1977 S.C. Op. Atty. Gen. 121 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-146, 1977 WL 24488

Office of the Attorney General

State of South Carolina
Opinion No. 77-146
May 9, 1977

***1** TO: The Honorable Robert H. Burnside
South Carolina House of Representatives

QUESTION

Whether the disparity in automobile liability insurance premiums charged males under the age of 25 as opposed to females under said age is violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

AUTHORITIES

South Carolina Code Sections 37–591.2, 57–591.12, 37–591.23, 37–591.25, 46–750.119;

Craig v. Boren, —— U.S. ——, L.Ed. 2d 397 (1976);

Evans v. Newton, 382 U.S. 296 (1966);

Gilmore v. City of Montgomery, 417 U.S. 556 (1974);

McGowan v. Maryland, 366 U.S. 420 (1961);

Reed v. Reed, 404 U.S. 71 (1971);

Reitman v. Mulkey, 387 U.S. 369 (1967);

San Antonio Board of Education v. Rodriquez, 411 U.S. 1 (1973);

United States v. Guest, 383 U.S. 745 (1966).

DISCUSSION

Applicability of Equal Protection Clause

Inasmuch as premiums for automobile liability insurance are set by private insurance companies, an initial question arises as to whether Equal Protection Clause of the Fourteenth Amendment to the United States Constitution has any applicability in the setting presented. The protections of the equal protection clause are brought into play only when ‘state action’ is involved. It affords no protection against wrongs done by private corporations, nor does it add anything to the constitutional rights which one citizen has against another.E.g., Gilmore v. City of Montgomery, 417 U.S. 556 (1974); United States v. Guest, 383 U.S. 745 (1966).

No infallible test has been formulated for determining whether a state in any of its manifestations has become significantly involved in private discriminations so as to invoke equal protection scrutiny. Reitman v. Mulkey, 387 U.S. 369 (1967). However, it is clear that conduct that is formally private may bo so entwined with governmental principles or so impregnated with governmental character as to become subject to the constitutional limitations placed upon state action. Evans v. Newton, 382 U.S. 296 (1966).

While, as stated hereinabove, automobile liability insurance rates are set by private companies, such rates must be approved by the Chief Insurance Commissioner of South Carolina. South Carolina Code Sections 37–591.2, 37–591.23 and 37–591.25. Further, insurers are required to adopt and use the Uniform Risk Classification Plan promulgated by the Commissioner and approved by the South Carolina Insurance Commission pursuant to Section 37–591.12 of the Code of Laws, which plan makes the distinction in the first instance between young males and young females for insurance purposes. Also relevant is the fact that automobile liability insurance has been made virtually mandatory. See South Carolina Code Section 46–750.119. It is, therefore, the opinion of this office that there exists sufficient state action in the disparity in automobile liability insurance premiums charged young males vis-a-vis females so as to subject the practice to scrutiny under the applicable equal protection standard.

Applicable Equal Protection Standard

***2** It is only invidious discrimination, as opposed to all discrimination, that is proscribed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (It should be noted that Section 37–591.25 of the Code requires a finding by the Insurance Commissioner that premium charges proposed to be used by an automobile insurance insurer are 'not unfairly discriminatory' before approving same).

Dependent upon the kind of classification involved, the United States Supreme Court has applied different tests to determine whether such invidiously discriminates and as a consequence thereof violates equal protection. The standard of review normally employed has been termed the 'rational basis' test and was defined in McGowan v. Maryland, 366 U.S. 420 (1961), as follows: Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.

However, when either 'suspect' classes or 'fundamental' constitutional rights are involved, the Court has required the state to demonstrate a 'compelling state interest' in the classification created. E.G., San Antonio Board of Education v. Rodriquez, 411 U.S. (1973).

While sex has not been declared to be a suspect class, Reed v. Reed, 404 U.S. 71 (1971), and its progeny make it clear that the rational basis standard of review normally applied takes on a sharper focus when a gender-based classification is addressed, creating what has been viewed by some as an approach falling somewhere in between the two tests hereinabove mentioned. Craig v. Boren, —— U.S. —$, 50 L.Ed.2d 397 (1976) (Lewis, J., concurring). These cases establish that classifications by gender must serve important governmental objectives and must be substantially related to the achievement of those objectives in order to withstand constitutional challenge.

Application of Standard

Purposes of the laws of this State relative to automobile liability insurance include the promotion of financial responsibility at rates which are adequate but not excessive and which correspond to the losses caused by various classes of the motoring public. There can be little doubt but that the same is an important governmental objective.

The question that remains to be answered, i.e., whether the distinction drawn between young males and females is substantially related to the achievement of that objective, is one which this office is in no position to answer with any degree of certainty for the reason that it would necessarily require expert analysis of vast statistical evidence. As was stated in Craig v. Boren, Supra, 'It is unrealistic to expect either members of the judiciary or state officials to be well versed in the rigors of experimental analysis or statistical technique.' Suffice it to say that the statistics provided this office by the State Highway Department through the State Department of Insurance reveal that for the year 1976, males between the ages of 16 and 24 constituted 12.5% of the drivers in this State but were involved in 23.7% of the accidents. Correspondingly, 10.7% of the drivers were females within the same age group, and they were involved in 10.3% of the accidents. With respect to fatal accidents, 26% involved young males and 4% young females. To the extent that it can be assumed that these two groups of drivers were at fault in approximately the same percentage of instances, it would appear that a disparity in automobile liability insurance premiums charged males under the age of 25 as opposed to females is justifiable.

CONCLUSION

***3** It is the opinion of this office that the distinction made between males under the age of 25 as opposed to females for automobile liability insurance premiums creates a gender-based classification which must serve important governmental objectives and be substantially related to the achievement of those objectives. While the evidence available to this office tends to indicate that said classification meets the requisite standard, no definitive opinion can be rendered.

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