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Opinion No. 09-96

Constitutionality of House Bill 1541 creating criminal offense of aggravated assault of transportation system employees

QUESTION

Whether proposed legislation is constitutional that would classify as an aggravated assault intentionally causing the physical injury of a public or private transportation system employee while the employee is performing an assigned duty on or related to the operation of a transit vehicle.

OPINION

Yes. The proposed legislation is reasonably related to legitimate governmental ends, provides fair notice to citizens of prohibited activities, and inflicts no cruel or unusual punishment.

ANALYSIS

House Bill 1541 proposes to amend Tenn. Code Ann. § 39-13-102, which defines the criminal offense of aggravated assault. Specifically, the proposed legislation would create new liability as follows:

> A person commits aggravated assault who, with intent to cause physical injury to an employee of a transportation system, public or private, whose operation is authorized by title 7, chapter 56, causes physical injury to such employee while such employee is performing duty on, or directly related to, the operation of a transit vehicle.

The legislation further provides that this offense is a Class A misdemeanor.

Appellate courts in Tennessee are charged with upholding the constitutionality of statutes wherever possible. *State v. Lyons*, 802 S.W.2d 590, 592 (Tenn. 1990). Thus, when reviewing a statute for a possible constitutional infirmity, the courts "indulge every presumption and resolve every doubt in favor of constitutionality." *Vogel v. Wells Fargo Guard Servs.*, 937 S.W.2d 856, 858 (Tenn. 1996). Here, we assess the proposed legislation against potential challenges based on equal protection and substantive due process, the due process requirement that a statute provide fair notice of prohibited conduct, and the prohibition on cruel and unusual punishments.

A. Equal protection & substantive due process

The Fourteenth Amendment to the United States Constitution and both Article I, § 8 and Article XI, § 8 of the Tennessee Constitution provide for equal protection under the law. Equal protection constitutional provisions guarantee that "'all persons similarly circumstanced shall be treated alike.'" *Tennessee Small Sch. Sys. v. McWherter,* 851 S.W.2d 139, 153 (Tenn. 1993) (quoting *F.S. Royster Guano Co. v. Virginia,* 253 U.S. 412, 415 (1920)). Unless the legislative classification disadvantages a "suspect class" or interferes with the exercise of a "fundamental right," requiring strict scrutiny analysis, the challenged statute is examined under the "rational basis test." *State v. Tester,* 879 S.W.2d 823, 828 (Tenn. 1994). Similarly, unless a statute implicates a fundamental right, it will comport with substantive due process under both the federal and state constitutions if it "bears 'a reasonable relation to a proper legislative purpose' and is 'neither arbitrary nor discriminatory.'" *Riggs v. Burson,* 941 S.W.2d 44, 51 (Tenn. 1997).

Under this standard, if some reasonable basis can be found for the classification, or if any state of facts may reasonably be conceived to justify it, the classification will be upheld. *Harrison v. Schrader,* 569 S.W.2d 822, 825 (Tenn. 1978). "The burden of showing that a classification is unreasonable and arbitrary is placed upon the individual challenging the statute; and if any state of facts can reasonably be conceived to justify the classification or if the reasonableness of the class is fairly debatable, the statute must be upheld." *Id.* at 826.

The proposed legislation burdens those who intentionally injure employees of a transit system. Such persons are not members of a suspect class, nor does their conduct implicate the exercise of a fundamental right. Accordingly, the legislation would be reviewed under the rational basis standard.

Reasonable bases for the proposed legislation are readily envisioned. The legislature may reasonably afford particular protection from assaults to those operating vehicles of public transportation, "whose occupations render them uniquely vulnerable to crimes of violence." *See California v. Raszler*, 215 Cal. Rptr. 770, 774 (Cal. Ct. App. 1985). Similarly, the legislature may conclude that the public welfare is enhanced by uninterrupted operation of the transit system and accord greater protection to those who perform these services. *See, e.g., Illinois v. Cole*, 362 N.E.2d 432, 435 (Ill. App. Ct. 1977) (rejecting due process and equal protection challenges to statute that classified a simple battery occurring on the public way as an aggravated battery); *Soverino v. Florida*, 356 So.2d 269, 271-72 (Fla. 1978) (upholding on equal protection grounds statute that punished more stringently those who commit assault or battery upon law enforcement officers or firefighters, stating "contrary to appellant's assertion that the legislature has created 'an elite class of untouchables,' in reality it merely has passed a law which fosters the public safety and welfare"); *Florida v. Bailey*, 360 So.2d 772, 773 (Fla. 1978) (upholding same statute on due process grounds). Because these conceivable legislative purposes are legitimate, and creating an offense of aggravated assault is reasonably related to those ends, the proposed legislation will pass muster under equal protection and substantive due process.

B. Vagueness

The due process guaranteed by the Fourteenth Amendment to the United States Constitution and Article 1, Section 8 of the Tennessee Constitution additionally requires that a statute be sufficiently precise to provide both fair notice to citizens of prohibited activities and minimal guidelines for enforcement to police officers and the courts. *State v. Torres*, 82 S.W.3d 236, 246 (Tenn. 2002); *see Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). "The fair warning requirement, however, does not demand absolute precision in drafting criminal statutes, and, generally, a statute is unconstitutionally vague only if people of common intelligence must necessarily guess at the meaning of a statute and differ as to its application." *Torres*, 82 S.W.3d at 246 (internal quotation marks and alteration omitted).

In our opinion, the proposed legislation is not unconstitutionally vague. A vagueness challenge might, for example, be drawn to the bill's language that an employee must be performing a duty "directly related to, the operation of a transit vehicle" on the theory that the provision does not give reasonable notice of the type activity in which a victim must be engaged to support criminal liability. The legislature need not, however, catalogue every act which violates a statute; the fact that a statute applies in a wide variety of situations and must necessarily use words of general meaning does not render it unconstitutionally vague. *See State v. Lyons*, 802 S.W.2d 590, 592 (Tenn. 1990). Neither the terms "operation of a transit vehicle" nor "directly related to" are outside the comprehension of persons of common intelligence. *See e.g., United States v. Hsu*, 40 F.Supp.2d 623, 627 (E.D. Pa. 1999) ("We believe the term "related to or included in" is readily understandable to one of ordinary intelligence . . . ."). Accordingly, we conclude that the proposed legislation would survive a vagueness challenge.

C. Cruel and unusual punishment

Both the federal and state constitutions proscribe cruel and unusual punishment. *See* U.S. Const. amend. VIII; Tenn. Const. art. I, § 16. The legislature receives substantial judicial deference regarding its establishment of crimes and punishments, and, excepting capital offense appeals, challenges against that body's authority are rarely successful. *See State v. Harris*, 844 S.W.2d 601, 602 (Tenn. 1982). In this regard, the legislature is entitled to "distinguish among the ills of society which require a criminal sanction, and may punish them appropriately without violating constitutional limitations." *State v. Hinsley*, 627 S.W.2d 351, 355 (Tenn. 1982). In determining whether a punishment is cruel and unusual, the courts consider (1) whether the punishment conforms to contemporary standards of decency, (2) whether it is grossly disproportionate to the offense, and (3) whether it goes beyond that necessary to achieve a legitimate penal objective. *State v. Black*, 815 S.W.2d 166, 189 (Tenn. 1991). On review, a finding of "gross disproportionality" between a defendant's offenses and his punishment is necessary for further scrutiny. *See Harris*, 844 S.W.2d at 603.

The proposed legislation specifies that the new aggravated assault offense is a Class A misdemeanor. Misdemeanors of this class carry a term of imprisonment not to exceed eleven months, twenty-nine days, and/or a fine not to exceed $2,500. Tenn. Code Ann. § 40-35-

111(e)(1). We think it most unlikely that such a punishment would be viewed as "grossly disproportionate" to the offense of intentionally causing physical injury to a transit employee. In this regard, we note that simple assault is, in general, a Class A misdemeanor. *See* Tenn. Code Ann. § 39-13-101(b)(1). Because the proposed legislation re-denominates an assault on a transit employee as an aggravated one, but enhances neither the term of imprisonment nor the potential fine, the legislation is unlikely to be susceptible to challenge as imposing a cruel and unusual punishment.

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