Supreme Court of Kentucky

No. 2023-SC-0498
Electronically Filed

RUSSELL COLEMAN, in his official capacity as Attorney General of the Commonwealth of Kentucky — APPELLANT

ON MOTION FOR DISCRETIONARY REVIEW FROM
COURT OF APPEALS
CASE NO. 2022-CA-0964-MR

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
CIVIL ACTION NO. 22-CI-002816

JEFFERSON COUNTY BOARD OF EDUCATION and Robin Fields Kinney, in her official capacity as Commissioner of Education — APPELLEES

SUPPLEMENTAL BRIEF FOR *AMICUS CURIAE* SEN. ROBERT STIVERS, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE SENATE

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2025, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF System, which will effectuate service upon all persons who have consented to electronic service.

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INTEREST OF THE AMICUS

The interest of the Amicus, as set forth in his motion for leave to file this brief, are that the appeal by the Attorney General is from a judgment declaring unconstitutional certain provisions of Senate Bill 1 (2022) and, in his official capacity as President of the Senate, this Amicus seeks to defend the constitutionality of the public policy choices made by the General Assembly in the challenged provisions of Senate Bill 1, including specifically the legislative power of the General Assembly to continue to address issues arising in Louisville and Jefferson County.

STATEMENT OF POINTS AND AUTHORITIES

First point: **The classification in SB 1 is not special, local legislation violative of Sections 59-60 because the classification of school boards set forth in SB 1 is not limited to the Jefferson County Board of Education, but includes all school boards that may in the future satisfy that criterion.**

ANSWERS TO THE COURT'S QUESTIONS

In the Order granting rehearing, the Court requested the parties to respond to two questions: (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?"; and (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?"

The Amicus sets forth his answer to each question below, followed by a summary of his analysis, then his argument.

Question # 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?"

Answer: Open.

The classification of school boards enacted by Senate Bill 1 ("SB 1") is an "open" class – not a "closed" class – as that term is articulated in the Majority Opinion, because it is not a static classification permanently limited to its present members, but is open for the inclusion of additional members in the future.

Question # 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?"

Answer: No.

At the time the Circuit Court entered judgment declaring SB 1 unconstitutional, *Woodall*[1] was the precedent of this Court binding on the Circuit Court. The Circuit Court misapplied *Woodall* when it held that SB 1 was unconstitutional because – at the present time – it "applies" (present tense) to only one school board. As the Majority Opinion correctly held, the classification of school boards created by SB 1 is not closed to only the present members of the classification, but is open to the inclusion of additional members in the future. It was therefore error for the Circuit Court to declare that classification unconstitutional as local legislation.

Under *Woodall*, the classification would be further reviewed under equal protection standards, not under Sections 59-60; but JCBE did not plead nor argue that issue, and thereby waived it. It was therefore error for the Circuit Court to reach the equal protection issue.

[1] *Calloway Cnty. Sheriff's Dep't v. Woodall*, 607 S.W.3d 557 (Ky. 2020).

SUMMARY OF ANALYSIS

Contrary to the Dissent, the Majority Opinion does not hold that an "open class" statute is *per se* constitutional.[2] Instead, the Majority Opinion rejected JCBE's argument that a class which – at present – has only one member, is *per se* special legislation in violation of Sections 59-60 KY. CONST.[3]

Under the Majority Opinion and *Woodall*, the question whether an open classification is discriminatory is subject to judicial review under the equal protection of the laws guaranteed by Sections 1, 2 and 3, KY. CONST. Under the Dissent, the reasonableness of a statutory classification is subject to judicial review under Sections 59-60, KY. CONST., pursuant to the *Schoo* test,[4] as "super-charged"[5] by *Tabler v. Wallace*,[6] *Elk Horn Coal*[7] and *Yeoman*.[8] Consequently, the functional difference between the Majority Opinion and the Dissent is the standard of judicial review of the reasonableness of the classification.

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[2] Dissent (slip op. at 51-52.).
[3] Slip op. at 11. *See also, Woodall*, 607 S.W.3d at 563 ("Classifications are not *per se* unconstitutional").
[4] *Schoo v. Rose*, 270 S.W.2d 940 (Ky. 1956).
[5] Slip op., p. 41 (". . . the *Tabler* super-charged *Schoo* test . . . .").
[6] *Taber v. Wallace*, 704 S.W.2d 179 (Ky. 1985).
[7] *Elk Horn Coal Corp. v. Cheyenne Res.*, 163 S.W.3d 408 (Ky. 2005).
[8] *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459 (Ky. 1998).

The additional, substantive difference between the Majority Opinion and the Dissent is the burden of persuasion as to the reasonableness of the classification. Adhering to *Woodall*, the Majority Opinion holds that the burden of persuasion is on the party challenging the constitutionality of the classification to demonstrate that there is not a rational basis for the classification.[9] The Dissent would overrule *Woodall*, reinstate *Tabler v. Wallace* and *Yeoman*, and hold that the defender of the constitutionality of the classification bears the burden of persuading the Court that there is a "substantial and justifiable reason" for the classification.[10]

But that the presumption of the constitutionality of acts of the General Assembly precludes placing the burden of persuasion on the party defending the constitutionality of the statutory classification. Consequently, shifting the burden of persuasion impermissibly creates a presumption of unconstitutionality.

Accordingly, *Woodall* correctly held that the burden of persuasion should be on the challenger who contends that the classification is unconstitutional, and *Tabler v. Wallace*, *Elk Horn Coal* and *Yeoman* were correctly overruled by *Woodall* on the burden of persuasion.

[9] Slip op. at 44-45.
[10] Dissent, slip op. at 52.

Moreover, the "enhanced" substantial and justifiable reason standard of review adopted in *Tabler v. Wallace* and *Yeoman* exceeds the standard of review adopted in the plethora of prior Kentucky precedents, and hence exceeds the purpose and intent of the prohibition against special, local legislation in Sections 59-60. *Woodall* therefore correctly overruled those cases as to the standard of review of the constitutionality of a statutory classification.[11]

The Amicus agrees with the Commonwealth that JCBE did not preserve for appellate review the standard of judicial review for reasonableness. However, if a majority of this Court now agrees with the Dissent that the reasonableness of a statutory classification should be reviewed under the prohibition against special legislation in Sections 59-60, rather than under the guarantee of equal protection in Sections 1, 2 and 3, then the Amicus respectfully suggests that the Court should adhere to the holding in *Woodall* that overruled *Tabler v. Wallace, Elk Horn Coal* and *Yeoman* as to the "super-charged" standard of review, and should reinstate the standard set forth in *Shoo*, namely, whether the classification is arbitrary and unreasonable because

[11] As counsel for the prevailing party in the companion case consolidated with *Tabler v. Wallace*, counsel for the Amicus agrees with the Majority Opinion, which succinctly states that its "firm view is that this court did not like the statute of repose which was at issue" in *Tabler v. Wallace*. Slip op., p. 40. *See General Electric Co. v. Nucor Corp.*, 704 S.W.2d 179 (Ky. 1985).

there are not any "distinctive and natural reasons inducing and supporting the classification." *Schoo*, 270 S.W.2d at 941.

ARGUMENT

I. The classification in SB 1 is not special, local legislation violative of Sections 59-60 because the classification of school boards set forth in SB 1 is not limited to the Jefferson County Board of Education, but includes all school boards that may in the future satisfy that criterion.

The classification of school boards in SB 1 is not limited to JCBE, but includes all school boards which may, in the future, satisfy the criterion of the classification. Accordingly, the classification of school boards in SB 1 is not *per se* violative of Sections 59-60, KY. CONST.

JCBE nevertheless argues that the classification in SB 1 is "local" legislation because it presently "applies" only to JCBE. Throughout this litigation, JCBE has relied solely upon the sentence in *Woodall* that says a classification is "local" legislation if it "applies" (present tense) only in one locale. That simple syllogism was the totality of JCBE's litigation strategy, and it was successful in the Circuit Court and the Court of Appeals. *See*, JCBE Opening Brief, pp. 11-12.

But in this Court, the Majority Opinion recognized that the classification in SB 1 includes all boards of education which – now, or hereafter – are in a county with a consolidated local government. Accordingly,

SB 1 does not create a "closed" classification and therefore is not *per se* special legislation under Section 59-60, KY. CONST.

Contrary to JCBE's contention, the Majority Opinion's reference to an "open" class is not "new." For over 100 years, this Court has recognized what the SUTHERLAND treatise denominates as "open" classes,[12] especially for statutes addressing public policy questions arising in Louisville and Jefferson County. Whether using classifications based upon population or upon the "first class city" form of local government, the General Assembly has long recognized that there is "a natural distinction" between problems confronting Greater Louisville and problems throughout the remainder of the Commonwealth, and this Court has repeatedly and consistently upheld open classifications against challenges that they constitute special, local legislation[13]

Ignoring that well settled line of cases, JCBE proposes to impose a requirement that the Court decide factually whether there is a reasonable

[12] Slip op., p. 15, citing II SUTHERLAND STATUTORY CONSTRUCTION § 40:4 (8th ed.).
[13] *Veail v. Louisville & Jefferson Cnty. Metro. Sewer Dist.*, 197 S.W.2d 413 (Ky. 1946); ("If there were now in the state a half dozen cities of the first class, the act in question would be applicable to all of them. The fact that there is only one city in that class does not change or affect in any way the power of the General Assembly."); *see also, Sims v. Bd. of Educ. of Jefferson Cnty.*, 290 S.W.2d 491 (Ky. 1956); *Miller v. Hoblitzell*, 271 S.W.2d 899 (Ky. 1954); *Somsen v. Sanitation Dist. No. 1 of Jefferson Cnty.*, 197 S.W.2d 410 (Ky. 1946); *Hager v. Gast*, 84 S.W. 556 (Ky. 1905); *Winston v. Stone*, 43 S.W. 397 (Ky. 1897); *Stone v. Wilson*, 39 S.W. 49 (Ky. 1897).

likelihood of future members of any such classification. It is this proposal by JCBE that would be a "new" addition to this Court's caselaw for reviewing the constitutionality of statutory classifications under Sections 59-60.

In the 135 years since the adoption of Sections 59 and 60, those clauses have never been interpreted to require this Court to predict the likelihood of future members of any statutory classification. Quite the contrary, there is a long line of decisions by this Court upholding classifications which – at present – apply only in Louisville and Jefferson County; and the rationale in each of those cases is that the classifications are open to the addition of additional members in the future. *See* footnote 13, *supra*.

A case directly on point is *Board of Education of Louisville v. Board of Education of Jefferson County*, 522 S.W.2d 854 (Ky. 1975), in which this Court held that a statute applicable to the Jefferson County Public Schools, but not presently applicable to school systems elsewhere in the state, was not unconstitutional local legislation because the problems unique to the largest school system in the state are a reasonable basis for the classification.[14]

[14] Significantly, cases approving "open" classifications are not limited to Louisville. *See, e.g., Conrad v. Lexington-Fayette Urban Cnty. Gov't*, 659 S.W.2d 190, 194 (Ky. 1983) ("The fact that there is presently only one urban county government does not mean that the law is unconstitutional.").

The additional test proposed by JCBE would also require the courts to second guess the policy decisions of the General Assembly in defining the parameters of statutory classifications. It is well settled that the courts are powerless to review the policy preferences of the Legislative Branch of state government.[15]

JCBE argues that there is no practical likelihood of another consolidated local government subsuming a city of the first class in the near future. But, as the Brief for the Commonwealth persuasively demonstrates, there is ample reason to believe that several Kentucky cities have sufficient population to anticipate that they could in the near future qualify as first class cities, and have the option to adopt the consolidated form of local government. Supplemental Brief for Commonwealth, pp. 6-7. Moreover, if JCBE's contention were well-founded, then the General Assembly would be absolutely prohibited from enacting any legislation remedying societal problems in Jefferson County beyond legislation pertaining specifically to the

[15] *See, e.g., Ky. Ass'n of Chiropractors, Inc. v. Jefferson Cnty. Med. Soc'y*, 549 S.W.2d 817, 822 (Ky. 1977); *Bd. of Educ. of Jefferson Cnty. v. Bd. of Educ. of Louisville*, 472 S.W.2d 496, 501 (Ky. 1971) (Palmore, C.J., dissenting) ("I doubt the wisdom of this statute . . . but it is not the court's province to pass on the wisdom of a legislative act, and mere doubt as to its constitutionality must be resolved in favor of the legislature . . . .").

organization and powers of the consolidated Metro Louisville Government.[16] That simply is not, and cannot be, the law.

In sum, the purpose of the prohibition against "special" legislation is to prohibit legislation that promotes only private interests, and to require legislation to focus on the public interest.[17] In this case, SB 1 does not promote the private interests of a person or group of persons in a particular locale. Rather, it deals with a matter of great and widespread public interest: the education of K-12 students in the largest school system in Kentucky where it is widely acknowledged that a large portion of those students are underachieving, if not failing. The classification of school boards in SB 1 is therefore not arbitrary nor unreasonable. The Court should therefore reinstate the Majority's holding that SB 1 is constitutional.

II. The burden of persuasion must be on the party challenging the constitutionality of the statute because the Separation of Powers Clauses require that the Court uphold an enactment of the General Assembly against a challenge to its constitutionality unless the act's infringement on the Constitution is clear, complete and unmistakable

[16] Because Section 156 KY. CONST. is an express exception to Sections 59-60, a classification which relates to the organization and powers of cities is *per se* constitutional. *Mannini v. McFarland*, 172 S.W.2d 631, 632 (Ky. 1943). Other classifications by population or the form of local government are reviewed for "a reasonable relation to the purpose of the Act." *Id*. at 632. *See also, Louisville/Jefferson County Metro Gov't v. O'Shea's-Baxter, LLC*, 438 S.W.3d 379, 383-84 (Ky. 2014).

[17] *Zuckerman*, 565 S.W.3d at 606 (Minton, C.J., concurring) ("The primary purpose of Sections 59 and 60 is to prevent special privileges, favoritism and discrimination, and assure equality under the law.") (quoting *Kentucky Harlan Coal Co. v. Holmes*, 872 S.W.2d 446, 452 (Ky. 1994) (cleaned up).

It is well settled that the burden of persuasion is on the party challenging the constitutionality of a statute under the equal protection provisions in Sections 1, 2 and 3 of the Kentucky Constitution. As this Court recently held:

> Further, a legislature that creates these categories need not actually articulate at any time the purpose or rationale supporting its classification. Instead, a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of fact that would provide a rational basis for the classification.
> A State, moreover, has no obligation to produce evidence to sustain the rationality of a statutory classification. A legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data. **A statute is presumed constitutional, and the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record.**[18]

Prior to the 4-3 decision in *Tabler v Wallace*, the burden of persuasion was also on the party challenging the constitutionality of a statute under the *Schoo* interpretation of the prohibition against special, local legislation in Sections 59-60 of the Constitution.[19] In *Tabler v Wallace*, however, the 4-3 majority shifted the burden of persuasion from the challenger to the party defending the constitutionality of a statute against an allegation it is special,

[18] *Zuckerman v. Bevin*, 565 S.W.3d 580, 596 (Ky. 2018) (boldface added).
[19] *Cf., Com., Revenue Cabinet v. Smith*, 875 S.W.2d 873, 875 (Ky. 1994).

local legislation. Writing for the majority, Justice Leibson announced the new rule shifting the burden of persuasion:

> The creative abilities of lawyers suggesting possible reasons after the fact does not suffice to provide the kind of justification that is required for special legislation to be valid under Section 59 of the Kentucky Constitution. . . . On the contrary, there must be a substantial and justifiable reason apparent from legislative history, from the statute's title, preamble or subject matter, or from some other authoritative source.

Tabler v. Wallace, 704 S.W.2d at 815-16.[20]

However, in *Woodall*, this Court overruled *Tabler v Wallace* (and *Elk Horn Coal* and *Yeoman*) on that point, and restored the longtime rule that the burden of persuasion in a special, local legislation case is on the party challenging the constitutionality of a statute.[21]

In this case, the Majority Opinion adhered to the holding in *Woodall* on the burden of persuasion; but the Dissent would overrule *Woodall* and once again place the burden of persuasion on the party defending the constitutionality of the statute.

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[20] *See Woodall*, 607 S.W.3d at 582 (Keller, J., dissenting) ("Our precedent regarding Section 59 places on the proponent of the classification, usually the Commonwealth, the burden of establishing that the classification was not arbitrary and unreasonable."). *See also Yeoman*, 983 S.W.2d at 468 ("When asserting the validity of a classification, the burden is on the party claiming the validity of the classification to show that there is a valid nexus between the classification and the purpose for which the statute in question was drafted. There must be substantially more than merely a theoretical basis for a distinction. Rather, there must be a firm basis in reality.").

[21] *Woodall*, 607 S.W.3d at 564.

The Court should adhere to its holding in *Woodall* and continue to apply the rule which the Court applied from the ratification of the 1891 Constitution until the decision in *Tabler v Wallace*, namely, that the burden of persuasion is on the party challenging a statute as special, local legislation.

The historic rule placing the burden of persuasion on the challenger is the jurisprudentially sound approach to adjudicating challenges to the constitutionality of a statute under both the equal protection clauses and the prohibition against special, local legislation. Indeed, it is well settled that the Separation of Powers Clauses mandate the presumption that acts of the General Assembly are constitutional. That presumption likewise mandates allocating the burden of persuasion to the party challenging the constitutionality of a statute. Indeed, allocating the burden of persuasion to the defender of the constitutionality of a statute creates a presumption that the challenged statute is **un**constitutional. That result is diametrically opposed to one of the oldest, most well settled maxims in Kentucky constitutional law.

It is well settled in Kentucky that "[a] constitutional infringement must be 'clear, complete and unmistakable' in order to render the statute unconstitutional."[22] That doctrine is not merely a rhetorical flourish. Quite

[22] *Caneyville Volunteer Fire Dep't v. Green's Motorcycle Salvage, Inc.*, 286 S.W.3d 790, 806 (Ky. 2009) (quoting *Ky. Indus. Util. Customers, Inc. v. Ky. Utils. Co.*, 983 S.W.2d 493, 499 (Ky. 1998)).

the contrary, it is a bedrock rule of Kentucky constitutional law that emanates from the separation of governmental powers mandated by Sections 27 and 28 of the Constitution, among the most forceful separation of powers provisions in any state constitution.[23]

While many people may have become inured to court decisions invalidating statutes, a judicial decision to declare unconstitutional an act of the General Assembly remains an awesome responsibility, not to be taken as lightly. Like the executive power to veto legislation, a judicial declaration of unconstitutionality is a check upon the legislative power vested in the General Assembly. The constitutional counter-check on the Governor's veto is the express power of the General Assembly to override a veto. But the legislature cannot override an opinion of this Court declaring an act of the General Assembly to be unconstitutional. The only restraint on that power is judicial self-restraint. Accordingly, the unconstitutionality of the statute "must be 'clear, complete and unmistakable'" before a court may declare it unconstitutional. *Caneyville*, 286 S.W.3d at 806.

The Dissent clearly applies the erroneous burden of persuasion to the facts of this case in order to determine that the Attorney General has not

[23] *Legislative Research Comm., by and through Prather, v. Brown,* 664 S.W.2d 907, 912-914 (Ky. 1984).

discharged his ostensible burden of persuasion that SB 1 is constitutional. Thus, the Dissent recounts that it has "concluded [that] **the evidence of record** does not demonstrate any such reason for departing from the typical school board-superintendent relationship applicable in all other counties in the Commonwealth. . . . Certainly no convincing 'distinctive and natural' reasons **appear in the record** . . . ." Dissent, slip Op. at 77 (boldface added).

Clearly, the Dissent is applying a presumption of unconstitutionality, rather than the presumption of constitutionality, in its evaluation of the reasonableness of the classification set forth in SB 1.

The Court should adhere to its holding in *Woodall* reaffirming that the burden of persuasion rests on the party contesting the constitutionality of a statutory classification.

III. Under either the *Woodall* or *Schoo* standard of review for reasonableness, the changes in the governance of the Jefferson County Public Schools enacted in SB 1 withstand judicial scrutiny.

Because the classification enacted in SB 1 applied to all boards of education which now or hereafter meet the criteria of that classification, the final question is whether the classification is arbitrary or unreasonable. But

JCBE did not plead nor argue reasonableness in either the Circuit Court or the Court of Appeals.[24]

Instead, JCBE made the deliberate litigation strategy decision to argue only that, at present, JCBE is the only member of the SB 1 class, *ergo*, the class is local legislation. JCBE argued only that *Woodall* speaks "in the present tense" when it states that a classification is special legislation if it "*applies* – present rather than future tense – to only one person, place or thing." Dissent, Slip op., p. 78 (italics in original). JCBE chose not to argue in the alternative to overrule *Woodall* because that would negate JCBE's argument that *Woodall's* test was sagacious and satisfied by JCBE's superficial syllogism based upon a single sentence in *Woodall*.

JCBE's simple syllogism worked in the Circuit Court and the Court of Appeals, but the majority in this Court recognized the fallacy in JCBE's argument: a classification which presently has one member is not special legislation if it is open to future members. So, JCBE has now abruptly changed positions and joins the Dissent to argue that *Woodall* should be overruled, and that the classification in SB 1 should be reviewed under the *Tabler* test.

[24] Consequently, JCBE has waived this argument. *See, e.g., Gasaway v. Commonwealth*, 671 S.W.3d 298 , 313 (Ky. 2023); *Johnson v. Commonwealth*, 450 S.W.3d 707 (Ky. 2014).

Yet, JCBE inadvertently concedes that JCPS is unique among school systems in the Commonwealth. JCBE concedes that JCPS has "by far the greatest number of administrative, budgetary, curricular, disciplinary, employment, financial, school security, student assignment, transportation, and general policy issues . . ." than any other school systems in Kentucky. Supplemental Brief for JCBE, p. 14. That admission explains why the General Assembly decided that school systems with the enrollment (and attendant problems) of JCPS should be governed differently than vastly smaller school systems in counties with less population.[25]

JCBE nevertheless contends that it "makes no sense" (*id*.) to empower the superintendent to make the initial decision pertaining to such significant problems, with the board of education exercising an oversight function. While that may not make any "sense" to the members of JCBE who would lose significant political clout under SB 1, it clearly made sense to the General Assembly. That policy decision is not to be second guessed by the courts. If JCBE had preserved this issue for appeal, this Court would apply the presumption of constitutionality – as it must – and decide that the policy choices enacted by the legislature are neither arbitrary nor unreasonable.

[25] *Bd. of Educ. of Louisville v. Bd. of Educ. of Jefferson Cnty.*, 522 S.W.2d 854 (Ky. 1975).

The Dissent applies the wrong standard of reasonableness and the wrong burden of persuasion, and concludes that the General Assembly's remedial legislation addressing the student achievement problems in JCPS is unconstitutional. The Dissent concludes that it is arbitrary for the legislature to allocate authority between the superintendent and the board differently in Jefferson County than it allocates that authority out in the state.

But the wisdom of SB 1's allocation of authority is in the eye of the beholder. The General Assembly's remedial legislation made a reasoned choice that, because of the problems inherent in the largest school system in the Commonwealth, public policy is best served by allocating more authority to the superintendent and less authority to the board of education. Certainly reasonable minds can differ concerning the wisdom of that policy choice. However, it is axiomatic that those policy choices are the province of the General Assembly.

The Dissent particularly singles out the provision in SB 1 limiting the board of education to a single meeting every 4 weeks, and argues that limitation "is facially irrational." Dissent, Slip op., p. 77. But the frequency with which a board of education should meet obviously depends upon its role in the governance of the school system. If one wants the board to govern by committee, micromanaging the largest school system in Kentucky, then one

wants the board to be in virtually continuous session. But if one wants a strong executive superintendent to lead the school system, with the board exercising oversight of the superintendent, then one could reasonably conclude that monthly meetings of a board are not only sufficient, but preferable. Respectfully, that limitation is fair grounds for debate among fair minded constituents of the school board.

Simply stated, SB 1 was not enacted in a vacuum. Quite the contrary, Jefferson County taxpayers, and Louisville community and civic leaders, have long been concerned that the Jefferson County Public School system ("JCPS") is failing too many of its students, especially students of color and those living below the poverty level. These concerns have been expressed loudly in the public square for years. *See, e.g., Courier Journal*, 2018 WLNR 23794074 (August 5, 2018).[26]

One significant concern is students' standardized test scores county-wide, but especially the achievement gap between white students and students of color. Another significant concern is the student dropout rate. *Courier-Journal*, 2018 WLNR 28901905 (May 1, 2018).

These concerns have coalesced into a concern about how JCPS is micromanaged by the Jefferson County Board of Education ("JCBE"). That

[26] The abbreviation WLNR is for Westlaw Newsroom.

concern reached a crescendo in 2018 when the state Board of Education publicly proposed to take over control of JCPS and totally remove JCBE from any role in managing JCPS, effectively placing JCPS in a receivership managed by the superintendent. *Courier Journal*, 2018 WLNR 28903035 (May 1, 2018).

After extensive negotiations, JCBE and the state Board of Education agreed to a settlement that avoided a complete state takeover of JCPS, albeit under a "corrective action plan" with "more than 200 goals across 10 categories." *Courier Journal*, 2019 WLNR 26275752 (August 29, 2019). However, student achievement, especially the achievement gap between white students and students of color, continued to be a cause for concern that was widely discussed in the public arena. *Courier Journal*, 2021 WLNR 29373928 (September 8, 2021).

Against this backdrop, it is hardly surprising that the 2022 General Assembly enacted the significant management reforms in S.B. 1 which, like the proposed state takeover, allow the superintendent to function as a chief executive officer, with the school board functioning more like a board of directors. Under either the *Woodall* or *Schoo* test, that policy choice by the General Assembly is not arbitrary nor unreasonable.

In sum, the policy decision of the General Assembly in SB 1 is constitutional under either the *Woodall* or *Schoo* standard of review for reasonableness. More importantly, JCBE did not preserve this issue for appellate review. This Court should therefore reverse the decision of the Court of Appeals, and reverse the judgment entered by the Circuit Court and remand this case with directions to enter judgment dismissing JCBE's complaint, with prejudice.[27]

RELIEF SOUGHT

The Amicus respectfully prays this Court to reverse the decision of the Court of Appeals, and remand this case to the Circuit Court with directions to enter judgment dismissing JCBE's Complaint, with prejudice.

Respectfully submitted,

/s/ Sheryl G. Snyder
Sheryl G. Snyder
David Fleenor
Counsel for Amicus Curiae
Sen. Robert Stivers, in his official capacity as President of the Senate

[27] The Court of Appeals held that this argument conceded that SB 1 presently applies in only one county. *Cameron v. Jefferson County Bd. of Educ.*, No. 2022-CA-0964-MR, slip op. at 25-26 (Ky. App. Oct. 6, 2023). That is, of course, literally true; but – contrary to the Court of Appeals – it is not the end of the inquiry. Because the classification in SB 1 is open to future members, it is not *per se* unconstitutional, but is reviewed for the reasonableness of the classification. *See* Argument I, *supra*.

CERTIFICATE OF COMPLIANCE

It is hereby certified that this document complies with the word limit of RAP 31(G)(3)(a) because, excluding the parts of the document exempted by RAP 15(D) and 31(G)(5), this document contains 4,755 words.

/s/ Sheryl G. Snyder
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Sen. Robert Stivers, in his official capacity as President of the Senate

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