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ENTERPRISE ZONES IN THE COURTS: LEGAL CHALLENGES TO STATE ECONOMIC REDEVELOPMENT LEGISLATION

I. INTRODUCTION

The declining state of our nation's cities has been, and continues to be, a frequent source of news[1] and fodder for political debate.[2] Unemployment, urban blight, crime, and economic dislocation are just a few of the inner-city's afflictions which occupy the American mind.[3] A multitude of theories have been advanced in order to explain the persistence of urban deterioration,[4] accompanied by an array of governmental attempts to reverse, or at least stem, the trend of inner-city decay.[5]

In the early 1980s, the concept of Enterprise Zones (EZs) came to the fore in American urban revitalization programs.[6] EZs are legislatively designated, economically depressed areas, within which tax, monetary, and regulatory benefits are offered to businesses planning to remain, establish, or relocate.[7] The federal government has only recently embraced the EZ concept after years of reluctance and trepidation, and new federal EZ legislation continues to make its way through Congress.[8]

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1. *E.g.*, Mark Bowes, *Counties May Not Stave Off Urban Ills*, RICH. TIMES-DISPATCH, Jan. 2, 1996, at A3.

2. *See, e.g.*, Mark Johnson, *House Retains Tougher Crack Law: Backers Reject Cries of Racism*, RICH. TIMES-DISPATCH, Oct. 19, 1995, at A11.

3. Michael A. Stegman, *National Urban Policy Revisited*, 71 N.C. L. REV. 1737, 1758-59 (1993); *see* Bill Geroux, *Inner City Problems Spread, Leaders Told*, RICH. TIMES-DISPATCH, June 16, 1995, at B4.

4. *See generally* E. Douglass Williams & Richard H. Sander, *The Prospects for "Putting America to Work" in the Inner City*, 81 GEO. L.J. 2003 (1993).

5. *See generally id.*

6. For a "genealogy" of EZs in America, see Michael Allan Wolf, *Potential Legal Pitfalls Facing State and Local Enterprise Zones*, 8 URB. L. & POL'Y 77, 77-81 (1986).

7. Laura A. Nicolette, *The Enterprise Community Development Act of 1993—H.R. 15, Urban Enterprise Zones: Do or Die Legislation for Our Nation's Cities*, 17 SETON HALL LEGIS. J. 603, 603 (1993).

8. In his article *U.S. Urban Areas Seek New Paths to Prosperity*, FORUM FOR APPLIED RESEARCH AND PUBLIC POLICY, Winter 1996, at 84, Professor Michael Allan

In inapposition to the federal government's hesitation, over the past fifteen years a number of municipalities and almost forty states have enacted legislation designating EZs. Naturally, each state has taken an individual approach to the establishment of its EZs, structuring its incentive and funding packages in various ways.[9] The differing state programs have spawned a substantial debate over policy considerations, most notably in Colorado, where a controversy currently rages over the propriety of the very existence of EZs.[10]

Despite the ongoing dialogue concerning underlying EZ policy, little mention has been made of the legal aspects of EZ legislation.[11] EZs are fertile sources for litigation, due to the fact that they often involve legislative classifications, eminent domain, and preferential tax, hiring, and deregulatory schemes.[12] As more states and municipalities continue to create EZs, and as the federal EZ programs take shape and gain momentum, legal challenges to EZ systems are likely to continue. Furthermore, persons wishing to challenge or shape EZ policy on either the state or federal level will benefit from having the legal principles surrounding EZs in their repertoires. The purpose of this comment is to provide a survey of Enterprise Zone legislative schemes as they have fared in the courts, highlighting the various legal trends that have developed with EZs over the past fifteen years.

Wolf tracks the federal EZ project, offering strategies for the effective implementation of such economic revitalization programs. For an accounting of legal, legislative, and administrative developments affecting state and federal EZs, see EZ GAZETTE, http://www.urich.edu/~ezproj; *see also* EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES INTERNET HOME PAGE, http://www.ezec.gov (providing an informational resource for federal EZs and Enterprise Communities).

9. Jeffrey M. Euston, *Clinton's Empowerment Zones: Hope for the Cities or a Failing Enterprise?*, 3 KAN. J.L. & PUB. POL'Y 140, 141-42 (1994).

10. Ann Imse, *Rail Deal Cost Colorado up to $ 21.4 million: Southern Pacific Received Incentives that Benefited State's Richest Man for Jobs Scheduled to be Cut*, ROCKY MTN. NEWS, Jan. 14, 1996, at 4A.

11. For a full analysis of the legal underpinnings and jurisprudential aspects of EZs, see Michael Allan Wolf, *Enterprise Zones Through the Legal Looking Glass*, *in* ENTERPRISE ZONES 58 (Roy A. Green ed., 1991).

12. See Wolf, *supra* note 6, for a detailed account of the legal ramifications of, and possible difficulties that can arise in, the implementation of EZ urban and rural renewal programs.

II. THE CREATION OF EZs

A. *The Legislative Process*

Many legal issues surrounding EZs arise at their very inception, with questions arising as to the constitutionality of the EZ scheme, and as to whom should control EZ operations. The establishment of EZs in Colorado, for example, has been a rather tumultuous process from the outset. In *Romer v. Colorado General Assembly*,[13] Roy Romer, in his capacity as Governor of Colorado, brought a declaratory judgment action against the General Assembly seeking a determination that his vetoes of certain bills, including the Enterprise Zone Expansion bill,[14] were valid. Governor Romer had sent the bills back to the legislature with the words "disapproved and vetoed" on them, and nothing more.[15]

The court held that the Governor's bald rejection of the bills was insufficient to constitute a valid veto, and that the Governor's specific reasons for rejecting the bills were necessary to avoid violating the Colorado Constitution.[16]

In re Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005[17] also involved the propriety of the designation of a Colorado EZ system. In this case, Governor Romer inquired into the constitutionality of certain bills that were to fund incentive packages designed to attract a United Airlines Maintenance Facility to Denver. The bills in question (1) established the Colorado Business Incentive Fund, (2) authorized the state to enter into "intergovernmental agreements" with local governments (such agreements would provide incentives to private entities to establish new business facilities in special EZs), and (3) established an "aviation fund" consisting of certain revenues derived from the state's excise, sales, and aviation use taxes.[18]

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13. 840 P.2d 1081 (Colo. 1992).
14. S.B. 131, 58th Gen. Assembly, 1st Sess. (1991).
15. 840 P.2d at 1082.
16. *Id.* at 1083.
17. 814 P.2d 875 (Colo. 1991).
18. *Id.* at 878.

At issue were several provisions of the Colorado Constitution concerning the relationship between the Colorado government and business. In affirming the constitutionality of the bills, the court came to the following conclusions. First, the bills did not provide unconstitutional, impermissible aid to a corporation.[19] The bills passed muster in part due to a public purpose exception to this prohibition, which was met since the bills were designed to stimulate employment, economic development, and new business creation.[20] Moreover, the bills on their face made no aid to any corporation or company.[21] Second, the bills did not run afoul of the Anti-Appropriation Clause of the Colorado Constitution, which prohibits appropriations to any entity "not under the absolute control of the state" since the monies went to governments, not private entities.[22] Third, the bills did not contain any prohibited "irrevocable grant of special privileges, franchises or immunities."[23] Fourth, the bills did not constitute prohibited "special legislation" since (1) the class of entities which were to benefit from the legislation was a genuine class, (2) the classification of entities based on the number of employees to be hired was reasonable, and (3) there was a reasonable relationship between the classifications and the stated purpose of economic redevelopment.[24] Finally, the funding provided by the bills did not violate the constitutional prohibition against state debt, since the bills contained no provisions that either pledged future state revenues, or imposed obligations that would require future revenues from tax otherwise available for general purposes.[25]

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19. *Id.* at 883 (construing COLO. CONST. art. XI, § 2).

20. *Id.* at 883-84.

21. *Id.*

22. *Id.* at 883 (construing COLO. CONST. art. V, § 34).

23. *Id.* at 885.

24. *Id.* at 887-88. Although the court did not find the statutes in question to be "special legislation" designed to benefit United Airlines alone, in Beer v. Continental Airlines (*In re* Continental Airlines), 149 B.R. 76 (D. Del. 1993), the court disallowed EZ benefits for Continental's activities in the Denver EZ, holding that the legislative history behind the creation of the Denver special EZ indicated that this legislation was specifically "enacted to address [a] single structure contemplated by [a] proposed United Airlines Maintenance Facility. . . ." 149 B.R. at 88. For a complete discussion of *Beer*, see *infra* part III.A.

25. 814 P.2d at 889 (construing Gohnson v. McDonald, 49 P.2d 1017, 1025 (Colo. 1935)).

The Colorado experience provides insight into the tension between government efforts to stimulate lagging economies through direct financial incentives and various constitutional prohibitions against immediate alliances between government and private business entities. As more communities seek EZ status for the purposes of attracting new businesses, and as public outcry increases over "corporate welfare," policy makers should be aware that legislation designed to attract and fund one particular business venture may be viewed less favorably by the courts than in previous years.[26]

In addition to issues surrounding the passage of EZ legislation, tensions can develop over who should exercise control over EZs once they are designated. Kentucky ran into difficulties operating its EZ system when a power struggle broke out between the Kentucky General Assembly and Governor John Y. Brown, Jr. At issue in *Legislative Research Commission v. Brown*[27] was a group of statutes which allowed the Legislative Research Commission (LRC) (an "arm" of the General Assembly), and certain members of the General Assembly, to make appointments to various administrative agencies.[28] The Kentucky Enterprise Zone Authority was one such agency.[29] The Governor asserted that such legislation constituted a violation of the separation of powers doctrine, and the LRC countered by seeking a declaration of rights to confirm its power.[30] The trial court found the various statutes to be unconstitutional, and the LRC appealed.[31]

The LRC is comprised of the President Pro Tem of the Senate, the Speaker of the House, and the majority and minority floor leaders of the Senate and the House.[32] Its role has historically been that of a "research, fact-finding, secretariat, and general support agency for the General Assembly."[33] In 1982, however, the General Assembly enacted five categories of stat-

26. *See infra* note 63.
27. 664 S.W.2d 907 (Ky. 1984).
28. *Id.* at 920.
29. *Id.* at 920 nn.16-17.
30. *Id.* at 910.
31. *Id.*
32. *Id.* at 911.
33. *Id.*

utes, effectively expanding the power of the LRC.[34] The second and third categories affected the administration of Kentucky's EZs.[35] The second category made the Speaker of the House and the President Pro Tem ex officio members of the Enterprise Zone Authority.[36] The third category conferred upon the LRC, or a joint legislative committee, the power to advise and consent to the Governor's appointments to the Enterprise Zone Authority.[37]

In considering the validity of the statutes in question, the court referred to earlier Kentucky case law dealing with the appointment of officers to administrative boards and agencies.[38] Although the balance of power between the Governor and the General Assembly has historically been a point of contention in Kentucky, the court determined that "while [the Constitution] authorizes the Legislature to *provide* by law for the appointment or election of such officers, it does not authorize the Legislature itself to *make* such appointment or election."[39] The court reinforced its view in noting that "such power on the part of the Legislature . . . would enable it to gradually absorb into itself the patronage and control of the greater part of the functioning agencies of the state and county governments, and thus endowed it would be little short of a legislative oligarchy."[40]

Applying these principles to the challenged statutes, the court ruled that the second category of statutes, making the Speaker and the President Pro Tem members of the Enterprise Zone Authority, constituted a "legislative appointment which infringe[d] [upon] the right of the Governor to make such appointments."[41] The third category of statutes, authorizing the LRC or an interim legislative committee to advise and consent on appointments to the Enterprise Zone Authority, was

34. *Id.* at 916.
35. *Id.* at 920.
36. *Id.*
37. *Id.*
38. *Id.* at 921-23.
39. *Id.* at 923 (quoting Sibert v. Garret, 246 S.W. 455, 459 (Ky. 1922) (first emphasis added)).
40. *Id.* (quoting Sibert v. Garret, 246 S.W. 455, 460 (Ky. 1922)).
41. *Id.* at 924.

also held to be invalid as being violative of the separation of powers doctrine.[42]

B. *Property Concerns*

The process of designating EZs invariably involves land and real property issues, as land is often classified or appropriated in order to further EZ goals. In *Gay v. City of Springdale*,[43] the Springdale City Council (City Council) annexed approximately 7,000 acres of land surrounding the city.[44] The owners of the four tracts of land in question challenged the city's annexation of the tracts on the ground that the tracts did not meet the requirements of section 14-40-302(a) of the Arkansas Code.[45] According to this statute,

> a city may annex lands contiguous to the city if the lands are either: (1) [p]latted and held for sale or use as municipal lots; (2) [w]hether platted or not, if the lands are held to be sold as suburban property; (3) [w]hen the lands furnish the abode for a densely settled community or represent the actual growth of the municipality beyond its legal boundary; (4) [w]hen the lands are needed for any proper municipal purposes . . . ; or (5) [w]hen they are valuable by reason of their adaptability for prospective municipal uses.[46]

Annexation is proper when any one of these criteria is met.[47]

The City Council claimed that the annexation of two of the tracts could be justified under the fourth criterion mentioned above, since those tracts contained EZs.[48] The city argued that until the tracts came within the city limits, the EZs could not be "activated," and businesses could not take advantage of the accompanying economic incentives.[49] The court agreed that the activation of the EZs constituted a proper municipal purpose,

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42. *Id.*
43. 769 S.W.2d 740 (Ark. 1989).
44. *Id.* at 741.
45. *Id.* (citing ARK. CODE ANN. § 14-40-302(a) (Michie 1987)).
46. *Id.* at 741-42.
47. *Id.* at 742.
48. *Id.*
49. *Id.*

and thus held that the annexation of the land in question was proper under section 14-40-302(a).[50]

Eminent domain was the subject of *City of Duluth v. Minnesota*,[51] which arose out of the City of Duluth's (City) attempts to revitalize a deteriorated area of land in West Duluth.[52] The City decided to establish a paper mill on the site and obtained EZ status to attract investors.[53] The City secured an interested company which subsequently completed a feasibility study.[54] Included in the feasibility study was a determination that a vacant food processing plant owned by Jeno Paulucci (Paulucci)[55] would have to be demolished.[56] Paulucci notified the City's mayor that he planned to reopen the plant and proposed that the site could accommodate both the plant and the paper mill.[57] The City determined that the two industries could not coexist and moved to condemn Paulucci's property.[58] Paulucci subsequently challenged the condemnation proceedings.

The main thrust of Paulucci's argument was that since private companies would be operating the paper mill, the taking of his property was not for a "public use," and hence, violated both the United States and Minnesota constitutions.[59] In reviewing the City's actions, the court noted that the words "public use" are used interchangeably with the words "public purpose," which "thus impl[ies] that even though a public entity, using its eminent domain powers, turns over parcels to a private entity for use by that private entity, the condemnation will, nevertheless, be constitutional if a public purpose is furthered by such a transfer of land."[60]

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50. *Id.* at 742-43.

51. 390 N.W.2d 757 (Minn. 1986).

52. *Id.* at 760.

53. *Id.*

54. *Id.* at 760-61.

55. For snack food aficionados, Paulucci is the purveyor of "Jeno's Pizza Rolls." Larry Oakes, *In Duluth, He's the Stuff of Legends; Colorful Past Has Won Paulucci Friends and Foes*, MINNEAPOLIS STAR TRIB., Nov. 19, 1995, at 11A.

56. 390 N.W.2d at 761.

57. *Id.*

58. *Id.* at 761-62.

59. *Id.* at 762.

60. *Id.* at 763. In Berman v. Parker, 348 U.S. 26 (1954), the United States Supreme Court expanded the notion of public use to include projects that incidentally benefit private parties. *See* Poletown Neighborhood Council v. Detroit, 304 N.W.2d

The court then proceeded to determine whether the condemnation of Paulucci's land constituted a public purpose. The court took notice of the fact that the paper mill would create both permanent and temporary employment in an economically depressed area and rejuvenate an otherwise undevelopable area of the city.[61] The court concluded that "[t]he revitalization of deteriorating urban areas and the alleviation of unemployment are certainly public goals"[62] and affirmed the constitutionality of the City's condemnation of Paulucci's land.[63]

C. *Equal Protection Concerns*

Zajicek v. Aaby[64] involved a disgruntled property owner, Zajicek, who challenged the constitutionality of EZ legislation in the City of Freeport, Illinois (City).[65] Zajicek owned a mobile home park, which he expanded between 1990 and 1992; he had plans to expand it further between 1993 and 1995.[66] Under Freeport's EZ system, retailers and property owners may receive tax benefits for activities related to the construction or rehabilitation of improvements upon parcels of land located within EZs.[67] Nevertheless, to qualify for the tax benefits, such construction or rehabilitation must be "of the nature and scope for which a building permit is required and has been obtained."[68] Zajicek applied numerous times for a building permit for both his existing and planned construction, but he was

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455 (Mich. 1981) (allowing the condemnation of land for transfer to private corporation).

61. 390 N.W.2d at 763.

62. *Id.*

63. *Id.* at 764. Although the court upheld the condemnation, it stated that "[the argument] that the legislature and the courts have become far too lenient in allowing governmental units to exercise eminent domain in urban renewal projects, particularly where private property is condemned and then turned over to a new private venture . . . may have some merit." *Id.* at 767. Despite the problems that can and do arise in intertwining governmental and business interests, public-private partnerships may be the only way to effectively implement EZ policies in this era of dwindling funds and bureaucratic simplification. Wolf, *supra* note 8, at 88. *See* Wolf, *supra* note 11, at 70-72 (discussing the future of public-private partnerships).

64. No. 94 C 50066, 1995 WL 150031 (N.D. Ill. Apr. 3, 1995), *aff'd* No. 95-2130, 1996 WL 47454 (7th Cir. Feb. 2 1996).

65. *Id.* at *1.

66. *Id.* at *2.

67. *Id.* at *1.

68. *Id.*

repeatedly refused.[69] Zajicek then brought suit, claiming that his mobile home park was similarly situated with other residential developments, such as condominiums, apartment buildings and subdivisions, and that the City's EZ system violated his equal protection rights.[70]

At trial, the court determined that since Zajicek's claim implicated neither a fundamental right nor a suspect class, the EZ system would be subject to rational basis scrutiny.[71] The court stated that

> [i]t is hard to conceive of a more rational basis for the City to differentiate between properties, or property owners, than on the basis of economic development consequences. It is well within the bounds of equal protection law to provide tax benefits to certain property owners in an effort to approve the conditions of the property. . . .[72]

Having found that the City's EZ legislation was constitutional, the court dismissed Zajicek's case.[73]

Gay, *City of Duluth*, and *Zajicek* all echo a familiar theme in judicial review of EZ legislation: Economic redevelopment and urban renewal is a legitimate public purpose. While there is no indication that the courts are moving away from this view, the means used to accomplish these goals may come under closer scrutiny, in terms of conferring direct benefits upon private business concerns.[74]

III. QUALIFYING FOR EZ BENEFITS

A. *Eligibility for EZ Benefits*

A frequent point of contention is determining which businesses are eligible to receive EZ benefits. In *Beer v. Continental Airlines (In re Continental Airlines)*,[75] the city and county of

69. *Id.* at *2.
70. *Id.* at *4.
71. *Id.*
72. *Id.*
73. *Id.*
74. *See supra* note 63.
75. 149 B.R. 76 (D. Del. 1993).

Denver sought to collect unpaid use taxes in the bankruptcy proceedings of Continental Airlines (Continental). Continental claimed that it was eligible for EZ tax credits based on Denver Ordinance No. 75, Series of 1991,

> which exempted sales of personalty from certain Denver sales and use taxes so long as the personalty was 'to be used, consumed, stored or distributed at a facility . . . (b) that contains at least one million square feet of useable floor space and (c) that serves as a . . . regular place of reporting for duty for at least two thousand employees.'[76]

At the bankruptcy court level, the court found in favor of Continental, ruling that Continental met all of the requirements of Ordinance No. 75, thus qualifying for various tax exemptions.[77] Specifically, the bankruptcy court found that the term "facility" as used in Ordinance No. 75 encompassed multiple buildings, so long as they were used for a common purpose.[78] In Continental's case, the buildings were all used for aviation purposes.[79] The bankruptcy court further found that Continental's "facility" met the one-million-square-feet-of-usable-floor-space requirement, concluding that the amount of space *leased* by Continental should have been included in calculating usable floor space.[80]

On appeal, the district court reversed the bankruptcy court's order. Finding that the term "facility" was ambiguous as used in Ordinance No. 75, the district court turned to the legislative history of the ordinance.[81] The court determined that Ordinance No. 75 was specifically "enacted to address [a] single structure contemplated by [a] proposed United Airlines Maintenance Facility, not the aggregation of multiple buildings of existing utilities."[82]

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76. *Id.* at 79. The court's finding is quite curious in light of the fact that the Denver EZ was found *not* to be "special legislation" benefiting only one business in *In re* Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005, 814 P.2d 875 (Colo. 1991). *See supra* note 24 and accompanying text.

77. 149 B.R. at 79.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 87.

82. *Id.* at 88.

The district court further found that although Continental was obligated under leases for one million square feet of space, Continental sublet a substantial portion of that space to other businesses.[83] The court thus concluded that (1) Continental was no longer responsible for the sublet space; (2) there was no potential for sales of personalty that would qualify for the tax exemption for such space; and (3) no Continental employees could report for duty to the sublet space.[84] The square footage sublet by Continental, therefore, had to be deducted from the calculation of floor space for purposes of Ordinance No. 75, and as a result, Continental fell below the one-million-square-footage requirement.[85] Since Continental's operation did not fit the definition of "facility," and failed to meet the square-footage requirement of Ordinance No. 75, Continental could not qualify for the EZ tax exemptions.[86]

Dav-Con, Inc. v. State Board of Tax Commissioners exemplified the fact that EZ benefits do not accrue to businesses that are, without more, merely situated within an EZ.[87] Plaintiff Dav-Con was a corporation that processed steel for its customers and stored the steel in the event that the steel was not picked up immediately after processing.[88] In 1992, Dav-Con filed an assessment for tangible personal property and applied for an EZ inventory credit.[89] A field auditor for the State Board subsequently assessed Dav-Con's property and determined that Dav-Con failed to report certain steel that had been stored for its customers.[90] The State Board then held a hearing on Dav-Con's assessment, held it liable for the unreported steel, and denied its request for EZ benefits.[91] Dav-Con subsequently appealed the State Board's decision.[92]

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83. *Id.*
84. *Id.* at 89.
85. *Id.*
86. *Id.* at 90. The Colorado EZ system has come under fire as of late, as critics accuse the state of using tax money to subsidize large businesses with few benefits actually accruing to economically depressed areas. *See* Imse, *supra* note 10.
87. 644 N.E.2d 192 (Ind. T.C. 1994).
88. *Id.* at 193.
89. *Id.* at 194.
90. *Id.*
91. *Id.*
92. *Id.*

On appeal, Dav-Con argued that it was entitled to an EZ tax credit by virtue of the undisputed fact that it was located within an EZ.[93] Dav-Con, however, never filed the requisite forms mandated by Indiana law to qualify for the EZ benefits.[94] Dav-Con further asserted that the accountants who prepared its tax forms were "ignorant" of the filing requirement.[95] The court found that merely being located within an EZ does not automatically qualify a business for an EZ credit and that ignorance of filing requirement did not excuse Dav-Con's failure to file.[96] The court accordingly affirmed the State Board's determination concerning Dav-Con's ineligibility for EZ benefits.[97]

Schudy v. Cooper involved a dispute over the eligibility of leased property for EZ benefits.[98] Plaintiff Schudy acquired property in the Cabool EZ, constructed a commercial building on the site, and leased the property to Contel Telephone Company (Contel).[99] Schudy sought an ad valorem tax exemption for the property, claiming that leasing the property was a "revenue producing enterprise" eligible for EZ tax benefits.[100] The Texas County Board of Equalization (Board) denied Schudy the exemption.[101] Schudy challenged the Board's decision in the circuit court, which denied relief, and Schudy appealed.[102]

On appeal, the Missouri Supreme Court summarily dismissed Schudy's complaint.[103] The court held that leasing improved real property to a commercial tenant was not an activity deemed a "revenue producing enterprise" according to the applicable statutes.[104] Furthermore, Schudy's lease to Contel did not constitute "the rendering of a service," which would have entitled Schudy to the EZ tax exemption since service requires

93. *Id.* at 197.
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.* at 198.
98. 824 S.W.2d 899 (Mo. 1992).
99. *Id.* at 900.
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.* at 901.
104. *Id.* at 900-01.

an act or deed and "does not include the passive activity of leasing improved real estate."[105]

Beer, *Dav-Con*, and *Schudy* illustrate the principle that tax exemptions will be strictly construed against the taxpayer, and the courts' unwillingness to loosely interpret EZ legislation to cover marginally qualifying businesses.

B. *Sale of Existing Qualified Businesses*

Columbia Sun, Inc. v. Department of Revenue involved a disgruntled purchaser of property that lost its EZ eligibility as a result of the property's sale.[106] Columbia Sun, Inc. (Columbia) owned a food processing plant and had obtained a partial property tax exemption pursuant to Oregon's EZ system in 1988.[107] In 1993, Columbia sold the plant to Universal Frozen Foods Company (Universal).[108] Not long thereafter, Columbia and its owners, John and Judy Betz (Betz), were notified that the sale to Universal disqualified the property from the EZ tax exemption and that the previously exempted taxes would be recaptured by adding the exempted amount to the tax levied in the 1993-94 tax year.[109] As required by the sales contract between Columbia and Universal, Betz reimbursed Universal for the recaptured taxes.[110] Columbia and Betz appealed to the Department of Revenue (Department), but were unsuccessful, and subsequently appealed to the Oregon Tax Court.[111]

The Tax Court simply found that as mandated by Oregon EZ legislation, property that is granted EZ tax exemptions becomes disqualified upon its sale, and the previously exempted tax is subject to recapture.[112] The court held, therefore, that the sale of Columbia's property to Universal disqualified that property and subjected Universal to liability for the previously exempted

105. *Id.* at 901.
106. 900 P.2d 1039 (Or. 1995).
107. *Id.* at 1039-40.
108. *Id.* at 1040.
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*

tax.[113] Columbia and Betz then appealed to the Oregon Supreme Court.[114]

The supreme court never reached the merits of the case, finding that Columbia and Betz lacked standing to sue.[115] The court determined that, according to Oregon law, only "two types of taxpayers [may] appeal to the Tax Court: (1) a taxpayer aggrieved by and directly affected by an order of the Department [of Revenue], and (2) a taxpayer whose property is affected by an order of the Department. . . ."[116] According to the court, neither Columbia nor Betz had standing under the second classification above since neither had an interest in the property at issue when the Department made its determination.[117] In addition, neither Columbia nor Betz were taxpayers "aggrieved by and *directly* affected by an order of the Department," since they were only liable as a result of the terms of the contract between Columbia and Universal.[118] The contract "'was an intervening instrumentality or determining influence' which rendered the Department's order *indirect*."[119] The court, therefore, vacated the Tax Court's ruling and remanded with instructions to dismiss.[120]

Keeter Mfg., Inc. v. Department of Revenue also involved disqualification for EZ benefits by virtue of the sale of exempted property.[121] In 1989, Keeter Manufacturing, Inc. (Old Keeter) applied for and received an EZ property tax exemption.[122] In 1990, Old Keeter sold its assets to Pentadyne Technologies, Inc. (New Keeter).[123] After learning of the sale, the county assessor disqualified the property from tax exemption.[124] After a par-

113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.* at 1041.
118. *Id.*
119. *Id.*
120. *Id.*
121. 13 Or. Tax 124 (1994).
122. *Id.* at 125.
123. *Id.* Old Keeter eventually changed its name to Keeter, Inc., and Pentadyne assumed the name Keeter Manufacturing, Inc. *Id.* at 126.
124. *Id.* at 126.

tially unsuccessful appeal to the Department of Revenue, New Keeter appealed to the Tax Court.[125]

The Tax Court stated that according to Oregon's EZ legislation, "[a]n eligible business firm becomes a qualified firm only with respect to specific property" and that only new property can be qualified.[126] Therefore, "[b]ecause only new property can be qualified, it is impossible for property, once exempted within the zone, to be sold to another firm and be qualified property, nor can the purchasing firm be a qualified firm as to that property."[127] As a result of Old Keeter's sale of its property to New Keeter, the court ruled that New Keeter could not claim eligibility for its newly acquired property.[128]

C.W.O., Inc. v. Commissioner of Revenue involved a dispute over whether the sale of an existing business to a corporation within an enterprise zone merely resulted in the transfer of jobs, disqualifying the corporation for EZ benefits.[129] C. W. Olsen. Inc. (Olsen), located in Minneapolis, Minnesota and Garfield, Minnesota, was a manufacturing firm whose financial condition began to deteriorate in 1984.[130] By 1985, Olsen was facing bankruptcy and liquidation.[131] A new corporation, C.W.O, Inc. (CWO), was formed by stockholders from Montevideo, Minnesota and agreed to purchase Olsen's assets.[132] Olsen subsequently closed its operations in Minneapolis and Garfield, terminated its employees, and finalized its sale to CWO.[133]

After CWO purchased Olsen's assets, CWO applied to the Montevideo City Council for EZ tax credits.[134] The City Council approved, finding that "[e]nterprise zone tax credits by C.W.O., Inc., will not have the effect of transferring existing employment from one or more municipalities within the

125. *Id.*
126. *Id.* at 128.
127. *Id.*
128. *Id.* at 130.
129. No. 4501, 1986 WL 9364 (Minn. T.C. Oct. 28, 1986).
130. *Id.* at *2.
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.*

state."[135] The Commissioner of Revenue (Commissioner), however, disapproved CWO's application, finding that the CWO project involved a transfer of employment, and therefore did not qualify for EZ benefits.[136] CWO subsequently appealed the Commissioner's ruling.[137]

On appeal, the Minnesota Tax Court placed heavy emphasis on the fact that Olsen was going out of business. Concluding that the jobs in Minneapolis and Garfield would have been lost regardless of Olsen's sale to CWO, the court ruled that the Commissioner should have approved CWO's application for EZ tax credits.[138]

Columbia Sun, *Keeter*, and *C.W.O.* again exemplify the judiciary's close reading of applicable EZ statutes. Two of the fundamental principles of EZs are new business and new job creation, and courts are not likely to allow existing businesses to take advantage of EZ benefits targeted for such new commercial ventures.

C. *Exemptions for the Sale and Use of Goods Within EZs*

In *Craftmasters, Inc. v. Department of Revenue*, plaintiff Craftmasters, a contracting firm, sought a refund of retailer's occupation taxes pursuant to Illinois EZ legislation.[139] Craftmasters purchased building materials from a business outside a designated EZ and then incorporated those materials into customers' real estate that was located within a Decatur, Illinois EZ.[140] After auditing Craftmasters, the Department of Revenue (Department) issued a notice of tax liability to Craftmasters for the materials purchased from suppliers outside the Decatur EZ.[141]

Craftmasters challenged the Department's assessment and sought a refund for the assessed taxes.[142] The Department ar-

135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.*
139. 647 N.E.2d 607 (Ill. App. Ct. 1995).
140. *Id.* at 608.
141. *Id.*
142. *Id.* at 608-09.

gued that according to its interpretation of the EZ legislation, the occupation tax exemption applied only where a contractor's purchases were made from a supplier within the Decatur EZ but was inapplicable where the supplier was located outside the EZ.[143] At the trial level, the court did not accept the Department's interpretation of the statute and found for Craftmasters.[144] The Department subsequently appealed.

On appeal, the court first determined that Craftmaster's incorporation of the building materials into real estate was a use of the materials and hence did not constitute a retail sale.[145] Therefore, the retail sale at issue was Craftmaster's purchase of the building materials, not the incorporation of the materials into the customer's real estate.[146] The court concluded that "it is not an arbitrary or unreasonable interpretation of the enterprise zone exemption to require the purchases, direct or indirect, to be made from a supplier located within the jurisdiction which created the enterprise zone to qualify for the exemption," and reversed the trial court.[147]

Another case involving the sale and use of personal property in an EZ is *Fedway Assoc. v. Director, Division of Taxation.*[148] Fedway was a wholesale distributor of wines and alcoholic beverages.[149] It was issued an Urban Enterprise Exempt Purchase Permit (Permit) for its corporate office and warehouse complex, the latter of which served as a distribution center for four subsidiary organizations.[150] The Permit exempted Fedway from use tax on purchases of tangible personal property, provided that such property was consumed solely and exclusively by Fedway within the EZ.[151]

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143. *Id.* at 609.
144. *Id.*
145. *Id.* at 610.
146. *Id.*
147. *Id.* at 611. There is currently before Congress legislation requiring that a certain portion of federal purchases be made from businesses located within EZs. S. 17, 104th Cong., 1st Sess. (1995); H.R. 1297, 104th Cong., 1st Sess. (1995); *see* EZ GAZETTE, *supra* note 8.
148. 14 N.J. Tax 71 (1994), *aff'd per curiam,* 659 A.2d 536 (N.J. Super. Ct. App. Div. 1995).
149. 14 N.J. Tax at 73.
150. *Id.* at 74.
151. *Id.*

As part of its sales strategy, Fedway purchased certain goods which were distributed at its central complex to its sales staff as compensation or marketing aids.[152] The salespersons could either keep the items or give them to their customers.[153] The Director claimed that the items in question were taxable and demanded payment.[154] Fedway sued, however, contending that the goods were exempt, since they were consumed in the EZ when the sales staff picked them up.[155]

In ruling upon Fedway's tax liability, the New Jersey Tax Court determined that personal property which is to be exempt under the Permit must be

> consumed, that is, used up in the enterprise zone with no remaining residual utility. Purchases of property and subsequent transfers of title to others by the qualified business, for further use or consumption outside the enterprise zone, do not meet the statutory requirement of exclusive use within the zone, or consuming or using up the property within the zone.[156]

The court went on to find that the property that Fedway sought to exempt retained utility even after Fedway "used" it and that the promotional items were neither distributed to customers within the EZ, nor consumed within the EZ.[157] The court thus concluded that the Permit exemptions applied to none of the property claimed by Fedway.[158]

The eligibility for an EZ tax exemption of personal property used in a motel was the subject of *Edgewater Inn, Inc. v. Department of Revenue*.[159] Edgewater Inn, Inc. (Inn) purchased and used certain personal property in its motel business and tried to secure an EZ tax exemption for the property in question.[160] Although the county assessor initially granted the exemption, he later reversed his position and determined that

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152. *Id.* at 75.
153. *Id.*
154. *Id.*
155. *Id.*
156. *Id.* at 78.
157. *Id.* at 79.
158. *Id.*
159. 13 Or. T.C. 117 (1994).
160. *Id.* at 117.

the property at issue did not qualify.[161] The Inn eventually appealed to the Oregon Tax Court.

The tax court, in a strikingly abbreviated opinion, began by setting out the relevant provisions of Oregon law dealing with EZ property tax exemptions.[162] According to the applicable statutes, qualified property includes:

> [1] any real property machinery or equipment . . . installed in property owned or leased by a qualified business firm, [2] any single item of personal property machinery or equipment . . . installed in property owned or leased by a qualified business firm, and [3] any property otherwise described in this section that is owned or leased and operated by a . . . motel.[163]

The Inn claimed that the property in question was "equipment" which was "installed in property owned or leased by a qualified business firm" and hence was exempt.[164] The court rejected this argument, however, claiming that the Inn "ignore[d] the words 'real property'."[165] The tax court concluded that the exemption was "only for machinery or equipment which, due to its size or nature, becomes part of real property and is assessed as such."[166] Since the property in question apparently did not meet this description, the court disallowed the exemption.[167]

Craftmasters, *Fedway*, and *Edgewater Inn* again show that tax exemptions are to be strictly construed against the taxpayer. Furthermore, *Craftmasters* and *Fedway* also are illustrative of the fact that EZ legislation is usually designed to stimulate EZ economies to the greatest extent possible. Sales and use tax exemptions for consumer goods, therefore, provide the maximum benefit when they apply only to goods bought within the boundaries of the EZ, and the courts appear to support this aspect of the EZ system.

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161. *Id.*
162. *Id.* at 118.
163. *Id.* (quoting OR. REV. STAT. § 285.607(2)(d),(e) & (g) (1983)).
164. *Id.* at 119.
165. *Id.*
166. *Id.*
167. *Id.*

D. *Local Government Consent*

St. Landry Parish School Board v. Roy O. Martin Lumber Co. involved a dispute over sales and use taxes between a parish school board and police jury and an owner of land in an industrial area.[168] In 1983, defendant Martco Partnership (Martco) informed plaintiff St. Landry Police Jury that Martco would be privately furnishing garbage and refuse collection within the Parish of St. Landry.[169] Prior to commencing operations, Martco applied to the State of Louisiana under Louisiana's Enterprise Zone Act for exemption from sales and use, income, and corporate franchise taxes.[170] The School Board and Police Jury subsequently executed a Certificate of Local Government Endorsement endorsing Martco's participation in the EZ program.[171] Martco then entered into a contract with the State of Louisiana which provided EZ benefits for Martco's operations within the EZ.[172] Such contracts can only be entered into if the governing body of the appropriate local government entity endorses the exemptions sought.[173] A number of years later, the School Board and the Police Jury sued to recover the taxes which would have been due had Martco not been exempt.[174] The trial court found for Martco, and the School Board appealed.[175]

On appeal, the School Board argued that the language in both the School Board's and the Police Jury's endorsement of Martco's tax exemptions was equivocal.[176] Since exemptions from taxes are exceptional privileges, they must be clearly, unequivocally and affirmatively established; thus, according to the School Board, the endorsements had to fail.[177] In the alternative, the School Board argued that it was without authori-

168. 606 So. 2d 933 (La. Ct. App. 1992).
169. *Id.* at 934.
170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*
174. *Id.*
175. *Id.*
176. *Id.* at 937.
177. *Id.*

ty to grant any exemption to Martco under Louisiana's Enterprise Zone Act.[178]

The court summarily rejected both of the School Board's arguments.[179] First, the court examined the language of both endorsements. The School Board granted the exemption "pending proper legal advice to make sure the granting of the said exemption [was] legal."[180] The Police Jury also assented to the tax exemption, but stated that if "[the endorsement] is illegal, the approval will be withdrawn."[181] The court held that the endorsements were not equivocal, but "simply stated the obvious, i.e., if the resolutions are invalid, they would be null and would be disregarded. The reference to legal advice . . . does not make an action equivocal since this concern is implicit in all governmental action."[182] Second, the court dismissed the claim that the School Board was without authority to grant the exemption, since "the actual exemption did not come from the School Board, but from the State."[183]

IV. TAX ISSUES

A. *Applicability of EZ Tax Credits*

Horizon Bancorp, N.A. v. Indiana Department of State Revenue was a case involving EZ tax benefits accruing from granting loans to EZ businesses.[184] Under Indiana EZ legislation, interest received on a qualified loan entitles the taxpayer to a credit against its state gross income tax liability for a taxable year.[185] Horizon Bancorp (Horizon), a financial institution located in Indiana, earned a substantial number of EZ loan interest credits between 1984 and 1989.[186] During the same period of time, Horizon's bank tax liability exceeded its gross income

178. *Id.*
179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.* (citations omitted).
183. *Id.*
184. 626 N.E.2d 603 (Ind. T.C. 1993), *aff'd in part, rev'd in part on other grounds*, 644 N.E.2d 870 (Ind. 1994).
185. 626 N.E.2d at 610-11.
186. *Id.* at 608.

tax liability; Horizon's bank tax payments also were available as credits against its gross income tax liability.[187] Horizon then filed a claim for a refund, seeking $968,283 in excess bank tax credits, but received only $503,887 plus $58,965 in interest.[188] The Department of State Revenue (Department) denied the balance of the claim for refund, and Horizon appealed.[189]

The amount of Horizon's refund hinged in part on the order in which the tax credits were applied, since excess bank tax credits were refundable, while excess loan credits were not.[190] If the bank tax credits were applied to Horizon's gross income tax liability first, any excess credits would be loan credits, thus precluding Horizon from receiving a refund.[191] The Department asserted that the bank tax credits had to be applied first, thus justifying a lower refund for Horizon.[192]

The court cited three reasons for rejecting the Department's argument. First, the bank tax credit provisions were older than the loan credit provisions, implying that the legislature was aware of the former when enacting the latter, and there was nothing in the loan credit provisions indicating that bank tax credits were to negate loan credits.[193] The court further stated that

> [i]f banks like Horizon, which consistently offset all, or almost all, of their gross income tax liability with bank tax credits were unable to get any use from any loan credits under [EZ legislation] the banks would have no incentive to make qualifying loans and the loan credits would fail in their purpose. The court will not presume the legislature intended [such] an absurd result.[194]

Second, the statutes governing the computation of credits dictate that bank tax credits be applied before certain other credits.[195] While the Department urged that these statutes

187. *Id.* at 604.
188. *Id.*
189. *Id.*
190. *Id.* at 611.
191. *Id.*
192. *Id.*
193. *Id.*
194. *Id.* at 612.
195. *Id.* at 611.

mandated application of loan credits after bank tax credits, the court held that proper application of the relevant legislation "requires application of non-refundable credits like the loan credits to be applied before refundable credits like the bank tax credits."[196] Third, the court held that the statute creating the loan credits and the statute governing the computation of certain credits have to be construed together.[197] The court stated, "[i]f the legislature had intended IC 6-3.1-7-4 to create a hierarchy of application of loan credits and other credits, it would have inserted language to that effect, as it did in IC 6-3.1-1-2(a)."[198] Since the legislature did not take such course of action, Horizon's loan credits were properly applied before the bank tax credits.

In *Missouri ex rel. May Department Stores v. Koupal*, the May Department Store Company (May) challenged the Missouri Department of Revenue's (Department) interpretation of Missouri EZ statutes concerning the applicability of May's EZ tax credits.[199] May had opened two new department stores in Joplin, Missouri, which had been designated an EZ.[200] By establishing new business facilities within the EZ, May became eligible for certain EZ tax credits.[201] To qualify for the credits, May had to submit the matter to the Department for calculation and certification.[202] The Department limited May's EZ credits to the amount of taxable income that was attributable to the two new stores.[203] May challenged the Department's interpretation of the EZ statutes, claiming that the credits should have been applied to May's entire Missouri taxable income.[204] May brought suit, lost at trial, and appealed.

The Department on appeal offered three arguments in support of its interpretation of the statute creating the EZ tax credits. All three failed. First, although this statute, Mo. Rev. Stat. section 135.225(8) (1986), specifically stated that such

196. *Id.* at 612.
197. *Id.*
198. *Id.*
199. 835 S.W.2d 318 (Mo. 1992).
200. *Id.* at 319.
201. *Id.*
202. *Id.*
203. *Id.*
204. *Id.*

credits "shall not be limited to some portion of the income tax,"[205] the Department argued that the statute in question had to be read in conjunction with other EZ statutes that limited benefits to new business facility income.[206] The court rejected the Department's argument, stating that if the legislature had wanted to limit the EZ tax credits to new business income, it could have easily inserted the language in the statute as it had done elsewhere, or if the legislature had meant to rely entirely on the other EZ provisions, there would have been no need to enact section 135.225 in the first place.[207]

The Department's second argument centered around the use of the word "the" in the phrase "some portion of the income tax."[208] The Department asserted that "the" implied reference to "income tax" as a prior defined term, and since "income tax" was limited to new business facility income in prior statutes, it had to be limited to such income in later statutes.[209] The court determined that since the earlier statutes also included the phrase "the income tax," the Department's interpretation begged the question of the previous definition to which the earlier statutes refer.[210]

Finally, the Department argued that tax exemptions should be construed strictly against the taxpayer and that its interpretation of the statute should be given great weight.[211] The court agreed, but again refused to accept the Department's argument, holding that the plain and ordinary meaning of the words dictate that the EZ credits apply to May's entire Missouri taxable income.[212]

Horizon Bancorp and *May* mark a departure from construing tax exemptions strictly against the taxpayer and perhaps suggest that businesses, already qualified for EZ benefits, should be permitted to take full advantage of such benefits.

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205. *Id.* (quoting MO. REV. STAT. § 135.225(8) (1986)).
206. *Id.*
207. *Id.* at 320.
208. *Id.*
209. *Id.*
210. *Id.*
211. *Id.*
212. *Id.*

B. *Challenges to "Unequal" Tax*

Blume v. County of Ramsey involved a challenge to a legislative scheme, called disparity reduction aid, that conferred tax benefits on certain property owners within EZs.[213] Disparity reduction aid is a form of property tax relief which is based upon the total tax burden within "unique taxing jurisdictions" (UTJ's), legislatively created districts that are subject to the same set of tax capacity rates.[214] The effect of the disparity reduction aid plan is that different parcels of land of equal value, in the same class based on type and usage and in the same local taxing district, are assessed differently for tax purposes.[215]

Gary P. Blume, plaintiff, owned property that was not eligible for disparity reduction aid.[216] Blume sued Minnesota, claiming that the legislative scheme violated both his federal equal protection rights and the uniformity clause of the Minnesota Constitution, which requires that "taxes [be] uniform upon the same class of subjects."[217] The court utilized traditional rational basis analysis for both challenges to determine whether Minnesota's classification of Blume's property bore a rational relationship to a legitimate governmental purpose.[218]

In analyzing the validity of the disparity reduction aid system, the court first found that a reasonable distinction existed between Blume's property and the tracts that qualified for the tax benefits, since the qualifying tracts were more heavily burdened by various property taxes.[219] The court then found that the classification scheme in question furthered legitimate government purposes.[220] Disparity reduction aid targeted tax relief to areas where such relief would most likely equalize tax burdens, and would "foster economic recovery in depressed areas of the state and/or declining central cities. . . . Attempts

213. No. C9-88-2861, 1989 WL 28940 (Minn. T.C. Mar. 31, 1989).
214. *Id.* at *7.
215. *Id.* at *8.
216. *Id.* at *1.
217. *Id.* at *8 (quoting MINN. CONST. art. X, § 1).
218. 1989 WL 28940 at *8.
219. *Id.* at *9-*11.
220. *Id.* at *11.

to remedy these perceived problems are legitimate public policy, and reducing disparities is a rational way of addressing such problems."[221] The court thus affirmed the legitimacy of the disparity reduction aid scheme.

Blume, and the cases that follow, again illustrate the widespread acceptance of economic redevelopment as legitimate public policy.

V. EZ LEGISLATION AS EVIDENCE OF PUBLIC POLICY

Apart from ruling on challenges to, or the interpretation of, EZ statutes, courts have also cited EZ legislation as evidence of the existence of certain public policies.

Department of Revenue v. ACF Industries, Inc. involved a challenge by a railroad company to tax exemptions given for non-railroad business property.[222] In upholding the Oregon Department of Revenue's tax scheme, the Supreme Court cited EZs for the proposition that "it is standard practice for States to grant exemptions to commercial entities for . . . beneficial purposes."[223]

In *Davidson Bros. v. D. Katz & Sons, Inc.*,[224] Davidson, which operated a number of supermarkets, closed one of its grocery stores in New Brunswick, an economically depressed area, and sold the store to Katz.[225] The deed to Katz contained a restrictive covenant prohibiting the use of the property as a supermarket.[226] In striking down the covenant as being unreasonable, the court cited New Jersey's EZ legislation as evidence of how "urban rehabilitation is imbedded in public policy and the public interest."[227]

Bosworth v. Pledger involved a challenge to a sales tax statute that taxed regular long distance telephone service, but not "wide area telecommunications service" typically used by busi-

221. *Id.*
222. 114 S.Ct. 843 (1994).
223. *Id.* at 852.
224. 643 A.2d 642 (N.J. Super. Ct. App. Div. 1995).
225. *Id.* at 643.
226. *Id.*
227. *Id.* at 648.

nesses.[228] In upholding the validity of the sales tax, the court cited Arkansas's EZ legislation for the proposition that Arkansas has a long history of providing tax incentives as a means of encouraging the establishment of business within the state.[229]

Finally, in *People v. Mitchell*,[230] a criminal case, the court, in an appendix to its decision, listed Illinois's EZ legislation among state statutes that specifically prohibited gender discrimination.[231]

VI. CONCLUSION

As the federal EZ program continues to develop, the legal issues arising out of continuing legislative attempts at urban renewal will inevitably multiply. The efficacy and soundness of the federal effort will be subject to judgment only after the passage of time. Nevertheless, the EZ projects conducted in the "laboratory of the states," as surveyed in this article, may provide valuable guidance in determining the resolution of legal difficulties that accompany EZs and may help avert the errors which, as the Colorado experience demonstrates, can all too easily be made.

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228. 810 S.W.2d 918 (Ark. 1991).
229. *Id.* at 923.
230. 593 N.E.2d 882 (Ill. App. Ct. 1992).
231. *Id.* at 934.