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The Centennial Shuffle: City of Enid v. Public Employees Relations Board: How the Oklahoma Supreme Court Upheld a Century of Population-Based Classifications While Foreshadowing Another Century of Confusion Concerning the Laws that Govern Them

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The Centennial Shuffle: *City of Enid v. Public Employees Relations Board*: How the Oklahoma Supreme Court Upheld a Century of Population-Based Classifications While Foreshadowing Another Century of Confusion Concerning the Laws that Govern Them*

*Laws and institutions, like clocks, must be occasionally cleansed, and wound up, and set to true time.*¹

— Henry Ward Beecher
Abolitionist, Clergyman, and Orator
(1813-1887)

I. Introduction

On March 14, 2006, the Oklahoma Supreme Court chose to rehear² the case of *City of Enid v. Public Employees Relations Board*.³ By doing so, the court revisited the issue of whether collective bargaining agreements, authorized by title 11, section 51-201 of the *Oklahoma Statutes*,⁴ for eleven of Oklahoma's largest municipalities constituted a general law or a prohibited law within the meaning of Oklahoma's special law prohibitions.⁵ With the shift of Justice Winchester's vote,⁶ the Oklahoma Supreme Court issued a five-to-four, per curiam opinion upholding the constitutionality of the Oklahoma Municipal Employee Collective Bargaining Act⁷ as a permissible, general law under

* Kristopher Dale Jarvis serves as a Note Editor of the Oklahoma Law Review and was recognized with the 2006-2007 Gene and Joann Sharp Best Case Note Award. First, the author would like to thank his parents, Terry and Katie Jarvis, for the opportunities that their sacrifices have provided him. Further, the author would like to acknowledge the contributions of Professors Srividhya Ragavan, David Swank, and Rick Tepker to this piece and to the author's success in the field of law. The author also extends a special thanks to Governor George Nigh, who inspired and cultivated the author's love for Oklahoma through the example of his life and his invaluable friendship. Finally, this note is dedicated to the memory of Captain Brian Edward Wheeler (USA). Job well done Captain, be thou at peace.

1. HENRY WARD BEECHER, LIFE THOUGHTS 129 (Boston, Phillips, Sampson & Co. 1858).
2. See OKLA. SUP. CT. R. 1.13 (explaining the process of rehearing).
3. 2006 OK 16, 133 P.3d 281 (per curiam).
4. See 11 OKLA. STAT. § 51-201 (Supp. 2006).
5. *City of Enid*, ¶ 7, 133 P.3d at 285.
6. Compare *City of Enid*, ¶ 26, 133 P.3d at 290 (showing that Vice Chief Justice Winchester concurred with Justices Lavender, Hargrave, Kauger, and Edmondson), with *City of Enid v. Pub. Employees Relations Bd.*, No. SD-101,729, 2005 Okla. LEXIS 57, at *27 (Okla. July 5, 2005) (showing that Vice Chief Justice Winchester originally opposed those same justices), *withdrawn and substituted by* 2006 OK 16, 133 P.3d 281 (per curiam).
7. 11 OKLA. STAT. §§ 51-200 to -220.

article 5, sections 46 and 59 of the Oklahoma Constitution.⁸ Whereas the first opinion demanded an unprecedented universality in municipal legislation, the second opinion supplanted this notion with a return to legislative deference.

Fundamentally, the decision in the rehearing of *City of Enid* substantiated the legislature's capacity to enact legislation for Oklahoma municipalities based on population. Furthermore, the case invalidated the previous majority's misconception that Oklahoma's special law proscriptions require "state legislation regulating the affairs of cities to embrace all cities in the state."⁹ In upholding this statute, the Oklahoma Supreme Court honored the intent of the state's constitutional framers, galvanized the constitutional inquiry regarding special law prohibitions on the classification contained within challenged legislation, and employed the appropriate test to find that the Oklahoma Municipal Employee Collective Bargaining Act represented a general law. Nevertheless, by confusing the demarcation between challenges under article 5, section 46 and article 5, section 59 and by issuing an opinion limited in scope and quality, the *City of Enid* court failed to capitalize on a seminal opportunity to recast Oklahoma special law jurisprudence and, consequently, rendered a just result at the expense of clarity and future utility.

This note concentrates on the strengths and weaknesses of the *City of Enid* decision in six parts. Part II recounts the evolution of special law prohibitions and state case law addressing such prohibitions prior to *City of Enid*. Part III outlines the facts of *City of Enid* and details the Oklahoma Supreme Court's findings and reasoning. Part IV proffers an analysis of the court's findings and rationale. Part V discusses the impact of this decision on Oklahoma constitutional law and the separate branches of Oklahoma government. This note concludes with Part VI.

II. Law Prior to *City of Enid* v. Public Employees Relations Board

A. *The Evolution of Constitutional Prohibitions Against Special Laws*

The doctrine of special law prohibitions is best illustrated from a historical perspective. With the end of the Civil War, the advent of the modern industrial age, and widespread perceptions of collusion between influential corporations and state legislatures, tensions flared across the national political landscape.¹⁰ The "concentration of money held by private, powerful

8. *City of Enid*, ¶ 26, 133 P.3d at 290.

9. *Id.* ¶ 6, 133 P.3d at 306 (Taylor, J., dissenting).

10. Donald Marritz, *Making Equality Matter (Again): The Prohibition Against Special Laws in the Pennsylvania Constitution*, 3 WIDENER J. PUB. L. 161, 185-86 (1993) (explaining the origins of Pennsylvania's constitutional prohibition against special laws and offering a detailed account of the mores that helped shape its course).

corporations exerted a disproportionate, if not all-consuming, influence on the legislature,” leading commentators of the period to characterize state government as nothing more than an agent reacting to dominant financial interests.¹¹ Believing that the only avenue to halt legislative misbehavior “was to lead the Legislature, if possible, out of temptation, by taking from it everything it had to sell,”¹² many states incorporated prohibitions against special and local laws into their constitutions.¹³

The concept of special law prohibitions emerged from the same paradigm of equality law that produced equal protection.¹⁴ Though special law proscriptions primarily concerned legislative malfeasance, they also “reflect[ed] a concern for equal treatment under the law.”¹⁵ Where equal protection sought to “eradicate legal disabilities resulting from slavery,” special law prohibitions sought to ameliorate inequities in the areas of “economics and social welfare.”¹⁶ Special and local law proscriptions cast a broad stroke to further these aims, as evidenced by the first federal statute concerning special laws, which specifically enumerated twenty-four forbidden areas of legislation in the territories.¹⁷ Many states, including Oklahoma, built

11. *Id.* at 186.

12. *Id.* at 190.

13. See Amasa M. Eaton, *Recent State Constitutions*, 6 HARV. L. REV. 109, 122 (1892) (discussing the proliferation of state legislative authority into the subdivisions of the states, and how this incursion led to a burgeoning response within new state constitutions against special and local laws made by the state legislature).

14. See generally Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX. L. REV. 1195 (1985) (discussing the emergence of the equality doctrine, equal protection, and prohibitions against special laws in a number of state constitutions).

15. *Id.* at 1209.

16. See Marritz, *supra* note 10, at 184-85.

17. See Act of July 30, 1886, ch. 818, § 1, 24 Stat. 170, 170 (codified at 48 U.S.C. § 1471 (1886)), *repealed by* Act of Dec. 8, 1983, Pub. L. No. 98-213, § 16(w), 97 Stat. 1459, 1463. The act provided in pertinent part

[t]hat the legislatures of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases, that is to say:

- Granting divorces
- Changing the names of persons or places.
- Laying out, opening, altering and working roads or highways.
- Vacating roads, town-plats, streets, alleys, and public grounds.
- Locating or changing county seats.
- Regulating county and township affairs.
- Regulating the practice in courts of justice.
- Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables.
- Providing for changes of venue in civil and criminal cases.

on this federal statute to create their respective bans on special and local laws.¹⁸

Incorporating cities, towns, or villages, or changing or amending the charter of any town, city, or village.
 For the punishment of crimes or misdemeanors.
 For the assessment and collection of taxes for Territorial, county, township, or road purposes.
 Summoning and impaneling grand or petit jurors.
 Providing for the management of common schools.
 Regulating the rate of interest on money.
 The opening and conducting of any election or designating the place of voting.
 The sale or mortgage of real estate belonging to minors or others under disability.
 The protection of game or fish.
 Chartering or licensing ferries or toll bridges.
 Remitting fines, penalties, or forfeitures.
 Creating, increasing, or decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed.
 Changing the law of descent.
 Granting to any corporation, association, or individual the right to lay down railroad tracks, or amending existing charters for such purpose.
 Granting to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever.
 In all other cases where a general law can be made applicable, no special law shall be enacted in any of the Territories of the United States by the Territorial legislatures thereof.

Id.

18. See OKLA CONST. art. 5, § 46. The section provides that [t]he Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing:
- The creation, extension, or impairing of liens;
 - Regulating the affairs of counties, cities, towns, wards, or school districts;
 - Changing the names of persons or places;
 - Authorizing the laying out, opening, altering, or maintaining of roads, highways, streets, or alleys;
 - Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other state;
 - Vacating roads, town plats, streets, or alleys;
 - Relating to cemeteries, graveyards, or public grounds not owned by the State;
 - Authorizing the adoption or legitimation of children;
 - Locating or changing county seats;
 - Incorporating cities, towns, or villages, or changing their charters;
 - For the opening and conducting of elections, or fixing or changing the places of voting;
 - Granting divorces;

B. Oklahoma Special and Local Law Prohibitions

The framers of the Oklahoma Constitution drew from a complex mixture of federal, state, and territorial sources to inform their construction of special and local law prohibitions. The federal statute of 1886 banning special laws in U.S. territories provided the textual blueprint for Oklahoma's special and local law prohibitions,¹⁹ while original understanding was shaped locally by state and territorial judiciaries crafting the borders between general and special laws.²⁰ Contemporary state courts defined general laws as legislation

Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

Changing the law of descent or succession;

Regulating the practice or jurisdiction of, or changing the rules of evidence in judicial proceedings or inquiry before the courts, justices of the peace, sheriffs, commissioners, arbitrators, or other tribunals, or providing or changing the methods for the collection of debts, or the enforcement of judgments or prescribing the effect of judicial sales of real estate;

Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, or constables;

Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

Fixing the rate of interest;

Affecting the estates of minors, or persons under disability;

Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

Exempting property from taxation;

Declaring any named person of age;

Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from due performance of his official duties, or his securities from liability;

Giving effect to informal or invalid wills or deeds;

Summoning or impaneling grand or petit juries;

For limitation of civil or criminal actions;

For incorporating railroads or other works of internal improvements;

Providing for change of venue in civil and criminal cases.

Id.

19. Compare *id.*, with § 1, 24 Stat. at 170.

20. See *Chi. Terminal Transfer R.R. v. Greer*, 79 N.E. 46, 47-48 (Ill. 1906) (holding that an act providing for the establishment of city courts in municipalities with at least three thousand inhabitants was not unconstitutional class legislation); *State ex rel. Hargrave v. Reitz*, 62 Ind. 159 (1878) (sustaining an act providing salary increases for judges in counties with a population greater than forty thousand); *Hanlon v. Bd. of Comm'rs*, 53 Ind. 123 (1876) (upholding an act that increased salaries for the county auditor in counties where the population exceeded fifteen thousand); *Ladd v. Holmes*, 66 P. 714, 717-18 (Or. 1901) (sustaining a statute that enacted specific provisions for electing delegates to political conventions only in cities of the state containing a population of ten thousand or more); *Peterson v. State*, 56 S.W. 834, 834-

premised upon rational classifications rather than universal inclusion.²¹ One court held that to require general laws to operate upon all things or all persons of the state would leave the state with few general laws, if any of that class.²² Another court ruled that a classification for purposes of general legislation could properly be challenged upon a showing that its premise was “purely arbitrary, unreasonable, unjust, or capricious.”²³ Drawing on this backdrop, Oklahoma’s territorial judiciary also contrasted general laws from special laws, which the territorial judiciary understood as enactments that related to and distinguished “one section from others of a general class.”²⁴ The territorial court defined a local law as a particular category of special law encompassing “such legislation as relates to only a portion of the territory or state, or a part of its people, or to a fraction of the property of its citizens.”²⁵ The confluence of these national, state, and territorial influences produced article 5, sections 32, 46, and 59 of the Oklahoma Constitution, which safeguard the citizens of Oklahoma against impermissible special and local legislation.²⁶

Article 5, section 46 of the Oklahoma Constitution provides the cornerstone of the state’s prohibitions against special and local laws.²⁷ This section demonstrates a close succession from federal special law statutes and disallows the passage of twenty-eight distinct classes of special and local laws, including a ban against state encroachment into city and county affairs.²⁸ The significance of the similarities between section 46 and prior federal special law prohibitions increased when tempered by the territorial court’s assessment that the federal statute controlling the territory operated as “an absolute prohibition on the legislature’s enacting any special law in reference to the subjects enumerated.”²⁹ Consequently, in the subject areas specifically

35 (Tenn. 1900) (upholding an act to prevent stock running in counties having a population of fifty-nine thousand or more according to a federal census).

21. See *State ex rel. Van Riper v. Parsons*, 40 N.J.L. 1 (N.J. 1878) (holding that the term “general law” does not necessitate universality in the subject or operation of the law).

22. *Brooks v. Hyde*, 37 Cal. 366, 375 (1869) (upholding a state ordinance allowing for separate treatment of different types of title).

23. *State v. Hogan*, 58 N.E. 572, 573 (Ohio 1900) (upholding a state “tramp law” which criminalized assault by a vagrant upon a citizen as not being class-based or special legislation).

24. *Territory ex rel. Taylor v. Sch. Dist. No. 83*, 1901 OK 22, ¶ 9, 64 P. 241, 241.

25. *Id.*

26. OKLA. CONST. art. 5, §§ 32, 46, 59.

27. It should be noted that Oklahoma’s framers not only incorporated the entire corpus of the existing federal statute, but also added additional provisions. See *supra* notes 17-19 and accompanying text.

28. See OKLA. CONST. art. 5, § 46.

29. *Guthrie Daily Leader v. Cameron*, 1895 OK 71, ¶ 30, 41 P. 635, 638.

enumerated in article 5, section 46, the command against the passage of special and local laws continues to be understood as “unequivocal and unqualified.”³⁰

Two corollary sections complete the treatment of special and local laws in the Oklahoma Constitution.³¹ Article 5, section 59 of the Oklahoma Constitution expands the ban on special laws beyond the enumerated fields of article 5, section 46 and declares that all other “[l]aws of a general nature shall have a uniform operation throughout the State, and where a general law can be made applicable, no special law shall be enacted.”³² Consequently, even legislation not expressly forbidden by Oklahoma’s special law prohibitions will be invalidated if a similar general law could be fashioned. Nevertheless, recognizing that “the law must, in dealing with persons and property and governmental divisions, group persons or objects having similar attributes into classes,”³³ the Oklahoma Constitution allows for the enactment of special laws when a general law cannot be crafted.³⁴ Pursuant to article 5, section 32, a special law may be considered by the legislature once a four-week publication period has elapsed and verification has been presented to the Oklahoma Secretary of State.³⁵ This procedural exception for special laws operates outside the purview of the specific prohibitions otherwise articulated in the constitution and in no way contravenes the forbidden categories of article 5, section 46.³⁶ Accordingly, while the constitution permits the legislature to pass special laws when the subject and purpose of the legislation cannot be dealt with by general law,³⁷ the unqualified barriers of article 5, section 46 remain inviolable.³⁸

C. Oklahoma Case Law Prior to City of Enid

Oklahoma courts have toiled with the application of the constitutional prohibition against special laws and local laws.³⁹ Although recent decisions

30. *City of Enid v. Pub. Employees Relations Bd.*, 2006 OK 16, ¶ 2, 133 P.3d 281, 303 (Opala, J., dissenting).

31. *See* OKLA. CONST. art. 5, §§ 32, 59.

32. *Id.* § 59.

33. *State v. Hogan*, 58 N.E. 572, 573 (Ohio 1900).

34. *See* OKLA. CONST. art. 5, § 59.

35. *Id.* § 32.

36. *See Reynolds v. Porter*, 1988 OK 88, ¶¶ 16-17, 760 P.2d 816, 822-23.

37. *Id.* ¶ 16, 760 P.2d at 822.

38. *Id.* ¶ 17, 760 P.2d at 822-23.

39. *See generally* *Hamilton v. Oklahoma City*, 1974 OK 109, ¶¶ 4-18, 527 P.2d 14, 15-17 (upholding a state law that made cities with populations over two hundred thousand liable for torts arising from government action, even though it affected only Oklahoma City); *Barrett v. Bd. of County Comm’rs*, 1939 OK 68, ¶¶ 10-20, 90 P.2d 442, 445-47 (striking an additional

cast doubt on the value of existing case law,⁴⁰ the development of special law jurisprudence in Oklahoma has exhibited a degree of consistency.⁴¹ From the earliest days of statehood, the Oklahoma judiciary manifested a desire to simultaneously uphold the competing interests of special law prohibitions and judicial deference.⁴² To accomplish this, case law prior to *City of Enid* often addressed all the relevant constitutional challenges within one holding.⁴³ Despite the confusion promulgated by this method of analysis, a careful examination of precedent reveals consistent holdings on both section 46 and section 59 challenges.

1. Challenges to Article 5, Section 46 of the Oklahoma Constitution

Since territorial times, the Oklahoma judiciary has understood the prohibition against enumerated local and special laws to be absolute.⁴⁴ As a result, inquiries into legislation covering these forbidden areas inherently revolved around characterizing the legislation as either permissibly general or impermissibly special.⁴⁵ Should the determination be made that the legislation at issue is a general law then the inquiry ends and the legislation passes muster under article 5, section 46.⁴⁶ Thus, the dispositive question concerns the definition of a special law.

state levy on land affected by prior federal judgments); *Key v. Donnell*, 1924 OK 996, ¶ 2, 231 P. 546, 547-48 (finding unconstitutional a law that gave cities over ninety thousand in population, which affected only Oklahoma City, the same amount of judges as cities having between thirty-five thousand and forty-five thousand in population); *Burks v. Walker*, 1909 OK 317, ¶ 1, 109 P. 544, 544 (upholding an act of the legislature establishing a county court for each county of the state having a population of thirty thousand and a city therein of eight thousand).

40. *Reynolds*, ¶ 16, 760 P.2d at 822 (recognizing that both the courts and attorneys have confused the requirements of article 5, sections 46 and 59 when a statute is simultaneously attacked under both provisions); *see also* *Maule v. Indep. Sch. Dist. No. 9*, 1985 OK 110, 714 P.2d 198.

41. It should be noted that in *City of Enid*, the Oklahoma Supreme Court cited no less than twenty-eight of its own prior decisions concerning special and local laws in its efforts to bolster the rational-relationship test articulated in *Burks*. *City of Enid v. Pub. Employees Relations Bd.*, 2006 OK 16, ¶ 15 n.7, 133 P.3d 281, 287 n.7 (per curiam). *See generally* *Burks v. Walker*, 1909 OK 317, ¶ 23, 109 P. 544, 549 (providing the rational-relationship test for determining whether a law that operates on a class of people is general in nature).

42. *See Burks*, ¶ 23, 109 P. at 549.

43. *See Reynolds*, ¶ 16, 760 P.2d at 822. Special laws can, and generally are, challenged under both sections 46 and 59 of article 5 of the Oklahoma Constitution.

44. *See Guthrie Daily Leader v. Cameron*, 1895 OK 71, ¶ 30, 41 P. 635, 638.

45. *See Reynolds*, ¶¶ 13-17, 760 P.2d at 821-23.

46. *See* OKLA. CONST. art. 5, § 46.

In the seminal case of *Key v. Donnell*, the Oklahoma Supreme Court revisited the body of its previous judgments to announce a definitive approach to differentiating permissible general from impermissible special and local legislation.⁴⁷ In *Key*, a statute rife with specific population parameters sought to reduce the number of municipal judges in Oklahoma City to a level lower than other cities half its size.⁴⁸ The court held that “from an examination of the authorities, which are almost unanimous,” the state legislature could promulgate general laws that classified municipalities by population,⁴⁹ provided the classification was not “arbitrary and capricious, and b[ore] some reasonable, rational relation to the subject-matter.”⁵⁰ Even so, the *Key* court struck down the offending statute for employing the classification by population as a “subterfuge for the purpose of passing a special law under the form of a general law.”⁵¹ Therefore, the court simultaneously pronounced its continued adherence to judicial deference while unmistakably denouncing an impermissible special and local law under article 5, section 46.⁵²

The case of *Lowden v. Oklahoma County Excise Board*⁵³ upheld the inclusion of the rational basis test into the article 5, section 46 analysis. In *Lowden*, a population-based state levy aimed at funding public officers applied exclusively to Oklahoma County.⁵⁴ The Oklahoma Supreme Court held that only upon finding that a classification of counties by population was “clearly capricious and arbitrary” would the court be “justified in holding that these constitutional provisions [(i.e., article 5, sections 32, 46, and 59)] were violated.”⁵⁵ The court upheld the levy, while unambiguously classifying a law affecting only one county as general through a rational basis analysis.⁵⁶

A litany of similar cases support the contention that even under a challenge to section 46, “whether a particular law is impermissibly special or permissibly general necessitates a determination of whether the Legislature’s

47. *Key v. Donnell*, 1924 OK 996, 231 P. 546.

48. *Id.* ¶ 2, 231 P. at 547.

49. The enactment in question clearly concerned the provision of article 5, section 46 of the Oklahoma Constitution, dealing with cities and counties.

50. *Key*, ¶ 2, 231 P. at 547.

51. *Id.* ¶ 5, 231 P. at 549. The statute also violated article 5, section 46 by regulating the jurisdiction of the courts and salaries of the judges. *See id.* (“[T]he rest of the act in question fixing the salary and jurisdiction of the court is likewise invalid . . .”).

52. *Id.*

53. 1940 OK 134, 100 P.2d 448.

54. *Id.* ¶¶ 1-2, 100 P.2d at 449-50.

55. *Id.* ¶ 9, 100 P.2d at 450.

56. *Id.* ¶ 8, 100 P.2d at 450 (stating that a law that affects only one municipality when it is enacted is not on its face unconstitutional; the test is whether other municipalities can be included, or are forever excluded).

classification is reasonable.”⁵⁷ Whether the issue was upholding a legislative act that provided for the construction of improvements in towns having a population of more than one thousand,⁵⁸ sustaining a statute fixing jurisdictional authority for justices in counties whose population exceeded one hundred fifty thousand,⁵⁹ or upholding an act that rendered cities with over two hundred thousand inhabitants liable for torts arising out of their governmental functions,⁶⁰ the Oklahoma Supreme Court has uniformly employed a rational basis test to ascertain whether the legislative enactment was special or general on its face. Furthermore, in striking down legislation based on a section 46 challenge, the court has cited the arbitrary and capricious nature of the classification therein adopted.⁶¹ Hence, while the impenetrable barriers erected by article 5, section 46, retain their potency, the threshold question of what constitutes a general and special law has been understood by Oklahoma courts within the classic paradigm of judicial deference.⁶²

2. Challenges to Article 5, Section 59 of the Oklahoma Constitution

Precedent surrounding article 5, section 59 challenges has evolved with many of the familiar trappings of article 5, section 46 jurisprudence. Fundamentally, where article 5, section 46 was drafted to absolutely prohibit the enactment of special laws in twenty-eight specific areas, article 5, section 59 generally permits the legislature to pass special laws when a general law is not applicable.⁶³ Nevertheless, the Oklahoma courts have often obscured the boundaries between the enumerated prohibitions of section 46 and the requirement of general laws found in section 59.⁶⁴ In one of the state’s earliest decisions, the Oklahoma Supreme Court chose to analyze county-based legislation, otherwise specifically barred by article 5, section 46, under the rubric of section 59, declaring that a law “may be general and have a local

57. *City of Enid v. Pub. Employees Relations Bd.*, 2006 OK 16, ¶ 19, 133 P.3d 281, 296 (Edmondson, J., concurring).

58. *See Pointer v. Town of Chelsea*, 1927 OK 9, 257 P. 785.

59. *See Sanchez v. Melvin*, 1966 OK 116, 418 P.2d 639.

60. *See Hamilton v. Oklahoma City*, 1974 OK 109, 527 P.2d 14.

61. *See, e.g., Wilkinson v. Hale*, 1939 OK 11, ¶ 11, 86 P.2d 305, 307.

62. *Burks v. Walker*, 1909 OK 317, ¶¶ 31-32, 109 P. 544, 550-51 (concluding that courts should not lightly declare acts unconstitutional, and stating that courts should resolve doubts about constitutionality in favor of the legislature).

63. *See Reynolds v. Porter*, 1988 OK 88, ¶ 13, 760 P.2d 816, 822.

64. *See City of Enid v. Pub. Employees Relations Bd.*, 2006 OK 16, ¶¶ 23-25, 133 P.3d 281, 297-98 (Edmondson, J., concurring) (noting how the court’s previous opinions often addressed simultaneous challenges to article 5, sections 46 and 59, and how the analysis commingled between the questions).

application or apply to a designated class if it operates equally upon all the subjects within the class for which it was adopted.”⁶⁵ This approach to article 5, section 59 challenges approximated the court’s handling of section 46 challenges, and took on even greater resemblance when the court held in a section 59 case that “[t]he all important factor in determining whether a bill is local or general is the basis of classification contained in it.”⁶⁶ Further developments in article 5, section 59 decisions also reflected the jurisprudence of section 46, as the court legitimated reasonable classifications that were not “arbitrary and capricious” and pertained “to some peculiarity in the subject matter calling for the legislation” as general laws.⁶⁷ The analytical boundaries between the itemized proscriptions of section 46 and the requirement of general laws found in section 59 remained ambiguous until the Oklahoma Supreme Court’s landmark decision in *Reynolds v. Porter*.⁶⁸

In *Reynolds*, the Oklahoma Supreme Court integrated previous case law on article 5, sections 46 and 59 and formulated a comprehensive litmus test.⁶⁹ The *Reynolds* court examined whether a legislative enactment creating a separate statute of limitations for a special class of tortfeasors could stand against Oklahoma’s special law prohibitions.⁷⁰ While the court focused its primary holding on article 5, section 46 grounds, the court also held that under a section 59 challenge, a three-prong inquiry would determine constitutionality.⁷¹

Under the *Reynolds* test, a court must first determine whether challenged legislation is a special or general law.⁷² To do so, a court must identify the class involved, and analyze whether the classification relates to all or particular persons or things of a class.⁷³ The court held that “[t]he number of persons or things upon which the law has a direct effect may be very few, but it must operate uniformly upon all brought within the class by common circumstances.”⁷⁴ Next, if the court finds the challenged law special or local,

65. *Burks*, ¶ 23, 109 P. at 549 (upholding a law affecting only counties with a population of thirty thousand and with a city of eight thousand located therein).

66. *State ex rel. Nesbitt v. Dist. Court of Mayes County*, 1967 OK 228, ¶ 6, 440 P.2d 700, 705 (invalidating a statute that provided additional remuneration to county officers in counties whose population was between 20,000 and 20,400), *overruled by* *Beidleman v. Belford*, 1974 OK 72, 525 P.2d 649, *and* *Palmer v. Belford*, 1974 OK 73, 527 P.2d 589.

67. *Burks*, ¶ 23, 109 P. at 549.

68. 1988 OK 88, 760 P.2d 816.

69. *Id.* ¶ 13, 760 P.2d at 822.

70. *Id.* ¶ 1, 760 P.2d at 818.

71. *Id.* ¶ 13, 760 P.2d at 822.

72. *Id.*

73. *Id.* ¶ 14, 760 P.2d at 822.

74. *Id.* (citing *Grable v. Childers*, 1936 OK 273, 56 P.2d 357).

the court must determine whether the legislature could fashion a general law to accomplish the same goal.⁷⁵ Finally, if the legislature could not craft a general law, then the court must examine whether the statute is a permissible special law.⁷⁶ This examination requires the court to resolve whether the special legislation reasonably relates to a valid legislative objective.⁷⁷ The court related this holding to article 5, section 46 challenges by stating that a constitutional review under those auspices stops at the first prong of the *Reynolds* inquiry.⁷⁸ It does so because article 5, section 46 “absolutely and unequivocally” prohibits passage of special laws in enumerated areas, including local laws, while also guaranteeing that a general law in those areas would always be applicable.⁷⁹ Thus, the *Reynolds* case brought the two lines of Oklahoma special law jurisprudence into harmony with one established litmus test.

III. City of Enid v. Public Employees Relations Board

A. Background of the Case

The Oklahoma Legislature passed the Oklahoma Municipal Employee Collective Bargaining Act⁸⁰ (the Act) in 2004. In the interests of promoting “orderly and constructive employment relations between municipal employers and their employees,”⁸¹ the Act afforded qualifying municipal employees the right to organize and choose representation for the purpose of collective bargaining.⁸² The Act also obligated municipal employers to recognize and negotiate with the employees’ chosen representatives.⁸³ The Act defined qualifying municipal employers as municipalities with populations greater than thirty-five thousand,⁸⁴ thereby including Broken Arrow, Edmond, Lawton, Midwest City, Moore, Muskogee, Norman, Oklahoma City, Stillwater, Tulsa, and most notably, Enid.⁸⁵ The Act was to be administered

75. *Id.* ¶ 13, 760 P.2d at 822.

76. *Id.*

77. *Id.* ¶ 16, 760 P.2d at 822.

78. *Id.* ¶ 17, 760 P.2d at 822.

79. *See id.*

80. Oklahoma Municipal Employee Collective Bargaining Act, ch. 62, 2004 Okla. Sess. Laws 330 (codified at 11 OKLA. STAT. §§ 51-201 to -220 (Supp. 2006)).

81. 11 OKLA. STAT. § 51-201 (stating that it is the “public policy of this state and the purpose of the Legislature in the enactment of this act to promote orderly and constructive employment relations between municipal employers and their employees” (footnote omitted)).

82. *Id.* § 51-201(1).

83. *Id.* § 51-201(2).

84. *Id.* § 51-202(12).

85. *City of Enid v. Pub. Employees Relations Bd.*, No. SD-101,729, 2005 Okla. LEXIS 57,

by the Public Employees Relations Board (PERB),⁸⁶ and as envisioned by the legislature, was to take effect on November 1, 2004.⁸⁷

On November 1, 2004, the American Federation of State, County, and Municipal Employees (the Union) requested certification from the PERB to represent the City of Enid's qualifying employees.⁸⁸ Three days later, on November 4, 2004, the PERB gave notice to the City of Enid concerning the Union's request and directed city officials to post the notice.⁸⁹ Pursuant to the PERB's emergency rules, the PERB was required to certify the Union as the representative of Enid's municipal employees unless the PERB obtained a request from a competing union within fifteen days.⁹⁰

On November 19, 2004, the same day the PERB was required to certify the Union, the City of Enid filed suit against both the PERB and the Union seeking a temporary restraining order, temporary and permanent injunctions, and a declaratory judgment on the constitutionality of the Oklahoma Municipal Employee Collective Bargaining Act under article 5, sections 46 and 59, and article 18, section 3(a) of the Oklahoma Constitution.⁹¹ At a hearing on November 22, 2004, the Oklahoma County District Court issued a temporary restraining order.⁹² Soon after, the City of Enid filed a timely motion for summary judgment.⁹³

On summary judgment, the district court found that the classification of municipalities with populations greater than thirty-five thousand violated both article 5, sections 46 and 59 of the Oklahoma Constitution.⁹⁴ In its article 5, section 46 analysis, the court found that the classification of municipalities with populations greater than thirty-five thousand for collective bargaining purposes was arbitrary and thus constituted a special law in violation of article 5, sections 46 and 59.⁹⁵ Under the framework of article 5, section 59, the court found that the Act was an unconstitutional special law because it was

at *3 (Okla. July 5, 2005), *withdrawn and substituted by* 2006 OK 16, 133 P.3d 281 (per curiam).

86. 11 OKLA. STAT. § 51-204(1); *see also id.* §§ 51-101, -104 (outlining the purpose and composition of the Oklahoma Public Employees Relations Board).

87. *City of Enid v. Pub. Employees Relations Bd.*, 2006 OK 16, ¶ 3, 133 P.3d 281, 284 (per curiam).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* ¶ 4, 133 P.3d at 284.

93. *Id.*

94. *Id.*

95. *Id.*

possible to design a general law to accomplish the same goal.⁹⁶ Consequently, the court issued a permanent injunction against the PERB, from which the Union appealed and the PERB joined as co-appellant.⁹⁷ The Oklahoma Supreme Court retained the appeal and heard oral arguments on May 10, 2005.⁹⁸

B. Question for the Court

The primary issue in *City of Enid* concerned whether the classification in the Oklahoma Municipal Employee Collective Bargaining Act of “municipal employers” as municipalities with populations greater than thirty-five thousand violated the special and local law prohibitions of the Oklahoma Constitution.⁹⁹ The City of Enid also challenged the Act in light of Oklahoma’s “home-rule doctrine,”¹⁰⁰ but this issue proved to be tertiary.¹⁰¹ Instead, the *City of Enid* court framed its decision around the challenges to article 5, sections 46 and 59 of the Oklahoma Constitution.¹⁰² In doing so, the court had to resolve several interdependent issues. First, the court had to ascertain how general and special law classifications specifically applied to state legislation concerning municipalities.¹⁰³ Second, the court had to interpret how the *Reynolds* criteria¹⁰⁴ and rational-relation precedent under article 5, sections 46 and 59 affected the permissibility of such legislation.¹⁰⁵

96. *Id.*

97. *Id.*

98. *Id.* The standard practice of all Oklahoma appellate courts is to render decisions based on written pleadings. Oral arguments are extremely rare. See OKLA. SUP. CT. R. 1.9 (requiring a party who desires to present oral argument before the appellate courts to file a motion for oral argument “setting forth the exceptional reason that oral argument is necessary”).

99. See *id.* ¶ 6, 133 P.3d at 285.

100. See OKLA. CONST. art. 18, § 3(a). The section provides in pertinent part that “[a]ny city containing a population of more than two thousand inhabitants may frame a charter for its own government . . . Upon . . . approval it shall become the organic law of such city and supersede any existing charter and all amendments thereof and all ordinances inconsistent with it.” *Id.*

101. *City of Enid*, ¶ 25, 133 P.3d at 290 (recognizing that the legislature has determined that the promotion of orderly and constructive collective bargaining between municipal employers and their employees is a matter of state-wide public policy, and therefore, not in conflict with article 18, section 3 of the Oklahoma Constitution).

102. See *id.* ¶¶ 7-19, 133 P.3d at 286-89. Article 5, section 46 of the Oklahoma Constitution states that the legislature may not pass laws “[r]egulating the affairs . . . of cities.” OKLA. CONST. art. 5, § 46. Section 59 provides that “[l]aws of a general nature shall have a uniform operation throughout the State, and where a general law can be made applicable, no special law shall be enacted.” *Id.* § 59 (footnotes omitted).

103. *City of Enid*, ¶¶ 10-12, 133 P.3d at 286-87.

104. See *Reynolds v. Porter*, 1988 OK 88, ¶¶ 13-17, 760 P.2d 816, 822.

105. See *City of Enid*, ¶¶ 9, 15, 133 P.3d at 286-87.

Finally, after determining the proper framework for analysis, the court had to decide if the Act, on its merits, met the parameters of this construct.

C. Decision of the Court

The Oklahoma Supreme Court found the Oklahoma Municipal Employee Collective Bargaining Act constitutional under article 5, sections 46 and 59, and article 18, section 3(a) of the state constitution.¹⁰⁶ Applying the *Reynolds* test, the per curiam opinion held that article 5, section 46 “in no way precludes the classification of cities into similarly situated municipalities based on population when the legislature, in its wisdom, has a legitimate, reasonable and rational reason to do so.”¹⁰⁷ Furthermore, by finding that the two-part rational-relationship test of *Burks* represented the appropriate test under both section 46 and section 59 challenges,¹⁰⁸ the court held that the Act’s population classification was “not arbitrary or capricious” and moreover, that the classification was “rationally related to the stated purpose of the legislation.”¹⁰⁹ Although the trial court never reviewed the challenge under article 18, section 3(a),¹¹⁰ the Oklahoma Supreme Court disposed of the issue by stating that that the “collective bargaining between municipal employers and their employees is a matter . . . of state-wide concern.”¹¹¹ Fundamentally, because the Act allocated “the same privileges to all municipalities of the same class” and manifested “uniform application to all class members,” the Act was ruled constitutional on its face.¹¹²

D. Rationale of the Court

Despite reaching a just resolution, the Oklahoma Supreme Court upheld the Oklahoma Municipal Employee Collective Bargaining Act on novel grounds.

106. *See id.* ¶ 26, 133 P.3d at 290. *See also* OKLA. CONST. art. 18, § 3(a), which states in pertinent part:

Any city containing a population of more than two thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State [I]t shall thereafter be submitted to the Governor for his approval, and the Governor shall approve the same if it shall not be in conflict with the Constitution and laws of this State. Upon such approval it shall become the organic law of such city and supersede any existing charter and all amendments thereof and all ordinances inconsistent with it.

107. *City of Enid*, ¶ 9, 133 P.3d at 286.

108. *Id.* ¶¶ 14-15, 133 P.3d at 287 (citing *Burks v. Walker*, 1909 OK 317, ¶ 23, 109 P. 544, 549).

109. *Id.* ¶ 26, 133 P.3d at 290.

110. *Id.* ¶ 6, 133 P.3d at 285.

111. *Id.* ¶ 25, 133 P.3d at 290.

112. *Id.* ¶ 26, 133 P.3d at 290.

Indeed, the per curiam opinion offered uncommon justifications to support its holding that the Act was a general law within the meaning of court precedents.¹¹³ Moreover, the justices were anything but unanimous in their decision. Only five justices joined in the court's opinion,¹¹⁴ while one justice concurred by his own writing.¹¹⁵ Conversely, four dissenting justices and two dissenting opinions vigorously assailed the findings of the majority.¹¹⁶

The per curiam opinion in *City of Enid* validated the Oklahoma Municipal Employee Collective Bargaining Act on three legal theories. First, the court sought to demonstrate that "not all [legislative] classification in proportion to population is prohibited."¹¹⁷ To achieve this, the court cited its ruling in *Edmonds v. Town of Haskell*,¹¹⁸ where the court held that express authority existed within the legislature, under article 18, section 1 of the Oklahoma Constitution, to enact public works programs in cities with populations in excess of one thousand people.¹¹⁹ Coupled with the provision in article 5, section 46 which states that "[t]he Legislature shall not, *except as otherwise provided* in this Constitution, pass any local or special law,"¹²⁰ the court argued that the powers vested in the legislative branch by article 18 allowed the legislature to legislate based on population.¹²¹ Next, the court sought to establish that the rational-relationship test governed inquiries into challenges under both section 46 and section 59 of article 5. In this pursuit, the court combined a reading of *Reynolds*, which mandated that the threshold inquiry under article 5, section 46 concerns defining the classification included in the challenged legislation,¹²² with a reading of *Burks*, which held that where legislation "operates upon a class, the classification must not be capricious or

113. *Id.* ¶¶ 10-12, 133 P.3d at 286-87 (invoking the "except as otherwise provided" language of article 5, section 46, and employing this phrase as evidence that not all classification in proportion to population is prohibited).

114. *Id.* ¶¶ 1-26, 133 P.3d at 281-90 (per curiam).

115. *Id.* ¶¶ 1-36, 133 P.3d at 290-302 (Edmondson, J., concurring).

116. *Id.* ¶¶ 1-8, 133 P.3d at 303-05 (Opala, J., dissenting); *id.* ¶¶ 1-30, 133 P.3d at 305-12 (Taylor, J., dissenting).

117. *Id.* ¶ 12, 133 P.3d at 286 (per curiam).

118. *Id.* ¶ 11, 133 P.3d at 286 (citing *Edmonds v. Town of Haskell*, 1926 OK 289, ¶ 9, 247 P. 15, 17-18).

119. *Edmonds*, ¶ 9, 247 P. at 17-18. Article 18, section 1 of the Oklahoma Constitution provides that "[m]unicipal corporations shall not be created by special laws, but the Legislature, by general laws shall provide for the incorporation and organization of cities and towns and the classification of same in proportion to population, subject to the provisions of this article." OKLA. CONST. art. 18, § 1 (footnotes omitted).

120. OKLA. CONST. art. 5, § 46 (emphasis added) (footnote omitted).

121. *See City of Enid*, ¶ 12, 133 P.3d at 286.

122. *See id.* ¶ 9, 133 P.3d at 286 (citing *Reynolds v. Porter*, 1988 OK 88, ¶ 18 & n.36, 760 P.2d 816, 823 & n.36); *see also Reynolds*, ¶¶ 13-17, 760 P.2d at 822.

arbitrary and must be reasonable.”¹²³ Finally, with this framework in place, the court undertook the final task of proving that the Act constituted a reasonable, rational piece of legislation. To bolster this argument, the court examined trial court documents supporting the premise that smaller municipalities have fewer layers of management, fewer resources to engage in collective bargaining, smaller budgets, and less personnel available to facilitate the negotiation process.¹²⁴ Ruling on these three grounds, the court held the Act constitutional.¹²⁵

Justice Edmondson, who wrote “to provide a more detailed explanation why the Court’s opinion is correct,”¹²⁶ authored the lone concurrence in *City of Enid*. His concurring opinion scrutinized the original understanding of general, special, and local laws in Oklahoma jurisprudence.¹²⁷ Additionally, Justice Edmondson clarified the threshold inquiry outlined in *Reynolds* by stating that “every § 46 claim involves identifying a class.”¹²⁸ Highlighting the centrality of classification in the article 5, section 46 analysis, he postulated that “[w]hether the classification drawn by the Legislature is reasonable is part of defining whether a particular law is special, local, or general.”¹²⁹ Having concurred with the court’s holding that the Act’s classification based on population represented rational, reasonable legislation, Justice Edmondson found the trial court’s injunction “contrary to law.”¹³⁰

Writing in dissent, Justice Opala criticized the per curiam opinion on multiple grounds.¹³¹ Justice Opala attacked the court’s interpretation of legislative power under article 18, section 1 and declared that the court’s expansion of the permissive language contained in article 5, section 46 to obligatory acts “expands the exception to swallow the rule.”¹³² Moreover, Justice Opala accused the court of “applying a § 59 analysis to a § 46 legal

123. *City of Enid*, ¶ 14, 133 P.3d at 287 (quoting *Burks v. Walker*, 1909 OK 317, ¶ 23, 109 P. 544, 549).

124. *Id.* ¶ 16, 133 P.3d at 288 (referencing expert affidavits entered at the trial court level).

125. *Id.* ¶ 26, 133 P.3d at 290.

126. *Id.* ¶ 1, 133 P.3d at 290 (Edmondson, J., concurring).

127. *Id.* ¶¶ 5-15, 133 P.3d at 291-95.

128. *Id.* ¶ 26, 133 P.3d at 298; *see also Reynolds v. Porter*, 1988 OK 88, ¶ 17, 760 P.2d 816, 822-23.

129. *City of Enid*, ¶ 19, 133 P.3d at 296 (Edmondson, J., concurring).

130. *Id.* ¶ 36, 133 P.3d at 303.

131. *Id.* ¶¶ 1-8, 133 P.3d at 303-05 (Opala, J., dissenting). Voicing his displeasure with the court’s ruling, Justice Opala took the uncommon approach of dissenting “from the court’s judgment, from its pronouncement, and from the statement in concurrence.” *Id.* ¶ 8, 133 P.3d at 305.

132. *Id.* ¶ 3, 133 P.3d at 304 (emphasis omitted).

problem for which they fashioned a falsely-crafted dichotomy.”¹³³ As corollary arguments, Justice Opala also assailed the Act for not achieving its intent of providing collective bargaining for “employees of all municipalities in the State of Oklahoma” and for purporting to deal with a matter of statewide concern while simultaneously having a local application.¹³⁴ Correspondingly, Justice Opala declared that the Act represented a “special law on a constitutionally impermissible subject.”¹³⁵

Justice Taylor also filed a dissent that found the Act unconstitutional under article 5, sections 46 and 59.¹³⁶ Focusing on the “absolute and unequivocal” nature of the article 5, section 46 prohibitions,¹³⁷ Justice Taylor declared that section 46 “requires any statute ‘regulating the affairs of cities’ to operate upon all ‘cities’ throughout the state so as not to be a special law.”¹³⁸ In addition, Justice Taylor blasted the per curiam opinion for rendering article 5, section 59 “ineffective” and for enveloping section 46 into an ineffective section 59.¹³⁹ Supported by a competing perspective on original understanding,¹⁴⁰ as well as the conviction that “[t]here are no distinct differences between public works employees in some cities and public works employees in other cities,”¹⁴¹ Justice Taylor opined that the court’s opinion substantiated “the very legislative mischief that the constitutional framers attempted to prevent.”¹⁴² Thus, while the per curiam opinion and concurrence upheld the Act as a permissible and rational exercise of population-based legislation, the dissenting justices argued that legislation into municipalities represents a constitutionally impermissible subject, and alternatively, that any legislation into municipalities must bear universal application.

IV. Analysis

The *City of Enid* court rendered the appropriate decision in three respects. First, the court correctly interpreted the original understanding of Oklahoma’s

133. *Id.* ¶ 4, 133 P.3d at 304 (emphasis omitted).

134. *Id.* ¶¶ 5-6, 133 P.3d at 304 (emphasis omitted).

135. *Id.* ¶ 7, 133 P.3d at 305.

136. *Id.* ¶ 1, 133 P.3d at 305 (Taylor, J., dissenting).

137. *Id.* ¶ 8, 133 P.3d at 306 (emphasis omitted).

138. *Id.* ¶ 6, 133 P.3d at 306 (quoting OKLA. CONST. art. 5, § 46).

139. *Id.* ¶ 30, 133 P.3d at 311.

140. *Id.* ¶¶ 12-21, 133 P.3d at 307-10 (describing the prototype of Oklahoma’s special law prohibitions as emerging from Kansas, and citing early Kansas case law, accompanied by a treatise and several other legal sources, as bolstering an absolutist view toward special law prohibitions).

141. *Id.* ¶ 26, 133 P.3d at 311. Interestingly, Justice Taylor offered no evidence to support this contention.

142. *Id.* ¶ 30, 133 P.3d at 311.

special and local law prohibitions. Second, the court premised its holding on a logical extrapolation of the *Reynolds* precedent and its focus on classification. Third, the court crafted the proper definition of what constitutes a general law.

Despite reaching a just result, the *City of Enid* court erred in two critical aspects. First, the court confused the analysis required in an article 5, section 46 challenge, with the analysis required in article 5, section 59 challenge. More importantly, the court issued an opinion limited in both scope and quality. Consequently, while the *City of Enid* court may have reached a just decision, it did so at the expense of precedential value.

A. Framers' Intent

To accurately interpret the special and local law prohibitions of the Oklahoma Constitution, the judiciary must observe the fundamental principles that support it.¹⁴³ While the constitution established a framework for growth, the meaning of the constitution was fixed when it was adopted.¹⁴⁴ Consequently, judicial construction must be in accord with the intent of the framers and the people who adopted the constitution.¹⁴⁵ This intent emerges most notably from the constitution itself, and courts are not empowered to search for the meaning of a provision beyond the constitution when the text of the provision is unambiguous.¹⁴⁶

As a rule, when provisions that are analogous to those of other states have been adopted into the Oklahoma Constitution, Oklahoma courts presume that the framers were acquainted with, and intended to adopt, the constructions of those provisions in other states.¹⁴⁷ This proposition recognizes that if the legislature intended to alter a previously familiar practice, then it would have specifically done so in fashioning the body of the Oklahoma Constitution.¹⁴⁸ The interpretation of special and local law prohibitions among state courts at the time of Oklahoma statehood demonstrated a deferential understanding of the meanings of general, special, and local laws, as well as an

143. *Draper v. State*, 1980 OK 117, ¶ 8, 621 P.2d 1142, 1145.

144. *Wimberly v. Deacon*, 1943 OK 432, ¶ 13, 144 P.2d 447, 450.

145. *Draper*, ¶ 8, 621 P.2d at 1145; *see also* *Simpson v. Dixon*, 1993 OK 71, 853 P.2d 176 (touting framers' intent when analyzing municipal election laws); *Latting v. Cordell*, 1946 OK 217, 172 P.2d 397 (emphasizing the framers' intent in election law and how it concerned names placed on the ballot for a state senate seat).

146. *Draper*, ¶ 8, 621 P.2d at 1145-46; *see also* *McCurtain County Excise Bd. v. St. Louis-S.F. Ry. Co.*, 1959 OK 100, ¶ 17, 340 P.2d 213, 216.

147. *Wimberly*, ¶ 13, 144 P.2d at 450; *see also* *State ex rel. Tharel v. Bd. of Comm'rs*, 1940 OK 468, ¶ 16, 107 P.2d 542, 549; *Baker v. Newton*, 1908 OK 232, ¶ 2, 98 P. 931, 932 (setting the trend for future Oklahoma Supreme Court analysis based on the theory of parallel meaning).

148. *See Wimberly*, ¶ 13, 144 P.2d at 450; *see also Baker*, 1908 OK 232, 98 P. 931.

acknowledgment of the state's role in municipal affairs.¹⁴⁹ Furthermore, state supreme courts validated instances in which state legislatures rationally legislated in municipal affairs based specifically on population.¹⁵⁰ Accordingly, prior to the holding in *City of Enid*, the weight of Oklahoma Supreme Court decisions construed the definitions of special and local laws for purposes of their respective constitutional prohibitions under the rubric of the rational basis analysis.¹⁵¹

The *City of Enid* court properly held that the Oklahoma Constitution forbids the enactment of impermissibly special and local laws by the state legislature.¹⁵² Even so, the decision recognized that sections of the constitution specifically assign to the state legislature the authority to legislate into county and municipal affairs.¹⁵³ Reflecting this dichotomy, one legislative committee remarked that while the state legislature is generally forbidden to legislate into local affairs, constitutional inconsistencies left the boundaries of this constraint in doubt.¹⁵⁴ What these observers, and the

149. See *Butler v. City of Lewiston*, 83 P. 234 (Idaho 1905) (affirming the right of the state to pass general laws affecting city charters); *Chi. Terminal Transfer Ry. Co. v. Greer*, 79 N.E. 46 (Ill. 1906) (upholding a state statute providing for organization of city courts in cities based on population); *State v. Rogers*, 106 N.W. 345 (Minn. 1906) (affirming the ability of the state legislature to set district court levies based on population, while emphasizing that the decision was based on the rationality of the legislature's action, and its lack of arbitrariness); *Coffey v. City of Carthage*, 98 S.W. 562 (Mo. 1906) (upholding the constitutionality of the state legislature's enactment of county-specific judicial processes). *Contra* *State ex rel. Kinsey v. Messerly*, 95 S.W. 913 (Mo. 1906) (striking a state compensation scheme that specifically allocated funds to one city in the state); *State v. Scott*, 100 N.W. 812 (Neb. 1904) (striking a state law regulating a county office because it set the parameters for the law's effect by utilizing the census of 1900 only, while also noting that a general law can plainly be made applicable to all counties having the required population, without the limitation to those which had a population of fifty thousand in the census of 1900); *State v. Burns*, 52 S.E. 960 (S.C. 1906) (striking part of a state law that fixed compensation for one county officer in a specific county).

150. See *supra* note 150.

151. See *Fair Sch. Fin. Council of Okla., Inc. v. State*, 1987 OK 114, ¶ 62, 746 P.2d 1135, 1150 (explaining the broad powers of the Oklahoma legislature and the tradition of rational basis analysis in a school district finance case); *Elias v. City of Tulsa*, 1965 OK 164, ¶¶ 9-10, 408 P.2d 517, 519-20 (enlisting the rational basis analysis to decide the constitutionality of a rezoning scheme); see also *State ex rel. Nesbitt v. Rockwell*, 1968 OK 78, 443 P.2d 104 (using the rational basis test to strike unconstitutional ad valorem taxes).

152. See *City of Enid v. Pub. Employees Relations Bd.*, 2006 OK 16, ¶ 7, 133 P.3d 281, 285-86 (per curiam); see also OKLA. CONST. art. 5, §§ 46, 59.

153. See *City of Enid*, ¶¶ 10-11, 133 P.3d at 286 (referencing the express authority of article 18, section 1 of the Oklahoma Constitution); see also OKLA. CONST. arts. 17-18.

154. John Paul Duncan, *County Government — An Analysis*, in OKLAHOMA CONSTITUTIONAL STUDIES OF THE OKLAHOMA CONSTITUTIONAL SURVEY AND CITIZEN ADVISORY COMMITTEES 417, 426 (H.V. Thornton ed., 1950) [hereinafter OKLAHOMA CONSTITUTIONAL STUDIES]; see also OKLA. CONST. art. 17, § 2 (allowing for the state legislature to specifically create and change county

dissenters in *City of Enid*, failed to recognize was that Oklahoma's populist¹⁵⁵ framers feared government abuses at all levels, including local and county assemblies.¹⁵⁶ Delegates to Oklahoma's constitutional convention sought to "provide for the largest measure of local control consistent with the *interests of the State*,"¹⁵⁷ and the delegates were similarly meticulous in declaring counties and townships to be "the auxiliaries of the State in the important business of Municipal rule."¹⁵⁸ This appreciation of the state role in local affairs was sustained through Oklahoma's first legislature, where representatives steeped in the constitution enacted municipal legislation based on population.¹⁵⁹ Subsequent legislatures continued to enact population-based municipal legislation that satisfied state aims.¹⁶⁰ Thus, while the framers of Oklahoma's constitution sought to protect municipalities from discriminatory legislation, their understanding of the state role in municipal governance does not support the contention of Justice Taylor's dissent that they intended to absolutely preclude the legislature from enacting laws classifying municipalities based on population.¹⁶¹ Moreover, the court's adoption of a classification-centered inquiry in *Reynolds* further undercuts Justice Taylor's flawed proposition.

B. The Reynolds Precedent and the Primacy of Classification

The *City of Enid* court properly construed the *Reynolds* interpretation of protected classes for the purpose of Oklahoma's special and local law prohibitions.¹⁶² In *Reynolds*, the Oklahoma Supreme Court looked to English legal tradition to inform its analysis of permissible subdivisions of civil

officers).

155. The term "populism" can be defined as "representation or extolling of the common person, the working class, the underdog, etc." THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1505 (Stuart Berg Flexner & Leonore Crary Hauck eds., 2d ed. 1987).

156. See PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE PROPOSED STATE OF OKLAHOMA 18-22 (Muskogee Printing Co. 1907) [hereinafter PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION].

157. *Id.* at 22 (emphasis added).

158. *Id.* at 438.

159. See *City of Enid v. Pub. Employees Relations Bd.*, 2006 OK 16, ¶ 17, 133 P.3d 281 at 288 (per curiam).

160. See case cited *supra* note 39 (showing some population-based statutes that were challenged and sustained in court).

161. See *City of Enid*, ¶ 6, 133 P.3d at 306 (Taylor, J., dissenting) (relating his opinion that article 5, section 46 requires any statute regulating the affairs of cities to operate on all cities throughout the state). *But see* Marritz, *supra* note 10, at 190.

162. See *City of Enid*, ¶ 9, 133 P.3d at 286 (per curiam) (holding that *Reynolds* did not concern a population-based statute, and did not preclude such a classification when the "legislature, in its wisdom, has a legitimate, reasonable and rational reason to do so").

actions, which constitute an expressly protected area under article 5, section 46.¹⁶³ The *Reynolds* court struck down the special law in question for being underinclusive and unreasonable and for “impact[ing] less than an entire class of similarly situated claimants.”¹⁶⁴ Because of this particular focus, however, the *Reynolds* court carefully limited its constitutional holding to the classification challenged in the case.¹⁶⁵ As summarized by Justice Edmondson, “the [*Reynolds*] Court merely identified ‘negligent tort claims’ as a class from which the Legislature could not create subclasses for the purpose of limitations.”¹⁶⁶ The *City of Enid* court accounted for these fundamental, common law dimensions of *Reynolds* by recognizing that the *Reynolds* decision “did not concern a population-based statute, and in no way precludes the classification of cities into similarly situated municipalities based on population.”¹⁶⁷

The *City of Enid* court also acknowledged the logical progression of the *Reynolds* decision from previous case law. While the *Reynolds* decision generated the groundbreaking litmus test for permissible general laws under the Oklahoma Constitution, it followed previous court rulings by analyzing whether the classification in question was founded on real and substantial distinctions and by questioning whether the requirement bore some reasonable, rational relation to the subject matter.¹⁶⁸ Employing the same classification-centered analysis, the *City of Enid* court ruled that the Oklahoma Municipal Employee Collective Bargaining Act’s population classification was “rationally related to the stated purpose of the legislation,” was “not arbitrary or capricious,” and “grant[ed] the same privileges to all municipalities of the same class.”¹⁶⁹ To support this ruling, the court referenced multiple documents from the trial court that established profound

163. *See Reynolds v. Porter*, 1988 OK 88, ¶ 18, 760 P.2d 816, 823 (stating that to determine whether a statute operates on an entire class of similarly situated claims, the court must look at English legal tradition and the common law).

164. *Id.* ¶ 21, 760 P.2d at 824.

165. *Id.* ¶ 18, 760 P.2d at 823 n.36 (explaining that “[t]he test we adopt for identifying the class in measuring the validity of a civil action’s limitation by the strictures in § 46 is not necessarily applicable to other subjects enumerated in that section”).

166. *City of Enid*, ¶ 28, 133 P.3d at 299 (Edmondson, J., concurring) (citing *Reynolds*, ¶ 18, 760 P.2d at 823).

167. *See id.* ¶ 9, 133 P.3d at 286 (per curiam).

168. *See Hamilton v. Oklahoma City*, 1974 OK 109, ¶ 7, 527 P.2d 14, 16; *see also Sanchez v. Melvin*, 1966 OK 116, 418 P.2d 639; *Wilkinson v. Hale*, 1939 OK 11, 86 P.2d 305; *Pointer v. Town of Chelsea*, 1927 OK 9, 257 P. 785; *City of Sapulpa v. Land*, 1924 OK 92, 223 P. 640; *Guthrie Daily Leader v. Cameron*, 1895 OK 71, 41 P. 635.

169. *City of Enid*, ¶ 26, 133 P.3d at 290.

dissimilarities between the operations of smaller and larger municipalities.¹⁷⁰ Additionally, the court asserted that “[c]lassification of municipalities by population is one of those classifications historically recognized as necessary and appropriate in the state of Oklahoma.”¹⁷¹ Based upon this evidence, the *City of Enid* court held that the legislature’s population classification of thirty-five thousand was “closely related to the object sought to be obtained by the Act,”¹⁷² and the classification “manifest[ed] uniform application to all class members.”¹⁷³ By so doing, the Oklahoma Supreme Court not only properly interpreted the notion of protected classes in Oklahoma special law jurisprudence, but also rendered an opinion that recognized the primacy of classification throughout the corpus of special law challenges. Accordingly, the decision also served to properly distinguish general laws from impermissible special and local laws.

C. Distinguishing General Laws

Despite the assertions of the *City of Enid* dissents, the court’s opinion properly construed the traditional definition of general laws in Oklahoma. The Oklahoma Constitution provides the framework for analysis by defining general laws as those which “have a uniform operation throughout the State.”¹⁷⁴ This requirement of uniform operation, however, does not mandate that a general law apply to every person or to every locality in the state.¹⁷⁵ Indeed, since territorial times, Oklahoma courts have held that “[l]aws are general if they apply to a class,” even if the class is small, so long as the law

170. *Id.* ¶ 16, 133 P.3d at 288 (detailing trial-level expert testimony that demonstrated differences in budgeting, workforce complement, layers of management, and institutional resources among smaller and larger municipalities).

171. *Id.* ¶ 17, 133 P.3d at 288.

172. *Id.* ¶ 18, 133 P.3d at 288.

173. *Id.* ¶ 26, 133 P.3d at 290.

174. OKLA. CONST. art. 5, § 59.

175. *See* *Hamilton v. Oklahoma City*, 1974 OK 109, 527 P.2d 14 (holding that where the city did not meet the burden of proving congestion of population was unrelated to the Governmental Tort Liability Act, which provides that cities with a population of over two hundred thousand will be liable for their torts arising out of their governmental functions, the classification by population was not unreasonable and did not contravene the Constitution); *Sanchez v. Melvin*, 1966 OK 116, 418 P.2d 639 (ruling that the Legislature may classify for legislative purposes, but a classification so adopted must be neither arbitrary nor capricious and must bear a reasonable relation to the object to be accomplished); *Wilkinson v. Hale*, 1939 OK 11, 86 P.2d 305 (holding that it is not necessary that a general law be universal in its application and operate the same in every section of the State and upon all persons); *Pointer v. Town of Chelsea*, 1927 OK 9, 257 P. 785 (upholding a law which provided for the construction of improvements in towns having a population of more than one thousand as a general law against an article 5, section 46 challenge).

is general in its application and embraces all of the given class.¹⁷⁶ Early Oklahoma Supreme Court decisions sustained the threshold inquiry into classification by reiterating that general laws need not operate upon every locality in the state “but must apply equally to all classes similarly situated and apply to like conditions and subjects.”¹⁷⁷ Recent decisions follow this reasoning by distinguishing general laws upon whether the population classification in question is founded on real and substantial distinctions and whether the requirement bears some reasonable, rational relation to the subject matter.¹⁷⁸ Collectively, these decisions bolster the overall policies of judicial deference and strict construction when construing limitations on legislative powers.¹⁷⁹ Moreover, the decisions recognize that “line-drawing is an inevitable aspect of the legislative function and that ‘even improvident decisions will eventually be rectified by the democratic processes.’”¹⁸⁰ Ultimately, these decisions create a body of *stare decisis* that clearly defers to the legislature and its ability to reasonably construct classifications based on rational distinctions.

In *City of Enid*, the Oklahoma Supreme Court measured the value of *stare decisis* against the desire of the dissenting justices to craft a meaningful application of Oklahoma’s special and local law prohibitions, and the court ruled in favor of the former. Prior rulings required the *City of Enid* court to determine whether the Oklahoma Municipal Employee Collective Bargaining Act applied uniformly to the larger class of municipalities with a population of thirty-five thousand throughout the state and to ascertain whether the Act applied equally to all similarly situated entities in the class.¹⁸¹ Precedent also required the court to discern whether the Act constituted a special law by distinguishing one group from others in a general class based on arbitrary or capricious criteria,¹⁸² and to ensure that the classification was not used as a subterfuge for the purpose of passing a special law under the guise of a general law.¹⁸³

176. *Guthrie Daily Leader v. Cameron*, 1895 OK 71, ¶41, 41 P. 635, 639.

177. *City of Sapulpa v. Land*, 1924 OK 92, ¶ 23, 223 P. 640, 643.

178. *Hamilton*, ¶ 7, 527 P.2d at 17.

179. *Way v. Grand Lake Ass’n*, 1981 OK 70, ¶ 39, 635 P.2d 1010, 1017.

180. *Gladstone v. Bartlesville Indep. Sch. Dist. No. 30*, 2003 OK 30, ¶ 12 n.30, 66 P.3d 442, 448 n.30 (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985)).

181. *See generally Hamilton*, 1974 OK 109, 527 P.2d 14; *Sanchez v. Melvin*, 1966 OK 116, 418 P.2d 639; *Wilkinson v. Hale*, 1939 OK 11, 86 P.2d 305; *Pointer v. Town of Chelsea*, 1927 OK 9, 257 P. 785; *Land*, 1924 OK 92, 223 P. 640; *Guthrie Daily Leader*, 1895 OK 71, 41 P. 635.

182. *See Hamilton*, ¶ 7, 527 P.2d at 17.

183. *See Elias v. City of Tulsa*, 1965 OK 164, ¶ 10, 408 P.2d 517, 519-20.

Rather than endorsing these lines of inquiry, Justice Taylor's dissent in *City of Enid* took the unprecedented position that the Oklahoma Constitution categorically forbids the state legislature from attempting to classify cities by population for the purposes of regulating municipal affairs.¹⁸⁴ Furthermore, both dissenting opinions rejected the use of the rational basis examination to define general and special laws by postulating that article 5, section 46 of the Oklahoma Constitution recognizes cities as a distinct class of entities, thereby creating a classification *pro tanto* that prohibits further division.¹⁸⁵ In essence, the dissenting justices would favor transforming the constitutionally protected categories of article 5, section 46 into the definition of local and special laws. By rejecting these arguments and formulating its opinion based on tests derived from the weight of the court's past precedent, the *City of Enid* court properly found the Act constitutional as a general law. Had the court concluded its findings with this analysis of article 5, section 46, the body of special law jurisprudence would have been well served. Nevertheless, the *City of Enid* court repeated the folly of previous courts by further analyzing the challenged law under article 5, section 59.

D. Blurring the Lines Between Article 5, Sections 46 and 59 of the Oklahoma Constitution

The *City of Enid* court erred by expanding its inquiry beyond the confines of article 5, section 46. Plainly stated, the Oklahoma Constitution prohibits the enactment of special laws where a general law can be fashioned.¹⁸⁶ Outside of the twenty-eight areas specifically enumerated in article 5, section

184. See *City of Enid v. Pub. Employees Relations Bd.*, 2006 OK 16, ¶ 2, 133 P.3d 281, 305 (Taylor, J., dissenting) (explaining the dissent's position that article 5, section 46 operates as an injunction against the Legislature regulating the affairs of some, but not all, cities). *But see* *Fair Sch. Fin. Council of Okla., Inc. v. State*, 1987 OK 114, ¶ 62, 746 P.2d 1135, 1150 (explaining the broad powers of the Oklahoma legislature and the tradition of rational basis analysis in a school district finance case); *State v. Rockwell*, 1968 OK 78, 443 P.2d 104 (using the rational basis test to strike unconstitutional ad valorem taxes); *Elias*, ¶¶ 9-10, 408 P.2d at 520 (enlisting the rational basis analysis to decide the constitutionality of a rezoning scheme). Despite the fact that Justice Taylor would elevate the classification inquiry to one mirroring strict scrutiny, case law manifestly guides the court toward a rational basis analysis.

185. See *City of Enid*, ¶ 9, 133 P.3d at 307 (Taylor, J., dissenting) (stating that he would find that article 5, section 46 classifies municipalities into two groups, cities and towns, and that any legislation attempting to regulate municipal affairs must affect all cities and/or all towns); *id.* ¶ 2, 133 P.3d at 303 (Opala, J., dissenting) (stating that cities with a population under thirty-five thousand must not be accorded preferential and disparate treatment from those with a population exceeding thirty-five thousand, thereby implying that the only way to avoid this disparate and preferential treatment is to include all cities within municipal legislation in order to meet the guidelines of article 5, section 46).

186. OKLA. CONST. art. 5, § 59.

46 of the Oklahoma Constitution,¹⁸⁷ article 5, section 59 provides the backdrop for analysis. Conversely, when legislation impacts one of the areas enumerated within article 5, section 46, the restrictions of that prohibition govern without exception.¹⁸⁸ By failing to incorporate this distinction into its analysis, the *City of Enid* court detracted from the precedential value of its opinion.

Ideally, the *City of Enid* court should have acknowledged that the only relevant inquiry in the case concerned the challenge to article 5, section 46 of the Oklahoma Constitution.¹⁸⁹ On its face, the Oklahoma Municipal Employee Collective Bargaining Act seeks to regulate the collective bargaining rights of municipal employees.¹⁹⁰ Additionally, while admissions of parties in interest cannot bind the court,¹⁹¹ Justice Opala noted that the appellants arguing to uphold the legislation conceded that the Act regulated the affairs of cities.¹⁹² Therefore, as a matter of constitutional construction, the per curiam opinion should have noted that the Act concerned one of the enumerated subjects of article 5, section 46 and restricted the court's analysis to this question. Although the court deserves praise for restricting its section 59 analysis to a terse four sentences, the court would have profited from eschewing a section 59 analysis altogether. Instead, the per curiam opinion injected an analysis of the Act under article 5, section 59 to provide a definitional exposition as to why the Act constituted a general law.¹⁹³ This mistake only serves to further the confusion that has permeated the Oklahoma Supreme Court's treatment of special law prohibitions.¹⁹⁴ Furthermore, this fault legitimates Justice Opala's contention that the court's opinion confused "the prohibition of § 46 with the § 59 analytical framework."¹⁹⁵ Moreover, the court used the *Burks* two-part rational-relationship test as the centerpiece of its constitutional analysis,¹⁹⁶ ignoring the fact that this test was carelessly

187. *Id.* § 46.

188. *See Reynolds v. Porter*, 1988 OK 88, ¶ 17, 760 P.2d 816, 822-23.

189. This note acknowledges that the City of Enid challenged the Act under article 18, section 3(a) of the Oklahoma Constitution, but as both the opinion and this note state, that challenge was not dispositive. *See City of Enid*, ¶¶ 20-25, 133 P.3d at 289-90 (per curiam).

190. *See* 11 OKLA. STAT. § 51-201 (Supp. 2006).

191. *City of Enid*, ¶ 29 n.18, 133 P.3d at 299 n.18 (Edmondson, J., concurring) (explaining how party admissions cannot circumscribe the sovereign power of the court).

192. *Id.* ¶ 2, 133 P.3d at 303 (Opala, J., dissenting).

193. *Id.* ¶ 19, 133 P.3d at 288 (per curiam) (finding that the Act granted the same privileges to all municipalities of the same class, and therefore did not violate article 5, section 59 of the Oklahoma Constitution).

194. *See supra* notes 64-68 and accompanying text.

195. *City of Enid*, ¶ 7, 133 P.3d at 305 (Opala, J., dissenting).

196. *See id.* ¶¶ 14-15, 133 P.3d at 287 (per curiam); *see also Burks v. Walker*, 1909 OK 317,

applied throughout Oklahoma case law in both section 46 and section 59 challenges, without distinguishing its particular application to article 5, section 46.¹⁹⁷ Thus, the Oklahoma Supreme Court failed to separate the article 5, section 46 and section 59 challenges and failed to offer supporting case law free of the confusion between such challenges.

To avoid the error of infusing article 5, section 59 jurisprudence into the court's ruling, the *City of Enid* court should have focused on the threshold definition of general laws under article 5, section 46. The court properly noted that article 5, section 59 defines general laws as those that "have a uniform operation throughout the State."¹⁹⁸ In addition, the court properly integrated the *Burks* test, which dictates that "a law may be general and have a local application or apply to a designated class if it operates equally upon all the subjects within the class for which it was adopted."¹⁹⁹ Even so, the court failed to acknowledge that a challenge under article 5, section 46 engenders an analysis separate from that under article 5, section 59. Rather than simply stating that the *Burks* test represented "the appropriate test for today's inquiry,"²⁰⁰ the court would have benefited from stating that *Burks* now represents the threshold, definitional inquiry into whether a challenged law represents general or impermissibly special legislation under any article 5, section 46 challenge. Likewise, the *City of Enid* court should have avoided any analysis under article 5, section 59. Any analytical value gleaned from the language of article 5, section 59 as to the definition of a general law also exists within the *Burks* test.²⁰¹ By heeding these suggestions, the *City of Enid* court could have laid the foundations of a distinct article 5, section 46 analysis that, while reaching the same result in the instant case, could have finally ended the confusion between challenges under article 5, sections 46 and 59. In essence, the court could, and should, have constructed the *City of Enid* test for use in future challenges under article 5, section 46 of the Oklahoma Constitution.

¶ 23, 109 P. 544, 549.

197. See *City of Enid*, ¶ 15 n.7, 133 P.3d at 287 n.7. Of the litany of cases cited by the court to demonstrate the application of the *Burks* test, a majority of the cases failed to distinguish how *Burks* particularly applied to article 5, section 46 challenges. In fact, many of the cases cited by the court were dual section 46 and section 59 challenges. Thus, in citing *Burks* as the focus of its special law jurisprudence, without any additional extrapolation as to why it bears specific relevance to article 5, section 46, the court missed a seminal opportunity to clarify prior case law.

198. OKLA. CONST. art. 5, § 59.

199. *City of Enid*, ¶ 13, 133 P.3d at 287 (quoting *Grimes v. Oklahoma City*, 2002 OK 47, ¶ 10, 49 P.3d 719, 723); see also *Burks*, ¶ 23, 109 P. at 549.

200. *City of Enid*, ¶ 15, 133 P.3d at 287.

201. See *Burks*, ¶ 23, 109 P. at 549.

E. Limitations in the Scope and Quality of the Per Curiam Opinion

To the detriment of the case and Oklahoma special law jurisprudence, the Oklahoma Supreme Court carefully limited its holding in *City of Enid* to the facts before the court. Principally, the court evaded an opportunity to grant the case precedential value by holding that the *Burks* test was “the appropriate test for today’s inquiry,” rather than marking *Burks* as the seminal test for any article 5, section 46 challenge.²⁰² Furthermore, the case failed to distinguish, discuss, or overrule any prior aberrational cases.²⁰³ Most importantly, the court limited the significance of its holding by issuing a per curiam opinion.²⁰⁴ Although “[p]er curiam opinions have precedential value as an application of settled principles of law to facts,” courts will use signed opinions when announcing new principles of law.²⁰⁵ Thus, rather than creating the *City of Enid* test that this note advocates, the *City of Enid* court issued a pronouncement with dubious future utility.

The *City of Enid* opinion may also disserve Oklahoma special law jurisprudence by further confusing the analytical framework for article 5, section 46 challenges. In addition to the shortcomings already highlighted,²⁰⁶ the *City of Enid* court validated legislative authority in municipal affairs through an amalgamated reading of article 18, section 1 of the Oklahoma Constitution, the teaching of *Edmonds v. Town of Haskell*, and the “except as otherwise provided” language of article 5, section 46 of the Oklahoma Constitution.²⁰⁷ Despite the accuracy of these holdings, the introduction of this reasoning led Justice Opala to opine that applying the permissive language of article 5, section 46 to obligatory acts, such as the Oklahoma

202. *City of Enid*, ¶ 15, 133 P.3d at 287.

203. To the credit of both dissenting opinions, the dissenting authors proffer arguments that the court should have answered if the case were intended to harbor future precedential value.

204. *City of Enid*, 2006 OK 16, 133 P.3d 281.

205. *Stanley v. Dep’t of Tax and Revenue*, 614 S.E.2d 712, 713 (W. Va. 2005); *see also* OKLA. SUP. CT. R. 1.200(c)(1) (providing that every published opinion, which would include per curiam opinions, has precedential value once a mandate has been issued by the Oklahoma Supreme Court to publish the opinion in the official reporter, the *Pacific Reporter*).

206. *See supra* Part III.D.

207. *See City of Enid*, ¶¶ 11-12, 133 P.3d at 286; *see also* OKLA. CONST. art. 18, § 1 (providing that “[m]unicipal corporations shall not be created by special laws, but the Legislature, by general laws shall provide for the incorporation and organization of cities and towns and the classification of same in proportion to population, subject to the provisions of this article”); *id.* art. 5, § 46 (providing that “[t]he Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law” in any of the twenty-eight enumerated areas); *Edmonds v. Town of Haskell*, 1926 OK 289, ¶ 9, 247 P. 5, 17-18 (allowing cities of over one thousand persons to improve roads and make assessments for these improvements).

Municipal Employee Collective Bargaining Act, “expands the exception to swallow the rule.”²⁰⁸ Rather than trying to craft exceptions through the “except as otherwise provided” language, the *City of Enid* court should have observed that articles 17 and 18 of the Oklahoma Constitution, in conjunction with article 5, section 46, vest authority in the legislature to enact county and municipal legislation, provided that the legislation meets the definition of a general law under the rubric of *Burks*.²⁰⁹ Indeed, articles 17 and 18 of the Oklahoma Constitution empower the legislature to organize and disorganize both counties and municipalities, to create county offices, to mandate that counties provide for the needy, to change county boundaries, to remove a county seat, to incorporate and organize municipalities based on population, to regulate municipal franchises, and to exercise control over municipal streets.²¹⁰ Based on these broadly enumerated powers, the *City of Enid* court had no need to invoke the permissive language of article 5, section 46. Having established that the Act passed the litmus test outlined in *Burks*, the court had no further need for substantiating the legislature’s power. By introducing an unnecessary argument into the article 5, section 46 analysis, the *City of Enid* court only served to confuse and limit the quality of its findings.

V. *The Impact of City of Enid on State Constitutional Law*

On a normative level, the decision in *City of Enid* harmonized the balance between legislative accountability and judicial deference that marked the Oklahoma Supreme Court’s special and local law jurisprudence.²¹¹ By rejecting the dissents’ attempts to shift such a significant sphere of discretion away from the state legislature, the court recognized the desire of the framers to hold the legislature to scrupulous lawmaking, while rejecting the notion that Oklahoma’s special law prohibitions act as a vast grant of lawmaking authority to municipalities, which the framers considered nothing more than “the auxiliaries of the State.”²¹² Early reports communicate the perspective of the state legislature, which presumed that “local government might well be cared for by the legislature . . . within the framework of our broad constitutional liberties.”²¹³ In keeping with this reasoning, the Oklahoma Supreme Court properly upheld the Oklahoma Municipal Employee Collective

208. *City of Enid*, ¶ 3, 133 P.3d at 304 (Opala, J., dissenting) (emphasis omitted).

209. See OKLA. CONST. arts. 17, 18.

210. See *id.*

211. See Marritz, *supra* note 10, at 190; see also *City of Enid*, 2006 OK 16, 133 P.3d 281.

212. See PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION, *supra* note 157, at 438.

213. John Paul Duncan, *County Government — Constitutional Data*, in OKLAHOMA CONSTITUTIONAL STUDIES, *supra* note 155, at 466, 469.

Bargaining Act, which manifested the state legislature's legitimate interest in local affairs by granting thousands of municipal employees the right to bargain collectively for the first time in Oklahoma history.²¹⁴

In the national context, the decision in *City of Enid* reconciled Oklahoma's special law jurisprudence with the prevailing, majority view. One national journal concludes that a population-based classification affecting municipalities "does not fall within a constitutional inhibition against special or local laws, or conflict with a provision requiring general laws to have uniform operation, where the classification reasonably is related to the purposes and objects of the legislation."²¹⁵ Another legal journal reiterates this view by stating that "[t]he classification of counties, municipal corporations, and other local governmental bodies may properly be based on population . . . if such classification is reasonably related and adapted to the subject or purpose of the statute and is uniform and general in its application."²¹⁶ Thus, by centering its inquiry on the classification contained within the Oklahoma Municipal Employee Collective Bargaining Act and by probing whether the Act manifested uniform operation and a rational relation to the object of the Act, the Oklahoma Supreme Court rendered a decision that complements the national approach to special law prohibitions.

Regardless of the *City of Enid* court's failure to create groundbreaking precedent, the opinion has demonstrated a positive, subsequent influence on Oklahoma jurisprudence. Indeed, one recent Oklahoma case accepted the reasoning of the *City of Enid* court.²¹⁷ More importantly, in a six-to-one ruling released just two months after the *City of Enid* decision, Justice Kauger discussed the *City of Enid* opinion with approval.²¹⁸ Concurring in *Jacobs Ranch, L.L.C. v. Smith*, Justice Kauger emphasized how the *City of Enid* court reaffirmed the *Burks* test as the threshold analysis into "what constituted a class for the purposes of determining whether a legislative enactment was a special law barred by the Oklahoma Constitution, art[icle] 5, § 46."²¹⁹ The most striking part of Justice Kauger's concurrence illustrated, in detail, the ramifications that would have followed a finding in *City of Enid* that the Act

214. See 11 OKLA. STAT. § 51-201 (Supp. 2006).

215. 56 AM. JUR. 2D *Municipal Corporations, Etc.* § 93 (2000).

216. 82 C.J.S. *Statutes* § 185 (1999) (footnotes omitted).

217. *Zeier v. Zimmer, Inc.*, 2006 OK 98, ¶ 18 n.42, 152 P.3d 861, 869 n.42 (striking a statute that required an affidavit of merit in a medical malpractice action as an unconstitutional special law).

218. *Jacobs Ranch, L.L.C. v. Smith*, 2006 OK 34, ¶ 2, 148 P.3d 842, 858-59 (Kauger, J., concurring) (upholding the constitutionality of amendments to water use laws that placed a moratorium on the issuance of temporary permits for out-of-basin municipal or public use of water in sensitive sole-source groundwater basins or subbasins).

219. *Id.*

constituted an impermissible special law.²²⁰ According to Justice Kauger, such a finding “would have effectively nullified at least 51 population-based legislative enactments that regulate the affairs of counties, cities, towns, wards and school districts, some of which have been on the books since just after statehood.”²²¹ Moreover, such a ruling “would have voided at least an additional 19 statutes in which the legislature has made a distinction based on population for the purpose of facilitating state services through counties or cities.”²²² Measured against this striking backdrop, one could argue that what the *City of Enid* decision lacked in precedential value was overwhelmingly remedied by the beneficial impact of the decision on the lives of millions of Oklahomans.

VI. Conclusion

Believing “that those with political power would carve out for themselves special exceptions to our general laws,”²²³ the framers of the Oklahoma Constitution specifically incorporated provisions to safeguard state citizens from the discriminatory effects of special and local legislation.²²⁴ Article 5, section 46 of the constitution provides an unequivocal prohibition against special laws in specified fields, while article 5, section 59 allows for special laws in areas left unmentioned by section 46 when a general law cannot be fashioned. The original understanding of these provisions guided the deferential development of Oklahoma special and local law jurisprudence for the century preceding the decision of the Oklahoma Supreme Court in *City of Enid v. Public Employees Relations Board*. In *City of Enid*, the court upheld an act granting the right to collectively bargain to municipal employees in cities with a population of at least thirty-five thousand on the grounds that the Act represented a rational, reasonable enactment that exhibited uniform application to all members of the class. Although the *City of Enid* opinion lacked the scope and clarity inherent to a seminal decision, the ruling recognized original understanding, refocused the constitutional inquiry regarding special law prohibitions on the classification contained within challenged legislation, and employed the appropriate test to find that the Act represented a general law. More importantly, the decision made manifest the

220. *Id.* ¶ 2 n.1, 148 P.3d at 858 n.1.

221. *Id.*

222. *Id.* To truly appreciate the breadth of how the *City of Enid* decision could have impacted the lives of Oklahomans, this note commends the reading of Justice Kauger’s footnote to any reader interested in understanding how one judicial opinion can affect Oklahomans of every walk of life.

223. *Reynolds v. Porter*, 1988 OK 88, ¶ 20, 760 P.2d 816, 824.

224. *See* OKLA. CONST. art. 5, §§ 46, 59.

promises of a constitution once considered to be “the most radical organic law ever adopted in the Union”²²⁵ by safeguarding the right of thousands of Oklahoma municipal employees to collectively bargain for the first time in Oklahoma’s century-long history .

Kristopher Dale Jarvis

225. *Oklahoma’s Radical Constitution*, 87 OUTLOOK 229, 229 (1907).