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Opinion No. 08-57

Repealing Exclusions from Uniform Residential Landlord and Tenant Act

QUESTION

Senate Bill 2885/House Bill 2746 amends the Uniform Residential Landlord and Tenant Act, Tenn. Code Ann. §§ 66-28-101, *et seq.* Its effect is to make counties within four population brackets subject to the act. Counties within these brackets were excluded from coverage of the act under 1992 Tenn. Pub. Acts Ch. 995 and 2001 Tenn. Pub. Acts Ch. 101. Is this bill, if enacted, constitutional?

OPINION

Senate Bill 2885/House Bill 2746 is constitutional.

ANALYSIS

This opinion concerns the constitutionality of Senate Bill 2885/House Bill 2746 (the “Bill”). The Bill amends the Uniform Residential Landlord and Tenant Act, Tenn. Code Ann. §§ 66-28-101, *et seq.* (the “Uniform Act”). Section 1 of the Bill would delete subsection (a) of Tenn. Code Ann. § 66-28-102 and substitute a new provision. This subsection now provides:

(a)(1) Except as provided in subdivision (a)(2), the provisions of this chapter are applicable only in counties having a population of more than sixty-eight thousand (68,000) according to the 1970 federal census or any subsequent federal census.

(2) The provisions of this chapter do not apply in counties having a population according to the 1990 federal census or any subsequent federal census, of:

not less than

80,000

92,200

118,400

140,000

nor more than

83,000

92,500

118,700

145,000

The Bill would substitute the following subsection (a):

The provisions of this chapter are applicable only in counties having a population of more than sixty-eight thousand (68,000) according to the 1970 federal census or any subsequent federal census.

Section 2 of the Bill would delete subsection (d) of Tenn. Code Ann. § 66-28-102. That subsection provides:

Any county listed in subdivision (a)(2) to which the provisions of this chapter do not apply shall remain excluded from the provisions of this chapter notwithstanding the results of the 2000 federal census or any subsequent federal census.

Section 3 of the Bill would delete subdivision (2) of Tenn. Code Ann. § 66-28-301(h) and redesignate the remaining language accordingly. Subdivision (2) currently provides:

The provisions of subdivision (h)(1) [regarding security deposits] do not apply in counties having a population according to the 1990 federal census or any subsequent federal census, of

<u>not less than</u>	<u>nor more than</u>
80,000	83,000
92,200	92,500
118,400	118, 700
140,000	145,000

Section 4 of the Bill provides:

The House Judiciary Committee and the Senate Commerce, Labor and Agriculture Committee are requested to independently study the effect of expanding the Uniform Residential Landlord and Tenant Act to counties with populations of over fifty (50,000) and report back to the entire general assembly in the year 2009 about their findings.

Section 5 of the Bill would make it effective July 1, 2008. The Bill, therefore, would extend coverage of the Uniform Act to counties within the four population brackets currently exempted from it.

We see no constitutional problems with the proposed amendments. Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV. Article XI, Section 8, of the Tennessee Constitution provides in relevant part:

The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any

individual or individuals, rights, privileges, immunitie, [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

The standards governing the validity of legislative classifications are the same under Article XI, Section 8, of the Tennessee Constitution and the Fourteenth Amendment to the United States Constitution. *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 518 (Tenn. 2005); *Brown v. Campbell County Board of Education*, 915 S.W.2d 407, 412 (Tenn. 1995), *cert. denied*, 116 S.Ct. 1852 (1996); *State v. Price*, 124 S.W.3d 135, 137-38 (Tenn. Crim. App. 2003), *p.t.a. denied* (2003). These provisions guarantee that “all persons similarly circumstanced shall be treated alike.” *State v. Robinson*, 29 S.W.3d 476, 480 (Tenn. 2000); *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993) (both quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 562, 64 L.Ed.2d 989 (1920)).

The bill eliminates an exemption for counties within four narrowly defined population brackets. The Uniform Act, as amended, would create two classes of landlords and tenants: first, landlords and tenants in counties with a population of 68,000 or more under the 1970 census or any subsequent federal census; second, landlords and tenants in counties with a population of less than 68,000 under the 1970 census. This classification does not affect a fundamental right or discriminate as to a suspect class. All classifications that do not affect a fundamental right or discriminate as to a suspect class are generally subject to the rational basis test. *State v. Tester*, 879 S.W.2d 823, 828 (Tenn. 1994). Under this test, the classification will be upheld “if any state of facts may *reasonably be conceived* to justify it.” *Tester*, 879 S.W.2d at 828 (emphasis added) (citing *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139, 153 (Tenn. 1993)); *Harrison v. Schrader*, 569 S.W.2d 822, 825 (Tenn. 1978). A classification having some reasonable basis does not offend equal protection merely because the classification is not made with mathematical nicety, or because in practice it results in some inequality. *Wyatt v. A-Best Products Company, Inc.*, 924 S.W.2d 98, 105 (Tenn. Ct. App. 1995), *as modified on rehearing, p.t.a. denied* (Tenn. 1996).

We think the classification is supported by a rational basis. When passed in 1975, the Uniform Act applied only in counties with a population of 200,000 or more according to the 1970 federal census or any subsequent federal census. The Court of Appeals found that there was a rational basis for applying the law only in counties within this population bracket. *Crawford v. Buckner*, 1991 WL 127626 (E.S.Tenn.Ct.App. August 27, 1991), *reversed on other grounds*, 839 S.W.2d 754 (Tenn. 1992), *on remand*, 1994 WL 85970 (E.S.Tenn.Ct.App. 1994), *p.t.a. denied, concurring in results only* (1994). In that case, a tenant of property in Bradley County asked the court to rule an exculpatory clause in her lease to be unenforceable. The tenant argued, among other grounds, that these clauses were unenforceable under the Uniform Act, and that the population limit on the applicability of the Uniform Act was unconstitutional.

The Court of Appeals rejected this argument for two reasons. First, the Court found that, because the population bracket was open, the Uniform Act was potentially applicable to all counties. Second, the Court found a rational basis for the classification. The Court stated:

It is highly probable that populations are crowded in rental properties in urban areas. The Legislature has determined that there is a need for greater restrictions in landlord/tenant relationships in crowded urban areas. In addition, large metropolitan areas historically have greater numbers of residents on public assistance and in low income housing. Uniform rules are arguably needed to establish guidelines for landlord/tenant responsibilities, to provide a modicum of protection to tenants who cannot readily procure legal services, and to reduce the filing of lawsuits in already overcrowded municipal dockets.

Id. at *3. The Court found the exculpatory clause in the lease to be enforceable. On appeal, the Tennessee Supreme Court concluded that, even though the Uniform Act did not apply in Bradley County, the clause was unenforceable as against public policy. *Crawford v. Buckner*, 839 S.W.2d 754 (Tenn. 1992). The Supreme Court remanded the action for a trial. The Court of Appeals upheld the Trial Court's directed verdict, and the Supreme Court denied the plaintiff permission to appeal.

We think a court would find that extending the Uniform Act to apply in counties with a population of 68,000 to 199,999 is supported by a rational basis for similar reasons. Further, there is a rational basis for repealing the exemption for four counties placed within narrow population brackets. The repeal means that landlords and tenants within the same broad population bracket of 68,000 or more are all treated in the same manner. Further, preserving the 1970 federal census as the baseline for applicability of the Uniform Act is supported by a rational basis. The Uniform Act was passed in 1975, and the counties to which it originally applied were defined by reference to the 1970 federal census.

We assume that the Bill would not apply retroactively in the counties newly subjected to the Uniform Act. Tenn. Code Ann. § 68-28-102(b) provides:

This chapter applies to rental agreements entered into or extended or renewed after July 1, 1975. Transactions entered into before July 1, 1975, and not extended or renewed after that date, and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the amendment or repeal has not occurred.

The Bill does not amend this subsection. As amended by the Bill, Tenn. Code Ann. § 68-28-102 suggests that the Uniform Act would apply to rental agreements in every county where it applies going back to July 1, 1975. Of course, by the terms of the Uniform Act, the counties within the four exempted population brackets are not currently subject to it. As we interpret the Bill, however, it is not intended to have a retroactive effect on rental agreements in counties within the four population brackets newly subject to the act. Section 5 of the Bill provides that “[t]his act shall take

effect July 1, 2008, the public welfare requiring it.”¹ Statutes are presumed to apply prospectively in the absence of clear legislative intent to the contrary. *See, e.g., State v. Thompson*, 151 S.W.3d 434, 442 (Tenn. 2004); *Nutt v. Champion International Corporation*, 980 S.W.2d 365, 368 (Tenn. 1998). For these reasons, we assume that the Bill is intended to apply prospectively beginning July 1, 2008.

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¹ As passed in 1975, the Uniform Act only applied to counties within a population bracket of 200,000 or more under the 1970 federal census or any subsequent census. The 1992 act deleted the number “200,000” from Tenn. Code Ann. § 66-28-102(a) and substituted “68,000.” 1992 Tenn. Pub. Acts Ch. 995, § 1. Subdivision (b), therefore, remained unchanged. But, like the Bill, the 1992 act generally became effective July 1 after its passage. *Id.* at § 7.