

SURANGEL WHIPPS, Plaintiff

v.

NEIL MORRIS, CHAIRMAN, PALAU DISTRICT LOAN REVIEW BOARD: THE PALAU DISTRICT LOAN REVIEW BOARD and TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendants

Civil Action No. 57-75

Trial Division of the High Court

Palau District

November 14, 1975

Challenge to law under which territorial citizen married to a non-citizen must obtain a Foreign Investor Business Permit before being eligible for a Marine Resources Development Fund loan. The Trial Division of the High Court, Hefner, Associate Justice, held that the law was in violation of equal protection and due process and invalid.

1. Statutes—Construction

Trust Territory Bill of Rights is to be construed and interpreted as in the United States Courts.

2. Constitutional Law—Equal Protection

Statute providing that one who is a Trust Territory citizen married to a non-citizen must have a Foreign Investor Business Permit to obtain a Marine Resources Development Fund loan is in violation of equal protection of the laws in that it penalizes all territorial citizens who marry non-citizens for any reason whatever, and is therefore invalid; and that it was designed to eliminate use of a territorial citizen as a "front" for a non-citizen who wishes to do business in the territory does not make the statute valid. (33 TTC § 2(2))

3. Constitutional Law—Due Process

Statute providing that one who is a Trust Territory citizen married to a non-citizen must have a Foreign Investor Business Permit to obtain a Marine Resources Development Fund loan is in violation of due process of law, and thus invalid, in that the right of citizenship is a vested property right protected by due process and the statute attempts to deny a very important incident of citizenship and in doing so operates to deny the totality of citizenship and reduces one to a second class citizen. (33 TTC § 2(2))

4. Citizens—Nature of Citizenship

A citizen of the territory is a citizen for all purposes, not just for some purposes at the whim of the congress; citizenship is neither divisible nor separable and is not capable of subclassification.

5. Constitutional Law—Basic Rights—Going into Business

The privilege of going into business is a basic right when the everyday problem of supporting oneself or family is concerned.

6. Constitutional Law—Equal Protection—Classifications

Authority of congress to make classifications is not absolute, and a classification must be reasonable to comport with equal protection of the law.

7. Constitutional Law—Equal Protection—Classifications

Arbitrary or capricious classifications by congress conflict with equal protection of the law.

8. Constitutional Law—Equal Protection—Classifications

If a congressional classification touches upon a fundamental right its validity must be judged by a strict standard and by whether it promotes a compelling government interest.

9. Constitutional Law—Equal Protection—Classifications

A classification by congress must be rationally related to the purpose it is designed to serve in order to comport with equal protection and must rest upon a material difference between the persons included and those excluded and must be based upon substantial distinctions.

HEFNER, Associate Justice

On January 2, 1975, the plaintiff, a citizen of the Trust Territory, filed an application for a loan of \$72,000, from the Marine Resources Development Fund. This application was denied by the defendants for the sole reason that the plaintiff was married to a United States citizen and, pursuant to 33 TTC § 2(2) as amended, he was required to have a Foreign Investor Business Permit in order to obtain the loan. The plaintiff did not possess such a permit.

There being no need for testimony, the matter was submitted on written briefs. Under the terms of the pre-trial order entered on September 26, 1975, the sole issue to be determined is whether subsection (2) of 33 TTC § 2 as amended is a valid law.

[1] Both parties concede that the Trust Territory Bill of Rights are to be construed and interpreted as in the United

States Courts. See *Paul v. Trust Territory*, 2 T.T.R. 603, and *Yang v. Yang*, 5 T.T.R. 427.

[2, 3] It is not surprising that neither counsel have found a United States case with facts similar to those in this case. However, applying the general principles of due process and equal protection to the law in question, this Court is convinced that subsection 2 of 33 TTC § 2 is invalid.

Title 33 of the Trust Territory Code as amended in 1974 provides in pertinent part:

“Section 1. *Amendment.* Section 2 of Title 33 of the Trust Territory Code is hereby amended as follows:

‘Section 2. *Definition.* For the purpose of this Chapter, unless it is otherwise provided or the context requires a different construction, application, or meaning “non citizen” means:

‘(2) any person who is married to a person who is not a Trust Territory citizen’”

It is noted that the Congress of Micronesia in Section 2 of the amendment, made the law apply only prospectively. Plaintiff’s application for his loan was made after the effective date of the law. It is assumed that the date of marriage has no bearing as to the application of Section 2 of the amendment. In any event, the defendants concede that the sole reason for refusing the plaintiff’s application for the loan is his current married status.

Of paramount concern to this Court is the effect of the law when considered with Section 1 of Title 53 of the Trust Territory Code. The section defines who is a citizen of the Trust Territory. Subsection (1) states:

“*All persons* born in the Trust Territory shall be deemed to be citizens of the Trust Territory” (Emphasis added).

[4, 5] While 53 TTC § 1 does not so state on its face, it must be that a citizen of the Trust Territory is a citizen for *all* purposes, not for some purposes only at the whim of the

Congress. Citizenship is neither divisible nor separable and is not capable of subclassification. “[T]he term ‘citizen’ . . . refers to a constituent member of the sovereignty—that is, a member of the civil state, *entitled to all its privileges.*” 3 Am.Jur.2d Aliens and Citizens, Section 115 (Emphasis added). The law in question attempts to deny to certain Trust Territory citizens privileges to which they are entitled as citizens. Such an attempt is clearly contrary to the very notion of citizenship. Certainly, the privilege of going into business is a basic right when the everyday problem of supporting oneself or his family is concerned.

[6-9] Title 33 TTC § 2(2) as amended operates to deny to the plaintiff, and to others similarly situated, the equal protection of the law, in contravention of 1 TTC § 7. Certainly, Congress has the authority to make classifications. Indeed, it is difficult to conceive of a law that does not, to one extent or another, classify individuals. But just as certainly, the authority of Congress to make classifications is not absolute. Classification must be reasonable if it is to comport with the guarantee of equal protection of the law. Arbitrary or capricious classifications conflict with the equal protection guarantee of 1 TTC § 7. If the classification touches on a fundamental right, its validity must be judged by a strict standard and whether it promotes a compelling government interest. *Shapiro v. Thompson*, 394 U.S. 618 (1969). However, classifications must be rationally related to the purpose they are designed to serve in order to comport with the equal protection guarantee, and they must not paint with too broad a brush. That is, they must rest upon material differences between the persons included and those excluded and must be based upon substantial distinctions. 16 Am.Jur.2d Constitutional Law, § 497 et seq.

The purpose of 33 TTC § 2(2) as amended is to eliminate the use of a Trust Territory citizen as a “front” for a non-

citizen in doing business in the Trust Territory. Such use of a citizen might well be seen as reprehensible, and might well be the subject of Congressional action, but the action taken by Congress in enacting 33 TTC § 2(2) as amended was too broad in scope to be valid. The statute does not take into consideration the realistic circumstances surrounding marriages contracted between Trust Territory citizens and non-citizens. There may be those who marry for purposes intended to be prohibited by the Act as amended. However, undoubtedly there are also those who marry with no thought or design in circumventing the Foreign Investors Business Permit Act. Nevertheless, 33 TTC § 2(2) as amended puts the two groups together and penalizes them similarly. Congress could have settled on a less onerous method for achieving its purpose in enacting this statute, a method which would not, as this statute does, have the effect of penalizing all Trust Territory citizens who marry non-citizens. Since this statute does have this effect, it clearly denies the equal protection of the law.

Finally, 33 TTC § 2(2) as amended operates to deny to the plaintiff, and to others similarly situated, due process of law, in contravention of 1 TTC § 4. As noted above, the statute attempts to deny to the plaintiff a very important incident of citizenship, and in doing so operates to deny him the totality of his citizenship in the Trust Territory. The right of citizenship itself is a property right vested in the individual. Citizenship is the very source of rights such as the individual's right to vote, own land or possess a passport. By reducing the plaintiff to a "second class citizen" in any area, as this statute attempts to do, it deprives him of his property without due process of law.

The statute as amended requires the plaintiff, a Trust Territory citizen, to comply with the provisions in order to conduct business activities in the Trust Territory. This requirement is imposed on him solely because he happens to

have married a non-citizen. He has been automatically required to comply in order to transact his lawful business, which other citizens may transact without similar restrictions and regulations.

It is the *Judgment* of the Court that the defendant Palau District Loan Review Board and its chairman, the defendant Neil Morris, shall reconsider the plaintiff's application for a loan of \$72,000, which application was submitted on January 2, 1975, without reference to 33 TTC § 2(2), which statute is hereby declared null and void.