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Supreme Court of Kentucky

2023-SC-0498-DG

RUSSELL COLEMAN, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY — APPELLANT

V.

ON REVIEW FROM COURT OF APPEALS
NO. 2022-CA-0964
JEFFERSON CIRCUIT COURT NO. 22-CI-002816

JEFFERSON COUNTY BOARD OF EDUCATION; AND ROBBIE FLETCHER, COMMISSIONER OF EDUCATION — APPELLEES

OPINION OF THE COURT BY JUSTICE NICKELL

REVERSING

Kentucky Senate Bill ("S.B.") 1 was enacted in 2022 and instituted various changes to the duties and responsibilities of a school board relative to those of its superintendent "in a county school district in a county with a consolidated local government adopted under KRS Chapter 67C." It is undisputed that Jefferson County is the only county in Kentucky to which S.B. 1 currently applies. We granted discretionary review to consider whether S.B. 1 constitutes impermissible local legislation in violation of Sections 59 and 60 of the Kentucky Constitution. Having carefully reviewed the briefs, law, and

record, we hold S.B. 1 does not violate these constitutional provisions, and therefore, reverse the decision of the Court of Appeals.

FACTS AND PROCEDURAL HISTORY

The Jefferson County Board of Education ("Board") oversees the Jefferson County Public School district, which is the largest in Kentucky; totaling 165 elementary, middle, and high schools; with more than 95,000 students; more than 14,000 teachers, administrators, and other employees; and a $1.9 billion annual budget.[1] In 2022, the General Assembly enacted S.B. 1. Pertinent to the present matter, the bill amended KRS 160.370 to restructure the interaction between the school board and the superintendent "in a county school district in a county with a consolidated local government adopted under KRS Chapter 67C." The form of this restructuring involved:

- Requiring the Board to delegate control over the district's "day-to-day operations and implementation of the board-approved strategic plan" to the superintendent. KRS 160.370(2)(a)1.

- Limiting the Board's general ability to "meet more than once every four weeks for the purpose of approving necessary administrative matters." KRS 160.370(2)(a)2.

- Requiring a two-thirds vote of the Board to disapprove a rule, regulation or by-law submitted by the superintendent. KRS 160.370(2)(b)2.

- Granting the superintendent responsibility for any "administrative duty not explicitly granted" to the Board. KRS 160.370(2)(b)5.

- Allowing the superintendent to make contract purchases not exceeding $250,000 and to make line-item transfers in the annual budget for the same amount. KRS 160.370(2)(c).

[1] These figures pertain to the 2021-22 academic year.

In June 2022, the Board filed a declaratory judgment action against Dr. Jason Glass, in his official capacity of the Commissioner for the Kentucky Department of Education.[2] The sole claim raised in the Board's complaint was that S.B. 1 violates the prohibition against special or local legislation under Sections 59 and 60 of the Kentucky Constitution. The Attorney General thereafter entered an appearance in the suit to defend the constitutionality of S.B. 1.

Following briefing and argument, the trial court entered judgment in favor of the Board and declared S.B. 1 unconstitutional. As threshold matters, the trial court determined the Board had standing to raise the constitutional challenge and that Jefferson County Superintendent, Dr. Marty Pollio, was not a necessary party. On the merits, the trial court reasoned that S.B. 1 was unconstitutional because, as a practical matter, it applied exclusively to Jefferson County. Although the Board did not assert an equal-protection claim, the trial court further ruled, *sua sponte*, that S.B. 1 violated the equal-protection rights of "the voters, parents, students, and taxpayers of Jefferson County."

The Court of Appeals affirmed on the merits under Section 59 and declined to address the trial court's ruling on equal protection as moot. We granted discretionary review and heard oral argument on August 14, 2024.

[2] The interim Commissioner, Robin Fields Kinney, was automatically substituted as an appellee pursuant to Kentucky Rules of Appellate Procedure (RAP) 8(E). The current Commissioner, Dr. Robbie Fletcher, has since been substituted in turn.

LAW AND ANALYSIS

1. The Board has constitutional standing to challenge S.B. 1.

The Attorney General first argues the Board lacks constitutional standing to challenge S.B. 1. We disagree.

In Kentucky, standing is a threshold jurisdictional matter. *City of Pikeville v. Kentucky Concealed Carry Coalition, Inc.*, 671 S.W.3d 258, 263 (Ky. 2023). We have recognized that "all Kentucky courts have the constitutional duty to ascertain the issue of constitutional standing, acting on their own motion, to ensure that only *justiciable causes* proceed in court, because the issue of constitutional standing is not waivable." *Commonwealth, Cabinet for Health & Fam. Servs., Dept. for Medicaid Servs. v. Sexton ex rel. Appalachian Reg'l Healthcare, Inc.*, 566 S.W.3d 185, 192 (Ky. 2018). The standing requirement derives from Section 112 of the Kentucky Constitution, which confers upon the circuit court "original jurisdiction of all justiciable causes not vested in some other court." *Pikeville*, 671 S.W.3d at 260.

This Court has adopted the federal *Lujan* test for standing and explained

> for a party to sue in Kentucky, the initiating party must have the requisite constitutional standing to do so, defined by three requirements: (1) injury, (2) causation, and (3) redressability. In other words, "A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." "[A] litigant must demonstrate that it has suffered a concrete and particularized injury that is either actual or imminent . . . ." "The injury must be … 'distinct and palpable,' and not 'abstract' or 'conjectural' or 'hypothetical.'" "The injury must be 'fairly' traceable to the challenged action, and relief from the injury must be 'likely' to follow from a favorable decision."

Id. at 263-64 (quoting *Sexton*, 566 S.W.3d at 196) (footnotes omitted).

Here, the Attorney General concedes the Board has asserted injury to a legally cognizable interest[3] through the enactment of S.B. 1, and instead, argues the Board failed to satisfy the causation and redressability prongs of the standing test by naming the Commissioner as the sole party against whom declaratory relief was sought.

Typically, the standing inquiry focuses on the status of the plaintiff while the identity of the defendant is only relevant insofar as causation and redressability remain in dispute. *See* Wright & Miller, 13A Fed. Prac. & Proc. Juris. § 3531 (3d ed.) ("The party focused upon . . . is almost invariably the plaintiff . . . but ordinarily the role of defendants is considered only in determining whether they have caused the injury complained of and whether an order directed to them will redress that injury."). In this regard, Kentucky law has long recognized that a declaratory judgment action against a government official is not justiciable unless the named official "occupies some official relation thereto with imposed duties, which, if exercised, would impair,

[3] We additionally note that in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 202 (Ky. 1989), a majority of this Court held a local school board had both the capacity and standing to assert a violation of Section 183 of the Kentucky Constitution based on "a judicially recognizable interest in a system of efficient common schools[.]" This rationale applies with equal force to a claimed violation of Section 59's prohibition on local legislation relative to the management of the common schools. While a political subdivision, such as a local school board, may not claim a violation of federal constitutional rights against the state as its creator, a state legislature must nevertheless "conform[] its action to the state Constitution[.]" *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907), overruled on other grounds by *Kramer v. Union Free Sch. Dist. 2*, 395 U.S. 621 (1969). Further, a political subdivision's standing to seek redress of an alleged violation of a state constitution "is a question of state practice[.]" *Williams v. Mayor of Balt.*, 289 U.S. 36, 48 (1933).

thwart, obstruct, or defeat plaintiff in his rights." *Revis v. Daugherty*, 215 Ky. 823, 287 S.W. 28, 29 (1926).

The Attorney General argues the Commissioner's authority relative to the provisions of S.B. 1 is not fairly traceable to the Board's alleged injury because KRS 156.210(3) merely requires the reporting of "any mismanagement, misconduct, violation of law, or wrongful or improper use of any district or state school fund, or neglect in the performance of duty on the part of any official . . . to the Kentucky Board of Education, which shall, through the chief state school officer or one (1) of his assistants, call in the county attorney or the Commonwealth's attorney in the county or district where the violation occurs[.]" Because the Commissioner lacks direct enforcement authority, the argument goes, he cannot have caused the alleged injury of which the Board now complains. While there is some surface appeal to this logic, we cannot ignore the broader authority vested in the Commissioner as set forth in KRS 156.010.

Under KRS 156.010(1), the Commissioner of Education is empowered to act as "the chief executive of the Department of Education."[4] His enumerated duties and responsibilities include:

[4] As the Department's chief executive, the Commissioner is also the "chief state school officer," which is defined "[f]or purposes of KRS Chapters 156 through 168," as "the Superintendent of Public Instruction until the close of business on December 31, 1990, and after that date it shall mean the commissioner of education." KRS 156.005. Additionally, we note "the naming of the agency head in his official capacity in a lawsuit is the functional equivalent of naming the agency itself." *Lassiter v. American Ex. Travel Related Servs Co.*, 308 S.W.3d 714, 719 (Ky. 2010).

> (f) Monitoring the management of school districts, including administration and finance, *implementation of state laws and regulations*, and student performance; and
>
> (g) *Implementing state laws* and the policies promulgated thereunder by the Kentucky Board of Education and the Education Professional Standards Board.

KRS 156.010(1)(f)-(g) (emphases added). Although the Commissioner may lack express enforcement authority, the Commissioner is undeniably charged with the official responsibility to monitor local school districts and implement state law in connection therewith. The implementation of unconstitutional local legislation affecting the management of the common schools would undoubtedly "impair, thwart, obstruct, or defeat" the Board's rights. *Revis*, 287 S.W. at 29. Moreover, a court order enjoining the implementation of that unconstitutional law would clearly redress the injury. Thus, we have little difficulty concluding the Board has satisfied the elements of causation and redressability under the *Lujan* test.

Nevertheless, the Attorney General maintains the Board is not entitled to pre-enforcement review because its alleged injury is too speculative and conjectural. True, recent decisions of this Court have expressed a "general reluctance to allow pre-enforcement constitutional challenges outside the First Amendment context." *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 664 S.W.3d 633, 684 (Ky. 2023) (Nickell, J., concurring in part, dissenting in part) (citing *Beshear v. Ridgeway Properties, LLC*, 647 S.W.3d 170, 177 (Ky. 2022); *Commonwealth v. Bredhold*, 599 S.W.3d 409, 412 (Ky. 2020); and *Beshear v. Acree*, 615 S.W.3d 780, 828 (Ky. 2020)). Additionally, we have clearly held

"[s]peculative fears of prosecution or other future injuries are legally insufficient to confer standing." *Pikeville*, 671 S.W.3d at 266.

However, the common thread running through these recent decisions on standing is the contingency of whether the regulation of private conduct by the government will be enforced against a particular party at some unknown, future time.[5] *See also Wright & Miller*, at § 3532.4 ("The contingency of official action often is formulated as a search for threatened prosecutorial enforcement of criminal statutes."). The hesitation to engage in pre-enforcement review often stems from a court's desire to avoid the danger of incorrect rulings in the vacuum of an abstract setting or otherwise making "premature interpretations of statutes in areas where their constitutional application might be cloudy." *EMW*, 664 S.W.3d at 683 (Nickell, J., concurring in part, dissenting in part) (quoting *United States v. Raines*, 362 U.S. 17, 22 (1960)). Thus, issues of standing and ripeness dovetail in the context of a declaratory judgment action and essentially "boil down to the same question." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128 n.8 (2007).

Ripeness is not a concern here. Unlike our recent standing decisions, the present matter does not involve the uncertainty of whether governmental regulations directed toward private conduct will be enforced in a particular instance. Instead, the constitutional question presented relates to the order and structure of government as between the state and one of its political

[5] Or, in the case of *Bredhold* whether the constitutionality of the death penalty may be challenged before it has been imposed. 559 S.W.3d at 412.

subdivisions. This Court need not speculate on the contingent enforcement of S.B. 1 because the Commissioner is duty-bound to implement state law under KRS 156.010(1)(f)-(g), and the Attorney General has already acknowledged the validity of the Board's alleged injury for the purpose of standing.

2. Superintendent was not a necessary party.

Next, the Attorney General argues the Board's complaint should have been dismissed for failure to name the Superintendent as a necessary party. We disagree.

In a declaratory judgment action, KRS 418.075 requires "all persons shall be made parties who have or claim any interest which would be affected by the declaration." This statutory requirement is mandatory. *Commonwealth ex. rel. Meredith v. Reeves*, 289 Ky. 73, 157 S.W.2d 751, 753 (1941). However, unlike standing, the failure to join a necessary party is not jurisdictional. *West v. Goldstein*, 830 S.W.2d 379, 385 (Ky. 1992). The basis of the mandatory joinder rule is the equitable principle that "that no Court can adjudicate directly upon a person's right, without the party being either actually or constructively before the court." *Mallow v. Hinde*, 25 U.S. 193, 198 (1827).

CR 19.01 applies to declaratory judgment actions and provides:

> A person who is subject to service of process, either personal or constructive, shall be joined as a party in the action if (a) in his absence complete relief cannot be accorded among those already parties, or (b) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed

> interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

A necessary or indispensable party for the purpose of CR 19.01 includes those

> [p]arties who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.

Levin v. Ferrer, 535 S.W.2d 79, 81 (Ky. 1975) (quoting *Shields v. Barrow*, 58 U.S. 129 (1854)). "The decision as to necessary or indispensable parties rests within the sound authority of the trial judge in order to effectuate the objectives of the rule." *Commonwealth, Dep't of Fish & Wildlife Resources v. Garner*, 896 S.W.2d 10, 14 (Ky. 1995). An abuse of discretion occurs when "the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Without question, school superintendents are invested with "a multitude of powers and duties, including powers of independent judgment and discretion," however, "they have no common-law authority, but only those powers specifically granted to them by statute or lawfully delegated by the school board." 78 C.J.S. *Schools and School Districts* § 503 (2024) (footnotes omitted). In relation to these statutory responsibilities, our predecessor Court observed, "[t]he county superintendent has no rights that are not altogether

duties." *Hunter v. Bd. of Educ. of Floyd Cnty.*, 265 Ky. 162, 96 S.W.2d 265, 268 (1936). Moreover, KRS 160.370(1) mandates "[t]he superintendent shall be the executive agent of the board that appoints him or her[.]" It is further well-established that

> [a]n agent is not a necessary or indispensable party in litigation between the principal and a third party over the subject matter of the agency, nor is an agent for a disclosed principal a necessary party to a lawsuit adjudicating the substantive rights of the principal.

3 C.J.S. *Agency* § 519 (2024) (footnotes omitted). Under these circumstances, we cannot conclude the Superintendent was a necessary party. The trial court did not abuse its discretion.

3. S.B. 1 is not local legislation in violation of Sections 59 and 60.

For its third contention of error, the Attorney General argues the lower courts erred by concluding S.B. 1 violated the prohibition on local legislation contained in Sections 59 and 60 of the Kentucky Constitution. We agree.

Section 26 of the Kentucky Constitution declares that "all laws contrary . . . to this Constitution, shall be void." With this standard in mind, we will not invalidate a legislative enactment unless the constitutional violation is "clear, complete and unmistakable." *Ky. Industrial Utility Customers, Inc. v. Ky. Utilities Co.*, 983 S.W.2d 493, 499 (Ky. 1998). In other words, this Court has "continually resolved any doubt in favor of constitutionality rather than unconstitutionality." *Hallahan v. Mittlebeeler*, 373 S.W.2d 726, 727 (Ky. 1963) (citing *Reynolds Metal Co. v. Martin*, 269 Ky. 378, 381-82, 107 S.W.2d 251, 253 (1937)).

When a constitutional challenge to a statute has been properly raised, our limited task is "to determine the constitutional validity and to declare the meaning of what the legislative department has done." *Johnson v. Commonwealth ex rel. Meredith*, 291 Ky. 829, 833, 165 S.W.2d 820, 823 (1942). We have no concern with the wisdom, necessity, or effectiveness of legislation as these are matters of public policy which are exclusively committed to the legislative branch. *Id.* The constitutionality of a statute presents an issue of law, which is subject to *de novo* review. *Louisville/Jefferson Cnty. Metro Gov't Waste Mgmt. Dist. v. Jefferson Cnty. League of Cities, Inc.*, 626 S.W.3d 623, 628 (Ky. 2021). Thus, we owe no deference to the legal conclusions of the lower courts. *Id.*

In relevant part, Section 59(25) prohibits the General Assembly from passing "local or special acts concerning . . . the management of common schools." Section 60 of the Kentucky Constitution further provides:

> 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, nor where the courts have jurisdiction to grant the same or to give the relief asked for. No law, except such as relates to the sale, loan or gift of vinous, spirituous or malt liquors, bridges, turnpikes or other public roads, public buildings or improvements, fencing, running at large of stock, matters pertaining to common schools, paupers, and the regulation by counties, cities, towns or other municipalities of their local affairs, shall be enacted to take effect upon the approval of any other authority than the General Assembly, unless otherwise expressly provided in this Constitution.

Sections 59 and 60 are to be applied together and "the appropriate test is whether the statute applies to a particular individual, object or locale." *Calloway Cnty. Sheriff's Dep't v. Woodall*, 607 S.W.3d 557, 573 (Ky. 2020). The overarching intent of Section 59 is that "any acts touching these [enumerated] subjects be general acts." *Zuckerman v. Bevin*, 565 S.W.3d 580, 599 (Ky. 2018). We have further defined special legislation as

> arbitrary and irrational legislation that favors the economic self-interest of the one or the few over that of the many. "Local" or "special" legislation applies exclusively to special or particular places, or special and particular persons, and is distinguished from a statute intended to be general in its operation, and that relates to classes of persons or subjects. More specifically, "[a] 'local law' is one whose operation is confined within territorial limits other than those of the whole state, or any properly constituted class or locality therein."

Id. (citations omitted). Additionally, we emphasize that a duly enacted statute does not necessarily violate the constitutional prohibition on "special legislation" simply because it concerns special subject matter. *Zuckerman*, 565 S.W.3d at 606 (Minton, C.J., concurring).

Before turning to the merits of the present appeal, we observe that both parties agree the outcome turns on the proper application of *Woodall*. Thus, we decline the dissent's invitation to *sua sponte* reconsider the continuing validity of *Woodall* here. "[A] court should not overrule its own decisions simply because it disagrees with them: there must be some additional, special justification for doing so." *Gasaway v. Commonwealth*, 671 S.W.3d 298, 328 (Ky. 2023). Moreover, we strenuously reject the dissent's contention that our

decision today undermines the intent of the Kentucky Constitutional Delegates or otherwise renders Section 59 a nullity.

It is well-settled that constitutional interpretation depends foremost on the plain and usual meaning of the express language of the provision. *Zuckerman*, 565 S.W.3d at 591. Resort to interpretative aids such as the canons of construction or the constitutional debates is appropriate only where the provision at issue is ambiguous or does not otherwise lend itself to a natural reading. *Id.* If the ordinary public meaning of the constitutional text differs from the remarks of individual delegates, "the language of the instrument controls, regardless of the purpose disclosed in the debates, since the constitution obtains its force from the people who adopted it and not from the convention which drafted and proposed it." *Barker v. Stearns Coal & Lumber Co.*, 287 Ky. 340, 152 S.W.2d 953, 956 (1941).

Rather than scouring "selective quotations from a four-volume set of over 6,000 pages," *Zuckerman*, 565 S.W.3d at 591, our discernment of the original meaning of Section 59 is primarily based on *Woodall* which, in turn, relied upon decisions authored by Judge John D. Carroll who was also a Delegate to the Constitutional Convention of 1890-91. 607 S.W.3d at 567 (citing *Greene v. Caldwell*, 170 Ky. 571, 587, 186 S.W. 648, 654 (1916); *Singleton v. Commonwealth*, 164 Ky. 243, 175 S.W. 372, 373 (1915)). Given this unique situation and his pre-eminent influence on Kentucky law, Judge Carroll's views "interpreting the difference between class legislation and special/local legislation are especially noteworthy[.]" Laurance B. VanMeter, *Reconsideration*

of Kentucky's Prohibition of Special and Local Legislation, 109 Ky. L.J. 523, 573 (2021).

Thus, in *Woodall*, we restored "[t]he original test for a violation of Section 59's prohibition on special and local legislation[,]" which simply held that "'special legislation applies to particular places or persons as distinguished from classes of places or persons.'" 607 S.W.3d at 567 (quoting *Greene*, 186 S.W. at 654). This straightforward analysis resonates with the historical focus of special legislation provisions "on laws that identified an object and singled it out for special treatment." Anthony Schutz, *State Constitutional Restrictions on Special Legislation as Structural Restraints*, 40 J. Legis. 39, 58 (2013) (citing Robert M. Ireland, *The Problem of Local, Private, and Special Legislation in the Nineteenth-Century United States*, 46 Am. J. Legal Hist. 271 (2004)).

Thus, the meaning and purpose of Section 59 "addresses legislation form and is not a substitute for equal protection." *VanMeter*, 109 Ky. L.J. at 582. More specifically, "the term 'special law' should be interpreted as a restriction on the form legislation may take, restricting the legislature's ability to identify objects." *Schutz*, 40 J. Legis. at 64. Indeed, "utilizing these [special legislation] provisions as individual-rights provisions does damage to the constitution drafters' design." *Id.* at 94.

However, in the decades following the ratification of Section 59[6], the decisions of this Court and our predecessor courts had inappropriately grafted the equal protection analysis pertinent to legislation based on classifications under Sections 1, 2, and 3 of the Kentucky Constitution onto the simple, original test for special legislation under Section 59.[7] *Id.* at 569. "The reason for the muddling would seem to be that partial/class legislation was short-handedly referred to as 'special legislation.'" *Id.* at 567.

After disentangling these separate concepts and the appropriate tests relative thereto, we explained:

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

Id. at 573.

Applying the *Woodall* test to the present matter, we cannot conclude the application of S.B. 1 is limited to a particular individual, object, or locale. The text of S.B. 1 neither mentions Louisville or Jefferson County in particular nor does the plain language indirectly limit any and all future applications of the statute to this particular locale. On the contrary, it generally pertains to "a county school district in a county with a consolidated local government under

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[6] For the interested reader, *Woodall* traces the historical development of Section 59 and subsequent court decisions interpreting same. 607 S.W.3d at 569; *see also VanMeter*, 109 Ky. L.J. at 524.

[7] This hybrid analysis became known as the *Schoo* test, so named after *Schoo v. Rose*, 270 S.W.2d 940 (Ky. 1954).

KRS Chapter 67C." This language pertains to the Board as a member of an open classification. Thus, S.B. 1 does not violate Section 59.

The argument that S.B. 1 is unconstitutional local legislation because the Board is currently the only existing member of the class is without merit. Kentucky precedent has long recognized "a clear distinction between a general and a special law, stating '[a] statute which relates to persons or things *as a class* is a general law, while a statute which relates to particular persons or things *of a class* is special.'" *Zuckerman*, 565 S.W.3d at 599 (quoting *Johnson v. Commonwealth ex rel. Meredith*, 291 Ky. 829, 165 S.W.2d 820, 825 (1942) (internal quotations omitted)).

In the context of Section 59, a classification does not apply to a particular individual, object, or locale unless the scope of the class is permanently closed. *See* 2 *Sutherland Statutory Construction* § 40:4 (8th ed.) ("Courts sometimes make sense of special legislation prohibitions by asking whether a particular class is closed or open."). "In this view, classifications based upon factors subject to change are prospective and may be open-ended and do not implicate the constitutional prohibition against special laws." *Id.* Moreover, "[c]lassification does not depend upon [the] number[]" of persons, objects, or locales affected by an act of legislation. *Wheeler v. City of Philadelphia*, 77 Pa. 338, 350, 1875 WL 12964 (Pa. 1875). The Supreme Court of Pennsylvania explained that the distinction between open and closed classifications "does not open the door to special legislation." *Id.* at 351.

Instead, "[i]t permits legislation for classes, but not for persons or things of a class." *Id.*

Founding-era decisions of our predecessor Court have recognized this principle. *Stone v. Wilson*, 19 Ky.L.Rptr. 126, 39 S.W. 49, 50-51 (1897), overruled on other grounds by *Vaughn v. Knopf*, 895 S.W.2d 566 (Ky. 1995); *Winston v. Stone*, 102 Ky. 423, 43 S.W. 397, 398 (1897), overruled on other grounds by *Vaughn*, 895 S.W.2d at 566. In *Winston*, the Court rejected a Section 59 challenge to a statute which only applied "to counties having a population in excess of 75,000[.]" 43 S.W. at 398. The Court observed, "[i]t may be a fact that Jefferson county is the only county in the state having a population in excess of 75,000, but the statute in question *would apply* to all counties of that class within the state[.]" *Id.* at 398 (emphasis added). This reasoning pertains with equal force to the present appeal.

Similarly, in *Sims v. Bd. of Ed. of Jefferson Cnty*, 290 S.W.2d 491, 495 (Ky. 1956), the Court applied the rule that open classifications do not violate Section 59 and upheld a statute that applied "only to boards of education in a county containing a city of the first class." Distinguishing a Missouri statute with terms "making it impossible for any other county ever to qualify," the Court explained,

> [t]he statute before [the Court] does not have this restrictive feature. While it is not probable that another city will qualify as a first-class city in Kentucky at any time in the immediate future, nevertheless, it is always possible and the statute would then be applicable to more than one county.

Id. Thus, "[a] law is general not because it operates on every person in the state, but because every person *within the circumstances provided for* by the Act is affected." 2 *McQuillin Mun. Corp.* § 4:43 (3d ed. 2024) (emphasis added).

Contrary to the view of the dissent, the closed-class distinction is not inimical to the original purpose of Section 59. In confronting constitutional prohibitions on special legislation, courts across the United States have "generally employ[ed] two tests. One is geared at 'closed classes' and one is geared at arbitrarily defined classes." *Schutz*, 40 J. Legis. at 51. Endorsement of the closed-class test is implicit in our predecessor Court's recognition that "special legislation applies to particular places or persons as distinguished from classes of places or persons." *Greene*, 186 S.W. at 654. In this regard, "the general rule should be kept in mind: If legislation applies to only one or a few present objects, then the class it creates must be open to future entry and the class needs to include all relevant members." *Schutz*, 40 J. Legis. at 68.

Additionally, the dissent's attempt to undercut the application of *Stone*, *Winston*, and *Sims* through reliance on *Bd. of Ed. of Jefferson Cnty. v. Bd. of Ed. of Louisville*, 472 S.W.2d 496, 499 (Ky. 1971), is unavailing. While not specifically citing the *Schoo* test, *Jefferson Cnty.* employed the heightened requirement of "natural, real or substantial distinctions, inhering in the subject matter" of the classification. *Jefferson Cnty.*, 472 S.W.2d at 498. This is precisely the form of reasoning we expressly repudiated in *Woodall*. 607 S.W.3d at 566.

The dissent's citation to other decisions of ancient and recent vintage is similarly unconvincing because these decisions hinged upon the same analytical infirmity. *See e.g.*, *Gorley v. City of Louisville*, 104 Ky. 372, 47 S.W. 263 (1898) (conflating legislative classification with local legislation); *James v. Barry*, 138 Ky. 656, 128 S.W. 1070, 1072 (1910) (applying overruled decision in *Safety Bldg. & Loan Co. v. Ecklar*, 106 Ky. 115, 50 S.W. 50 (1899)); *Mannini v. McFarland*, 294 Ky. 837, 172 S.W.2d 631, 632 (1943) (same); *Louisville/Jefferson Cnty. Metro Gov't v. O'Shea's-Baxter, LLC*, 438 S.W.3d 379, 385 (Ky. 2014) (applying *Mannini* which in turn relied on *Ecklar*). Indeed, as we explained in *Woodall*, Kentucky appellate courts have failed to recognize the distinction between equal protection and special legislation from the outset of the 1891 constitutional era. 607 S.W.3d at 566; *see also Linton v. Fulton Bldg. & Loan Ass'n*, 262 Ky. 198, 90 S.W.2d 22, 25 (1936) ("At the date of our opinions in those cases . . . the distinction between class legislation, special or local and general law was not at that time generally observed by this and courts of other jurisdictions.").

Moreover, the proposal of various hypotheticals by the trial court and dissent to illustrate the supposed "impotence" of the *Woodall* test misapprehends the purpose of the special legislation prohibition and perpetuates the improper conflation of Section 59 with equal protection analysis under Sections 1, 2, and 3 of the Kentucky Constitution.[8] Far from

[8] For example, the trial court posited that the legislature would be free to discriminate against the citizens of Edmundson County merely by designating a law to apply to "all counties containing a cave system greater than 400 miles in length."

condoning such seemingly absurd results, *Woodall* merely locates the appropriate remedy for such arbitrary and improper classifications in equal protection law which is specifically designed for this purpose. 607 S.W.3d at 567-68.

In *Woodall*, we demonstrated the illogic of applying the same test to separate provisions of the constitution which arose from different constitutional eras and are designed to address different problems. *Id.* ("The effect was to equate special/local legislation with class legislation."). Moreover, the conflation of equal protection and special legislation analysis resulted in an intolerable uncertainty in the law because "[n]o one knows or can possibly know when a given statute will strike any judge, or four justices of this court, as worthy of the heightened standard." *Id.* at 568-69.

In other words, "[t]he problem with this heightened standard is no one knows when the judges or justices will 'elect' to apply it, since those cases are limited to their 'particular facts.'" *VanMeter*, 109 Ky. L.J. at 581. Indeed, it is widely recognized that the classification-based approach preferred by the dissent is more apt to judicial overreach and "involve[s] multiple inquiries that are difficult for the judiciary to perform and perform on a consistent basis." *Schutz*, 40 J. Legis. at 95.

Similarly, the trial court opined the legislature could also favor a recent Kentucky governor by exempting him from traffic laws simply because there could possibly be other persons sharing the governor's name.

Woodall further anticipated the objection that the application of a simple, classification-based test would allow "legislators . . . to draft around the Section 59 prohibition" and definitively answered that the remedy for arbitrary and irrational legislative classifications is an equal protection challenge under Sections 1, 2, and 3 of the Kentucky Constitution. 607 S.W.3d at 573. While equal protection challenges pursuant to the prohibition on "exclusive, separate" privileges under Section 3 were rare in the years following the ratification of the 1891 Constitution, the appellate courts of Kentucky have since developed extensive jurisprudence on this subject "and have shown little hesitancy in engaging a more rigorous analysis with respect to classification legislation."[9] *Id.*

Stated differently, "[e]ven without the robust interpretation of Section 59, built up over the past century, courts therefore have another, more appropriate arrow in their quiver to analyze claims of partial class legislation, Section 3." *VanMeter*, 109 Ky. L. J. at 579-80. Thus, the decoupling of Section 59 and Section 3 will not invite legislative mischief because "the latter section has long been held to embrace Kentucky's equal protection provisions and has been held to apply coextensively with the Fourteenth Amendment." *Id.* (footnotes omitted).

[9] Contrary to the reading of the Court of Appeals, this statement in *Woodall* was neither an endorsement nor an invitation for lower courts to develop "a more rigorous analysis under Section 59[.]"

Moreover, the Board's reliance on *University of Cumberlands v. Pennybacker*, 308 S.W.3d 668 (Ky. 2010), is misplaced. In *Pennybacker*, we held a statute appropriating state funds for a scholarship to "an accredited school of pharmacy at a private four (4) year institution of higher education with a main campus located in an Appalachian Regional Commission county in the Commonwealth" violated Section 59. *Id.* at 683. Subsequently, in *Woodall*, we noted the *Pennybacker* Court applied the incorrect test under Section 59 "but reached correct result since the statute applied to a particular object[.]" 607 S.W.3d at 573 n.19.

Viewing the facts of *Pennybacker* through the lens of the proper *Woodall* test, it is evident that the statute was unconstitutional under Section 59, not because there was only a single currently existing member of the class, but instead, because the scope of the class eligible to receive state funds for tuition was closed in that the scholarship money could only be applied to a private school located in an Appalachian Regional Commission county. These geographic and private-status factors were unchanging and invariable to the extent of categorically foreclosing the addition of public schools from outside the Appalachian region to the class. By contrast, a classification based on counties with a consolidated local government does not necessarily preclude the addition of additional members. Thus, *Pennybacker* is distinguishable from the present appeal.

The Board further contends that the legislature unmistakably intended S.B. 1 to apply to Jefferson County in particular despite the use of open-ended

language in the statute. Stated differently, the proposition is that extra-textual indications of the legislature's subjective intent must control over the plain language of the statute for the purpose of Section 59 analysis. However, this line of reasoning does not conform to ordinary principles of statutory interpretation because "it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998).

Moreover, the force of this argument is equivalent to the unsound assertion that S.B. 1 must fail under Section 59 because the Board is currently the only existing member of the class. Again, this is a question of equal protection which concerns the validity of the classification under Sections 1, 2, and 3 of the Kentucky Constitution. Stated differently, the issue is whether a rational basis exists to support a classification treating counties with a consolidated local government differently from counties having other forms of local government. *Woodall*, 607 S.W.3d at 564, 573.

4. Equal-protection challenge is not properly before this Court.

Finally, the Attorney General argues that an equal-protection challenge to S.B. 1 is not properly before this Court. We agree.

On direct appeal, the Attorney General alleged the trial court's equal-protection analysis was erroneous. In its response brief, the Board stated:

> The Attorney General correctly notes in his brief that the Board did not bring a due process or equal protection claim under Ky. Const. §§ 2-3. The Board does not elect to pursue those claims here, and consequently does not address that discussion in the Circuit Court's declaratory judgment or in the Attorney General's brief[.]

Likewise, the Board relies entirely upon Sections 59 and 60 in its brief before this Court.

A party's failure to address an issue in an appellate brief results in the abandonment of that issue. *CSX Transp., Inc. v. Moody*, 313 S.W.3d 72, 88 (Ky. 2010). This rule applies equally to both appellants and appellees. *See Baker v. Weinberg*, 266 S.W.3d 827, 834 (Ky. App. 2008). Moreover, it is generally inappropriate for a trial court to review the constitutionality of a statute in the absence of a specific request by a party because "[a] judge's *sua sponte* declaration of unconstitutionality is a derogation of the strong presumption of constitutionality accorded legislative enactments."[10] *Delahanty v. Commonwealth*, 558 S.W.3d 489, 504 (Ky. App. 2018) (quoting 16 Am. Jur. 2d *Constitutional Law* § 127).

Our decision in *Woodall* clearly demarcates the boundary between special legislation claims under Sections 59 and 60 and equal protection claims under Sections 1, 2, and 3 of the Kentucky Constitution. 607 S.W.3d at 573. Thus, the trial court lacked a necessary basis to inject the unraised equal-protection issue into this proceeding. *See EMW*, 664 S.W.3d at 707 (Nickell, J., concurring in part, dissenting in part). Under these circumstances, we perceive the equal-protection issue to have been abandoned and otherwise insufficiently developed for our review.

[10] This rule is especially applicable in the present situation where the trial court premised its ruling on the equal-protection rights of Jefferson County voters, parents, students, and taxpayers, none of whom were joined as parties to this action.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals is hereby reversed.

All sitting. VanMeter, C.J.; Conley, and Lambert, JJ., concur. VanMeter, C.J.; concurs by separate opinion in which Conley and Lambert, JJ., join. Bisig, J., dissents by separate opinion in which Keller and Thompson, JJ., join.

VANMETER, C.J., CONCURRING: I concur in Justice Nickell's majority opinion, but I write separately to address a few points raised in Justice Bisig's dissent, specifically the argument that this Court's opinion in *Calloway County Sheriff's Department v. Woodall*, 607 S.W.3d 557 (Ky. 2020) should be overruled. A few preliminary points. First, no party argues *Woodall* should be overruled. The Jefferson County Board of Education ("JCBE") argues that application of *Woodall* results in it prevailing, whereas the other side argues that application results in it winning. Second, and while I find the Court of Appeals erred in its application of *Woodall*, it certainly had little difficulty in applying *Woodall* to rule in favor of the JCBE. Justice Bisig's dissent argues: 1) *Woodall* wrongly concluded *Safety Building & Loan Co. v. Ecklar*, 106 Ky. 115, 50 S.W. 50 (1899) *overruled by Linton v. Fulton Building & Loan Association*, 262 Ky. 198, 203-04, 90 S.W.2d 22, 25 (1936), was an equal protection case; 2) *Woodall*'s critique of post-bellum Kentucky history may be erroneous; and 3) *Woodall* erroneously eliminated classification considerations from special/local legislation jurisprudence. I will try to address these points, although some overlap exists.

1. *Ecklar*.

As to *Woodall* and the test from *Schoo v. Rose*, 270 S.W.2d 940, 941 (Ky. 1954), our Section 3 and Section 59 jurisprudence has been a hopeless muddle almost from the start of the 1891 constitutional era. Our predecessor court explicitly so recognized in *Linton*, 262 Ky. at 203, 90 S.W.2d at 25, when it overruled its previous savings & loan cases, specifically including *Ecklar*, noting "the distinction between class legislation, special or local and general law was not at that time generally observed by this and courts of other jurisdictions[.]" While *Schoo* does cite *Ecklar*, and without conceding that *Ecklar* was a Section 59 case, that was not *Schoo*'s only citation: *Droege v. McInerney*, 120 Ky. 796, 87 S.W. 1085 (1905); *Burrow v. Kapfhammer*, 284 Ky. 753, 145 S.W.2d 1067 (1940); *Terrace v. Thompson*, 263 U.S. 197, 44 S.Ct. 15, 68 L.Ed. 255 (1921); *Truax v. Corrigan*, 257 U.S. 312, 42 S.Ct. 124, 66 L.Ed. 254 (1921). These latter two cases are obviously United States Supreme Court cases and apply the equal protection clause of the 14th Amendment. In fact, this supports the *Woodall* holding that Section 59 analysis has erroneously applied equal protection analysis. 607 S.W.3d at 568. In *Burrow*, a claim of unconstitutionality was upheld apparently on the basis of the 14th amendment and Ky. Const. § 1. The *Burrow* court discussed at length *Fischer v. Grieb*, 272 Ky. 166, 113 S.W.2d 1139 (1938). *Fischer* involved a claimed entitlement to a farm truck license. The *Fischer* court stated:

> Our Bill of Rights solemnly declares: "All men, when they form a social compact, are equal; and no grant of exclusive, separate

> public emoluments or privileges shall be made to any man or set of men, except in consideration of public services." Constitution, § 3.
>
> It also provides: "To guard against transgression of the high powers which we have delegated, we declare that everything in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void." Constitution, § 26.
>
> In addition to these provisions of our own Constitution, we have the Fourteenth Amendment to the Federal Constitution declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws. These provisions distinguish our government from governments based on favoritism, and their adoption was the greatest forward step in the development of the science of government. Their purpose was to place all persons similarly situated upon a plane of equality under the law, and to fix it so that it would be impossible for any class to obtain preferred treatment, or for those in power to grant governmental favors in return for political support. It is true that the foregoing provisions do not forbid classification based on reasonable and natural distinctions, but the rule is otherwise where the classification is manifestly so arbitrary and unreasonable as to impose a burden upon, or exclude one or more of a class without reasonable basis in fact. *Withers v. Board of Drainage Commissioners of Webster County*, 270 Ky. 732, 110 S.W.2d 664 (1937). In view of the constant effort of classes and political blocks to obtain special privileges from the government, there is constant danger that the doctrine of classification may be carried so far as practically to nullify the constitutional provisions.

Fischer, 272 Ky. at 169, 113 S.W.2d at 1140. Our predecessor Court clearly used the same language to analyze claims under both Sections 3 and 59. Thus, given the citation to *Fischer*, *Burrow* is not a Section 59 case, but rather a 14th amendment equal protection case. A quick look at *Withers* demonstrates that our predecessor court, in the 1930s, continuing through *Schoo* and at least into the 1970s, equated equal protection guarantees of the 14th amendment with the analysis of Section 59:

> The principal ground of attack on the 1928 and 1932 acts is that they offend sections 59 and 60 of our Constitution forbidding the enactment of special and local acts. **It is true that the foregoing sections of our Constitution, like the Fourteenth Amendment to the Federal Constitution, do not forbid classification based on reasonable and natural distinctions, *Jones v. Russell*, 224 Ky. 390, 6 S.W.2d 460, but the rule is otherwise where the classification is manifestly so arbitrary and unreasonable as to impose a burden upon, or exclude one or more of a class without reasonable basis in fact.** *Shaw v. Fox*, 246 Ky. 342, 55 S.W.2d 11; *Commonwealth v. Griffen*, 268 Ky. 830, 105 S.W.2d 1063.

Withers, 270 Ky. 732, 734, 110 S.W.2d at 664–65 (emphasis added); *see also Commonwealth ex rel. Hancock v. Davis*, 521 S.W.2d 823, 826 (Ky. 1975) (claiming violations of Kentucky Constitution sections 2, 59, 60 and Equal Protection Clause of 14th amendment are all satisfied if a reasonable basis exists for classification); *Walters v. Bindner*, 435 S.W.2d 464, 466 (Ky. 1968) (stating that the arguments under Section 59 and the equal protection clause are the same). Here's a fuller quotation from *Walters*:

> Appellant's attack is based upon the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States; Section 1 of the Constitution of the Commonwealth of Kentucky, which in essence provides for equal protection of the laws, and that portion of Section 59 of the Constitution of the Commonwealth of Kentucky which provides: 'In all other cases where a general law can be made applicable, no special law shall be enacted.'
>
> . . .
>
> It is appellant's contention that, by singling out the operation of a poolroom on Sunday, the legislature created a classification which amounts to special legislation prohibited by the Kentucky Constitution. Appellant also contends that such a classification denies him equal protection of the laws. **The arguments advanced under either of these two theories are essentially the same.** The Equal Protection Clause of the Fourteenth Amendment requires '* * * that in defining a class subject to legislation, the distinctions that are drawn have 'some relevance to the purpose for which the classification is made."

> *Rinaldi v. Yeager*, 384 U.S. 305, 309, 86 S.Ct. 1497, 1499-1500, 16 L.Ed.2d 577 (1966). Section 59 of the Kentucky Constitution requires that '* * * there must be a substantial reason why a particular law is made to operate upon a class of citizens and not generally upon all.' Dawson v. Hamilton, Ky., 314 S.W.2d 532 (1968). **The purpose of both provisions is to provide equality under the law.**

435 S.W.2d at 465–66 (emphasis added). One of the *Woodall* points is the illogic of applying the same test to separate provisions of the constitution which arose from different constitutional eras and are designed to address different problems.

Ecklar cannot be properly interpreted without considering the savings and loan cases that preceded it, as well as other cases involving classification which were decided in the years preceding the 1891 ratification. As to *Ecklar*, *overruled by Linton, 2*62 Ky. at 203-04, 90 S.W.2d at 25, and as correctly noted by the dissent, our predecessor Court did not speak of Section 59, but it did refer to a prior case, *Simpson v. Kentucky Citizens' Building & Loan Ass'n*, 101 Ky. 496, 41 S.W. 570 (1897), *overruled by Linton*, 262 Ky. at 203-04, 90 S.W.2d at 25, in rather direct terms:

> The real plea offered as a reason for a revision and reversal of the *Simpson* Case (19 Ky. L. Rptr. 1176), [41 S. W. 570, and 42 S. W. 834], is that the statute, as understood generally, has afforded an unusually profitable field for the investment of money secured by mortgage on real estate, and the opportunity, after legal advice, has been seized by thousands of investors.

Ecklar, 106 Ky. at 118, 50 S.W. at 50. As general background, these savings & loan cases arose from claims that the interest rate permitted to be charged by building & loan associations was in excess of the statutory general interest rate

permitted to be charged.[11] While *Simpson* arose post-convention and both Section 3 and Section 59 were advanced as grounds for holding the association's rate of interest unconstitutional, the court's basis for decision was Section 3. This section provides, in part, "[a]ll men, when they form a social compact, are equal; and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services[.]" In reaching its conclusion, the *Simpson* court stated, "[w]e have not been able to escape the conclusion that these associations 'are men and sets of men,' within the meaning of the constitution, upon whom it is violative of our bill of rights to confer separate or exclusive privileges." *Simpson*, 101 Ky. at 511, 41 S.W. at 572. In so holding, the *Simpson* court followed the earlier analysis in *Gordon v. Winchester Bldg. & Accumulating Fund Ass'n*, 75 Ky. (10 Bush) 110 (1876) that the legislative grant of a permissive interest rate in excess of that authorized by general statute constituted an exclusive, separate privilege not in consideration of public service and therefore violated the Kentucky constitution.[12] And *Gordon* was indisputably decided when Kentucky's 1850 constitution only to a very limited extent prohibited special legislation. *See* KY. CONST. of 1850, art. II, §§ 32, 38 (prohibiting special laws

[11] All these savings and loan cases were eventually overruled in 1936 by *Linton*.

[12] KY. CONST. of 1850, art. XIII, § 1: "[A]ll freemen, when they form a social compact, are equal, and that no man, or set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services."

granting divorces, changing individuals' names, directing sales of minors or persons under disability, and changing criminal venues).

Important as well is *Schoolcraft's Administrator v. Louisville & Nashville Railroad*, 92 Ky. 233, 17 S.W. 567 (1891)[13] which was decided under the 1850 constitution and thus was clearly NOT a Section 59 case, although the court speaks of general and special laws. The issue decided in *Schoolcraft* was whether a law which imposed liability on a railroad for someone's death denied the railroad equal protection of the laws under the Fourteenth Amendment and under the Kentucky constitution's bill of rights which guaranteed equal rights to all persons under the law.[14] *Id.* 92 Ky. at 238, 17 S.W. at 568. The trial court had struck down the law as imposing a special burden on railroads and spoke of the legislature's classifications. *Louisville Safety Vault & Tr. Co. v. Louisville & Nashville R.R.*, 18 Wash. L. Rptr. 510, 511-12 (L & Eq. Ct. 1890). And, again, the Kentucky constitutional provision that was at issue was KY. CONST. of 1850, art. XIII, § 1, the predecessor to Section 3. The language in *Schoolcraft* was not exactly the two-part test of *Schoo/Ecklar*, but the court's analysis was clear:

> It will be noticed, however, that the statute in question does not give a right of action merely against railroad corporations, but it applies to each proprietor of a railroad, whether operated by an

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[13] Slight confusion here. In the Kentucky Reports, the case is *Schoolcraft's Administrator v. Louisville & Nashville Railroad*. In the S.W. reports, the case is designated as *Louisville Safety-Vault & Trust Co. v. Louisville & N. R. Co.*

[14] Another aside. *Schoolcraft's Adm'r*, and other historical facts, belie the assertion in *Tabler v. Wallace*, 704 S.W.2d 179, 186 (Ky. 1985) that railroads and others obtained special privileges from the legislature. Railroads were the only type of business before 1891 which was subject to wrongful death liability.

individual, partnership, or corporation. It applies not merely to corporations operating railroads, but to all persons operating them.

. . .

Undoubtedly partial legislation is inimical to justice and free government. The same burden should be imposed upon all under the like circumstances. The legislature cannot, for instance, impose a different or additional penalty upon one litigant, in case of failure, from what it does upon all other litigants. **It cannot select a particular individual from a class or a locality, and subject him to special burdens or peculiar rules different from those imposed upon others of the same class or same locality.**

If, however, legislation like that now in question cannot be upheld as constitutional, then much necessary legislation, and which is vital to the interests and safety of the public, must fail. **The police power of a state certainly extends to all matters necessary to the protection of the health, morals, and safety of the public.**

The conduct of railroads is a highly dangerous business. More people are brought in contact with it than with any other dangerous agency. While necessary to the business of the country, and entitled to a proper protection under the law, yet its control by the law is highly essential to the safety and protection of the public, because so many persons come within reach of injury from it. In fact, this control is at this time, when railroad transportation is almost the wonder of the day, absolutely necessary to the safety and well–being of the public; and, if those operating railroads cannot be made subject to laws relating specially to them, then the safety and rights of others will be largely at their mercy.

If, however, a law like this one, which meets a particular and public necessity, cannot be upheld as falling within the exercise of the police power, yet there is another ground upon which, to our minds, it can clearly rest. As already said, this statute does not single out a particular individual or corporation, and subject him or it to special burdens or peculiar rules; nor does it do so as to some of those engaged in a particular business, as, for instance, the Chinese in the laundry business, and which the supreme court of the United States condemned in the case of *Soon Hing v. Crowley*, 113 U.S. 703 [(1885)] but it subjects all in a particular business to its provisions, just as a law relative to banks, and the conduct of banking, would subject all in that particular business

> to its terms. Legislation of like character is to be found upon the statute books of every state.

92 Ky. at 239-41,17 S.W. at 568-69 (emphasis added). The importance of this case is that, while not precisely in the terms of the *Schoo/Ecklar* test, the court addresses the requirements (i) that class legislation apply equally to all in a class, i.e., all railroads, and (ii) that distinctive and natural reasons induce and support the classification, i.e., railroads are highly dangerous businesses. And, again, this was a pre-1891 constitution case. And, the court noted, "[w]hile in the broad sense of the term it is special legislation, yet it is not of such a character as to fall within the constitutional inhibition." *Id*. at 569. The opinion also addresses general and special legislation at several points, but its focus was obviously equal protection under Section 3's predecessor. The inescapable conclusion is that *Ecklar* at the time of decision was firmly rooted in the court's analysis as set out in *Simpson* and *Schoolcraft's Administrator* interpreting Section 3 and its predecessor provision, the 1850 Constitution's Article XIII, Section 1.

2. Post-bellum Kentucky, 1865-1890.

The reason *Woodall* uses so much ink in addressing the history of the 1870s-1880s is that the opinions in *Tabler* and *Perkins v. Northeast Log Homes,* 808 S.W.2d 809 (Ky. 1991) obviously thought that was necessary in order to hold as unconstitutional what otherwise seems to be somewhat ordinary legislation, a statute of repose. In the discussion of historical background of special/local legislation, the narrative of the "powerful elite" invariably arises. No doubt this appeals to the populist element in all of us, but interestingly, no

one ever identifies who exactly this "powerful elite" was. Seriously, who were they? Who are they? The railroads? A captured legislature would hardly have suffered continued wrongful death liability for the industry if that were the case. The most one can say from the quotations provided by the dissent is that, under the norms of the day, legislators felt compelled to acquiesce in requests by their constituents through the passage of special/local acts. That someone was able to obtain passage of a special or local act did not necessarily make him part of a "powerful elite"—although undoubtedly on occasion an act may have served to benefit a prominent person.

Research in the newspapers of the time demonstrates that the complaint regarding local/special legislation was that it was driven primarily by constituent demand. And even though the legislature had enacted general laws for almost every type of legislation, it was unable to stop that demand on its work and time. Two historians, Robert Ireland and Willard Hurst, independently confirm this view. Prof. Hurst is quoted at length in *Reconsideration of Kentucky's Prohibition of Special and Local Legislation*, 109 KY. L. J. 523, 556 (2021), including his statement that "the case against continued special chartering came to the undue drain on the time of the legislature[.]" *Id.* That article also identified what were the types of legislation the General Assembly was passing in the 15 or so years prior to 1890. 40 to 50% was devoted to county or municipal government issues; 10% to turnpike legislation (notwithstanding general legislation for the formation of turnpike companies); 10% for benevolent corporations, such as churches, schools,

cemeteries (notwithstanding general legislation for their formation); 5% for general business corporations (notwithstanding general legislation for their formation); 4% were banks; and 6% were railroads. As to railroads, a review of the indexes to the Kentucky Acts of the period 1870-1890 reveals over 300 were "chartered," but in fact the vast majority were never built, and three, the Louisville & Nashville, the Cincinnati Southern and the Chesapeake & Ohio controlled around 85% of Kentucky trackage. No doubt these three, especially the Louisville & Nashville, were powerful, but the legislature pushed back in various ways such that the legislature was not captive to the railroads. *Id.* at 548-53. Notably, the *only* type of business that was subject to wrongful death liability was the railroad business. *See, e.g., Schoolcraft's Adm'r,* 92 Ky. 233, 17 S.W. 567.

As to the ills of local/special legislation before the 1891 Constitution, Delegate J. C. Beckham expressed a view different from that expressed by the five or so delegates quoted in the dissent:

> I have concurred in most of the admirable report made by the Committee on Legislative Department, but, I think, in this section, they have gone entirely too far. I desire to call the attention of the Convention to this fact, while there has been a great deal said in this State against local legislation, when your attention is called to it, ***you will all remember that the objection has been in the minds of our people, not so much to the character of the local legislation as to the quantum or amount of it; not the character, but the great volume of it. If there has been any complaint of the character, I have not heard it.***

3 1890-91 Ky. Const. Debates 4353 (emphasis added). In other words, the time drain, as opposed to the rent-seeking. This view is also confirmed by Prof. Hurst, who stated "the special charters which fill so many bulky volumes of

state session laws of the 1830-1880 are on the whole disappointing to a searcher for melodrama or oral conflict." 109 Ky. L. J. at 556 (quoting JAMES WILLIARD HURST, LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH-CENTURY UNITED STATES 15 (Univ. of Wis. Press, 1984) (1956)). Anyone who takes the time to look at the thick Kentucky Acts volumes in our State Law Library will readily observe that from 1865 to 1890 they are full of dull and trivial legislation.

Historical research demonstrates that the call of the 1890 constitutional convention was not due primarily to address local/special legislation. Local/special legislation was one of the reasons, but other reasons were of at least equal import since the 1850 Constitution had come to be viewed as having a number of flaws. The statements made in *Tabler* and *Northeast Log Homes* as to reasons for the call and the history of the period, 1870-1890, simply do not stand up to scrutiny.

First of all, the 1850 constitution had no provision for amendment and the only way to amend was through a convention, which had to be approved by a vote of the majority of all eligible voters, not once but twice.[15] Post-bellum,

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[15] The 1850 Constitutional language was the following:

> When experience shall point out the necessity of amending this Constitution, and when a majority of all the members elected to each House of the General Assembly shall, within the first twenty days of any regular session, concur in passing a law for taking the sense of the good people of this Commonwealth, as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs and other officers of elections, at the next general election which shall be held for Representatives to the General Assembly, after the passage of such law, to open a poll for, and make return to the Secretary of State, for the time being, of the names of all those entitled to vote for Representatives who

the legislature had been trying for 15 years to convene a convention, but because of the strict method for obtaining approval that threshold failed to be met in 1875, 1879, 1883 and 1885. Only when the legislature provided that the voters who actually came to vote could be considered the total of citizens entitled to vote did the measure pass. *See* Act of Jan. 18, 1886, ch. 12, § 3, 1886 Ky. Acts 1 (providing, in part, "[t]he total number of votes so registered shall be the true number of citizens entitled to vote for Representative within this State, for the purpose of ascertaining whether a majority of all the citizens of this State entitled to vote for Representative vote for calling a convention for the purpose of re-adopting, amending or changing the Constitution[]"). If the legislature was captive to "powerful elites" who obtained all sorts of special benefits under the 1850 constitution, then why would the legislature by sleight of hand alter the method of calling for a constitutional convention? Would not the "powerful elite" put a stop to this?

> have voted for calling a convention; **and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for Representatives, have voted for calling a convention**, the General Assembly shall, at their next regular session, direct that a similar poll shall be opened, and return made for the next election for Representatives; **and if, thereupon, it shall appear that a majority of all the citizens of this State entitled to vote for Representatives, have voted for calling a convention**, the General Assembly shall, at their next session, pass a law calling a convention. . . .

KY. CONST. of 1850, art. XII, § 1 (emphasis added). I have read somewhere that this difficult amendment procedure was purposely inserted as guard against a more easily obtained amendment procedure by which slavery could be abolished. Given the known pro-slavery sentiments of the 1849 Constitutional Convention delegates, this seems to be a reasonable interpretation.

Secondly, as to the voters approving the convention, over 160,000 in 1887 and over 180,000 in 1889 voted approval. Rhetorically, how can anyone say what were the motivations of any of these voters in approving? One might look at statements of the Delegates, but, in my view, one has to consider *all* Delegates' statements which express an opinion and not just cherry-pick the Delegates who support one's viewpoint. Just because one might find five constitutional delegates, out of a hundred, who railed against special/local legislation, that does not mean that that their statements are gospel, nor that the remaining ninety-five share that precise viewpoint. Additionally, the newspapers of the day listed various reasons necessitating a new convention: general necessity without specific reason, reforming the ballot, restricting county and municipal indebtedness and taxation, reforming the judicial system, reforming the jury system, creating county commissioners, limiting local/special legislation, reforming elections of judges and ministerial officers, repealing slavery provisions, providing for amendment of the constitution. Other delegates also supported some of these reasons for the primary purpose of calling the convention and did not necessarily include local/special legislation. *See* 109 KY. L. J. at 557-66 (examining all of the reasons necessitating the call of the 1890 constitutional convention).

One more point on original meaning. Properly understood, original meaning is not the Delegates' meaning; rather, it is the public meaning the text had for the relevant enactors, i.e., the voters who ratified the Constitution. *See Barker v. Stearns Coal & Lumber Co.*, 287 Ky. 340, 345, 152 S.W.2d 953, 956

(1941) (stating "the language of the instrument controls, regardless of the purpose disclosed in the debates, since the constitution obtains its force from the people who adopted it and not from the convention which drafted and proposed it[]"); *see generally* Richard Kay, *Original Intention and Public Meaning in Constitutional Interpretation*, 103 NW. L REV. 703, 709-10 (2009).

3. *Woodall*'s Rejection of Classification as an Element of Special/Local Legislation.

Getting to this court's opinion in *Tabler* and *Northeast Log Homes*, my firm view is that this court did not like the statute of repose which was at issue. Traditional considerations of equal protection are a weak reed to challenge economic and social legislation.[16] So, if one is going to strike it down, one needs a stronger tool. Why not special legislation? Imbue our constitutional history as somehow unique, special to Kentucky, outside of standard considerations of equal protection. Boom, done, unconstitutional as violative of special legislation. Our four opinions in *Zuckerman v. Bevin*, 565 S.W.3d 580 (Ky. 2019) are instructive, especially that of Chief Justice Minton who feared our court's overstepping its judicial bounds and adopting an overly subjective view of what constitutes special legislation. *Id.* at 605-06 (Minton, C.J., concurring). In a nutshell, that was what lead to *Woodall*: the thought that our Court in more recent opinions had become too subjective in applying

[16] *Tabler* and *Northeast Log Homes* constituted half of a quartet of cases interpreting KRS 413.120(14) [now (13)] and 413.135 which purported to set a five-year, now seven-year limitations period for construction/design of a building. The earlier two cases were *Carney v. Moody*, 646 S.W.2d 40 (Ky. 1982) and *Saylor v. Hall*, 497 S.W.2d 218 (Ky. 1973).

Schoo and the court's inconsistent defining of whatever the classification might entail. This subjectivity was explicitly acknowledged in *Elk Horn Coal Corp. v. Cheyenne Resources, Inc.*, 163 S.W.3d 408, 418-19 (Ky. 2005), *overruled by Woodall*, 607 S.W.3d 557 (Ky. 2020), in which the Court stated, in addressing Section 59,

> Because of this additional protection, we have elected at times to apply a guarantee of individual rights in equal protection cases that is higher than the minimum guaranteed by the Federal Constitution. Instead of requiring a "rational basis," we have construed our Constitution as requiring a "reasonable basis" or a "substantial and justifiable reason" for discriminatory legislation in areas of social and economic policy. Cases applying the heightened standard are limited to the particular facts of those cases.

No one knew or could know when the Court would elect to strike down a classification under the *Tabler* super-charged *Schoo* test.

To this latter point, *Tabler* also signaled a shift in this court's standard of review regarding the constitutionality of challenged legislation, i.e., super-charging the test. The court in *Tabler* addressed whether a reasonable basis existed for the classification, stating "[t]he fundamental question is whether the General Assembly had a reasonable basis for this legislation sufficient to justify creating a separate classification for certain persons engaged in the construction of improvements to real property, granting these persons a special immunity." 704 S.W.2d at 185. The court then rejected a whole host of possible rationales. *Id.* at 185. And then, "[t]he creative abilities of lawyers suggesting possible reasons after the fact does not suffice to provide the kind of justification that is required for special legislation to be valid under Section 59 of the Kentucky Constitution. . . . [T]here must be a substantial and justifiable

reason apparent from legislative history, from the statute's title, preamble or subject matter, or from some other authoritative source." *Id.* at 185-86.[17] Over time, this language was perceived to flip the burden of persuasion as to constitutionality; in other words, that the Commonwealth bore the burden of proving not arbitrary or unreasonable. *E.g., Woodall*, 607 S.W.3d at 582 (Keller, J., concurring in part/dissenting in part).

None of this comports with longstanding analysis even under the *Schoo* test. In fact, that last statement in *Tabler* about the source of the justification cannot be squared with earlier cases, specifically *Shaw v. Fox*, in which the court disclaimed the authority to evaluate a legislative preamble: "[t]he court is without power to inquire into the existence or truth of facts recited in the preamble. . . . [O]ur duty [is] to **assume** the existence of any other facts not embraced in the preamble, essential and necessary to sustain a constitutional classification, was known to the Legislature and motivated it to make the classification and to adopt the act; the contrary not appearing from the substance of the act, nor its preamble." 246 Ky. 342, 350-51, 55 S.W.2d 11, 15 (1932) (emphasis added).

And contrary to any argument that that *Tabler* merely reaffirmed our longstanding standard of review or burden of persuasion, in *Walters v. Bindner*, our predecessor court held:

[17] The use of the *Ecklar* quotation as to the inducement in enacting a classification is particularly inapt since *Ecklar* was specifically overruled in *Linton,* 262 Ky. at 203-04, 90 S.W.2d at 25.

> Although we may have serious doubt that the questioned subsection is presently beneficial, historically it has been considered so. Our Legislature has a broad discretion to determine for itself what is harmful to health and morals or what is inimical to public welfare and we will try to refrain from usurping its prerogative.
>
> **It is the rule that all presumptions and intendments are in favor of the constitutionality of statutes and, even in cases of reasonable doubt of their constitutionality, they should be upheld and the doubt resolved in favor of the voice of the people as expressed through their legislative department of government. The wisdom or expediency of such legislation cannot be subjected to judicial review.** *Commonwealth for Use and Benefit of City of Wilmore v. McCray*, 250 Ky. 182, 61 S.W.2d 1043; *State of Ohio ex rel. Clarke v. Deckebach*, 274 U.S. 392, 47 S.Ct. 630, 71 L.Ed. 1115.

435 S.W.2d at 467 (emphasis added); *see also Fann v. McGuffey*, 534 S.W.2d 770 (Ky. 1975) (upholding Kentucky's no-fault automobile insurance law against claim of Section 59 violation and acknowledging legislature's "prerogative of declaring public policy and that the mere wisdom of its choice in that respect is not subject to the judgment of a court[]"); *Davis*, 521 S.W.2d at 826 (rejecting constitutional challenges under §§ 2, 59, 60, and taking judicial notice of presumed justification for the legislation); *Hallahan v. Mittlebeeler*, 373 S.W.2d 726, 728 (Ky. 1963) (rejecting constitutional challenge under Ky. Const. §§ 1, 2, 3, 6 and 59 and 14th Amendment to absentee voting statute, and stating the Court has continually resolved any doubt in favor of constitutionality rather than unconstitutionality and "the propriety, wisdom and expediency of statutory enactments are exclusively legislative matters[]"). Chief Justice Palmore certainly held this view. *See Bd. of Educ. Jefferson Cnty. v. Bd. of Educ. Louisville*, 472 S.W.2d 496, 501 (Ky. 1971) (Palmore, J.,

dissenting) (stating "I doubt the wisdom of this statute, and I am not free of doubt on the constitutional point, but it is not the court's province to pass on the wisdom of a legislative act, and mere doubt as to its constitutionality must be resolved in favor of the legislature[]"). These latter cases adhered to the longstanding presumption as to constitutionality and deference to the legislative classification. *See Linton*, 90 S.W.2d at 23 (Ky. 1936) (rejecting statutory challenge under Section 59, stating "a fixed rule of courts to resolve all doubts in favor of constitutionality; and courts are not at liberty to declare a legislative classification unconstitutional as violative of public policy as it is for the legislature to determine public policy"); *Jones v. Russell*, 224 Ky. 390, 398, 6 S.W.2d 460, 463 (1928) (rejecting statutory challenge under Section 59, and stating court defers to legislature as reasonableness of classification; and holding differences and resemblances must be considered in considering reasonableness of classification, and "we cannot say the conditions . . . are not materially different in the different cities of the commonwealth; we must assume that it is so, and that the [legislature] took note of the fact[]"); *Greene v. Caldwell*, 170 Ky. 571, 186 S.W. 648, 650 (1916) (addressing constitutionality as to several Kentucky Constitution section, including Section 59, stated "the judiciary will not interfere with the enactments of the legislative department . . . unless they are found to be clearly in contravention of some provision of the Constitution[]"). In other words, *Tabler* in fact did alter the longstanding presumption of constitutionality and burden of persuasion under Section 59.

Any statement that "long-standing jurisprudence had faithfully applied Sections 59 and 60" is simply inaccurate.

Also, *State ex rel. Van Riper v. Parsons*, 40 N.J.L. 1 (N.J. 1878), is an odd case to support application of the Section 59 *Schoo/Ecklar* test to the present case. Factually, the New Jersey legislature had passed "an act concerning commissioners to regulate municipal affairs," which provided for abolishing all laws in reference to legislative commissioners, and terminating the offices of the legislative commissioners then in existence, and for substituting therefor new boards, to be elected by the people. As recounted in the opinion, the objection was that the law "in point of fact, . . . applie[d] to but a single place, that is, to Jersey City[.]" *Id.* at 9. Notwithstanding that fact, the court held the legislation to be constitutionally sound.

4. *Woodall* does not render Sections 59 and 60 dead letters.

Finally, to address briefly the contention that by returning the analysis for special and local legislation to the text of the constitution, *Woodall* has rendered those provisions so easily avoidable as to make them ineffectual. First, simplification of a test which, after *Tabler*, had become little more than a measure of the court's predilections is not wrong. In fact, this simplification is one of the great advantages of *Woodall* for legislators, litigators and parties alike. No longer do interested parties need to wonder how this court will rule on a Section 59/60 challenge; rather, they need only apply the straightforward, relatively objective analysis set forth in *Woodall* to know whether a provision can withstand constitutional muster.

To this end, no good reason why the courts should endeavor to add complexity to the simple. Simple rules "promote greater predictability." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). And they lessen the threat of "endless litigation." *Payton v. New York*, 445 U.S. 573, 620 (1980) (White, J., dissenting). Where (as with Sections 59 and 60) the text, the history, and a provision's role in the overall constitutional scheme indicate a simple interpretation, we should not multiply the analysis beyond necessity.

Sections 59 and 60 are not the only parts of our constitution easily applied by the legislature. The Constitution's requirements as to the terms of the legislators, the time of their election, in what manner the legislature meets, and much of the legislative process are set forth in simple terms and we have seen fit to leave them largely unelaborated by judicial decision. *See, e.g.*, KY. CONST. §§ 30-31; 36-37; 55-56. Of the provisions of our Constitution relating to the legislative department, only two have we seen fit to convert erroneously into a wide-spanning bulwark equivalent to an ill-defined violation of equal protection: Sections 59 and 60.

This observation leads into my final point: *Woodall* is not the death-knell for equal protection in this Commonwealth. Our equal protection jurisprudence is alive and well under Sections 1, 2, and 3. The court does not need to perpetuate the conflation of special/local legislation with equal protection in order to continue to protect the rights of Kentucky citizens. When a case before this court properly asserts an equal protection challenge, *Woodall* does nothing to impede that analysis; the *Woodall* analysis only clarifies the

separate matter, under Sections 59 and 60, of whether the legislature has improperly drafted legislation which applies "exclusively to particular places or particular persons." 607 S.W.3d at 572. To subsume that interpretation into the much broader concept of equal protection enshrined in Sections 1, 2, and 3 would be the true death of Sections 59 and 60.

To conclude, I respect Justice Bisig's differing opinion, but the analysis in *Woodall*, as further expounded in 109 KY. L. J. 523, as to proper interpretation of Section 59 is correct.

Conley and Lambert, JJ., join.

BISIG, J., DISSENTING: The command of Section 59 of the Kentucky Constitution is not complex. To the contrary, it plainly and unequivocally forbids the General Assembly from passing any "local or special acts" regarding "the management of common schools." Ky. Const. § 59(25). A "local or special" act is one that either affects only a single person, place, or locale, or that arbitrarily discriminates against some persons, places, or things and favors others. *Bd. of Educ. of Jefferson Cnty. v. Bd. of Educ. of Louisville*, 472 S.W.2d 496, 498 (Ky. 1971). Thus, the General Assembly may not pass any act that either affects the management of public schools in only one place, or that arbitrarily discriminates against one school district while favoring others.

Yet, despite this clear constitutional command, the General Assembly in 2022 passed legislation that by its plain terms applies **only** to the management of the Jefferson County Public School District. Indeed, the statute provides greater powers to the superintendent of a school district in "a county school

district in a county with a consolidated local government" than is provided to school superintendents in other parts of the Commonwealth. KRS 160.370(2). The Jefferson County Public School District is the **only** such district in the state.

Thus, under the statute, while the Jefferson County superintendent enjoys exclusive authority over "the general conduct of the schools, the course of instruction, the discipline of pupils, . . . and the management of business affairs," his counterpart in McCracken County only enjoys such authority "subject to the control of the board of education." *Compare* KRS 160.370(2)(b)(3) *and* KRS 160.370(2)(a). While the Jefferson County superintendent enjoys the ability to implement rules, regulations, bylaws, and statements of policy so long as a super-majority of the school board does not vote against them, those proposed by his counterpart in Pulaski County fail if even half the school board disagrees. *Compare* KRS 160.370(2)(b)(2) & KRS 160.370(2)(a). And while the Jefferson County superintendent may approve a purchase of $250,000, his counterpart in Boyd County enjoys no such authority.

For reasons unknown, the statute also forbids the Jefferson County school board from meeting more than once every four weeks. KRS 160.370(2)(a)(2). The Jefferson County Board of Education brought suit challenging the 2022 legislation as violative of our Constitutional prohibitions against special and local legislation. The trial court and the Court of Appeals

found the statute unconstitutional, and we granted discretionary review to consider the issue.

Though the statute at issue unquestionably affects only the management of the Jefferson County Public School District—and thus violates Section 59 of our Constitution—the Court today finds it wholly permissible. Though I agree the Jefferson County Board of Education has standing to pursue its claim, I must respectfully dissent from the Majority Opinion because I conclude that the statute blatantly violates Sections 59 and 60 of the Kentucky Constitution.

The Majority Opinion today holds that the statute is not impermissible special or local legislation because while Jefferson County is currently the only "county school district in a county with a consolidated local government," other such districts might exist in the future. Thus, under the Majority's view, legislation violates Sections 59 and 60 only if it applies to either 1) a single explicitly named person, place, or, object, or 2) a class so narrowly defined that only one person, place, or object can ever be within the class.

The Majority Opinion's conclusion that the statute does not violate Sections 59 and 60 arises from its application of this Court's 2020 decision in *Calloway County Sheriff's Department v. Woodall*, 607 S.W.3d 557. In that decision, this Court departed from more than a century of Kentucky jurisprudence and held that legislation violates Section 59 and 60 only if it "applies to a particular individual, object or locale." *Woodall*, 607 S.W.3d at 573.

The errors underlying *Woodall's* rejection of more than a century of Kentucky case law interpreting Sections 59 and 60—including cases decided shortly after the Constitutional Convention and thus providing best evidence of the Delegates' intent—are numerous. First, *Woodall* jettisoned this Court's previous (and long-standing) test for Section 59 and 60 challenges on the faulty and mistaken premise that it arose from early Section 3 equal protection jurisprudence. However, a thorough review makes plain that the test arose from a Section 59 case, not an equal protection case. The *Woodall* Court's mistaken conclusion to the contrary led it to incorrectly reject early and particularly persuasive insight into the meaning of Sections 59 and 60 and the Delegates' intent in adopting those provisions.

Second, *Woodall* is also based on an erroneous historical understanding of the Constitutional Debates. Indeed, *Woodall* mistakenly minimized the significant role that the eradication of special and local legislation played in the calling of the 1890 Constitutional Convention. *Woodall* also overemphasized the Delegates' concerns that special and local legislation contributed to legislative inefficiency, while failing to fully acknowledge the simultaneous significant concerns of the Delegates regarding the use of such legislation to further the interests of a powerful elite. The Debates make plain that the scourge of special and local legislation was a primary concern of the Delegates, and that they were as concerned with the ill of special legislation to serve the interests of a powerful elite as they were with legislative inefficiency. The

alternative history offered by *Woodall* fails to honor these concerns and the original intent in the passage of Sections 59 and 60.

Third, the test devised by the *Woodall* Court to replace the previous long-standing test for Section 59 challenges removed an important and necessary element of any test for impermissible special and local legislation, namely whether the legislation is based upon unreasonable or arbitrary classification. As a matter of logic, a constitutional provision designed to prevent disparate treatment of a part of a class that should be treated as a whole has no teeth if courts do not inquire into whether the classifications drawn by the legislature are reasonable and proper to the object of the legislation. Moreover, *Woodall*'s removal of this element also deprives courts of a necessary tool to determine whether a legislative enactment is an effort at evading the prohibitions against special and local legislation. The result of *Woodall* is a substantial weakening of Sections 59 and 60 on the basis of erroneous reading of case law, flawed historical analysis, and faulty logic.

The present majority Opinion only furthers the weakening of Sections 59 and 60 begun in *Woodall* by now also adding that even legislative classifications plainly drafted to reach only a single "individual, object or locale" do not violate Sections 59 or 60 so long as the General Assembly avoids specifically identifying its target or using a "closed" class to define its scope. It is plain that any lawyer, and certainly any legislator, can conceive of a potentially open class to effectively reach only a single person, object or place. Together, *Woodall* and the present Majority Opinion leave Sections 59 and 60 a

dead letter that may be freely evaded by the clever legislative crafting of seemingly "open" classes that in fact reach only a single individual, object or locale. This result is directly contrary to the plain intent of the Constitutional Delegates in including Sections 59 and 60 in our Kentucky Constitution.

I conclude that *Woodall* was wrongly decided and should be overruled rather than applied to resolve this case. Moreover, even applying *Woodall*, it is plain KRS 160.370(2) applies to only a **single** school district—the Jefferson County Public School District—and thus fails even *Woodall's* lax "particular individual, object or locale" standard. I therefore must respectfully dissent.

I. *Woodall* Erroneously Rejected Early And Persuasive Special Legislation Jurisprudence And Should Be Overruled.

For more than a century before *Woodall*, Kentucky courts consistently applied a two-part test to determine whether challenged statutes were "general" and thus not impermissible special or local legislation: "(1) [the statute] must apply equally to all in a class, and (2) there must be distinctive and natural reasons inducing and supporting the classification." *Schoo v. Rose*, 270 S.W.2d 940, 941 (Ky. 1954) (citing *Safety Bldg. Loan Co. v. Ecklar*, 106 Ky. 115, 50 S.W. 50 (1899)). In *Tabler v. Wallace*, the Court further explained that Section 59 is violated absent a "reasonable basis" and a "substantial and justifiable reason" for the classification drawn by the legislature. 704 S.W.2d 179, 186 (Ky. 1985).

This Court's 2020 decision in *Calloway County Sheriff's Department v. Woodall* rejected this long-applied standard and replaced it with a test holding that legislation violates Section 59 only if it "applies to a particular individual,

object or locale." 607 S.W.3d 557, 573. The Court reasoned that the original test—which it referred to as the *Schoo* test—originated in *Safety Building Loan Company v. Ecklar*, 106 Ky. 115, 50 S.W. 50 (1899), and that *Ecklar* was not a Section 59 case, but rather a Section 3 equal protection case. *Woodall*, 607 S.W.3d at 566 ("[T]he *Schoo* test comes straight from *Ecklar* . . . ."); *id.* at 567 ("*Ecklar* [was] originally decided under Section 3."); *id.* at 566 (citing *Ecklar* to support the proposition that "*Schoo's* foundation is based on cases interpreting the federal Equal Protection clause or Section 3, ***not*** Section 59's prohibition on special legislation."). The *Woodall* Court concluded that as a result, "as lawyers and judges looked to apply the constitution and case law to various statutes and situations, they quite obviously saw a constitutional section, Section 59, which addressed 'local and special' legislation and read case law that applied, erroneously, a classification test to it." *Id.* at 567.

The *Woodall* Court's conclusion that the *Schoo* test finds its origins in *Ecklar* is correct. *Schoo*, 270 S.W.3d at 941. However, the *Woodall* Court's conclusion that *Ecklar* was a Section 3 case, rather than a Section 59 case, is mistaken.

Admittedly, *Ecklar* does not explicitly use the terms "Section 59" or "Section 3" in its discussion. However, consideration of its language, the cases it relies on, and the cases immediately following it make plain that it *was* a Section 59 case. First—and perhaps most obviously—the same Court that decided *Ecklar* explicitly referred to it as a Section 59 case one year after *Ecklar* was decided:

> It has been frequently decided by this court that a building and loan association could not exact from its borrowing members monthly or weekly premiums in addition to the legal rate of 6 per cent. interest on the money borrowed, **as it was in violation of section 59 of the constitution. See** *Simpson v. Association*, 41 S.W. 570, 42 S.W. 834, and ***Loan Co. v. Eklar*** **[sic], 50 S.W. 50 where the question has been thoroughly considered.**

Bull v. Safety Bldg. & Loan Co., 58 S.W. 984 (Ky. 1900) (emphasis added).[18] Indeed, the same seven justices that sat on *Ecklar* also sat on *Bull*. *Compare* SW Reporter Vols. 49-52 at iii *with* SW Reporter Vols. 58-62 at iii (showing Court was composed of Hazelrigg, C.J., and Paynter, Burnam, Guffy, Du Relle, White, and Hobson, JJ., at the time of both *Ecklar* and *Bull*). In other words, the same seven justices that decided *Ecklar* referred to it as a Section 59 case one year later. This leaves no doubt that *Ecklar* was a Section 59 decision, and that *Woodall* erred in rejecting it on the faulty basis that it was a Section 3 equal protection case.

Second, *Ecklar* itself used the language of special and local legislation and relied on other special and local legislation cases, only further confirming its role as a Section 59 case. Indeed, the Court used the particular language of general and special legislation in setting forth its test for deciding the case:

> We assert it to be elementary that the true test whether **a law is a general one**, in the constitutional sense, is not alone that it applies equally to all in a class,—though that is also necessary,—but, in addition, there must be distinctive and natural reasons inducing and supporting the classification. A law does not escape **the constitutional inhibition against**

[18] *Bull* is an unpublished case. It is cited here not for its fundamental holding, but rather as insight into the Court's designation of *Ecklar* as a Section 59 case.

> **being a special law** merely because it applies to all of a class arbitrarily and unreasonably defined.

Ecklar, 50 S.W. at 51 (emphasis added). Quite simply, the *Ecklar* Court would have had no reason to utilize the "general" and "special" legislation language of Section 59 had it been deciding the case on Section 3 equal protection grounds.

Likewise, in articulating the standards to be applied in the case, the *Ecklar* Court looked to other special legislation decisions. For example, it noted that "[i]nterdicted special laws are those that rest upon a false or deficient classification [and] [t]heir vice is that they do not embrace all of a class to which they are naturally related." *Id.* at 52. The *Ecklar* Court took this principle verbatim from a New Jersey case adjudicating a claim that legislation violated that state's constitutional prohibition on special and local laws. *Id.* (quoting *Van Riper v. Parson*, 40 N.J.L. 1 (N.J. 1878)); *Van Riper*, 40 N.J.L. at 3 ("[T]he principal exception that has been urged is, that [the statute] is, in substance and effect, special and local, and consequently is in conflict with one of the recent amendments of the constitution of the state."). *Ecklar* also relied on another New Jersey special and local legislation decision for the proposition that "the characteristics which thus serve as the basis of classifications must be of such a nature as to make the object so designated as peculiarly requiring exclusive legislation." *Ecklar*, 50 S.W. at 52 (quoting *Richards v. Hammer*, 42 N.J.L. 435 (N.J. 1880)); *Richards*, 42 N.J.L. at 438 (considering argument that challenged legislation "contravenes, in its spirit, that provision of the constitution that prohibits the enactment of any local or special law . . . .").

Other contemporaneous decisions are consistent with the *Ecklar* and *Bull* Court's understanding of *Ecklar* as a Section 59 case. In 1905, only six years after *Ecklar*, the Court applied the *Ecklar* test to resolve a Section 59 challenge. *Droege v. McInerney*, 120 Ky. 796, 87 S.W. 1085. In 1910, the Court again quoted *Ecklar* as setting forth the appropriate test for Section 59 challenges. *James v. Barry*, 138 Ky. 656, 128 S.W. 1070, 1072-73. Other contemporaneous cases similarly relied on *Ecklar* in resolving Section 59 challenges. *See, e.g., Singleton v. Commonwealth*, 164 Ky. 243, 175 S.W. 372, 373 (1915). As these cases make plain, the Court at the time *Ecklar* was decided plainly understood it to be a Section 59 case. The *Woodall* Court's conclusion to the contrary is incorrect.

In sum, *Ecklar was* a Section 59 case. Its plain language, the sources upon which it relied, and the decisions contemporaneous to it make that plain. Moreover, it clearly set forth the test for consideration of Section 59 challenges: "[T]he true test whether a law is a general one, in the constitutional sense, is not alone that it applies equally to all in a class,—though that is also necessary,—but, in addition, there must be distinctive and natural reasons inducing and supporting the classification." *Ecklar*, 50 S.W. at 51. This understanding of Section 59—set forth in 1899, so near in time to the 1890 Constitutional Convention—is persuasive as to the Delegates' intent regarding the prohibitions against special and local legislation. *Woodall*, 607 S.W.3d at 572 ("[C]ases decided contemporaneously or close in time [to the constitutional convention] would appear to be persuasive of Delegates' intent[].") (quoting

Williams v. Wilson, 972 S.W.2d 260, 267 (Ky. 1998)). As such, *Ecklar* is our earliest and best evidence of the Delegates' intentions in adopting Section 59. *Schoo* faithfully adhered to the *Ecklar* test, and respectfully, I conclude the *Woodall* Court erred in disregarding it.

II. *Woodall* Misconstrues The Historical Context Giving Rise To The 1890 Constitutional Convention And Sections 59 And 60.

The *Woodall* Court also justified its abandonment of Kentucky's long-standing special and local legislation jurisprudence by recasting the historical context in which Sections 59 and 60 arose. Earlier cases found that Sections 59 and 60 arose from a desire to prevent preferential treatment of a privileged and elite few via special legislation, and that the desire to ban such statutes was in fact a primary motivation for the calling of the 1890 Constitutional Convention. For example, in *Tabler* in 1985, the Court noted that Section 59 arose following a time when "[u]nbridled legislative power had become the captive of special interest groups," leading to "[c]oncern for . . . cutting off special and local legislation . . . [becoming] the primary motivating force behind enactment of the new Kentucky Constitution of 1891." 704 S.W.2d at 183. Given this context, the *Tabler* Court concluded that a robust standard considering whether a challenged classification has "a reasonable basis" or is based on a "substantial and justifiable reason" was warranted to effectuate the Delegates' intent to prevent such conduct. *Id.* at 185-86.

The *Woodall* Court disagreed, contending that "[t]he *Tabler* court . . . imbue[d] Section 59 with an inappropriate purpose by relating a historical narrative of the 1880's and the 1890-91 Constitutional Convention that is

overly simplistic and misleading." 607 S.W.3d at 569. The *Woodall* Court concluded that *Tabler*'s purported historical errors led to a "super-charging" of Section 59 by the adoption of an unduly robust standard. *Id.* at 571.

After a review of the Constitutional Debates, however, I conclude that the Delegates of the 1890 Constitutional Convention were deeply concerned with the ill of special and local legislation, both as it affected legislative efficiency and as it led to preferential treatment of a powerful elite. As *Tabler* recognized, this context makes plain that the Delegates fully intended Sections 59 and 60 to serve as a powerful tool to wholly curb the overwhelming legislative ill that special and local legislation had become in the Commonwealth. In failing to fully account for the complete historical context from which Sections 59 and 60 arose, *Woodall* also failed to effectuate this original intent.

For example, the *Woodall* Court contended that the Delegates were more concerned with legislative efficiency problems arising from special legislation than with use of such legislation to service the interests of a powerful elite. *Id.* at 570 ("[T]he main problem with local and special legislation was the resulting legislative inefficiency and wasted time, as opposed to the corrupt, rent-seeking motive ascribed by the *Tabler* court."). Certainly efficiency of the legislature was one motivation for the adoption of Sections 59 and 60. Yet the Delegates' own words leave little doubt that they were also gravely concerned about the servicing of privileged and special interest groups via special legislation:

- Delegate Young: "[The legislature has] been guilty of outrageous special legislation, and made laws which were not for the

benefit of the people at large, but only for the benefit of people who were to be enriched by them." Vol. I at 395.

- Delegate Knott: "Special legislation for private persons or favored classes [has been] the bane of our government for years, the fruitful source of corruption, extravagance and inequality . . . ." Vol. I at 748.

- Delegate Buckner: "[T]his is the result of your special legislation. Our sympathies are allowed to go out freely to the rich, but not to the poor." Vol. II at 2402.

- Delegate McDermott: "What is local or special legislation? It is nothing more than legislation for the favored few—legislation by which the general law is changed, at public expense, to gratify the favorites of the law-makers." Vol. III at 3991.

- Delegate McDermott (in discussing the volume of special legislation in 1884): "The cost of all that favoritism came from the pockets of the tax-payer. The gain went to a few persons or a few towns and cities. That seems to me to be the very worst form of government we can have. The many should not be burdened by the favored few. The laws should bear on all alike. Favoritism and inequality are the marks of tyranny, whatever may be the nominal form of the government." Vol. III at 3992.

- Delegate McDermott (discussing need to eliminate special and local legislation): "It is indispensable that the law . . . should not be the patrimony of the rich and the influential, but the inheritance of the poor . . . . These local acts should be curtailed, and all of us should stand equal before the law." Vol. III at 4007.

The *Woodall* Court failed to give due regard to the Delegates' own repeated expressions of concern about the use of special and local legislation for preferential treatment of a favored few, focusing instead solely on the legislative efficiency issues that were also referenced during the Debates.

The *Woodall* decision also took issue with the *Tabler* Court's conclusion that concern over special and local legislation was a primary motivation for the calling of the Convention. *See Tabler*, 704 S.W.2d at 183 ("[C]utting off special

and local legislation . . . was the primary motivating force behind enactment of the new Kentucky Constitution of 1891."). The Court continued to hold this view at least through 2018, when it noted that it "has on many occasions recognized the need to curtail special legislation as the primary reason for the 1891 Constitution." *Zuckerman v. Bevin*, 565 S.W.3d 580, 589 (Ky. 2018). Yet in *Woodall*, the Court rejected *Tabler's* assessment on the grounds that numerous concerns motivated the Convention. *Woodall*, 607 S.W.3d at 571.

While it is undoubtedly true that numerous concerns motivated the Convention, that in no way undermines the long-recognized fact that special and local legislation were at least *a*—if not *the*—primary reason for the Convention. The words of the Delegates themselves are telling. For example, Delegate Carroll stated that "[w]e are all very heartily agreed that local legislation has become a crying evil in this State, *and one of the prime causes for calling this Convention*." Vol. III at 4009 (emphasis added). Similarly, Delegate Mackoy stated that "if there is any one evil more than another which the people of this State have earnestly demanded should be corrected by this Convention, it was that local and special legislation should be rooted up entirely . . . ." Vol. III at 4019. This Court's own long-standing recognition that concern regarding special and local legislation was a primary reason for the calling of the Convention is thus supported by the words of the Delegates themselves. *Zuckerman*, 565 S.W.3d at 589.

As such, I conclude that *Woodall's* rejection of *Tabler* as purportedly resting on faulty historical foundations was fundamentally flawed. In fact,

Tabler's robust standard for Section 59 challenges arose from its accurate recognition that a primary reason for the Convention was to prohibit special and local legislation and the ills it occasions. The *Woodall* Court erred in rejecting that standard on the basis of a faulty history that is contrary to the words of the Delegates themselves.

III. *Woodall* Erroneously Eliminates Classification Considerations From Our Special And Local Legislation Jurisprudence.

Woodall replaced Kentucky's long-standing test for Section 59 and 60 challenges with a test that wholly eliminates any consideration of whether the classification drawn by the legislature is reasonable:

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

607 S.W.3d at 573. The *Woodall* Court asserted that a "classification test" relates to equal protection rather than Sections 59 and 60, is "erroneously" applied in the context of special and local legislation, and thus "our analysis of two constitutional sections, that proceed from different constitutional eras with different purposes, essentially apply the same analysis." *Id.* at 567-68.

This, too, I conclude was inaccurate. First, as the Court explained in 1905—again, shortly after the Constitutional Convention—classification plainly *is* relevant to a Section 59 analysis, even if it might *also* be relevant to an equal protection analysis:

> "Whether or not an act is class legislation, *or whether or not it is a general or special law*, depends fundamentally upon a question of classification. When an act is assailed as class *or special legislation*, the attack is necessarily based upon the claim that there are persons or things similarly situated to those embraced in the act, and which by the terms of the act are excluded from its operation. The question then is whether the persons or things embraced by the act form by themselves a proper and legitimate class with reference to the purposes of the act."

Droege, 87 S.W. at 1085 (quoting 1 Sutherland on Statutory Construction, § 203) (emphasis added). As the *Droege* Court recognized, it is thus logical and indeed even necessary to consider the classifications drawn by the legislature in adjudicating a Section 59 challenge because the very nature of the claim is that the legislative act relates only to a subpart of a class that should be treated as a whole. Moreover, Section 59 specifically includes a catch-all provision prohibiting any special or local legislation in all circumstances in which "a general law can be made applicable." Ky. Const. § 59(29). This provision necessarily requires courts to consider whether the classification drawn by the legislature is too narrow insofar as the challenged statute could be applied more generally. I believe the *Woodall* decision errs in eliminating this integral consideration from our jurisprudence regarding special and local legislation.

Moreover, while the reasonableness of a classification is thus integral to the adjudication of a Section 59 challenge, it also serves an additional purpose as well. More particularly, it allows the Court to see through possible efforts by the legislature to evade Sections 59 and 60 by the clever crafting of classifications that facially appear to apply statewide but that in reality are

intended only to reach a "particular individual, object or locale." We have previously noted the need to be vigilant for such evasion of constitutional prohibitions. *Tabler*, 704 S.W.2d at 188 ("We 'may not countenance an evasion or even an unintentional avoidance of our fundamental law.'").

The *Richards* decision relied upon by *Ecklar* provides an excellent explanation regarding why it is necessary to consider legislative classifications in order to avoid a clever legislative crafting of a class that is seemingly general, but that in fact is intended to reach only one person, place, or thing. The *Richards* court gave an example of legislation providing that in all cities in the state in which there are ten churches, there were to be three water commissioners. *Richards*, 42 N.J.L. at 440. The Court held that such a statute, though seemingly general, could nonetheless not be sanctioned as compliant with the constitutional prohibition on special and local legislation:

> If it could be so sanctioned, then the constitutional restriction would be of no avail, as there are few objects that cannot be arbitrarily associated, if all that is requisite for the purpose of legislation is to designate them by some quality, no matter what that may be, which will so distinguish them as to mark them as a distinct class. But the true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis of the classification must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be substantial distinction, having a reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree, at least, account for or justify the restriction of the legislation.

Id. In other words, if courts do not consider whether the classification used by the legislature bears some reasonable relationship with the purpose of the law, the legislature may entirely avoid the prohibition against special and local legislation by simply crafting clever classifications to reach a single individual, object, or locale.

I also disagree with *Woodall*'s contention—also repeated in the present Majority Opinion—that rational basis review on an equal protection claim stands as an adequate safeguard against legislative efforts to evade Sections 59 and 60. *Woodall* noted:

> Some may say that with this simple test legislators will be able to draft around the Section 59 prohibition by avoiding express reference to a specific person, entity or locale but articulating criteria for a statute's application that as a practical matter only a specific person, entity or locale can satisfy, essentially reverting to the ways of the 1870s and 1880s. The answer to this objection is that Kentucky's courts, in that pre-1891 Constitution period, had only just begun to apply the "exclusive, separate" privilege prohibition of the Bill of Rights to evaluate class or partial legislation, and to equate that section with equal protection. Over the last 130 years, *courts have had experience with the analysis and have shown little hesitancy in engaging in a more rigorous analysis with respect to classification legislation*.

607 S.W.3d at 573 (emphasis added). *Woodall* was certainly prescient in noting the potential for the General Assembly to evade Section 59 under *Woodall*'s newly articulated test. However, this concern is not alleviated by asserting that equal protection involves any sort of "rigorous" analysis comparable to the *Schoo* test for claims under Section 59 and 60.

In fact, the equal protection inquiry is *far* less searching than the long-standing test for Section 59 and 60 challenges, and an equal protection

claimant therefore faces a *far* more significant hurdle to prevail than a Section 59 or 60 claimant did under the former *Schoo* test. Indeed, as then-Justice VanMeter wrote the year before his majority opinion in *Woodall*, "[a] person challenging a law upon equal protection grounds under the rational basis test has a *very difficult task* because a law must be upheld if there is *any reasonably conceivable state of facts that could provide a rational basis for the classification*." *Teco/Perry Cnty. Coal v. Feltner*, 582 S.W.3d 42, 47 (Ky. 2019) (emphasis added). In stark contrast, under the former *Schoo* test statutes challenged under Sections 59 and 60 faced a higher bar, being found permissible only if there were "distinctive and natural reasons *inducing* and supporting the classification." *Ecklar*, 50 S.W. at 51 (emphasis added). Thus, unlike an equal protection claim in which *any possible rational basis* will support the statute, a statute challenged under Sections 59 and 60 was formerly allowable only if the purported rational basis *induced* the passage of the statute. *Id.*; *see also Tabler*, 704 S.W.2d at 185-86 ("The creative abilities of lawyers suggesting possible reasons after the fact does not suffice to provide the kind of justification that is required for special legislation to be valid under Section 59 of the Kentucky Constitution . . . . On the contrary, there must be a substantial and justifiable reason apparent from the legislative history, from the statute's title, preamble or subject matter, or from some other authoritative source.").

Moreover, those reasons also had to be both "distinctive" and "natural," not merely "rational." Additionally, as noted in the concurrence in part in

Woodall, an equal protection claimant bears the burden of proof, while in a Section 59 challenge the burden is on the Commonwealth to prove that the classification was not arbitrary or unreasonable. *Woodall*, 607 S.W.3d at 582; *Yeoman v. Commonwealth*, 983 S.W.2d 459, 468 (Ky. 1998) (holding that in considering Section 59 claims, "the burden is on the party claiming the validity of the classification to show that there is a valid nexus between the classification and the purpose for which the statute in question was drafted."). Thus, *Woodall* also erred in finding an equal protection rational basis analysis comparable to this Court's long-standing interpretation of the far stronger constitutional protections enshrined in Sections 59 and 60.

In sum, *Woodall* erroneously jettisoned more than a century of consistent Kentucky jurisprudence interpreting Sections 59 and 60. It did so on the flawed basis that the jurisprudence grew out of equal protection law, and on the basis of a faulty historical review that failed to honor the plainspoken intentions of the Delegates in seeking to prohibit special and local legislation. The result was a drastically weakened version of Sections 59 and 60 that removes even the logically necessary consideration of classification reasonableness from our test for challenges to alleged special and local legislation. For these reasons, I would overrule *Woodall* and return to the standards articulated in *Schoo* and *Tabler*.

IV. Today's Majority Opinion Compounds The Errors Of *Woodall* And Leaves Sections 59 And 60 A Dead Letter.

The Majority Opinion only compounds the errors of the *Woodall* Opinion. Under *Woodall*, legislation that explicitly relates to a "particular individual,

object or locale" violates Section 59. But the Majority Opinion now also adds that where the legislature crafts a class that presently includes only a single individual, object or locale, that too is allowable under Sections 59 and 60 so long as others could possibly ever join the class in the future—*i.e.* if the class is "open."

The Majority's conclusion that any statute applicable to a potentially "open" class is not special or local legislation effectively renders Sections 59 and 60 a nullity. One need not stretch to the extreme of colorful hypotheticals to reach this conclusion. For example, under the Majority's test, a statute limiting funding for any public university west of the Land Between the Lakes National Recreation Area to 75% of that provided to other public universities would presently affect only Murray State University, but nonetheless would be permissible because it is possible another public university *might* someday exist in the described area. Likewise, a statute requiring any museum with a life-sized replica of Noah's Ark to be taxed at a higher rate than other museums would be permissible under Sections 59 and 60, because while Kentucky only has one such museum at the present time, it is possible other such museums *might* someday be built. Or, as in the present case, a statute altering the school district-superintendent relationship only in "a county school district with a consolidated local government adopted under KRS Chapter 67C" is permissible because the General Assembly was able to craft a unique description for the district that *might* be capable of applying to another district at some point in the future.

In other words, under the Majority Opinion the General Assembly now may pass legislation that reaches only a single individual, object or locale, so long as it does so by adopting a class definition that is "open," no matter how remote or speculative the possibility that another might later join the class. What is left of Section 59 and 60 is a wholly empty shell prohibiting only legislation that either explicitly reaches only a single expressly named individual, object or locale, or that sets forth a class definition so narrow that only one member could ever exist. Unsurprisingly, the statute at issue here survives the Majority's wholly impotent test, despite the fact the statute applies only to the Jefferson County Public School District.

The Majority Opinion reaches this result *despite* the fact that the Constitutional Delegates specifically *rejected* a proposed provision of Section 59 that would have allowed for differential treatment of school districts in larger cities. The version that ultimately failed would have prohibited special and local legislation "[t]o provide for the management of common schools, *except in cities and towns having a population of more than twenty-five thousand inhabitants*." Debates, Vol. III at 4331 (emphasis added). Delegate McDermott from Louisville argued in favor of the provision, asserting the General Assembly should be able to legislate separately for schools in larger cities because "the management of those schools is a delicate matter. A system which would be satisfactory in the country would not be sufficient in a large city with its thousands of scholars and its hundreds of thousands of people." Debates, Vol. III at 3998. Delegate Bullitt of McCracken County argued against the

provision, explaining he did "not want to interfere with the government of the city of Louisville" because "[t]he people are always miffed when they are singled out." *Id.* at 3998-99. He also rejected the purported special taxation and educational circumstances of Louisville schools that Delegate McDermott offered to justify the proposed provision, pointing out those reasons applied equally to McCracken County's schools. *Id.*

The Convention ultimately agreed with Delegate Bullitt and struck the provision allowing separate school legislation for larger towns. What the Convention approved instead was the simple wholesale prohibition against special or local school legislation in towns and cities of any and all sizes in the Commonwealth that we have today. *Id.* at 3998, 4331. In other words—and as the Debates make plain—the Delegates specifically rejected the idea that special or local legislation on the basis of the size of a school district would be permissible under Sections 59 and 60.

Thus, in finding such legislation compliant with Sections 59 and 60, the Majority Opinion entirely ignores the obvious intent of the Delegates *to forbid such legislation*. Indeed, not only does the Majority ignore the expressed intentions of the Constitutional Delegates, it specifically *rejects* those intentions as irrelevant to determining the meaning of the provisions adopted by the Delegates. Maj. Op. at 14.

Instead, the Majority claims to search for the original "plain and usual" public meaning of Section 59. Yet in reality the Majority simply rejects the actual original understanding of Section 59 in favor of the newly adopted

interpretation set forth in *Woodall*. Indeed, the Majority could not be plainer, offering that "Kentucky appellate courts have failed" to correctly interpret Section 59 "*from the outset of the 1891 constitutional era*." *Id.* at 20 (emphasis added). Thus, far from effectuating any original understanding of Section 59, the Majority instead simply contends the original understanding was wrong. As the Majority sees it, the Constitutional Delegates and the judges interpreting Section 59 shortly after the Convention misapprehended the meaning of Section 59. And in the Majority's estimation, for more than a century thereafter our judicial forbears simply issued decisions that *all* consistently suffered from "the same analytical infirmity,"—that infirmity apparently being an interpretation of Section 59 at odds with that adopted in 2020 in *Woodall*. *Id.*

Nonetheless, having found the original understanding of Section 59 wrong and the intentions of the Delegates irrelevant, the Majority instead turns to the 2020 *Woodall* decision and a 2021 law review article. This analysis turns originalism on its head, replacing a long-held and widely accepted original understanding of Section 59 with a position advocated in a 2020 decision and a 2021 law review article. I thus cannot agree that *Woodall* or the Majority have arrived at any correct "original" understanding of Sections 59 or 60.[19]

[19] The Majority also chastises this Opinion for purportedly relying on "selective quotations" from the Constitutional Debates, while in the next breath acknowledging that its own interpretation is based on the decisions of a single judge who also happened to be a Constitutional Delegate. Maj. Op. at 14.

In support of its position to the contrary, the Majority Opinion relies on *Stone v. Wilson*, 39 S.W. 49 (Ky. 1897), *Winston v. Stone*, 102 Ky. 423, 43 S.W. 397 (1897), and *Sims v. Board of Education of Jefferson County*, 290 S.W.2d 491 (Ky. 1956). The Majority reads these cases to support the proposition that legislative classifications on the basis of county or city population or class are *per se* permissible under Sections 59 and 60 because other counties or cities could always join the class. However, the cited cases are not strong support for unique reasons.

In *Stone*, the Kenton circuit clerk challenged a statute requiring the circuit clerk of counties having a population between 40,000 and 75,000 to report and pay to the auditor of public accounts amounts received as clerk in excess of $3,000 per year. 39 S.W. at 49-50. Kenton County was the only such county at the time. *Id.* at 49.

Our predecessor Court was asked to consider whether the statute violated Section 59 because it then applied only to Kenton County. The Court held that it did not violate Section 59. Notably, however, the basis of the Court's ruling was not that the class as defined by the legislature was "open," but rather that there were distinctive and natural reasons for the class. Indeed, the Court expressly noted that the statute did not violate Section 59 because the salary of a clerk of a county with a population of less than 75,000 "properly and necessarily, should be less than of officers in counties having a greater" population, given the "consequent difference in amount of services required of, and the responsibility imposed upon, them." *Id.* at 50. Thus,

contrary to the Majority Opinion's reading, *Stone* both *does not* support a holding that the General Assembly has *carte blanche* to legislate on the basis of county or city class or size simply because such a class might be deemed "open," and *does* demonstrate early application of the "natural and distinctive reasons" test in Section 59 jurisprudence immediately following the Constitutional Convention.

While *Winston* is similar, it was decided in reliance on a case that did not involve the issue of "open" or "closed" classes. In fact, *Winston*'s conclusion that the statute at issue was permissible was premised on *Commonwealth v. E.H. Taylor, Jr., Co.*, 101 Ky. 325, 41 S.W. 11 (1897). In that case, a distiller challenged a statute providing for the tax assessment of distilled spirits that applied statewide. *Id.* at 12-13. Unsurprisingly, the Court held the assessment statute did not violate Section 59 because it operated "upon a multitude of property of like character, owned by persons all over the state, and in our judgment it is neither local nor special, but general." *Id.* at 15. Thus, *E.H. Taylor* did not involve an issue of "open" classes and provides no support for the proposition that *any* statute setting forth an "open" class is not violative of Sections 59 and 60. Rather, the case simply holds that a statute affecting property statewide is permissible. *Winston's* reliance on *E.H. Taylor* for the proposition that the "open" class statute at issue was permissible under Sections 59 and 60 is dubious at best.

Finally, *Sims* also does not support a holding that a legislative classification comports with Sections 59 and 60 so long as it is "open." In

Sims, the Court considered a statute allowing a board of education in any county containing a city of the first class to impose occupational license fees. 290 S.W.2d at 493. As in *Stone*, the Court noted that the class was "open" given that "it is always possible" Kentucky might have more than one first-class city. *Id.* at 495. However, the Court's analysis went further and found that the statute was thus allowable "*provided that the classification thus made is not unreasonable nor arbitrary*." *Id.* (emphasis added). Thus, like *Stone*, *Sims* does not suggest that any classification is allowable under Sections 59 and 60 so long as it is "open," but rather that it is also necessary to inquire into the reasonableness of the classification drawn by the legislature.

Not only are *Stone*, *Winston*, and *Sims* not good support for the proposition that any open legislative classification satisfies Sections 59 and 60, but numerous cases also hold directly to the contrary. For example, our predecessor Court explained in *Board of Education of Jefferson County v. Board of Education of Louisville*, 472 S.W.2d 496, 499 (Ky. 1971), that the legislature's use of an "open" classification on the basis of county or city class or size alone does not suffice for legislation to comply with Sections 59 and 60, but rather the reasonableness of the classification must also be considered:

> When the subject [of the statute] is one ***that reasonably depends upon or affects*** the number and density of population as a correlative fact in the scheme of the particular legislation, then such classification is allowable. There are even perhaps other instances justifying such classification. But where the subject is one of general application throughout the state, and has been so treated in a general scheme of legislation, distinctions favorable or unfavorable to particular localities, and rested alone upon numbers and density of

> population, ***are invidious, and therefore offensive to the letter and spirit of the Constitution***.

(Emphasis added). At issue in the case was a statute providing a procedure for transfer of school district areas in counties containing a city of the first class. *Id.* at 497. The scheme differed from that set forth in a general statute that applied to all other districts in the state. *Id.* The Court held that the statute violated Sections 59 and 60 because the classification it drew was not "reasonable and proper:"

> Neither the size nor population of the area nor the fact that the problem may occur more frequently in the more populous area has any natural relationship to the object of the legislation. [The statute] violates both Sections 59 and 60 of the Constitution. It creates a procedure which is limited without any reasonable basis to counties containing cities of the first class when it could have been made universally applicable throughout the state. It is thus local in nature. It also exempts counties containing a city of the first class from the operation of a general law without any sufficient or reasonable basis for such exemption and thereby violates Section 60 of the Constitution.

Id. at 500.

Numerous other cases in the immediate post-Convention era are in accord. *See James v. Barry*, 138 Ky. 656, 128 S.W. 1070, 1072 (1910) (collecting cases where statutes involving classification on basis of city or county class or size were struck down as special or local legislation because the classification bore "no appreciable relevancy" to the subject of the statute). For example, in the 1898 case of *Gorley v. City of Louisville*, 104 Ky. 372, 47 S.W. 263, our predecessor Court found that a statute providing a six-month statute of limitations period for certain claims in "cities of the first class" violated

Section 59. No mention was made of any notion that the legislation might be permissible because the defined class of "cities of the first class" was "open." Likewise, in *City of Louisville v. Kuntz*, 104 Ky. 584, 47 S.W. 592 (1898), the Court held that a statute providing a six-month statute of limitations for certain claims against "cities of the first class" violated Section 59. These cases make plain that in early Section 59 jurisprudence shortly following adoption of the 1891 Constitution, the Commonwealth's highest Court repeatedly struck down "open" classifications on the basis of county or city size or class as violative of Sections 59 and 60.

Mid-century cases are the same. For example, the Court held in *Mannini v. McFarland*, 294 Ky. 837, 172 S.W.2d 631, 632 (1943), that

> a classification according to population and its density, and according to the division of cities into classes, is not a natural and logical classification and cannot be sustained unless the act pertains to the organization or government of cities and towns or is incident thereto, *or unless the classification has a reasonable relation to the purpose of the Act*.

(Emphasis added). In 1951, the Court struck down as violative of Section 59 a provision applying a six-month statute of limitations for claims against "cities of the first class" for recoupment of illegally paid taxes or assessments. *City of Louisville v. Louisville Taxicab & Transfer Co.*, 238 S.W.2d 121, 124 (Ky. 1951). As with the other cited cases, the case is devoid of any suggestion the statute might be upheld simply because it involved an "open" class.

More recent cases reaffirm that a legislative classification drawn on the basis of city or county class or size is not permissible under Sections 59 and 60 simply because the class might be "open." For example, in 2014 this Court

considered in *Louisville/Jefferson County Metro Government v. O'Shea's-Baxter, LLC,* 438 S.W.3d 379, whether a statute prohibiting retail drink licenses for certain establishments in a "city of the first class or consolidated local government" violated Section 59. *Id.* at 381. At the time, Louisville Metro was the only entity to which the prohibition could apply. *Id.* at 382. The Court first recognized that the purpose of the statute was to limit the concentration of retail liquor licenses, and then held that for the statute "to be constitutional, there must be some distinctive and natural reason for the separate classification of a consolidated local government (Louisville) that relates to the purpose of the act—to limit the concentration of retail liquor drink licenses." *Id.* at 385. Finding no such reasons, the Court found the statute violative of Sections 59 and 60. *Id.* at 386. In sum, long-applied Kentucky jurisprudence makes plain that classifications on the basis of county or city size or class are not permissible simply because they involve an "open" class, but rather there must *also* be a distinctive and natural reason for the distinction drawn by the legislature to comport with Sections 59 and 60. The Majority Opinion errs in disregarding this long line of precedent, replacing it with a permissive test finding challenged statutes permissible so long as they employ a potentially "open" classification, and thereby wholly gutting Sections 59 and 60.

V. There Was No Reasonable Basis For The General Assembly's Provision Of A Unique School Board-Superintendent Relationship In Jefferson County.

For the reasons stated above, I would overrule *Woodall* and apply the Commonwealth's long-standing Section 59 jurisprudence in the resolution of

this case. As such, I would not consider whether KRS 160.370(2) reaches a particular individual, object or locale or involves only an "open" class, but rather whether there is some distinctive and natural reason for its differential treatment of the school board-superintendent relationship in Jefferson County. I conclude the evidence of record does not demonstrate any such reason for departing from the typical school board-superintendent relationship applicable in all other counties in the Commonwealth.

Take for example the provision limiting Jefferson County's school board—the largest in the state—from meeting more than once every four weeks. *See* KRS 160.370(2)(a)(2). It is facially irrational to require the board of the *largest* district to meet less frequently than the boards of far smaller districts which plainly have far less administrative matters and business to consider. So too are the provisions of the statute empowering the superintendent in Jefferson County to exercise day-to-day control, to promulgate rules only subject to super-majority veto, to have all non-explicitly delegated administrative duties, and to exercise greater purchasing power, while denying those same powers to the superintendents of smaller and more rural districts. *See* KRS 160.370(2)(a)(1), (2)(b)(2), (2)(b)(5), & (2)(c). Certainly no convincing "distinctive and natural" reasons appear in the record for depriving other school district superintendents in the state of the powers granted to the Jefferson County superintendent. As such, I would find the statute unconstitutional under the properly articulated standards set forth in

Kentucky jurisprudence shortly after the Constitutional Convention and applied until the unfortunate advent of *Woodall*.

That said, it also bears noting that the statute also fails constitutional muster even under the standard set forth in *Woodall* itself. As noted above, *Woodall* holds that legislation violates Section 59 and 60 if it "*applies* to a particular individual, object or locale." *Woodall*, 607 S.W.3d at 573 (emphasis added). The *Woodall* Court made no mention of any distinction between "open" versus "closed" classes, but rather plainly stated its test as being whether the statute *applies*—present rather than future tense—to only one person, place, or thing. Had the Court wished to say otherwise, it could have—but did not. Thus, the present statute also plainly fails the standard articulated by this Court in *Woodall* for Section 59 and 60 challenges as it presently reaches only a single school district in the entire state.

CONCLUSION

As the statute at issue here makes plain, the General Assembly is more than capable of concocting clever "open classes" that in effect are likely only ever to reach a single "individual, object or locale." In so doing, the legislature evades Sections 59 and 60. The holdings of *Woodall* and the Majority Opinion here overwhelmingly weaken Sections 59 and 60, enable such conduct, and give free rein for the General Assembly to revive the scourge of special and local legislation in the Commonwealth.

The Delegates at the Constitutional Convention worked long and hard to unbind Kentucky from special and local legislation. They did so both to cure

the ill of occupying the legislature's time with legislation of such limited import, and to remedy the ill of special legislative treatment of a powerful elite. *Woodall* jettisoned long-standing jurisprudence that faithfully applied Sections 59 and 60 and protected the Commonwealth from the abuses of special and local legislation for more than a century. In so doing, *Woodall* failed to honor the original intent of the Constitutional Convention Delegates and left Sections 59 and 60 drastically weakened provisions that provide only limited protection against the General Assembly's return to the ill of special and local legislation. Today's Majority Opinion only further weakens Sections 59 and 60 and undermines the original intent in passage of these provisions, effectively leaving them an empty promise. I therefore must respectfully dissent.

Keller and Thompson, JJ., join.

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