § 15-314 violates the equal protection clause of the Fourteenth Amendment of the Federal Constitution because the discrimination against females as a class is not based upon any rational policy, but rather is arbitrary and capricious. She contends that there is no justifiable basis for granting males a preference merely on the basis of sex.

It is well settled that the equal protection clause of the Fourteenth Amendment does not preclude the legislature from making classifications and drawing distinctions between classes. It merely prohibits classifications which are arbitrary and capricious. Griffin v. Illinois, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585 (1956); Morey v. Doud, 354 U.S. 457, 1 L.Ed. 2d 1485, 77 S.Ct. 1344 (1957); McLaughlin v. Florida, 379 U.S. 184, 13 L.Ed. 2d 222, 85 S.Ct. 283 (1964). It is for the courts to determine in each instance whether a particular classification rests upon rational grounds or is in fact without justification and arbitrary. Carrington v. Rash, 380 U.S. 89, 13 L.Ed. 2d 675, 85 S.Ct. 775 (1965); McLaughlin v. Florida, supra.

It is equally well settled that legislative enactments are entitled to a presumption of validity and that a classification will not be held unconstitutional absent a clear showing that it is arbitrary and without justification. Rowe v. City of Pocatello, 70 Idaho 343, 218 P.2d 695 (1950).

I.C. § 15-312 classifies individuals as to their relationship to a decedent and gives to those most closely related to the decedent a preference for appointment as administrator. This classification is basically in accord with the law as to the intestate succession of property in Idaho.

I.C. § 14-103. Those first entitled to succeed to the property have a priority over subsequent successors insofar as entitlement to administer is concerned. This is a basic and rational classification insofar as I.C. § 15-312 is concerned. However, unlike determination of succession of property where a court may award to individuals in a class a proportionate share of property without complication, the naming of an administrator out of a particular class becomes more involved. Generally only one administrator is named, although by joint petition it is possible for joint administrators to be named from a particular class.

When two or more persons of a class, as established by I.C. § 15-312, individually seek administration of an estate, the court is faced with the issue of which one should be named. By I.C. § 15-314, the legislature eliminated two areas of controversy, *i.e.*, if both a man and a woman of the same class seek letters of administration, the male would be entitled over the female, the same as a relative of the whole blood is entitled over a relative of the same class but of only the half blood. This provision of the statute is neither an illogical nor arbitrary method devised by the legislature to resolve an issue that would otherwise require a hearing as to the relative merits as to which of the two or more petitioning relatives should be appointed.

Philosophically it can be argued with some degree of logic that the provisions of I.C. § 15-314 do discriminate against women on the basis of sex. However nature itself has established the distinction and this statute is not designed to discriminate, but is only designed to alleviate the problem of holding hearings by the court to determine eligibility to administer. This is one of those areas where a choice must be made, and the legislature by enacting I.C. § 15-314 made the determination.

The legislature when it enacted this statute evidently concluded that in general men are better qualified to act as an administrator than are women. As the United States Supreme Court pointed out in Morey v. Doud, supra,

> "'A classification having some reasonable basis does not offend against that clause [equal protection clause] merely because it is not made with mathematical nicety or because in practice it results in some inequality. * * * One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369." 77 S.Ct. at 1349.

While this classification may not be entirely accurate, and there are doubtless particular instances in which it is incorrect, we are not prepared to say that it is so completely without a basis in fact as to be irrational and arbitrary. We are concerned only with whether the classification is so irrational and arbitrary that it violates the constitution, and it is our opinion that it is not.

States have recognized the validity of classifications based upon sex in a variety of situations. See 2 Stan. L. Rev. 691. This court has held that a woman cannot bind her separate property by signing an appeal bond when it is not for her own use and benefit. See Craig v. Lane, 60 Idaho 178, 89 P.2d 1008 (1939). There are also several other cases from other jurisdictions upholding statutes discriminating on the basis of sex when there is a rational basis for distinguishing between the sexes. See State v. Hunter, 300 P.2d 455 (Ore. 1956); Patterson v. City of Dallas, 355 S.W.2d 838 (Tex. Civ. App. 1962); State v. Hollman, 102 S.E.2d 873 (S.C. 1958); Eskridge v. Division of Alcoholic Beverage Control, 105 A.2d 6 (N.J. Super. 1954); State v. Emery, 31 S.E.2d 858 (N.C. 1944); In re Mahaffay's Estate, 254 P. 875 (Mont. 1927).

As this court stated in Newland v. Child, 73 Idaho 530, 254 P.2d 1066 (1953),

> "It is recognized that the legislature has broad discretionary power to make classifications of persons and property for all purposes which it may lawfully seek to accomplish. So long as the classifications are based upon some legitimate ground of difference between the persons or objects classified, are not unreasonable or arbitrary, and bear a reasonable relation to the legislative purpose, such classifications do not violate the constitution." 73 Idaho at 539-540.

It is our opinion that the state has a legitimate interest in promoting the prompt administration of estates and that the statute in question promotes this interest by curtailing litigation over the appointment of administrators. In addition it is supported by the presumption of constitutionality.

The respondent also contends that I.C. § 15-314 violates the newly enacted Idaho Civil Rights Act. I.C. § 18-7301 et seq. That act, however, provides a remedy for, among other things, sexual discrimination in employment or public accomodations. It is our opinion that it is inapplicable here. Moreover, the legislature could not have intended by that enactment to prohibit all discrimination based on sex. As is the case with the equal protection clause of the Fourteenth Amendment, discrimination based upon the differences between men and women which is not wholly irra-

tional or arbitrary and which is utilized to accomplish a legitimate objective is not condemned.

The judgment of the district court is reversed and the order of the probate court awarding letters of administration to the appellant is reinstated. Costs to appellant.

McQuade, Shepard and Spear, JJ., and Felton, D.J., concur.

Opinion of the District Court, Fourth Judicial District

In the
DISTRICT COURT
of the Fourth Judicial District
of the State of Idaho
In and for the County of Ada
Civil No. 40834

Memorandum Decision and Order

In the Matter of the Estate of
Richard Lynn Reed, Deceased.

This matter is before the Court on appeal from the Probate Court of Ada County Idaho. The point in question is whether I.C. 15-314 is constitutional. This act provides that in the appointment of persons to administer an estate of a decedent, that of several persons claiming and equally entitled to administer that males must be preferred to females. The parties through their respective counsel have stipulated that the matter be submitted to the Court on briefs and the same have been submitted.

This section of the Probate Code originally appeared in the Probate Practice Act adopted by the first territorial legislature and has been in effect ever since. It was apparently borrowed from California. Montana has a similar statute. The constitutionality has never been questioned in any of these states. A companion statute, I.C. 15-312,

which gives a preference to brothers over sisters has been upheld in each of the states although the precise point which is involved in this case was not raised or argued.

The appellants contend that under the Idaho Civil Rights Act this section is unconstitutional. The Idaho Civil Rights Act, however, applies only to the right to obtain and hold employment and the right to an equal enjoyment of accommodation or public place of amusement, etc. The right to be appointed as administrator is not employment, it is merely a temporary appointment for a temporary purpose. For definition of the word administrator, see WORDS AND PHRASES, Volume Two, Page 291, Section 339. This Court, therefore, does not feel that this section is in conflict with the Civil Rights Law.

The appellant further contends that the statute is unconstitutional since it violates the Fourteenth Amendment to the Constitution of the United States and Article I, Section One of the Constitution of the State of Idaho. First it should be noted that women are not disqualified from being appointed to administer an estate in Idaho since Section 15-314 states that of several persons claiming and *equally* entitled to administer, males must be preferred to females. The Fourteenth Amendment protects all persons without regard to race, color or class and prohibits any state legislation which has the effect of denying to any race, class or individual the equal protection of the laws. The guiding principle of this guarantee of equal protection of the laws requires that all persons be treated alike under like circumstances and conditions both in the privileges conferred and the liabilities imposed. The equal protection clause of the Fourteenth Amendment is a restriction on state governments and includes all departments of

state government including both political and judicial. It is true that a state may classify persons and objects for the purpose of legislation and pass laws applicable only to persons or objects within a designated class. However, class legislation discriminating against some and favoring others is prohibited by the equal protection guarantee. One of the essential requirements as to classification so that it does not violate the constitutional guarantee as to equal protection of laws is that the classification must not be capricious or arbitrary but must be reasonable and natural and must have a rational basis. If it is arbitrary or capricious it is in conflict with the guarantee. The Court can see no reasonable basis for the classification which gives preference of males over females. Counsel for the respondent argues that there is a reasonable base for the classification. He says that men ordinarily have more business experience than women. The Court feels that this statement has no basis in fact in this modern age and society. There are occasions when a woman would be more qualified than a man and vice versa. This would be the basis of the Court choosing one over the other where they are both equally entitled to be appointed to administer the estate. Counsel for the respondent further claims that it would be easier to recover from a man than a woman in the case of defalcation. This again depends on the facts of whether or not the woman is married and whether or not she has separate property. Again these matters are something the Court should weigh in determining which of two persons is best qualified to administer the estate. The mere fact that a person is a male rather than a female is not a valid basis for preference and the Court, therefore, finds this section of the Idaho Code, 15-314, unconstitutional as a violation of the Fourteenth Amendment to the United

States Constitution and Article I, Section One of the Constitution of the State of Idaho.

Originally the appeal was from both questions of law and fact. The parties have stipulated that the appeal is only to questions of law. Therefore, the matter should be returned to the Probate Court for its determination of which of the two parties is best qualified to serve as administrator or administratrix of the estate. It is so Ordered.

Dated and signed this 2nd day of December, 1968.

CHARLES R. DONALDSON
District Judge

Denial of Petition for Rehearing

SUPREME COURT
STATE OF IDAHO
BOISE, IDAHO

March 24, 1970

No. 10417

REED v. REED

Derr, Derr & Walters
Charles S. Stout, Esq.
Attorneys at Law
Boise, Idaho

Robert F. McLaughlin, Esq.
Attorney at Law
Mountain Home, Idaho

Gentlemen:

In the above entitled cause the Court has today denied respondent's petition for rehearing.

Cost awarded to .....

MARTIN HUFF
Clerk of the Supreme Court

Notice of Appeal to the Supreme Court of the United States

IN THE
SUPREME COURT
OF THE STATE OF IDAHO

No. 10417

SALLY M. REED,
Plaintiff-Respondent,

v.

CECIL R. REED, Administrator in the Matter of the Estate of Richard Lynn Reed, Deceased,
Defendant-Appellant.

Notice is hereby given that Sally M. Reed, Plaintiff-Respondent above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Idaho, reversing the judgment of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, and declaring Idaho Code 15-314 constitutional, entered in this action on February 11, 1970. Petition for rehearing was denied on March 24, 1970.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

ALLEN R. DERR
Counsel for Plaintiff-Respondent

June 16, 1970

Judgment

IN THE
SUPREME COURT
OF THE STATE OF IDAHO

No. 10417

SALLY M. REED,
Plaintiff-Respondent,

v.

CECIL R. REED, ADMINISTRATOR In the Matter of the Estate of Richard Lynn Reed, Deceased,
Defendant-Appellant.

Chief Justice McFadden announced the decision in this cause February 11, 1970, and on denial of petition for rehearing March 24, 1970, to the effect that the judgment of the District Court of the Fourth Judicial District of the State of Idaho, Ada County, is reversed and the order of the probate court awarding letters of administration to the appellant is reinstated. Costs to appellant in the sum of $48.80.

IT IS NOW THEREFORE SO ORDERED.

Date of remittitur—March 24, 1970.