

The Burger Court Opinion Writing Database

Wengler v. Druggists Mutual Insurance Co.

446 U.S. 142 (1980)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 17, 1980

RE: 79-381 - Wengler v. Druggists Mutual Insurance Co.

Dear Byron:

I join.

Regards,

W. B.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 9, 1980

RE: No. 79-381 Wengler v. Druggists Mutual Insurance
Co., et al.

Dear Byron:

I agree.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 7, 1980

Re: No. 79-381, Wengler v.
Druggists Mutual Insurance Co.

Dear Byron,

I am glad to join your opinion for
the Court.

Sincerely yours,

P.S.
P.

Mr. Justice White

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
 Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White
Circulated: 7 APR 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-381

Paul J. Wengler, Appellant,
v.
Druggists Mutual Insurance Company et al. } On Appeal from the Supreme
Court of Missouri.

[April —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case challenges under the Equal Protection Clause of the Fourteenth Amendment a provision of the Missouri workers' compensation laws, Mo. Ann. Stat. § 287.240 (Vernon 1979 Cum. Supp.), which is claimed to involve an invalid gender-based discrimination.

I

The facts are not in dispute. On February 11, 1977, Ruth Wengler, wife of appellant Paul J. Wengler, died in a work-related accident in the parking lot of her employer, appellee Dieus Prescription Drugs, Inc. Appellant filed a claim for death benefits under Mo. Ann. Stat. § 287.240 (Vernon 1979 Cum. Supp.),¹ under which a widower is not entitled to death

¹ Mo. Ann. Stat. § 287.240 (Vernon 1979 Cum. Supp.) provides in its entirety (emphasis added):

"If the injury causes death, either with or without disability, the compensation therefor shall be as provided in this section:

"(1) In all cases the employer shall pay direct to the persons furnishing the same the reasonable expense of the burial of the deceased employee not exceeding two thousand dollars. But no person shall be entitled to compensation for the burial expenses of a deceased employee unless he has furnished the same by authority of the widow or widower, the nearest relative of the deceased employee in the county of his death, his personal representative, or the employer, who shall have the right to give the au-

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
 Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

11-12

From: Mr. Justice White

Circulated: _____

Recirculated: 10 APR 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-381

Paul J. Wengler, Appellant,
v. On Appeal from the Supreme
Drugists Mutual Insurance Court of Missouri.
Company et al.

[April —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case challenges under the Equal Protection Clause of the Fourteenth Amendment a provision of the Missouri workers' compensation laws, Mo. Ann. Stat. § 287.240 (Vernon 1979 Cum. Supp.), which is claimed to involve an invalid gender-based discrimination.

I

The facts are not in dispute. On February 11, 1977, Ruth Wengler, wife of appellant Paul J. Wengler, died in a work-related accident in the parking lot of her employer, appellee Dicus Prescription Drugs, Inc. Appellant filed a claim for death benefits under Mo. Ann. Stat. § 287.240 (Vernon 1979 Cum. Supp.),¹ under which a widower is not entitled to death

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 9, 1980

Re: No. 79-381 - Wengler v. Druggists Mutual
Insurance Company, et al.

Dear Byron:

Please join me.

Sincerely,

JW
T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 8, 1980

Re: No. 79-381 - Wengler v. Druggists Mutual Insurance Co.

Dear Byron:

Please join me.

Because this is a state case, should the remand portion of the last line of the opinion be in terms of "not inconsistent with"?

Sincerely,

Harry.

Mr. Justice White
cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 8, 1980

79-381 Wengler v. Druggist Mutual

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 9, 1980

Re: No. 79-381 - Wengler v. Druggists Mutual
Insurance Co.

Dear Byron:

Will you add at the end of your opinion for the Court the following: Mr. Justice Rehnquist, continuing to believe that Califano v. Goldfarb, 430 U.S. 199 (1977) was wrongly decided, and that constitutional issues should be more readily re-examined under the doctrine of stare decisis than other issues, dissents and would affirm the judgment of the Supreme Court of Missouri.

Sincerely,



Mr. Justice White

Copies to the Conference

79-381 - Wengler v. Druggists Mutual
Insurance Company

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: APR 9 '86

MR. JUSTICE STEVENS, concurring.

Recirculated: _____

Nothing has happened since the decision in Califano v. Goldfarb, 430 U.S. 199, to persuade me that this kind of gender-based classification can simultaneously disfavor the male class and the female class.

To illustrate my difficulty with the analysis in Part II of the Court's opinion, it should be noted that there are three relevant kinds of marriages: (1) those in which the husband is dependent on the wife; (2) those in which the wife is dependent on the husband; and (3) those in which neither spouse is dependent on the other.

Under the Missouri statute, in either of the first two situations, if the dependent spouse survives, a death benefit will be paid regardless of whether the survivor is male or female; conversely, if the working spouse survives, no death benefit will be paid. The only difference in the two situations is that the surviving male, unlike the surviving female, must undergo the inconvenience of proving dependency. That surely is not a discrimination against females.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: APR 10 '80

1st PRINTED DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-381

Paul J. Wengler, Appellant,
v. On Appeal from the Supreme
Druggists Mutual Insurance Court of Missouri.
Company et al.

[April —, 1980]

MR. JUSTICE STEVENS, concurring.

Nothing has happened since the decision in *Califano v. Goldfarb*, 430 U. S. 199, to persuade me that this kind of gender-based classification can simultaneously disfavor the male class and the female class.

To illustrate my difficulty with the analysis in Part II of the Court's opinion, it should be noted that there are three relevant kinds of marriages: (1) those in which the husband is dependent on the wife; (2) those in which the wife is dependent on the husband; and (3) those in which neither spouse is dependent on the other.

Under the Missouri statute, in either of the first two situations, if the dependent spouse survives, a death benefit will be paid regardless of whether the survivor is male or female; conversely, if the working spouse survives, no death benefit will be paid. The only difference in the two situations is that the surviving male, unlike the surviving female, must undergo the inconvenience of proving dependency. That surely is not a discrimination against females.

In the third situation, if one spouse dies, benefits are payable to a surviving female but not to a surviving male. In my view, that is a rather blatant discrimination against males. While both spouses remain alive, the prospect of receiving a potential death benefit upon the husband's demise reduces the wife's need for insurance on his life, whereas the prospect of *not* receiving a death benefit upon the wife's demise in-