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## Constitutionality of Tenant Disclosure Ordinance Upheld

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In a decision handed down by the U.S. District Court for the Western District of Pennsylvania, a municipality withstood a constitutional challenge to an ordinance which requires landlords to disclose the complete names and addresses of their tenants.

In 2007, Oil City, which is located in the foothills of the Allegheny Mountains, enacted an ordinance to provide for the "uniform and equitable collection of earned income." In order to achieve its purpose, the city mandated that landlords prepare a report that contained the complete name and address of each tenant who was 18 years of age or older. If a landlord did not comply with the city ordinance, the city could impose a civil penalty on the violating landlord.

Two such landlords eventually filed suit against the city in federal court in the Western District of the commonwealth in the case captioned *Lopez v. City of Oil City*. In their complaint, the landlords asserted multiple violations of the U.S. Constitution, among other things.

### **EQUAL PROTECTION CLAUSE**

The landlords first claimed that the city ordinance violated the 14th Amendment of the Constitution because the ordinance denied them equal protection of the laws.

The Equal Protection Clause prohibits state and local governments from statutorily classifying groups and individuals in such a way as to disadvantage a suspect class or infringe upon a fundamental right unless the purpose of the classification is narrowly tailored to further a compelling governmental interest. When dealing with only quasi-suspect classifications, the purpose of the law must be merely substantially related to an important governmental interest. If no suspect class or quasi-suspect class is present and a fundamental right is not burdened, then a state or local government may create a classification as long as it is rationally related to a legitimate governmental interest.

Although landlords and tenants are not, by themselves, considered members of a suspect class, the landlords in *Lopez* nonetheless argued that the city ordinance required a heightened standard of review. They claimed that the ordinance infringed upon a fundamental right - the right to privacy and the right to establish a home. In particular, the landlords in *Lopez* contended that the ordinance burdened an individual's right to keep the activity in his or her home private.

The court in *Lopez* found the ruling in *Berwick Area Landlord Association v. Borough of Berwick* to be instructive. In *Berwick*, the municipality, in order to protect the public health, enacted legislation which required landlords, among other things, to produce floor plans, names and addresses of their tenants and permit annual inspections of the rental properties.

Although the court in *Berwick* recognized the fundamental right to establish a home, it found the comprehensive requirements of the statute did not burden that fundamental right. Rather, in *Berwick*, the court noted that the statute, while regulating the ownership of rental properties, did not "explicitly or effectively ban all residential properties."

Applying the reasoning from *Berwick*, the court in *Lopez* did not believe that the disclosure of names and addresses of tenants equated to disclosing an activity in the household. In doing so, the court applied the rational basis test to each of the landlords' claims under the 14th Amendment.

The court explained that the stated purpose of the ordinance - to provide for the "uniform and equitable collection of earned income" - was applied equally and did not single out tenants. As the court pointed out, although the identity of property owners is readily available, renter information is harder to determine. The court thus concluded that the ordinance rationally attempts to determine the identity of the tenants who may be below the tax radar.

## **DUE PROCESS CLAUSE**

The landlords also argued that the city ordinance violated the Due Process Clause of the 14th Amendment of the Constitution.

The Due Process Clause consists of substantive and procedural components. The substantive component bars the infringement of those fundamental rights that are deeply rooted in our society.

In *Lopez*, the landlords claimed that their right to privacy was infringed upon because the city ordinance required them to disclose the names and addresses of the tenants. The federal district court pointed out, since the city ordinance only requires the disclosure of tenant information, any constitutional claim would be analyzed through the eyes of the tenants, not the landlords.

When considering protecting an individual's privacy interest in disclosing personal matters, the court reiterated that it is crucial to weigh the individual's right to privacy with the public interest. The court found that the collection of taxes is an important and basic public necessity that outweighs the nominal intrusion created by the ordinance.

The court then determined whether the procedural component of the Due Process Clause was violated.

Under the Due Process Clause, a law must be drafted in such a way that an individual with common intelligence will be able to understand the law. Civil statutes, as opposed to criminal statutes, are given more leeway when attacked facially and are only invalidated when the statute is vague in all of its applications.

The landlords in *Lopez* claimed that the term "residing" was not defined in the ordinance and, therefore, it was unclear which individuals the landlords needed to report to the city. For instance, they were unsure if overnight guests counted as residents under the ordinance.

The court in *Lopez*, applying common sense and the definition from Webster's Dictionary, determined that the term "resident" did not include transitory visitors and thus was not unconstitutionally vague.

#### **FOURTH AMENDMENT**

Next, the court addressed whether the disclosure of tenant information violated the Fourth Amendment of the Constitution by authorizing unreasonable searches and seizures. The underlying basis for the Fourth Amendment is to protect individuals from arbitrary governmental invasions. In order for there to be a governmental invasion, there must be a reasonable expectation of privacy.

The court flatly rejected the landlords' Fourth Amendment claim out of hand because, neither through the complaint nor during testimony, did the landlords even attempt to clarify how the statutory disclosure constituted a "search" or "seizure" within the meaning of the Fourth Amendment.

#### **IMPAIRMENT OF CONTRACTUAL RELATIONSHIPS**

The court lastly addressed whether the city ordinance impaired existing contractual relationships in violation of Article I, Section 10 of the Constitution. Under that constitutional provision, a change in state law cannot operate as a substantial impairment of a contractual relationship unless the law has a legitimate and important purpose and the adjustment of the rights to the contractual relationship is reasonable and appropriate in light of that purpose.

In *Lopez*, the landlords claimed that the city ordinance impaired existing contractual relationships because they would be obligated to spend substantial additional work and money in order to comply with the ordinance - an amount that was not included in the offering price - and that their tenants would have negotiated a different deal if they knew that the city would be furnished with their names and addresses.

The court found no evidence that a landlord would have raised rent or of a tenant seeking lower rent. The court further noted that the effort to fill out a form is so minimal that it could not "impair the contractual relationship, much less substantially so." Irrespective, the court found that the ordinance had a legitimate and important purpose and that the adjustment of the rights of the parties to the contractual relationship was reasonable and appropriate in light of that purpose.

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