

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000150-MR

JEFFERSON COUNTY LEAGUE OF CITIES, INC.

APPELLANT

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

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT, WASTE MANAGEMENT
DISTRICT; ROBERT SCHINDLER; GREG
FISCHER, IN HIS OFFICIAL CAPACITY AS
MAYOR OF LOUISVILLE METRO GOVERNMENT;
COMMONWEALTH OF KENTUCKY, ENERGY AND
ENVIRONMENT CABINET; CHARLES G. SNAVELY,
IN HIS OFFICAL CAPACITY AS SECRETARY FOR THE
COMMONWEALTH OF KENTUCKY, ENERGY AND
ENVIRONMENT CABINET; NATIONAL WASTE & RECYCLING
ASSOCIATION, KENTUCKY CHAPTER;
CITY OF ANCHORAGE; CITY OF AUDUBON
PARK; CITY OF BANCROFT; CITY OF BARBOURMEADE;
CITY OF BEECHWOOD VILLAGE; CITY OF BELLEMEADE;
CITY OF BELLEWOOD; CITY OF BLUE RIDGE MANOR;
CITY OF BRIARWOOD; CITY OF BROECK POINTE; CITY OF
BROWNSBORO FARM; CITY OF BROWNSBORO VILLAGE;
CITY OF CAMBRIDGE; CITY OF COLDSTREAM; CITY OF
CREEKSIDE; CITY OF CROSSGATE; CITY OF DOUGLASS HILLS;
CITY OF DRUID HILLS; CITY OF FINCASTLE; CITY OF FOREST
HILLS; CITY OF GLENVIEW; CITY OF GLENVIEW HILLS;
CITY OF GLENVIEW MANOR; CITY OF GOOSE CREEK;
CITY OF GRAYMOOR-DEVONDALE; CITY OF GREEN

SPRING; CITY OF HERITAGE CREEK; CITY OF HICKORY HILL; CITY OF HILLS AND DALES; CITY OF HOLLOW CREEK; CITY OF HOLLYVILLA; CITY OF HOUSTON ACRES; CITY OF HURSTBOURNE; CITY OF HURSTBOURNE ACRES; CITY OF INDIAN HILLS; CITY OF JEFFERSONTOWN; CITY OF KINGSLEY; CITY OF LANGDON PLACE; CITY OF LINCOLNSHIRE; CITY OF LYNDON; CITY OF LYNNVIEW; CITY OF MANOR CREEK; CITY OF MARYHILL ESTATES; CITY OF MEADOWBROOK FARMS; CITY OF MEADOW VALE; CITY OF MEADOWVIEW ESTATES; CITY OF MIDDLETOWN; CITY OF MOCKINGBIRD VALLEY; CITY OF MOORLAND; CITY OF MURRAY HILL; CITY OF NORBOURNE ESTATES; CITY OF NORTHFIELD; CITY OF NORWOOD; CITY OF OLD BROWNSBORO PLACE; CITY OF PARKWAY VILLAGE; CITY OF PLANTATION; CITY OF POPLAR HILLS; CITY OF PROSPECT; CITY OF RICHLAWN; CITY OF RIVERWOOD; CITY OF ROLLING FIELDS; CITY OF ROLLING HILLS; CITY OF SAINT MATTHEWS; CITY OF SAINT REGIS PARK; CITY OF SENECA GARDENS; CITY OF SHIVELY; CITY OF SOUTH PARK VIEW; CITY OF SPRING MILL; CITY OF SPRING VALLEY; CITY OF STRATHMOOR MANOR; CITY OF STRATHMOOR VILLAGE; CITY OF SYCAMORE; CITY OF TEN BROECK; CITY OF THORNHILL; CITY OF WATTERSON PARK; CITY OF WELLINGTON; CITY OF WEST BUECHEL; CITY OF WESTWOOD; CITY OF WILDWOOD; CITY OF WINDY HILLS; CITY OF WOODLAND HILLS; CITY OF WOODLAWN PARK; CITY OF WORTHINGTON HILLS; AND ANDY BESHEAR, IN HIS CAPACITY AS ATTORNEY GENERAL OF KENTUCKY

APPELLEES

AND

NO. 2018-CA-000151-MR

NATIONAL WASTE & RECYCLING ASSOCIATION,
KENTUCKY CHAPTER

APPELLANT

v.

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

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT, WASTE MANAGEMENT
DISTRICT; ROBERT SCHINDLER; GREG
FISHER,¹ IN HIS OFFICIAL CAPACITY AS
MAYOR OF LOUISVILLE METRO GOVERNMENT;
COMMONWEALTH OF KENTUCKY, ENERGY AND
ENVIRONMENT CABINET; CHARLES G. SNAVELY,
IN HIS OFFICAL CAPACITY AS SECRETARY FOR THE
COMMONWEALTH OF KENTUCKY, ENERGY AND
ENVIRONMENT CABINET; CITY OF ANCHORAGE;
CITY OF AUDUBON PARK; CITY OF BANCROFT; CITY OF
BARBOURMEADE; CITY OF BEECHWOOD VILLAGE;
CITY OF BELLEMEADE; CITY OF BELLEWOOD; CITY OF
BLUE RIDGE MANOR; CITY OF BRIARWOOD; CITY OF
BROECK POINTE; CITY OF BROWNSBORO FARM; CITY OF
BROWNSBORO VILLAGE; CITY OF CAMBRIDGE; CITY OF
COLDSTREAM; CITY OF CREEKSIDE; CITY OF CROSSGATE;
CITY OF DOUGLASS HILLS; CITY OF DRUID HILLS; CITY OF
FINCASTLE; CITY OF FOREST HILLS; CITY OF GLENVIEW;
CITY OF GLENVIEW HILLS; CITY OF GLENVIEW MANOR;
CITY OF GOOSE CREEK; CITY OF GRAYMOOR-DEVONDALE;
CITY OF GREEN SPRING; CITY OF HERITAGE CREEK;
CITY OF HICKORY HILL; CITY OF HILLS AND DALES; CITY OF
HOLLOW CREEK; CITY OF HOLLYVILLA; CITY OF HOUSTON
ACRES; CITY OF HURSTBOURNE; CITY OF HURSTBOURNE
ACRES; CITY OF INDIAN HILLS; CITY OF JEFFERSONTOWN;
CITY OF KINGSLEY; CITY OF LANGDON PLACE; CITY OF
LINCOLNSHIRE; CITY OF LYNDON; CITY OF LYNNVIEW; CITY OF
MANOR CREEK; CITY OF MARYHILL ESTATES; CITY OF
MEADOWBROOK FARMS; CITY OF MEADOW VALE; CITY OF
MEADOWVIEW ESTATES; CITY OF MIDDLETOWN; CITY OF

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

MOCKINGBIRD VALLEY; CITY OF MOORLAND; CITY OF MURRAY HILL; CITY OF NORBOURNE ESTATES; CITY OF NORTHFIELD; CITY OF NORWOOD; CITY OF OLD BROWNSBORO PLACE; CITY OF PARKWAY VILLAGE; CITY OF PLANTATION; CITY OF POPLAR HILLS; CITY OF PROSPECT; CITY OF RICHLAWN; CITY OF RIVERWOOD; CITY OF ROLLING FIELDS; CITY OF ROLLING HILLS; CITY OF SAINT MATTHEWS; CITY OF SAINT REGIS PARK; CITY OF SENECA GARDENS; CITY OF SHIVELY; CITY OF SOUTH PARK VIEW; CITY OF SPRING MILL; CITY OF SPRING VALLEY; CITY OF STRATHMOOR MANOR; CITY OF STRATHMOOR VILLAGE; CITY OF SYCAMORE; CITY OF TEN BROECK; CITY OF THORNHILL; CITY OF WATTERSON PARK; CITY OF WELLINGTON; CITY OF WEST BUECHEL; CITY OF WESTWOOD; CITY OF WILDWOOD; CITY OF WINDY HILLS; CITY OF WOODLAND HILLS; CITY OF WOODLAWN PARK; CITY OF WORTHINGTON HILLS; AND ANDY BESHEAR, IN HIS CAPACITY AS ATTORNEY GENERAL OF KENTUCKY

APPELLEES

AND NO. 2018-CA-000154-MR

THE CITIES OF SHIVELY, INDIAN HILLS AND BELLEWOOD, KENTUCKY

APPELLANTS

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

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, WASTE MANAGEMENT DISTRICT; ROBERT SCHINDLER; GREG FISCHER, IN HIS OFFICIAL CAPACITY AS MAYOR OF LOUISVILLE METRO GOVERNMENT; THE COMMONWEALTH OF KENTUCKY, ENERGY AND ENVIRONMENT CABINET;

CHARLES G. SNAVELY, IN HIS OFFICIAL CAPACITY AS KENTUCKY ENERGY AND ENVIRONMENT SECRETARY; THE JEFFERSON COUNTY LEAGUE OF CITIES, INC.; THE NATIONAL WASTE & RECYCLING ASSOCIATION, KENTUCKY CHAPTER; CITY OF ANCHORAGE; CITY OF AUDUBON PARK; CITY OF BANCROFT; CITY OF BARBOURMEADE; CITY OF BEECHWOOD VILLAGE; CITY OF BELLEMEADE; CITY OF BLUE RIDGE MANOR; CITY OF BRIARWOOD; CITY OF BROECK POINTE; CITY OF BROWNSBORO FARM; CITY OF BROWNSBORO VILLAGE; CITY OF CAMBRIDGE; CITY OF COLDSTREAM; CITY OF CREEKSIDE; CITY OF CROSSGATE; CITY OF DOUGLAS HILLS; CITY OF DRUID HILLS; CITY OF FINCASTLE; CITY OF FOREST HILLS; CITY OF GLENVIEW; CITY OF GLENVIEW HILLS; CITY OF GLENVIEW MANOR; CITY OF GOOSE CREEK; CITY OF GRAYMOOR-DEVONDALE; CITY OF GREEN SPRING; CITY OF HERITAGE CREEK; CITY OF HICKORY HILL; CITY OF HILLS AND DALES; CITY OF HOLLOW CREEK; CITY OF HOLLYVILLA; CITY OF HOUSTON ACRES; CITY OF HURSTBOURNE; CITY OF HURSTBOURNE ACRES; CITY OF JEFFERSONTOWN; CITY OF KINGSLEY; CITY OF LANGDON PLACE; CITY OF LINCOLNSHIRE; CITY OF LYNDON; CITY OF LYNNVIEW; CITY OF MANOR CREEK; CITY OF MARYHILL ESTATES; CITY OF MEADOWBROOK FARMS; CITY OF MEADOW VALE; CITY OF MEADOWVIEW ESTATES; CITY OF MIDDLETOWN; CITY OF MOCKINGBIRD VALLEY; CITY OF MOORLAND; CITY OF MURRAY HILL; CITY OF NORBOURNE ESTATES; CITY OF NORTHFIELD; CITY OF NORWOOD; CITY OF OLD BROWNSBORO PLACE; CITY OF PARKWAY VILLAGE; CITY OF PLANTATION; CITY OF POPLAR HILLS; CITY OF PROSPECT; CITY OF RICHLAWN; CITY OF RIVERWOOD; CITY OF ROLLING FIELDS; CITY OF ROLLING HILLS; CITY OF SAINT MATTHEWS; CITY OF SAINT REGIS PARK; CITY OF SENECA GARDENS; CITY OF SOUTH PARK VIEW; CITY OF SPRING MILL; CITY OF SPRING VALLEY; CITY OF STRATHMOOR MANOR; CITY OF STRATHMOOR VILLAGE; CITY OF SYCAMORE; CITY OF TEN BROECK; CITY OF THORNHILL; CITY OF WATTERSON PARK; CITY OF WELLINGTON; CITY

OF WEST BUECHEL; CITY OF WESTWOOD; CITY OF WILDWOOD; CITY OF WINDY HILLS; CITY OF WOODLAND HILLS; CITY OF WOODLAWN PARK; CITY OF WORTHINGTON HILLS; AND ANDY BESHEAR, IN HIS CAPACITY AS ATTORNEY GENERAL OF KENTUCKY APPELLEES

AND NO. 2018-CA-000156-MR

THE CITIES OF JEFFERSONTOWN, KENTUCKY AND SENECA GARDENS, KENTUCKY APPELLANTS

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

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, WASTE MANAGEMENT DISTRICT; ROBERT SCHINDLER; GREG FISCHER, IN HIS OFFICIAL CAPACITY AS MAYOR OF LOUISVILLE METRO GOVERNMENT; COMMONWEALTH OF KENTUCKY, ENERGY AND ENVIRONMENT CABINET; CHARLES G. SNAVELY, IN HIS OFFICAL CAPACITY AS SECRETARY FOR THE COMMONWEALTH OF KENTUCKY, ENERGY AND ENVIRONMENT CABINET; NATIONAL WASTE & RECYCLING ASSOCIATION, KENTUCKY CHAPTER; CITY OF ANCHORAGE; CITY OF AUDUBON PARK; CITY OF BANCROFT; CITY OF BARBOURMEADE; CITY OF BEECHWOOD VILLAGE; CITY OF BELLEMEADE; CITY OF BELLEWOOD; CITY OF BLUE RIDGE MANOR; CITY OF BRIARWOOD; CITY OF BROECK POINTE; CITY OF BROWNSBORO FARM; CITY OF BROWNSBORO VILLAGE; CITY OF CAMBRIDGE; CITY OF COLDSTREAM; CITY OF CREEKSIDE; CITY OF CROSSGATE; CITY OF DOUGLASS HILLS; CITY OF DRUID HILLS; CITY OF FINCASTLE; CITY OF FOREST HILLS; CITY OF GLENVIEW; CITY OF GLENVIEW HILLS;

CITY OF GLENVIEW MANOR; CITY OF GOOSE CREEK;
CITY OF GRAYMOOR-DEVONDALE; CITY OF GREEN
SPRING; CITY OF HERITAGE CREEK; CITY OF HICKORY
HILL; CITY OF HILLS AND DALES; CITY OF HOLLOW
CREEK; CITY OF HOLLYVILLA; CITY OF HOUSTON ACRES;
CITY OF HURSTBOURNE; CITY OF HURSTBOURNE ACRES;
CITY OF INDIAN HILLS; CITY OF KINGSLEY; CITY OF LANGDON
PLACE; CITY OF LINCOLNSHIRE; CITY OF LYNDON; CITY OF
LYNNVIEW; CITY OF MANOR CREEK; CITY OF MARYHILL ESTATES;
CITY OF MEADOWBROOK FARMS; CITY OF MEADOW VALE; CITY OF
MEADOWVIEW ESTATES; CITY OF MIDDLETOWN; CITY OF
MOCKINGBIRD VALLEY; CITY OF MOORLAND; CITY OF MURRAY
HILL; CITY OF NORBOURNE ESTATES; CITY OF NORTHFIELD;
CITY OF NORWOOD; CITY OF OLD BROWNSBORO PLACE;
CITY OF PARKWAY VILLAGE; CITY OF PLANTATION;
CITY OF POPLAR HILLS; CITY OF PROSPECT; CITY OF
RICHLAWN; CITY OF RIVERWOOD; CITY OF ROLLING
FIELDS; CITY OF ROLLING HILLS; CITY OF SAINT
MATTHEWS; CITY OF SAINT REGIS PARK; CITY OF SHIVELY;
CITY OF SOUTH PARK VIEW; CITY OF SPRING
MILL; CITY OF SPRING VALLEY; CITY OF STRATHMOOR
MANOR; CITY OF STRATHMOOR VILLAGE; CITY OF
SYCAMORE; CITY OF TEN BROECK; CITY OF THORNHILL;
CITY OF WATTERSON PARK; CITY OF WELLINGTON; CITY
OF WEST BUECHEL; CITY OF WESTWOOD; CITY OF
WILDWOOD; CITY OF WINDY HILLS; CITY OF WOODLAND
HILLS; CITY OF WOODLAWN PARK; CITY OF WORTHINGTON
HILLS; AND ANDY BESHEAR, IN HIS CAPACITY AS ATTORNEY
GENERAL OF KENTUCKY

APPELLEES

AND

NO. 2018-CA-000158-MR

THE COMMONWEALTH OF KENTUCKY,
ENERGY AND ENVIRONMENT CABINET; AND
CHARLES G. SNAVELY, IN HIS OFFICIAL
CAPACITY AS THE SECRETARY OF THE
KENTUCKY ENERGY AND ENVIRONMENT
CABINET

APPELLANTS

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

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT, WASTE MANAGEMENT
DISTRICT; ROBERT SCHINDLER; GREG
FISCHER, IN HIS OFFICIAL CAPACITY AS
MAYOR OF LOUISVILLE METRO GOVERNMENT;
JEFFERSON COUNTY LEAGUE OF CITIES, INC.;
NATIONAL WASTE & RECYCLING ASSOCIATION,
KENTUCKY CHAPTER; CITY OF ANCHORAGE; CITY OF
AUDUBON PARK; CITY OF BANCROFT; CITY OF
BARBOURMEADE; CITY OF BEECHWOOD VILLAGE; CITY
OF BELLEMEADE; CITY OF BELLEWOOD; CITY OF BLUE RIDGE
MANOR; CITY OF BRIARWOOD; CITY OF BROECK POINTE; CITY OF
BROWNSBORO FARM; CITY OF BROWNSBORO VILLAGE; CITY OF
CAMBRIDGE; CITY OF COLDSTREAM; CITY OF CREEKSIDE; CITY OF
CROSSGATE; CITY OF DOUGLAS HILLS; CITY OF DRUID HILLS; CITY
OF FINCASTLE; CITY OF FOREST HILLS; CITY OF GLENVIEW; CITY OF
GLENVIEW HILLS; CITY OF GLENVIEW MANOR; CITY OF GOOSE
CREEK; CITY OF GRAYMOOR-DEVONDALE; CITY OF GREEN SPRING;
CITY OF HERITAGE CREEK; CITY OF HICKORY HILL; CITY OF HILLS
AND DALES; CITY OF HOLLOW CREEK; CITY OF HOLLYVILLA; CITY
OF HOUSTON ACRES; CITY OF HURSTBOURNE; CITY OF
HURSTBOURNE ACRES; CITY OF INDIAN HILLS; CITY OF
JEFFERSONTOWN; CITY OF KINGSLEY; CITY OF
LANGDON PLACE; CITY OF LINCOLNSHIRE; CITY OF
LYNDON; CITY OF LYNNVIEW; CITY OF MANOR CREEK;
CITY OF MARYHILL ESTATES; CITY OF MEADOWBROOK
FARMS; CITY OF MEADOW VALE; CITY OF MEADOWVIEW
ESTATES; CITY OF MIDDLETOWN; CITY OF MOCKINGBIRD
VALLEY; CITY OF MOORLAND; CITY OF MURRAY HILL;
CITY OF NORBOURNE ESTATES; CITY OF NORTHFIELD;
CITY OF NORWOOD; CITY OF OLD BROWNSBORO PLACE;
CITY OF PARKWAY VILLAGE; CITY OF PLANTATION;
CITY OF POPLAR HILLS; CITY OF PROSPECT; CITY OF

RICHLAWN; CITY OF RIVERWOOD; CITY OF ROLLING
FIELDS; CITY OF ROLLING HILLS; CITY OF SAINT
MATTHEWS; CITY OF SAINT REGIS PARK; CITY OF SENECA
GARDENS; CITY OF SHIVELY; CITY OF SOUTH PARK VIEW; CITY OF
SPRING MILL; CITY OF SPRING VALLEY; CITY OF STRATHMOOR
MANOR; CITY OF STRATHMOOR VILLAGE; CITY OF
SYCAMORE; CITY OF TEN BROECK; CITY OF THORNHILL;
CITY OF WATTERSON PARK; CITY OF WELLINGTON; CITY
OF WEST BUECHEL; CITY OF WESTWOOD; CITY OF
WILDWOOD; CITY OF WINDY HILLS; CITY OF WOODLAND
HILLS; CITY OF WOODLAWN PARK; CITY OF WORTHINGTON
HILLS; AND ANDY BESHEAR, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF KENTUCKY APPELLEES

AND NO. 2018-CA-000160-MR

CITY OF BANCROFT, KENTUCKY APPELLANT

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

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT, WASTE MANAGEMENT
DISTRICT; ROBERT SCHINDLER; GREG
FISCHER, IN HIS OFFICIAL CAPACITY AS
MAYOR OF LOUISVILLE METRO GOVERNMENT;
THE COMMONWEALTH OF KENTUCKY,
ENERGY AND ENVIRONMENT CABINET;
CHARLES G. SNAVELY, IN HIS OFFICIAL
CAPACITY AS KENTUCKY ENERGY AND ENVIRONMENT
SECRETARY; THE JEFFERSON COUNTY LEAGUE OF CITIES, INC.;
THE NATIONAL WASTE & RECYCLING ASSOCIATION,
KENTUCKY CHAPTER; CITY OF ANCHORAGE; CITY OF
AUDUBON PARK; CITY OF BARBOURMEADE; CITY OF BEECHWOOD
VILLAGE; CITY OF BELLEMEADE; CITY OF BLUE RIDGE MANOR; CITY

OF BRIARWOOD; CITY OF BROECK POINTE; CITY OF BROWNSBORO FARM; CITY OF BROWNSBORO VILLAGE; CITY OF CAMBRIDGE; CITY OF COLDSTREAM; CITY OF CREEKSIDE; CITY OF CROSSGATE; CITY OF DOUGLAS HILLS; CITY OF FINCASTLE; CITY OF FOREST HILLS; CITY OF GLENVIEW; CITY OF GLENVIEW HILLS; CITY OF GLENVIEW MANOR; CITY OF GOOSE CREEK; CITY OF GRAYMOOR-DEVONDALE; CITY OF GREEN SPRING; CITY OF HERITAGE CREEK; CITY OF HICKORY HILL; CITY OF HILLS AND DALES; CITY OF HOLLOW CREEK; CITY OF HOLLYVILLA; CITY OF HOUSTON ACRES; CITY OF HURSTBOURNE; CITY OF HURSTBOURNE ACRES; CITY OF JEFFERSONTOWN; CITY OF KINGSLEY; CITY OF LANGDON PLACE; CITY OF LINCOLNSHIRE; CITY OF LYNDON; CITY OF LYNNVIEW; CITY OF MANOR CREEK; CITY OF MARYHILL ESTATES; CITY OF MEADOWBROOK FARMS; CITY OF MEADOW VALE; CITY OF MEADOWVIEW ESTATES; CITY OF MIDDLETOWN; CITY OF MOCKINGBIRD VALLEY; CITY OF MOORLAND; CITY OF MURRAY HILL; CITY OF NORBOURNE ESTATES; CITY OF NORTHFIELD; CITY OF NORWOOD; CITY OF OLD BROWNSBORO PLACE; CITY OF PARKWAY VILLAGE; CITY OF PLANTATION; CITY OF POPLAR HILLS; CITY OF PROSPECT; CITY OF RICHLAWN; CITY OF RIVERWOOD; CITY OF ROLLING FIELDS; CITY OF ROLLING HILLS; CITY OF SAINT MATTHEWS; CITY OF SAINT REGIS PARK; CITY OF SENECA GARDENS; CITY OF SHIVELY; CITY OF SOUTH PARK VIEW; CITY OF SPRING MILL; CITY OF SPRING VALLEY; CITY OF STRATHMOOR MANOR; CITY OF STRATHMOOR VILLAGE; CITY OF SYCAMORE; CITY OF TEN BROECK; CITY OF THORNHILL; CITY OF WATTERSON PARK; CITY OF WELLINGTON; CITY OF WEST BUECHEL; CITY OF WESTWOOD; CITY OF WILDWOOD; CITY OF WINDY HILLS; CITY OF WOODLAND HILLS; CITY OF WOODLAWN PARK; CITY OF WORTHINGTON HILLS; AND ANDY BESHEAR, IN HIS CAPACITY AS ATTORNEY GENERAL OF KENTUCKY

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** *

BEFORE: DIXON, JONES, AND LAMBERT, JUDGES.

DIXON, JUDGE: Jefferson County League of Cities, Inc.; National Waste & Recycling Association, Kentucky Chapter; the Cities of Shively, Indian Hills, and Bellewood, Kentucky; the Cities of Jeffersontown and Seneca Gardens, Kentucky; the Commonwealth of Kentucky, Energy and Environment Cabinet (“EEC”) and Charles G. Snavelly, in his official capacity as the Secretary of the Kentucky EEC; and the City of Bancroft, Kentucky (Appellants) appeal the Franklin Circuit Court’s order granting Louisville/Jefferson County Metro Government Waste Management District (“LMGWMD”²); Robert Schindler; and Greg Fischer, in his official capacity as Mayor of Louisville Metro Government (Appellees), partial summary judgment, finding all sections of 2017 Kentucky Laws Chapter 105 (“HB 246”), except for Section 2, which amended KRS³ 109.115 to provide for a distinct composition of the board of directors in a county containing a consolidated local

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

³ Kentucky Revised Statutes.

government, violated Sections 59, 60, and 156a of the Kentucky Constitution.⁴

After careful review of the record, briefs, and applicable law, we affirm in part, reverse in part, and remand for entry of an order consistent with this opinion.

In 2017, Kentucky’s General Assembly enacted HB 246, which was signed into law on March 21, 2017. Because the bill contained an emergency clause, it became effective immediately. On March 27, 2017, Appellees filed the instant action seeking a declaratory judgment that HB 246 was impermissible “special legislation” in violation of Sections 27, 28, 55, 59, and 60 of the Kentucky Constitution. Injunctive relief was also sought and initially—at least preliminarily—heard on March 29, 2017. The issues concerning injunctive relief

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

[t]he amendments to KRS 109.115 in Section 2 of this Act shall be applied, on the effective date of this Act, to declare vacant the offices of current board members of a solid waste management district in a county containing a consolidated local government who were appointed under subsection (3) of Section 2 of this Act prior to its amendment in this Act. The mayor of the consolidated local government shall fill the vacant positions within 90 days of the effective date of this Act in accordance with subsection (4) of Section 2 of this Act; otherwise all appointment authority shall shift to the Governor.

Section 7 provides:

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

were then briefed and arguments heard on April 27, 2017. The motion was taken under advisement until the trial court entered its order denying injunctive relief on June 27, 2017. Cross motions for summary judgment were filed, and arguments on those motions were heard on August 28, 2017. The court's order granting Appellees partial summary judgment was entered December 28, 2017. These appeals followed.

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

The standard of review of a trial court's grant of summary judgment is well settled. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR⁵ 56.03. "[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor." *Steelvest, Inc. v.*

⁵ Kentucky Rules of Civil Procedure.

Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 480 (Ky. 1991). An appellate court's role in reviewing an award of summary judgment is to determine whether the trial court erred in finding that no genuine issue of material fact exists, and therefore, the moving party was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). A grant of summary judgment is reviewed *de novo* because factual findings are not at issue. *Pinkston v. Audubon Area Community Serv., Inc.*, 210 S.W.3d 188, 189 (Ky. App. 2006) (citing *Blevins v. Moran*, 12 S.W.3d 698 (Ky. App. 2000)).

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

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

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

McFarland, 294 Ky. 837, 172 S.W.2d 631 (1943), our predecessor Court developed a test for determining whether legislation based on population is constitutionally sustainable. *Mannini* held “a legislative classification according to population and its density, and according to the division of cities into classes, will be constitutional under the framework of Sections 59 and 60 only if (1) the act relates to the organization and structure of a city or county government or (2) the classification bears ‘a reasonable relation to the purpose of the Act.’” *O’Shea’s-Baxter, LLC*, 438 S.W.3d at 383 (quoting *Mannini*, 172 S.W.2d at 632).

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

[f]or over twenty-five years, solid waste planning and management in Jefferson County has been implemented under the same general law that applies to all 120 counties. Plaintiffs now argue that the action of the 2017 General Assembly repealing those provisions and enacting a unique regulatory regime that applies only to Jefferson County violates Sections 59 and 60 of the Kentucky Constitution. This Court agrees, in part.

The Kentucky Supreme Court has recently addressed this issue, and held that “classifications that are favorable or unfavorable to particular localities, rested alone upon numbers and populations, are invidious, and therefore offensive to the letter and the spirit of the Constitution ...” *O’Shea’s-Baxter, LLC*, 438 S.W.3d at 383. There are two exceptions to the rule that classifications based on population are unconstitutional as special legislation: (1) when the act relates to the organization or structure of a city or county government agency; and (2) when the classification has a reasonable relation to the purpose of the Act. *Id.*

Here, the Court finds that to the extent that House Bill 246 restructures the administrative composition of the Solid Waste Management District’s board in Section 2 of the bill, those provisions do not run afoul of the Kentucky Constitution.

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

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

The trial court found:

the other provisions of the legislation all deal with substantive issues of solid waste policy. The legislation purports to enact a broad range of restrictions and provisions that apply only to Jefferson County. House Bill 246 purports to exempt local municipalities from regulation by the solid waste management district; to grant a veto power to local municipalities over the county-wide solid waste plan; to legislatively revoke local solid waste regulations previously enacted; and to enact different rules for collection of fees for residential

property. These policies, restricted to Jefferson County only, do not bear any rational relationship to the purpose the statutes governing solid waste disposal, as set forth by the General Assembly in KRS 224.43-010(6), which states that “counties and waste management districts . . . are in the best position to make plans for municipal solid waste collection services for its citizens.”

In fact, a plain reading of KRS 109 demonstrates that the purpose of the statute is to regionalize the planning function for solid waste disposal. As the statute puts it, the intent of KRS Chapter 109 is to promote local government planning for solid waste disposal “with primary emphasis on regionalization of these functions.” KRS 109.011(5)(c). [sic] The statute further provides that “primary responsibility for adequate solid waste collection, management, treatment, disposal and resources recovery shall rest with combinations of counties and waste management districts.” KRS 109.011(6).^{6]} Lest there be any doubt, the General

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

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

Assembly made it clear that the purpose of local waste management districts is to “provide counties with the authority to develop a solid waste management system for solid waste generated within the geographical boundaries of the county.” KRS 109.011(11). Contrary to these provisions of law, House Bill 246, essentially balkanizes solid waste management and planning in Jefferson County, enabling each municipality to go its own way, and to enact policies that are at odds with the county-wide plan.

(Footnote added.)

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

In *O’Shea’s-Baxter*, the Supreme Court of Kentucky looked at the statute in question, “the Act,” to determine its purpose, not other statutes or prior versions of the statute as the trial court did in the case at hand. In construing statutes, we must give them “a literal interpretation unless they are ambiguous and

(Emphasis added).

if the words are not ambiguous, no statutory construction is required.”

Commonwealth v. Plowman, 86 S.W.3d 47, 49 (Ky. 2002). We may infer the purpose of the Act from its “legislative history, from the statute’s title, preamble or subject matter, or from some other authoritative source.” *Elk Horn Coal Corp. v. Cheyenne Resources, Inc.*, 163 S.W.3d 408, 419 (Ky. 2005).

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

HB 246, Section 1, amends KRS 109.041 concerning county powers for solid waste management. Like the *Bilyeu* court, having analyzed the statute, we have no difficulty in declaring that the subject matter of HB 246 is “governmental in nature” and constitutional under the first prong of the *Mannini* test. Also following in the *Bilyeu* court’s footsteps, “we do not decide the wisdom

of the action of the General Assembly” in its actions concerning the powers of a county or waste management district in prohibiting or otherwise restricting materials recovery or charging fees. *Id.* at 416. The establishment and powers of counties and waste management districts, as well as their powers for solid waste management, are clearly governmental activities. Since KRS 109.041 deals with governmental authority, its amendment by HB 246 complies with the constitutional requirements of the first prong of the *Mannini* test. Therefore, we need not consider the second prong of the *Mannini* test.

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

HB 246, Section 3, amends KRS 109.120, titled “Rules and regulations of board; different provisions for rulemaking in those counties containing a consolidated local government and those counties that do not.” Once again, having analyzed the statute, we have no difficulty in declaring that the subject matter of HB 246 is “governmental in nature” and constitutional under the

first prong of the *Mannini* test. The establishment, rules, and regulations of county boards are clearly governmental activities. Since KRS 109.120 deals with governmental activity, its amendment by HB 246 complies with the constitutional requirements of the first prong of the *Mannini* test. It is also apparent from reading the amendments and the title of the statute being amended that the amendments bear a “reasonable relation to the purpose of the Act” as required under the second prong of the *Mannini* test.

HB 246, Section 4, amends KRS 224.43-340 concerning regulations, solid waste management plans, designation of solid waste management areas, and enforcement representatives. Yet again, having analyzed the statute, we have no difficulty in declaring that the subject matter of HB 246 is “governmental in nature” and constitutional under the first prong of the *Mannini* test. The regulations, solid waste management plans, designation of solid waste management areas, and enforcement representatives are clearly governmental activities. Since KRS 224.43-340 deals with the exercise of governmental authority, its amendment by HB 246 complies with the constitutional requirements of the first prong of the *Mannini* test. Therefore, we need not consider the second prong of the *Mannini* test.

We find it curious that the trial court found that HB 246, Section 5, which amends KRS 109.310, violated Sections 59 and 60 of the Kentucky

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

As noted previously, the trial court correctly found that HB 246, Section 2, which amended KRS 109.115 concerning the composition of the board of directors in a county containing a consolidated local government, “concerns the organization and structure of a local government unit, and accordingly, that Section of the Bill is a reasonable classification that does not violate Sections 59 and 60 of the Kentucky Constitution.” However, the trial court failed to acknowledge that

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

HB 246, Sections 6 and 7, also concern the amendments to KRS 109.115 regarding the composition of the board of directors in a county containing a consolidated local government. Consequently, neither HB 246, Section 6 nor 7, runs afoul of the provisions of the Kentucky Constitution. Accordingly, we must reverse the trial court's declaration that HB 246, Sections 6 and 7, are unconstitutional.

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

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

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

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

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

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

[t]he General Assembly may provide for the creation, alteration of boundaries, consolidation, merger, dissolution, government, functions, and officers of cities. The General Assembly shall create such classifications of cities as it deems necessary based on population, tax base, form of government, geography, or any other reasonable basis and enact legislation relating to the classifications. All legislation relating to cities of a certain classification shall apply equally to all cities within the same classification. The classification of all

cities and the law pertaining to the classifications in effect at the time of adoption of this section shall remain in effect until otherwise provided by law.

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

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

However, section 156 of our Constitution authorizes the division of cities and towns into six classes for purposes of their organization and government, the class of a city or town being determined by its population, and the General Assembly has classified cities and towns of the state pursuant to this authority. In determining whether the Act in question is special or local legislation we must consider section 156 in connection with sections 59 and 60.

The language of section 156 is so clear and unambiguous in saying that the authorized classification is for the purpose of organization and government that there would be little difficulty in disposing of the question before us if this were a matter of novel impression but some confusion has arisen in the cases in which this question was involved due to the failure of the court in some instances to keep in mind the purpose of the division into classes as manifested by this section.

Mannini, 172 S.W.2d at 632. It was at this point the *Mannini* court began its analysis under Sections 59 and 60 of the Kentucky Constitution and set forth its

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

two-prong test. Application of these provisions and the two-prong test has been previously discussed; accordingly, we hold that no section of HB 246 is unconstitutional.

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

ALL CONCUR.

BRIEFS FOR APPELLANT,
JEFFERSON COUNTY LEAGUE OF
CITIES, INC.:

Samuel D. Hinkle IV
Culver V. Halliday
Adam C. Reeves
Louisville, Kentucky

BRIEF FOR APPELLEES:

Peter F. Ervin
Assistant Jefferson County Attorney
Louisville, Kentucky

BRIEFS FOR APPELLANT,
NATIONAL WASTE &
RECYCLING ASSOCIATION,
KENTUCKY CHAPTER:

R. Kenyon Meyer
J. Tanner Watkins
Young-Eun Park
Louisville, Kentucky

BRIEF FOR APPELLANTS, CITIES
OF SHIVELY, INDIAN HILLS, AND
BELLEWOOD, KENTUCKY:

Finn Cato
Louisville, Kentucky

BRIEF FOR APPELLANTS, CITY
OF JEFFERSONTOWN AND CITY
OF SENECA GARDENS:

Schuyler J. Olt
City Attorney, City of Jeffersontown
Louisville, Kentucky

BRIEFS FOR APPELLANTS,
COMMONWEALTH AND
SECRETARY SNAVELY:

M. Stephen Pitt
S. Chad Meredith
Matthew F. Kuhn
Office of the Governor
Frankfort, Kentucky

John G. Horne, II
Daniel C. Cleveland
J. Michael West
Energy & Environment Cabinet
Frankfort, Kentucky

BRIEF FOR APPELLANT, CITY OF
BANCROFT:

Richard P. Schiller
Terri E. Boroughs
Chapin Elizabeth Scheumann
Louisville, Kentucky