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Opinion No. 12-22

Revocation of Professional Licenses Due to Student Loan Arrears

QUESTION

Is House Bill 0740 of the 107th General Assembly (hereinafter "HB0740") constitutionally suspect?

OPINION

No. HB0740 is constitutionally defensible as it is rationally related to the legitimate state interest of compelling the repayment of student loans and provides sufficient due process to protect the rights of debtors.

ANALYSIS

HB0740 would amend Title 3, Title 49, and Title 56 of the Tennessee Code to provide for the revocation of a professional license when a debtor is delinquent or in default on student loan obligations.

The United States Supreme Court has recognized the significance of a person's interest in remaining employed. *Gilbert v. Homar,* 520 U.S. 924, 932 (1997); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543 (1985). The right to work in a chosen profession without unreasonable government interference is a property and liberty interest "protected by the Due Process Clause of the Fourteenth Amendment and Tenn. Const. art. I § 8." *Martin v. Sizemore*, 78 S.W.3d 249, 262 (Tenn. Ct. App. 2001) (citing *Greene v. McElroy*, 360 U.S. 474, 492 (1959). *See also State v. AAA Aaron's Action Agency Bail Bonds, Inc.*, 993 S.W.2d 81, 85 (Tenn. Crim. App. 1998).

The level of scrutiny for legislative acts that invoke due process concerns is determined by whether the right in question is fundamental. The United States Supreme Court recently held that "[t]he liberty component of the Fourteenth Amendment's Due Process Clause includes some generalized due process right to choose one's field of private employment, *but a right which is nevertheless subject to reasonable government regulation*." *Conn v. Gabbert*, 526 U.S. 286, 291-92 (1999) (emphasis added). Various federal courts have also concluded that there is no fundamental right to employment in a specific field. *See Schware v. Bd. of Bar Examiners,* 353 U.S. 232, 238 (1957) (no fundamental right to practice law); *Mass. Bd. of Retirement v. Murgia*,

427 U.S. 307, 313-14 (1976) (no fundamental right to government employment). *See also Medeiros v. Vincent*, 431 F.3d 25, 29 n.3 (1st Cir. 2005) (no fundamental right to pursue an occupation and legislation infringing upon such a right is subject to a rational basis review).

Procedural Due Process

As a professional license is a property right and liberty interest protected by Article I, Section 8, of the Tennessee Constitution and the Fourteenth Amendment of the United States Constitution, revocation of a license must comport with the requirements of procedural due process. The Tennessee Supreme Court has recognized in this context that the "most basic principle underpinning procedural due process is that individuals be given an opportunity to have their legal claims heard at a meaningful time and in a meaningful manner." *Lynch v. City of Jellico*, 205 S.W.3d 384, 391 (Tenn. 2006) (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-30 (1982)).

HB0740 meets the requirements of procedural due process. HB0740 requires the Tennessee Student Assistance Corporation ("TSAC") or the guarantee agency to serve upon a debtor notice of intent to file an order with a licensing agency to revoke the debtor's license. HB0740 mandates that TSAC or the guarantee agency either personally serve the notice upon the debtor or mail it by certified mail with return receipt requested. HB0740 also requires that the notice state with specificity that the debtor's license shall be suspended within ninety days unless the debtor pays the debt, enters into or complies with a payment plan, requests or qualifies for deferment or forbearance, or requests a hearing.

Should the debtor request a hearing, HB0740 specifies that the hearing shall be governed by the rules and regulations of the Tennessee Uniform Administrative Procedures Act ("UAPA"). It is well settled that the "UAPA satisfies procedural due process standards by providing chancery court review of agency decisions." *Threadgill v. Bd. of Professional Responsibility of Supreme Court*, 299 S.W.3d 792, 814 (Tenn. 2009) (citing *Bobbitt v. Shell*, 115 S.W.3d 506, 510 (Tenn. Ct. App. 2003)). *See also Watts v. Burkhart*, 854 F.2d 839, 841 (6th Cir. 1988). Accordingly, because HB0740 provides debtors the opportunity for a hearing to have their legal claims heard pursuant to the UAPA, HB0740 comports with the requirements of procedural due process.

Substantive Due Process

The Due Process clause guarantees more than just a fair procedural process. *Parks Properties v. Maury County*, 70 S.W.3d 735, 743 (Tenn. Ct. App. 2001) (citing *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997)). The clause also bars "certain governmental actions regardless of the procedures used to implement them." *Id*. at 744 (citing *County of Sacramento v. Lewis*, 523 U.S. 833, 830 (1998) and *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). Thus, substantive due process protects against "acts of government officials that are so far beyond the outer limits of legitimate government that no amount of process could cure the deficiency." *Id*. (citing *Natale v. Town of Ridgefield*, 170 F.3d 258, 262-63 (2d. Cir. 1999) and *Front Royal and Warren County Indus. Park Corp. v. Town of Front Royal*, 135 F.3d 275, 288 (4th Cir. 1998)).

Where the right involved is not a fundamental one, "a statute comports with substantive due process if it bears „a reasonable relation to a proper legislative purpose' and is „neither arbitrary nor discriminatory.'" *Riggs v. Burson*, 941 S.W.2d 44, 51 (Tenn. 1997) (quoting *Newton v. Cox*, 878 S.W.2d 105, 110 (Tenn. 1994)). Accordingly, for HB0740 to survive a substantive due process analysis, a court must "identify a legitimate governmental interest that the legislative body could rationally conclude was served by the legislative act." *Parks Properties v. Maury County*, 70 S.W.3d, 735, 744 (Tenn. Ct. App. 2001).

While statutes providing for revocation of licenses as a consequence of defaulting on student loans are relatively new legal developments, similar statutes involving license revocation for non-payment of child support have been ruled upon in multiple jurisdictions. The State of Washington has enacted a statute, that permits the revocation of a professional license of a person who has failed to pay child support. Wash. Rev. Code § 74.20A.320 (2009). In *Amunrud v. Board of Appeals*, the State of Washington, Department of Social and Health Services, suspended Mr. Amunrud's commercial driver's license for failure to pay child support pursuant to this statute. *Amunrud v. Board of Appeals*, 143 P.3d 571 (Wash. 2006), *cert. denied*, 549 U.S. 1282 (2007). Mr. Amunrud filed suit, claiming the statute was unconstitutional and violated his substantive due process rights. *Id*. Performing a rational basis analysis, the Washington Supreme Court determined that, while non-payment of child support is unrelated to one's driving abilities, Section 74.20A.320 promotes the State's interest in "encouraging legally responsible persons to financially support their children." *Id*. at 578-79. Accordingly, the Washington Supreme Court determined that Section 74.20A 320 was rationally related to a legitimate state interest and was consistent with substantive due process. *Id*. at 579. Other courts considering this question have reached similar conclusions. *See Thompson v. Ellenbecker*, 935 F.Supp. 1037 (D. S.D. 1995) and *State v. Beans*, 965 P.2d 725 (Alaska 1998) (license suspension is effective at promoting payment of child support); *Tolces v. Trask*, 76 Cal.App. 4th 285 (1999) (license suspension is a rational means of enforcing child support orders); *State v. Leuvoy*, No. 03CA66, 2004 WL 944387 (Ohio Ct. App. April 29, 2004), *appeal denied*, 814 N.E.2d 491 (Ohio 2004) (upheld statute prohibiting renewal or issuance of driver's license to those owing more than $1000 in child support arrears).

Given the above, it is our opinion there exists a rational basis for HB0740. Specifically, we believe a court would find that the State of Tennessee has a substantial interest in ensuring the payment of student loans guaranteed by TSAC and that HB0740 is tailored to advance such an interest. Accordingly, HB0740 does not offend the substantive due process rights of debtors whose licenses would be subject to revocation.

As HB0740 does not offend either procedural or substantive due process, it is constitutionally defensible.

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