SUPREME COURT OF KENTUCKY
NO. 2023-SC-0498-DG

RUSSELL COLEMAN, ATTORNEY GENERAL, ON BEHALF OF THE COMMONWEALTH OF KENTUCKY — APPELLANT

V.

ON MOTION FOR DISCRETIONARY REVIEW FROM COURT OF APPEALS, CASE NO. 2022-CA-2816

APPEAL FROM JEFFERSON CIRCUIT COURT, 22-CI-2816

JEFFERSON COUNTY BOARD OF EDUCATION, ET AL. — APPELLEES

BRIEF OF AMICI CURIAE, IMPETUS FOR A BETTER LOUISVILLE (IMPETUS, INC.) AND GREATER LOUISVILLE, INC. (LOUISVILLE AREA CHAMBER OF COMMERCE)

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Certificate of Service

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/s/ Bethany A. Breetz
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INTRODUCTION

Amicus curiae Impetus for a Better Louisville (Impetus, Inc.) brings together top decision-makers from business, higher education, faith communities, and the social services to share accountability for Louisville's future. This team of leaders work together to pursue major opportunities and solve major problems facing Louisville now and for the benefit of generations to come in order that, by 2030, Louisville is a city of great economic opportunity built on a foundation of inclusion and equity for all its citizens. A top priority is to support Jefferson County Public Schools transformation into one of the most effective public-school systems in the country.

Amicus curiae Louisville Area Chamber of Commerce, Inc. d/b/a Greater Louisville Inc. (GLI) is the Metro Chamber of Commerce representing a 15-county bi-state region in Kentucky and Southern Indiana. GLI's mission is to shape the economic future of Greater Louisville through job creation and growth, and community investment. GLI's vision is to create a region with a growing economy where businesses succeed and people thrive.

The goal of amici here is to: (1) demonstrate the lower courts' holdings are contrary to a long line of case law allowing the General Assembly to enact legislation providing municipal powers to Louisville—once the only city of the first class and now the only consolidated local government in Kentucky—and enabling its local government; (2) discuss why this Court's ultimate analysis and opinion should not impair the General Assembly's ability to enact legislation based on proper classification, which may only be applicable to a class of one. The amici are not taking a position on whether the statute at issue is or is not unconstitutional.

STATEMENT OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE

The lower courts erroneously ruled that because the statute at issue applied to a class of one, it violated Section 59 of Kentucky's Constitution. The trial court ruled that the legislation in question is "special legislation" because it applies only to Jefferson County. (R.221-222.) The court also held that, to the extent the legislation "singles out Jefferson County," it "violated Jefferson County residents' right to equal protection under the law and is therefore unconstitutional on that basis as well." (R.222.) The Court of Appeals affirmed the "special legislation" holding, concluding that "the challenged provisions were intended to apply only to a specific locale, not a class, and consequently are local and special legislation which is prohibited under Sections 59 and 60 of the Kentucky Constitution." (Opinion, 26.) The Court of Appeals found the equal protection analysis moot and did not address it. (*Id.*)

The lower courts' holdings are, however, contrary to a long line of case law allowing the General Assembly to enact legislation providing municipal powers to and enabling local government in Louisville, which was long the only first-class city and is now the only consolidated local government in Kentucky. Just a few of the many examples of the City of Louisville working with the legislature to enable Louisville to meet its specific needs and challenges and pursue unique opportunities for economic growth benefitting Louisville and the entire Commonwealth include: (1) bipartisan legislation to foster transformational change in the West End of Louisville, 2021 Kentucky General Assembly House Bill 321, West End Opportunity Partnership; (2) bipartisan legislation to build two bridges and fix Spaghetti Junction, Ohio River Bridges Project Case Study, Gov. Steve Beshear signs Ohio River bridges bill; and (3) unifying

Louisville and Jefferson County to create Louisville Metro. A 2008 Brookings Institute Study showed the work that needed to be done, and was being done, by a cadre of unified business and political leaders from Louisville, Jefferson County, and the Commonwealth as a whole. Louisville Metro Case Study, Brookings Institute.

ARGUMENT

It is overly simplistic to declare a statute to be "special legislation" if it affects only Louisville. As the cases below demonstrate, legislation empowering or benefitting Louisville only is necessary and proper in myriad situations. Accordingly, amici first provide a brief summary of Kentucky case law regarding "special legislation" and "partial legislation" under Kentucky Constitution Sections 59 and 3, applying to particular places or persons as distinguished from classes of places or persons.

However the Court rules in this case, its analysis and ultimate opinion should reflect that such classification is both allowed under the Constitution and that legislation applicable only to first-class cities (or to counties including first-class cities) is—frequently—requested and needed by the City of Louisville.

A. Kentucky's Constitution prohibits "special legislation" and "partial" legislation.

Before the Constitutional Convention of 1890–91, Kentucky had no constitutional check on the General Assembly's ability to pass special legislation. For example, in 1878, the General Assembly passed a law banning the playing of baseball—but only in Kenton County, and only on Sundays. Act of Apr. 2, 1878, ch. 705, vol 2., 1877 Ky. Acts 247. In 1884, the General Assembly banned the netting of partridges, but only in Laurel County. Act of Feb. 20, 1884, ch. 195, vol. 1, 1883 Ky. Acts 305. The General Assembly's unchecked ability to pass laws that impacted only one portion of the

Commonwealth resulted in a patchwork legal system in which conduct was outlawed or subjected to different penalties based frequently on nothing more than where in the Commonwealth the act was committed. This system blighted the Judiciary with "confusion" and left the people "not knowing the law." OFFICIAL REPORTS OF THE PROCEEDINGS AND DEBATES IN THE CONVENTION, at 1291 (1891). The Constitutional Convention's solution came in the form of Kentucky Constitution Section 59, mandating that "[t]he General Assembly shall not pass local or special acts concerning any" of twenty-nine enumerated subjects and purposes. KY. CONST. § 59.

Within years of Section 59's adoption, cases seeking to challenge laws as special legislation began to proliferate. An early example is *Stone v. Wilson*, 39 S.W. 49, 50 (Ky. 1897), concerning the requirement that certain government employees in counties with a population between 40,00 and 75,000 report certain compensation data or else pay a fine and vacate public office. Although the law only applied at that time to a class of one—Kenton County—Kentucky's highest court deemed the law to not be in violation of Section 59 because "'[l]ocal' or 'special' legislation, according to the well-known meaning of the words, applies *exclusively* to specific or particular places, or special and particular persons, and is distinguished from a statute intended to be general in its operation, and that relating to classes of persons or subjects." *Id.* (emphasis added). *See also Winston v. Stone,* 43 S.W. 397, 399 (Ky. 1897) (applying same analysis to Jefferson County, "the only county in the state having a population in excess of 75,000.").

At first, Kentucky's courts handled Section 59 cases with uniformity. For example, Kentucky's high court upheld a whiskey tax imposed on the liquor industry that was challenged as special legislation. *Comm. v. E.H. Taylor, Jr., Co.*, 41 S.W. 11 (Ky.

1897). In holding the statute constitutional, the Court ruled that Section 59's prohibition was not implicated by the statute because it did not apply "alone to the [distiller], Franklin County, or to the Seventh congressional district," but instead "operated upon a multitude of property of like character, owned by persons all over the state." *Id.* at 15. Similarly, in *Singleton v. Comm.*, 175 S.W. 372, 373 (Ky. 1915), a statute making illegal the "driv[ing] or operat[ing] a motor vehicle without the knowledge and consent of the owner" was held to be constitutional:

> The purpose of section 59 of the Constitution was to prevent the Legislature from enacting legislation that would be applicable only to particular localities or particular persons or things as distinguished from other localities or persons or things through the state. For example, the Legislature could not . . . enact a law for the punishment of a designated crime in Henry county.

This Court recently recognized the test originally adopted as to whether particular legislation violated Section 59: "The original test for a violation of Section 59's prohibition on special and local legislation was simply 'special legislation applies to particular places or persons as distinguished from classes of places or persons.'" *Calloway Cnty. Sheriff's Dep't v. Woodall*, 607 S.W.3d 557, 567 (Ky. 2020), quoting *Greene v. Caldwell*, 186 S.W. 648, 654 (Ky. 1916).

Running parallel to the development of Section 59 jurisprudence was the development of equal protection jurisprudence (also called "partial/class legislation") under Section 3 of Kentucky's Constitution. Section 3 provides that "[a]ll men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men[.]" KY. CONST. § 3. For example, in *Safety Bldg. Loan Co. v. Ecklar*, 50 S.W. 50 (Ky. 1899), an interest rate statute was challenged as inequitably impacting certain types of businesses and

associations. When analyzing whether the statute constituted an equal protection violation under Section 3, the Court held that, "if the exercise of these powers puts the association into the same class and on a level with other corporations engaged in the business of lending money and selling stocks, then the same general laws should control the association as control other corporations engaged in the same or similar business." *Id.* at 51. That is, business entities in the same class needed to have been treated equally under the law. In so holding, the Court determined that, in the equal protection context, "the true test of whether a law is a general one, in the constitutional sense, is not alone that it applies equally to all in a class, —though that is also necessary—but, in addition, there must be distinctive and natural reasons inducing and supporting the classification." *Id.*

Early cases analyzed Section 3 and Section 59 challenges separately. *See, e.g., E.H. Taylor*, 41 S.W. at 14. Over time, however, opinions addressing Section 3 and Section 59, which both used the term "special" legislation in their analyses, albeit in different contexts, began conflating the Section 3 and Section 59 tests. *Calloway Cnty. Sheriff's Dept. v. Woodall*, 607 S.W.3d 557, 567 (Ky. 2020) ("[W]ith the passage of time, the clear distinction between special/local laws and partial/class laws became muddled," apparently because "partial/class legislation was short-handedly referred to as 'special legislation.'"). Presumably because of the overlapping use of the term "special legislation," the *Ecklar* test under Section 3 began to appear in cases analyzing constitutionality under Section 59. *See, e.g., Schoo v. Rose*, 270 S.W.2d 940 (Ky. 1954).

The *Schoo* opinion concerned an act requiring anyone other than certain common carriers to "submit evidence to the County Court Clerk that he has paid his personal

property taxes." *Id.* at 941. Notwithstanding that the act was challenged under Section 59 and not Section 3, the Court applied the *Ecklar* Section 3 equal protection test and struck down the act after finding that the Commonwealth's rationale for placing different requirements on common carriers was insufficient "to support a classification by which the Act is applicable to one class and inapplicable to the other." *Id.* at 942. The Court held the law to be special legislation—not because its application was limited "to specific or particular places, or special and particular persons," as Section 59 mandates—but because it did not find "distinctive and natural reasons inducing and supporting the classification," as Section 3 mandates. Despite the test it applied being rooted in Section 3, *Schoo* concluded that the law violated Section 59. *Id.*

After *Schoo*, Section 3 and Section 59 analyses continued to be muddled and conflated. *See, e.g. Elk Horn Coal Co. v. Cheyenne Resources, Inc.*, 163 S.W.3d 408, 418–19 (Ky. 2005) (holding that "the equal protection provisions of the Kentucky Constitution are enhanced by Section 59 and 60" and that relationship permitted certain types of equal protection claims to be asserted under a "heightened standard.").

In 2020, this Court undertook the challenge of detangling over a century of confusion regarding "special legislation." *Woodall, supra*, 607 S.W.3d 557. The Court concluded that Section 3 and Section 59 jurisprudence had been improperly conflated beginning with *Schoo*, and reverted the test for Section 59 back to its original formulation:

> [F]or the sake of clarity going forward, state constitutional challenges to legislation based on classification succeed or fail on the basis of equal protection analysis under Section 1, 2, and 3 of the Kentucky Constitution. As for analysis under Sections 59 and 60, the appropriate test is whether the statute applies to a particular individual, object or locale.

Id. at 573. In doing so, the Court acknowledged a concern that its reversion to the "simple test" would grant legislators room "to draft around the Section 59 prohibition by avoiding express reference to a specific person, entity or locale but articulating criteria for a statute's application that as a practical matter only a specific person, entity or locale can satisfy, essentially reverting to the ways of the 1870s and 1880s." *Id.* That concern is, however, appropriately addressed through "a more rigorous analysis with respect to classification legislation." *Id.*[1]

B. Legislation based on city classification is analyzed under a different rubric.

Although some of the cases discussed in *Woodall* concerned a different type of classification—the classification of cities under Section 156 of the Constitution—the specific analysis applicable to "special legislation" based on city classification was not at issue, and thus not discussed, in *Woodall*.[2] The appropriate analysis for legislation based on city classification is, however, critical here.

The Kentucky Constitution has long allowed classification of cities. Former Section 156 (resulting from Kentucky's 1890-91 Constitutional Convention) directed that

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[1] In conducting that "rigorous" equal protection analysis with respect to class legislation, cases addressing legislation concerning counties with various classes of cities would likely be particularly relevant here. *See, e.g., Droege v. McInerney*, 87 S.W. 1085, 1086 (Ky. 1905); *Shaw v. Fox*, 55 S.W.2d 11 (Ky. 1932); *Allison v. Borders*, 187 S.W.2d 728 (Ky. 1945); *Jefferson Cnty. Fiscal Ct. v. Trager*, 194 S.W.2d 851, 854 (Ky. 1946); *Sims v. Bd. of Ed. of Jefferson Cnty.*, 290 S.W.2d 491 (Ky. 1956); *Second St. Properties, Inc. v. Fiscal Ct. of Jefferson Cnty.*, 445 S.W.2d 709 (Ky. 1969).

[2] A recent law review article noted, with regard to "the interplay between Section 156 and Section 59," that "the legislature may validly classify, unless the court determines the classification employed bears no relation to a proper role of local government. With that determination, the legislation is improper local legislation, albeit in the form of class legislation," typically relating to Louisville. Laurance B. VanMeter, *Reconsideration of Kentucky's Prohibition of Special & Local Legislation*, 109 Ky. L.J. 523, 573 n.315 (2012). "Unfortunately, language from these local classification cases has frequently found its way into non-local cases," further exacerbating the above confusion. *Id.*

cities and towns be based on population and that "[t]he organization and powers of each class shall be defined and provided for by general laws, so that all municipal corporations of the same class shall possess the same powers and be subject to the same restrictions." *Louisville/Jefferson Cnty. Metro Gov't Waste Mgmt. Dist. v. Jefferson Cnty. League of Cities, Inc.*, 626 S.W.3d 623, 628 (Ky. 2021) (quoting former §156). In 1994, Section 156 was replaced with Section 156a, allowing the General Assembly to classify "cities as it deems necessary based on population, tax base, form of government, geography, or any other reasonable basis and enact legislation relating to the classifications. All legislation relating to cities of a certain classification shall apply equally to all cities within the same classification." *Id.* (quoting current §156a).

1. Legislation regarding first-class cities may be constitutional although only Louisville is in the class.

In 1898, Kentucky's high court analyzed the combined impact of Section 59 (prohibiting "special legislation") and Section 156 (classifying cities "for the purpose of organization and government"). *City of Louisville v. Kuntz*, 47 S.W. 592 (Ky. 1898). For a statute relating to a class of cities not to be considered "local," it must "be applicable to all the members of the class to which it relates, and must be directed to the existence and regulation of municipal powers and to matters of local government." *Id.* at 593 (citation omitted). Among the "subjects upon which classification of cities may be necessary" are: "the establishment, maintenance, and control of an adequate police force for the public protection; the preservation of the public health; protection against fire; the provision of an adequate water supply; the paving, grading, curbing, and lighting of the public streets; the regulation of public markets and market houses, and of docks and wharves; the erection and care of public buildings and other municipal improvements." *Id.* Thus,

cities "are divided with reference to their own peculiar characteristics and needs; and the legislation to which they are entitled by virtue of such provision is simply that which relates to the peculiarities and needs which induced the division." *Id.* In this way, each class may be provided with legislation appropriate to it, without imposing the same provisions on other classes, to which they would be unsuitable and burdensome." *Id.*

Subsequently, in response to Section 59 challenges to legislation regarding the class of cities that included only Louisville, Kentucky's high court repeatedly ruled that such legislation was constitutional. For example, *Miller v. City of Louisville*, 99 S.W. 284, 284–85 (Ky. 1907), concerned a challenge to a statute enabling "cities of the first class to construct a comprehensive system for the disposition of sewage," on the grounds that, despite its facially neutral state-wide applicability, the statute violated Section 59 because, as applied, it only benefitted Louisville, the sole first-class city in Kentucky. *Id.* at 285.

The court found the legislation constitutional, holding that the statute did not violate Section 59 because it was applicable to an entire class of cities, not to one city in particular—notwithstanding that Louisville was then the only first-class city in Kentucky. "The Constitution authorizes the General Assembly to divide the cities of the state into classes, and to provide for the government of each class. So long as there is only one city in any class, all legislation for that class of cities must of necessity be limited to the one city in the class." *Id.* Because "Louisville is now the only city of the first class, it is the only city that can take advantage of the act. . . . . If we had three cities of the first class, the act would be applicable to all of them, but so long as we only have one city of the

first class the Legislature can only provide for its government by general laws governing cities of the first class." *Id.*

Similarly, in *Kirch v. City of Louisville*, 101 S.W. 373 (Ky. 1907), the Court held that legislation creating water boards for first-class cities was constitutional even though it only applied to Louisville. "It is true that Louisville is the only city in this class, due to the fact, solely, that it was the only city in Kentucky having a population of 100,000 when the Constitution was adopted." *Id.* It was well known at that time "that the first division or class of the cities would contain none other than the city of Louisville, and the members of the Constitutional Convention must therefore have known that all legislation looking to the management and conduct of affairs in cities of the first class would be applicable to the city of Louisville alone," meaning that, simply "because of this fact, it cannot be said that legislation for the benefit of and made applicable alone to cities of the first class is special legislation." *Id.* "[S]o long as legislation enacted for the management and conduct of municipal affairs applies to all that now are or may be embraced within a given class, it is not in violation of section 59 of the Constitution, in that it can be classed as special legislation." *Id.*

Next, in *Klein v. City of Louisville*, 6 S.W.2d 1104, 1106 (Ky. 1928), construing section 59 "together with section 156," the Court held that a statute authorizing first-class cities to construct and operate bridges was constitutional. Noting that "no distinction has been drawn between acts granting governmental powers to municipalities and acts granting necessary incidental municipal powers under section 59," the Court held that the power to be provided "is not confined to strictly governmental matters"; rather, the only restriction is that the powers "shall be 'by general law,' which "logically implies that

each class may be granted such powers as are necessary or incidental to the proper conduct and control of its affairs." *Id.* at 1106–07. "A law for the government of cities is general when it applies to cities of a class." *Id.* at 1107 (citation omitted). The Court concluded that, "even though the construction, operation, and control of a bridge by the city as here provided may not be the exercise of a governmental power in its strict sense, yet it is evident that such power is to be exercised for a public purpose, and that it is incidental to the government of the municipality, and, as it is granted to all cities of the same class, it is not forbidden by subsection 29 of section 59 of the Constitution," a conclusion unaffected "by the fact that there is but one city in the class affected by the legislation." *Id.* Further, "it is evident that a bridge of this character could not be constructed and maintained by the smaller cities, and a general law applying to all is impracticable." *Id.* "Under such circumstances, it was for the Legislature to say which class or classes was entitled to the exercise of such power, even if it should appear that some other class might have been included." *Id.*

In subsequently explaining the allowable "differentiations" due to the interplay of sections 156 and 59, Kentucky's high court held that the Legislature has "the right and the authority to enact different charters for each class of cities and to confer different governmental functions and powers upon each class, as well as the means and methods by which such rights might be exercised." *Logan v. City of Louisville*, 142 S.W.2d 161, 163 (Ky. 1940). There, the Court upheld as constitutional a statute making the state responsible for the proportionate cost of public improvements abutting state property in first-and third-class cities. In addition to merely affecting "the remedy by which the cost of such improvements might be realized, thereby presenting a question solely of local

government of the class of city to which the statute is made applicable," the Court noted that Louisville (a first-class city) and Frankfort (a third-class city) contained "practically all the state's property in the Commonwealth," which also provided "sufficient reasons" for the classes. *Id.*, at 164. *See also Veail v. Louisville and Jefferson County Metropolitan Sewer Dist.*, 197 S.W.2d 413, 415, 418 (Ky. 1946) (upholding statute "enabling" and "authorizing" first-class cities to create a sewer district even though "Louisville is now the only city of the first class."); *Dieruf v. Louisville & Jefferson County Bd. Of Health*, 200 S.W.2d 300, 302 (Ky. 1947) (upholding constitutionality of act allowing Louisville mayor to determine how to spend surplus bridge because, in "a long and unbroken line of cases," this court has held that, under Sections 59, 60, and 156, "an act of the General Assembly limited to a city of a certain class and pertaining to municipal affairs is valid as being general rather than local or special legislation.").

2. Legislation based on city classification is constitutional unless it does not relate to the city's corporate powers.

"[A]ll legislation not relating to the exercise of corporate powers, or to corporate offices and their powers and duties" "remains forbidden to cities, notwithstanding classification." *Kuntz*, 47 S.W. at 593. For example, there cannot be different rules of evidence, different rates of interest, or different laws of descent, in cities of different classes. *Id.* "The effect of classification must not be carried beyond its purpose as declared in the original classification laws. A law relating to any other subject, though embracing all the cities of any given class, or of all the classes into which cities are divided, is local and unconstitutional, if the subject be one upon which local or special legislation is forbidden." *Id.* at 594. Thus, a 6-month statute of limitations for actions

against a city contained in "charters of cities of the first class" was unconstitutional under an analysis of Sections 59 and 156. *Id.* at 592.

Decades after *Kuntz*, the Court held that a statute prohibiting—in 4th-class cities only—operation of poolrooms and bowling alleys where retail alcoholic liquors were sold was unconstitutional. *Mannini v. McFarland,* 172 S.W.2d 631, 631 (Ky. 1943). After noting that "the language of Section 156 is [] clear and unambiguous in saying that the authorized classification is for the purpose of organization and government," the Court noted that classification by city may, or may not, be relevant to the subject of the legislation:

> For certain purposes classification by population and its density are not only natural and logical, but any other basis would be unscientific and unsatisfactory. . . . But it was always pointed out, or plainly to be seen, that the legislation was also of a class which it was legitimate to classify upon the basis of population. On the other hand, instances have occurred where it was attempted to classify subjects by the sizes of cities where the question of the density of population had no appreciable relevancy to the subject.

172 S.W.2d 633, quoting *James v. Barry*, 128 S.W. 1070, 1072 (Ky. 1910).

Subsequently, the court reiterated that the "Constitution permits special legislation that is made local to a particular class of city where it pertains to the organization and government of such cities, but the Constitution prohibits other legislation that "does not bear some relevant and logical relation to the classification of cities." *City of Louisville v. Klusmeyer*, 324 S.W.2d 831, 834 (Ky. 1959) (finding unconstitutional a statute imposing liability on property owners abutting sidewalks in first-class cities). "The 'bigness' of Louisville does not . . . afford a reasonable difference or a ground for the special legislation. All cities have sidewalks which any person may use for proper purposes." *Id.*

In holding unconstitutional a new procedure for transferring areas from one school district to another, the Court recognized that Section 156 "permits classification of cities upon the basis of size alone for the purpose of their organization or government and matters relating thereto. *Bd. of Ed. of Jefferson Cnty. v. Bd. of Ed. of Louisville*, 472 S.W.2d 496, 498 (Ky. 1971). Nevertheless, "classification of cities and counties by size and population is permissible only if the size and population of itself has an appreciable relevancy to the subject matter of the legislation." *Id.*

> When the subject-matter is purely one of municipal government, it is clearly competent for the Legislature to classify it alone upon number and density of population, as the Constitution implies if it does not expressly allow. When the subject is one that reasonably depends upon or affects the number and density of population as a correlative fact in the scheme of the particular legislation, then such classification is allowable. There are even perhaps other instances justifying such classification. But where the subject is one of general application throughout the state, and has been so treated in a general scheme of legislation, distinctions favorable or unfavorable to particular localities, and rested alone upon numbers and density of population, are invidious, and therefore offensive to the letter and spirit of the Constitution.

Id., 498–99.

In 2021, this Court addressed a statute modifying the composition of waste management boards in a "county containing a consolidated local government," which was aimed at Louisville Metro's regulation "requiring yard waste to be placed in paper bags" to "reduce waste going to landfills"; the regulation "was not, apparently, universally popular." *Louisville/Jefferson Cnty. Metro Gov't Waste Mgmt. Dist., supra*, 626 S.W.3d at 627. Although "the lower courts analyzed the issues primarily under Sections 59 and 60, the Court found Section 156a "dispositive." *Id.* at 628. "If legislation relating to local government is permitted by Section 156a, then it is obviously

constitutional. Conversely, if not permitted under this section, reference to other sections of the constitution is superfluous." *Id.*

C. Whether legislation based on city classifications is constitutional depends on whether it is permitted by Section 156a of the Constitution.

Under this Court's "simple test" in *Woodall*, whether legislation is constitutional under Section 59 depends on whether it applies "exclusively to particular places or particular persons." 607 S.W.3d at 573. That inquiry is all that is necessary for most legislation that might be "special" under Section 59. The next inquiry (which used to be part of the Section 59 test, and is now a Section 3 test) is whether it complies with equal protection.

This "simple test" under Section 59 does not, however, apply when the classification at issue is a city classification under Section 156a of Kentucky's Constitution. *See Louisville/Jefferson Cnty. Metro Gov't Waste Mgmt. Dist.*, 626 S.W.3d at 627. Thus, Rule 59's test discussed in *Woodall* does not apply here.

Rather, the proper inquiry when legislation is based on city classification, like the legislation here concerning "a county school district in a county with a consolidated local government," KRS 160.370(2), is whether it is legislation relating to local government under Section 156a. Under the Section 156/156a test for the last hundred years, legislation based on city classification is constitutional if it is: (1) "applicable to all the members of the class to which it relates," and (2) "directed to the existence and regulation of municipal powers and to matters of local government." *Kuntz*, 47 S.W. at 593. When legislation is based on a classification applicable only to Metro Louisville, the only inquiry is, thus, whether the legislation is permissible under Kentucky Constitution

Section 156a. *Louisville/Jefferson Cnty. Metro Gov't Waste Mgmt. Dist., supra.*, 626 S.W.3d at 627; *Kuntz*, 47 S.W. at 593.

CONCLUSION

The City of Louisville depends on legislation based on city classifications that may, at the time they are enacted, apply only to Louisville, the Commonwealth's only first-class city and one consolidated local government. Under Kentucky Constitution Section 156a, legislation that applies to all of a class of cities is not unconstitutional simply because Louisville is the only city in the class. The constitutionality of legislation based on city classification relates to the existence and regulation of municipal powers and matters of local government.

As stated above, amici does not take a position on how the Court should resolve this case. Rather, amici's interest is to: (1) provide the Court with the background of "special legislation" and city classifications; and (2) explain why this case can be resolved without damaging the legislature's ability to enact legislation based on city classifications that include only Louisville.

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WORD COUNT CERTIFICATE

This brief complies with the word limit of RAP 341(4) because, excluding the parts exempted by RAP 15(D), this brief contains 4,876 words.

/s/ Bethany A. Breetz
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