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Supreme Court of Kentucky

No. 2023-SC-0498

RUSSELL COLEMAN, Attorney General,
 on behalf of the Commonwealth of Kentucky

Appellant

v.

On appeal from
 Jefferson Circuit Court No. 22-CI-02816;
 Court of Appeals No. 2022-CA-0964

JEFFERSON COUNTY
 BOARD OF EDUCATION, *et al.*

Appellees

FIRST SUPPLEMENTAL BRIEF OF THE ATTORNEY GENERAL

RUSSELL COLEMAN
Attorney General of Kentucky

MATTHEW F. KUHN (No. 94241)
Solicitor General

JOHN H. HEYBURN (No. 100756)
Principal Deputy Solicitor General

JACOB M. ABRAHAMSON (No. 99238)
Assistant Solicitor General

Office of the Attorney General
 700 Capital Avenue, Suite 118
 Frankfort, Kentucky 40601
 Matt.Kuhn@ky.gov
 Jack.Heyburn@ky.gov
 Jacob.Abrahamson@ky.gov
 (502) 696-5300

Counsel for the Attorney General

CERTIFICATE OF SERVICE

I certify that a copy of this brief was served by U.S. mail on May 27, 2025 on David Tachau, Katherine Lacy Crosby, Amy D. Cabbage, Tachau Meek PLC, PNC Tower, Suite 3600, 101 South Fifth Street, Louisville, Kentucky 40202 (also served via email); Todd G. Allen, Kentucky Department of Education, Office of the Commissioner of Education, 300 Sower Boulevard, Fifth Floor, Frankfort, Kentucky 40601 (also served via email); Clerk, Jefferson Circuit Court, 700 West Jefferson Street, Louisville, Kentucky 40202; Clerk, Kentucky Court of Appeals, 669 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601. The record on appeal was not withdrawn in preparing this brief.

Matthew F. Kuhn

INTRODUCTION

This lawsuit alleges that parts of Senate Bill 1 from the 2022 legislative session violate Sections 59 and 60 of the Kentucky Constitution because at present they apply only in Jefferson County. The Court already rejected that argument. *Coleman v. Jefferson Cnty. Bd. of Educ.*, 2024 WL 5180457, at *5–11 (Ky. Dec. 19, 2024). Now on rehearing, the Court has withdrawn its opinion and ordered supplemental briefing about (i) whether SB 1 applies to “an open or a closed class” as set out in the original opinion and (ii) whether the circuit court applied “the correct standard” to resolve whether SB 1 is constitutional. Neither question justifies backtracking on the Court’s opinion.

First, SB 1 applies to an open class. It governs a county school board and its superintendent in any consolidated local government. Any city that is the largest in a county of a specified size can become a first-class city, and any first-class city can form a consolidated local government.

Second, the circuit court was correct to ask whether SB 1 “applies to a particular individual, object or locale.” *Calloway Cnty. Sheriff’s Dep’t v. Woodall*, 607 S.W.3d 557, 573 (Ky. 2020). Until rehearing, the parties agreed that *Woodall* established the applicable rule but disputed its application. The Court should reaffirm *Woodall* and apply it to uphold SB 1.

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The Court has set oral argument for August 6, 2025.

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STATEMENT OF THE CASE

By now, the Court is familiar with the background of this case. But a quick refresher helps reset the stage.

The General Assembly passed Senate Bill 1 during its 2022 session, less than two years after *Woodall*. The law recalibrates the relationship between a superintendent and a school board in “a county school district in a county with a consolidated local government adopted under KRS Chapter 67C.” KRS 160.370(2). Right now, the law applies to only Jefferson County’s sprawling county school district. But it can apply in *any* county in Kentucky meeting a population threshold, if local voters choose to adopt a consolidated local government. KRS 67C.101(1); KRS 81.005(1)(a); KRS 83A.160(6).

SB 1 makes a covered superintendent more like a CEO and a school board more like a board of directors. To the superintendent, SB 1 grants authority over the “district’s day-to-day operations,” including “pupil transportation,” as well as “implementation of the board-approved strategic plan.” KRS 160.370(2)(a)1. The superintendent may also make purchases or line-item transfers under \$250,000 and retains responsibility for “administrative dut[ies] not explicitly granted” to the school board. KRS 160.370(2)(b)5., (2)(c). And the superintendent must provide quarterly reports to the board and must run any policy changes by the board, which can overturn such changes by a two-thirds vote.

KRS 160.370(2)(b)1.–2. The board, by contrast, creates the strategic plan, oversees the finances, monitors student performance, and hires and fires the superintendent. KRS 160.370(2)(a)3.–6., 8. The board can meet once every four weeks to “approv[e] necessary administrative matters.” KRS 160.370(2)(a)2.

To challenge these provisions of SB 1, the Board sued the Commissioner of the Department of Education in Jefferson Circuit Court. R.1. The Board brought a narrow lawsuit. Its sole claim was that the disputed provisions of SB 1 violate Sections 59 and 60 of the Kentucky Constitution. R.8–9. The circuit court, the Board, and the Attorney General agreed on one thing: that *Woodall* governs the Board’s claim. R.149, 183, 203–05, 218–19. The circuit court issued a declaratory judgment that the challenged parts of SB 1 are unconstitutional. R.220–21, 223.

The Court of Appeals affirmed. It applied *Woodall* to conclude that SB 1 violates Sections 59 and 60. *Cameron v. Jefferson Cnty. Bd. of Educ.*, 2023 WL 6522192, at *7–10 (Ky. App. Oct. 6, 2023).

This Court reversed by a 4–3 vote. *Coleman v. Jefferson Cnty. Bd. of Educ.*, 2024 WL 5180457, at *5–11 (Ky. Dec. 19, 2024). It began by “observ[ing] that both parties agree the outcome turns on the proper application of *Woodall*.” *Id.* at *6; *see also id.* at *12 (VanMeter, C.J., concurring) (“[N]o party argues *Woodall* should be overruled.”). Under *Woodall*, the Court was unable to “conclude the application of S.B. 1 is limited to a particular object, individual, or locale.” *Id.* at

*7. The Court instead determined that SB 1 “pertains to the Board as a member of an open classification.” *Id.* Justice Bisig dissented, joined by Justices Keller and Thompson. The dissent rested almost entirely on an argument that the Board had not made: that *Woodall*’s test for violations of Sections 59 and 60 should be overruled. *Id.* at *22–33. The dissent also briefly argued that SB 1 violated *Woodall*. *Id.* at *33–34.

The Board petitioned for rehearing and made two relevant assertions. First, in a single sentence, it argued (at 13) that *Woodall* should be “rescinded.” Through years of litigation at every level of Kentucky’s judiciary, the Board had not pressed that argument. Second, the Board argued (at 2, 9 & n.1) that SB 1 applies to a closed class of one county as a statutory matter. Here as well, the Board did not make this argument in merits briefing.

Given the late-breaking nature of the Board’s arguments, its petition should have been an easy one to deny. *See Johnson v. Commonwealth*, 450 S.W.3d 707, 713 (Ky. 2014) (“[E]rror raised for the first time in a petition for rehearing will not be considered”). By a 4–3 vote, however, the Court granted the Board’s rehearing petition and withdrew its prior opinion. Order at 1 (Apr. 24, 2025). It ordered supplemental briefing on two topics, which seem to be the two new arguments in the Board’s rehearing petition:

1. Does the statute at issue in this case apply to an open or a closed class as that concept was articulated in this Court’s December 19, 2024 Opinion?

2. Did the trial court apply the correct standard for resolution of a claim that a statute violates Sections 59 and 60 of the Kentucky Constitution?

Id. at 1–2. Chief Justice Lambert and Justices Nickell and Conley dissented from the grant of rehearing. They emphasized that “the issues noted were presented to the Court in the Brief for the Commonwealth,” which makes rehearing “inappropriate.” *Id.* at 2. The majority did not respond to this criticism.

ARGUMENT

As directed, the Attorney General submits this brief to address the two questions identified by the Court. At the outset, the Attorney General respectfully reemphasizes the undisputed points made in his rehearing response. Until its rehearing petition, the Board never argued that *Woodall* was wrongly decided. And until its rehearing petition, the Board never contended that SB 1 applied to a closed class as a statutory matter. It is well-established that rehearing is not a juncture to address new arguments unless the issue was unforeseeable. *Johnson*, 450 S.W.3d at 713. The Board had its chance to make whatever arguments it thought best. It did so. And it lost fair and square.

Agree or disagree with the Court’s decision to grant rehearing, no one can dispute that it is an extraordinary exercise of the judicial power. From the second question posed by the Court, it appears that the Court may be considering overturning *Woodall*, despite the Board accepting *Woodall* as the governing rule all the way up. Overturning precedent is always a big deal. But doing so at the rehearing

stage when the correctness of *Woodall* was never appropriately raised would be a jurisprudential anomaly.

Overruling *Woodall* would also return the Court to a jurisprudence of uncertainty. The prior governing *Schoo* test, three Justices warned not so long ago, was “weaponiz[ed]” to such an extent that the Court “risk[ed] overstating its role in Kentucky’s tripartite government.” *Zuckerman v. Bevin*, 565 S.W.3d 580, 605–06 (Ky. 2018) (Minton, C.J., concurring). The pre-*Woodall* regime benefitted no one except “a majority” of this Court, who could decide a Sections 59 and 60 case in “whatever way they would like.” *Id.* at 606. Such “unfettered discretion [wa]s unworthy of any legal system.” *Calloway Cnty. Sheriff’s Dep’t v. Woodall*, 607 S.W.3d 557, 569 (Ky. 2020). *Woodall* correctly removed such subjectivity from Kentucky’s jurisprudence.

If *Woodall* is applied here, SB 1 is perfectly constitutional. The Court’s supplemental questions are not cause to upset the original decision. As to the first question, SB 1 applies to a county school board and its superintendent in any consolidated local government. That class is open and may be expanded under the generally applicable process set by statute. As to the Court’s second question, the Court should not reconsider *Woodall* at this late juncture. But if it does, *Woodall* properly reflects the text of Sections 59 and 60, the history that led to these provisions, and this Court’s caselaw. And importantly, *Woodall* is judicially administrable, unlike the indeterminate *Schoo* regime.

I. SB 1 applies to an open class.

A. Under the Court’s opinion, an open class allows for the possibility of adding new members.

As the Court held, an open class is one that is not “permanently closed.” *Coleman*, 2024 WL 5180457, at *8. Relying on a leading treatise, the Court explained that open classes are “based upon factors subject to change” and thus “may be open-ended.” *Id.* (quoting 2 *Sutherland Statutory Construction* § 40:4 (8th ed.)). A “closed class,” by contrast, “limits the application of the law to a present condition, and leaves no room or opportunity for an increase in the numbers of the class by future growth or development.” 2 *Sutherland Statutory Construction* § 40:4 (8th ed.) (citation omitted)).

The Court emphasized that this concept was nothing new. Nearly 130 years ago, the Court’s predecessor upheld a law that applied “in a county having a population of over forty thousand and under seventy-five thousand.” *Stone v. Wilson*, 39 S.W. 49, 50 (Ky. 1897) (citation omitted), *overruled on other grounds by Vaughn v. Knopf*, 895 S.W.2d 566 (Ky. 1995). In rejecting a Section 59 challenge, *Stone* emphasized that the law applied “in counties that may *now or hereafter* have a population of over 40,000 and under 75,000.” *Id.* (emphasis added). In other words, because county population is subject to change, other counties could become part of the class in the future.

The Court also mentioned *Winston v. Stone*, which upheld a law that applied only in counties with a population above 75,000. 43 S.W. 397, 397–98 (Ky. 1897), *overruled on other grounds by Vaughn v. Knopf*, 895 S.W.2d 566 (Ky. 1995). The parties there “admitted that Jefferson county has a population of over 75,000 inhabitants, and, further, it is the only county that at the present has such population.” *Id.* at 397. But that single-county sweep was not a Section 59 problem. The Court explained: “It 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.

For its open-class holding, the Court lastly cited *Sims v. Board of Education of Jefferson County*, which upheld a statute that applied “only to boards of education in a county containing a city of the first class.” 290 S.W.2d 491, 495 (Ky. 1956). At the time, only one board of education qualified—that in Jefferson County. *Id.* Similar to *Stone* and *Winston* before it, the Court reasoned that even though “it is not probable that another city will qualify as a first-class city in Kentucky at any time in the immediate future, . . . it is always possible and the statute would then be applicable to more than one county.” *Id.* The Court contrasted this open-class statute with a law from a sister state that “ma[de] it *impossible* for any other county ever to qualify.” *Id.* (emphasis added).

B. SB 1 applies to an open class under the Court’s definition of the concept.

Applying these principles, SB 1 regulates an open class. As everyone agrees, the challenged parts of SB 1 “d[o] not mention Jefferson County.” R.136. Nor do they mention Louisville. Instead, SB 1 applies in any “county school district in a county with a consolidated local government adopted under KRS Chapter 67C.” KRS 160.370(2). SB 1 therefore applies within any consolidated local government that exists “now or hereafter.” *See Stone*, 39 S.W. at 50.

Like the challenged laws in *Winston* and *Sims*, SB 1 currently applies only in Jefferson County. But that does not a closed class make. In fact, joining the class regulated by SB 1 is as easy as one, two, three:

1. Any “city with the largest population located in a county with a population equal to or greater than two hundred fifty thousand” may “elect to become organized and governed under the mayor-alderman plan of government.” KRS 83A.160(6).
2. A city that is “organized and operating under the mayor-alderman plan of government” constitutes a city of the “[f]irst class.” KRS 81.005(1)(a).
3. And “any city of the first class” can consolidate the “governmental and corporate functions” of the city with the “governmental and corporate functions of the county containing the city” “upon approval by the voters of the county.” KRS 67C.101(1).

As these provisions make clear, there is a statutory roadmap to follow to become subject to SB 1. Even if the Court believes “it is not probable that another city will” form a consolidated local government “at any time in the immediate future,” there can be no dispute that it is “always possible.” *Coleman*, 2024 WL

5180457, at *8 (quoting *Sims*, 290 S.W.2d at 495). Whether that occurs depends on population and local choice—two metrics that are open by definition.

Even if the probability of a new class member mattered, SB 1 would still apply to an open class. In addition to Jefferson County, Fayette County also has more than 250,000 residents. For now, Lexington has chosen another form of local government. *See generally* KRS 67A.010 (allowing an urban county government anywhere in Kentucky “except [in] a county containing a city of the first class”); *Holsclaw v. Stephens*, 507 S.W.2d 462, 466 (Ky. 1973). But the people of Fayette County could change their minds. And before long, Kenton County (population 174,862), Warren County (population 147,936), and Boone County (population 144,135), among others, could reach the statutory population threshold.¹ To argue that SB 1 applies to a permanently closed class would be tantamount to saying that future population growth in Kentucky will be so anemic that no other county will ever have 250,000 residents. The Court should not take such a dim view of our future.

What appears to have prompted the Court to ask for supplemental briefing on this issue is the Board’s unexplained assertion in its rehearing petition (at

¹ U.S. Census Bureau, County Population Totals and Components of Change: 2020–2024 (Mar. 2025), <https://perma.cc/PXA6-83C3>.

9 & n.1) that it “would actually require multiple statutory amendments” for another county school district and superintendent to become subject to SB 1. But as discussed above, Kentucky’s statutes unmistakably allow other consolidated local governments to form. Tellingly, the Board’s petition did not address those statutes, despite the Attorney General having cited them in his merits brief (at 46–47). If the Board refines its argument in its first supplemental brief, the Attorney General will address the issue more fully in his next brief.

II. Although the circuit court misapplied *Woodall*, the court was correct to apply that decision.

The Court also requested supplemental briefing on a second question: whether “the trial court app[lied] the correct standard for resolution of a claim that a statute violates Sections 59 and 60 of the Kentucky Constitution.” Order 2 (Apr. 24, 2025). This question can be reasonably read two ways. It could ask whether the trial court correctly applied *Woodall* to resolve whether SB 1 is constitutional. That appears to be how the three Justices who dissented from the grant of rehearing understood this question. *Id.* As they noted, the Attorney General has already exhaustively briefed that question. Op. Br. at 34–58; Reply Br. at 11–20. And this Court has already resolved the issue against the Board. *Woodall* compelled this result, given how intentional it was in separating claims under Sections 59 and 60 from those under Section 3. Although three Justices dissented from this resolution, they discussed how to apply *Woodall* only briefly. If the

Court granted rehearing to reconsider this issue, the Attorney General rests on his prior briefing. In short, if *Woodall* means what it says, SB 1 is constitutional.

That leads to the other way that the Court’s second question can be understood. The real dispute between the Court and the dissent was not about applying *Woodall* but about whether to overrule it. The Court’s order can reasonably be read to ask the parties to address that larger issue—what is the “correct standard” for a claim under Sections 59 and 60? If the Court is in fact contemplating overruling *Woodall*, it should not do so for three overarching reasons. First, the party-presentation principle requires the Court to reconsider a precedent only if a party properly presents the issue. That did not happen here. Second, stare decisis strongly favors adhering to *Woodall*. And third, if the Court opts to reconsider *Woodall*, the Court should affirm it as consistent with the constitutional text as well as the history and caselaw concerning Sections 59 and 60.

A. The Board did not properly preserve whether to overturn *Woodall*.

Despite having every opportunity to do so, the Board never properly put the issue of whether to overrule *Woodall* before the Court. The Board first raised the issue in its rehearing petition—and then only in a single sentence (at 13). That does not suffice. Respectfully, if the Court overrules *Woodall* on this record, this matter will cross the line from a litigant-driven case to a judge-driven one.

“In our adversarial system of adjudication, we follow the principle of party presentation.” *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020); accord *Primal Vantage Co. v. O’Bryan*, 677 S.W.3d 228, 248 n.53 (Ky. 2022). This means that courts “rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.” *Sineneng-Smith*, 590 U.S. at 375 (citation omitted). In one of her final opinions on the U.S. Supreme Court, Justice Ginsburg instructed that courts should not “sally forth each day looking for wrongs to right.” *Id.* at 376 (citation omitted). Instead, courts “wait for cases to come to them, and when cases arise, courts normally decide only questions presented by the parties.” *Id.* (cleaned up). Our judicial system, Justice Ginsburg explained, “is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief.” *Id.* at 375–76 (cleaned up).

The party-presentation rule applies with equal force to an argument that a precedent should be overturned. The Board might respond that it would have been futile to ask the courts below to overrule *Woodall* given vertical stare decisis. That is no excuse for the Board failing to raise the issue in its merits brief here. In any event, this Court recently refused to create a futility exception to the preservation requirement. See *Gasaway v. Commonwealth*, 671 S.W.3d 298, 313 (Ky. 2023) (“[E]ven if a trial court lacks authority to grant immediate relief, such as the power to overrule binding precedent, neither our criminal rules nor our

caselaw supports a futility exception to the preservation requirement.”). So if the Board wanted to challenge *Woodall*, it needed to preserve the issue all the way up.

The Board failed three times over. At every level of our judicial system, it accepted *Woodall* as the constitutional baseline—until the dissent raised the issue. R.149; COA Br. at i, 11–12. Indeed, the Board’s merits brief here quoted *Woodall* (at 36) for the notion that it is the “appropriate test.” It also urged the Court (at 51) to apply “the holding and reasoning” of *Woodall*. The Board’s agreement with *Woodall* is not just a forfeiture of the argument to overrule the decision but a waiver of it. See *Gasaway*, 671 S.W.3d at 314. The Court pointed out the Board’s preservation problem, *Coleman*, 2024 WL 5180457, at *6, as did the concurrence, *id.* at *12. The dissent did not contest these statements. *Id.* at *21–34. As the party who brought this suit, the Board was the “master” of its litigation strategy. See *Bradley v. Commonwealth ex rel. Cameron*, 653 S.W.3d 870, 879 (Ky. 2022). It chose to accept *Woodall* at the circuit court, at the Court of Appeals, and at this Court. That thrice-repeated strategy can now be second-guessed in light of three Justices’ willingness to overrule *Woodall* sua sponte. But this is the Board’s lawsuit. The decision about which issues to raise or not raise belonged to the Board.

To be sure, the party-presentation principle is “not ironclad.” *Sineneng-Smith*, 590 U.S. at 376. But when, as here, the unraised issue is “purely legal, not factual,” this Court has refused to “suspend our traditional rules of preservation.” *Massie v. Navy*, 487 S.W.3d 443, 446 (Ky. 2016). The Court should be wary

of bypassing the party-presentation principle here given the stakes. Recall that this lawsuit is an attempt to invalidate the hard work of a coordinate branch of government. A decision striking down a statute on a basis not properly argued by the plaintiff is a “derogation of the strong presumption of constitutionality accorded legislative enactments.” *Delahanty v. Commonwealth*, 558 S.W.3d 489, 504 (Ky. App. 2018) (quoting 16 Am. Jur. 2d Constitutional Law § 127).

The Board might respond that the parties are now briefing the correctness of *Woodall*. But the Rules of Appellate Procedure expressly prohibit considering a new issue during rehearing “[e]xcept in extraordinary cases when justice demands it.” RAP 43(B)(1)(a). The default rule is thus that an “error raised for the first time in a petition for rehearing *will not be considered.*” *Johnson*, 450 S.W.3d at 713 (emphasis added); accord *Herrick v. Mills*, 333 S.W.2d 275, 276 (Ky. 1959). The Court has qualified that in a “rare instance” when an “issue is not foreseeable,” a petition for rehearing “may be” appropriate. *Johnson*, 450 S.W.3d at 713–14. But no one can claim that the correctness of *Woodall* was unforeseeable. After all, the circuit court raised concerns with *Woodall*. R.219 (saying that the court has “no idea what [*Woodall*] means as a practical matter”), 221. Yet even after receiving the circuit court’s opinion, the Board remained content to litigate the meaning of *Woodall*.

One final point about party presentation. The Attorney General appreciates that the Court’s composition has changed since the Court ruled against the

Board by a 4–3 vote. In fact, the Justice who has been replaced is *Woodall*'s author. Respectfully, the change in the Court's composition is a powerful reason not to bend the party-presentation principle to rule for the Board on an issue it did not properly raise. Justice Sotomayor put this point best: "No doubt, it would be illegitimate to overrule a precedent simply because the Court's current membership disagrees with it." *Alleyne v. United States*, 570 U.S. 99, 121 (2013) (Sotomayor, J., concurring). The Court should demand strict compliance with the party-presentation principle here—the same as it would in any other case. If the Court wants to reconsider *Woodall* in a later case when the issue is properly presented, the only limit would be stare decisis. As the Attorney General explained in his rehearing response (at 5 n.2), many other Sections 59 and 60 cases are working their way through the judicial system.

B. Stare decisis strongly favors retaining *Woodall*.

If the Court gets past the party-presentation principle, it is not free to simply ask whether *Woodall* was correctly decided. Instead, it must put a heavy thumb on the scale in *Woodall*'s favor, given the Court's "steadfast adherence to stare decisis." *Gasaway*, 671 S.W.3d at 328. Indeed, "Kentucky is generally recognized as one of the earliest of the individual states to adopt the doctrine of stare decisis." *Matheney v. Commonwealth*, 191 S.W.3d 599, 622 (Ky. 2006) (Cooper, J., dissenting) (italics omitted).

Stare decisis means that the Court does not overturn a precedent lightly. More specifically, the Court does not overrule a case “merely because it was wrong” in the eyes of a majority of the current Justices. *Gasaway*, 671 S.W.3d at 328. The Court faithfully follows its precedent “unless there is a *compelling and urgent* reason to depart therefrom which destroys or completely overshadows the policy or purpose established by the precedent.” *Schilling v. Schoenle*, 782 S.W.2d 630, 633 (Ky. 1990) (emphasis added).

Although the Court has not distilled stare decisis into a set of factors to weigh, the U.S. Supreme Court helpfully focuses on “three broad considerations” when deciding whether to “overrule a prior constitutional decision.” *Ramos v. Louisiana*, 590 U.S. 83, 121 (2020) (Kavanaugh, J., concurring in part). Those three factors mirror considerations this Court has found relevant when considering whether to overrule a precedent:

- First, is the contested decision “not just wrong, but grievously or egregiously wrong?” *Id.*; see *Chestnut v. Commonwealth*, 250 S.W.3d 288, 296 (Ky. 2008) (asking whether the “former determination is evidently contrary to reason” (citation omitted)).
- Second, has the prior decision prompted “significant negative jurisprudential or real-world consequences?” *Ramos*, 590 U.S. at 122 (Kavanaugh, J., concurring in part); see *Gilbert v. Barkes*, 987 S.W.2d 772, 776 (Ky. 1999) (asking whether a precedent is “anomalous, unworkable or contrary to public policy”).
- And third, would overruling the decision “unduly upset reliance interests?” *Ramos*, 590 U.S. at 122 (Kavanaugh, J., concurring in part); see *D & W Auto Supply v. Dep’t of Revenue*, 602 S.W.2d 420, 424 (Ky. 1980)

(holding that stare decisis “depends upon . . . the extent of the disturbance of rights and practices” (citation omitted)).

All three factors favor keeping *Woodall*.

Grievous error. Far from being grievously wrong, *Woodall* correctly reflects the text of Sections 59 and 60, their history, and caselaw applying those provisions. To see why, skip to Part III below.

Negative consequences. *Woodall* has not caused negative jurisprudential or real-world consequences. To the contrary, overruling *Woodall* would return us to a jurisprudence of uncertainty for Sections 59 and 60 claims.

Even *Woodall*'s most ardent critic cannot dispute that it simplified the Sections 59 and 60 inquiry. The prior *Schoo* regime proved hopelessly unpredictable, which is a big reason why *Woodall* overruled it. See *Woodall*, 607 S.W.3d at 569 (“This unfettered discretion is unworthy of any legal system.”). Judged solely on its administrability, *Woodall* is a major improvement over *Schoo*. As the former Chief Justice summed up, “[n]o 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.” *Coleman*, 2024 WL 5180457, at *20 (VanMeter, C.J., concurring). A bright-line rule like *Woodall*'s is a good thing. It promotes clarity and predictability, which are hallmarks of the rule of law. See *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). And the existence of a “clear or easily

applicable standard” like *Woodall*’s favors retaining the precedent. See *South Dakota v. Wayfair*, 585 U.S. 162, 186 (2018).

Woodall’s administrability cannot be missed. In fact, every Sections 59 and 60 case this Court has decided since *Woodall*, except this one, has been unanimous. *Cates v. Kroger*, 627 S.W.3d 864, 872 (Ky. 2021); *Cameron v. Beshear*, 628 S.W.3d 61, 77–78 (Ky. 2021); *Louisville/Jefferson Cnty. Metro Gov’t Waste Mgmt. Dist. v. Jefferson Cnty. League of Cities*, 626 S.W.3d 623, 628 (Ky. 2021); *O’Bryan v. Zip Express*, 636 S.W.3d 457, 463 (Ky. 2021); *Darnell v. Saputo Dairy*, 2021 WL 5984688, at *3 (Ky. Dec. 16, 2021) (not binding); *Flynn v. Buyers Paradise Furniture*, 2021 WL 5984802, at *3 (Ky. Dec. 16, 2021) (not binding); *Pickett v. Ford Motor Co. (LAP)*, 2021 WL 5984805, at *3–4 (Ky. Dec. 16, 2021) (not binding); *Coffey v. McCreary Cnty. Fiscal Ct.*, 2021 WL 5984801, at *3 (Ky. Dec. 16, 2021) (not binding).

Granted, five years of caselaw is not a huge sample size. But eight unanimous opinions over five years is no small thing. That the Court disagreed here about how to apply *Woodall* should not give the Court pause. As noted, the dissent here discussed how to apply *Woodall* as an afterthought to its main argument. *Coleman*, 2024 WL 5180457, at *33–34. The reality is that, in its first five years, *Woodall* has provided stability in the jurisprudence that evaded the prior regime over several decades. See *Zuckerman*, 565 S.W.3d at 606 (Minton, C.J., concurring). The Court should not return to *Schoo* after five years of calm waters.

Even if the Court is unsure about *Woodall*'s workability, it is much too early to overturn it. When a court makes the weighty decision to overturn a prior decision, it is most often a precedent with a track record that can be evaluated. For example, in *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, the U.S. Supreme Court remarked that a “half century’s experience ha[d] persuaded” it to overrule two decisions. 485 U.S. 271, 283 (1988). Similarly, when *Woodall* overturned *Schoo*, it examined how *Schoo* had been applied “over the last 30 years.” *Woodall*, 607 S.W.3d at 568. The upshot is that there is tremendous value in seeing how a precedent is applied over time before casting it aside—all the more so given that *Woodall*'s author just left the Court. To overrule *Woodall* so soon would cause jurisprudential whiplash for lower courts and litigants.

Aside from reintroducing instability into the Court’s caselaw, overruling *Woodall* would open up any law upheld under its test to a renewed challenge.² It would also invite a challenge to any law that makes a similar classification to that drawn by SB 1. As the Attorney General’s opening brief catalogued (at 54–57), there are many statutes that presently apply in only a single county. And as then-

² The Court applied *Woodall* to uphold the legislature’s seminal law regarding the response to COVID-19. *Cameron*, 628 S.W.3d at 77–78. It has also applied *Woodall* to uphold reforms to our workers’ compensation laws. *E.g.*, *Cates*, 627 S.W.3d at 872. Plus, at least one Justice on the Court has argued that Kentucky’s right-to-work law violates *Schoo*. *Zuckerman*, 565 S.W.3d at 611–17 (Keller, J., dissenting).

Chief Justice VanMeter remarked during oral argument, a challenge to one part of a classification system logically sweeps in every other such classification. Oral Arg. 23:23–24:21. In fact, the legislature has passed an entire statutory chapter to govern a consolidated local government. KRS 67C.101 *et seq.* Two Louisville-based organizations have urged the Court not to “impair[] the General Assembly’s ability to enact legislation based on proper classifications, which may only be applicable to a class of one.” Amicus Br. of Greater Louisville Inc. & Impetus for a Better Louisville at i (filed July 17, 2024). As amici argue, legislation that happens to “empower[] or benefit[] Louisville only is necessary and proper in myriad situations.” *Id.* at 2.

The dissent’s answer to this slippery slope is apparently to apply *Schoo* to presume that all laws that classify like SB 1 are presumptively unconstitutional unless the Commonwealth meets the “robust standard” of proving with evidence that the legislature had a “substantial and justifiable reason” for each and every classification. *Coleman*, 2024 WL 5180457, at *25 (citation omitted). Maybe the Commonwealth would win some or even most of those challenges. Maybe not. Regardless, the dissent’s preferred *Schoo* test may well prompt serious legal challenges to many other statutes that in operation apply only in Louisville, Lexington, or another single locality.

The Board does not meaningfully contest this slippery slope. At oral argument, the Board’s counsel conceded it was “fair enough” that follow-on challenges could arise. Oral. Arg. at 25:40. In any event, one of the problems with the dissent’s preferred test—learned over many decades of caselaw applying *Schoo*—is that it is altogether unpredictable. Before *Woodall*, no one could say with any certainty whether a given statute would survive a challenge under Sections 59 and 60. As three Justices who collectively adjudicated decades of these lawsuits explained, the *Schoo* test allowed a majority of this Court to reach “whatever [result] they would like.” *Zuckerman*, 565 S.W.3d at 606 (Minton, C.J., concurring).

The primary negative consequence that the dissent here voiced about *Woodall* is that it leaves Sections 59 and 60 a “dead letter.” *Coleman*, 2024 WL 5180457, at *29–33. That’s incorrect, as explained in Part III below.

Reliance interests. Overruling *Woodall* would also unduly upset reliance interests.

Although *Woodall* has been on the books for only five years, the General Assembly has already relied on it when passing major legislation. SB 1 is Exhibit A. The General Assembly passed the law less than two years after *Woodall* was decided. This Court “assume[s] that the legislature was aware of [its] decision[s] when drafting” laws. *Spurlin v. Woods*, 954 S.W.2d 309, 311 (Ky. 1997). Overturning *Woodall* would unsettle these inter-branch dynamics. If the Court takes the

dramatic step of overruling *Woodall* to invalidate SB 1, it will throw out the handiwork of a coordinate branch of government despite the legislature acting within the bounds just set by *Woodall*. In effect, the Court would be pulling the rug it created out from under the law-making branch of government. And SB 1 is not the only law passed since *Woodall* that in practice currently affects only Louisville Metro. To give another example, in 2024, the legislature made local elections in a consolidated local government nonpartisan. 2024 Ky. Acts ch. 181, §§ 4–5.

Beyond the General Assembly’s reliance on *Woodall* to pass laws, the subject matter of SB 1 should not get lost. SB 1 is about improving public education through streamlined decisionmaking in enormous school districts like the Jefferson County Public Schools. This Court has been emphatic that setting education policy is the constitutional province of the General Assembly. *Rose v. Council for Better Educ.*, 790 S.W.2d 186, 211 (Ky. 1989). In passing SB 1, the General Assembly was acutely aware of the unique challenges facing JCPS. In a sprawling school district like JCPS, the General Assembly reasonably determined that the superintendent needs enhanced powers and the ability to act quickly, creatively, and decisively as appropriate. SB 1 empowers a superintendent to act more like a CEO, while the school board serves as a board of directors. Put more simply, the General Assembly determined that in a district of JCPS’s size the buck needs to stop with one person: the superintendent. The Court should not lightly set

aside the General Assembly’s considered policy judgment about how best to help the many thousands of students and families in a school district like JCPS.

III. The Court should affirm *Woodall*.

If the Court takes the extraordinary step of reconsidering *Woodall* at this juncture, the Court should affirm it. Unlike *Schoo*, *Woodall* comports with the text and history of Sections 59 and 60. And compared to *Schoo*, *Woodall* better reflects this Court’s caselaw. Plus, *Woodall*’s rule can be consistently applied, unlike *Schoo*’s subjective test. All four things—constitutional text, history, caselaw, and administrability—favor keeping *Woodall*. Each is discussed in turn.

A. *Woodall* better reflects Sections 59 and 60’s text.

In interpreting the Kentucky Constitution, the Court starts “first and foremost” with its text. *Westerfield v. Ward*, 599 S.W.3d 738, 747 (Ky. 2019). With that text-focused standard in mind, the Court should ask a simple question: Which test—*Woodall* or *Schoo*—is more faithful to the language of Sections 59 and 60?

1. Section 59’s text is unique compared to the rest of the Constitution. It starts with a prohibition, followed by a long list of items within the prohibition, and ends with a catch-all. The prohibition states: “The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes” *Id.* The provision then lists 28 different “subjects” or “purposes,” followed by a catch-all that “[i]n all cases where a general law can be made applicable, no special law shall be enacted.” *Id.* As relevant here,

one of the 28 prohibited “subjects” or “purposes” is “[t]o provide for the management of the common schools.” *Id.* at (25).

Section 59’s text contrasts a “local or special” law, which is not allowed, with a “general law,” which is allowed. The question thus becomes what distinguishes the two. *See Johnson v. Commonwealth ex rel. Meredith*, 165 S.W.2d 820, 825 (Ky. 1942) (“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.” (citation omitted)).

Start with a “local” law. As the word connotes, a “local” law applies only in a particular locality or localities. To give an example from the caselaw, “a law for the punishment of a designated crime in Henry county” would violate Section 59. *Singleton v. Commonwealth*, 175 S.W. 372, 373 (Ky. 1915). Everyone thus agrees that a law that by its terms can apply only in a particular locality or localities is a local law prohibited by Section 59.³

Under our Constitution, the way to pass a local law is for a locality to do so itself—what is known as “home rule.” Ky. Const. § 156B (allowing the General Assembly by “general law” to empower a city to “exercise any power and

³ One clarifying point. Section 156A gives leeway to the General Assembly to legislate with respect to cities. If a law is authorized by Section 156A, it follows that the law is not prohibited by Section 59. *See Louisville/Jefferson Cnty. Metro Gov’t Waste Mgmt. Dist.*, 626 S.W.3d at 628.

perform any function within its boundaries that is in furtherance of a public purpose of a city and not in conflict with a constitutional provision or statute”). Indeed, Sections 59 and 60 apply only to acts of the General Assembly. So under our Constitution, the General Assembly must legislate generally while localities can legislate locally to the extent allowed by the legislature. *See Cameron*, 628 S.W.3d at 77–78.

The next question is what constitutes a “special” law. Simply put, a “special” law is one that is “special” to a person, thing, or object. *Stone*, 39 S.W. at 50; *Johnson*, 165 S.W.2d at 825. For example, a law that allows two particular individuals to pursue a legal claim against the State is a prohibited “special” law, as held in *Commonwealth, Department of Highways v. McCoun*, 313 S.W.2d 585, 587, 589 (Ky. 1958). As is a law that grants workers’ compensation benefits to the widow of a particular individual, as held in *Department of Conservation v. Sowers*, 244 S.W.2d 464, 465, 467 (Ky. 1951). So too a law that grants a particular individual the right to practice veterinary science, as held in *Reid v. Robertson*, 200 S.W.2d 900, 901, 903 (Ky. 1947). In all these instances, the law was special because it gave a particular individual or individuals a special benefit.

Section 60 reinforces Section 59. It prohibits “indirectly enact[ing] any special or local act.” Section 60 provides two ways such an indirect violation can happen. It can occur 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.” This makes

sense. A general law remains special if it carves out a particular person, thing, or object from its sweep. And a general law remains local if it does not apply to a particular city, town, district, or county.

2. Against this backdrop, the Court should ask whether *Woodall* or *Schoo* is more consistent with Sections 59 and 60’s text. As noted above, *Woodall* asks “whether the statute applies to a particular individual, object or locale.” 607 S.W.3d at 573. This test maps very well on to the text of Sections 59 and 60. The 28 prohibited “subjects” or “purposes” in Section 59 are all topics that can be unique to an “individual, object or locale” under *Woodall*. Of course, the *Woodall* test generalizes by grouping all 28 prohibited “subjects” or “purposes” into the words “particular individual, object or locale.” But the catch-all in Section 59 generalizes too by stating that “[i]n all other cases where a general law can be made applicable, no special law shall be enacted.” So *Woodall*’s test is all-encompassing in the same way as Section 59’s text.

Woodall similarly mirrors Section 60’s text. As noted above, Section 60 prohibits specified “indirect[]” violations of Section 59. *Woodall* captures such indirect violations. “[R]epeal[ing] in part” a general act under Section 60 makes the law apply to a “particular individual, object or locale” under *Woodall*. And “exempting from the operation of a general act any city, town, district or county” under Section 60 makes the law apply to a “particular . . . locale” under *Woodall*. In sum, *Woodall* stacks up well when judged by Sections 59 and 60’s text.

Section 60's text is important for purposes of this case. One of the dissent's criticisms of *Woodall's* test is that it can be circumvented by a "clever" legislature. *Coleman*, 2024 WL 5180457, at *22. Section 60, which addresses "indirect[]" special or local legislation, is the framer's response to this circumvention concern. Importantly, the framers did not say that creating a small class of localities, persons, or things that could become a larger class amounts to an "indirect[]" violation. Instead, the framers addressed circumvention concerns in a more targeted way. Relevant here, Section 60 instructs that such an "indirect[]" violation occurs *only when* the legislature "exempt[s] from the operation of a general act any city, town, district or county." So the delegates textually addressed circumvention concerns in Section 60 in a way that does not capture an open-class law like SB 1.

Turn now to *Schoo's* two-part test. It directs that a law is "general in its constitutional sense" if it meets two requirements: (i) the law "must apply equally to all in a class," and (ii) "there must be distinctive and natural reasons inducing and supporting the classification." *Schoo v. Rose*, 270 S.W.2d 940, 941 (Ky. 1954). It is nigh impossible to discern either part of *Schoo's* test from Sections 59 and 60's text. Neither constitutional section mentions classifications, much less equal application within classifications. Nor does either provision ask whether the General Assembly had a sufficient justification to pass the law—what *Schoo* calls "distinctive and natural reasons." In fact, the words "distinctive and natural" are

nowhere found in Sections 59 and 60. Moreover, *Schoo*'s two-part test appears to allow an otherwise special or local law to be valid if the General Assembly merely had a sufficient reason for the law. That result is in tension with Section 59's categorical language. Section 59 says that "[t]he General Assembly shall not pass" certain laws. It does not say that the legislature shall not pass certain laws unless it has "distinctive and natural reasons" for doing so.

The analytical gap between *Schoo* and Sections 59 and 60's text has only grown in the decades since *Schoo*. For example, in *Tabler v. Wallace*, the Court said that Section 59 guards against the influence of "special interest groups." 704 S.W.2d 179, 183 (Ky. 1985). Section 59's language, however, is not uniquely concerned with lobbying or special interest groups. It mentions neither. To be sure, Section 59 prohibits some legislation that such segments might want—for example, a special law providing a favorable rate of interest for a particular company. Ky. Const. § 59(21) (prohibiting a special law that "regulate[s] the rate of interest"). But Section 59 likewise prohibits mundane laws that any constituent might seek from a local legislator—for example, a name change, a divorce, the adoption of children, and giving effect to a deed. Ky. Const. § 59(9)–(11). As a result, *Tabler*'s single-minded focus on lobbying and special interest groups does not reflect Section 59's text.

The same is true for *Tabler*'s apparent requirement that the Commonwealth bears a special burden of proof in overcoming a Sections 59 and 60 challenge. According to *Tabler*, the Commonwealth must provide a “substantial and justifiable reason” for the law that is “apparent from legislative history, from the statute’s title, preamble or subject matter, or from some other authoritative source.” 704 S.W.2d at 186. This shifting of the burden of proof appears nowhere in Sections 59 and 60. Nothing in Sections 59 and 60 even hints at such an evidentiary requirement for the sovereign. The words “substantial and justifiable” from *Tabler* are not in the Constitution. And as discussed above, Sections 59 and 60 reject the notion that the Commonwealth can sufficiently prove that an otherwise special or local law is constitutional.

3. Before leaving the text of the Constitution, it’s important to situate Sections 59 and 60 alongside another provision, Section 3. That provision states that “no grant of exclusive, separate public emoluments or privilege shall be made to any man or set of men, except in consideration of public services.” Merely reading Section 3 shows how different it is from Sections 59 and 60. Relevant here, Section 3 asks whether a law grants an “exclusive, separate . . . privilege” to “any man or set of men” and if so whether the law is “in consideration of public services.” From a textual perspective, this provision in our Bill of Rights could not be more unlike Section 59, with its 28 listed topics and catch-all, and from Section 60’s backstop for “indirect[]” violations.

Section 3 is much older than Sections 59 and 60. It has appeared almost verbatim in all of Kentucky’s constitutions, whereas Sections 59 and 60 were mostly new to the current charter.⁴ Ky. Const. Art. XII, § 1 (1792); Ky. Const. Art. X, § 1 (1799); Ky. Const. Art. XIII, § 1 (1850). And well before Kentuckians adopted the 1891 Constitution, it was established that the 1850 version of Section 3 was a guarantee of equal protection of the law guarding against unlawful classifications. In *Gordon v. Winchester Building & Accumulating Fund Association*, this Court’s predecessor invalidated a law under the 1850 version of Section 3, reasoning in classic equal-protection terms that “[i]t is our boast that under our government none are entitled to exclusive rights, but that all are governed by equal laws, subject to like burdens, and entitled to equal privileges.” 75 Ky. 110, 113–14 (Ky. 1876). So when the delegates gathered in 1890, there was no question that Section 3’s predecessor provision guaranteed equal protection of the laws. *Barbour v. Louisville Bd. of Trade*, 82 Ky. 645, 650 (Ky. 1885) (noting the significance of *Gordon*).

By readopting the 1850 Constitution’s equal-protection provision as Section 3 in the 1891 Constitution, the framers no doubt intended for Section 3 to incorporate equal-protection principles into the current Constitution, just as it

⁴ The 1850 Constitution contained much narrower private-legislation protections. Ky. Const. Art. II, §§ 32, 38 (1850).

had in the 1850 Constitution. *See Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019) (explaining that when a term is “obviously transplanted from another legal source, it brings the old soil with it” (cleaned up)). After all, our framers were “learned men, who understood the use and the meaning of words.” *Brown v. Moss*, 105 S.W. 139, 141 (Ky. 1907). For this reason, this Court and its predecessor have long interpreted Section 3 just like *Gordon* interpreted its predecessor provision. *E.g.*, *Simpson v. Ky. Citizens’ Building & Loan Ass’n*, 41 S.W. 570, 572 (Ky. 1897). This being so, it stands to reason that the framers necessarily intended for Section 3 and Sections 59 and 60 to serve different purposes. If the framers thought Sections 59 and 60 would cover similar ground as Section 3, they would not have written the Constitution the way they did. By adopting two distinctly worded provisions, each with a unique historical pedigree, the framers necessarily expected that Section 3 and Sections 59 and 60 would operate independently.

Think about the issue this way. Our framers knew how to adopt complementary constitutional provisions. Sections 59 and 60 establish as much. They employ identical language—special and local laws contrasted with general laws. Indeed, Section 60’s prohibition on “indirect[]” violations makes little sense without Section 59’s direct prohibition. As a result, the framers plainly intended for Sections 59 and 60 to work in tandem. But Section 3 is altogether unlike Sections 59 and 60. Section 3 comes from a different era, and its text does not mention special laws, local laws, or general laws. If the text of the Constitution

matters the most, *Westerfield*, 599 S.W.3d at 747, it follows that different text in different provisions connotes different meanings.

Unlike Sections 59 and 60, Section 3 is a classic equal-protection provision. Its text envisions a two-step inquiry that can only be understood as ensuring equal protection of the law. The first question is whether a law grants a “separate . . . privilege[]” “to any man or set of men.” That is a paradigmatic classification inquiry. It asks whether a challenged law treats similarly situated people differently. If the law transgresses that line, Section 3 requires a second step asking whether the differential treatment is “in consideration of public services.” That second step is classic means-ends scrutiny. It asks whether the legislature had a sufficient reason to treat similarly situated people differently.

The two-step inquiry directed by Section 3’s text should sound very familiar. It overlaps substantially with *Schoo*’s two-step test. At step one, *Schoo* asks a classification question, just like Section 3’s first step does. 270 S.W.2d at 941 (asking whether a law “appl[ies] equally to all in a class”). And at step two, *Schoo* considers means-ends scrutiny, just like Section 3’s second step does. *Id.* (asking whether there are “distinctive and natural reasons inducing and supporting the classification”). A reader examining *Schoo* and Section 3 side by side could not help but see the overlap.

This lengthy discussion of Sections 59 and 60’s text makes a simple point: *Woodall*’s test closely matches that constitutional text; *Schoo*’s test not so much. In fact, from a purely textual perspective, *Schoo*’s two-part test is at the very least a sibling to Section 3’s two-part inquiry.

B. *Woodall* has the better read of Kentucky’s history.

Although the language of the Constitution is the place to start for interpretation, the Court also looks to Kentucky’s history. *Keck v. Manning*, 231 S.W.2d 604, 607 (Ky. 1950). Rather than reiterate *Woodall*’s persuasive telling of that history, 607 S.W.3d at 569–71, the Attorney General offers two additional points to show that *Woodall* is more faithful to Kentucky’s history than is *Schoo*.

1. Sections 59 and 60 are a success story.

One of the key arguments in the dissent here is that *Woodall* leaves Sections 59 and 60 a “dead letter.” *Coleman*, 2024 WL 5180457, at *29–33. Even accepting that premise as true,⁵ it overlooks Kentucky’s history. More specifi-

⁵ As the Attorney General explained in his opening brief (at 50), Section 3’s equal-protection guarantee operates as a backstop against unlawful class legislation. Section 2 also guards against arbitrary legislation. Indeed, the dissent’s strong language suggests it may have sustained an equal-protection claim, at least in part, if the Board had brought it. *Coleman*, 2024 WL 5180457, at *34 (arguing that parts of SB 1 are “facially irrational”).

cally, it forgets just how bad the problem of special and local legislation had become in the lead up to the 1890–91 convention and just how successful Sections 59 and 60 have been in eradicating that problem. Gone are the days when the people’s representatives spent virtually all their time passing local or special acts. Legislative sessions today, during which legislators debate and vote on statewide issues, look this way in no small part thanks to Sections 59 and 60. Under no circumstances are these constitutional sections a “dead letter.” To this day, Sections 59 and 60 remain a resounding success story.

As has been recounted elsewhere, before the 1891 Constitution, Kentucky’s legislators had time for little else besides passing special and local legislation. In the 1880s, “private and local acts routinely made up *almost 90%* of all legislation enacted.” Laurance B. VanMeter, *Reconsideration of Kentucky’s Prohibition of Special & Local Legislation*, 109 Ky. L. J. 523, 529 (2021) (emphasis added). Matters somehow got worse during the last legislative session before the 1890–91 convention. That “final session” the General Assembly “passed 1,926 acts, nearly 4,900 pages in a three-volume set, of which 1,752, or 91%, were related to local and private matters.” *Id.* So that the Court can see for itself just how intolerable things had become, the Attorney General attaches as Exhibits 1 through 5 in the Appendix the relevant parts of the table of contents from the Kentucky Acts in 1887 and 1889. One cannot truly appreciate the gravity of the problem without seeing the sheer volume of these private acts and how specific—absurdly so—

they were. The Attorney General respectfully asks the Court to thumb through these exhibits to get a flavor of the state of things. For example, in 1887, the General Assembly passed a law “to prohibit the running at large of hogs in Greenup county.” 1887 Ky. Acts ch. 1400. And in 1889, the legislature passed a law to “prohibit the sale of spirituous, vinous, malt liquors, ale or beer, within three miles of the Newstead Presbyterian Church, in Christian county.” 1889 Ky. Acts ch. 944.

With so much private legislation in the lead up to the convention, it’s no wonder that the framers wanted to address the issue. Although one can reasonably debate whether remedying special and local legislation was the primary reason for the constitutional convention, *Woodall*, 607 S.W.3d at 571, there is no doubt the framers were resolute about fixing it. And rightly so. As one delegate summarized:

A prohibition on special and local legislation “will enable the General Assembly to devote its time to the purposes for which the General Assembly is constituted, namely, the enactment of laws for the benefit of the whole State at large, instead of being distracted and harassed by claims from various local communities to have this law or that law passed, trading off votes and their influence on general matters to secure the passage of local measures, neglecting public matters, and pushing them off to the last days of the session, and then hurrying them through under whip and spur without proper consideration.”

3 Official Reports of the Proceedings and Debates 3795 (1891) (Spalding). Another delegate echoed this concern, noting that “[t]he time that is wasted in considering these bills is *astonishing*.” *Id.* at 3991 (McDermott) (emphasis added). That delegate even “took the trouble to look into the special acts” passed during the 1884 session. *Id.* at 3992. He found that the 1884 legislature, after sitting 134 days, “passed fifteen acts that might have been called general acts” compared to “1,515 private acts.” *Id.*

Sections 59 and 60 *radically* changed how the legislature operates while in session. The tables of contents of the Kentucky Acts from 1896 and 1897, which are attached as Exhibits 6 and 7, show how quickly this change arrived. The first several legislatures under the 1891 Constitution understood the profound change effected by Sections 59 and 60. Instead of passing hundreds of private acts, as had been done just a few years earlier under the 1850 Constitution, these early legislatures mostly pivoted to legislating on topics of statewide importance.⁶ It is not an understatement to say that Sections 59 and 60 fundamentally transformed how the General Assembly conducted the people’s business. And that transformation has persisted until the present day—over 130 years later. The modern General Assembly remains focused on solving statewide issues. No one, not even

⁶ The table of contents lists several laws repealing special or local acts. But that is permitted. *See* Ky. Const. § 60 (“[L]aws repealing local or special acts may be enacted.”).

the current legislature’s most fervent critic, can suggest that the body is wasting time on private acts like the legislatures from the second half of the nineteenth century.

In short, Sections 59 and 60 have been, and remain, an enduring success. Their remarkable and lasting achievements show the folly of criticizing *Woodall* for making Sections 59 and 60 a “dead letter.” To be sure, the modern legislature does not frequently cross the clear line drawn in *Woodall*, as legislatures in the 1880s did. When the General Assembly does so, however, Sections 59 and 60 prohibit such laws. *Woodall*, 607 S.W.3d at 573 n.19 (collecting instances). But to say that the General Assembly does not often violate *Woodall* is not a basis to criticize the decision. It is cause to celebrate Sections 59 and 60 for successfully ridding the Commonwealth of special and local legislation. Respectfully, to criticize *Woodall* as making Sections 59 and 60 a “dead letter” is to overlook a regrettable part of our history when the legislature strayed from doing the people’s business.

2. History shows that the framers did not intend to prohibit an open-class law like SB 1.

As noted above, the framers included paragraph 25 of Section 59 so that the legislature could not pass a special or local law “[t]o provide for the management of common schools.” From a historical perspective, a persuasive way to interpret this provision is to look at the pre-1891 laws that violated this provision.

As this Court has recognized, the “400-year-old ‘mischief rule’” provides that provisions “must be read in the light of the mischief to be corrected and the end to be obtained.” *Springer v. Commonwealth*, 998 S.W.2d 439, 448 (Ky. 1999) (citing a case from 1584).

Applying the mischief rule here shows that the framers did not have in mind an open-class law like SB 1 when they adopted Section 59(25). Instead, they contemplated local laws that specifically identified a particular locality’s or localities’ common schools, which created a permanently closed class. In 1889 alone, the General Assembly passed at least 66 *such laws*. Although the Attorney General appreciates that including multiple pages of bill titles from a legislative session 130 years ago is rarely an effective technique in a legal brief, the following list is all but dispositive of this case. When the delegates adopted Section 59(25), what follows are the types of laws that were front of mind. These 1889 laws could not be more different from SB 1. They include:

- Chapter 55: An act to amend an act, entitled “An act to establish a system of public graded schools in district number forty-seven, East Point.”
- Chapter 64: An act for the benefit of Mrs. Daisy E. Harvey, common school teacher in colored^[7] school district number six, Fulton county.
- Chapter 65: An act to give Knott county her share in the surplus school bonds of Floyd, Breathitt, Perry and Letcher counties.

⁷ Such a discriminatory law of course violates the Fourteenth Amendment. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 495 (1954).

- Chapter 99: An act for the benefit of colored common school district number two, Bourbon county.
- Chapter 110: An act to amend an act, entitled “An act to organize, supervise and maintain a common school in common school district number forty-nine, on John’s creek, in Pike county.”
- Chapter 111: An act to amend an act to incorporate Bethel High School located in Christian county, Kentucky.
- Chapter 114: An act to amend an act to establish and maintain a graded free school in the town of Harrodsburg, Kentucky.
- Chapter 126: An act to amend an act, entitled “An act to provide for organizing and establishing a system of public schools in Winchester.”
- Chapter 140: An act directing the county school superintendent of Robertson county to pay to Mrs. E.G. Dotson, certain money due her as public school teacher in said county.
- Chapter 193: An act for number two, colored common school district for Montgomery county.
- Chapter 205: An act for the benefit of colored common school district number sixteen, Todd county.
- Chapter 250: An act to amend an act, entitled “An act to establish a system of public graded schools in the city of Somerset, Kentucky.”
- Chapter 274: An act for the benefit of common school district number fifteen, Bracken county.
- Chapter 301: An act to amend an act, entitled “An act to establish a system of common schools in the town of Corydon, Henderson county,” changing the boundary thereof, and adding same to other districts.

- Chapter 307: An act for the benefit of common school districts forty-nine and sixty, Lincoln county.
- Chapter 308: An act for the benefit of common school district number twenty-one, Lincoln county.
- Chapter 315: An act to amend an act, entitled “An act to provide for the reorganization, maintenance and supervising of common schools in the town of Louisa, and the vicinity.”
- Chapter 343: An act for the benefit of common school district number one, in Grayson county.
- Chapter 352: An act for the benefit of school district number four, in Greenup county.
- Chapter 359: An act to charter an institution of learning by the name and style of the Edmonton High School, at Edmonton, Metcalfe county, Kentucky.
- Chapter 372: An act to organize and establish a system of public schools in Slaughtersville, Webster county, for white children.
- Chapter 419: An act to authorize the city of Cloverport to refund its school-house indebtedness.
- Chapter 421: An act to amend an act, entitled “An act to establish a system of common schools for the town of Beech Grove, McLean county.”
- Chapter 488: An act to change the boundary line between common school districts numbers fourteen and eighteen, in Marion county.
- Chapter 493: An act for the benefit of common school district number twenty-three, in Livingston county, Kentucky.

- Chapter 495: An act to organize and establish a system of public graded schools in Lancaster, Kentucky.
- Chapter 508: An act to organize a system of public graded schools in Junction City, Boyle county.
- Chapter 700: An act to amend an act, entitled “An Act to provide for organizing an establishing a system of public schools in Winchester.”
- Chapter 948: An act to amend an act, entitled “An Act to amend an act, entitled ‘An act to maintain a graded school in Hartford, and to provide for the erection of school-buildings therein.’”
- Chapter 974: An act authorizing the establishment of a graded free school in district number sixteen, Fulton county, Kentucky.
- Chapter 978: An act to establish a system of public graded schools in the city of Pineville.
- Chapter 996: An act to establish a public graded school at the mouth of Beaver, in Floyd County.
- Chapter 1013: An act to amend an act, entitled “An Act for the benefit of common school districts numbers fourteen, eighteen and twenty-three, in Fulton county.”
- Chapter 1017: An act for the benefit of white common school district number forty-nine, Elliott county.
- Chapter 1027: An act for the benefit of school districts numbers twenty and forty-three, Morgan county.
- Chapter 1098: An act supplementary to and to amend an act, entitled “An Act to organize and establish a system of public schools in the city of Hopkinsville for white children in said city.”

- Chapter 1107: An act authorizing Mason county to levy a tax in aid of common schools in said county.
- Chapter 1180: An act to amend an act, entitled “An Act to organize and establish a system of public graded schools in Carlisle.”
- Chapter 1185: An act to authorize and empower the trustees of common school district number eighteen, in Larue county, to levy a per capita and ad valorem tax for certain purposes.
- Chapter 1194: An act to establish common school district number twenty-three, Metcalfe county.
- Chapter 1197: An act for the benefit of Mistress Lucy Curry, of common school district number twenty-six, white, Montgomery county.
- Chapter 1239: An act for the benefit of J.J. Stephens and Mistress Lucy N. Scott, of common school district number fifty-five, Boone county.
- Chapter 1241: An act to amend an act, entitled “An act for the benefit of common school district number twenty-five, in Oldham county, and amendments thereto.”
- Chapter 1242: An act for the benefit of common school district number seventy-four, Barren county.
- Chapter 1244: An act for the benefit of common school district number seventy-five, in Lewis county.
- Chapter 1254: An act to amend an act entitled “An act to incorporate and establish a system of public schools in district number forty-nine, in Logan county, including the town of Adairville.”
- Chapter 1256: An act to establish a maintain a graded free school in common school district number thirty-eight, in Marshall county.

- Chapter 1257: An act to authorize the trustees of Greenville Seminary to sell and convey the Greenville Seminary lot and appurtenances and to turn the proceeds and other assets of said seminary over to the trustees of common school district number fourteen, of Muhlenberg county, for certain purposes.
- Chapter 1270: An act imposing a tax on dogs, and providing for its collection and appropriation for the benefit of common schools in certain counties in this Commonwealth.^{8]}
- Chapter 1297: An act to amend an act, entitled “An act to establish a system of common schools in the town of Corydon, Henderson county.”
- Chapter 1427: An act to establish a graded school in common school district number one, in Leslie county.
- Chapter 1431: An act to authorize district number eighty-three, in Barren county, to vote a tax for three years for the purpose of extending the session of said school.
- Chapter 1460: An act to amend an act, entitled “An act to establish a system of common schools for the town of Beech Grover, McLean county.”
- Chapter 1487: An act for the benefit of E.L. Garnett, James Carman and John W. Wrather, late trustees in and for common school district number forty-two, Graves county, Kentucky.
- Chapter 1528: An act for the benefit of common school districts numbers thirty-three and thirty-four, of Henderson county.
- Chapter 1530: An act for the benefit of school district number seven, of Trigg county.

⁸ Section 12 provides that “[t]his act shall only apply to the counties of Shelby, Anderson, Barren, Madison, Simpson and Woodford.”

- Chapter 1543: An act to change the line between common school districts number fourteen and number seventy, in Breckinridge county.
- Chapter 1564: An act extending and enlarging the boundary of common school district number seventeen, white, Madison county.
- Chapter 1620: An act to change the line between common school district number twenty-six and common school district number one, in Montgomery county, Kentucky, for the benefit of Mistress Lucy Curry.
- Chapter 1650: An act to amend an act, entitled “An Act to incorporate the Flemingsburg Graded High School.”
- Chapter 1657: An act for the benefit of white school district number twenty-eight, of Madison county.
- Chapter 1658: An act for the benefit of Bedford common school district number six (white), in Trimble county.
- Chapter 1793: An act repealing an act, entitled “An act to establish a system of public graded schools in school district number two, in Bracken county.”
- Chapter 1824: An act to provide for the safe-keeping of the school fund of Hardin county.
- Chapter 1837: An act to amend an act, entitled “An act imposing a tax on dogs, and provide for its collection and appropriation for the benefit of common schools in certain counties in this Commonwealth.”^{9]}
- Chapter 1862: An act to authorize the trustees of common school district number thirty-one, in Estill county, and the Worshipful Master, Senior and Junior Wardens of Irvine Lodge number one hundred and thirty-seven of

⁹ Section 2 added Logan and Todd Counties to the law’s coverage.

Free and Accepted Masons, to unite in the purchase of or procurement of a lot and erect thereon a school-house and lodge-room.

Missing from this long list are *any* open-class laws affecting common schools like SB 1. These many dozens of local laws from the legislative session immediately before the constitutional convention, all of which would have been invalid under *Woodall*, powerfully refute the dissent's contention that Section 59(25) is a "dead letter." Quite the contrary, Section 59(25) has been remarkably effective at stopping closed-class laws from being passed. So effective, perhaps, that it can be easy to overlook how bad things once were. The above-cited historical laws unmistakably remind just how much Section 59(25) has changed Kentucky for the better.

Another indicator of the framers' intent is what they said during the constitutional debates. To be sure, the debates are not a panacea for the difficulties that attend constitutional interpretation. The views of a single delegate are not necessarily the views of the convention or of the people who adopted the delegates' work. *See Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 689 (2021). For this reason, the constitutional text controls despite what the delegates said or didn't say. *Barker v. Stearns Coal & Lumber Co.*, 152 S.W.2d 953, 956 (Ky. 1941). Although the Court has sometimes quoted the delegates' statements in special or local legislation cases, to the best of the Attorney General's knowledge, it has never found a quote that suggests a single delegate, much less the collective body,

thought Sections 59 and 60 would operate like the *Schoo* test or that these sections would prohibit an open-class law like SB 1.

Start with *Tabler*, which provided a “few excerpts” from the constitutional debates. 704 S.W.2d at 183–84. Although *Tabler* considered an open-class law, its preferred quotes provide no support for *Schoo*’s test or for invalidating a law like SB 1. *See id.* In fact, one of those quotes underscored the “ponderous volumes of private acts passed [by] our Legislature within the last few years.” *Id.* (quoting 1 Debates at 466). Justice Keller likewise relied on the constitutional debates in her right-to-work dissent to argue that an open-class law should be invalidated. *Zuckerman*, 565 S.W.3d at 611–12. But the passages she cited do not imply that the delegates had a constitutional test like *Schoo* in mind or that they thought a law like SB 1 would be infirm. *See id.* If anything, one of Justice Keller’s preferred quotes uses “particular locality” language that sounds like *Woodall*’s rule. *Id.* at 612 (“Therefore, that, whilst the law was uniform and general in its provisions, it was not uniform and general in its operation, but was special and local in its operation, dependent entirely upon the will of a *particular locality*.” (emphasis added) (quoting 4 Debates at 5762)).

Justice Bisig also spent time in the debates in her dissent here. She relied on a passage in which the delegates rejected a provision that “would have allowed for differential treatment of school districts in larger cities.” *Coleman*, 2024 WL 5180457, at *30. But that part of the debates is no silver bullet for the Board.

That’s because in rejecting the language, the delegates evidenced beliefs, first, that Section 59(25) should prohibit a law identifying a particular locality and, second, that an open-class law regulating common schools would be permissible.

Here’s how the portion of the debates on which the dissent relied unfolded. What ultimately became Section 59(25) initially included an exception for “cities and towns having a population of more than twenty-five thousand inhabitants.” 3 Debates at 3990. The delegates, however, removed that language after the following discussion:

- Delegate McDermott defended the initial draft, explaining that “[a] system which would be satisfactory in the country would not be sufficient in a large city,” so “it seems proper that the distinction should be made.” *Id.* at 3998.
- Delegate W.H. Miller asked if the proposed “section would permit any city having 25,000 inhabitants or more to have local legislation applicable to itself *alone*?” *Id.* (emphasis added). Delegate McDermott responded by pointing to what became Section 156 (he called it “the report of the Committee on Municipalities”) to note that “all your cities and towns will be divided into classes, and the different classes can be differently regulated.” *Id.*
- Delegate W.H. Miller did not believe the reference to Section 156 addressed the “force” of his question. His question, he reiterated, was whether the section as drafted would allow a city “to have local legislation on the subject of schools applicable to itself *alone*.” *Id.* (emphasis added). This suggests that Delegate W.H. Miller distinguished between class-based and local legislation.
- After further discussion, Delegate Bullitt then raised a concern about Louisville being “*singled out*.” *Id.* at 3999 (emphasis added). From this concern, it seems Delegate Bullitt had in mind a law naming Louisville. Delegate Young explained that his city’s situation “would not suit in other portions

of the State.” *Id.* He emphasized that we should be able to “pass laws *particularly* governing schools of that kind.” *Id.* (emphasis added). Although Delegates Bullitt and Young disagreed on the merits of the proposed language, it seems they agreed it would permit a law naming a particular locality. Note the “particularly” language from Delegate Young, which is quite similar to *Woodall*.

- After this back and forth, Delegate Nunn stated that the delegates’ concerns might be addressed with “a general law applicable to cities of ten, fifteen, and twenty thousand.” *Id.* Delegate McDermott explained that Section 156 “provided for” that solution, but that “this section was drawn before that article was adopted” and that “we thought a town of twenty-five thousand inhabitants should have a school system different from that of smaller towns.” *Id.*

This context shows that no delegate—not even one—suggested that an open-class law like SB 1 would violate Section 59(25). Indeed, it seems that the delegates who spoke uniformly agreed that the stricken language would have permitted a law that named a particular locality to pass muster—what Delegate W.H. Miller called “local legislation on the subject of schools applicable to itself *alone*.” *Id.* at 3998 (emphasis added). This consensus suggests that the delegates wanted Section 59(25) to prohibit such locality-identifying laws. Thus, rather than support the Board, this passage conveys that the delegates did not have an open-class law like SB 1 in mind when they voted on Section 59(25). Indeed, Delegate Nunn’s qualification that the Constitution would permit a “general law applicable to cities of ten, fifteen, and twenty thousand” unmistakably conveys that open-class laws are constitutional.

C. *Woodall* has the better read of the caselaw.

There is no grand, unifying theory for the Court to reconcile its corpus of Sections 59 and 60 caselaw. Parts of this caselaw are irreconcilable—plain and simple. And confusing matters further, the conflicting lines of caselaw often don’t acknowledge each other. In surveying this body of caselaw, the Attorney General makes three broad points. First, beginning shortly after our Constitution was adopted, this Court’s predecessor repeatedly rejected a Section 59 challenge to laws that by operation applied only in Louisville but that could apply to any other similarly situated locality. Second, *Schoo*’s test inappropriately infuses equal-protection principles from Section 3 into Sections 59 and 60. And third, *Schoo*’s test proved unpredictable in application.

1. The Court has upheld open-class laws like SB 1 for 130 years.

SB 1 is not the first law that at present applies only in Louisville or Jefferson County but that could apply elsewhere in the future. (As shorthand, this brief calls these open-class laws “Louisville-class laws.”) For nearly as long as our 1891 Constitution has existed, the Court has mostly turned away Section 59 challenges to Louisville-class laws similar to SB 1.

The earliest decision to address a Louisville-class law came just a few years after ratification. In 1895, this Court’s predecessor considered a taxation statute that “appears in the act incorporating cities of the first class, *without any reference*

to the city of Louisville.” *Long v. City of Louisville*, 30 S.W. 987, 990 (Ky. 1895) (emphasis added). The Court recognized that the statute currently applied only to Louisville “being in that class; but by its terms, intent, and meaning, it would apply equally to other cities, if there were any other in that class.” *Id.* at 990–91. Like the Board, a taxpayer challenged the law under Section 59 because “the court must judicially know there was no other city in Kentucky, in the first class, than the city of Louisville, and that, therefore, the statute can only apply to the city of Louisville, and hence is obnoxious to the provision of the constitution (section 59) against special legislation.” *Id.* at 991. The Court responded curtly: “We confess we are not so impressed with the soundness of this reasoning as to apply it in behalf of the delinquent taxpayer, and thus enable him to avoid a legal and moral obligation to bear his just proportion of the public burden.” *Id.* As a result, before our Constitution reached its fifth birthday, this Court’s predecessor rejected a legal theory not unlike that being pressed here.

The Court upheld another Louisville-class law just two years later in *Winston v. Stone*. There, the Court considered a law that applied only in counties with a population above 75,000 persons. 43 S.W. at 397–98. The parties “admitted that Jefferson county has a population of over 75,000 inhabitants, and, further, it is the *only* county that at present has such population.” *Id.* at 397 (emphasis added). Using language that reappeared in *Woodall*, the Court interpreted Section

59 to prohibit laws that “appl[y] exclusively to special or particular places or special or particular persons.” *Id.* at 398 (citation omitted). The Louisville-class law in *Winston* did not qualify. As the Court put it, “[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.* The rule from *Winston* is clear: If a law distinguishes based on the population of counties, it is constitutional under Section 59 because other counties can grow and become subject to the law.

In establishing this clear rule, *Winston* relied on two earlier cases: *Stone v. Wilson* and *Commonwealth v. E.H. Taylor, Jr., Co.*, 41 S.W. 11 (Ky. 1897). Although neither case considered a law that at the time applied in only Louisville, the two decisions are instructive in explaining how this Court’s predecessor thought about Section 59 in the ratification era.

Start with *Stone*. The law there applied in only a county with a population between 40,000 and 75,000 persons. 39 S.W. at 49–50. At the time, there was “only one of that class in the state”: Kenton County. *Id.* at 49. In considering whether Section 59 “inhibited” this statute that applied by operation in only one county, the Court elaborated a simple rule for applying Section 59: “‘Local’ or ‘special’ legislation, according to the well-known meaning of the words, applies exclusively to special or particular places, or special or particular persons, and is

distinguished from a statute intended to be general in its operation, and that relating to classes of persons or subjects.” *Id.* at 49–50. The Court found that the statute there was in keeping with that rule because it applied “in counties that *may now or hereafter* have a population of over 40,000 and under 75,000.” *Id.* at 50 (emphasis added). It is therefore easy to see why *Winston* cited *Stone*. Like *Winston*, *Stone* upheld an open-class law even though by operation the law currently applied in only a single county.

Pause for a moment on *Stone*’s simple test for applying Section 59. It is the same test that the Court returned to 123 years later in *Woodall*. Indeed, *Woodall* favorably cited *Stone*. 607 S.W.3d at 567. And this Court’s predecessor relied on *Stone*’s straightforward test several times in between. *E.g.*, *Singleton*, 175 S.W. at 373 (“The purpose of section 59 of the Constitution was to prevent the Legislature from enacting legislation that would be applicable only to particular localities or particular persons or things as distinguished from other localities or persons or things as distinguished from other localities or persons or things throughout the state.”); *Petty v. Talbott*, 76 S.W.2d 940, 945 (Ky. 1934) (“This act does not become a local or special act, because there may be sheriffs who will not be affected by it.”); *see also Greene v. Caldwell*, 186 S.W. 648, 654 (Ky. 1916).

The dissent here read *Stone* quite differently. It argued that *Stone* “demonstrate[s] early application of the ‘natural and distinctive reasons’ test in Section 59 jurisprudence following the Constitutional Convention.” *Coleman*, 2024 WL

5180457, at *31. Respectfully, that assertion elevates long-forgotten policy dicta into a holding that contradicts *Stone*'s actual holding. The words “natural and distinctive reasons” or their equivalent are nowhere found in *Stone*. And as just discussed, shortly after *Stone*, *Winston* read *Stone* differently from how the dissent reads it a century later.¹⁰ 43 S.W. at 398 (making no mention of means-ends scrutiny). That aside, the dissent narrowly focused on three words from *Stone* in which the Court said that the law was “properly and necessarily” applicable to counties of a certain population. 39 S.W. at 50. That offhand remark, which at most seems to laud the policy decision of the legislature, is not an application of Section 59.¹¹ In fact, the above-quoted sentence from *Stone* discussing the “well-known” meaning of Section 59's text nowhere mentions means-ends scrutiny. *Id.* In the century plus since *Stone*, no referenced opinion has seen fit even to mention the “properly and necessarily” language from *Stone*—until the dissent unearthed it in 2024. That's a long time for those three words to lie dormant in

¹⁰ Elsewhere, the dissent emphasized how a contemporaneous court viewed a case. 2024 WL 5180457, at *23 (interpreting *Eckler* a certain way because “perhaps most obviously” the “same Court that decided *Ecklar* explicitly referred to it as a Section 59 case one year after *Ecklar* was decided”).

¹¹ The Attorney General says “seems” because it's just as possible that *Stone* was applauding the judgment of the framers. The sentence following the “properly and necessarily” language discusses the framers' views on what was “impracticable” or “unjust.” 39 S.W. at 50–51.

the caselaw if, as the dissent contended, they set forth the Court’s holding. Respectfully, the dissent’s position elevated three previously irrelevant words of policy dicta into a holding that would eviscerate *Stone*’s rule. The bottom line is that in 1897 *Stone* articulated the same rule that *Woodall* readopted in 2020. Properly understood, *Stone* is devastating to the contention that *Schoo* best reflects the original understanding of Sections 59 and 60.

Turn now to *E.H. Taylor*, the other case on which *Winston* relied. There, the Franklin County Sheriff sought to tax “whisky” aging in the “bonded warehouses” of the E.H. Taylor, Jr. Company. 41 S.W. at 12. Importantly, the company brought both an equal-protection and a special-legislation challenge to the taxing statute. *Id.* at 14. The Court treated the two challenges *separately*. It began with the Section 3 one. It found that the law “prohibits no one from entering into this lawful business” and “is no denial of equal privileges.” *Id.* The Court then turned to the company’s Section 59 challenge. It reasoned that “[i]t cannot be contended that this law applies *alone* to the appellees or to Franklin county, or to the Seventh congressional district.” *Id.* at 15 (emphasis added). It explained that the law “operates 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, in purpose and detail.” *Id.*

The dissent here distinguished *E.H. Taylor* because it did not “involve the issue of ‘open’ or ‘closed’ classes.” *Coleman*, 2024 WL 5180457, at *31. But look

again at the decision’s careful language. *E.H. Taylor* specifically noted that the law did not apply “*alone*” to the company “or to Franklin county, or to the Seventh congressional district.” 41 S.W. at 15 (emphasis added). The Court’s use of “alone” can only be understood as saying that the law did not apply to a closed universe of companies or areas of the Commonwealth. Indeed, that’s exactly how *Winston* read *E.H. Taylor* several months later. 43 S.W. at 398.

These four early cases—*Long*, *Winston*, *Stone*, and *E.H. Taylor*—accomplish two very important things. First, they unmistakably establish the same rule that *Woodall* returned to more than a century later. Second, this ratification-era caselaw demonstrates that almost as soon as the ink was dry on the Constitution, this Court’s predecessor began upholding open-class laws like SB 1 against a Section 59 challenge, including as to a Louisville-class law in *Long* and *Winston*.

The Attorney General acknowledges that the Sections 59 and 60 caselaw following these four cases is hard to reconcile in some respects. That said, no one can question that this Court has often upheld laws similar to SB 1. Although the Attorney General has already surveyed this caselaw in detail, Op. Br. 35–40, he reiterates here that this Court’s predecessor repeatedly upheld Louisville-class laws while emphasizing that the law could apply to any other locality if generally applicable conditions are met. For example, in *Miller v. City of Louisville*, this Court’s predecessor upheld a Louisville-class law about sewage disposal because “[i]f there were now in the state a half dozen cities in the first class, the act in

question would be applicable to all of them.” 99 S.W. 284, 285 (Ky. 1907). *Miller* emphasized the pitfall of a contrary rule: “[S]o long as Louisville is the only city of the first class, there is no way in which the General Assembly can provide for the government of Louisville but by acts for the government of cities of the first class.” *Id.* The Court made the same point in *Veail v. Louisville & Jefferson County Metropolitan Sewer District*, 197 S.W.2d 413 (Ky. 1946). In upholding a Louisville-class law, the Court concluded that “[t]he fact that there is only one city in that class does not change or affect in any way the power of the General Assembly.” *Id.* at 418 (citation omitted).

In fact, the Court’s predecessor made this same point while rejecting a challenge under Section 59(25), the provision prohibiting special or local laws “[t]o provide for the management of common schools.” In *Sims*, the Court allowed a board of education in a county containing a city of the first class, which was only Jefferson County at the time, to impose an occupational license fee. 290 S.W.2d at 493, 495–96. The Court in *Sims* was not blind to reality. “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.* at 495.

2. *Schoo* mixes and matches constitutional provisions.

This brings us to *Schoo*. That case occupies a unique place among discredited caselaw. *Schoo*’s test has been overruled not once *but twice*, including before

Schoo was even decided. The Court should not resuscitate *Schoo* again. As the dueling opinions between the former Chief Justice and Justice Bisig show, however, the dispute about *Schoo* is not about only *Schoo*. The disagreement is also, if not primarily, about *Safety Building Loan Co. v. Ecklar*, 50 S.W. 50 (Ky. 1899), which is the lead case on which *Schoo* relied in announcing its two-part test. So *Ecklar* is the best starting point to understand *Schoo*'s error.

Through 2025 eyes, *Ecklar* is hard to parse. It was one of several cases of the era to consider the ability of building-and-loan associations to charge premiums above the general interest rate set by statute. In *Ecklar*, this Court's predecessor considered whether to overrule a case from just two years earlier (*Simpson*) on the basis that building-and-loan associations are "unusually profitable" for "thousands of investors." 50 S.W. at 50. In *Simpson*, the Court had invalidated the premiums statute. Although *Simpson* considered a challenge under both Sections 3 and 59 of the Constitution, 41 S.W. at 571–72, its ruling seems to rest more on equal-protection grounds, *id.* at 572–73 ("We 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."). That said, *Simpson* discussed both Section 3 and Section 59 principles. *See id.* at 571–72.

Against the backdrop of *Simpson*'s holding from two years earlier, *Ecklar* reaffirmed that the premiums statute applicable to building-and-loan associations

remained unconstitutional. 50 S.W. at 51–52. *Ecklar* did not quote, or even mention, Section 3 or Section 59. *Ecklar* did not even cite any Kentucky caselaw applying either constitutional provision aside from *Simpson*. That is, *Ecklar* did not acknowledge the Court’s then-existing caselaw about Section 59—*Long, Winston, Stone, and E.H. Taylor*. The dissent here argued that “*Ecklar* is our earliest and best evidence of the Delegates’ intent in adopting Section 59.” *Coleman*, 2024 WL 5180457, at *25. Although reasonable minds can differ about whether *Ecklar* is the “best” evidence of the framers’ intent, no one can dispute that *Long, Winston, Stone, and E.H. Taylor* all predate *Ecklar*. Under no circumstances is *Ecklar* the “earliest” case interpreting Section 59. The problem is that *Ecklar* acted like the earlier cases did not exist.

Instead of canvassing the existing caselaw, *Ecklar* reasoned by ipse dixit. It “assert[ed]” what the Court deemed “elementary” as the “true test [for] whether a law is a general one, in the constitutional sense.” 50 S.W. at 51. That “true test” is what would eventually become the *Schoo* test. In declaring that “true test,” *Ecklar* cited nothing. It did not quote or even cite Sections 3, 59, or 60. It did not mention anything from the constitutional debates. Aside from *Simpson*, it did not cite any Kentucky caselaw. At most, it eventually cited a New Jersey case to respond to counsel’s argument. *Id.* at 52. The correctness of *Ecklar*’s holding can be debated (as the back and forth in this Court’s prior opinion shows). But

what cannot be questioned is that *Ecklar* is not a model of judicial decisionmaking. Respectfully, Kentucky courts should do better than to “assert” what they view to be “elementary” without discussing the constitutional text or applicable caselaw. They should reason based on neutral principles of law.

In this case, much of the debate about *Ecklar* has become about whether it is a Section 3 decision or a Section 59 one. Compare *Coleman*, 2024 WL 5180457, at *14–15 (VanMeter, C.J., concurring), with *id.* at *23–25 (Bisig, J., dissenting). To this debate, the Attorney General adds two points. First, *Ecklar* must be understood against the backdrop of *Simpson*, which is mostly a Section 3 case. In other words, *Ecklar* is a refinement of *Simpson*—indeed, *Ecklar* viewed itself as “add[ing]” to *Simpson*. 50 S.W. at 51. Viewed this way, to say that *Ecklar* is a Section 59 case, as the dissent contended, does not mean that *Ecklar* is not also a Section 3 case. And that’s part of *Ecklar*’s problem—it infused equal-protection principles into a distinct constitutional inquiry. Second, the dissent was right that *Ecklar* seemed to use some special-legislation sounding language. *Id.* at 51–52. But *Ecklar* also used equal-protection language by stating in reference to *Simpson* that the legislature is “incompetent to make such a vicious, arbitrary, and unnatural classification.” *Id.* It also discussed an organization being “entitled to the equal protection of the law of the land with all other such corporations.” *Id.*

Although the members of this Court can debate whether *Ecklar* is a Section 3 or a Section 59 case (or perhaps both), what is not up for debate is that

this Court’s predecessor overruled *Ecklar* well before *Schoo* adopted it. And it was overruled for the very same reason that *Woodall* overruled it again decades later. In particular, in 1936, this Court’s predecessor returned to the topic of building-and-loan associations—what *Simpson* and *Ecklar* had addressed. In *Linton v. Building & Loan Association*, the Court again asked whether such associations could charge premiums above the statutory interest rate. 90 S.W.2d 22, 24 (Ky. 1936). The borrower correctly invoked *Simpson* and *Ecklar* as a basis to rule in his favor. *Id.* at 25. Despite those cases being on all fours, *Linton* found them unpersuasive. To *Linton*, it was “easy to see” that the challenged statute is not “within the inhibition of section 59 of our Constitution.” *Id.* As to *Simpson* and *Ecklar*, the Court overruled them because “[a]t the date of our opinions in those cases . . . the distinction between class legislation, special or local and general law was not at the time generally observed by this and courts of other jurisdictions.” *Id.* In other words, *Linton* overruled *Ecklar* because it did not appreciate “the distinction” between Section 3 and Sections 59 and 60.

Ecklar’s overruling somehow went unnoticed in *Schoo*.¹² At issue in *Schoo* was a law requiring evidence of payment of personal property taxes before a

¹² In fairness to *Schoo*, other pre-*Schoo* decisions following *Linton* likewise failed to appreciate that *Ecklar* was bad law. Although *Shannon v. Wheeler* followed *Ecklar*, it did so to uphold a Louisville-class law very similar to the one invalidated in *James v. Barry*. 103 S.W.2d 718, 722–24 (Ky. 1937). *Manini v. McFarland* similarly relied on *Ecklar* following *Linton*. 172 S.W.2d 631, 632 (Ky. 1943).

vehicle could be registered, unless an applicant used the vehicle “for hire . . . to carry more than nine persons including the operator.” 270 S.W.2d at 941. The Court invalidated the law principally because it could not discern enough of a justification “to support a classification by which the Act is applicable to one class and inapplicable to another.” *Id.* at 942. As the Court put it, “[w]e are unable to perceive wherein the obligations and duties imposed by this Act bear any reasonable relationship to the accomplishment of a valid regulatory function such as may be designated as an exercise of the State’s police power.” *Id.* This holding sounds like a rational-basis-review holding under equal-protection principles.

Schoo, however, was not a Section 3 case. As it is now famous for, *Schoo* adopted its two-part test for Section 59 claims. It said: “It is generally established in this and other jurisdictions to which our investigation has extended that in order for a law to be general in its constitutional sense it must meet the following requirements: (1) It must apply equally to all in a class, and (2) there must be distinctive and natural reasons inducing and supporting the classification.” *Id.* at 941. That of course is almost word for word the test from *Ecklar*. After all, the *first* case that *Schoo* cited for its two-part test was *Ecklar*. *Id.* Yet as just discussed, *Ecklar* had been overruled in 1936 for not appreciating the distinction between Sections 3 and 59. *Schoo* led with *Ecklar* anyway, simply overlooking that *Ecklar* had not been good law for almost two decades.

Not only that, *Schoo* doubled down on the blending of special and local legislation with equal protection that *Ecklar* exemplified and that *Linton* had tried to fix. Aside from citing *Ecklar*, *Schoo* cited four other cases in announcing its test. One case expressly applied *Ecklar*. *Droege v. McInerney*, 87 S.W. 1085, 1085 (Ky. 1905). And the three other cases applied equal-protection principles. One is an equal-protection case under the Kentucky Constitution. *See Burrow v. Kapfhammer*, 145 S.W.2d 1067, 1071 (Ky. 1940) (saying the “only question” is whether a law is an “arbitrary classification” and discussing the “equal rights clause” of the state and federal constitutions). And the other two are Fourteenth Amendment cases applying the federal Equal Protection Clause. *Truax v. Corrigan*, 257 U.S. 312, 332–39 (1921); *Terrace v. Thompson*, 263 U.S. 197, 218–22 (1923). *Schoo*’s reliance on these three equal-protection cases to announce its two-part test only worsens its (and *Ecklar*’s) conflating of Section 3 with Sections 59 and 60.

In sum, *Schoo* is poorly reasoned top to bottom. It failed to recognize that *Ecklar*—its lead citation for its two-part test—had already been overruled for impermissibly combining Section 3 with Sections 59 and 60. And *Schoo* itself further confused equal protection with special or local legislation. For all these reasons, *Woodall* was demonstrably correct to overrule *Schoo*’s two-part test—just as *Linton* had overruled *Ecklar* almost 85 years earlier.

3. *Schoo* was completely unworkable.

Before *Woodall*, the Court applied *Schoo*'s two-part test for many years. But those years unfortunately did not yield clear precedent. As *Woodall* recognized, *Schoo* and by extension *Ecklar* left a “muddle” of caselaw in their wake. 607 S.W.3d at 567. This problem came to a head in the lawsuit challenging Kentucky's right-to-work law. There, by a 4–3 vote, the Court upheld that law, which applied statewide and across industries, as consistent with Sections 59 and 60. *Zuckerman*, 565 S.W.3d at 599–600. Justice Keller, joined by two other Justices, would have invalidated the law as unconstitutional special legislation under *Schoo*. *Id.* at 611–17; *see also id.* at 619–22 (Wright, J., dissenting).

The close vote to uphold Kentucky's right-to-work law prompted Kentucky's then-Chief Justice to respond separately to the dissents' application of *Schoo*. In that concurring opinion, Chief Justice Minton, who was not known for charged language in judicial opinions, made an extraordinary assertion about how his dissenting colleagues understood *Schoo*. Joined by two other Justices, he said:

I write separately to address the *weaponization* of Sections 59 and 60 in accompanying opinions in this case and [*Commonwealth v. Claycomb*, 566 S.W.3d 202 (Ky. 2018)]. I feel compelled to speak up because I fear this Court risks overstating its role in Kentucky's tripartite government.

Id. at 605–06 (Minton, C.J., concurring) (emphasis added) (footnotes omitted).

This “weaponization” concern shows better than anything else how intolerable *Schoo* had become.

To understand the gravity of the then-Chief Justice’s statement, it’s worth revisiting two of the key decisions applying *Schoo*’s test. The first is *Tabler v. Wallace*, which considered a law granting immunity to defendants in a suit for damages or injury filed five or more years after substantial completion of a construction project. 704 S.W.2d at 180. Although the law applied to the construction industry as a whole, *id.*, *Tabler* declared that it violated Section 59(5), *id.* at 183. In *Tabler*’s view, the law was a “special classification for architects, engineers, and builders.” *Id.* at 184.

To reach this conclusion, *Tabler* recast Section 59 as a guard against the influence of “special interest groups” and “persuasive lobbyist[s].” *Id.* at 183, 186. As noted above, Section 59’s text does not support that characterization. To be sure, Section 59 prohibits some laws that special interest groups might favor. But it also prohibits humdrum laws that any Kentuckian, wealthy or not, might want. Putting that aside, *Tabler*’s Section 59 inquiry turned on assessing the legislature’s justification for the challenged law. *Tabler* memorably said that to overcome a Section 59 challenge, “there must be a substantial and justifiable reason [for the law] apparent from legislative history, from the statute’s title, preamble or subject matter, or from some other authoritative source.” *Id.* at 186. This statement purports to place on the sovereign the affirmative burden of proving the justification for a law to the judiciary’s satisfaction. Indeed, that’s how later courts read this

remarkable passage. See *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 468 (Ky. 1998).

Even more extraordinarily, *Tabler* used that elevated standard, which appears to be something akin to rational basis review-plus, to second-guess the legislature’s policy judgment. The decision can be read no other way. It reasoned that “[t]here is no social or economic basis to justify a special class, only their own self-interest.” 704 S.W.2d at 187. And *Tabler* judicially declared that the industry’s “subjective reasons” for wanting the challenged law “will not withstand *public policy analysis*.” *Id.* (emphasis added). Taking that language at face value, it is a public-policy critique in a judicial opinion.

Make no mistake, *Tabler* is a potent weapon for plaintiffs who want a court to invalidate a duly enacted law. All a plaintiff needs to do is raise a Section 59 challenge to a generally applicable law, which then puts the Commonwealth to the burden of convincing the Court to its satisfaction that the law is justified by real-world evidence. In fact, that’s what Justice Keller argued in her right-to-work dissent to strike down a law that applied statewide across industries. *Zuckerman*, 565 S.W.3d at 613, 615. And it’s what the dissent argued here. *Coleman*, 2024 WL 5180457, at *29.

Tabler’s burden-shifting rule is miles outside the judicial mainstream. Indeed, *Tabler* cited *nothing* for this holding. 704 S.W.2d at 186. The phrase “substantial and justifiable” had never appeared in Kentucky caselaw before *Tabler*.

And *Tabler* made no attempt to reconcile its burden-shifting rule with longstanding Section 59 precedent holding that the normal ground rules for constitutional litigation apply. That caselaw dates to the ratification era. *See E.H. Taylor*, 41 S.W. at 13 (stating in a Section 59 decision that “the presumption is always in favor of the constitutionality of a statute, and every reasonable doubt must be resolved in favor of the statute and not against it” (citation omitted)); *accord Coleman*, 2024 WL 5180457, at *19 (VanMeter, C.J., concurring) (collecting Section 59 caselaw applying the default rule).

As much of an outlier as *Tabler* is, it is only part of the *Schoo* story. In *Elk Horn Coal Corp. v. Cheyenne Resources*, this Court acknowledged how unpredictable *Schoo* had become. 163 S.W.3d 408 (Ky. 2005) There, the Court doubled down on *Schoo*’s combining of Section 3 with Sections 59 and 60. Whereas in *Schoo* that mixing and matching was by inference in some respects, *Elk Horn Coal* made the intermingling unmistakable. As *Elk Horn Coal* put it, “the equal protection provisions of the Kentucky Constitution are *enhanced* by Section[s] 59 and 60.” *Id.* at 418 (emphasis added). As discussed above, that conclusion is textually and historically indefensible. As support for enhancing equal protection, *Elk Horn Coal* recounted that “few” other state constitutions “have additional protection against local and special legislation as we have in Kentucky Constitution § 59.” *Id.* (citation omitted). That assertion is incorrect, as *Woodall* later explained with

gusto. 607 S.W.3d at 572 (“[C]urrently, no less than forty-six states have prohibitions on local and special legislation!”). As a result, one of the key premises for using Sections 59 and 60 to enhance equal protection has no basis in reality.

If *Elk Horn Coal* had stopped there, it would at least have provided a rule to follow. But *Elk Horn Coal*, to its credit, presumably recognized that its enhancement theory would unsettle a host of prior equal-protection rulings that had upheld laws without considering enhancement under Sections 59 and 60. In trying to reconcile this caselaw, *Elk Horn Coal* demonstrated the subjectivity of *Schoo*. It explained that the Court “elect[s]” to apply its enhancement theory only “at times.” 163 S.W.3d at 418. That is to say, Sections 59 and 60 enhance Section 3 only sometimes. Confusing matters further, *Elk Horn Coal* explained that cases applying the enhancement theory “are limited to the particular facts of those cases.” *Id.* at 419. In other words, *Elk Horn Coal* could provide no guidance about when Sections 59 and 60 operate to enhance Section 3 other than to promise that the Court will tell litigants when it is appropriate based on the “particular facts.” *See id.* at 418–19. *Woodall* captured well the problem with such an unknowable rule: “No 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. This unfettered discretion is unworthy of any legal system.” *Woodall*, 607 S.W.3d at 568–69.

This discussion of *Tabler* and *Elk Horn Coal* brings us back to then-Chief Justice Minton’s separate opinion in the right-to-work case. Apart from worrying about “weaponization,” he viewed *Schoo* as “an untenable restriction on the legislature’s ability to act to solve problems” and thus was “offen[sive to] the doctrine of separation of powers.” *Zuckerman*, 565 S.W.3d at 605, 609 (Minton, C.J., concurring). Echoing what the Court said in *Elk Horn Coal*, the then-Chief Justice underscored that “[n]o one can articulate how we evaluate special legislation challenges” and that “truly . . . [our] precedent is unworkable today.” *Id.* at 610. Rather than provide predictability, *Schoo* placed the inquiry “in the hands of a majority of the seven Kentucky Supreme Court justices” who can essentially reach “whatever” result “they like.” *Id.* at 606. These are strong words. And they were joined in full by two other Justices—Deputy Chief Justice Hughes and Justice Venters. All told, those three Justices brought to bear 30 collective years of service on this Court in calling the *Schoo* test a “weaponization” of Sections 59 and 60.

This history of *Schoo* proves up a simple point. The Justices of this Court applied *Schoo* over a great many years. *Schoo* had its chance as a governing rule. The Court watched *Schoo* flip the burden of proof in *Tabler*. The Court saw how *Schoo* enhanced equal protection but only sometimes in *Elk Horn Coal*. And the Court saw how three Justices would have applied *Schoo* to strike down the right-to-work law, despite the law applying statewide and across industries. So when

the Court overruled *Schoo* in *Woodall*, the Court’s action had been a long time coming. *Woodall* was a careful and considered decision, grounded in the text and history of Sections 59 and 60, that was rendered after decades of confusion under the *Schoo* test. For all these reasons, *Woodall* should be affirmed, not overruled.

CONCLUSION

For these reasons and those explained in the Attorney General’s earlier briefs, the Court should reverse the Jefferson Circuit Court’s judgment.

Respectfully submitted,

RUSSELL COLEMAN
Attorney General of Kentucky

MATTHEW F. KUHN (No. 94241)
Solicitor General

JOHN H. HEYBURN (No. 100756)
Principal Deputy Solicitor General

JACOB M. ABRAHAMSON (No. 99238)
Assistant Solicitor General

Office of the Attorney General
700 Capital Avenue, Suite 118
Frankfort, Kentucky 40601
Matt.Kuhn@ky.gov
Jack.Heyburn@ky.gov
Jacob.Abrahamson@ky.gov
(502) 696-5300

Counsel for the Attorney General

WORD-COUNT CERTIFICATE

This brief complies with the word limit of RAP 31(G)(3)(a) and the Court's April 24, 2025 order because, excluding the parts of the document exempted by RAP 15(D) and 31(G)(5), this brief contains 17,468 words.

A handwritten signature in blue ink, appearing to read "Matthew F. Kl", is positioned above a solid horizontal line.

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