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April 3, 2008

Opinion No. 08-80

Constitutionality of Exclusions from Uniform Residential Landlord and Tenant Act

QUESTION

Senate Bill 2885/House Bill 2746 would amend the Uniform Residential Landlord and Tenant Act, Tenn. Code Ann. §§ 66-28-101, *et seq.*, to make counties within four population brackets subject to the act. Counties within these brackets are excluded from coverage of the act under 1992 Tenn. Pub. Acts Ch. 995. These exclusions are codified in Tenn. Code Ann. § 66-28-102(a)(2). Do these exclusions violate equal protection?

OPINION

Absent a rational basis for the exclusions, they are unconstitutional. Legislative history indicates that these counties were excluded at the request of local officials in these counties. A trial court has rejected this as a rational basis for excluding Sullivan County from the Uniform Act. We can conceive of no other rational basis for treating landlords and tenants living in the counties within the four brackets differently from those in other counties subject to the Uniform Act. Although this precedent is not binding on other courts of this state, we think other courts are likely to conclude that the exclusions violate Article XI, Section 8, of the Tennessee Constitution.

ANALYSIS

This opinion concerns the constitutionality of Tenn. Code Ann. § 66-28-102(a)(2) and (d), which permanently excludes counties within four population brackets from the Uniform Residential Landlord and Tenant Act, Tenn. Code Ann. §§ 66-28-101, *et seq.* (the "Uniform Act"). Tenn. Code Ann. § 66-28-102(a) 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	nor more than
80,000	83,000
92,200	92,500
118,400	118,700
140,000	145,000

Subsection (d) of Tenn. Code Ann. § 66-28-102 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.

In fact, counties in the four population brackets were already permanently excluded under (a)(2). The statutory wording "or any subsequent federal census" allows a particular county to grow into, but not out of, the population classification so established. Op. Tenn. Att'y Gen. 03-121 (Sept. 24, 2003); *Hall v. State*, 124 Tenn. 235, 137 S.W. 400 (1911); *State v. Boyd*, 867 S.W.2d 330, 333 (Tenn. Crim. App. 1992), *p.t.a. dismissed* (1993). Your question is whether permanently excluding counties within the four population brackets under the 1990 census or any subsequent census from coverage under the Uniform Act is unconstitutional under principles of equal protection embodied in the United States Constitution and the Tennessee Constitution. Most directly pertinent in this regard is Article XI, Section 8, of the Tennessee Constitution, which provides:

> 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)).

Subsections (a) and (d) of Tenn. Code Ann. § 66-28-102 create two different classes of counties: those having a population of more than 68,000 under the 1970 federal census or any subsequent federal census, and a class of those that fall within the four narrowly defined brackets under the 1990 federal census or any subsequent census. Landlords and tenants in counties within these narrow brackets are not subject to the Uniform Act. 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).

The 1992 act first excluded counties within the four populations brackets. Legislative history of that act indicates the exclusions were added at the request of officials in the excluded counties. House Session April 23, 1992 (remarks of Rep. Hubbard and Rep. Liles). There is a strong presumption in favor of the constitutionality of acts passed by the legislature. *See, e.g., Bozeman v. Barker,* 571 S.W.2d 279, 282 (Tenn. 1978); *West v. Tennessee Housing Development Agency,* 512 S.W.2d 275, 279 (Tenn. 1974). The burden of proof rests on one challenging the constitutionality of the statute to rebut the presumption that the act is constitutional. *Gallaher v. Elam,* 104 S.W.3d 455, 460 (Tenn. 2003).

As the request notes, the Sullivan County Law Court has found the permanent exclusion of Sullivan County from the Uniform Act to be unconstitutional. *Bouchillon v. Hough,* No. C36195(M) (Sullivan County Law Court December 20, 2005). Representatives of this Office defended the constitutionality of the exclusion in that case. But the Court found that the exclusion was not supported by a rational basis. The Court elided subsection (d) permanently excluding Sullivan County from the Uniform Act.

The Court's ruling was not appealed and is not binding on other courts of this state. But we think another court would probably find that the exclusion of counties within the four population brackets under the 1990 census or any subsequent federal census is unconstitutional because it is not supported by a rational basis. *See, e.g., 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 plaintiff challenged the 1975 Uniform Act that extended only to counties with a population of 200,000 or more under the 1970 census or any subsequent federal census. The Court upheld the classification, first, because it was open and other counties would grow into it; and, second, because there was a rational basis for the classification in light of the need for more exacting housing laws in more densely populated areas. By contrast, the court in *Bouchillon* rejected the request of local officials within the county as a rational basis for excluding counties within the brackets. We can conceive of no other rational basis for treating landlords and tenants living in the counties within the four narrow population brackets differently from those in other counties of the same general size that are subject to the Uniform Act. For this reason, we think a court would find that the four-county exclusion violates Article XI, Section 8, of the Tennessee Constitution.

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