Supreme Court of Kentucky

Case No. 2019-SC-520

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT WASTE MANAGEMENT DISTRICT, *et al.* — *Appellants*

v.

Court of Appeals Case Nos. 2018-CA-150, 2018-CA-151, 2018-CA-154, 2018-CA-156, 2018-CA-158, 2018-CA-160

JEFFERSON COUNTY LEAGUE OF CITIES, INC., *et al.* — *Appellees*

APPELLEE BRIEF OF COMMONWEALTH OF KENTUCKY EX REL. ATTORNEY GENERAL DANIEL CAMERON, JEFFERSON COUNTY LEAGUE OF CITIES, INC., CITY OF JEFFERSONTOWN, & NATIONAL WASTE & RECYCLING ASSOCIATION

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CERTIFICATE OF SERVICE

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STATEMENT CONCERNING ORAL ARGUMENT

Because this appeal concerns the constitutionality of a Kentucky statute, oral argument should be held.

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COUNTERSTATEMENT OF THE CASE[1]

Generally speaking, solid waste is "any garbage, refuse, sludge, and other discarded material." KRS 109.012(12). Historically, state and local governments have taken the lead in collecting and disposing of solid waste. *See* 42 U.S.C. § 6901(a)(4) ("[T]he collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies . . . .").

To this end, the General Assembly passed what is now KRS Chapter 109. Although the General Assembly primarily vested decision-making authority for solid waste management in counties, the General Assembly envisioned a role for cities. KRS 109.011(6), (11); KRS 109.260. The General Assembly also recognized that counties may wish to delegate solid waste management to a specialized entity. The General Assembly therefore gave counties, either alone or together, the authority to create what is known as a waste management district, which is managed by a board of directors. KRS 109.115(1)–(2); KRS 109.120(1).

In 2017, the General Assembly decided, as a matter of public policy, to alter this structure to give cities in a county with a consolidated local government a greater voice in solid waste management.[2] The General Assembly accomplished

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[1] The above-listed Appellees do not accept the Appellants' statement of the case. *See* CR 76.12(4)(d)(iii).

[2] At present, Louisville Metro is the only consolidated local government in the Commonwealth. A consolidated local government combines the "governmental and corporate functions vested in any city of the first class" with the

this with 2017 House Bill 246. Important for present purposes, HB 246's reforms relate to the relationship between and among local-government units, not to the substance of solid waste management. That is to say, HB 246 concerns the *who* of solid waste management, not the *how* of it.

HB 246 shifts decision-making authority for solid waste management to cities in a county with a consolidated local government in four primary ways:

- Section 1 of HB 246 curtails the ability of a county or waste management district in a county with a consolidated local government to "prohibit or otherwise restrict materials recovery by . . . any municipality located within the geographic area of the county or waste management district created to serve that county." 2017 Ky. Acts, ch. 105, § 1(3)(g) (codified at KRS 109.041(3)(g)).

- Also in Section 1, HB 246 limits the ability of a consolidated local government or waste management district therein to restrict a city from using a solid waste management facility or from charging fees based on the city's solid waste stream "if the [city's] solid waste stream is in conformity with state and federal law for the use of the solid waste management facility receiving the waste." 2017 Ky. Acts, ch. 105, § 1(14) (codified at KRS 109.041(14)).

"governmental and corporate functions of the county containing the city." KRS 67C.101(1); *see also Pinchback v. Stephens*, 484 S.W.2d 327, 329 (Ky. 1972) ("[C]onsolidated city-county governments have existed for years in other states." (citation omitted)).

- Section 3 of HB 246 directs that, in certain circumstances, the rules and regulations passed by the board of a waste management district in a consolidated local government "shall not be enforceable within the boundaries of [a] city until approved by the legislative body of the city." 2017 Ky. Acts, ch. 105, § 3(3) (codified at KRS 109.120(3)).

- And in Section 4, HB 246 gives cities in a consolidated local government the ability to opt out of the solid waste management plan adopted by a waste management district so long as the city complies with all applicable laws and regulations. 2017 Ky. Acts, ch. 105, § 4(2) (codified at KRS 224.43-340(2)).

In addition to granting authority to cities in a county with a consolidated local government, HB 246 also gives those cities more representation on the board of the applicable waste management district. In particular, Section 2 of HB 246 restructures the make-up of the board such that the mayor, with the approval of the consolidated local government's legislative body, appoints seven members with specified qualifications to the board. 2017 Ky. Acts, ch. 105, § 2(4) (codified at KRS 109.115(4)). For example, one of the members must be "submitted by the organization representing the largest amount of cities within the county which does not have statewide membership." *Id.*

HB 246 took effect on March 21, 2017. 2017 Ky. Acts, ch. 105, § 7 (emergency clause). Based almost entirely on the fact that Louisville Metro is the

only consolidated local government in the Commonwealth, Louisville Metro's Mayor Greg Fischer, Louisville Metro's waste management district (the "District"), and a member of the District's board sued to invalidate HB 246. [Vol. I, R. 24–48]. As relevant here, the Plaintiffs' complaint alleged that HB 246 violates the Constitution's special-legislation provisions in Sections 59 and 60. [Vol. I, R. 43–44].

On cross-motions for summary judgment, the circuit court invalidated HB 246 in part. [Tab 2[3]]. With respect to the Plaintiffs' special-legislation claim, the trial court applied the rule from *Louisville/Jefferson County Metro Government v. O'Shea's-Baxter, LLC*, 438 S.W.3d 379 (Ky. 2014), that "classifications based on population are unconstitutional" except in two circumstances: "(1) when the act relates to the organization or structure of a city or county government agency; and (2) when the classification has a reasonable relation to the purpose of the Act." [Tab 2 at 9].

Taking each exception in turn, the circuit court found that "to the extent that House Bill 246 restructures the administrative composition of [the District's] board in Section 2 of the bill, those provisions do not run afoul of the Kentucky Constitution." [*Id.*]. The circuit court therefore rejected the Plaintiffs' special-

[3] References to "Tab" are to the Appendix to the Plaintiffs' opening brief.

legislation challenge with respect to HB 246's changes to the District's board because those changes relate to the "organization or structure of a city or county government agency." [*Id.*].

All other challenged provisions in HB 246, the trial court reasoned, "deal with substantive issues of solid waste policy." [*Id.*]. The circuit court also concluded that these provisions violate Section 59 and 60 because they "do not bear any rational relationship to the purpose [of] the statutes governing solid waste disposal." [*Id.* at 10]. As evidence for this conclusion, the circuit court relied solely on *preexisting statutes*—not HB 246—to discern the applicable legislative purpose. [*Id.*].

The circuit court also found that HB 246 violates Section 156A of the Constitution. [*Id.* at 10–11]. The circuit court struck down HB 246 on this further basis even though the Plaintiffs failed to plead such a claim in their complaint. [Vol. I, R. 24–48]. The circuit court concluded that HB 246 violates Section 156A because "cities within Jefferson County are given the power to accept, reject, or deviate from the county solid waste plan, while that power is withheld from similarly situated cities in other counties." [*Id.* at 10–11].

On appeal, the Court of Appeals unanimously upheld HB 246 in full. *Jefferson Cty. League of Cities, Inc. v. Louisville/Jefferson Cty. Metro Gov't, Waste Mgmt. Dist.*, 2019 WL 3377396, at *7 (Ky. App. July 26, 2019). Like the circuit court,

the Court of Appeals applied the two-part test from *O'Shea's-Baxter*. *Id.* at *2. In particular, the Court of Appeals concluded that HB 246 is governmental in nature and thus constitutional under the first prong of that test. *Id.* at *5. The Court of Appeals explained that "[t]he establishment and powers of counties and waste management districts, as well as their powers for solid waste management, are clearly governmental activities." *Id.* It further reasoned that "[t]he establishment, rules, and regulations of county boards are clearly governmental activities." *Id.*

The Court of Appeals also rejected the Plaintiff's Section 156A argument. The Court of Appeals acknowledged that "the issue concerning the potential violation of Section 156a of the Kentucky Constitution was not initially raised by [the Plaintiffs] in their Complaint." *Id.* at *6. It nevertheless rejected this argument on the merits because the analysis under Section 156A is "akin" to that under the first part of the two-part test from *O'Shea's-Baxter*. *Id.* at *7.

The Plaintiffs thereafter moved for discretionary review, which the Court granted on February 12, 2020. The Commonwealth, through Attorney General Daniel Cameron, promptly moved to intervene to defend HB 246. *See* KRS 15.020. The Court granted this motion on April 24, 2020.

ARGUMENT

A lawsuit that asks the judiciary to invalidate a duly enacted statute is no

small matter. A statute expresses the public policy of the Commonwealth, as determined by the People's representatives in the General Assembly. Just like judges, legislators swear an oath to support Kentucky's Constitution. Ky. Const. § 228. For this simple reason, and because the General Assembly is a co-equal branch of government, a statute comes to court with a "strong presumption of constitutionality." *See Wynn v. Ibold, Inc.*, 969 S.W.2d 695, 696 (Ky. 1998). This means that a "violation of the Constitution must be clear, complete and unmistakable in order to find the law unconstitutional." *Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co.*, 983 S.W.2d 493, 499 (Ky. 1998). The Court must resolve "any doubt in favor of constitutionality rather than unconstitutionality." *Teco/Perry Cty. Coal v. Feltner*, 582 S.W.3d 42, 45 (Ky. 2019) (citation omitted).

For the reasons explained below, HB 246 is constitutional. Because HB 246 concerns the powers of a consolidated local government, which is a unique form of local government, Plaintiffs' challenge fails out of the gate. Even if the Court disagrees, HB 246 complies with Sections 59 and 60 both because HB 246 relates to the organization or structure of local government and because the HB 246 bears a reasonable relation to its purpose. As to Plaintiffs' Section 156A claim, it is not preserved. And even if it were, it is meritless.

I. The Plaintiffs' claims fail because a consolidated local government is a unique form of local government.

Although the trial court and the Court of Appeals applied the same two-part test in resolving this case (albeit very differently), the analysis required to uphold HB 246 is far simpler.[4] This lawsuit boils down to the Plaintiffs' contention that HB 246 impermissibly "singles out and discriminates against only Jefferson County." [Br. at 8]. All that the Court must do to reject this argument is faithfully apply *Holsclaw v. Stephens*, 507 S.W.2d 462 (Ky. 1973).[5]

Holsclaw concerned the constitutionality of Fayette County's "plan of merger of all units of city and county government into an urban county form of government." *Id.* at 466. In upholding much of this scheme, the Court reasoned:

> We see no reason why the General Assembly may not establish a new unit of local government in which are combined the powers of both city and county governments . . . . This new form of government is neither a city government nor a county government as those forms of government presently exist but it is an entirely new creature in which are combined all of the powers of a county government and all of the powers possessed by that class of cities to which the largest city in the county belongs.

Id. at 470.

In discussing this new form of local government, *Holsclaw* concluded that

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[4] Even if the Court disagrees with this threshold argument, it should uphold HB 246 for the reasons explained in Parts II and III.

[5] This Court later modified *Holsclaw* on a ground not relevant here. *See Jacobs v. Lexington-Fayette Urban Cty. Gov't*, 560 S.W.2d 10, 14 (Ky. 1977).

it was constitutional under Sections 59, 60, and 156[6] of the Constitution. These constitutional provisions, *Holsclaw* explained, stand for the "principle of uniform applicability of laws." *Id.* at 472. Important for present purposes, *Holsclaw* determined that the statutory scheme permitting an urban county government "is a general act, not special, in that it applies generally to all counties except those which contain a city of the first class" (*i.e.*, everywhere except Jefferson County). *Id.* at 472. The Court recognized that this created the possibility of "one-hundred and nineteen different structural organizations administering the powers of local government" (*i.e.*, in every county but Jefferson County). *Id.* But this did not concern the Court because "urban county government is a separate classification of local government which is in itself a reasonable classification." *Id.* The Court's bottom line was that "a new classification of local government having both county and municipal powers is a reasonable and valid classification based upon a bona fide need which now exists . . . ." *Id.* Thus, *Holsclaw* rejected the contention that legislating about a unique form of local government violates Sections 59, 60, or 156 of the Constitution.

Holsclaw forecloses the Plaintiffs' claims. Like the urban county government considered in *Holsclaw*, a consolidated local government was, at the time the General Assembly allowed it, an "entirely new creature" of local

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[6] Section 156 of the Constitution is the predecessor to the current Section 156A, which Part III of this brief discusses.

government. *See Holsclaw*, 507 S.W.2d at 470. KRS Chapter 67C gives a city of the first class the ability to combine with its county government, KRS 67C.101, which the city of Louisville and Jefferson County did in 2003. By applying equally to any city of the first class and the county containing it, legislation about a consolidated local government therefore is "a general act, not special." *See Holsclaw*, 507 S.W.2d at 472. Under *Holsclaw*, a consolidated local government like Louisville Metro is a "separate classification of local government which is in itself a reasonable classification." *See id.* It therefore does not violate the Constitution to legislate about only a consolidated local government.

That's exactly what HB 246 does. It simply limits the power of a consolidated local government and its waste management district vis-à-vis cities. HB 246 repeatedly specifies that it only applies in a county containing a consolidated local government. 2017 Ky. Acts, ch. 105, §§ 1(3)(g), 1(14), 3(3), 4(2). Viewed from this perspective, HB 246 does not single out Louisville Metro for differing treatment, as the Plaintiffs claim. Instead, HB 246 is a general act, not a special one, that relates to a "separate classification of local government which is in itself a reasonable classification." *See Holsclaw*, 507 S.W.2d at 472. This case is that simple.

At bottom, the Plaintiffs' argument asks this Court to hollow out *Holsclaw*, which is the paradigmatic case in this area. *Holsclaw* has governed for nearly 50 years, and it appropriately recognizes that legislating about a unique form of

government—such as a consolidated local government—does not violate the Constitution. The Court should reaffirm *Holsclaw*.

II. HB 246 does not violate Sections 59 and 60 of the Constitution.

The Plaintiffs claim that HB 246 violates Sections 59 and 60 of the Constitution because the bill only applies in a county with a consolidated local government (only in Jefferson County at present). [Br. at 8].

This fact, however, is not dispositive or even noteworthy. "A law is not local or special merely because it does not relate to the whole state or to the general public." *Commonwealth v. Moyers*, 272 S.W.2d 670, 673 (Ky. 1954). Moreover, "[t]he fact that there is only one city of the class to which the legislation is applicable[] does not necessarily render unconstitutional an act pertaining to that city." *City of Louisville v. Klusmeyer*, 324 S.W.2d 831, 834 (Ky. 1959). This Court, indeed, has "become '*greatly liberalized*' in upholding the right of the legislature to classify local government entities," which means that the judiciary must be "reluctan[t] to encroach upon the powers of the legislature, one of the three partners in Kentucky state government." *Jefferson Cty. Police Merit Bd. v. Bilyeu*, 634 S.W.2d 414, 416 (Ky. 1982) (emphasis added). In fact, early in the life of our present Constitution, Kentucky's highest court recognized that "[f]or certain purposes classification by population and its density [is] not only natural and logical, but any other basis would be unscientific and unsatisfactory." *James*

v. Barry, 128 S.W. 1070, 1072 (Ky. 1910). This makes sense given that different parts of the Commonwealth face different problems and have different needs.

As this Court unanimously recognized in *O'Shea's-Baxter*, its predecessor court, in *Mannini v. McFarland*, 172 S.W.2d 631 (Ky. 1943), "developed a test for determining whether legislation on the basis of population is constitutionally sustainable." *O'Shea's-Baxter*, 438 S.W.3d at 383. Under this two part-test (known as the *Mannini* test), a classification "will be constitutional under the framework of Sections 59 and 60 only if (1) the act relates to the organization and structure of a city or county government or (2) the classification bears 'a reasonable relation to the purpose of the Act.'" *Id.* (quoting *Mannini*, 172 S.W.2d at 632). This is an either-or test: "If the statute complies with either requirement, it is constitutional." *Bilyeu*, 634 S.W.2d at 416.

The Plaintiffs do not dispute the applicability of the *Mannini* test. [Br. at 11–12]. The only question, then, is whether HB 246 meets either of *Mannini*'s exceptions. For the reasons that follow, it satisfies both.

A. HB 246 relates to the organization or structure of local government.

It is well established that legislation that relates to the organization or structure of local government is permissible under Sections 59 and 60, even if the legislation only applies to part of the state. As *Mannini* put it, "[w]hen 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 does not expressly allow." *Mannini*, 172 S.W.2d at 633 (citation omitted). The seminal case on this topic underscores the General Assembly's leeway in directing the operations of local government.

In *Jefferson County Police Merit Board v. Bilyeu*, the Court considered a statute that provided that "in counties containing a population of 600,000 or more, all officers of the county police force above the rank of captain are excluded from the county police merit system." *Bilyeu*, 634 S.W.2d at 414–15. The Court summarized the backstory of this statute as follows: "In 1972, for reasons known only to the General Assembly, and solely on the basis of the numerical size of the county[,] certain officers were mandatorily eliminated from the merit system"—what the Court termed an "exercise of legislative fiat." *Id.* at 415. In upholding the constitutionality of this statute, the Court concluded that "[t]he establishment and maintenance of a county police force and the subsequent creation of a merit system are clearly government activities. The police force is part and parcel of the county government which created it, sustains it, and controls and nurtures it." *Id.* at 416. For this simple reason, the Court had "no difficulty in declaring that the subject matter [of the challenged statute] is *governmental in nature* and is constitutional under the first *Mannini* test." *Id.*

(emphasis added). Thus, *Bilyeu* holds that the General Assembly telling local governments *how to operate* is not unconstitutional because it "deals with the organization or incidents of government." *Id.* This Court's unanimous decision in *Bilyeu* has been the law of Kentucky for nearly 40 years.[7]

Judged by *Bilyeu*, there can be no question that HB 246 concerns the organization or structure of local government and therefore is constitutional. HB 246 relates exclusively to how local government operates—namely, how cities in a county with a consolidated local government interact with the consolidated local government and its waste management district. HB 246 in no way concerns how solid waste is managed. It does not, for example, specify standards or licensing requirements for solid waste management, nor does it direct how solid waste must be collected or stored. Instead, HB 246 relates exclusively to the decision-making structure of local government in the field of solid waste management. This key point carries the day.

A quick summary of the four provisions in HB 246 that the Plaintiffs challenge makes this clear:[8]

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[7] The Plaintiffs criticize *Bilyeu* as "more conclusive than analytical." [Br. at 14]. This is a not-so subtle recognition that they lose under *Bilyeu*'s plain terms.

[8] The circuit court inexplicably enjoined a fifth provision in HB 246, that in Section 5 of the bill. While the trial court recognized (correctly) that Section 5 "is not challenged in this litigation," [Tab 2 at 6 n.2], it nevertheless invalidated it [*id.* at 11, 13]. The Court of Appeals found this "curious" and perhaps an "oversight" because Section 5 "does not apply only to Jefferson County or a

Section 1 of HB 246 limits the ability of a county or waste management district in a consolidated local government to "prohibit or otherwise restrict materials recovery by . . . any municipality." 2017 Ky. Acts, ch. 105, § 1(3)(g). This provision does not establish how solid waste is managed by specifying how "materials recovery" should be done, but instead concerns how cities interact with the county and the waste management district while managing solid waste. The Court of Appeals got it exactly right when it reasoned that "[t]he establishment and powers of counties and waste management districts, as well as their powers for solid waste management, are clearly governmental activities. Since KRS 109.041 deals with governmental authority, its amendment by HB 246 complies with the constitutional requirements of the first prong of the *Mannini* test." *Jefferson Cty. League of Cities*, 2019 WL 3377396, at *5.

The same goes for the other amendment in Section 1 of HB 246. This provision primarily limits the ability of a consolidated local government or waste management district therein to assess a fee on a city based "on the composition of the solid waste stream of [a] city." 2017 Ky. Acts, ch. 105, § 1(14). This provision says nothing about what the "composition of the solid waste stream" must be, but rather concerns whether a consolidated local government or waste

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county containing a consolidated local government." *Jefferson Cty. League of Cities*, 2019 WL 3377396, at *5 & n7. The Plaintiffs agree. [Br. at 5 n.5].

management district therein can penalize a city for its "composition" of solid waste and thereby oversee the city's actions. Here again, HB 246 solely concerns how the various parts of local government work together in a consolidated local government. This provision simply removes a specified power from a consolidated local government and its waste management district.

Section 3 of HB 246 is similar. It merely limits the enforceability of a waste management district's rules and regulations within a county that has a consolidated local government. Generally speaking, these rules and regulations are not enforceable within cities "until approved by the legislative body of the city . . . ." 2017 Ky. Acts, ch. 105, § 3(3). This provision does not dictate the content of those rules or regulations, but simply modifies the applicable decision-making structure. Under this provision, a city in a consolidated local government, not the waste management district, decides which rules and regulations apply. *See Jefferson Cty. League of Cities*, 2019 WL 3377396, at *5 (upholding Section 3 of HB 246 under *Mannini*'s first prong).

Section 4 of HB 246 relates to the organization or structure of local government for much the same reasons. This provision enables cities in a county with a consolidated local government to opt out of the applicable solid waste management plan. 2017 Ky. Acts, ch. 105, § 4(2). This provision does not dictate what the content of the applicable solid waste management plan is. Instead, it

relates entirely to the question of who decides whether the solid waste management plan governs. *See Jefferson Cty. League of Cities*, 2019 WL 3377396, at *5 (upholding Section 4 of HB 246 under *Mannini*'s first prong).

The circuit court concluded otherwise, reasoning that these provisions "deal with substantive issues of solid waste policy."[9] [Tab 2 at 9]. Substantive issues of solid waste policy, however, specify standards for solid waste management or dictate what must be done to appropriately manage solid waste, neither of which HB 246 does. The Plaintiffs have no answer for this simple, but dispositive point.

The Plaintiffs try to get around it by arguing that HB 246 "makes substantive changes in *the authority* of the Board to act." [Br. at 13 (emphasis added)]. But this framing only hurts the Plaintiffs' position.[10] HB 246 is all about the "authority" of local-government actors. Giving "authority" to one local-government unit and taking "authority" away from another, as HB 246 does, is definitionally related to the organization or structure of local government.

The Plaintiffs next try to claim that *Mannini*'s first prong only permits

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[9] If the Court agrees with the circuit court in any part, the Court should sever any offending provision under KRS 446.090, assuming that provision does not satisfy the second part of the *Mannini* test.

[10] The *amicus* brief of the Kentucky Resources Council is of no help on this point. It argues that HB 246 "selectively transfer[s] power from one Waste Management District and giv[es] it to 83 home rule class cities located within Jefferson County." [*Amicus* Br. at 14].

"creat[ing] . . . a form of government" or "creat[ing] . . . the components of a government." [Br. at 13]. The Plaintiffs cite no authority for this supposed distinction. None exists. In any event, although "creat[ing]" forms or components of local government clearly is constitutional under *Mannini*'s first prong, so too is altering how *preexisting* local-government units interact, as HB 246 does. *Bilyeu*, which dealt with altering existing county structures, confirms this commonsense point. *See Bilyeu*, 634 S.W.2d at 414–15. Indeed, Section 2 of HB 246, which the Plaintiffs do not challenge [Br. 5 n.6], alters the existing structure of the District's board of directors, thus undermining the Plaintiffs' argument. If the General Assembly can create local government in the form it chooses, as the Plaintiffs concede, it follows that the General Assembly can create a local government and then change it later. That's all that HB 246 does.

The folly of the Plaintiffs' argument is further demonstrated by contrasting this case with the facts of *Mannini*. There, the statute provided that, in a city of the fourth class, "neither a poolroom nor a bowling alley should be operated in a room where alcoholic liquors were sold by retail." *Mannini*, 172 S.W.2d at 631. Unlike HB 246, this statute did not define the relationship between and among local-government actors. Instead, the *Mannini* statute affirmatively directed where alcohol could not be sold. As *Mannini* recognized, the challenged statute "purports in no wise to be directed to the *regulation of*

municipal powers or *matters of local government.*" *Id.* at 634 (emphasis added). As this Court later summarized, "it is well-settled that statutes governing the sale of alcoholic beverages have no relation to governmental organization or structure." *O'Shea's-Baxter*, 438 S.W.3d at 383. By like token, if HB 246 told local-government actors how to manage solid waste, such as by requiring certain waste to disposed of in a certain way or stored at a certain place, this case would be a closer call under *Mannini* step one.

The Plaintiffs also argue that if HB 246 truly relates to the organization or structure of local government, the General Assembly would have amended KRS Chapter 67C—the chapter authorizing and establishing the powers of a consolidated local government. [Br. at 12]. That argument puts form over substance. True, in *Mannini*, the Court noted (albeit in the factual background of the case) that the statutory amendment at issue did not appear "in the charter of fourth class cities." *Mannini*, 172 S.W.2d at 631. But the Court in no way intimated that the location of a statute in the Kentucky Revised Statutes is somehow dispositive of its constitutionality. Indeed, the *Mannini* Court noted that the statutory amendment at issue originally was "a part of the charter of fourth class cities." *Id.* Thus, *Mannini* itself refutes the distinction that the Plaintiffs seek to draw. What matters is what the statutory amendment accomplishes, not where it happens to reside. *See* KRS 446.140.

A final way to think about why HB 246 relates to the organization or structure of local government is to consider HB 246 alongside KRS Chapter 67C. Generally speaking, this chapter grants a consolidated local government the powers of both the county and the city of the first class that combined to create the consolidated local government. KRS 67C.101(2)(a). Important for present purposes, KRS Chapter 67C also grants a consolidated local government the power to "[c]ollect and dispose of garbage, junk, and other refuse, and regulate the collection and disposal of garbage, junk, or other refuse by others." KRS 67C.101(3)(j). HB 246, in certain respects, limits the operation of this provision. *See, e.g.*, 2017 Ky. Acts, ch. 105, § 1(3)(g). If it is constitutional to authorize the creation of a consolidated local government and to specify its powers with respect to the collection and disposal of "garbage, junk, or other refuse," as KRS Chapter 67C does, it follows that it is constitutional to modify the powers of a consolidated local government with respect to solid waste management, as HB 246 does. Both equally relate to the organization or structure of local government.

Viewed this way, the Plaintiffs' argument, if accepted, has the potential to undercut KRS Chapter 67C's allowance for a consolidated local government. This shows the inconsistency of the Plaintiffs' position: they are officials associated with Louisville Metro advocating a position that calls into question

the powers of Louisville Metro. If the General Assembly cannot pare back the powers of a consolidated local government as it did in HB 246, how is it constitutional for the General Assembly to create a consolidated local government in the first place? The power to create a consolidated local government necessarily carries with it the power to alter that form of local government as the General Assembly sees fit.

B. HB 246 bears a reasonable relation to its purpose.

The Court also should uphold HB 246 under the second prong of *Mannini* because any classification created by HB 246 has a reasonable relation to its statutory purpose.[11] More to the point, the General Assembly had a rational basis to conclude that HB 246 would address a unique problem in a county with a consolidated local government—namely, under-representation of cities in matters of solid waste management.

In applying *Mannini*'s second exception, the operative question is one that is deferential to the General Assembly's policy-making prerogative. In answering it, the Court is not to judge "the wisdom of the action of the General Assembly."

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[11] Because the Court of Appeals upheld HB 246 under *Mannini*'s first part, it did not reach the second part of *Mannini*'s test, except in one respect. *See Jefferson Cty. League of Cities*, 2019 WL 3377396, at *5 (upholding Section 3 of HB 246 because it is "apparent from reading the amendments and the title of the statute being amended that the amendments bear a 'reasonable relation to the purpose of the Act' as required under the second prong of the *Mannini* test").

Bilyeu, 634 S.W.2d at 416. The Court must simply ask whether a legislative classification bears a "reasonable relation" to the purpose of the legislation. *O'Shea's-Baxter*, 438 S.W.3d at 383 (quoting *Mannini*, 172 S.W.2d at 632). In *O'Shea's-Baxter*, this Court unanimously and repeatedly analogized this review to rational basis review.[12] *Id.* at 384–86 & n.7. This standard requires the Court to "draw all reasonable inferences and implications" to "sustain [the] validity" of the challenged legislation. *Zuckerman v. Bevin*, 565 S.W.3d 580, 600 (Ky. 2018) (quoting *Waggoner v. Waggoner*, 846 S.W.2d 704, 707 (Ky. 1992)).

This Court's recent decision in *O'Shea's-Baxter* gives the roadmap for how to apply *Mannini*'s second exception. In *O'Shea's-Baxter*, the plaintiffs challenged a statute limiting where alcohol could be sold at retail in a city of the first class or consolidated local government. *O'Shea's-Baxter*, 438 S.W.3d at 381. In considering whether the statutory classification bore a reasonable relation to the statute's purpose, the Court first discerned the "apparent purpose" of the statute, which was "to limit the concentration of establishments with retail package licenses and retail drink licenses." *Id.* at 384. The Court then asked whether there

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[12] Ignoring *O'Shea's-Baxter* formulation, the Plaintiffs try to strengthen this standard, claiming that there must be a "substantial and justifiable reason for the classification." [Br. at 15 (emphasis omitted) (citing *Tabler v. Wallace*, 704 S.W.2d 179 (Ky. 1985))]. But in *Zuckerman v. Bevin*, 565 S.W.3d 580 (Ky. 2018), the Court equated this to rational basis review. *Id.* at 600. In any event, whatever the standard, HB 246 survives it for the reasons explained below.

was a "rational basis for assuming that a concentration of retail drink licenses in a consolidated local government (Louisville Metro) will present different consequences than a similar concentration of licenses in other classes of Kentucky cities and urban governments." *Id.* Stated differently, the Court asked whether there was a rational basis for treating Louisville Metro differently from the rest of the state on the issue addressed by the statute. *See id.*; *see also Moyers*, 272 S.W.2d at 673 (asking whether "facts reasonably differentiate a class or locality from the general public or the state at large").

Under *O'Shea's-Baxter*, the purpose of HB 246 is clear: to give cities in a consolidated local government more of a voice. Numerous aspects of HB 246 inform this conclusion. As discussed above, the parts of HB 246 that the Plaintiffs challenge shift decision-making authority in solid waste management from the waste management district and its consolidated local government to cities. For example, HB 246 gives cities in a county with a consolidated local government a say-so on whether the rules and regulations of the waste management district apply in each city. 2017 Ky. Acts, ch. 105, § 3(3). And cities are allowed to opt out of the applicable solid waste management plan under certain circumstances. 2017 Ky. Acts, ch. 105, § 4(2). These two provisions, in particular, demonstrate that the purpose of HB 246 is to give cities in a county with a consolidated local government more of a role in solid waste management.

This legislative purpose is confirmed by the parts of HB 246 that are not challenged in this appeal. Section 2 of HB 246 reorganizes the waste management board in a county with a consolidated local government to give cities more representation. 2017 Ky. Acts, ch. 105, § 2. The emergency clause of HB 246 underscores that "the citizens of counties containing a consolidated local government will be better served by a reconstituted waste management district board that is more diverse and representative of and responsive to the populace."[13] 2017 Ky. Acts, ch. 105, § 7. Viewed together, HB 246's provisions unequivocally point to a legislative purpose of giving cities in a county with a consolidated local government a more meaningful role in solid waste management.

In light of this legislative purpose, the question becomes whether a rational basis exists for the General Assembly to apply HB 246 only in a county with a consolidated local government, rather than statewide. *See O'Shea's-Baxter*, 438 S.W.3d at 384. For the reasons that follow, the General Assembly had more than a rational basis to conclude that cities in a county with a consolidated local government need more guaranteed input into solid waste management than do

[13] The Plaintiffs claim that the Court should only rely on the emergency clause to discern HB 246's legislative purpose. [Br. at 18]. They cite nothing for this proposition, nor do they explain why the Court should put on blinders when looking at a bill to ascertain its purpose.

other cities statewide. HB 246 reasonably recognizes that because of Louisville Metro's number of cities, size, population density, tax base, and urban character, Louisville Metro is better served by a unique governing structure for solid waste management focused on achieving the input of as many constituent cities possible. The existence of an entire KRS chapter about the operation of a consolidated local government (KRS Chapter 67C) is proof positive that there is a rational basis for HB 246.

Jefferson County has more cities in it—83 in total—than any other county in the state. [Vol. VI, R. 609–17]. In passing HB 246, it was reasonable for the General Assembly to conclude that, on average, cities in Jefferson County had less input into solid waste management than did cities in other counties statewide. Compare, for example, the 83 cities in Jefferson County to the single city in Adair County (the city of Columbia) or Allen County (the city of Scottsville). Prior to HB 246, cities like Columbia and Scottsville naturally had much more input into solid waste management than did each of the 83 cities in Jefferson County. For this reason, it would make little sense to apply HB 246's reforms in single-city counties like Adair County or Allen County. Why, for example, would Columbia and Scottsville need to opt out of the applicable solid waste management plan given that they are the only city in their respective county? Presumably, the solid waste management plans in Adair County and Allen County are appropriately

tailored to the needs and resources of the single city in each county. This demonstrates that Jefferson County's 83 cities face concerns related to solid waste management that are not confronted by other cities statewide. While other Kentucky counties have multiple cities (for example, Harlan County has seven cities), no county has anywhere close to Jefferson County's 83 cities. [Vol. VI, R. 609–17]. This provides a rational basis to apply HB 246 only in Jefferson County.

Another way to think about the rational basis for HB 246 is to ask why a city in Jefferson County might need more guaranteed input into solid waste management than a city not in a county with a consolidated local government. Under KRS Chapter 67C, Louisville Metro "possesses *enhanced authority* that is distinct from other municipalities." *Ky. Rest. Ass'n v. Louisville/Jefferson Cty. Metro Gov't*, 501 S.W.3d 425, 428 (Ky. 2016) (emphasis added). As mentioned above, as a consolidated local government, Louisville Metro has the ability to "[c]ollect," "dispose of," and "regulate" "garbage, junk, and other refuse." KRS 67C.101(3)(j). This is in addition to those powers given to Louisville Metro under KRS Chapter 109 to manage solid waste or to create a waste management district for this purpose. *See* KRS 67C.101(2)(a) (granting a consolidated local government the powers of both the city of the first class and county). Also, Louisville Metro, as a consolidated local government, can "[l]evy and collect [property] taxes" and "[m]ake appropriations for [its] support." KRS

67C.101(3)(a), (3)(c).

Louisville Metro's unmatched authority, combined with its unparalleled tax base, could enable the District to adopt a waste-management regulation that is too difficult or too costly for some cities to implement. Giving cities in a consolidated local government additional input into such regulations (through the approval of the regulations by their legislative bodies, for example) is a rational way to avoid saddling these cities with regulations that they cannot afford or implement. This scenario provides a rational basis for applying HB 246 only in a county with a consolidated local government.

The Plaintiffs push back on this point by arguing that the legislative purpose of giving cities more of a voice in solid waste management is "completely satisfied by Sec. 2 of the bill providing for a reconstituted board." [Br. at 18]. But what fully accomplishes the General Assembly's legislative purpose is not up to the Plaintiffs. Obviously, the General Assembly concluded that reorganizing the board of a waste management district was not a sufficient remedy for the problem it perceived. That is the General Assembly's call to make, not the Plaintiffs' or this Court's.

This Court's predecessor recognized that Jefferson County's unique status can provide a rational basis for treating it differently. In *Second Street Properties, Inc.*

v. Fiscal Court of Jefferson County, 445 S.W.2d 709, 711 (Ky. 1969), the Court rejected a special-legislation challenge to a statute that treated Jefferson County differently than all other cities and counties in the state. The statute in *Second Street Properties* authorized cities and counties to create tourist and convention commissions. *Id.* at 711. In counties not containing a city of the first class (everywhere except Jefferson County), the statute allowed these commissions to use tax revenue for both "the promotion of convention and tourist activity" and for "recreational" purposes. *Id.* at 715. In Jefferson County, by contrast, the commission could only use tax revenue for the "promotion of convention and tourist activity." *Id.* at 711, 715–16. The Court upheld this statute because:

> From a realistic standpoint, Jefferson County, containing the city of Louisville, is the principal convention center in the Commonwealth due to its size and facilities. The legislature could reasonably determine that the Commission's function there should be limited to the promotion of tourist and convention activity. It also may have considered that the recreational facilities in that area are sufficiently financed from other sources. On the other hand, the development of recreational activities in less populated counties may have appeared equally as essential for the attraction of tourists.

Id. at 716. This case shows that the Jefferson County's unmatched size, unique character, and tax base can in fact provide a rational basis for treating it

differently from other local governments.[14] *See also Pinchback*, 484 S.W.2d at 330 ("As is the case with Louisville and Jefferson County, the first-class city ordinarily will be larger in population than the unincorporated territory of the county; this is not usually the case with cities of lower classes, and this distinction furnishes the justification for separate legislative treatment . . . .").

The circuit court's rationale for concluding otherwise should not be affirmed. The circuit court did not grapple with any of the proffered reasons (discussed above) for why cities in a county with a consolidated local government are different when it comes to solid waste management. Instead, the circuit court got dangerously close to overruling the General Assembly's policy choice in HB 246 simply because the circuit court disagreed with that policy. The circuit court reasoned: "If anything, the larger population and greater number of cities logically increases [] the importance of county-wide planning." [Tab 2 at 12]. The circuit court also noted that "[u]nder this legislation, there could be eighty-seven (87) [sic] solid waste plans in effect in Jefferson County, and it is highly likely that those plans would ultimately impose policies that would be at cross-purposes for

[14] The General Assembly, it should be noted, has codified an analogous point in statute. KRS 83.410(4) ("This legislative finding is based upon hearings held by the General Assembly and the conclusion of its members that conditions found in cities of the first class are sufficiently different from those found in other cities to necessitate this grant of authority and complete home rule.").

some important aspects of the plans." [*Id.* at 12–13]. Concerns like these should be addressed by the General Assembly, not a court sitting in judgment of duly enacted legislation. The question before the circuit court was not whether HB 246 is good policy, but merely whether the General Assembly had a rational basis to apply HB 246 only in a county with a consolidated local government.

The problems with the circuit court's ruling, however, go even deeper. Instead of discerning the purpose of HB 246 in applying *Mannini*'s second prong, the trial court incorrectly analyzed the purpose of *preexisting statutes* that relate to solid waste management. The circuit court reasoned that HB 246 "do[es] not bear any rational relationship to the purpose [of] the statutes governing solid waste disposal, *as set forth by the General Assembly in KRS 224.43-010(6).*" [Tab 2 at 10 (emphasis added)]. The problem with this conclusion is that HB 246 did not amend KRS 224.43-010. *See* 2017 Ky. Acts, ch. 105. The circuit court made an analogous error with respect to KRS Chapter 109, reasoning that "a plain reading of KRS Chapter 109 demonstrates that the purpose of the statute is to regionalize the planning function for solid waste disposal." [Tab 2 at 10]. For this proposition, the trial court cited provisions in KRS Chapter 109 that HB 246 *did not amend.* [*Id.* (citing KRS 109.011(5)(c), (6), & (11))]. Consequently, in analyzing whether there is a rational basis for HB 246, the circuit court confusingly held that HB 246's limitation to a county with a consolidated local government does

not reasonably advance the purposes of statutes that HB 246 did not even amend.

The Court of Appeals fixed this error. It recognized that, in *O'Shea's-Baxter*, this Court "looked at the statute *in question* . . . to determine its purpose, not other statutes or prior versions of the statute as the trial court did in the case at hand." *Jefferson Cty. League of Cities*, 2019 WL 3377396, at *4 (emphasis added). *O'Shea's-Baxter* is not alone in so doing. *See, e.g.*, *Mannini*, 172 S.W.2d at 634 ("[T]he classification of fourth class cities set up in the statute has no reasonable relation to the purpose of the statute."); *United Dry Forces v. Lewis*, 619 S.W.2d 489, 493 (Ky. 1981) ("The sole purpose of the enactment of the statute, as evidenced by its terms and as agreed on by the parties, is to improve the economy of the affected areas."). With good reason. It makes no sense to ascertain the purpose of a bill by analyzing statutory provisions that the bill did not amend. The circuit court offered no justification, nor could it have done so, for judging whether there is a rational basis for HB 246 by statutes that it did not amend.

The circuit court made the additional legal error of essentially treating KRS Chapters 109 and 224.43 as straightjackets of legislative purpose. Under the trial court's framework, once the General Assembly has established how local governments should work together on solid waste management, the General Assembly cannot pass subsequent legislation that contradicts, or even modifies,

the purpose expressed in the earlier legislation. The effect of the circuit court's ruling is to constitutionalize the legislative purpose of solid waste management for all time. But as the Commonwealth's public-policy body, the General Assembly can change its mind on public policy or modify prior legislation, as it did with HB 246. *See, e.g.*, *Morrison v. Carbide & Carbon Chemicals Corp.*, 129 S.W.2d 547, 549 (Ky. 1939) ("If a change in [public] policy is desired, application must be made to the Legislature . . . ." (citation omitted)). The circuit court's ruling, if affirmed, will tie the General Assembly's hands in updating public policy to deal with new problems and new situations.

The Plaintiffs nevertheless insist that the "classification created by HB 246 must be viewed in light of the statute as amended and not in relation to the amendments standing alone." [Br. at 17 (emphasis omitted)]. This proposition is an invitation for the Court to second-guess the legislature's policy-making decisions. In applying *Mannini*'s second prong, Kentucky courts have repeatedly declined to take this step. *See, e.g.*, *Lewis*, 619 S.W.2d at 493 ("In so deciding, we do not agree or disagree with the general assembly's decision . . . . We simply accept this legislative decision as a premise to our decision.").

III. HB 246 does not violate Section 156A of the Constitution.

As a last resort, the Plaintiffs claim that HB 246 violates Section 156A of the Constitution. [Br. at 22–25].

The easiest way to reject this argument is to conclude that the Plaintiffs failed to plead a violation of Section 156A in their complaint. [Vol. I, R. 24–48]. The Plaintiffs' complaint does not include a count based upon Section 156A; indeed, Section 156A is nowhere mentioned in the complaint. [*Id.*]. The Court should not field an argument to invalidate a duly enacted statute on a constitutional basis that the Plaintiffs did not properly raise. *See Elk Horn Coal Corp. v. Cheyenne Res., Inc.*, 163 S.W.3d 408, 424 n.73 (Ky. 2005) (discussing the "general rule" that a court will not review the constitutionality of a statute unless it is, among other things, "duly raised and insisted on" (citation omitted)).

Even if the Court considers this unpreserved claim, it is meritless. Section 156A of the Constitution provides in relevant part:

> The General Assembly may provide for the creation, alteration of boundaries, consolidation, merger, dissolution, government, functions, and officers of cities. The General Assembly shall create such classifications of 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.

Ky. Const. § 156A. Compared to many other provisions in our Constitution, Section 156A is relatively new. It replaced Section 156 of the Constitution in part in 1994. Section 156 previously created six classifications of cities. Ky. Const. § 156 (1891). Sections 156A, by contrast, gives the General Assembly general

authority to classify cities, which it has exercised to create a two-class system: first-class cities and home-rule cities. *See* KRS 81.005(1).

In striking down HB 246 under Section 156A, the circuit court relied entirely on the third sentence of Section 156A, which states that "[a]ll legislation relating to cities of a certain classification shall apply equally to all cities within that same classification." The circuit court reasoned that HB 246 treats the 83 home-rule cities in Jefferson County differently from home-rule cities statewide, in violation of the above-quoted portion of Section 156A. [Tab 2 at 10–11]. The Plaintiffs parrot this argument in their brief. [Br. at 22–25]. It is wrong for at least three reasons.

First, the Plaintiffs focus on one sentence of Section 156A to the exclusion of the remainder of the provision. As quoted above, Section 156A also states (in its first sentence) that "[t]he General Assembly may provide for the creation, alteration of boundaries, consolidation, merger, dissolution, *government, functions,* and officers of cities." Ky. Const. § 156A (emphasis added). The Plaintiffs have no answer to this language; indeed, their brief doesn't even mention it. Importantly, this sentence places no limits on the General Assembly's ability to legislate with respect to the "government" or "functions" of cities. Indeed, the mention of the "government" and "functions" of cities in Section 156A essentially codifies constitutionally the first part of the *Mannini* test, discussed

above in Part II.A, which allows the General Assembly to legislate about the organization or structure of local government. As outlined above, HB 246 concerns the organization or structure of local government by directing when cities in a county with a consolidated local government are the decision-maker with respect to solid waste management. It therefore complies with Section 156A.

Second, and similarly, Section 156A tracks the constitutional analysis under Sections 59 and 60. Kentucky courts historically treated the predecessor to Section 156A—the old Section 156—as part and parcel of the special-legislation analysis under Sections 59 and 60. *See, e.g.*, *Mannini*, 172 S.W.2d at 632 ("In determining whether the Act in question is special or local legislation we must consider section 156 in connection with sections 59 and 60."). Indeed, the whole reason that *Mannini*'s first exception exists is because of the old Section 156. As this Court explained in *Lewis*, the *Mannini* court "enunciated the 'government' test *because of* the existence of section 156 of our Constitution." *Lewis*, 619 S.W.2d at 492 (emphasis added); *see also id.* ("Test number one, is, in effect, an exception to the prohibition (in sections 59 and 60) against local or special legislation, based on section 156, which authorizes classification of cities by size and density of population 'for the purpose of organization and

government.'" (citation omitted)).

Importantly, the old Section 156 contained language that is comparable to the provision in Section 156A that the circuit court used to invalidate HB 246. Ky. Const. § 156 (1891) ("The 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."). Thus, the Court should analyze Section 156A as part of the special-legislation analysis under Sections 59 and 60 of the Constitution, as it historically did with the old Section 156. This is precisely what the Court of Appeals did to reject the Plaintiffs' Section 156A argument. *See Jefferson Cty. League of Cities*, 2019 WL 3377396, at *7 ("The analysis required under this section of Kentucky's Constitution is akin to the first prong of the *Mannini* test.").

Third, and finally, HB 246 is not "legislation relating to cities of a certain classification" so as to implicate Section 156A. Rather, HB 246 concerns how a consolidated local government relates to the cities therein. There is no constitutional problem with legislating about a consolidated local government, as KRS Chapter 67C shows. Indeed, the General Assembly has adopted special rules for cities within a consolidated local government, which the Plaintiffs' expansive Section 156A argument calls into question. For example, KRS

67C.111(3) provides different rules for the annexation of cities within a consolidated local government. And KRS 67C.111(2) restricts the incorporation of cities in a county containing a consolidated local government. Like HB 246, these statutes do not impermissibly treat home-rule cities differently, but instead direct how those home-rule cities operate in a consolidated local government. Were the rule otherwise, the General Assembly would be powerless to legislate about home-rule cities in a consolidated local government even though only those home-rule cities have to deal with a consolidated local government. *See Jacobs v. Lexington-Fayette Urban Cty. Gov't*, 560 S.W.2d 10, 12 (Ky. 1977) ("We apprehend no compelling reason why we should use the Constitution like a blanket to smother the attempts of the legislature to breathe life into local government via a form of local government unforeseen at the time of the adoption of the Constitution.").

The Plaintiffs and their *amicus* cite several cases in making their Section 156A argument. [Br. at 23–24; *Amicus* Br. at 9–10]. However, all of those cases concerned the old Section 156, meaning that none of them take account of Section 156A's first sentence, which as discussed above specifically gives the General Assembly the ability to legislate about the "government" and "functions" of cities. Ky. Const. § 156A. On top of that, none of those cases

concerned, as here, the operations of cities in a consolidated local government.

CONCLUSION

HB 246 is a legitimate exercise of legislative power. This Court has become "'greatly liberalized' in upholding the right of the legislature to classify local government entities" because of the judiciary's "reluctance to encroach upon the powers of the legislature, one of the three partners in Kentucky state government." *Bilyeu*, 634 S.W.2d at 416. That deferential approach, which takes account of Kentucky's strict separation of powers, necessitates upholding HB 246.

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APPENDIX

Tab Number	Description
1	*Jefferson Cty. League of Cities, Inc. v. Louisville Jefferson Cty. Metro Gov't, Waste Mgmt. Dist.*, 2019 WL 3377396 (Ky. App. July 29, 2019)

TAB 1

KeyCite Yellow Flag - Negative Treatment
Review Granted February 12, 2020
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NOT TO BE PUBLISHED
Court of Appeals of Kentucky.

JEFFERSON COUNTY LEAGUE OF CITIES, INC., Appellant

v.

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, Waste Management District; Robert Schindler; Greg Fischer, in His Official Capacity as Mayor of Louisville Metro Government; Commonwealth of Kentucky, Energy and Environment Cabinet; Charles G. Snavely, in His Official Capacity as Secretary for the Commonwealth of Kentucky, Energy and Environment Cabinet; National Waste & Recycling Association, Kentucky Chapter; City of Anchorage; City of Audubon Park; City of Bancroft; City of Barbourmeade; City of Beechwood Village; City of Bellemeade; City of Bellewood; City of Blue Ridge Manor; City of Briarwood; City of Broeck Pointe; City of Brownsboro Farm; City of Brownsboro Village; City of Cambridge; City of Coldstream; City of Creekside; City of Crossgate; City of Douglass Hills; City of Druid Hills; City of Fincastle; City of Forest Hills; City of Glenview; City of Glenview Hills; City of Glenview Manor; City of Goose Creek; City of Graymoor-Devondale; City of Green Spring; City of Heritage Creek; City of Hickory Hill; City of Hills and Dales; City of Hollow Creek; City of Hollyvilla; City of Houston Acres; City of Hurstbourne; City of Hurstbourne Acres; City of Indian Hills; City of Jeffersontown; City of Kingsley; City of Langdon Place; City of Lincolnshire; City of Lyndon; City of Lynnview; City of Manor Creek; City of Maryhill Estates; City of Meadowbrook Farms; City of Meadow Vale; City of Meadowview Estates; City of Middletown; City of Mockingbird Valley; City of Moorland; City of Murray Hill; City of Norbourne Estates; City of Northfield; City of Norwood; City of Old Brownsboro Place; City of Parkway Village; City of Plantation; City of Poplar Hills; City of Prospect; City of Richlawn; City of Riverwood; City of Rolling Fields; City of Rolling Hills; City of Saint Matthews; City of Saint Regis Park; City of Seneca Gardens; City of Shively; City of South Park View; City of Spring Mill; City of Spring Valley; City of Strathmoor Manor; City of Strathmoor Village; City of Sycamore; City of Ten Broeck; City of Thornhill; City of Watterson Park; City of Wellington; City of West Buechel; City of Westwood; City of Wildwood; City of Windy Hills; City of Woodland Hills; City of Woodlawn Park; City of Worthington Hills; and Andy Beshear, in His Capacity as Attorney General of Kentucky, Appellees

National Waste & Recycling Association, Kentucky Chapter, Appellant

v.

Louisville/Jefferson County Metro Government, Waste Management District; Robert Schindler; Greg Fisher, [1] in His Official Capacity as Mayor of Louisville Metro Government; Commonwealth of Kentucky, Energy and Environment Cabinet; Charles G. Snavely, in His Official Capacity as Secretary for the Commonwealth of Kentucky, Energy and Environment Cabinet; City of Anchorage; City of Audubon Park; City of Bancroft; City of Barbourmeade; City of Beechwood Village; City of Bellemeade; City of Bellewood; City of Blue Ridge Manor; City of Briarwood; City of Broeck Pointe; City of Brownsboro Farm; City of Brownsboro Village; City of Cambridge; City of Coldstream; City of Creekside; City of Crossgate; City of Douglass Hills; City of Druid Hills; City of Fincastle; City of Forest Hills; City of Glenview; City of Glenview Hills; City of Glenview Manor; City of Goose Creek; City of Graymoor-Devondale; City of Green Spring; City of Heritage Creek; City of Hickory Hill; City of Hills and Dales; City of Hollow Creek; City of Hollyvilla; City of Houston Acres; City of Hurstbourne; City of Hurstbourne Acres; City of Indian Hills; City of Jeffersontown; City of Kingsley; City of Langdon Place; City of Lincolnshire; City

of Lyndon; City of Lynnview; City of Manor Creek; City of Maryhill Estates; City of Meadowbrook Farms; City of Meadow Vale; City of Meadowview Estates; City of Middletown; City of Mockingbird Valley; City of Moorland; City of Murray Hill; City of Norbourne Estates; City of Northfield; City of Norwood; City of Old Brownsboro Place; City of Parkway Village; City of Plantation; City of Poplar Hills; City of Prospect; City of Richlawn; City of Riverwood; City of Rolling Fields; City of Rolling Hills; City of Saint Matthews; City of Saint Regis Park; City of Seneca Gardens; City of Shively; City of South Park View; City of Spring Mill; City of Spring Valley; City of Strathmoor Manor; City of Strathmoor Village; City of Sycamore; City of Ten Broeck; City of Thornhill; City of Watterson Park; City of Wellington; City of West Buechel; City of Westwood; City of Wildwood; City of Windy Hills; City of Woodland Hills; City of Woodlawn Park; City of Worthington Hills; and Andy Beshear, in His Capacity as Attorney General of Kentucky, Appellees

The Cities of Shively, Indian Hills and Bellewood, Kentucky, Appellants

v.

Louisville/Jefferson County Metro Government, Waste Management District; Robert Schindler; Greg Fischer, in His Official Capacity as Mayor of Louisville Metro Government; the Commonwealth of Kentucky, Energy and Environment Cabinet; Charles G. Snavely, in His Official Capacity as Kentucky Energy and Environment Secretary; the Jefferson County League of Cities, Inc.; the National Waste & Recycling Association, Kentucky Chapter; City of Anchorage; City of Audubon Park; City of Bancroft; City of Barbourmeade; City of Beechwood Village; City of Bellemeade; City of Blue Ridge Manor; City of Briarwood; City of Broeck Pointe; City of Brownsboro Farm; City of Brownsboro Village; City of Cambridge; City of Coldstream; City of Creekside; City of Crossgate; City of Douglas Hills; City of Druid Hills; City of Fincastle; City of Forest Hills; City of Glenview; City of Glenview Hills; City of Glenview Manor; City of Goose Creek; City of Graymoor-Devondale; City of Green Spring; City of Heritage Creek; City of Hickory Hill; City of Hills and Dales; City of Hollow Creek; City of Hollyvilla; City of Houston Acres; City of Hurstbourne; City of Hurstbourne Acres; City of Jeffersontown; City of Kingsley; City of Langdon Place; City of Lincolnshire; City of Lyndon; City of Lynnview; City of Manor Creek; City of Maryhill Estates; City of Meadowbrook Farms; City of Meadow Vale; City of Meadowview Estates; City of Middletown; City of Mockingbird Valley; City of Moorland; City of Murray Hill; City of Norbourne Estates; City of Northfield; City of Norwood; City of Old Brownsboro Place; City of Parkway Village; City of Plantation; City of Poplar Hills; City of Prospect; City of Richlawn; City of Riverwood; City of Rolling Fields; City of Rolling Hills; City of Saint Matthews; City of Saint Regis Park; City of Seneca Gardens; City of South Park View; City of Spring Mill; City of Spring Valley; City of Strathmoor Manor; City of Strathmoor Village; City of Sycamore; City of Ten Broeck; City of Thornhill; City of Watterson Park; City of Wellington; City of West Buechel; City of Westwood; City of Wildwood; City of Windy Hills; City of Woodland Hills; City of Woodlawn Park; City of Worthington Hills; and Andy Beshear, in His Capacity as Attorney General of Kentucky, Appellees

The Cities of Jeffersontown, Kentucky and Seneca Gardens, Kentucky, Appellants

v.

Louisville/Jefferson County Metro Government, Waste Management District; Robert Schindler; Greg Fischer, in His Official Capacity as Mayor of Louisville Metro Government; Commonwealth of Kentucky, Energy and Environment Cabinet; Charles G. Snavely, in His Official Capacity as Secretary for the Commonwealth of Kentucky, Energy and Environment Cabinet; National Waste & Recycling Association, Kentucky Chapter; City of Anchorage; City of Audubon Park; City of Bancroft; City of Barbourmeade; City of Beechwood Village; City of Bellemeade; City of Bellewood; City of Blue Ridge Manor; City of Briarwood; City of Broeck Pointe; City of Brownsboro Farm; City of Brownsboro Village; City of Cambridge; City of Coldstream; City of Creekside; City of Crossgate; City of Douglass Hills; City of Druid Hills; City of

Fincastle; City of Forest Hills; City of Glenview; City of Glenview Hills; City of Glenview Manor; City of Goose Creek; City of Graymoor-Devondale; City of Green Spring; City of Heritage Creek; City of Hickory Hill; City of Hills and Dales; City of Hollow Creek; City of Hollyvilla; City of Houston Acres; City of Hurstbourne; City of Hurstbourne Acres; City of Indian Hills; City of Kingsley; City of Langdon Place; City of Lincolnshire; City of Lyndon; City of Lynnview; City of Manor Creek; City of Maryhill Estates; City of Meadowbrook Farms; City of Meadow Vale; City of Meadowview Estates; City of Middletown; City of Mockingbird Valley; City of Moorland; City of Murray Hill; City of Norbourne Estates; City of Northfield; City of Norwood; City of Old Brownsboro Place; City of Parkway Village; City of Plantation; City of Poplar Hills; City of Prospect; City of Richlawn; City of Riverwood; City of Rolling Fields; City of Rolling Hills; City of Saint Matthews; City of Saint Regis Park; City of Shively; City of South Park View; City of Spring Mill; City of Spring Valley; City of Strathmoor Manor; City of Strathmoor Village; City of Sycamore; City of Ten Broeck; City of Thornhill; City of Watterson Park; City of Wellington; City of West Buechel; City of Westwood; City of Wildwood; City of Windy Hills; City of Woodland Hills; City of Woodlawn Park; City of Worthington Hills; and Andy Beshear, in His Capacity as Attorney General of Kentucky, Appellees

The Commonwealth of Kentucky, Energy and Environment Cabinet; and Charles G. Snavely, in His Official Capacity as the Secretary of the Kentucky Energy and Environment Cabinet, Appellants

v.

Louisville/Jefferson County Metro Government, Waste Management District; Robert Schindler; Greg Fischer, in His Official Capacity as Mayor of Louisville Metro Government; Jefferson County League of Cities, Inc.; National Waste & Recycling Association, Kentucky Chapter; City of Anchorage; City of Audubon Park; City of Bancroft; City of Barbourmeade; City of Beechwood Village; City of Bellemeade; City of Bellewood; City of Blue Ridge Manor; City of Briarwood; City of Broeck Pointe; City of Brownsboro Farm; City of Brownsboro Village; City of Cambridge; City of Coldstream; City of Creekside; City of Crossgate; City of Douglas Hills; City of Druid Hills; City of Fincastle; City of Forest Hills; City of Glenview; City of Glenview Hills; City of Glenview Manor; City of Goose Creek; City of Graymoor-Devondale; City of Green Spring; City of Heritage Creek; City of Hickory Hill; City of Hills and Dales; City of Hollow Creek; City of Hollyvilla; City of Houston Acres; City of Hurstbourne; City of Hurstbourne Acres; City of Indian Hills; City of Jeffersontown; City of Kingsley; City of Langdon Place; City of Lincolnshire; City of Lyndon; City of Lynnview; City of Manor Creek; City of Maryhill Estates; City of Meadowbrook Farms; City of Meadow Vale; City of Meadowview Estates; City of Middletown; City of Mockingbird Valley; City of Moorland; City of Murray Hill; City of Norbourne Estates; City of Northfield; City of Norwood; City of Old Brownsboro Place; City of Parkway Village; City of Plantation; City of Poplar Hills; City of Prospect; City of Richlawn; City of Riverwood; City of Rolling Fields; City of Rolling Hills; City of Saint Matthews; City of Saint Regis Park; City of Seneca Gardens; City of Shively; City of South Park View; City of Spring Mill; City of Spring Valley; City of Strathmoor Manor; City of Strathmoor Village; City of Sycamore; City of Ten Broeck; City of Thornhill; City of Watterson Park; City of Wellington; City of West Buechel; City of Westwood; City of Wildwood; City of Windy Hills; City of Woodland Hills; City of Woodlawn Park; City of Worthington Hills; and Andy Beshear, in His Official Capacity as Attorney General of Kentucky, Appellees

City of Bancroft, Kentucky, Appellant

v.

Louisville/Jefferson County Metro Government, Waste Management District; Robert Schindler; Greg Fischer, in His Official Capacity as Mayor of Louisville Metro Government; the Commonwealth of Kentucky, Energy and Environment Cabinet; Charles G. Snavely, in His Official Capacity as Kentucky Energy and Environment Secretary; the Jefferson County League of Cities, Inc.; the National Waste & Recycling Association, Kentucky

Chapter; City of Anchorage; City of Audubon Park; City of Barbourmeade; City of Beechwood Village; City of Bellemeade; City of Blue Ridge Manor; City Of Briarwood; City of Broeck Pointe; City of Brownsboro Farm; City of Brownsboro Village; City of Cambridge; City of Coldstream; City of Creekside; City of Crossgate; City of Douglas Hills; City of Fincastle; City of Forest Hills; City of Glenview; City of Glenview Hills; City of Glenview Manor; City of Goose Creek; City of Graymoor-Devondale; City of Green Spring; City of Heritage Creek; City of Hickory Hill; City of Hills and Dales; City of Hollow Creek; City of Hollyvilla; City of Houston Acres; City of Hurstbourne; City of Hurstbourne Acres; City of Jeffersontown; City of Kingsley; City of Langdon Place; City of Lincolnshire; City of Lyndon; City of Lynnview; City of Manor Creek; City of Maryhill Estates; City of Meadowbrook Farms; City of Meadow Vale; City of Meadowview Estates; City of Middletown; City of Mockingbird Valley; City of Moorland; City of Murray Hill; City of Norbourne Estates; City of Northfield; City of Norwood; City of Old Brownsboro Place; City of Parkway Village; City of Plantation; City of Poplar Hills; City of Prospect; City of Richlawn; City of Riverwood; City of Rolling Fields; City of Rolling Hills; City of Saint Matthews; City of Saint Regis Park; City of Seneca Gardens; City of Shively; City of South Park View; City of Spring Mill; City of Spring Valley; City of Strathmoor Manor; City of Strathmoor Village; City of Sycamore; City of Ten Broeck; City of Thornhill; City of Watterson Park; City of Wellington; City of West Buechel; City of Westwood; City of Wildwood; City of Windy Hills; City of Woodland Hills; City of Woodlawn Park; City of Worthington Hills; and Andy Beshear, in His Capacity as Attorney General of Kentucky, Appellees

NO. 2018-CA-000150-MR, NO. 2018-CA-000151-MR, NO. 2018-CA-000154-MR, NO. 2018-CA-000156-MR, NO. 2018-CA-000158-MR, NO. 2018-CA-000160-MR

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JULY 26, 2019; 10:00 A.M.

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Discretionary Review Granted by Supreme Court February 12, 2020

Editor's Note: This case is not to be published pursuant to the Kentucky Rules of Civil Procedure, and may generally not be cited or used as binding precedent, CR 76.28(4)(c), RCr 12.02.

APPEAL FROM FRANKLIN CIRCUIT COURT, HONORABLE PHILLIP J. SHEPHERD, JUDGE, ACTION NO. 17-CI-00327.

Attorneys and Law Firms

BRIEFS FOR APPELLANT, JEFFERSON COUNTY LEAGUE OF CITIES, INC.: Samuel D. Hinkle IV, Culver V. Halliday, Adam C. Reeves, Louisville, Kentucky.

BRIEFS FOR APPELLANT, NATIONAL WASTE & RECYCLING ASSOCIATION, KENTUCKY CHAPTER: R. Kenyon Meyer, J. Tanner Watkins, Young-Eun Park, Louisville, Kentucky.

BRIEF FOR APPELLANTS, CITIES OF SHIVELY, INDIAN HILLS, AND BELLEWOOD, KENTUCKY: Finn Cato, Louisville, Kentucky.

BRIEF FOR APPELLANTS, CITY OF JEFFERSONTOWN AND CITY OF SENECA GARDENS: Schuyler J. Olt, City Attorney, City of Jeffersontown, Louisville, Kentucky.

BRIEFS FOR APPELLANTS, COMMONWEALTH AND SECRETARY SNAVELY: M. Stephen Pitt, S. Chad Meredith, Matthew F. Kuhn, Office of the Governor, Frankfort, Kentucky, John G. Horne, II, Daniel C. Cleveland, J. Michael West, Energy & Environment Cabinet, Frankfort, Kentucky.

BRIEF FOR APPELLANT, CITY OF BANCROFT: Richard P. Schiller, Terri E. Boroughs, Chapin Elizabeth Scheumann, Louisville, Kentucky.

BRIEF FOR APPELLEES: Peter F. Ervin, Assistant Jefferson County Attorney, Louisville, Kentucky.

BEFORE: DIXON, JONES, AND LAMBERT, JUDGES.

OPINION

DIXON, JUDGE:

*1 Jefferson County League of Cities, Inc.; National Waste & Recycling Association, Kentucky Chapter; the Cities of Shively, Indian Hills, and Bellewood, Kentucky; the Cities of Jeffersontown and Seneca Gardens, Kentucky; the Commonwealth of Kentucky, Energy and Environment Cabinet ("EEC") and Charles G. Snavely, in his official capacity as the Secretary of the Kentucky EEC; and the City of Bancroft, Kentucky (Appellants) appeal the Franklin Circuit Court's order granting Louisville/Jefferson County Metro Government Waste Management District ("LMGWMD" [2]); Robert Schindler; and Greg Fischer, in his official capacity as Mayor of Louisville Metro Government (Appellees), partial summary judgment, finding all sections of 2017 Kentucky Laws Chapter 105 ("HB 246"), except for Section 2, which amended KRS [3] 109.115 to provide for a distinct composition of the board of directors in a county containing a consolidated local government, violated Sections 59, 60, and 156a of the Kentucky Constitution. [4] After careful review of the record, briefs, and applicable law, we affirm in part, reverse in part, and remand for entry of an order consistent with this opinion.

In 2017, Kentucky's General Assembly enacted HB 246, which was signed into law on March 21, 2017. Because the bill contained an emergency clause, it became effective immediately. On March 27, 2017, Appellees filed the instant action seeking a declaratory judgment that HB 246 was impermissible "special legislation" in violation of Sections 27, 28, 55, 59, and 60 of the Kentucky Constitution. Injunctive relief was also sought and initially—at least preliminarily—heard on March 29, 2017. The issues concerning injunctive relief were then briefed and arguments heard on April 27, 2017. The motion was taken under advisement until the trial court entered its order denying injunctive relief on June 27, 2017. Cross motions for summary judgment were filed, and arguments on those motions were heard on August 28, 2017. The court's order granting Appellees partial summary judgment was entered December 28, 2017. These appeals followed.

*2 Appellants collectively present essentially the same arguments why HB 246 does not violate Section 59, Section 60, or Section 156a of the Kentucky Constitution. Additionally, Kentucky courts have historically considered whether challenged legislation violates these three sections in tandem. Consequently, we will address Appellants' arguments in a global fashion.

The standard of review of a trial court's grant of summary judgment is well settled. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR [5] 56.03. "[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). An appellate court's role in reviewing an award of summary judgment is to determine whether the trial court erred in finding that no genuine issue of material fact exists, and therefore, the moving party was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). A grant of summary judgment is reviewed *de novo* because factual findings are not at issue. *Pinkston v. Audubon Area Community Serv., Inc.*, 210 S.W.3d 188, 189 (Ky. App. 2006) (citing *Blevins v. Moran*, 12 S.W.3d 698 (Ky. App. 2000)).

The trial court began its analysis of the issues before it on summary judgment stating:

> [t]his case presents the question of whether the legislature can single out Jefferson County to impose a regulatory scheme for solid waste planning and regulation that destroys the ability of the Louisville Metro Government and its duly constituted Solid Waste Planning Board to engage in county-wide solid waste planning and management, in contrast to the statute's provisions governing solid waste planning in all 119 other counties.

"However, an act is not necessarily rendered unconstitutional by the fact that there is only one city of the class to which the legislation is applicable." *Louisville/Jefferson County Metro Gov't v. O'Shea's-Baxter, LLC*, 438 S.W.3d 379, 383 (Ky. 2014) (citing *City of Louisville v. Klusmeyer*, 324 S.W.2d 831, 834 (Ky. 1959); *Commonwealth v. Moyers*, 272 S.W.2d 670, 673 (Ky. 1954)). In *Mannini v. McFarland*, 294 Ky. 837, 172 S.W.2d 631 (1943), our predecessor Court developed a

test for determining whether legislation based on population is constitutionally sustainable. *Mannini* held "a legislative classification according to population and its density, and according to the division of cities into classes, will be constitutional under the framework of Sections 59 and 60 only if (1) the act relates to the organization and structure of a city or county government or (2) the classification bears 'a reasonable relation to the purpose of the Act.' " *O'Shea's-Baxter, LLC*, 438 S.W.3d at 383 (quoting *Mannini*, 172 S.W.2d at 632).

The trial court examined HB 246 to determine whether it was permissible or constituted special legislation prohibited by Sections 59 and/or 60 of the Kentucky Constitution. Section 59 of the Kentucky Constitution provides that "where a general law can be made applicable, no special law shall be enacted." Likewise, Section 60 of the Kentucky Constitution provides, in part, "[t]he General Assembly shall not indirectly enact any special or local act by the repeal in part of a general act, or by exemption from the operation of a general act any city, town, district or county[.]" The trial court stated:

> ***3** [f]or over twenty-five years, solid waste planning and management in Jefferson County has been implemented under the same general law that applies to all 120 counties. Plaintiffs now argue that the action of the 2017 General Assembly repealing those provisions and enacting a unique regulatory regime that applies only to Jefferson County violates Sections 59 and 60 of the Kentucky Constitution. This Court agrees, in part.
>
> The Kentucky Supreme Court has recently addressed this issue, and held that "classifications that are favorable or unfavorable to particular localities, rested alone upon numbers and populations, are invidious, and therefore offensive to the letter and the spirit of the Constitution ...." *O'Shea's-Baxter, LLC*, 438 S.W.3d at 383. There are two exceptions to the rule that classifications based on population are unconstitutional as special legislation: (1) when the act relates to the organization or structure of a city or county government agency; and (2) when the classification has a reasonable relation to the purpose of the Act. *Id.*
>
> Here, the Court finds that to the extent that House Bill 246 restructures the administrative composition of the Solid Waste Management District's board in Section 2 of the bill, those provisions do not run afoul of the Kentucky Constitution.

We agree with the trial court's finding that HB 246, Section 2, falls within the first category and is, therefore, not unconstitutional. This is undisputed by the parties.

However, the remainder of the trial court's analysis is contested by the parties. Following careful review, we must reverse.

The trial court found:

> the other provisions of the legislation all deal with substantive issues of solid waste policy. The legislation purports to enact a broad range of restrictions and provisions that apply only to Jefferson County. House Bill 246 purports to exempt local municipalities from regulation by the solid waste management district; to grant a veto power to local municipalities over the county-wide solid waste plan; to legislatively revoke local solid waste regulations previously enacted; and to enact different rules for collection of fees for residential property. These policies, restricted to Jefferson County only, do not bear any rational relationship to the purpose the statutes governing solid waste disposal, as set forth by the General Assembly in KRS 224.43-010(6), which states that "counties and waste management districts ... are in the best position to make plans for municipal solid waste collection services for its citizens."
>
> In fact, a plain reading of KRS 109 demonstrates that the purpose of the statute is to regionalize the planning function for solid waste disposal. As the statute puts it, the intent of KRS Chapter 109 is to promote local government planning for solid waste disposal "with primary emphasis on regionalization of these functions." KRS 109.011(5)(c). [sic] The statute further provides that "primary responsibility for adequate solid waste collection, management, treatment, disposal and resources recovery shall rest with combinations of counties and waste management districts." KRS 109.011(6).[6] Lest there be any doubt, the General Assembly made it clear that the purpose of local waste management districts is to "provide counties with the authority to develop a solid waste management system for solid waste generated within the geographical boundaries of the county." KRS 109.011(11). Contrary to these provisions of law, House Bill 246, essentially balkanizes solid waste management and planning in Jefferson County, enabling each municipality to go its own way, and to enact policies that are at odds with the county-wide plan.

*4 (Footnote added.)

We first note that while the trial court initially cited the correct standard from *O'Shea's-Baxter* as espoused in *Mannini*, as well as its predecessors and progeny, it failed to consider the purpose of the amendments–KRS 109.041, KRS 109.115, KRS 109.120, KRS 224.43-340, and KRS 109.310–when determining whether HB 246 complied with same. Instead, the trial court looked to KRS 224.43-010(6), KRS 109.011(5), KRS 109.011(6), and KRS 109.011(11) in its determination of whether the classification in HB 246 "has a reasonable relation to the purpose of the Act." *Mannini*, 172 S.W.2d at 632.

In *O'Shea's-Baxter*, the Supreme Court of Kentucky looked at the statute in question, "the Act," to determine its purpose, not other statutes or prior versions of the statute as the trial court did in the case at hand. In construing statutes, we must give them "a literal interpretation unless they are ambiguous and if the words are not ambiguous, no statutory construction is required." *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002). We may infer the purpose of the Act from its "legislative history, from the statute's title, preamble or subject matter, or from some other authoritative source." *Elk Horn Coal Corp. v. Cheyenne Resources, Inc.*, 163 S.W.3d 408, 419 (Ky. 2005).

We begin our review of HB 246, as our Supreme Court has, "recognizing the strong presumption of constitutionality afforded to an enactment of the General Assembly." *Jefferson County Police Merit Bd. v. Bilyeu*, 634 S.W.2d 414, 416 (Ky. 1982) (citing *United Dry Forces v. Lewis*, 619 S.W.2d 489 (Ky. 1981)). "Because of our reluctance to encroach upon the powers of the legislature, one of the three partners in Kentucky state government, we have become 'greatly liberalized' in upholding the right of the legislature to classify local government entities." *Id.* at 416 (citing *Bd. of Educ. of Woodford County v. Bd. of Educ. of Midway Indep. Graded Common School Dist.*, 264 Ky. 245, 94 S.W.2d 687 (Ky. 1936)).

*5 HB 246, Section 1, amends KRS 109.041 concerning county powers for solid waste management. Like the *Bilyeu* court, having analyzed the statute, we have no difficulty in declaring that the subject matter of HB 246 is "governmental in nature" and constitutional under the first prong of the *Mannini* test. Also following in the *Bilyeu* court's footsteps, "we do not decide the wisdom of the action of the General Assembly" in its actions concerning the powers of a county or waste management district in prohibiting or otherwise restricting materials recovery or charging fees. *Id.* at 416. The establishment and powers of counties and waste management districts, as well as their powers for solid waste management, are clearly governmental activities. Since KRS 109.041 deals with governmental authority, its amendment by HB 246 complies with the constitutional requirements of the first prong of the *Mannini* test. Therefore, we need not consider the second prong of the *Mannini* test.

HB 246, Section 2, amends KRS 109.115, specifically detailing the composition of the board of directors in a county containing a consolidated local government. As mentioned above, the trial court correctly found that this legislation fell within the first *Mannini* exception because it clearly "relates to the organization and structure of a city or county government." The trial court's findings concerning the constitutionality of this section of HB 246 are not at issue; thus, no further discussion is required.

HB 246, Section 3, amends KRS 109.120, titled "Rules and regulations of board; different provisions for rulemaking in those counties containing a consolidated local government and those counties that do not." Once again, having analyzed the statute, we have no difficulty in declaring that the subject matter of HB 246 is "governmental in nature" and constitutional under the first prong of the *Mannini* test. The establishment, rules, and regulations of county boards are clearly governmental activities. Since KRS 109.120 deals with governmental activity, its amendment by HB 246 complies with the constitutional requirements of the first prong of the *Mannini* test. It is also apparent from reading the amendments and the title of the statute being amended that the amendments bear a "reasonable relation to the purpose of the Act" as required under the second prong of the *Mannini* test.

HB 246, Section 4, amends KRS 224.43-340 concerning regulations, solid waste management plans, designation of solid waste management areas, and enforcement representatives. Yet again, having analyzed the statute, we have no difficulty in declaring that the subject matter of HB 246 is "governmental in nature" and constitutional under the first prong of the *Mannini* test. The regulations, solid waste management plans, designation of solid waste management areas, and enforcement representatives are clearly governmental activities. Since KRS 224.43-340 deals with the exercise of governmental authority, its amendment by HB 246 complies with the constitutional requirements of

the first prong of the *Mannini* test. Therefore, we need not consider the second prong of the *Mannini* test.

We find it curious that the trial court found that HB 246, Section 5, which amends KRS 109.310, violated Sections 59 and 60 of the Kentucky Constitution.[7] "The purpose of the constitutional inhibition in these two sections is to require that all laws upon a subject shall operate alike upon all individuals and corporations." *Bilyeu*, 634 S.W.2d at 416 (citing *City of Louisville v. Kuntz*, 104 Ky. 584, 47 S.W. 592 (1898)). KRS 109.310 concerns collection of solid waste pick-up fees. Amendment of this statute in HB 246, Section 5, applies generally to "county or urban-county government[s]" and "residential property owner[s]" rather than specially or locally. It does not apply only to Jefferson County or a county containing a consolidated local government. It contains no classification which would trigger an analysis of its constitutionality under *Mannini*. Thus, the trial court erroneously determined that this section violated Kentucky's Constitution. Therefore, we must reverse the trial court's declaration that HB 246, Section 5, is unconstitutional "special legislation."

*6 As noted previously, the trial court correctly found that HB 246, Section 2, which amended KRS 109.115 concerning the composition of the board of directors in a county containing a consolidated local government, "concerns the organization and structure of a local government unit, and accordingly, that Section of the Bill is a reasonable classification that does not violate Sections 59 and 60 of the Kentucky Constitution." However, the trial court failed to acknowledge that HB 246, Sections 6 and 7, also concern the amendments to KRS 109.115 regarding the composition of the board of directors in a county containing a consolidated local government. Consequently, neither HB 246, Section 6 nor 7, runs afoul of the provisions of the Kentucky Constitution. Accordingly, we must reverse the trial court's declaration that HB 246, Sections 6 and 7, are unconstitutional.

The trial court further found that HB 246 violated Section 156a of the Kentucky Constitution. It stated:

> This decentralization of the solid waste planning and management authority that applies to Jefferson County only is equally at odds with Section 156a of the Kentucky Constitution, which provides that "[a]ll legislation relating to cities of a certain classification shall apply equally to all cities within the same classification." Under House Bill 246, cities within Jefferson County are given the power to accept, reject, or deviate from the county solid waste plan, while that power is withheld from similarly situated cities in other counties. There is no rational basis for this distinction.

Appellants insist that this finding was improper because Appellees failed to allege that HB 246 violated Section 156a of the Kentucky Constitution in their complaint. Like *Elk Horn Coal Corp.*, although the issue concerning the potential violation of Section 156a of the Kentucky Constitution was not initially raised by Appellees in their Complaint, the parties addressed this issue, and neither the trial court nor we are otherwise precluded by any rule or constitutional provision from addressing this issue.

> As a general rule, a court will not inquire into the constitutionality of a statute ... on its own motion, but only those constitutional questions which are duly raised and insisted on, and are adequately argued and briefed will be considered.... This is not an inflexible rule, however, and in some instances constitutional questions inherently involved in the determination of the cause may be considered even though they may not have been raised as required by orderly procedure.

Elk Horn Coal Corp., 163 S.W.3d at 424 (internal citations and quotation marks omitted). It was clear from Appellees' complaint that they were challenging the constitutionality of HB 246; neither the trial court nor we are precluded from examining the bill for compliance with sections of the Constitution not specifically named in the complaint.

Nonetheless, although it was not improper for the trial court to examine HB 246 to determine whether it complied with the provisions of Section 156a of the Kentucky Constitution, the trial court reached an improper result in determining that Sections 1, 3, 4, 5, 6, and 7 of HB 246 violated Section 156a of the Kentucky Constitution, which provides:

> [t]he General Assembly may provide for the creation, alteration of boundaries, consolidation, merger, dissolution, government, functions, and officers of cities. The General Assembly shall create such classifications of 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. The classification of all cities and the law pertaining to the classifications in effect at the time of adoption of this section shall remain in effect until otherwise provided by law.

*7 The analysis required under this section of Kentucky's Constitution is akin to the first prong of the *Mannini* test.

In *Mannini*, the court also combined its analysis of the constitutionality of the statute at issue under Sections 156,[8] 59, and 60 of the Kentucky Constitution, writing:

> However, section 156 of our Constitution authorizes the division of cities and towns into six classes for purposes of their organization and government, the class of a city or town being determined by its population, and the General Assembly has classified cities and towns of the state pursuant to this authority. In determining whether the Act in question is special or local legislation we must consider section 156 in connection with sections 59 and 60.
>
> The language of section 156 is so clear and unambiguous in saying that the authorized classification is for the purpose of organization and government that there would be little difficulty in disposing of the question before us if this were a matter of novel impression but some confusion has arisen in the cases in which this question was involved due to the failure of the court in some instances to keep in mind the purpose of the division into classes as manifested by this section.

Mannini, 172 S.W.2d at 632. It was at this point the *Mannini* court began its analysis under Sections 59 and 60 of the Kentucky Constitution and set forth its two-prong test. Application of these provisions and the two-prong test has been previously discussed; accordingly, we hold that no section of HB 246 is unconstitutional.

In conclusion, for the foregoing reasons, the order of the Franklin Circuit Court is AFFIRMED inasmuch as it found Section 2 of HB 246 constitutional but REVERSED inasmuch as it found the remainder of HB 246 unconstitutional. This matter is remanded with instructions for entry of an order consistent with this opinion.

ALL CONCUR.

All Citations

Not Reported in S.W. Rptr., 2019 WL 3377396

Footnotes

1 Appellants identified Appellee with this spelling in their Notice of Appeal. The spelling of the party's name in the action below is "Fischer." As we believe "Fischer" is the correct spelling, we choose to refer to Appellee as such.

2 LMGWMD was created pursuant to KRS 109.115 and has countywide authority under KRS 109.041. In 2003, Jefferson County and the City of Louisville merged, pursuant to KRS Chapter 67C, into a consolidated local government, which did not affect LMGWMD's authority under KRS 109.115 or KRS 109.041.

3 Kentucky Revised Statutes.

4 Section 1 amended KRS 109.041, Section 3 amended KRS 109.120, Section 4 amended KRS 224.43-340, and Section 5 amended KRS 109.310. Section 6 provides:

> [t]he amendments to KRS 109.115 in Section 2 of this Act shall be applied, on the effective date of this Act, to declare vacant the offices of current board members of a solid waste management district in a county containing a consolidated local government who were appointed under subsection (3) of Section 2 of this Act prior to its amendment in this Act. The mayor of the consolidated local government shall fill the vacant positions within 90 days of the effective date of

this Act in accordance with subsection (4) of Section 2 of this Act; otherwise all appointment authority shall shift to the Governor.

Section 7 provides:

[w]hereas the citizens of counties containing a consolidated local government will be better served by a reconstituted waste management district board that is more diverse and representative of and responsive to the populace, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

5 Kentucky Rules of Civil Procedure.

6 KRS 109.011(6), in its entirety reads:

That it is the intent of the General Assembly of the Commonwealth of Kentucky that the primary responsibility for adequate solid waste collection, management, treatment, disposal, and resource recovery shall rest with combinations of counties and waste management districts, subject to standards set by administrative regulations adopted by the Energy and Environment Cabinet. In those cities currently operating solid waste management systems, the city and county may assume joint responsibility of preparing a solid waste management plan. *If it is in the best public interest to do so and with the mutual agreement of both the county and city, a county may delegate responsibility for adequate collection, management, treatment, disposal, or materials recovery to a city. This delegation of responsibility is contingent upon the approval of a solid waste management plan by the cabinet. The purpose of delegating responsibilities shall be to effectuate the safe and sanitary management, use, and handling of solid waste, the protection of the health, welfare, and safety of the citizens and inhabitants of the Commonwealth, and for making the most efficient use of all resources for the benefit of the citizens and inhabitants of the Commonwealth*[.]

(Emphasis added).

7 This may have been an oversight as the trial court noted in its introduction that Section 5 "is not challenged in this litigation."

8 Section 156 was repealed in 1984 and replaced by Section 156a in 1994.

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