

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

Elijah Shaw & Patricia Raynor,)
 Plaintiffs,)
v.) No. 17-1299-II
Metropolitan Government)
of Nashville and Davidson County,)
 Defendant.)

REPLY TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Plaintiffs are mistaken when they attempt to differentiate the Tennessee and U.S. Constitution’s due process and equal protection analysis. This is not a case about privacy or the right to work. It is about an economic regulation and limitations on the location of businesses, and this analysis is identical under both constitutions:

Our Supreme Court stated in *Riggs* that:
This Court has held that the “law of the land” provision of article I, section 8 of the Tennessee Constitution “is synonymous with the due process clause of the Fourteenth Amendment to the United States Constitution.” *Newton v. Cox*, 878 S.W.2d [105] at 110 [(Tenn. 1994)]; *State ex rel. Anglin v. Mitchell*, 596 S.W.2d 779, 786 (Tenn.1980). Thus, unless a fundamental right is implicated, a statute comports with substantive due process if it bears “a reasonable relation to a proper legislative purpose” and is “neither arbitrary nor discriminatory.” *Newton v. Cox*, 878 S.W.2d at 110. *6 941 S.W.2d at 51.

In our analysis, we address whether the distance requirement is reasonably related to a legitimate legislative purpose. Stated somewhat differently, “[a] zoning ordinance is the product of legislative action and, before it can be declared unconstitutional, a court must find that the provisions are clearly arbitrary and unreasonable, having no substantial relationship to the public health, safety, morals or general welfare.” *Consol. Waste Sys., LLC v. Metro. Gov’t of Nashville & Davidson Cty.*, No. M2002-02582-COA-R3-CV, 2005 WL 1541860, at *5 (Tenn. Ct. App. June 30, 2005) (citing *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926)). Courts do not “inquire into the motives of a legislative body or scrutinize the wisdom of a challenged statute or ordinance.” *Martin v. Beer Bd. for City of Dickson*, 908 S.W.2d 941, 955 (Tenn. Ct. App. 1995) (citations omitted).

The Petitioners concede that “concerns about property values and economic redevelopment are valid concerns and a proper state interest for consideration in

enacting zoning regulations”; they argue that the distance requirement “is not reasonably related to advancing” that interest. The preamble to the ordinance includes concerns related to the detrimental effect of clustering alternative financial services on property values; the location of the businesses in areas that are disproportionately minority and low income; the permissive regulatory environment, which allows the businesses to charge an annual interest rate of up to 459 percent; and new regulations, effective January 1, 2015, that regulate three new types of alternative financial lenders. Taken in their entirety, the statements in the preamble reflect legitimate legislative purposes, specifically, protecting the welfare of economically vulnerable citizens. The Metropolitan Council chose to restrict the location of alternative financial service providers in order to regulate the proliferation and clustering of these services; this decision reasonably advances the governmental interests identified in the preamble to the ordinance. Accordingly, we affirm the dismissal of the Petitioners' due process claim.

Brown v. Metro. Gov't of Nashville, No. M201701207COAR3CV, 2018 WL 6169251, at *5–6 (Tenn. Ct. App. Nov. 26, 2018) (emphasis added); *also In re Walwyn*, 531 S.W.3d 131, 138 (Tenn. 2017) (affirming attorney discipline); *Consol. Waste Sys., LLC v. Metro. Gov't of Nashville & Davidson Cty.*, No. M2002-02582-COA-R3CV, 2005 WL 1541860, at *7 (Tenn. Ct. App. June 30, 2005).

Respectfully submitted,

/s/ Lora Fox

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been emailed by agreement to Braden Boucek, Beacon Center of Tennessee, P.O. Box 198646, Nashville, TN 37219 and Keith E. Diggs & Paul V. Avelar, Institute for Justice, 398 South Mill Avenue, Suite 301, Tempe, AZ 85281 on August 30th 2019.

/s/ Lora Fox

Lora Barkenbus Fox