

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

MAXWELL'S PIC-PAC, INC.
FOOD WITH WINE COALITION, INC.

PLAINTIFFS

v.

CIVIL ACTION NO. 3:11CV-18-H

ROBERT VANCE, *et al.*

DEFENDANTS

LIQUOR OUTLET, LLC

INTERVENING DEFENDANT

* * * * *

**INTERVENING DEFENDANT'S NOTICE OF FILING OF ADDITIONAL AUTHORITY
IN SUPPORT OF ITS MAY 23, 2012 HEARING POSITION REGARDING THE
RATIONAL BASIS ANALYSIS OF STATUTES**

Intervening Defendant Liquor Outlet, LLC, d/b/a The Party Source ("Intervening Defendant" or "Party Source"), by counsel, hereby gives notice to the Court of additional authority in support of its position that the rational basis of a challenged statute is examined at the time of the statute's enactment.

At the end of the May 23, 2012 Hearing, the Court asked the parties whether they all agreed that the rational basis of the challenged statute (KRS 243.230(5)) had to be analyzed as it stands today. In response, Party Source's counsel disagreed and indicated that in a case such as this one, where there is no invidious discrimination (i.e. *Brown v. Board of Education*) and the challenged statute relates solely to economic policy, the Court should consider the intent and legislative history of the challenged statute at the time it was enacted. Party Source's counsel also referred the Court to the following Kentucky case which stood for that proposition: *Dept. of Alcoholic Beverage Control v. Liquor Outlet, Inc.*, 734 S.W.2d 816 (Ky. App. 1987) (in considering a challenge to the Kentucky statute prohibiting the purchase of wine and distilled spirits on "credit," the Court of Appeals held that the challenged statute [KRS 244.300] must be

enforced as written at the time of its enactment, which would prohibit the use of national or bank credit cards to purchase wine or distilled spirits in Kentucky).

The issue raised by the Court's question is as follows: in an equal protection case, when is the rational basis for the challenged statute to be determined, when it was enacted or when it was challenged? In further support of Party Source's stated position in response to the Court's aforementioned rational basis analysis question, Party Source respectfully directs the Court's attention to the following federal and Kentucky case law supporting the position that the Court should look solely to the time the challenged statute was enacted in assessing its rational basis:

U.S. Supreme Court

FCC v. Beach Communications, Inc., 508 U.S. 307, 313-314 (1993): The Court recognized that where there are "plausible reasons" for the legislature's action, the Court's inquiry ends. This is the essence of judicial restraint since "[t]he Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." (quoting *Vance v. Bradley*, 440 U.S. 93, 97 (1979)).

U.S. R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 175 (1980): "In more recent years, however, the Court in cases involving social and economic benefits has consistently refused to invalidate on equal protection grounds legislation which it simply deemed unwise or unartfully drawn." The Court went on to state that "[I]t is not within our authority to determine whether the Congressional judgment expressed in that Section is sound or equitable, or whether it comports well or ill with purposes of the Act" The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom." *Id.* at 175-176 (emphasis added).

Kentucky Supreme Court

Com. ex rel. Stumbo v. Crutchfield, 157 S.W.3d 621, 624 (Ky. 2005): “A person challenging a law upon equal protection grounds under the rational basis test has a very difficult task because a law must be upheld if there is any reasonably conceivable state of facts that could provide a rational basis for the classification We will not invalidate on equal protection grounds legislation which we simply deem unwise or unartfully drawn Despite the parties’ arguments detailing the legislature’s wisdom and purposes for drafting the definition of ‘relative,’ the General Assembly need not articulate its reasons for enacting the statute, and this is particularly true where the legislature must necessarily engage in a process of line drawing We will accept at face value contemporaneous declarations of governmental purposes, or in the absence thereof, rationales construed after the fact, unless our examination of circumstances forces us to conclude that they could not have been a goal of the classification” (emphasis added) (internal citations omitted).

Federal Courts of Appeal

Innes v. Howell Corp., 76 F.3d 702, 710 (6th Cir. 1996): “Our function, however, is not to determine whether we as legislators would ourselves adopt such a rationale in enacting the exception, or to second-guess a state legislature’s judgment as to its efficacy.” (emphasis added).

Haves v. City of Miami, 52 F.3d 918, 921 (11th Cir. 1995): “The first step in determining whether legislation survives rational-basis scrutiny is identifying a legitimate government purpose—a goal—which the enacting government body could have been pursuing.” (emphasis added).

Smith Setzer & Sons, Inc. v. S.C. Procurement Review Panel, 20 F.3d 1311, 1323 (4th Cir. 1994): For the purposes of a rational basis challenge to an economic policy statute, the burden is on the challenger to show that “at the time of the enactment of these statutes and

regulations the legislature could not reasonably have conceived that the reinvestment of tax dollars into the community, even when it calls for purchasing goods for more than the lowest price available, would benefit its constituent citizenry.” (emphasis added).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that on this 29th day of May, 2012, the foregoing was electronically filed with the clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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