

ORIGINAL

IN THE SUPREME COURT OF OHIO

CINCINNATI CITY SCHOOL DISTRICT
BOARD OF EDUCATION,

Appellant,

v.

JOSEPH W. TESTA, TAX
COMMISSIONER OF OHIO, et al.

Appellees.

Supreme Court Case No. 2013-1426

On Appeal from the Board of Tax Appeals
Board of Tax Appeals Case No. 2012-Q-
1047

REPLY BRIEF OF APPELLANT CINCINNATI CITY SCHOOL DISTRICT
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INTRODUCTION

Appellees City of Cincinnati (“the City”) and the Ohio Tax Commissioner (“Tax Commissioner”) ask this Court to affirm a decision of the Board of Tax Appeals (“BTA”) that applied unconstitutional amendments to exempt the City from paying taxes owed on its Duke Energy Convention Center for tax years 2006 to 2011. Although Appellant Cincinnati Public Schools (“CPS”) stands to lose millions of dollars in property taxes because of the retroactive application of the exemption, the City and the Tax Commissioner argue that CPS should be denied any opportunity to challenge its constitutionality.

Unless this Court reverses the decision of the BTA, the City’s exemption application will be granted based on the unconstitutional amendments to R.C. 5709.084 in Am.Sub.H.B. No. 153, 2011 Ohio Laws File 28 (“Am.Sub.H.B. 153”) and uncodified Section 757.95 (collectively, “the Challenged Provisions”). First, the Challenged Provisions violate the Ohio Constitution’s prohibition against “retroactive laws” by exempting the City from paying taxes on its Duke Energy Convention Center for past tax years 2006, 2007, 2008, 2009, 2010, and 2011. Second, the Challenged Provisions, inserted as a rider into the budget appropriations bill, violate the “single-subject” clause, which safeguards against logrolling in legislation (i.e., the passage of a law not on its own merits, but on the merits of the measure to which it was attached). Third, the Challenged Provisions do not operate “uniformly throughout the state.” Instead, this tax exemption applies to a single parcel of property in Ohio—the City’s convention center.

The Challenged Provisions allow the City to avoid paying back taxes of approximately \$12 million for tax years 2006 to 2011 alone (approximately 65% of property taxes are distributed to CPS). On September 29, 2011, the effective date of the Challenged Provisions, CPS took every conceivable legal step to challenge the constitutionality of the Challenged

Provisions. First, CPS moved to intervene in this proceeding under R.C. 5715.27. At that time, this action was remanded to the Tax Commissioner for consideration of the newly-enacted exemption. Second, CPS also filed a declaratory judgment action and motion for a temporary restraining order in the Franklin County Court of Common Pleas.

The City and the Tax Commissioner moved to dismiss the declaratory judgment action arguing that R.C. 5715.27 was CPS's exclusive forum for challenging the constitutionality of a tax exemption statute. Judge Frye denied the motions to dismiss, but held that these proceedings were a better forum for CPS's constitutional arguments. (Supp. 196-205.) Judge Frye urged the Tax Commissioner to allow CPS to participate, and he required CPS to exhaust its appeals before proceeding with the declaratory judgment action. (Supp. 204.) Notwithstanding Judge Frye's opinion, the Tax Commissioner and BTA have refused to allow CPS to participate in this case, even for the limited purpose of preserving its constitutional arguments for an appeal to this Court. (Appx. 19-20.)

The City and the Tax Commissioner argue that this Court should also dismiss CPS's appeal. Both argue that the Challenged Provisions should apply to the City's 2006 exemption application, even though they were not enacted until 2011. Both also argue that CPS cannot challenge the constitutionality of the Challenged Provisions because CPS's notice to participate was "waived," even though CPS filed its notice to participate on the effective date of the Challenged Provisions. If the 2011 amendments are to be applied in this case, CPS should have the right to participate, and the Court should decide whether the Challenged Provisions violate the Ohio Constitution.

ARGUMENT

I. CPS Has A Right To Participate For The Limited Purpose Of Challenging The Amendments To R.C. 5709.084.

A. CPS did not waive its right to participate.

The Tax Commissioner and the City acknowledge the right of school districts to participate in tax exemption proceedings before the Tax Commissioner and BTA under R.C. 5715.27. The Tax Commissioner and the City further acknowledge the right of school districts to challenge the constitutionality of tax exemption statutes. “Parties to these administrative proceedings also may assert constitutional challenges to the underlying statutes, and may have these constitutional challenges heard—as a matter of right—by the Supreme Court of Ohio.” (City Merit Brief at 9; *see also* Tax Commissioner Merit Brief at 12.)

The Tax Commissioner and the City argue that CPS “waived” the right to challenge the constitutionality of the Challenged Provisions by not filing a notice to participate in the exemption application proceedings in 2006. This argument is illogical. CPS cannot be held to have “waived” a right to challenge legislation five years before it was enacted.

The main case relied upon by the City and the Tax Commissioner is *Strongsville Bd. of Edn. v. Zaino*, 92 Ohio St.3d 488, 2001-Ohio-1269, 751 N.E.2d 996 (2001). In *Strongsville*, the board of education simply missed the deadline for filing a statement of its intent to oppose the merits of the Cleveland Clinic Foundation’s application for an exemption. *Id.* at 488. The Tax Commissioner dismissed the board’s case because it was untimely filed. *Id.* at 489. This Court held the Tax Commissioner’s decision was “reasonable” and found there was no reason to excuse the board of education’s untimely filing. *Id.* at 490.

In contrast, CPS’s request to participate in this case cannot be regarded as untimely filed. The school district in *Strongsville* did not intervene for the purposes of challenging a later-

enacted tax exemption. CPS acknowledges that it did not file a statement to participate in the City's application in 2006. Unlike the school district in *Strongsville*, CPS is not asking this Court to excuse a late filed petition. CPS concedes that it does not have the right to oppose the merits of the City's application based on the law in effect in 2006. When, as here, the General Assembly later enacted an entirely new exemption that retroactively applies just to this case, CPS should have an opportunity to oppose the application. It was unreasonable for the Tax Commissioner and BTA to deny CPS a right to participate in this case for the limited purpose of preserving its argument that the Challenged Provisions violated the Ohio Constitution.

The Tax Commissioner and the City cite *Olmstead Falls Bd. of Educ. v. Tracy*, BTA No. 93-P-1382 & 1383, 1995 Ohio Tax LEXIS 1294 (Nov. 3, 1995), to describe their rationale that the Tax Commissioner and BTA cannot consider cases filed beyond the statutory deadline. (Tax Commissioner Merit Brief at 11; City Merit Brief at 13.) According to the BTA in *Olmstead Falls*, it would be "unfair to a property owner" to re-litigate the issues involved in a tax exemption because "a school district elected to sit idly by or neglected to join in the litigation in the first instance." The rationale articulated by the BTA in *Olmstead Falls* has no application to this case.

CPS's request to participate in this case results in no re-litigation of the merits. Before CPS moved to intervene, the Tax Commissioner issued a Final Determination denying the City's application for an exemption under then-existing law. (Appx. 11-17.) CPS had no interest in re-litigating the Tax Commissioner's decision. After the General Assembly enacted the Challenged Provisions, it was the City and the Tax Commissioner, not CPS, who requested the BTA to remand the case for consideration of the case under R.C. 5709.084 as amended by the Challenged Provisions. (Supp. 179.) CPS filed its request to participate approximately one

month later, on the effective date of the Challenged Provisions. (Supp. 183-188.) To avoid any doubt about CPS's intentions, CPS expressly stated in its filings in the Tax Commission and BTA that its only reason for participating was to create a record for this constitutional challenge. (Supp. 183-88; 206-11.)

Indeed, adopting the Tax Commissioner's and City's proposed rule would result in a far greater inefficiency in tax exemption proceedings. Faced with the prospect of being frozen out of tax exemption proceedings, school districts would need to file objections in every tax exemption case just to preserve a right to participate in the unlikely event an unconstitutional exemption is later enacted.

B. This Court has jurisdiction to declare the Challenged Provisions unconstitutional.

The City and the Tax Commissioner explain at length that CPS's right to participate in exemption proceedings is "conferred by statute." (Tax Commissioner Merit Brief at 13; City Merit Brief at 10.) *See* R.C. 5715.27(C) ("A statement filed in compliance with this division entitles the district to submit evidence and to participate in any hearing on the property and makes the district a party for purposes of sections 5717.02 to 5717.04 of the Revised Code in any appeal of the commissioner's or auditor's decision to the board of tax appeals."). CPS filed a statement to participate in this case on the effective date of the Challenged Provisions. The Tax Commissioner and the City argue that because CPS did not file a statement to participate in 2006, however, the Tax Commissioner, BTA, and this Court lack jurisdiction to hear this case.

Instead of analyzing the Tax Commissioner's jurisdiction under R.C. 5715.27, however, the Tax Commissioner and the City cite cases analyzing the Tax Commissioner's jurisdiction in the Board of Revisions or under other tax statutes. The Tax Commissioner cites *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Edn.* (Tax Commissioner Merit Brief

at 7) and the City cites *DeWeese v. Zaino* (City Merit Brief at 11). *Madison Local* relates to the Board of Revision's jurisdiction under R.C. 5715.29. 137 Ohio St.3d 266, 2013-Ohio-4627, 998 N.E.2d 1132. In *DeWeese*, this Court considered the BTA's jurisdiction under R.C. 5717.02 because the appellant county auditor filed an improper notice of appeal. 100 Ohio St.3d 324, 2003-Ohio-6502, 800 N.E.2d 1. Yet the Tax Commissioner concedes that CPS filed a proper notice of appeal under R.C. 5717.02. (Tax Commissioner Merit Brief at 21, n.5.)

A careful analysis of R.C. 5715.27 confirms that there was no jurisdictional bar to the Tax Commissioner or BTA allowing CPS to participate. Unlike the statutes cited by the Tax Commissioner and the City, R.C. 5715.27 gives the Tax Commissioner and the county auditor express discretion to allow a school district to participate in exemption proceedings, even where the school district has not filed a timely notice to participate: "The commissioner or auditor may extend the time for [a school district] to file a statement under division (C) of this section." R.C. 5715.27(D). Under the plain language of R.C. 5715.27, the Tax Commissioner could have exercised jurisdiction over CPS's request to participate. Given that CPS filed its notice to participate contemporaneously with the City and the Tax Commissioner's joint motion to remand the case from the BTA for the sole reason of considering the newly-enacted Challenged Provisions, it was unreasonable to refuse to allow CPS to participate for the limited purpose of preserving its constitutional arguments.

C. The City's and Tax Commissioner's alternative arguments are without merit.

The Tax Commissioner goes one step further than simply arguing there is no jurisdiction in this forum. The Tax Commissioner asserts that CPS does not have a right to challenge the constitutionality of the Am.Sub.H.B. 153 amendments in any forum: "no tribunal can take jurisdiction over the Board of Education's claims outside of this exclusive set of special statutory

proceedings.” (Tax Commissioner Merit Brief at 14.) Judge Frye rejected this “cribbed view” when he denied the motions to dismiss filed by the City and Tax Commissioner in CPS’s declaratory judgment action. (Supp. 201.) His decision is not at issue in this case. Moreover, the Tax Commissioner’s position that no forum has jurisdiction to consider CPS’s constitutional arguments is untenable. As Judge Frye observed, “no entity [other than CPS] has such an obvious interest” in challenging the constitutionality of the Am.Sub.H.B. 153 amendments. (Supp. 201.) If the Tax Commissioner’s argument is accepted, tax exemption statutes would be immune from constitutional challenge so long as they are enacted after a taxpayer files an application that is not challenged by a school district. If this Court determines that the Challenged Provisions are unconstitutional, it has the authority to hold that they should not be applied in this case.

While the Tax Commissioner argues that CPS cannot raise its constitutional challenges in any forum, the City argues that CPS’s arguments can be raised in response to the exemption application that the City refiled in 2011. (City Merit Brief at 2, 6-7, 18.) This Court should not be misled by the City’s self-serving argument. If this Court declines to consider CPS’s arguments in this case, it will result in the retroactive application of the Challenged Provisions to tax years 2006, 2007, 2008, 2009, 2010, and 2011. The City will be relieved of paying millions of dollars in taxes for six years, a substantial portion of which would be paid to CPS. The retroactive application of this tax exemption, particularly where it was enacted specifically to reverse a Tax Commissioner’s decision under pre-existing law, is the basis of CPS’s constitutional challenge.

II. CPS's Constitutional Arguments Should Be Considered In This Case. The Notice Of Appeal Provided Sufficient Notice Of CPS's Constitutional Challenge, And There Is No Need For The Development Of An Evidentiary Record In The BTA.

The Tax Commissioner and the City mistakenly argue that this Court lacks jurisdiction to consider CPS's constitutional claims because the notice of appeal did not comply with R.C. 5717.04. That statute provides that a notice of appeal from the BTA "shall set forth the decision of the board appealed from and the errors therein complained of." The notice of appeal stated, in part, as follows:

The Board of Tax Appeals Decision and Order denying the City of Cincinnati School District Board of Education's request for intervention for the limited purpose of establishing a record before the Board to challenge the constitutionality of 2011 Am.Sub.H.B. No 153 that added language to R.C. 5709.084 and uncodified section 757.95 was unreasonable and unlawful.

(Appx. 9.) The notice thus informed this Court, the Tax Commissioner, and the City that CPS intended to attack the constitutionality of the specific legislation identified, and that the BTA had erred in denying CPS's request to intervene to do so. To be sure, the notice of appeal could have added that the specific legislation referenced is unconstitutional. But that much is implicit in the notice, which plainly indicates CPS's intention to challenge the constitutionality of the legislation.

Moreover, the error of the BTA—which has no authority to rule on the constitutionality of legislation, *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229, 231, 520 N.E.2d 188 (1988)—was not in failing to rule the Challenged Provisions unconstitutional. The error of the BTA was refusing to permit CPS to participate in the proceeding so that CPS could argue in this Court that the legislation is unconstitutional—which is exactly what the notice of appeal described. *See Buckeye Int'l, Inc. v. Limbach*, 64 Ohio St.3d 264, 268, 595 N.E.2d 347 (1992)

(“In resolving questions regarding the effectiveness of a notice of appeal, we are not disposed to deny review by a hypertechnical reading of the notice.”).

In all events, this Court has “recognized an exception” to the rule requiring a notice of appeal from a BTA decision to set forth the “errors therein complained of” *Global Knowledge Training, LLC v. Levin*, 127 Ohio St.3d 34, 2010-Ohio-4411, 936 N.E.2d 463, ¶¶ 15-16 (2010). An appellant in this Court may argue that a tax statute is “unconstitutional on its face” without having ever raised that issue before the Tax Commissioner or the BTA. *Id.* (quoting *Cleveland Gear*, 35 Ohio St.3d 229, syllabus ¶ 2); *see also S.S. Kresge Co. v. Bowers*, 170 Ohio St. 405, 166 N.E.2d 139 (1960) (same). The *Cleveland Gear / Kresge* exception is applicable here. The statute here is unconstitutional on its face, and this Court may so hold even if that issue had never been raised before the Commission (though it was) or the BTA (though it was) or in the notice of appeal (though it was).

The Tax Commissioner argues that a record must be established in the BTA because CPS’s retroactivity argument depends on CPS’s ability to “demonstrate that the City was not entitled to exemption under the old laws.” (Tax Commissioner Merit Brief at 24.) This is ironic considering the Tax Commissioner’s March 2011 Final Determination holding that the City was not entitled to an exemption under then-existing law. (Appx. 3-7.) The Tax Commissioner’s revised Final Determination in February 2012 relied solely on the Challenged Provisions. (Appx. 19.) To reverse, there is no need for the Court to decide whether or not the City was entitled to an exemption under pre-existing law.

The essential facts needed for this Court to declare the Challenged Provisions unconstitutional are already in the BTA record and a remand would serve no purpose. There can be no serious dispute that the Challenged Provisions apply to the City’s convention center and to

no other parcel of property in Ohio. In the Franklin County proceedings, the Tax Commissioner, the City, and CPS agreed to stipulations of relatively simple facts including the legislative history of Am.Sub.H.B. 153, the procedural history of the City's application, and the population of Hamilton County according to the 2010 decennial census. There is no reason this Court cannot rely on these same stipulations, which were cited by all parties in their merits briefs and included as a part of the record in the BTA. (Supp. 1-7.)

Finally, even if the notice of appeal were construed narrowly to exclude any constitutional issues, and even if the *Cleveland Gear / Kresge* exception does not apply, CPS would still be able to raise its constitutional arguments eventually. In that event, if the Court agrees that CPS should be permitted to participate in the proceeding, the correct result would be to remand to the BTA to allow the creation of a record for challenging the statute, followed by a subsequent appeal to this Court after CPS becomes a formal party to the proceedings and the parties have created that record. The *Cleveland Gear / Kresge* exception, however, allows this Court to reach the constitutional issues now.

III. The Challenged Provisions Are Unconstitutional.

A. The Challenged Provisions Violate The Constitutional Prohibition Against "Retroactive Laws."

A tax exemption that applies retroactively violates the prohibition against "retroactive laws" in Article II, Section 28 of the Ohio Constitution. Specifically, Section 757.95 of Am.Sub.H.B. 153 is unconstitutionally retroactive because it applies a new exemption to pending cases relating to prior tax years.

Uncodified section 757.95 is indistinguishable¹ from the uncodified provision invalidated as a “retroactive law” in *Cincinnati Sch. Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 91 Ohio St.3d 308, 2001-Ohio-46, 744 N.E.2d 751 (2001) (the “*Mirge*” decision) and *Rubbermaid, Inc. v. Wayne Cty. Aud.*, 95 Ohio St.3d 358, 2002-Ohio-2338, 767 N.E.2d 1159 (2002). In *Mirge*, the Court determined that the uncodified provision was unconstitutionally retroactive to the extent it permitted the filing of a new valuation complaint for past tax years. And in *Rubbermaid*, the Court held that the statute was retroactive when applied to a complaint filed before the enactment of the amendment, but still pending in the BTA. *Id.* at ¶ 2 (“Before the BTA decided whether to dismiss [Rubbermaid’s] case, the General Assembly enacted 1998 Sub.H.B. No. 694.”). The Tax Commissioner concedes that *Mirge* and *Rubbermaid* were correctly decided, but fails to explain how to distinguish the two uncodified provisions.

¹ Uncodified section 757.95 (Supp. 178) provides:

Section 5709.084 of the Revised Code, as amended by this Act, is remedial in nature and applies to the tax years at issue in any application for exemption from taxation or any appeal from such an application pending before the Tax Commissioner, the Board of Tax Appeals, any Court of Appeals, or the Supreme Court on the effective date of this Act and to the property that is the subject of any such application or appeal.

(Supp. 178.)

The uncodified provision invalidated in *Mirge* and *Rubbermaid* provides:

The amendment by this act of sections 5715.13 and 5715.19 of the Revised Code is remedial legislation and applies to any complaint that was timely filed under either of these sections respecting valuations for tax year 1996 or 1997, and to complaints filed for tax years 1998 and thereafter.”

Section 3 of Sub.H.B.No. 694, eff. March 30, 1999, 147 Ohio Laws, Part III, 5373; *see also Mirge*, 91 Ohio St.3d at 311 (quoting Section 3 in full).

The Tax Commissioner argues that the Challenged Provisions may be applied because the City's exemption application was "still pending" when the General Assembly enacted Am.Sub.H.B. 153 in July 2011. (Tax Commissioner Merit Brief at 34.) This exact argument was considered and rejected by this Court in *Rubbermaid*. The Court held that the prohibition against "retroactive laws" barred the BTA from applying the new statute to past tax years: "Although this case is distinguishable [from *Mirge*] in that the complaint at issue is an original complaint rather than a refiled complaint, we agree with appellants that the rationale expressed in *Mirge* applies with equal force to the instant situation." *Id.* at ¶ 9.

The Tax Commissioner's lead case, *City of Euclid v. Zangerle*, 127 Ohio St. 91 (1933), has no application here. (Tax Commissioner Merit Brief at 33.) In *Zangerle*, the Court held that the General Assembly had a right prospectively to change the distribution of tax revenues to political subdivisions: "No governmental subdivision of the state has any vested right, at least until distribution has been made, in any taxes levied and in the process of collection." *Id.* The apportionment of tax revenues was not altered by the Challenged Provisions, and CPS does not assert in this case any vested right in the distribution of tax revenues.

By contrast, CPS (and the City) have a vested right to have a tax exemption granted or denied under the law in effect during the tax year at issue in the application. This Court "regards as settled the general proposition that the taxable or exempt status of property should be determined as of the tax lien date, which is January 1 of whatever tax year is at issue." *Episcopal School of Cincinnati v. Levin*, 117 Ohio St.3d 412, 2008-Ohio-939, 884 N.E.2d 561, ¶ 23 (2008) (rejecting the Tax Commissioner's theory that an exemption should not be granted if facts occurring after the tax lien date vitiated the property owner's entitlement to a tax exemption). Consider the impact to taxpayers, including the City, if the General Assembly

retroactively eliminated a tax exemption relied upon in a prior tax year. CPS respectfully submits the prohibition against “retroactive laws” should apply equally in both instances. The General Assembly has the authority to create new exemptions, or abolish them, but should not be permitted to apply the changes to prior tax years.

Finally, the Tax Commissioner cannot seriously contend that it would be “unfair to expect the City to come up with” the funds to pay its \$12 million tax bill if the exemption is not applied retroactively. The City should be required to pay the taxes that were required by the law in existence when the taxes accrued. As of March 2011, the Tax Commissioner determined that the City had no right to an exemption under then-existing law. (Appx. 11-17.) The City cannot object to paying taxes by saying that it anticipated its tax liability would be changed retroactively.

Finally, the Tax Commissioner’s statement that CPS will receive a “windfall” because it “never sought” tax revenues for the convention center is equally suspect and flips the statutory tax exemption process upside down. (Tax Commissioner Merit Brief at 36.) Taxpayers have the burden of proving they are entitled to an exemption, whether or not the school district participates in the exemption proceedings. CPS had no duty to “seek” property taxes from the City.

B. The Challenged Provisions Violate The “Single-Subject” Requirement.

Article II, Section 15(D) of the Ohio Constitution safeguards against “logrolling,” or the last-minute attachment of a provision ensuring adoption of a provision “not on its own merits, but on the merits of the measure to which it [was] attached.” *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 14-17, 711 N.E.2d 203 (1999). The enactment of the Challenged Provisions represents exactly the type of “logrolling” that the “single-subject” clause was intended to prevent. As

Judge Frye noted in his opinion, the amendments to R.C. 5709.084 “materialized just in time to be tucked into the last conference committee version of the biennial state budget bill.” (Supp. 196.) He noted that the two sentences comprising the Challenged Provisions were inserted into a “massive 3,264-page document” and “surely were inconspicuous to most legislators.” (*Id.*)

The Challenged Provisions are nothing more than a “legislative fix,” lobbied for by the City to relieve it from paying taxes on its convention center just months after the Tax Commissioner denied the City’s application for an exemption under then-existing law. The Tax Commissioner argues that the Challenged Provisions should be read together with the “sweeping changes” in the budget appropriations bill that were made “to school district funding.” (Tax Commissioner Merit Brief at 28.) Citing the Final Bill Analysis, the Tax Commissioner implies that the decision to “remove one source of school district funding (real property tax on certain convention centers)” was tied to the other school funding proposals. (Tax Commissioner Merit Brief at 29.) It is surprising then that the Tax Commissioner cites not a single reference to the legislative record that provides this rationale, much less a description of the amount of money that the City stood to save and that CPS would lose or any explanation as to why this rationale applied only to a single school district in the state. Without such information, it is not credible for the Tax Commissioner to claim that the General Assembly made an informed decision to balance the City’s and CPS’s interests. It is doubtful that many legislators even knew this provision had been added considering the proposal was not included in the versions of the appropriations bill passed by the House or the Senate. (Supp. 32.)

Budget appropriation bills are not immune from challenge under the single-subject rule. Indeed, “the danger of riders is especially evident when a bill as important and likely of passage as an appropriations bill is concerned.” *Riverside v. State*, 190 Ohio App.3d 765, 2010-Ohio-

5868, 944 N.E.2d 281, ¶ 40 (10th Dist.). This Court has “flatly rejected” the notion that any rider can be tacked on to a state budget bill merely because it “arguably impacts the state budget, even if only tenuously.” *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, ¶ 33. While the Challenged Provisions greatly impact the finances of the City and CPS, they were not enacted for any discernable reason related to the state budget. The Court should invalidate the Challenged Provisions under the “single-subject” provision.

C. The Challenged Provisions Do Not Operate Uniformly Throughout The State.

The Challenged Provisions violate Article II, Section 25 of the Ohio Constitution, which states, “All laws, of a general nature, shall have a uniform operation throughout the state.” This Court has said that “the purpose of the Uniformity Clause is to prohibit the enactment of special or local legislation.” *See, e.g., Austintown Twp. Bd. of Trustees v. Tracy*, 76 Ohio St.3d 353, 356, 667 N.E.2d 1174 (1996). In this case, there is no dispute that at the time the Challenged Provisions were enacted, the tax exemption applied to the City’s convention center and not to any other property in Ohio. (Supp. 33.) The Challenged Provisions constitute “special or local legislation,” because they were enacted specifically to relieve the City’s tax liability on the convention center just months after the Tax Commissioner ruled that it was not exempt.

According to the Tax Commissioner’s analysis, it would violate the Uniformity Clause for the General Assembly to enact a law stating, “The Duke Energy Convention Center in Cincinnati is exempt from taxation.” On the other hand, because the Challenged Provisions present a possibility, however unlikely, that they could apply in the future, the Tax Commissioner reasons that the exemption has a “universal application.” (Tax Commissioner Merit Brief at 32.)

The Tax Commissioner cites a case in which this Court upheld a population threshold. See *City of East Liverpool v. Columbiana Cty. Budget Comm.*, 114 Ohio St.3d 133, 136, 2007-Ohio-3759, 870 N.E.2d 705 (2007). The Tax Commissioner also relies on *State ex rel. Zupancic v. Limbach*, 58 Ohio St. 3d 130, 138, 568 N.E.2d 1206 (1991), which upheld a special property tax distribution formula that applied to a single power plant in the state. In each case, however, the party defending the statute offered a rational explanation for why the General Assembly included the limitations. Here, the Tax Commissioner offers no explanation for the General Assembly's decision to limit this tax exemption to counties with a population greater than 700,000 but less than 900,000. Moreover, there is no explanation for why the exemption is limited to convention centers in the largest city of the county. The obvious (and only) reason for including the population thresholds was to limit the statute's application to Cincinnati's convention center. The Challenged Provisions are exactly the type of "special or local legislation" that the Uniformity Clause was intended to prevent.

CONCLUSION

For the foregoing reasons, CPS respectfully submits that this Court should reverse the decision of the Tax Commissioner and BTA for refusing to allow CPS to participate in this case. The Court should invalidate the Challenged Provisions because they violate the "retroactive laws," "single-subject," and "uniformity" provisions of the Ohio Constitution. This Court should overrule the Tax Commissioner's decision to grant the City's application for a tax exemption for the Convention Center, or direct the Tax Commissioner and BTA to consider the City's application only in light of exemptions available when the City filed its application for an exemption in 2006.

Respectfully submitted,

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authorization)

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