SUPREME COURT OF KENTUCKY
FILE NO. 2019-SC-000520-D

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
WASTE MANAGEMENT DISTRICT, et al. APPELLANTS

v.

ON REVIEW FROM COURT OF APPEALS
NOS. 18-CA-000150, 18-CA-000151, 18-CA-000154
18-CA-000156, 18-CA-000158, 18-CA-000160
FRANKLIN CIRCUIT COURT
NO. 17-CI-00327

JEFFERSON COUNTY LEAGUE OF CITIES, INC., et al. APPELLEES

BRIEF FOR APPELLEES, CITIES OF SHIVELY, INDIAN HILLS AND BELLEWOOD, KENTUCKY

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing was served by regular U.S. Post upon the following: Hon. Philip J. Shepherd, Franklin Circuit Court Judge, Franklin Circuit Court, 222 St. Clair Street, Frankfort, KY 40601, Peter F. Ervin, Assistant Jefferson County Attorney, 531 Court Place, Suite 900, Louisville, KY 40202, Culver V. Halliday, Adam C. Reeves, Stoll Keenon Odgen PLLC, 500 W. Jefferson Street, Suite 2000, Louisville, KY 40202, John G. Horne, II, Daniel C. Cleveland, J. Michael West, Energy & Environment Cabinet, 300 Sower Boulevard, Frankfort, KY 40601, Schuyler J. Olt, 10416 Watterson Trail, Louisville, KY 40299, R. Kenyon Meyer, J. Tanner Watkins, Young-Eun Park, Dinsmore & Shol, LLP 101 S. Fifth Street, Suite 2500, Louisville, KY 40202, Richard P. Schiller, Terri E. Boroughs, Schiller, Barnes & Maloney, 1600 One Riverfront Plaza, 401 West Main Street, Louisville, KY 40202, John P. Singler, Carrie D. Ritsert, Singler & Ritsert, 209 Old Harrods Creek Road, Suite 100 Louisville, KY 40223, J. Matthew Carey, Carey & Niemi, One Riverfront Plaza, 401 West Main Street, Suite 2000, Louisville, KY 40202, Tom Fitzgerald, Kentucky Resource Counsel, P.O. Box 1070, Frankfort, KY 40602, Brian W. Hodge, 9408 Dawson Hill Road, Louisville, KY 40299, Denise M. Helline, Celebrezze & Helline, The Normandy Building, 101 North Seventh Street, Louisville, KY 40202, Charles W. Jobson, 6006 Brownsboro Park Blvd., Suite C, Louisville, KY 40207, Barry Dunn, Office of the Attorney General, 700 Capital Avenue, Frankfort, KY 40601, Charles J. Otten, John T. McGarvey, Morgan & Pottinger, P.S.C., 401 S. Fourth Street, Suite 1200, Louisville, KY 40202, James G. Hodge, 9904 Wynbrooke Place, Louisville, KY 40241, Samuel (Chip) Hayward, Adams, Hayward & Welsh, 1009 South Fourth Street, Louisville, KY 40203 and Sam Givens, Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601, on this 10th day of July 2020.

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STATEMENT CONCERNING ORAL ARGUMENT

Appellees desire oral argument and believe that oral argument would be helpful to the Court in deciding the constitutional issues presented.

COUNTERSTATEMENT OF POINTS AND AUTHORITIES

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COUNTERSTATEMENT OF THE CASE

The Appellees, herein, the cities of Shively, Indian Hills and Bellewood, Kentucky, assert that House Bill 246 does not violate Sections 59, 60 and 156a of the Kentucky Constitution which is the focus of this appeal. Furthermore, the Appellees accept the Appellants' Statement of the Case[1] only to the extent that it points to the recent amendments made to HB 246 but disagrees with the historical references to KRS Chapter 109 and KRS 224. The Appellees believe that the focus on appeal should be the Act itself and the amendments thereto and their constitutionality as set forth in the below argument.

ARGUMENT

I. Standard of Review

The standard of review on appeal is set forth in *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991), wherein this Court held that summary judgment is proper only where the movant shows that the adverse party cannot prevail under any circumstances and further held that the record must be viewed in a light most favorable to the party opposing the motion and all doubts are to be resolved in his favor. *Spencer v. Estate of Spencer*, 313 S.W.3d 534 (Ky. 2010).

In *Blankenship v. Collier*, 302 S.W.3d 665, 668 (Ky. 2010), this Court stated that "even though an appellate court always reviews the substance of a trial court's summary judgment ruling *de novo* i.e. to determine whether the record reflects a genuine issue of

[1] CR 76.12(4)(c)(iv).

material fact, a reviewing court must also consider whether the trial court gave the party opposing the motion an ample opportunity to respond and complete discovery before the court entered its ruling.

The inquiry before this Court should be "whether, from the evidence of record, facts exist which would make it possible for the nonmoving party to prevail.". *Hallahan v. The Courier Journal*, 138 S.W.3d 699, 704 (Ky. App. 2004).

Moreover, "an appellate court need not defer to the trial court's decision on summary judgment and will review the issue de novo because only legal questions and no factual findings are involved. *Id.* at 705. See also *Lewis v. B & R Corp.*, 56 S.W.3d 432 (Ky. 2001).

This Court has further held that "the application of constitutional standards is a question of law which we review *de novo*." *Louisville/Jefferson County Metro Government v. O'Shea's-Baxter, LLC*, 438 S.W.3d 379, 382 (Ky. 2014) citing *Jacobsen v. Commonwealth*, 376 S.W.3d 600, 606 (Ky. 2012).

II. House Bill 246 Does Not Constitute Special and Local Legislation Under Sections 59 and 60 of The Kentucky Constitution

The Appellants contend that HB 246 is repugnant to Ky. Const. §59 and §60 in that it is special and local legislation.[2] However, the Kentucky Court of Appeals rendered its

[2] Ky. Const. §59, Section Twenty-Ninth provides that "In all other cases where a general law can be made applicable, no special law shall be enacted."

Ky Const. §60 provides that "The General Assembly shall not indirectly enact any special or local act by the repeal in part of a general act, or by exempting from the operation of a general act any city, town, district or county; but laws repealing local or special acts may be enacted. No law shall be enacted granting powers or privileges in any case where the granting of such powers or privileges shall have been provided for by a general law, no where the courts have jurisdiction to the grant the same or to give the relief asked for."

decision on July 26, 2019 holding that HB 246 did not violate the provisions of Ky. Const. §59 and §60.

It has previously been established by this Court that "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." *O'Shea's-Baxter*, LLC, at 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).

The Court of Appeals both recognized and respected the established test for determining whether legislation based upon population is constitutionally sustainable and further noted that although the trial court cited the correct standard from *O'Shea's-Baxter* as espoused in *Mannini v. McFarland*, 294 Ky. 837, 172 S.W.2d 631 (1943), it failed to consider the purpose of the amendments to KRS 109 when determining whether HB 246 complied with same. The Court of Appeals discerned instead that in *O'Shea's-Baxter*, the Supreme Court 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. Importantly, the Court of Appeals noted that in construing statues, 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).

The Court further recognized the strong presumption of constitutionality afforded to an enactment of the General Assembly as espoused in *Jefferson County Police Merit Bd. v. Bilyeau*, 634 S.W.2d 414, 416 (Ky. 1982) and further concluded that "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 614.

The Court of Appeals in turn conducted its own analysis of each of the amendments in HB 246 via the test established in *Mannini* to hold that each amendment in HB 246, namely sections 1, 2[3], 3, 5[4], 6 and 7, satisfied the first prong of the *Mannini* test as they were governmental in nature and related to the organization and structure of a county or city government and further reversing the decision of the trial court.

The Appellants now contend before this Court that the Act is special legislation prohibited by §59 because it amends a general act to discriminate against the Waste Management District in favor of the Appellees and further contend that the Act contains local legislation prohibited by §60 because it specifically targets the District for application of the Act.

The Appellants further argue that the Act creates on the one hand a new sub-class of Waste Management District, the one operating in Jefferson County and on the other hand a new super-class of home rule city, those incorporated in Jefferson County citing to *Schoo v. Rose*, 270 S.W.2d 940 (1954). However, and to be distinguished, this Court in *Schoo* goes on to say that "In applying this test it is necessary to determine whether this Act should be regarded as a revenue measure or as an exercise of the State's inherent police power tending toward the accomplishment or promotion of the public health,

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[3] Section 2, amending KRS 109.115, was held constitutional by the trial court, satisfying the first exception to the Mannini test because it "relates to the organization and structure of a city or county government," and is not at issue on this appeal.

[4] Section 5, amending KRS 109.310, the Court of Appeals reversing the trial court's finding as unconstitutional on the grounds that the provision contains no classification that would trigger an analysis of its constitutionality under Mannini and further noting a possible oversight in the trial court's finding because Section 5 is not challenged in this litigation.

safety, peace and good order or morals." *Schoo* at 941. This Court further held that "In order to sustain a legislative enactment as an exercise of the police power it is necessary that the Act should have some reasonable relation to such subjects as public safety, health, peace, good order or morals. Moreover, the law must tend toward the accomplishment or promotion of the enumerated objects in a degree that is perceptible and clear." *Id.* at 941.

In the matter at hand, the Kentucky Legislature did not arbitrarily designate the dissevered faction of the original unit as two classes, as the Appellants suggest, and in fact, the classification is based upon a reasonable and substantial difference in kind, situation or circumstance which bears a proper relation to the purpose of the statute. The Act certainly has a reasonable relation to public health and public welfare, inherent in the State's police power, which is both perceptible and clear in the Act itself and amendments thereto.

For example, Ky. Acts, ch.105, § 3(3), amending KRS 109.12 provides that:

> In counties containing a consolidated local government, the board may adopt such rules and regulations as are necessary to carry out the purposes for which the waste management district was created and **necessary for the adequate management of solid waste in a manner adequate to protect the public health and consistent with such rules and regulations as may be promulgated by the department.** These rules and regulations shall not be enforceable within the boundaries of the city until approved by the legislative body of the city or, if outside of an incorporated municipality, the legislative body of the consolidated local government, where the rule or regulation is intended to apply. A city shall approve any rule or regulation if rejecting it would cause the city to be in violation of its approved solid waste management plan adopted in accordance with the provisions of KRS 224.43-345 and Section 4 of this Act. (Appellees' emphasis)

The Kentucky legislature elucidates its inherent police power in accomplishing and promoting public health and management of solid waste, by authorizing the eighty-three

municipalities and their legislative bodies located within the consolidated local government of Jefferson County to have a voice and play a vital role in the management of solid waste as it affects their cities.

In addition, Ky. Acts, ch.105, § 7 reverberates the intent of the Legislature wherein it provides:

> **Whereas 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. (Appellees' emphasis)

Again, the Act has a reasonable relation to the accomplishment and promotion of public health and solid waste management, inherent in the State's police power, justifying the classification and providing the numerous municipalities in Jefferson County with a district board that is more diverse and representative of and more responsive to those cities located within a consolidated local government.

III. House Bill 246 Is Excepted from the Prohibitions of Sections 59 and 60 of The Kentucky Constitution

A. House Bill 246 Relates to the Organization, Structure, Functions, Purpose and Incidents, of Local Government

As previously referenced, this Court in *Mannini* set the appropriate standard for legislation to be permissible under Sections 59 and 60 of the Kentucky Constitution and determined that "When the subject-matter is purely one of municipal government, it is clearly competent for the Legislature to classify it alone upon number and density of populations, as the Constitution implies if it does not expressly allow." *Mannini* at 633.

Further citing to *Hager v. Gast*, 119 Ky. 502, 84 S.W. 556 (1905), which upheld a classification based on a class of cities where the act dealt with a governmental purpose, this Court stated that "The court in the opinion kept in mind the requirement that an act based on a classification merely according to a class of cities must, to be sustainable, deal with governmental functions of the classified cities, or matters incidents thereto, unless the classification has a reasonable relation to the purposes of the act. The *Kuntz*[5] case was cited with approval and on its authority a classification according to the class of cities was upheld because the act under consideration dealt with the subject matter of local government or purposes incident thereto." *Id.* (Appellees' emphasis)

The Court in *Mannini* also referenced *Logan v. City of Louisville*, 142 S.W2d 161, 163 (1940) wherein this Court recognized an exception to Section 59 of the Kentucky Constitution by "conferring upon the Legislature the right and authority to enact different charters for each class of cities and to confer different governmental functions upon each class, as well as the means and methods by which such rights might be exercised." (Appellees' emphasis)

In *Jefferson County Police Merit Bd. v. Bilyeu*, 634 S.W.2d 414, 416 (1982) this Court reiterated and recited the test set forth in *Mannini*, and citing to *United Dry Forces v. Lewis, Ky.*, 619 S.W.2d 489 (1981) that "If a questioned statute deals with a particular classification of a governmental entity based upon population alone, it is constitutional under Sections 59 and 60 if (1) it deals with the organization or incidents of government, or (2) it bears a reasonable relation to the purpose of the Act. This Court held that "we have no difficulty in declaring that the subject matter of KRS 78.428 is governmental in

[5] *City of Louisville v. Kuntz*, 104 Ky. 584, 47 S.W. 592 (Ky. 1898)

nature and is constitutional under the first *Mannini* test." *Jefferson County Police Merit Bd.* at 416. (Appellees' emphasis)

Importantly, this Court further held that "This Court has considered the validity of a plethora of statutes under Sections 59 and 60, recognizing the strong presumption of constitutionality afforded to an enactment of the General Assembly. *United Dry Forces v. Lewis*, supra. 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 and citing to *Board of Education of Woodford County v. Board of Education of Midway Independent Graded Common School District*, 264 Ky. 245, 94 S.W.2d 687 (1936). As stated earlier, the Court of Appeals applied this same standard in rendering its decision.

Lastly, this Court reprised the Mannini test in *O'Shea's-Baxter*, stating that "Indeed, in *Mannini v. McFarland*, our predecessor Court developed a test for determining whether legislation on the basis of population is constitutionally sustainable. *Mannini* held that 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* at 383, citing to *Mannini* at 634. *O'Shea's-Baxter*, however, appears to have modified somewhat the language of the rule established in *Mannini* and echoed in *Bilyeu* from "governmental functions or governmental purposes incident thereto" in *Mannini* and "organizations or incidents of government" and

"government in nature" in *Bilyeu* to "organization and structure" of a city or county government in *O'Shea's-Baxter*.

Notwithstanding that slight variation, and the test having been established, the Appellants now argue that none of those sections of HB 246 challenged in the appeal deal with the organization and structure of city or county government and point to the preamble to HB 246 which states that it is an "Act relating to solid waste management and declaring an emergency." The Appellants argue that if the Act dealt with the organization and structure of the of a consolidated local government, it would come in the form of amendment to KRS Chapter 67C and not by way of amendment to a general law and further that the Legislature made no effort to amend any of the powers granted to the consolidated local government in its enabling/charter legislation, KRS Chapter 67C.

The Appellants' argument above is flawed. The preamble of the Act may relate to solid waste management, but portions of the Act and all the amendments at issue in the Act concern the organization, structure, government function, incidents of government and are indisputably governmental in nature.

Ky. Acts, ch.105, § 1(1) reads:

> **In addition to all other powers enumerated in Chapter 67 and other sections of the Kentucky Revised Statutes, counties, acting by and through their fiscal courts, may own and hold the permit for, plan, initiate, acquire, construct, and maintain solid waste management facilities, enter into contracts or leases with private parties for the design, construction, or operation of a publicly-owned solid waste management facility, and adopt administrative regulations with respect thereto in accordance with this chapter. It is hereby determined and declared that in the implementation, acquisition, financing, and maintenance of solid waste management facilities, and in the enforcement of their use, counties will be performing state functions duly delegated to them for the public welfare.** In such regard, the right of counties to condemn land necessary for the acquisition of solid waste management facilities pursuant to the Eminent Domain Act of Kentucky and to exercise the police power in respect thereto is confirmed. Any county may contract with third parties for the

management by public or private means of solid waste within the county. (Appellees' emphasis)

The Kentucky Legislature, in the above section, has delegated its police power related to the public welfare in the management of solid waste in Kentucky to the counties, waste management districts, and the waste management district in the consolidated local government of Louisville Metro/Jefferson County.[6] There is no need to amend KRS Chapter 67C, as the Appellants suggest, when Louisville Metro/Jefferson County, as a consolidated local government, maintains its status as a county, and its powers are already reflected in the Act as it relates to waste management. The waste management district is a government extension of the county and/or consolidated government, and HB 246 relates to the organization and structure of the waste management district.

Likewise, the Legislature has conferred its police powers in certain provisions of the Act related to public health and for the public welfare upon those 83 municipalities located in a consolidated local government should they opt out of the waste management district plan or should they approve the rules and regulations of the waste management district, because the need exists as unambiguously expressed in Ky. Acts, ch.105, § 7.[7] These are matters purely governmental in nature. They are related to the organization

[6] KRS 67C.101(1) provides The government and corporate functions vested in any city of the first class shall, upon approval by the voters of the county at a regular or special election, be consolidated with the governmental and corporate functions of the county containing the city. This single government replaces and supersedes the governments of the pre-existing city of the first class and its county.

[7] Whereas 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....."

and structure of how the waste management district should operate in a consolidated local government and the cities located within the consolidated local government.

The amendments to HB 246 which have already unanimously passed muster in the Court of Appeals each satisfy the test established in *Mannini*.

B. The Classification in HB 246 Bears a Reasonable Relation to the Purpose of the Act

The Court of Appeals, as previously illustrated, upheld the constitutionality of the amendments to HB 246 because they were either considered government in nature[8] or related to the organization and structure of a local government unit[9] via the first prong of the test established in *Mannini* and *Bilyeu*. Except for HB 246, Section 3[10], the Court of Appeals justifiably held it was not necessary to apply the second part of the test, having already satisfied the first prong of the test.

However, it is important to address this issue, nonetheless. Absent any speculation, the classification assuredly has a reasonable relation to the Act. To avoid speculation, one must look at the amendments to the Act.

Section 2 of the Act, although deemed constitutional by the trial court and not at issue on this appeal, identifies the classification's reasonable relationship to the Act. Section 2(4)(c) amends the Act to include on the waste management district board of directors in a county containing a consolidated local government, one resident of the

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[8] HB 246, Sections 1, 3, 4

[9] HB 246, Sections 2, 5, 6 & 7

[10] The Court of Appeals held that the amendments in Section 3 of HB 246 were government in nature and constitutional but also relayed that it was 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.

county submitted by the organization "representing" the largest amount of cities within the county which does not have statewide membership. (Appellees' emphasis) In name and practice this would be the Jefferson County League of Cities. The intent of this appointment is for the numerous municipalities in Jefferson County to have a collective voice on the board of directors addressing the issues and concerns of waste management peculiar to Jefferson County. Moreover, the Legislature specifically excludes an individual in an organization with statewide membership and limits the organization to Jefferson County.

Likewise, Section 2(4)(e) amends the Act to include on the waste management district board of directors in a county containing a consolidated local government, one resident of the county submitted by the association representing the largest number of waste management entities operation within the county. This provision harmonizes the interaction between municipalities and their respective waste managers within Jefferson County and further contributes to the collective voice of those municipalities in a consolidated local government.

In Section 3(3), in consolidated local governments, the board may adopt such rules and regulations as are necessary, and the rules and regulations shall not be enforceable within the boundaries of the city until approved by the legislative body of the city. From a practical standpoint, this amendment provides the municipality a stronger voice in the functions of waste management by actively engaging the many city councils and city commissions of Jefferson County on issues of waste management.

In Section 4(2) of the amendments to the Act, all municipalities within a county containing a consolidated local government, by ordinance, may opt out of the waste

management plan adopted by the waste management district. From a practical standpoint, this amendment not only provides the city commissions and city councils a stronger voice in waste management issues, but also it provides them with the ability to create their own plan if the waste management district cannot meet the needs of the city peculiar to a consolidated local government. In that event, the Act further confers upon the municipality the police power related to public health and welfare delegated by the Legislature, as previously addressed in this brief.

Lastly, Section 7 of HB 246, also previously addressed, states that the citizens of counties containing 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. As aforementioned, that reconstituted board includes one resident of the county submitted by the organization representing the largest amount of cities within the county and one resident of the county submitted by the association representing the largest number of waste management entities operation within the county. Again, this amendment underscores that there was and is a greater need for citizens in a county containing a consolidated local government to have a voice in waste management and for better service by a more diverse and responsive board.

Consequently, and without any doubt, the classification found in the Act, bears a reasonable relation to the purpose of the Act.

IV. House Bill 246 Does Not Violate Section 156a Of the Kentucky Constitution

The Kentucky Constitution §156a, provides that "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 classification 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 the adoption of this section shall remain in effect until otherwise provided by law."

The Court of Appeals held that 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. The Court of Appeals further acknowledged that the analysis required under this section of Kentucky's Constitution is akin to the first prong of the *Mannini* test and further that the Court in *Mannini* combined its analysis of the constitutionality of statute at issue under Sections 156, 59 and 60.

This Court in *Mannini* held the following:

> 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.
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> 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 this division into classes as manifested by this section.

Thus, the Court in *Mannini* suggests that an analysis of an Act pertaining to special or local legislation under Sections 59 and 60 must include and analysis of Section 156.[11]

HB 246 is constitutional under the provision of Section 156a because the Kentucky Constitution confers the Legislature with the authority to provide for the "government" and "functions" of cities. As previously relayed, this language directly coincides with the language used in the *Mannini* decision by this Court, namely, governmental functions of the classified cities, or matters incidents thereto.

Based upon the similar language used in the *Mannini* decision and the recommendation in that same decision that "in determining whether the Act in question is special or local legislation we must consider section 156 in connection with sections 59 and 60," it is quite clear that HB 246 is not in violation of Section 156A of the Kentucky Constitution.

In conclusion, and for all the foregoing reasons set forth in this brief, the Cities of Shively, Indian Hills and Bellewood, Kentucky respectfully request that the Opinion of the Kentucky Court of Appeals rendering HB 246 constitutional be affirmed.

Respectfully submitted,

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[11] In 1994, Ky. Const. § 156A replaced § 156 which had previously created six classifications of cities, and § 156A now provides the Kentucky Legislature the general authority to classify cities.