Department of Insurance v. Dade County Consumer Advocate's Office, 492 So.2d 1032 (FL 1986)

In 1983, the Florida legislature adopted a statute that prohibited insurance agents from providing rebates or discounts to their customers on the commissions set by the insurance company. Any insurance agent found guilty by the state department of insurance of offering rebates (an "unfair method of competition") would have his or her license to sell insurance revoked. The Dade County Consumer Advocate's Office filed suit in state court to enjoin the enforcement of the law, but the trial court found the law to be a valid exercise of the state's police powers. The trial court was reversed on appeal on the grounds that the court "was unable to find any legitimate state interest justifying the continued existence of the anti-rebate statutes" and that a "revolution in consumer's rights" had undermined the persuasiveness of New Deal-era precedents endorsing legislative schemes designed to protect businesses from competition. The state contended that the law prevented similarly situated consumers from paying different prices and avoided the possibility that consumers would frequently change their insurance carrier in pursuit of rebates on commissions. The Department of Insurance appealed to the state supreme court, which affirmed the lower court in a 4–3 decision.

This case marked a relatively rare instance of a modern court invalidating an economic regulation as an abuse of the police powers. The court relied on the due process clause of the Florida state constitution rather than federal constitutional provisions and law and appealed to modern court cases that had struck down economic regulations on various grounds. The majority concluded that there was no relationship between legitimate state interests and the regulation promulgated by the legislature. In response, the dissent is unusually clear in arguing that economic regulations should always be held constitutionally valid unless they encroached on a specific, fundamental right and that even the desire to enrich favored economic interests is a valid legislative purpose.

Could the majority have reached the same conclusion if by relying on the Fourteenth Amendment to the U.S. Constitution? Did the majority and the dissent disagree about the proper constitutional standard or about how that standard should be applied in this situation? Did the rational basis test still have any meaning as elaborated by the dissent? Is the majority applying a rational basis test? Are there any illegitimate state purposes, or are there only specific individual rights that restrain how government power is used? Does it matter that this law involved insurance companies? Would the analysis be affected if the law instead regulated hot dog vendors?

OVERTON, J.

. . . .

We are concerned with the narrow issue of whether a statute that prohibits an insurance agent from reducing the amount of the commission he or she will earn from selling the insurance is valid. Historically, this Court has carefully reviewed laws that curtail the economic bargaining power of the public. In fact, this Court was one of the first to hold unconstitutional a "fair trade act" that allowed a manufacturer to establish a minimum retail price for which the retailer could sell a product to the consumer. *Liquor Store v. Continental Distilling Corp*. (FL 1949). We found that such legislation is not within the scope of the state's police power and noted that "constitutional law never sanctions the

Copyright OUP 2013

granting of sovereign power to one group of citizens to be exercised against another unless the *general welfare* is served." We concluded that the act was arbitrary, unreasonable, and violated the right to own and enjoy property. . . . In *Stadnik v. Shell's City, Inc.* (FL 1962), this Court held invalid a pharmacy board rule that prohibited the advertisement of the name or price of prescription drugs on the basis that it was an attempt to prohibit price competition which had no reasonable relation to public safety, health, morals or general welfare. . . .

. . . .

In considering the validity of a legislative enactment, this Court may overturn an act on due process grounds only when it is clear that it is not in any way designed to promote the people's health, safety or welfare, or that the statute has no reasonable relationship to the statute's avowed purpose. . . .

From our review of the record, we find no identifiable relationship between the anti-rebate statutes and a legitimate state purpose in safeguarding the public health, safety or general welfare. Insurance agents' commissions do not affect the net insurance premium and are unrelated to the actuarial soundness of insurance policies. . . .

For the reasons expressed, we find [the statutes] are unconstitutional under article I, section 9 of the Florida Constitution to the extent they prohibit insurance agents from rebating any portion of their commissions to their customers.

. . . .

JUSTICE BOYD, joined by JUSTICE ADKINS and JUSTICE SHAW, dissents.

Although not explicitly stated, implicit in the Court's holding are the following propositions: that the courts of Florida have broad authority to determine whether acts of the legislature serve the public interest; that courts may generally scrutinize legislation to determine whether it achieves a stated legislative purpose with sufficient success or precision; and that courts may nullify laws not shown to serve the public interest to the courts' satisfaction. These propositions are totally erroneous and their application in this case represents an aggrandizement of judicial power that is antithetical to the basic constitutional doctrine of separation of powers.

The error in the majority opinion results primarily from the fact that it implicitly places the burden on the State Department of Insurance to demonstrate that the law in question is reasonably related to the achievement of some proper objective. . . . . In fact, the law under attack should be presumed valid, and the burden is on those who challenge it to demonstrate the lack of any such relationship. That burden has not been carried here.

There is no allegation that the legislation under attack violates any constitutional rights or penalizes or infringes upon any constitutionally protected liberty. Nor does it establish any suspect classification. It is a regulation of economic activities and relationships. The challenge is purely of the so-called "substantive due process" variety.

When faced with such a challenge, the power of a court to inquire into the validity of a law is severely limited, and rightly so. In order to declare the law invalid, a court must find that the law is simply and absolutely arbitrary, resting on no conceivable rational relation to the public welfare as determined by the legislature. . . .

Many of the decisions relied upon in the majority opinion were cases in which legislation was challenged on the ground that it violated or impaired the exercise of some constitutionally guaranteed right, liberty, or immunity. The interest of "consumers" in purchasing insurance in a freely competitive market as opposed to a regulated or protected market is not among the fundamental rights of persons protected by either the United States Constitution or the Florida Constitution. . . .

The police power embodies the sovereign prerogative of the people through the legislature to regulate all aspects of social life for the benefit of the health, morals, or welfare of the people. . . . The discretion of the legislature when exercised for the public welfare in selecting the subjects of policy

OXFORD UNIVERSITY PRESS
Copyright OUP 2013

regulations and in determining the nature and extent of such regulation is limited only by the requirements of fundamental law that the regulations shall not invade private rights secured by the Constitution. . . . "The economic interests of a state may justify the exercise of its continuing and dominant protective police power for the promotion of the general welfare, notwithstanding interference with lawful callings and even contracts." *State ex rel. Municipal Bond & Investment Co. v. Knott* (FL 1934). . . .

. . . .

. . . . In the field of general police power regulation, however, when no constitutional rights are affected, the legislation is presumed constitutional and no such speculation about legislative intentions is required. *State v. Bussey* (FL 1985) ("It is not necessary that we provide specific justifications for the statute in terms of state policy. . . ."). . . . The existence of such a debatable policy question is sufficient to put an end to all further judicial inquiry in this kind of case.

. . . .

In *Stadnick v. Shell's City Inc.* (FL 1962), . . . the Court struck down a pharmacy board rule . . . that prohibited the advertisement of the price, or any promotion of the sue of prescription drugs. It was held that the rule and statute in question bore no relation to the public health, safety, morals, or welfare. It was found that there was not even a debatable question of whether the regulations bore any such relationship. Those cases are different from the present case and do not support the proposition that the statute in question here is arbitrary.

. . . .

Liquor Store, Inc. v. Continental Distilling Corp. (FL 1949) is easily distinguishable. . . . . The Court found that statute unconstitutionally arbitrary as an authorization of price-fixing which provided economic protection to one segment of the population at the expense of another. The statutes at issue in the present case cannot by any stretch of the imagination be called price-fixing statutes. Moreover, the majority must recognize that the legislature has the authority to regulate and even to fix insurance premium rates if deemed necessary by the legislature. . . .[1]

. . . .

Nothing in the majority opinion or the respondents' brief provides any authority for the proposition that the constitutional standard for validity of legislation under the due process clause of article I, section 9, Florida Constitution, is any different from that embodied in the due process clause of the United States Constitution and made binding on the states by the Fourteenth Amendment. If the Florida Constitution gives the Florida courts the power to invalidate legislation on the ground of lack of political, economic, or social wisdom, this Court should explicitly so hold.

. . . .

The insurance industry in Florida is so affected with a public interest that it is subject to pervasive regulation. . . . The legislature apparently believes that the insurance industry must be strictly regulated to secure and protect the rights and interests of insureds, insurers, and others, and generally to protect and promote the economic welfare of the people of the state. The legislature has the sovereign prerogative to determine whether an industry has such impact on the economy generally that the economic stability of the industry must be protected even at the expense of any interest of purchasers of services in the existence of a freely competitive market for those services. . . .

. . . .

. . . . The Court in *United States v. Carolene Products* (1938) set forth the now well accepted constitutional rule. . . . Unless the law is so clearly arbitrary that the question is simply not a debatable one, courts must defer to the legislative judgment because "by their very nature such inquiries, where the

[1] Moreover, it can very well be argued that *Liquor Store*, viewed in the light of current knowledge and understanding of constitutional jurisprudence, was wrongly decided. . . . [footnote in the original]

OXFORD UNIVERSITY PRESS

Copyright OUP 2013

legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it."

Contrary to the suggestions in *Liquor Store* relied upon so heavily by the majority, the constitution does not prohibit the economic protection of one segment of society even when achieved at the expense of another segment. There is scarcely a piece of legislation enacted that does not have disparate impact on different groups, working to benefit some to the detriment of others. . . . In the present case, no constitutional rights are involved. It is the legislature's prerogative to determine that insurers and insurance agents should be protected from the economic detriment that would occur if purchasers of insurance were in a position to negotiate for rebates from premiums. . . . [E]ven if mere protection of agents at the expense of consumers were the only justification offered, there would be no constitutional impediment.

. . . .

OXFORD
UNIVERSITY PRESS

Copyright OUP 2013