

states small loan and usurious loan requirements. The issue of the act's constitutionality is one of first impression with courts in Alabama and is one solely a matter of law.

BACKGROUND

The basic facts of this case are undisputed. In August of 1998, the plaintiff, James Waites, a resident of St. Clair County, Alabama, obtained a loan from the defendant, Express Enterprises Inc., located in and doing business in St. Clair County, in the amount of four hundred dollars (\$400). In obtaining the loan Mr. Waites pledged the title of his vehicle as collateral. In the course of this transaction, the parties signed an agreement charging Mr. Waites twenty-five percent (25%) monthly interest on the principal loan amount. In total, this rate effectively results in three hundred percent (300%) interest annually over the course of the loan. Plaintiff made nine monthly payments in the amount of one hundred (\$100) dollars each, totaling nine hundred (\$900) dollars in total payments. Thereafter no further payments were made and the defendant repossessed the vehicle. Subsequently, the plaintiff initiated this action, claiming that the amount of interest charged in the agreement was usurious and a violation of the Equal Protection guarantees of both the Alabama and United States Constitutions.

OPINION OF THE COURT

Plaintiff asserts that the Alabama Pawn Shop Act allows pawn and title owners to charge interest rates of up to 300% annually, while Alabama law limits all other money lenders to maximum rates not exceeding 24% annually. Therefore, a rational basis must exist to allow this otherwise usurious rate of interest to be assessed. The plaintiff

also asserts that the interest provision of the Alabama Pawn Shop Act is unconstitutional in that it violates the Equal Protection Clause of the Fourteenth Amendment by favoring pawn and title owners above all other money lenders. See *Austin v. Alabama Check Cashers Ass'n*, 2005 WL 3082884 (Ala. November 18, 2005). In sum, plaintiff argues that the application of this statute is arbitrary and capricious, and discriminates, not only against other money lenders by allowing pawn and title owners to charge usurious interest rates, but also against the borrowers, the very class for whom the Alabama small loan and usurious statutes were made to protect.

The Equal Protection guarantee – implied in the Alabama Constitution and expressly stated in the Fourteenth Amendment to of the United States Constitution – holds that all persons similarly situated are to be treated in a similar fashion. In *Ex parte Melof*, the Alabama Supreme Court held that although there is no express equal protection clause in the Alabama state constitution, the Fourteenth Amendment fills any “gap” if the protection afforded by the state constitution is found lacking. *Ex parte Melof*, 735 So.2d 1172, 1186 (Ala. 1999). In the present case, the question before the court is not whether the classification of a specific group is properly drawn, but rather one of application. The Court is asked to determine whether a portion of the Alabama Pawn Shop Act is constitutional *vel non* on its face. As this determination does not involve an infringement of a fundamental right nor place an undue burden or classification upon a suspect class, the proper test to be applied is the rational basis test. This test involves an inquiry into the purpose and effect of the statute in question and whether its application creates an improper classification. *Baldwin County Bd. Of Health v. Baldwin County Elec. Membership Corp.*, 355 So.2d 708 (Ala. 1978).

The defendant argues that the transaction is not a loan and that there is no guarantee for equal protection contained in the Alabama constitution. The loan argument was specifically addressed in *Austin v. Alabama Check Cashers Ass'n, supra*. Furthermore, numerous decisions of the Alabama Supreme Court support the principle that while an express guarantee of equal protection cannot be found, there is an implied guarantee through a combined reading of sections one, six, and twenty-two. See, e.g. *Ex parte Branch*, 526 So.2d 609 (Ala. 1987); *Ex parte Jackson*, 516 So.2d 768 (Ala. 1986); *Davis v. Everett*, 443 So.2d 1232 (Ala. 1983); *Fuller v. Associates Commercial Corp.*, 389 So.2d 506 (Ala. 1980); *Mayo v. Rouselle Corp.*, 375 So.2d 449 (Ala. 1979); *Black v. Pike County Comm'n*, 360 So.2d 303 (Ala. 1978); *City of Hueytown v. Jiffy Chek Co.*, 342 So.2d 761 (Ala. 1977). It is clear from the foregoing decisions that there is a constitutional guarantee of equal protection under the Alabama state constitution. Even if this were not so the Fourteenth Amendment to the U.S. Constitution fills any "gap" and thus affords the protections asserted.

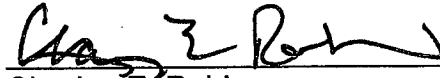
A statute violates the equal protection laws of the Constitution if it is not rationally related to a legitimate governmental purpose. Any classification created must be 1) reasonable, 2) not arbitrary and be based upon material and substantial distinctions and differences which are reasonably related to the subject matter of the legislation or policy consideration sought to be implemented. See *Ex Parte Bronner*, 623 So.2d 296 (Ala.1993). In this case that policy or purpose would be to allow pawnbrokers the right to charge twenty-five percent (25%) of principle per month which directly conflicts with the stated purposes and definitions of The Small Loan Act and The Consumer Finance Act. § 5-18-1 Ala.Code 1975 et seq. and § 5-19-1 Ala.Code 1975 et seq.

Applying the rational basis test as outlined above, the Court agrees with the plaintiff's position that the end which is achieved by application of this statute is in fact arbitrary and capricious, and ultimately discriminates, not only against other money lenders by allowing pawn and title owners to charge usurious interest rates, but also against the borrowers, for whom the usurious rate laws were meant to protect. In effect, pawnbrokers are allowed to overcharge persons who would otherwise enter into loans subject to the Alabama Small Loan Act. This unreasonable and unequal status under the Alabama Pawn Shop Act allows a charge of Three Hundred percent (300%) interest per year. The limitation on the legislature in making a classification is that it must not be arbitrary or mere subterfuge to shield one class and burden another. *Woco Pep Co. v. Butler*, 142 So. 509 1932.

The legislature, itself, cannot act in an arbitrary or capricious manner. *Druid City Hospital Bd. v. Epperson*, 378 So.2d 696 Ala.1979, 378 So.2d 696, *Franklin v. State*, 232 Ala. 637, 169 So.295 (1936), quoting *Nebbia v. New York*, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940, 89 A.L.R. 1439 (1936) A law that is irrational and is arbitrary and capricious in achieving its ends and which clearly works to protect one class of persons, while at the same time depriving similarly situated persons of the same rights, is a violation of Equal Protection and fails to meet the requirements of the rational basis test. This is particularly true where such a statute conflicts with direct legislation to prohibit predatory and loan shark lending in the name of consumer protection. Therefore, the portion of the Alabama Pawn Shop Act that allows an interest rate charge of 25% per month on car title pawns must be struck down as a violation of equal protection. It is therefore ORDERED, ADJUDGED and DECREED that to the extent said act allows

such interest rates it is found to be unconstitutional and void and as a consequence it is further ORDERED that such act is unenforceable as to car title pawns which the Court finds to be loans.

DONE and ORDERED this 25 day of August, 2006.



Charles E. Robinson
Circuit Judge

FILED
ST. LOUIS COUNTY
2006 AUG 25 PM 3:47
Debra M. [unclear]
CIRCUIT CLERK

¹ The Attorney General was served with a copy of this action and chose not to participate in this proceeding.