

STATE OF TENNESSEE
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Opinion No. 10-42

Constitutionality of Constitutional Amendment Endorsing Free Enterprise

QUESTION

House Joint Resolution 722 would amend Article I of the Tennessee Constitution to add the following section:

It is the policy of this state that a free enterprise system shall govern trade and commerce in this state to promote the dispersion of economic and political power and the general welfare of all the people.

Is this amendment consistent with the Tennessee and the United States Constitutions?

OPINION

The amendment on its face would not violate any provision of either of these constitutions. The extent to which this provision, if it becomes part of the Tennessee Constitution, might limit the legislature's authority to regulate business activity would likely be determined by subsequent litigation. Similarly, the extent to which this provision might conflict with the Supremacy Clause of the United States Constitution would depend on the facts and circumstances of the case in which the issue arose and would likely be decided by the courts.

ANALYSIS

This opinion concerns House Joint Resolution 722. The resolution provides:

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED SIXTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that a majority of all the members of each house concurring, as shown by the yeas and nays entered on their journals, that it is proposed:

That Article I of the Constitution of the State of Tennessee be amended by adding the following as a new, appropriately designated section:

It is the policy of this state that a free enterprise system shall govern trade and commerce in this state to promote the dispersion of economic and political power and the general welfare of all the people.

BE IT FURTHER RESOLVED, that the foregoing be referred to the One Hundred Seventh General Assembly and that this resolution proposing such amendment be published in accordance with Article XI, Section 3 of the Constitution of the State of Tennessee.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives is directed to deliver a copy of this resolution to the Secretary of State.

Representative Lynn is sponsoring this resolution in the House. At the House Industrial Impact Subcommittee meeting on March 24, 2010, Rep. Lynn explained the purpose of the resolution as follows:

HJR 722 is a constitutional amendment for Tennessee. We all grew up understanding that free enterprise is the economic system of the land of the United States and I got to thinking about it, and I noticed it's not in our constitution, in fact it's not in any of our documents anywhere. I did a search, and I found one state in the country, Utah, that actually has this provision in their constitution to say that they operate under free enterprise. So what this is is an affirmation, expressing support for free enterprise so that those in the future will know what is important to us. When we had this legislation at a meeting that we had in December, some folks said, Well does this mean there can be no regulation of business? I said no, this is in support of free enterprise. We all know that if a business offends someone, that means they're violating their constitutional rights or they're committing a crime, that is something we can regulate and we need to regulate that because we need to protect and secure the rights of individuals. That's not what this is saying. This is saying that we are proud of our free enterprise system, we know it gives the best opportunity to people to rise from poverty to a life in the middle class or the upper class, we know it's the best opportunity, and that's what this would be doing, adding to our constitution, just adding that affirmation that we support free enterprise.

<http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HJR0722> (Remarks of Rep. Lynn, Meeting of House Industrial Impact Subcommittee, March 24, 2010).

The request asks whether this provision, if adopted as a constitutional amendment, would violate any provision of the Tennessee or the United States Constitutions. The amendment would not violate any provision of either of these constitutions. In fact, both the Tennessee and the United States Constitutions guarantee basic rights essential to free enterprise. Both constitutions, for example, prohibit laws impairing contract obligations. Tenn. Const. Art. I, §

20; U.S. Const. Art. I, § 10. Both also provide that private property may not be taken for public use without just compensation. Tenn. Const. Art. I, § 21; U.S. Const. Amend. 5.

The extent to which the provision proposed in House Joint Resolution 722, if it becomes part of the Tennessee Constitution, might limit the legislature's authority to regulate business activity would likely be determined by subsequent litigation. Similarly, the extent to which this provision might conflict with the Supremacy Clause of the United States Constitution would depend on the facts and circumstances of the case in which the issue arose and would likely be decided by the courts.

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