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April 23, 2004

Opinion No. 04-076

Constitutionality of Granting a Homestead Exemption Based on Age and Marital Status

QUESTION

Whether a bill which grants a greater homestead exemption to individuals and married couples sixty-two years of age and older is constitutional?

OPINION

Yes. A bill which grants a greater homestead exemption to individuals and married couples sixty-two years of age and older is constitutional.

ANALYSIS

Article XI, §11 of the Tennessee Constitution establishes a homestead exemption from execution at a minimum amount of \$5,000:

There shall be a homestead exemption from execution in an amount of five thousand dollars or such greater amount as the General Assembly may establish. The General Assembly shall also establish personal property exemptions. The definition and application of the homestead and personal property exemptions and the manner in which they may be waived shall be as prescribed by law.

The Constitution thus gives the Legislature broad powers to implement and expand the exemption as it sees fit. It does not purport to require the Legislature to grant everyone the same exemption; rather, Article XI, §11 states that the exemptions shall be applied as “prescribed by law.” Tenn. Code Ann. §26-2-301 implements Article XI, §11 by granting a homestead exemption of up to \$5,000 to an individual on real property owned by the individual and used by the individual or the individual’s spouse or dependent as a principal place of residence. Section 26-2-301 also grants an exemption of up to \$7,500 to individuals who jointly own real property and use it as their principal residence.

The proposed legislation would supplement Tenn. Code Ann. §26-2-301 by granting an additional homestead exemption to individuals and married couples who are sixty-two years of age or older. However, the amount of the proposed exemption would vary depending on age and marital status. For example, individuals who are younger than sixty-two years of age would not be eligible for the increased exemption unless they are married to a person sixty-two years of age or older. In contrast, in §26-2-301, age and marital status do not play a role in determining eligibility for and the amount of the homestead exemption. The operative language of the proposed Bill reads as follows:

(e) Notwithstanding the provisions of subsection (a) to the contrary, an unmarried individual who is sixty-two years of age or older shall be entitled to a homestead exemption not exceeding twelve thousand five hundred dollars (\$12,500) upon real property that is owned by the individual and used by the individual as a principal place of residence; a married couple, one of whom is sixty-two years of age or older and the other of whom is younger than sixty-two years of age, shall be entitled to a homestead exemption not exceeding twenty thousand (\$20,000) upon real property that is owned by one or both of the members of the couple and used by the couple as their principal place of residence; and a married couple, both of whom are sixty-two years of age or older, shall be entitled to a homestead exemption not exceeding twenty-five thousand (\$25,000) upon real property that is owned by one or both of the members of the couple and used by the couple as their principal place of residence.

The proposed legislation clearly differentiates between people of different ages. Individuals who are sixty-two years of age or older are granted the benefit of an additional homestead exemption. Since age is not a suspect classification under the Equal Protection Clause, a statute benefitting older people is subject only to rational basis review. U.S. Const. Amend. XIV; *Kimel v. Florida Bd. Of Regents*, 528 U.S. 62, 120 S. Ct. 631, 646 (2000). States may discriminate on the basis of age without offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest. *Id.* citing *Vance v. Bradley*, 440 U.S. 93, 99 S. Ct. 939 (1979). The United States Supreme Court stated in *Kimel* that under rational basis review a statute will only be overturned if the treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that it can only be concluded that the legislature's actions were irrational." *Id.* The equal protection provisions of the Tennessee Constitution provide the same protection as the Equal Protection Clause of the United States Constitution; therefore, the rational basis review is the same. U.S. Const. Amend. XIV; *State v. Price*, 124 S.W.3d 135, 137-138 (2003).

To uphold the proposed law, one needs merely to show a rational basis or a legitimate purpose for treating people aged sixty-two and older differently from those younger than sixty-two. There are many conceivable rational bases for granting older people an additional homestead exemption. For example, a legitimate purpose would be to help older people keep their homes since

they are typically on fixed incomes and are less able to re-enter the workforce and increase their income to satisfy a judgment against them.

The proposed legislation also differentiates between married and unmarried people. While there is a fundamental right to marry, this law would not place a burden on the right to marry; rather, it benefits a certain class of married persons. Unmarried persons are not a protected class; therefore, strict scrutiny does not apply and rational basis review would be used to determine whether this bill violates equal protection. This bill proposes that a married couple of which only one spouse is sixty-two years of age or older and the other spouse is not yet sixty-two would be entitled to an exemption of up to \$20,000. However, an unmarried couple, or two individuals jointly owning and residing on a piece of property, where one individual is sixty-two years or older and the other is younger than sixty-two, would only be entitled to an exemption of up to \$12,500.

Again, in the case of marital status, if there is a rational basis for a law which differentiates between married and unmarried persons, then the law would be deemed constitutional. Obviously, the law since time immemorial has favored marriage, in the interests of furthering the stability of society, promoting the family unit, aiding the rearing of children, providing companionship in old age, and a myriad of other purposes. Moreover, in this particular context involving elderly spouses, one spouse would often be financially dependent on the other spouse. One spouse may never have had any income and may not have skills that would easily transfer into the workforce. If one spouse is sixty-two years of age or older and is retired and his or her spouse does not work, it would be very difficult for the couple to increase their income. The State certainly has an interest in helping older people keep their homes, even against claims of judgment creditors.

As long as there is a legitimate purpose for a law which differentiates between people of different ages and marital statuses, then such a law would be constitutional. It is therefore the opinion of this office that the proposed legislation which grants a greater homestead exemption to individuals and married couples sixty-two years of age and older is constitutional.

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