

pact severely upon some businesses and quite favorably upon others may be saved through stringent deference to legislative judgment.¹⁵³⁶ So deferential is the classification that it denies the challenging party any right to offer evidence to seek to prove that the legislature is wrong in its conclusion that its classification will serve the purpose it has in mind, so long as the question is at least debatable and the legislature “*could rationally have decided*” that its classification would foster its goal.¹⁵³⁷ The Court has condemned a variety of statutory classifications as failing the rational basis test, although some of the cases are of doubtful vitality today

in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. Legislatures may implement their program step-by-step . . . in such economic areas, adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations. . . . In short, the judiciary may not sit as a superlegislature to judge the wisdom or undesirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines . . . ; in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.” *Id.* at 303–04.

¹⁵³⁶ The “grandfather” clause upheld in *Dukes* preserved the operations of two concerns that had operated in the Quarter for 20 years. The classification was sustained on the basis of (1) the City Council proceeding step-by-step and eliminating vendors of more recent vintage, (2) the Council deciding that newer businesses were less likely to have built up substantial reliance interests in continued operation in the Quarter, and (3) the Council believing that both “grandfathered” vending interests had themselves become part of the distinctive character and charm of the Quarter. 427 U.S. at 305–06. *See also* *Friedman v. Rogers*, 440 U.S. 1, 17–18 (1979); *United States v. Maryland Savings-Share Ins. Corp.*, 400 U.S. 4, 6 (1970).

¹⁵³⁷ *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 461–70 (1981). The quoted phrase is at 466 (emphasis by Court). Purporting to promote the purposes of resource conservation, easing solid waste disposal problems, and conserving energy, the legislature had banned plastic nonreturnable milk cartons but permitted all other nonplastic nonreturnable containers, such as paperboard cartons. The state court had thought the distinction irrational, but the Supreme Court thought the legislature could have believed a basis for the distinction existed. Courts will receive evidence that a distinction is wholly irrational. *United States v. Carolene Products Co.*, 304 U.S. 144, 153–54 (1938).

Classifications under police regulations have been held valid as follows:

Advertising: discrimination between billboard and newspaper advertising of cigarettes, *Packer Corp. v. Utah*, 285 U.S. 105 (1932); prohibition of advertising signs on motor vehicles, except when used in the usual business of the owner and not used mainly for advertising, *Fifth Ave. Coach Co. v. New York*, 221 U.S. 467 (1911); prohibition of advertising on motor vehicles except notices or advertising of products of the owner, *Railway Express Agency v. New York*, 336 U.S. 106 (1949); prohibition against sale of articles on which there is a representation of the flag for advertising purposes, except newspapers, periodicals and books, *Halter v. Nebraska*, 205 U.S. 34 (1907).

Amusement: prohibition against keeping billiard halls for hire, except in case of hotels having twenty-five or more rooms for use of regular guests. *Murphy v. California*, 225 U.S. 623 (1912).

Attorneys: Kansas law and court regulations requiring resident of Kansas, licensed to practice in Kansas and Missouri and maintaining law offices in both States, but who practices regularly in Missouri, to obtain local associate counsel as a condi-