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April 11, 2000

Opinion No. 00-069

Constitutionality of Proposed Amendment to House Bill 2230 Limiting Payment of Punitive Damage Awards to Civil Litigation Plaintiffs Who Obtain Judgments Including Punitive Damages in an Amount Over $50,000,000 Against One or More of the Defendants Released From Liability Pursuant to the Master Settlement Agreement.

QUESTION

Does the proposed amendment to House Bill 2230 violate the Full Faith and Credit Clause or any other provision of the Tennessee or U.S. Constitutions?[1]

OPINION

Yes, if enacted into law, the proposed amendment to House Bill 2230 would likely violate the Full Faith and Credit Clause of the United States Constitution and might also be held by a court to be unconstitutional on other grounds, such as equal protection, under both the United States and Tennessee Constitutions.

ANALYSIS

The proposed amendment to House Bill 2230, if enacted into law, would potentially affect defendants released from liability pursuant to the Master Settlement Agreement who are subject to punitive damage judgments in excess of $50,000,000. Specifically, the proposed amendment would preclude civil litigation plaintiffs from executing on punitive damage judgments in any one year in an amount exceeding a defendant's pro rata share of $50,000,000 for that year, regardless of whether such punitive damages were awarded by a Tennessee court or by a court of another jurisdiction and the damages are being enforced in Tennessee pursuant to Tenn. Code Ann. § 26-6-1 *et seq*., the Uniform Enforcement of Foreign Judgments Act.

[1]The proposed amended bill incorrectly states that the State's settlement with certain members of the tobacco industry involved "claims for reimbursement of medicaid costs." The claims against certain members of the tobacco industry that were brought by the State did not include claims for reimbursement of medicaid costs. In fact, the claims were based on consumer protection, antitrust and unjust enrichment theories of law.

Article IV, Section 1 of the United States Constitution, the Full Faith and Credit Clause, provides that "Full Faith and Credit shall be given in each State to the public acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof." Pursuant to this Clause, Congress enacted 28 U.S.C. § 1738 which provides,

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Accordingly, by proclaiming that judgments of courts outside Tennessee which include awards of punitive damages exceeding $50,000,000 will not be honored as ordered (*i.e.*, not in a lump sum payment), the proposed amendment to House Bill 2230 does not appear to afford full faith and credit to those out of state judgments.

As the United States Supreme Court has recognized, "[r]egarding judgments, however, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." Baker v. General Motors Corporation, 522 U.S. 222, 233, 118 S.Ct. 657, 663-64, 139 L.Ed.2d 580 (1998). The Court has further stated, "[w]e are 'aware of [no] considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to [a money] judgment outside the state of its rendition.'" Baker, 522 U.S. at 234, 118 S.Ct. at 664, quoting Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 438, 64 S. Ct. 208, 213, 99 L.Ed. 149 (1943).

While the proposed amendment would apparently allow punitive damage awards over $50,000,000 to be paid over time, it still does not appear to comport with the requirements of full faith and credit because the Full Faith and Credit Clause requires that "not some but full" faith and credit be given by states to the judicial decrees of other states. Davis v. Davis, 305 U.S. 32, 40, 59 S.Ct. 3, 6, 83 L.Ed. 26, (1938). In other words, "the judgment of a State court which had jurisdiction of the parties and the subject-matter in suit, shall be given in the courts of every other State the same credit, validity and effect which it has in the State where it was rendered. . . ." Roche v. McDonald, 275 U.S. 449, 451-2, 48 S.Ct. 142, 72 L.Ed. 365 (1928) (emphasis added).

While the Supreme Court has recognized some exceptions to the Full Faith and Credit Clause, it does not appear that any of these exceptions would apply to the proposed amendment to House Bill 2230.[2]

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[2]For example, a forum court may not enforce a judgment that is void for lack of subject matter jurisdiction or personal jurisdiction. See, Flexner v. Farson, 248 U.S. 289, 63 L. Ed. 250, 39 S. Ct. 97 (1919); Grover & Baker Sewing Mach. Co. v. Radcliffe, 137 U.S. 287, 11 S.Ct. 92, 34 L.Ed 670 (1890); Four Seasons Gardening &

The proposed amendment to House Bill 2230 is also constitutionally suspect under an equal protection analysis. Legislation must comport with state and federal constitutional guarantees of "equal protection of the laws." U.S. Const. Amend. XIV, § 1. Basically, the concept of equal protection "embodies a general rule that States must treat like cases alike but may treat unlike cases accordingly." Vacco v. Quill, 521 U.S. 793, 799, 117 S.Ct. 2293, 2297, 138 L.Ed.2d 834 (1997) Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution are the state's expression of equal protection corresponding to Section 1 of the Fourteenth Amendment of the United States Constitution. Tennessee Small School Sys. v. McWherter, 851 S.W.2d 139, 152 (Tenn. 1993). Article XI Section 8 of the Tennessee Constitution provides in pertinent 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, immunite [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.

Because the distinction between entities released from liability pursuant to the Master Settlement Agreement and entities who were not released (*i.e.,* entities not a party to the Master Settlement Agreement) does not implicate any fundamental right or affect a suspect class, the classification is subject to the traditional rational basis test. Central State University v. American Assn. of University Professors, Central State University, 526 U.S. 124, 127-28, 119 S.Ct. 1162, 1163, 143 L.Ed.2d 227 (1999). Under this test, there need be only some "rational relationship" between the classification and some legitimate state purpose. Id.; Heller v. Doe, 509 U.S. 312, 319-21, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993). The Supreme Court has explained that in conducting a rational basis review, "we will not overturn such [government action] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [government's] actions were irrational." Vance v. Bradley, 440 U.S. 93, 97, 99 S. Ct. 939, 942, 59 L.Ed.2d 171 (1979). A classification made by the state, if enacted into law, carries with it a strong presumption of validity and can be overturned only when "no grounds can be conceived to justify [it]." McDonald v. Board of Election Commissioners, 394 U.S. 802, 809, 89 S. Ct. 1404, 1408, 22 L.Ed.2d 739 (1969).

The declared purpose of the proposed amendment to House Bill 2230 is "[t]o protect and maximize the funds available from the state's settlement with the tobacco industry." The goal of the proposed amendment, therefore, is apparently to maximize the funds which the State can obtain. While financial matters are of legitimate concern to the state, Zobel v. Williams, 457 U.S. 55, 81-82,

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Landscaping, Inc. v. Crouch, 688 S.W.2d 439 (Tenn. App. 1984); In Re Riggs, 612 S.W.2d 461, 465 (Tenn. App. 1980). In addition, when a judgment of the foreign court was based upon fraud, the forum court may choose not to enroll the judgment. See, In Re Riggs, *supra*. Finally, where enforcement of the judgment would violate the public policy of the forum state, the forum court may refuse to enforce the judgment of the foreign court. See, Hyde v. Hyde, 562 S.W.2d 194 (Tenn. 1978).

102 S.Ct. 2309, 2324, 72 L.E.2d 672 (1982), there still must be a rational relationship between the classification and the state's purpose.

States, however, are not required to prove the correctness of their legislative judgment. The burden is on those challenging the legislature's judgment to convince a court that the facts upon which the classification is based could not have reasonably been viewed as true by the legislature. Vance, 440 U.S. at 111, 97 S. Ct. at 950. But, a challenging party may argue that there is no rational basis for imposing legislation that imposes a random limit on payments of punitive damage awards only against Master Settlement Agreement signatories but not against nonsignatories. It is possible therefore that a court would find no reasonable relationship to the State's purpose and that the legislation discriminates against parties in an arbitrary and irrational manner.

In conclusion, it is the opinion of this Office that the proposed amendment to House Bill 2230, if enacted into law, is constitutionally suspect because it would likely violate the Full Faith and Credit Clause and may not survive equal protection scrutiny.

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