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Opinion No. 04-045

Constitutionality of HB 2543 Regarding Marriage License Fee Exception

QUESTION

Is HB 2543, which creates an exemption from the additional fee of $60.00 for marriage licenses in any county having a municipality defined as a "premier type tourist resort" if both applicants are not Tennessee residents, unconstitutional?

OPINION

No, HB 2543 is constitutional.

ANALYSIS

Under the provisions of Tenn. Code Ann. § 36-6-413(b)(2), an additional fee of $62.50 is imposed on the issuance of marriage licenses. The revenue from these additional fees is used to fund various domestic programs including the divorcing parent education and mediation fund; child abuse prevention services; domestic violence services; disability counseling services; Tennessee Court-Appointed Special Advocates; after-school programs; social workers' education; and foster care programs. There is an exemption from payment of $60.00 of this fee if both applicants provide the county clerk with a valid and timely certificate of completion of a pre-marital preparation course. In addition, there is currently an exemption from payment of $60.00 of this fee if both applicants are not Tennessee residents. Under proposed HB 2543, the exemption if both applicants are not Tennessee residents would apply only in counties having a municipality defined as a "premier type tourist resort" pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(B).[1]

[1]Under Tenn. Code Ann. § 67-6-103(a)(3)(B), a "premier type tourist resort" is defined as a municipality having a population of 1,100 or more persons, according to the Federal Census of 1970 or any subsequent federal census, in which at least 40% of the assessed valuation of the real estate in the municipality consists of hotels, motels, tourist courts accommodation, tourist stops and restaurants.

The United States Supreme Court has recognized that marriage is a fundamental right under the United States Constitution. *Zablocki v. Redhail*, 434 U.S. 374, 383-84, 98 S.Ct. 673, 679-80, 54 L.Ed.2d 618 (1978). *See also Davis v. Davis*, 842 S.W.2d 588, 599-600 (Tenn. 1992) (recognizing marriage as a fundamental privacy right under the Tennessee Constitution). If a statutory classification significantly interferes with the exercise of a fundamental right, it will be upheld only if "it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." *Zablocki*, 434 U.S. at 388, 98 S.Ct. at 682. The Supreme Court in *Zablocki* recognized, however, that reasonable regulations that "do not significantly interfere with decisions to enter into the marital relationship" may legitimately be imposed by states. 434 U.S. at 386, 98 S.Ct. at 681. Thus, a state regulation that does not significantly interfere with the right to marry need not be subjected to rigorous scrutiny. *Id*.

The imposition of an additional fee of $62.50 on the issuance of marriage licenses for the purpose of funding programs designed to address domestic and family issues does not significantly interfere with the right to marry. It is also reasonable to allow an exemption from payment of $60.00 of this fee if both applicants have completed a pre-marital preparation course. This is legitimately related to the legislative purpose of reducing the number of divorces and other domestic problems.

It is our opinion that the proposed additional exemption in HB 2543, for marriage licenses in any county having a municipality defined as a "premier type tourist resort" if both applicants are not Tennessee residents, is also constitutional. This exception does not significantly interfere with the decision to marry. Further, it does not violate the right to equal protection.

As this exemption does not significantly interfere with the right to marry or any other fundamental right and does not involve a suspect classification, it will be upheld as long as there is a "rational basis" between this classification and a legitimate state purpose. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985). In other words, the State need only demonstrate that there is some reasonable basis for the classification. *Riggs v. Burson*, 941 S.W.2d 44, 53 (Tenn. 1997).

Wedding chapels are a major tourist business in Tennessee. Approximately 30% of all marriages in Tennessee occurred in Sevier County, a premier type tourist resort. In 2002, over 80% of the marriages in Sevier County involved couples who were not residents of Tennessee. Thus, there is a reasonable basis for the State to provide an exemption from payment of $60.00 of the additional marriage license fee if both applicants are not residents of Tennessee and the marriage occurs in a premier type tourist resort. Allowing this exemption for counties with a municipality

meeting the definition of a “premier type tourist resort” is rationally related to the legitimate state purpose of encouraging tourism to the State.

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