

STATE OF TENNESSEE

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Opinion No. 10-74

Constitutionality of Felon Voting Restoration Bill

QUESTION

Tenn. Code Ann. § 40-29-202 sets forth guidelines for the restoration of the voting franchise to citizens convicted of a felony. HB969 would amend subsection (b) to exclude from eligibility those convicted felons who have not paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence, all fines imposed by the court as part of the sentence, and all court costs assessed against the person following the conviction. Does this exception violate the United States or Tennessee Constitutions?

OPINION

It is the opinion of this Office that the exception contained in HB969 is constitutional, because felons do not have a fundamental right to vote, the statute in question does not discriminate against a suspect class, and the State has a legitimate interest in encouraging convicted felons to complete their entire sentences, including the payment of legal financial obligations arising from a court order.

ANALYSIS

Tenn. Code Ann. § 40-29-202 sets forth guidelines governing the restoration of the elective franchise to persons convicted of an infamous crime (*i.e.*, felons). Under these guidelines, the following categories of felons are eligible to have their elective franchise restored: (1) those who have received a pardon that does not contain restrictive conditions relating to the right of suffrage; (2) those who have been discharged from custody after serving the maximum sentence imposed by the sentencing court for the infamous crime committed; and (3) those who have been granted a final discharge by the applicable county, state, or federal authority. The statute further contains exceptions to these eligibility guidelines. Specifically, those convicted felons who have not paid all restitution to the victim or victims of the offense ordered by the court as part of the sentence and those convicted felons who are not current in their child support obligations are not eligible to have their voting rights restored. Tenn. Code Ann. § 40-29-202(b) and (c).

HB696¹ would amend subsection (b) of this statute to also exclude from eligibility for restoration of voting rights those felons who have not paid all fines imposed by the court as part of the sentence and all court costs assessed against the person following the conviction. You have asked whether these provisions of HB969 are constitutional. This Office has previously opined that the current exceptions contained in Tenn. Code Ann. § 40-29-202, including the exception for convicted felons who have failed to pay all of the restitution ordered as part of the sentence, is constitutional. *See* Op. Tenn. Att’y Gen. 06-148 (September 29, 2006).

Furthermore, in *Johnson v. Bredesen*, 579 F.Supp. 2d 1044 (M.D.Tenn. 2008), the United States District Court for the Middle District of Tennessee also upheld the exceptions contained in Tenn. Code Ann. § 40-29-202 as constitutional. In that case, plaintiffs were convicted felons who had served their prison sentences and satisfied the conditions of supervised release; however, they were ineligible to register to vote because they owed past-due child support payments and/or restitution to the victims of the crimes for which they were convicted. *Id.* at 1049. The plaintiffs asserted that the exceptions contained in Tenn. Code Ann. § 40-29-202, by denying the vote to those who have not satisfied certain legal financial obligations, violated their fundamental right to vote and discriminated among citizens on the basis of wealth in violation of the Equal Protection Clause of the United States Constitution. Plaintiffs also asserted that the statute’s exceptions violated the Twenty-Fourth Amendment to the United States Constitution (prohibition on the imposition of a poll tax); the Ex Post Facto Clauses of the United States and Tennessee Constitutions, and the Privileges and Immunities Clauses of the United States and Tennessee Constitutions. *Id.* at 1048.

The district court first noted that the Sixth Circuit Court of Appeals has held that felons do not have a fundamental right to vote. *Id.* at 1050 (citing *Wesley v. Collins*, 791 F.2d 1255, 1261 (6th Cir. 1986)). As such, the court held that the State’s decision to restore voting rights to some convicted felons and not to others is not subject to the strict-scrutiny standard; rather the court must find such distinctions do not violate equal protection so long as they do not discriminate against a suspect class and bear a rational relationship to a legitimate state interest. Under this rational-basis standard, the district court found that the exceptions contained in Tenn. Code Ann. § 40-29-202 did not violate the Equal Protection Clause, as it was clearly established that wealth, or lack thereof, is not a “suspect classification” and that the exceptions were rationally related to the State’s legitimate interest in, among other things, encouraging convicted felons to complete their entire sentences, including the payment of restitution. *Id.* at 1053-54.

The district court further found that “[i]t is not unreasonable or impermissible for a state to require a convicted felon to complete his entire sentence, including the payment of restitution, prior to having his voting rights restored” and that the imposition of such a requirement “cannot reasonably be construed as a ‘tax’ on voting” in violation of the Twenty-Fourth Amendment. *Id.* at 1058-59 (citing to *Johnson v. Bush*, 214 F.Supp.2d 1333 (S.D.Fla. 2002), *aff’d on other grounds*, 405 F.3d 1214 (11th Cir. 2005) (*en banc*) and *Coronado v. Napolitano*, No. CV-07-1089-PHX-SMM, 2008 WL 191987, at *4-*5 (D. Ariz. Jan. 22, 2008)). The court also found

¹ As of May 21, 2010, HB969 and its companion bill SB440 had passed the Senate and House, but the House adopted an amendment not yet voted on in the Senate. This opinion does not discuss these amendments because the request concerns the bill’s constitutionality as originally drafted. Moreover, the bill as amended thus far is less onerous to the restoration of voting rights than the original bill.

that the provisions of Tenn. Code Ann. § 40-29-202(b) and (c) did not violate the Ex Post Facto Clauses of the United States and Tennessee Constitutions because they were civil, non-punitive measures for regulating applications to have the right to vote restored and did not either alter the definition of the crimes for which the plaintiffs were convicted or increase the punishment associated therewith. Rather, the only thing that changed was the conditions governing plaintiffs' ability to regain the right of suffrage. *Id.* at 1060-61. Finally, the district court found the exceptions contained in Tenn. Code Ann. § 40-29-202(b) and (c) did not violate the Privileges and Immunities Clause for the same reasons that they did not violate the Equal Protection Clause, i.e., the exceptions were rationally related to a legitimate governmental interest. *Id.* at 1062.

As noted, HB969 would add two additional exclusions to the eligibility guidelines set forth in Tenn. Code Ann. § 40-29-202: (1) convicted felons who have not paid all fines imposed by the court as part of the sentence and (2) convicted felons who have not paid all court costs assessed against the person following the conviction. Under the same reasoning applied by the court in *Johnson v. Bredesen, supra*, we think a court would find that requiring convicted felons to satisfy these legal financial obligations arising from a court order prior to having their voting rights restored is constitutional.

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