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Opinion No. 02-018

Social Security Numbers on Applications for Drivers Licenses

QUESTION

Public Chapter 158 of the Public Acts of 2001 amended Tenn. Code Ann. § 55-50-321(c) to allow applicants who do not possess social security numbers to obtain drivers licenses. Does this amendment violate any provision of the United States Constitution or conflict with federal laws regarding citizenship and immigration?

OPINION

No. Public Chapter 158 does not violate the any provision of the United States Constitution and does not conflict with federal laws regarding citizenship and immigration.

ANALYSIS

The request does not specify any particular provision of the United States Constitution which might be violated by Public Chapter 158. It does not appear that Public Chapter 158, which excuses certain individuals from providing social security numbers when applying for drivers licenses, could implicate any individual constitutional rights. The only constitutional provision which would even arguably be implicated by the amendment is the Supremacy Clause, U.S. Const. art.VI, §2.

Under the Supremacy Clause, federal statutes enacted pursuant to the United States Constitution are the supreme law of the land. If state law conflicts with those statutes, the state law is preempted in favor of federal law. *United States v. Gillock*, 445 U.S. 360, 100 S.Ct. 1185, 63 L.Ed2d 454 (1980). For preemption to occur, the federal statute must address the same subject matter as the state statute. Addressing the same subject means the two statutes must deal directly with the same subject matter; merely touching upon or being somehow related to the same subject matter will not suffice. *Norfolk Southern Ry Co. v. Shanklin*, 529 U.S. 344, 120 S.Ct. 1467, 146 L.Ed2d 374 (2000).

Under U.S. Const. art I, §8(4), Congress has the authority to make laws regulating immigration and naturalization. Once congress has acted to regulate immigration and naturalization, states are preempted from enacting statutes or regulations on the same subject. *Arrowsmith v. Voorhies*, 55 F.2d 310 (E.D. Mich. 1931).

Hines v. Davidowitz, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed.2d 581(1941) is instructive. In that case the Court held that Pennsylvania's statute requiring resident aliens to register with a state agency and carry a special identification card was preempted by federal statutes governing the same field. That case illustrates that states may not enact separate legislative schemes which single out aliens for special treatment or otherwise attempt to regulate their conduct as aliens.[1] As the Court's reasoning shows, it does not mean that states may not enact generalized legislation which may have some impact on aliens residing within their borders.

Public Chapter 158 falls into the latter category. It does not purport to regulate any aspect of immigration or the conduct of aliens who reside in the state.[2] The statute does not excuse only aliens from providing a social security number to obtain a drivers license. Any person who has not been issued a number may avail himself or herself of the benefits of the provision. Its primary objective is to protect the safety of the motoring public in Tennessee, not the regulation of legal or illegal aliens.

It does not matter that Chapter 158 may not advance the policies underlying these federal laws regulating citizenship and immigration. As a matter of law, states are not required to enact legislation to enforce federal interests or advance and promote the policies and purposes behind federal legislation. *New York v. United States*, 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed2d 120 (1992). Thus it is legally immaterial whether Public Chapter 158 aids the policies and purposes behind the federal laws regulating citizenship and immigration. The question whether Public Chapter 158 affects the federal interests and policies behind the immigration laws

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[1]The Court's rationale is particularly enlightening. It noted that laws regulating the conduct of aliens are intertwined with the conduct of foreign affairs, a matter entrusted to the exclusive control of the federal government. The Court recognized that if any given state singled out aliens for special treatment, such action could have a direct impact on the way in which U.S. citizens are treated abroad. Since foreign governments are unlikely to distinguish residents of one state from another, the actions of a single U.S. state could have an adverse impact on the nation as a whole. As the Court's reasoning indicates, this was one of the primary factors to consider in determining whether a state law affecting the treatment of aliens is preempted by federal law.

[2]There is nothing in the plain language of Chapter 158 which indicates any intent to regulate any activity covered by federal statutes regulating immigration or the conduct of aliens who reside in this state. *See, e.g.*, 8 U.S.C.§§ 1151(a)(identification of classes of immigrants who may lawfully be issued immigrant visas); 1151(d)(immigrants who may be issued work visas); 1152 (immigration quotas); 1182 (classes of aliens who are not eligible to enter the U.S.); 1202 (procedures for visa applications and registration of resident aliens)and 1252 (procedures for deportation of aliens).

thus becomes a policy as opposed to a legal issue. Such issues are within the domain of the General Assembly.

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