Sechelong v. ROP, 6 ROP Intrm. 368 (1997)
BAULES SECHELONG,
Plaintiff,

v.

REPUBLIC OF PALAU,
Defendant.

CIVIL ACTION NO. 382-96

Supreme Court, Trial Division
Republic of Palau

Summary judgment
Decided: October 20, 1997

Counsel for Plaintiff: Moses Y. Ulodong

Counsel for Defendant: Janine R. Udui

JEFFREY L. BEATTIE, Associate Justice:

Before the Court is the defendant's Motion to Dismiss or, In the Alternative, Motion for Summary Judgment. Plaintiff filed this action seeking a declaration that RPPL No. 4-47 is unconstitutional. For the reasons set forth below, defendant's motion is granted.

On May 15, 1996, President Nakamura signed and approved RPPL 4-47, which regulates the use of tinted windshields on vehicles operating in Palau. It provides in pertinent part that:

> Effective 90 days after the effective date of this Act, (1) no vehicle may be operated with tinted windows unless the windows are factory -tinted or allow transmission of a minimum of 35 percent of available light through the side and rear windows, (2) no vehicle may be operated with tinted front windows except that any percentage light transmission tint may be applied along the top edge of the front window so long as it does not extend below six inches from the top when measured from the middle point of the bottom edge of the top windshield molding, and (3) no vehicle may be operated ⊥369 with mirror, reflective or silver tint film on any window.

RPPL 4-47, section 3(a).

Plaintiff attacks the statute on numerous grounds, the first of which is his claim that it violates the due process clause of Article IV, Section 6 of the Palau Constitution because the statute bears no rational relation to any legitimate legislative function. This argument misapprehends the role and function of the courts. It can hardly be disputed that promoting

public safety is a legitimate legislative function. It is up to the legislature, not the courts, to decide on the wisdom and utility of legislation, and "the legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution . . . ." *Ferguson v. Skrupa*, 83 S.Ct. 1028, 1031 (1963) [quoting Justice Holmes' dissent in *Tyson & Brother v. Banton*, 47 S.Ct. 426 (1927)]; *see also Williamson v. Lee Optical of Oklahoma*, 75 S.Ct. 461 (1955). Here, the OEK could reasonably believe that certain types of windshield tinting on vehicles could adversely affect public safety. It is not for this Court to substitute its judgment for that of the members of the OEK, who are elected to pass laws, so long as the statute "does not run afoul of some specific . . . constitutional prohibition." *Ferguson* at 1031.

Plaintiff also contends that the statute violates due process because it makes a person who operates a vehicle in violation of the statute liable for the removal of any non-complying tint. *See* RPPL 4-47 § 4. He argues that the vehicle owner has a right to notice and hearing before the window tinting is removed. But nothing in the statute suggests that the tint is to be removed the instant a citation is issued. Nothing suggests that the tint may be removed over an owner's objection without a judicial determination, if the owner seeks one, whether the tinting complies with the law. It merely states that, if the tint must be removed, the operator of the vehicle is liable.

Plaintiff claims that the statute is unconstitutional because it will deprive him of the tinting on his windshield without compensation. Plaintiff cites no authority to support his argument that a law is unconstitutional simply because certain members of the public will incur expense or suffer some loss of property due ⊥370 to its enactment. [1] *See, James Everar'd Breweries v. Day*, 44 S.Ct. 628 (1924) [upholding ban on malt liquors over claim of unconstitutionality by manufacturer of malt liquors].

Plaintiff claims the statute is vague because it does not define "mirror," "reflective," "silver" or "president." The argument is without merit. These are terms whose meaning is generally understood and need no definition in the statute itself, which is certainly not rendered impermissibly vague by not defining these terms.

Plaintiff claims that the statute's prohibition of mirror, reflective or silver tint violates the equal protection clause of Article IV, section 5 of the Palau Constitution because it allows some types of tinting and prohibits others. Again, it is no the province of the Court to supplant the judgment of the OEK. The OEK might have concluded [2], for example, that tinting, such as mirrored tinting which could reflect sunlight into the eyes of other drivers, posed a greater risk than other types of tinting.

Plaintiff claims that, because the statute prohibits tinting of windshields that does not

---

[1] Plaintiff cited no authority supporting his claim, nor did his counsel attend the oral argument to argue in support of any of plaintiff's claims.

[2] It is not necessary that the legislature state all of its reasons for passing the law. "It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Williamson v. Lee Optical of Oklahoma*, 75 S.Ct. at 464.

allow at least 35% of available light through the window, but allows factory tinting of windshields without specifying degree of allowable tinting, it violates the equal protection clause. This argument must fail, again because the court will not substitute its judgment for the OEK's. The OEK might have reasonably concluded that, if the tinting complied with the safety regulations of the United States or other country in which the vehicle was manufactured, its safety concerns would be satisfied.

The plaintiff claims that the statute is overly broad in that it prohibits the operation of non-complying vehicles on private property. The court does not construe it that way, and in any even, if an attempt to apply the statute in an unconstitutional manner is made, plaintiff can raise the argument at that time.

⊥371 The statute allows the police to use a sample of tinting film that allows passage of 35% of available light through it and to compare the sample to tinting on a vehicle to determine whether it complies with the statute. Plaintiff argues that the use of the sample is subjective and unreliable. If that is true, though, it can be attacked at a trial of a person who is cited for non - compliance. The government will have the burden of proving that the tinting does not comply with the law, and a person charged with its violation can attack whatever method the government uses to prove its case by attempting to show that the evidence is unreliable. All the statute does is allow the sample to be used in determining whether to issue some type of citation for violating the statute or for safety inspection purposes.

Finally, the plaintiff claims that the statute makes a person guilty of a crime without notice and an opportunity to be heard. However, the statute cannot be reasonably construed to do away with notice and an opportunity to contest any charged violation before imposing the penalties provided by the statute.

A validly enacted statute is presumed to be constitutional, and should be construed to sustain its constitutionality whenever possible. *Yalap & Maidesil v. ROP* , 3 ROP Intrm. 61 (1992). For the foregoing reasons, the Court finds that there is no genuine issue of material fact and that the defendant is entitled to judgment as a matter of law. Accordingly, it is

ORDERED, that summary judgment be, and it hereby is, entered against plaintiff and in favor of defendant, dismissing the complaint.