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Opinion No. 09-45

Effect of Senate Bill 1061

QUESTIONS

1. If Senate Bill 1061, which requires only the last four digits of a person's social security number be provided when registering to vote in Shelby County, became law, would this enactment prevent the State of Tennessee from requiring the full social security number for persons in the county in the future when registering to vote.

2. Would statewide application of Senate Bill 1061 prevent the State of Tennessee from requiring the full social security number for persons when registering to vote.

3. Is Senate Bill 1061 constitutional as introduced.

OPINIONS

1. It is our opinion that, if Senate Bill 1061 is enacted, the state would not be able to require the disclosure of full social security numbers in the future by persons registering to vote in Shelby County.

2. If Senate Bill 1061 is enacted with statewide application, it is our opinion that the state would not be able to require the disclosure of full social security numbers in the future by persons registering to vote in this state.

3. We cannot conceive of any rational basis justifying Senate Bill 1061's application only to Shelby County. Accordingly, we think a court could find that Senate Bill 1061, if enacted, violates Art. XI, Section 8 of the Tennessee Constitution.

ANALYSIS

You have asked what effect Senate Bill 1061, if it became law, would have on the state's ability in the future to require full social security numbers from persons when registering to vote. Senate Bill 1061 would amend Tenn. Code Ann. § 2-2-116 by adding the following new section:

> In any county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census, the social security number required to be included on the permanent registration record pursuant to subsection (c) shall only be the last four digits of the voter's social security number, if the voter has been issued a social security number.

Tenn. Code Ann. § 2-2-116 sets forth the requirements for permanent registration forms, including the disclosure of a registrant's social security number, and specifically provides that an individual's permanent registration record "shall contain all the information required before being signed by the registrant." Tenn. Code Ann. § 2-2-116(c). This statute was enacted by the Tennessee General Assembly in 1972 as part of a comprehensive statutory scheme to recodify the state's existing election laws into a single election code. *See* Tennessee Public Acts of 1972, Chapter 740 ("An Act to restate, supplement, consolidate, clarify, and revise the elections laws of this State . . .").

In 1976, a challenge to the constitutionality of Tenn. Code Ann. § 2-2-116 was brought in state court. The Tennessee Court of Appeals found that the social security numbers required to be disclosed on registration forms by the statute were used by election officials to verify the identity of registrants. It further found that the statute did not offend either the federal or state constitutions, or that application of the statute had deprived the plaintiff of any right guaranteed to her by either the federal or state constitution. *See Carter v. Dunn*, No. 12507 (Tenn.Ct.App. Dec. 3, 1976).

In 2000, Tenn. Code Ann. § 2-2-116 was challenged in federal court as being in violation of Section 7 the Privacy Act, 5 U.S.C. § 552a. *See McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000). Section 7 provides that:

> (a)(1) It shall be unlawful for any Federal, State, or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.
>
> (2) The provisions of paragraph (1) of this subsection shall not apply with respect to –
>
> (A) any disclosure which is required by Federal statute, or

> (B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulations adopted prior to such date to verify the identity of an individual.
>
> (b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

Privacy Act of 1974, Pub.L. No. 93-579, §7, 88 Stat. 1896, 1909 (1974), *reprinted in* 5 U.S.C. § 552a note (2003). As noted, Section 7 of the Privacy Act was never codified, but appears in the annotated code as an historical note to 5 U.S.C. § 552a.

Pursuant to section 7(a)(1) of the Privacy Act, the state is otherwise prohibited from requiring an individual to provide his or her social security number in order to register to vote unless one of the exceptions contained in subsection (2) is applicable. In *McKay*, the court found that Tennessee's statute requiring the disclosure of social security numbers to register to vote met the "grandfather" exemption contained in section 7(a)(2)(B). Specifically, the court found that Tennessee had enacted Tenn. Code Ann. § 2-2-116 and that, based upon the evidence in the record, Tennessee had maintained "a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual."[1] *McKay v. Thompson*, 226 F.3d at 755.

Senate Bill 1061 would amend Tenn. Code Ann. § 2-2-116 to provide that residents of Shelby County would no longer have to provide their full social security numbers when registering to vote. If this bill is passed, you have asked whether the state would be able to require full social security numbers in the future from persons in Shelby County registering to vote. You have also asked whether the state would be able to require the disclosure of full social security numbers in the future from persons registering to vote if the provisions of Senate Bill 1061 were to be applied statewide. It is our opinion that, if Senate Bill 1061 is enacted, the state would not be able to require the disclosure of full social security numbers in the future by persons registering to vote in that county. Similarly, if Senate Bill 1061 is enacted with statewide application, then the state would not be able to require the disclosure of social security numbers in the future by persons registering to vote in this state.

As previously discussed, in order for the grandfather exemption found in section 7(a)(2)(B) to be applicable, not only must a state have a system of records in place, but it must have enacted a statute requiring the disclosure of social security numbers prior to January 1,

[1] The court relied in part upon the decision in *Carter v. Dunn* in which the appellate court found that social security numbers were used for identification purposes, as well as the other statutes requiring the disclosure of social security numbers that are then used for voter identification purposes by the State Election Coordinator and the county election commissions.

1975. Tenn. Code Ann. § 2-2-116 was enacted in 1972, and, thus, meets this requirement. If, however, Tenn. Code Ann. § 2-2-116 is amended by Senate Bill 1061 to remove Shelby County residents from the requirement of having to provide their social security number when registering to vote, but then is amended in the future to once again require the disclosure of social security numbers, the latter amendment clearly would not have been enacted prior to January 1, 1975. Accordingly, the grandfather exemption contained in section 7(a)(2)(B) would not apply and the State would be prohibited under the Privacy Act from requiring the disclosure of social security numbers by persons registering to vote in Shelby County. A similar result would occur if Senate Bill 1061 is enacted with statewide application, *i.e.*, the state would be prohibited from requiring the disclosure of social security numbers by persons registering to vote anywhere in the state.

Additionally, we would note that, if Senate Bill 1061 is enacted, Tennessee would no longer be maintaining a statewide system of records requiring social security numbers to be used to verify the identity of registrants. Under those circumstances we think a court could find that the grandfather exemption would no longer apply to Tenn. Code Ann. § 2-2-116 based upon the language of section 7(a)(2)(B) and, therefore, that the state would be prohibited under the Privacy Act from requiring the disclosure of social security numbers in order to register to vote. It is well-settled that the guiding principle of statutory construction is to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute's coverage beyond its intended scope. *Worley v. Weigels, Inc.*, 919 S.W.2d 589, 593 (Tenn. 1996); *State v. Sliger*, 846 S.W.2d 262, 263 (Tenn. 1993). Legislative intent and purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without a forced or subtle construction that would limit or extend the meaning of the language. *Tuggle v. Allright Parking Sys., Inc.*, 922 S.W.2d 105, 107 (Tenn. 1996); *National Gas Distrib., Inc. v. State*, 804 S.W.2d 66 (Tenn. 1991). Section 7(a)(2)(B) states that disclosure of an individual's social security number must be made to a federal, state or local agency "*maintaining* a system of records in existence and operating before January 1, 1975" and the disclosure of an individual's social security number must be "required *under statute or regulations adopted prior to"* January 1, 1975. The Privacy Act does not define the term "maintain"; however, that term is ordinarily defined as "to keep in an existing state; preserve from failure or decline; to continue or persevere in." Webster's Ninth New Collegiate Dictionary, p. 718 (1988). By using this term, we think Congress intended that, in order for the grandfather exemption to apply, not only must a state have a system of records requiring the disclosure of social security numbers in existence and operating prior to January 1, 1975, but such system must be kept in its existing state. With the passage of Senate Bill 1061, the state would no longer be maintaining its statewide system of records, as the disclosure of social security numbers would not be required in order to register to vote in Shelby County, nor would social security numbers be used by election officials in Shelby County to verify the identity of registrants.

Your last question asks if Senate Bill 1061 is constitutional as it would only apply in Shelby County. Generally, any legislation affecting different counties or cities in their governmental or political capacity must satisfy the requirements of Article XI, Section 8 of the Tennessee Constitution. *Jones v. Haynes*, 221 Tenn. 50, 424 S.W.2d 197 (1969); *Brentwood Liquors Corporation v. Fox*, 496 S.W.2d 454 (Tenn. 1973). That section 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.

In order to trigger application of Article XI, Section 8, a statute must "contravene some *general law* which has *mandatory statewide application*." *Knox County ex rel. Kessell v. Lenoir City*, 837 S.W.2d 382, 383 (Tenn. 1992); *Leech v. Wayne County*, 588 S.W.2d 270, 273 (Tenn. 1979); *Rector v. Griffith*, 563 S.W.2d 899 (Tenn. 1978) (emphasis added). The question is whether Senate Bill 1061 as a whole violates Article XI, Section 8, of the Tennessee Constitution because it contradicts a law of statewide applicability governing the requirements to register to vote in Tennessee.

Tenn. Code Ann. § 2-2-116 requires that an individual provide his or her social security number in order to register to vote. Senate Bill 1061 would require the residents of Shelby County to provide only the last four digits of their social security number in order to vote. Clearly, there is a conflict between Tenn. Code Ann. § 2-2-116 and Senate Bill 1061. However, even if a Senate Bill 1061 were found to constitute special or class legislation, it nonetheless would not violate Article XI, Section 8 if it is rationally related to a legitimate state interest. In applying the rational basis test, courts presume that the legislature acted constitutionally and will uphold 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 …." *City of Chattanooga v. Davis*, 54 S.W.3d 248, 276 (Tenn. 2001) (quoting *Bates v. Alexander*, 749 S.W.2d 742, 743 (Tenn. 1988)); *Phillips v. State*, 304 S.W.2d 614, 617 (Tenn. 1957); *Knoxtenn Theatres v. McCanless*, 151 S.W.2d 164, 167 (Tenn. 1941). The party attacking the statute bears the burden of showing that the classification does not rest upon a reasonable basis. *Stalcup v. City of Gatlinburg*, 577 S.W.2d 439 (Tenn. 1978); *Estrin v. Moss*, 430 S.W.2d 345, 349 (Tenn. 1968), *cert. denied*, 393 U.S. 318, 89 S.Ct. 554 (1969). It is not necessary that the reasons for the special legislation appear on the face of the legislation. *Stalcup*, 577 S.W.2d at 442; *State ex rel. Melton v. Nolan*, 30 S.W.2d 601, 602 (Tenn. 1930).

Tenn. Code Ann. § 2-2-116's requirement that an individual provide his or her full social security number when registering to vote is part of a comprehensive system established by the General Assembly utilizing social security numbers to verify the identity of registered voters. For example, when the election laws were recodified by the General Assembly in 1972, they included not only the provisions of Tenn. Code Ann. § 2-2-116, but also Tenn. Code Ann. § 2-2-133, which requires the state office of vital records of the Department of Health to furnish to the State Election Coordinator a monthly report of all persons, eighteen (18) years old or older, who have died in the state. Such report "shall contain each decedent's full name, last address, date and place of birth and *social security number*." Tenn. Code Ann. § 2-2-133(a)(1) (emphasis added). Upon receipt of this information, the State Election Coordinator is then required to notify the county election commissions of all persons who have died with an address in their

county so that such persons can be removed from the registers. The State Election Coordinator is also required to "annually obtain information regarding Tennessee residents eighteen (18) years of age or over identified as deceased by the federal social security administration death master file" and report this information to the county election commissions. Tenn. Code Ann. § 2-2-133(b) and (c). Additionally, Tenn. Code Ann. § 2-11-202(a)(16) requires the State Election Coordinator to devise and furnish to the clerks of the circuit and criminal courts a form to be used for notifying county election commissions of the fact that a registered voter in their county has been convicted of a felony and, therefore, should be purged from the registration records. This statute specifically requires that the form includes the voter's social security number. Senate Bill 1061 does not on its face disclose any reasons why its provisions should apply only in Shelby County, and in light of the purpose of Tenn. Code Ann. § 2-2-116 and its role as part of a comprehensive statewide system for verifying the identity of registered voters, we cannot conceive of any rational basis for justifying Senate Bill 1061's application only to Shelby County. Accordingly, we think a court could find that Senate Bill 1061, if enacted, violates Art. XI, Section 8 of the Tennessee Constitution.

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