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Opinion No. 13-37

Constitutionality of Population Bracket Exemption to "Move on When Ready Act"

QUESTION

Chapter 1077 of the 2012 Public Acts (hereinafter "Chapter 1077"), codified at Tenn. Code Ann. §§ 49-6-8303(i) and 49-6-8304(b), exempts from coverage of the "Move on When Ready Act" any county having a population of not less than 183,100 nor more than 183,200 according to the 2010 federal census or any subsequent census. Is Chapter 1077 unconstitutional under Article I, Section 8, or Article XI, Section 8, of the Tennessee Constitution as contravening a general law having mandatory statewide application?

OPINION

Chapter 1077 would likely be found unconstitutional as invalid class legislation.

ANALYSIS

The "Move on When Ready Act," codified at Tenn. Code Ann. §§ 49-6-8301 to -8306, permits Tennessee students who meet certain criteria to graduate early from high school and allows students meeting specific criteria to graduate with fewer credits that are otherwise required by the State Board of Education. Two provisions of the Act, Tenn. Code Ann. §§ 49-6-8303 and 49-6-8304, set forth (1) the specific requirements that must be met in order for a student to qualify for early graduation under the Act and (2) the proviso that neither the State Board of Education nor a local board of education may impose graduation requirements that would prohibit a student who is pursuing early graduation under the Act from completing high school in less than four years.

In 2012, the General Assembly passed Chapter 1077, which amended the Act by adding new subsections to Tenn. Code Ann. §§ 49-6-8303 and 49-6-8304. As a result of Chapter 1077, both of these code sections contain subsections with the following exemption:

> This section shall not apply in any county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three two hundred (183,200), according to the 2010 federal census or any subsequent census.

Tenn. Code Ann. §§ 49-6-8303(i), 49-6-8304(b). This population bracket appears to currently only include Williamson County, and Williamson County is thus the only Tennessee county exempted from the Act's coverage.[1]

Article I, Section 8, and Article XI, Section 8, of the Tennessee Constitution as well as the Fourteenth Amendment to the United States Constitution "guarantee to citizens the equal protection of the laws." *Brown v. Campbell County Bd. Of Educ.*, 915 S.W. 2d 407, 412 (Tenn. 1995). The Fourteenth Amendment provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The initial provision of Article I, Section 8, of the Tennessee Constitution, generally referenced as the "law of the land" clause, states that individuals shall not be deprived of "liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of . . . life, liberty or property but by the judgment of . . . peers or the law of the land." Tenn. Const. art. I, § 8. Article XI, Section 8, of the Tennessee Constitution provides in relevant part:

> The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

These federal and State constitutional provisions confer the same protections, and they apply the same rules in determining the validity of classifications made in legislative enactments. *Brown v. Campbell County Bd. of Educ.*, 915 S.W.2d at 412. The "law of the land" referred to in Article I, Section 8, and "any general law" within the meaning of the prohibition in Article XI, Section 8, on legislation "inconsistent with the general laws of the land" mean the same thing, namely, that a law must embrace and affect alike all persons who are in, or may come into, the same or similar situation, condition, and circumstances. *Harwell v. Leech*, 672 S.W.2d 761, 762-63 (Tenn. 1984); *Maney v. State*, 74 Tenn. 218 (1880).

While these equal protections guarantees require that persons similarly situated be treated alike, not all classifications made by the General Assembly are necessarily prohibited. *See Gallaher v. Elam*, 104 S.W.3d 455, 461 (Tenn. 2003); *State v. Tester*, 879 S.W.2d 823, 327-28 (Tenn. 1994). Unless the classification impacts a fundamental right or discriminates as to a suspect class, a classification is valid if it can be supported by any rational basis. *Gallaher v. Elam*, 104 S.W. 3d at 461-62; *Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978). The rational basis test provides the General Assembly "the initial discretion to determine what is 'different' and what is 'the same'" and allows the General Assembly "considerable latitude in making those determinations." *Gallaher v. Elam*, 104 S.W.3d at 461. A classification will be upheld under the rational basis test "if any state of facts may reasonably be conceived to justify it." *Id*. The question is "whether the classifications have a reasonable relationship to a legitimate

[1]http://www.ctas.tennessee.edu/PUBLIC/web/ctas.nsf/0/9A9961FE0E05464086257855007C1138/$file/2010+Census.pdf?openelement.

state interest." *Doe v. Norris*, 751 S.W.2d 834, 841 (Tenn. 1988). If so, there is a presumption of validity. The legislative body may make distinctions and treat various groups differently so long as the classification is not arbitrary. Reasonableness depends upon the facts of the case, and no general rule can be formulated for its determination. The burden of showing that a classification is unreasonable and arbitrary is placed upon the individual challenging the statute. If any state of facts can reasonably be conceived to justify the classification or if the reasonableness of the class is fairly debatable, the statute must be upheld. *See Gallaher v. Elam*, 104 S.W.3d at 461; *Harrison v. Schrader*, 569 S.W.2d at 825-26.

In order to trigger application of Article I, Section 8, and Article XI, Section 8, a statute must contravene some general law that has mandatory statewide application. *Riggs v. Burson*, 941 S.W.2d 544, 578 (Tenn. 1997). In this instance, the Act, and specifically Tenn. Code Ann. §§ 49-6-8303 and 49-6-8304, appear to be mandatory and applicable statewide, but for the exemption created by Chapter 1077 for Williamson County at the present time and any county that might subsequently grow into the narrow population exclusions in these statutes. A court therefore likely would conclude that these provisions are laws of general applicability.

The question then is whether a rational basis exists for the narrow population classification created by Chapter 1077 that suspends the general law permitting high school students to graduate early, and with fewer credits, contingent upon certain requirements being met. In *Chattanooga Metro. Airport Auth. v. Thompson*, No. 03A01-9610-CH-00319, 1997 WL 129366 (Tenn. Ct. App. 1997), the Tennessee Court of Appeals reviewed the constitutionality of a statute excluding counties within a narrowly defined population bracket from the operation of the Tennessee Passenger Transportation Services Act allowing government entities the power to control private passenger-for-hire vehicles. The Court concluded that there was no rational basis for the exclusion, noting that "even the generous rational basis standard requires that an exclusion based on a population bracket have some relation to a distinctive characteristic of that size population." *Id*. at *3. *See also Knoxville's Community Development Corp. v. Knox County*, 665 S.W.2d 704, 705 (Tenn. 1984) (holding that absent reason to justify discriminatory classification established by statute as to counties falling within specified population bracket, statute was unconstitutional); Tenn. Att'y Gen. Op. 12-72 (July 18, 2012); Tenn. Att'y Gen. Op. 87-185 (Dec. 3, 1987); Tenn. Att'y Gen. Op. 03-123 (Sept. 25, 2003) (all concluding that relatively narrow population classifications were constitutionally suspect under Article XI, Section 8 of the Tennessee Constitution).

This Office is not aware of any reason justifying the population exemption in Tenn. Code Ann. §§ 49-6-8303(i) and 49-6-8304(b). No rationale is cited in the Act or in Chapter 1077, nor does this Office's review of the legislative history of Chapter 1077 reveal any rationale to support the exemption. While the law does not require that a reasonable basis for the classification appear on the face of the legislation, *Shelby County Civil Serv. Bd. v. Lively*, 629 S.W.2d 15, 18 (Tenn. 1985), this Office cannot identify any rational basis why Williamson County should be treated differently than any other county in the State with respect to the coverage of the "Move on When Ready Act." Absent the existence of a rational basis for the exclusion of Williamson County from the Act, a court would likely hold that the narrow population classifications contained in Tenn. Code Ann. §§ 49-6-8303(i) and 49-6-8304(b) violate Article I, Section 8, and Article XI, Section 8, as invalid class legislation.

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