S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
NASHVILLE, TENNESSEE 37243-0497

May 1, 2007

Opinion No. 07-60

Constitutionality of HB 1008

QUESTION

Does any provision of House Bill 1008, as amended, violate the United States or Tennessee Constitutions, and specifically, is the limitation of the award of post-secondary scholarships to children who were enrolled in Title I schools and one of the pilot programs constitutional?

OPINION

HB 1008 does not appear to infringe upon any provision of the United States or Tennessee Constitutions. The limitation of the award of post-secondary scholarships to children who were enrolled in Title I schools and one of the pilot projects is constitutional.

ANALYSIS

HB 1008 (and the corresponding Senate Bill — SB 1452) is the "Tennessee STAR Scholarship Act of 2007" (the Act). The Act provides for the creation of up to 18 "pilot programs" directed at students attending grades 4 through 7 at "Title I"[1] schools and designed to provide enrichment programs that support and enhance the academic efforts of the students in the program. The stated intent of the Act is to address the "multi-faceted needs of economically disadvantaged fourth through seventh graders and their parents in improving academic achievement and in accessing and acquiring skills and information to ensure entrance in college and the financial ability to secure higher education opportunities."[2] The Act features two primary components: early academic enrichment programs for students, and post-secondary financial assistance for students enrolled in the program.

The Act proposes to fund the post-secondary financial assistance portion of the STAR scholarships from lottery proceeds. While this legislation would add an additional post-secondary scholarship program using lottery proceeds, these proposed scholarships would appear to comply

[1]Defined in Section 4(18) of the Act as "a public school in which fifty percent (50%) or more of the students qualify for free and reduced price lunch pursuant to 42 U.S.C. §§ 1751-1769."

[2]HB 1008, Section 3(6).

with Article XI, Section 5, of the Tennessee Constitution,[3] the provision of the state constitution that authorizes the creation of a lottery whose proceeds may be used to fund certain educational programs. The use of lottery funds for the STAR post-secondary scholarships created by the Act therefore would comply with the Tennessee Constitution.

The limitation of the program to children who were enrolled in Title I schools and who were part of a STAR pilot program also appears to pass constitutional muster. The stated intent of the Act is to focus upon economically disadvantaged children, and the Act's mechanism for doing so is to direct its efforts toward children in "Title I" schools, i.e., children who attend schools where at least fifty percent (50%) of the students qualify for federal free and reduced price lunch programs.[4] It should be noted that this mechanism does not provide a perfect fit for the stated legislative aim of assisting economically disadvantaged students because it permits *any* student who attends a Title I school to participate in a STAR pilot program.

That is, the terms of the Act permit *non*-economically disadvantaged children to take part in a STAR academic enrichment pilot program and to ultimately receive a STAR scholarship as long as they happen to attend a school in which at least fifty percent (50%) of the total student body is economically disadvantaged. And, while defining eligibility according to which school a student attends is not the most precise manner in which to target economically disadvantaged students for participation in the STAR program, it appears to be a reasonable method to target groups of students who are *more likely* to be economically disadvantaged. We are therefore of the opinion that this mechanism for STAR program eligibility would survive the low level of constitutional scrutiny required by a rational basis analysis, the applicable standard for legislation such as the Act.

Legislative efforts to assist economically disadvantaged students do not, in and of themselves, implicate any fundamental rights.[5] The Act does not affect students on the basis of any suspect classification such as race, gender, or religion. Nor does the Act infringe upon any fundamental constitutional right. The State therefore need only demonstrate a rational basis for the classification employed in the Act, i.e., economically disadvantaged students.

The rational basis standard is highly deferential to the State. In *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313-314, 113 S.Ct. 2096, 2101, 124 L.Ed.2d 211 (1993), the

---

[3]*See* Op. Tenn. Att'y Gen. Nos. 06-111 (July 13, 2006) and 05-019 (March 4, 2005)(copies attached).

[4]The Act also requires the creation of a "control group of similarly situated students" for every pilot program that is established, enabling the Department of Education to compare "student achievement, dropout rates, graduation rates, college entrance rates, college completion rates and other indicators of academic success for each group of students." *See* the Act, Section 5(f).

[5]*See, e.g., Zelman v. Simmons-Harris*, 536 U.S. 639, 662-223, 122 S.Ct. 2460, 153 L.Ed.2d 604 (2002)(holding that an Ohio scholarship program enacted for the valid purpose of aiding economically disadvantaged children in a failing public school system was constitutional, even where 96% of the participants were enrolled in religious schools).

United States Supreme Court stated:

> Whether embodied in the Fourteenth Amendment or inferred from the Fifth, equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. [citations omitted] Where there are 'plausible reasons' for Congress' action, 'our inquiry is at an end. [citation omitted] This standard of review is a paradigm of judicial restraint.' [citations omitted].

In addition, the burden is not on the State to show a rational basis, but rather lies with the challenger to prove that there is no rational basis. *See Board of Trustees of University of Alabama v. Garrett*, 531 U.S. 356, 367, 121 S.Ct. 955, 964, 148 L.Ed.2d 866 (2001).

Accordingly, we conclude that the Act does not infringe upon any provision of the United States or Tennessee Constitutions. We further conclude that limiting eligibility for participation in an academic enhancement pilot program and the award of post-secondary scholarships to children who were enrolled in Title I schools and one of the pilot projects is constitutional.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

KEVIN STEILING
Deputy Attorney General

Requested by:

Honorable Tommie F. Brown
Tennessee House of Representatives
Suite 36, Legislative Plaza
Nashville, Tennessee 37243-0128