IN THE SUPREME COURT OF ALABAMA
NO. 1200230

EX PARTE JEFFERSON COUNTY BOARD OF EDUCATION

RE: PETITION FOR WRIT OF MANDAMUS
ALABAMA LOCKERS, LLC v. JEFFERSON COUNTY BOARD OF EDUCATION
Jefferson County Circuit Court
01-CV-2020-902676

ANSWER OF RESPONDENT, ALABAMA LOCKERS, LLC,

ORAL ARGUMENT REQUESTED

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I. STATEMENT REGARDING ORAL ARGUMENT

The Respondent, Alabama Lockers, LLC, requests that oral argument be heard on the issues presented in this Writ of Mandamus for the following reasons:

- Respondent strongly believes that the current precedential caselaw that forms the basis for Petitioner's "clear legal right to a dismissal order" is flawed and deserves to be effectively reanalyzed by this Court.
- Respondent presented arguments for why it disagreed with the precedent and why it should be overturned based on the original intentions of the drafters of the Constitution of Alabama in its Response to Defendant's Motion to Dismiss (Petitioner's Writ of Mandamus, at pp. 57-59) and Proposed Order to the Honorable Judge Donald E. Blankenship.[1]
- Judge Blankenship reviewed those arguments and denied Defendant/Petitioner's Motion to Dismiss on December 7, 2020. (Petitioner's Writ of Mandamus, at p. 175.)

[1] The parties' proposed orders were not made part of the record.

- Oral argument will be the most effective method for Respondent to present its case for why the current precedent is flawed and due to be overturned by this Court.

II. STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings

Alabama Lockers, LLC sued the Jefferson County Board of Education ("Board"), alleging that the Board breached its contract with Alabama Lockers because it refused to uphold a contract entered into by Alabama Lockers, LLC and the principal of Mortimer Jordan High School, failed to abide by its own policies and procedures, and violated the Alabama Bid Law, Ala. Code §16-13B-2(d). (Petitioner's Writ of Mandamus, at pp. 29-40.) While Petitioner claims that it was not bound by the contract entered into by the principal and Alabama Lockers, LLC, and Respondent did not receive the contract because it was not the "lowest bidder," those claims are contrary to both the Board's own governing policies and procedures, as well as Ala. Code §16-13B-2(b)(2).

On September 25, 2020, the Board filed a Motion to Dismiss (Petitioner's Writ of Mandamus, at pp. 42-53) for failure to state a claim against the Board upon which relief can be granted, lack of subject matter jurisdiction, and the bid law Alabama Lockers has sued under does not allow for monetary damages. The Board claimed that Alabama Lockers, LLC lacked subject-matter jurisdiction based on *Ex parte Hale Cnty Bd.*

of Edu., 14 So.3d 844 (Ala. 2009), which gives a county school board absolute immunity from suit. The Board further contended that even if absolute immunity did not apply in this case, Alabama Lockers, LLC was not the lowest bidder according to the Board's policy, and thus did not have a valid contract with the Board.

Alabama Lockers, LLC filed a response to the Board's motion to dismiss, arguing its rationale behind why the Board's sovereign immunity argument was due to be denied because the precedent should be overturned and that it had more than sufficiently stated a claim against the Board under Ala. R. Civ. P. 12(b)(6). (Petitioner's Writ of Mandamus, at pp. 57-65.) The parties presented the same arguments to the Honorable Judge Donald E. Blankenship at a telephone hearing on November 17, 2020. (*Id.*, at p. 55.)

At Judge Blankenship's request, Respondent submitted a proposed order to the court, which reiterated its arguments and further explained its legal rationale for why the sovereign immunity precedent was due to be overturned and Alabama Lockers, LLC had sufficiently stated a claim upon which relief could be granted. Judge Blankenship then issued an Order denying the Board's motion to dismiss (*Id.*, at p. 175), which led to

the Board filing an Answer and Motion for Clarification to that Order (*Id.*, at pp. 177-95), as well as a Writ of Mandamus to this Court.

III. STATEMENT OF THE ISSUES

The Alabama Supreme Court has consistently held that "for every right there is a remedy." *Lecatt v. Merchants' Ins. Co.*, 16 Ala. 177, 179 (Ala. 1849) (citing 3 Blackstone's Com. 192); *Janney v. Buell*, 55 Ala. 408, 410 (Ala. 1876); *Barker v. Byars*, 245 Ala. 223, 225 (Ala. 1944). The Constitution of Alabama states:

> There can be no law of this state impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; and the legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this state.

Ala. Const. Art. IV, § 95 (1901).

IV. STATEMENT OF THE FACTS

Dr. Byron Campbell is a former Jefferson County school principal and is now the President of Alabama Lockers, LLC. Alabama Lockers, LLC's services are unique as they assign lockers through INow, which is a system that assigns lockers and provides reports to schools after student registration, in addition to providing locks. On June 3, 2013, Ms. Snyder, principal of Mortimer Jordan High School, signed a contract with Alabama Lockers, which extended from 2013 – 2016, and was specifically approved by Dr. Stephen Nowlin, the Jefferson County Superintendent of Education at that time. (Writ of Mandamus, at pp. 94-95.) The lockers were serviced at Mortimer Jordan High School as contracted in 2013. On May 29, 2014, during a pre-bid conference, Tracie Busby, who was responsible for bids and contracts, provided a chart reflecting that Alabama Lockers had active contracts with Oak Grove High School and Mortimer Jordan High School. (*Id.*, at p. 96.) There was a bidding process in May 2014, in which Locker Pro ultimately was recognized as having submitted the lowest bid. Based on that bid, Locker Pro received a contract with the Board for locker maintenance.

When Dr. Campbell was informed that Alabama Lockers was not the lowest bidder for the locker maintenance contract during the bidding that followed, he specifically inquired as to whether Alabama Lockers was still free to do work at Mortimer Jordan High School. He was informed by Mrs. Busby and Ms. Yeager that the signed three-year contract, notwithstanding the bid, was good for 2014 only.[2] Alabama Lockers serviced Mortimer Jordan High School in August of 2014. Ms. Snyder and her bookkeeper had left Mortimer Jordan by August 2014, and a new administrator and bookkeeper were in place. The work for Mortimer Jordan was invoiced by Alabama Lockers on or about August 8, 2014. The new principal of Mortimer Jordan High School contacted the

[2] This is validated by the contract list Busby provided to Dr. Campbell, which lists the "expiration date" for Mortimer Jordan High as 2014. Without the express consent of those individuals to change the expiration date to 2014, the contract, by its original terms and conditions, should have covered "a minimum of 3 consecutive school years and [would] automatically be renewed each 3-year period unless cancelled by either party." Because the contract was signed on June 3, 2013, that 3-year period would not have ended until June 3, 2016. (*Id.*, at pp. 94-96.) Further, despite the Board's attempt to require the Mortimer Jordan High School principal to pay Alabama Lockers' invoice out of her own pocket, the Local School Finance Manual provides, in §6, "Any contract entered into by the Principal may be cancelled by the Superintendent and the Principal held personally responsible unless written permission is secured beforehand." Neither party, particularly the Board, ever cancelled the contract in accordance with that policy.

Board's finance department and was instructed not to pay the Alabama Lockers invoice. The finance department claimed that a purchase order was needed in the absence of a valid contract. Upon hearing that statement, Dr. Campbell sent a letter to Yeager reminding her of the conversation in which she stated that Alabama Lockers could service the lockers in 2014. Dr. Campbell received a return letter from Yeager stating that there had been no valid contract and no purchase order. Yeager indicated that existing contracts would be honored, but added that it was never confirmed that the contract was valid.[3] On or about June 17, Yeager strongly advised that schools purchase from this bid in the future, but no order was initiated at the time. The Board refused to pay Alabama Lockers for the work completed at Mortimer Jordan. The

[3] Yeager acknowledged that "In this specific situation, the Principal was the one who entered into the agreement and was also the one providing the locker count and contract status." (*Id.*, at p. 97-98.) This statement indicates that principals had the authority (with the consent of the Superintendent) to enter into contracts funded with "local school funds," according to the Alabama Department of Education's Financial Procedures for Local Schools. Yeager went on to state, however, that: "We did make the statement that existing (valid) contracts would be honored, but never confirmed that your contract with MJHS was or was not valid." *Id.*

nonpayment resulted in damage to Alabama Lockers in the amount of $2,731.65.

In agreement with the Board's local school finance manual as well as board policy, Yeager instructed schools to document services provided by a non-bid vendor if those services were secured at a cheaper rate. The Board's policy related to its bidding process (published on May 15, 2014 by the Jefferson County Board of Education Bids and Contracts Department), states in Section I(18): "The Jefferson County Board of Education reserves the right to purchase any product identified on this bid from another valid governmental bid should the alternate bid pricing be lower than the pricing on this bid." (*Id.*, at p. 70, ¶ 18.) This clause was implemented as a custom policy throughout Jefferson County schools, as is evidenced by Interim Superintendent Bobby G. Neighbors' memorandum from June 10, 2014 (published after the awarding of the 2014 locker "bid" to Locker Pro), which stated: "Schools that are not currently under a contract, will be strongly advised to purchase from this bid."[4] (*Id.*, at p. 80.) Further, the Board's Assistant Director of Finance, Kari B. Yeager, also sent out an email to school principals and secretaries

[4] The language "strongly advised" does not indicate a policy requirement.

after the Locker Pro bid award, and clearly stated that while schools are "expected to use this bid.... If you do not used the bid vendor, you will be required to document that the services provided by the non-bid vendor were at a cheaper rate than the bid vendor." (*Id.*, at p. 81.) These communications clearly demonstrate that Section I(18) of the Board's bid policy gave principals the authority to contract with a separate vendor than the one chosen by the Board, **as long as the contractor offered lower pricing than the preferred bid**.

In July, Dr. Robinson, principal at Fultondale High School, obtained approval to use Alabama Lockers at his school. **The Alabama Lockers bid was cheaper than the bid by Locker Pro.** Alabama Lockers was issued a check for the services rendered at Fultondale High School. Alabama Lockers serviced the lockers at Corner High School, with the school being invoiced on July 25, 2014. During an audit of Corner High School, three price quotations were needed to demonstrate that Alabama Lockers' bid was cheaper than the bid vendor, as consistent with state law and the Board's policy. An email came out from the Board after the audit stating that "if there is a bid that exists for an item you are wishing to purchase, it is expected that the bid will be used regardless

of the source of funds." That email is in contravention to the Local School Finance Manual, which provides that the restrictive bid policy can only be applied to appropriated funds, not local school funds. Since students pay personally for locker rental, the funds collected are "local funds" and are not subject to the restrictive bid policy. (*Id.*, at pp. 80; 82.)

In June 2015, Dr. Robinson requested that Alabama Lockers service the lockers at Fultondale High School. Alabama Lockers informed Dr. Robinson that they would need a purchase order due to the nonpayment, which occurred at Mortimer Jordan. Dr. Robinson provided an invoice to Alabama Lockers, and the combinations were advanced. Around the same time, Locker Pro arrived at Fultondale High School to service lockers and was informed that Alabama Lockers had already completed the work. Dr. Robinson was informed by Sheila Jones, the Board's Chief School Financial Officer, that the invoice was out of compliance and that if the school paid the invoice that the monies would have to be taken out of her personal paycheck. Upon receiving that information, Alabama Lockers notified Dr. Robinson that there was no payment needed, and that it would not dip into her personal paycheck. For the second time, the Board refused to pay Alabama Lockers for

services rendered. Dr. Campbell met with Dr. Craig Pouncey, then-Superintendent of Jefferson County Schools, at which meeting Dr. Campbell indicated that proper procedures had not been followed. Dr. Campbell requested a reason in writing as to why Alabama Lockers had not been paid, but that request was ignored.

On or about June 28, 2016, Dr. Campbell again met with Dr. Pouncey, pointing out that items purchased with school funds [local monies] whether public or non-public were not subject to the bid law (*see* Ala. Code §16-13B-2(b)(2)) because they were purchased with "local funds," which are not "moneys raised by taxation or received through appropriations from state or county services." Dr. Campbell highlighted that the services rendered by Alabama Lockers at Fultondale High School complied with the relevant provisions of the Alabama Department of Education's Financial Procedures for Local Schools, which states: "The Principal should approve all expenditures that will be paid from school funds," and "Contracts, including service contracts for…maintenance…must have the approval of the School Superintendent before the services begin." (*Id.*, at p. 86.) **Nothing within the Alabama Dept. of Education's purchase orders procedure requires a**

County Board of Education to approve a vendor contract paid through school funds, which is exactly what happened in this case. *Id.*

Dr. Pouncey replied to Dr. Campbell, stating that "when available all purchases must be made from existing bids." This response was consistent with the email on July 14, 2014 from Melissa Johnson, Internal Audit Director, in which Johnson quoted a single line from the Jefferson County Local School Finance Manual (effective March 20, 2014), which states: "When available, ALL PURCHASES must be made from an existing bid." (emphasis in original) (*Id.*, at p. 99; *see also id.*, at p. 123-24.) The Finance Manual, however, makes clear that the purchasing "process shall be applicable to all purchases consistent with provisions of all Alabama State Competitive Bid Laws, Code of Alabama 1975, title 41, Chapter 16, and procedures established by the Examiners of Public Accounts," which clearly do not require competitive bidding for non-appropriated money. *Id.* In fact, the very next section lays out the specific procedure for purchases from non-appropriated money, and states: "Goods or services purchased or leased with funds NOT involving

appropriations, taxation or grants (gate receipts, fundraiser proceeds, donations received from a non-governmental entity, etc.):

a. Simple Purchase - $0 - $1,000.00 or less -May be made in the open market,

or through competitive bidding through the Bids & Contracts Department.

b. Quotable Item - $1,001+ - May be made by obtaining a minimum of three (3)

written quotes and using the lowest responsible quote, or through competitive

bidding through the Bids & Contracts Department." (emphasis in original) (*Id.*)

Therefore, not only does the State Bid Law **not** require competitive bidding for locker maintenance contracts, but also neither does the Board's own Local School Finance Manual. The email sent by Johnson resulted in Alabama Lockers losing all of its business in the Jefferson County School District.

Finally, Alabama Lockers maintains that the Board is in potential violation of the "Bid Law" based on the fact that its own policies are either

incorrect, according to Alabama Education Code §16-13B-2(b)(2) or the Board has intentionally misrepresented its policy in order to disadvantage Alabama Lockers. After Dr. Campbell made Dr. Pouncey aware of these policies, the following day, Alabama Lockers was paid after Dr. Pouncey instructed Fultondale High School's Office Coordinator to process the outstanding purchase order.

In April of 2017, Alabama Lockers was excluded from the invitation by the Board to bid for locker maintenance. After various extensions and refusals to provide combination spreadsheets, Alabama Lockers was eventually allowed to join the bidding process, but the bid was awarded to Ry-Cha. The bid was in contravention to Section II, General Conditions Minimum Qualifications, which states that "A successful bidder shall have a minimum of 3 years providing services of a similar size, nature and complexity to that specified and experience doing business under the same firm name in which bids are submitted." Ry-Cha did not meet the incorporation requirements, as it had not been incorporated for the three-year requirement and was a janitorial supply and service company.

V. STATEMENT OF THE STANDARD OF REVIEW

Because Respondent is asking this Court to overturn prior precedent, Rule 15 of the Alabama Rules of Appellate Procedure also applies: "No former adjudication of the court shall be overruled or materially modified except upon consultation of the court as a whole."

VI. SUMMARY OF THE ARGUMENT

While Respondent acknowledges that *Hale* and later precedents give a county school board absolute immunity from suit, Respondent disagrees with this precedent and believes that it should be overturned based on the original intentions of the drafters of the Constitution of Alabama. The Alabama Supreme Court has consistently held that "for every right there is a remedy." Further, the right to contract without interference by any state legislation dates back to the beginning of Alabama Constitutional law, and there was never an intent to take that right to contract away when the constitutional language was modified in 1875 to state: "The State of Alabama shall never be made defendant in any court of law or equity." Const. Ala. Art. I, § 15 (1875). Precedent decided prior to the *Hale* decision, *Kimmons v. Jefferson County Board of Education*, 204 Ala. 384, 85 So. 774, 777 (1920), which stood for decades, held that a county board of education could contract/sue and be sued. *Kimmons* was not only decided closer in time to when the Constitutional language was modified, but it also specifically contemplated whether a county board of education was an "arm of the state," and still held that it should be an entity capable of being sued – an analysis that the *Hale*

court misinterpreted. Based on *Hale's* misinterpretation of *Kimmons* and lack of Constitutional analysis as a whole, the precedent is due to be reanalyzed and overturned by this Court.

Further, this case is unique in that the State of Alabama's and Board's own policies and procedures never required it to approve Respondent's contract with Petitioner. Therefore, this Court should find that the defenses provided by Petitioner (aside from the subject matter jurisdiction argument) are merely a smoke screen to avoid breaching the clear contract it constructed with Alabama Lockers, LLC.

VII. ARGUMENT

A. Current Precedent Depriving Respondent of Subject Matter Jurisdiction is Due to Be Overturned

Respondent does not disagree with Petitioner that the most important issue to be decided by this Court is that of subject matter jurisdiction. Respondent disagrees, however, with the current precedent set by this Court and strongly urges it to reassess that precedent according to the original intentions of the drafters of the Constitution of Alabama. The Alabama Supreme Court has consistently held that "for every right there is a remedy." *Lecatt v. Merchants' Ins. Co.*, 16 Ala. 177, 179 (Ala. 1849) (citing 3 Blackstone's Com. 192); *Janney v. Buell*, 55 Ala. 408, 410 (Ala. 1876); *Barker v. Byars*, 245 Ala. 223, 225 (Ala. 1944). The Constitution of Alabama 1901 states:

> There can be no law of this state impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; and the legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this state.

Ala. Const. Art. IV, § 95 (1901).

The right to contract without interference by any state legislation dates back to the beginning of Alabama Constitutional law. *See* Ala.

Const. Art. I, § 19 (1819); Ala. Const. Art. I, § 19 (1861); Ala. Const. Art. I, § 24 (1865); Ala. Const. Art. I, § 24 (1868); Ala. Const. Art. I, § 23 (1875) (all of which state: "That no ex post facto law, **nor any law impairing the obligation of contracts**...shall be passed by the General Assembly"). (Emphasis added.) Article 1, § 15 of the Constitution of Alabama 1865 and Article 1, § 16 of the Constitution of Alabama 1868, in fact, stated: "That suits may be brought against the State, in such manner, and in such courts, as may be by law provided." It was not until 1875 that the constitutional language was modified to state: "The State of Alabama shall never be made defendant in any court of law or equity." Ala. Const. Art. I, § 15 (1875). The Constitution of Alabama 1875, however, **did not change nor omit** the clear language of the prior state constitutions, stating that "no...law impairing the obligation of contracts...shall be passed by the General Assembly." Ala. Const. Art. I, § 23 (1875). Thus, it is clear that the drafters of the Constitution of Alabama 1875 did not intend for Alabama citizens to lose their right to contract with the state nor to impair the obligation/recovery upon said contracts.

A deeper dive into this constitutional interpretation, paralleled with the Alabama Supreme Court's decision in *Kimmons*, which held that a "county board of education may sue and contract....This right to sue carries with it the implied right to be sued" and was decided much closer in time to the 1875 constitutional change than the 2009 *Hale* decision should convince this Court that the current precedent is due to be overturned.

It can be inferred that the 1920 *Kimmons* Court had a better understanding of the mindset of the drafters of the Constitution of Alabama 1875 than did the *Hale* Court, interpreting the language almost a century later. The Board tries to rebut Respondent's Constitutional analysis argument by stating: "the Court's decision in *Hale* wasn't haphazard, carless [sic], or otherwise inconsistent with 'the original intentions of the drafters of the Constitution of Alabama'". (Writ of Mandamus, at pp. 164-65.) The Board, however, does not give any indication whatsoever that the *Hale* court even acknowledged or attempted to interpret the intentions of the drafters of the Constitution in its decision. Rather, the Board goes on to state: "the Court in *Hale* expressly acknowledged what it was doing: It was plainly rejecting

Kimmons, a decision that was not only fatally flawed, but one that had wrought "significant confusion" among courts and parties alike." *Id.*, at p. 20; 166.

Had the Board more effectively analyzed the *Hale* decision, it would have found that the Court made no effort to analyze the specific language or intentions of the Constitutional drafters prior to the Alabama Constitutions of 1901 and 1875. Neither did the Court do so in the six times that it has affirmed *Hale* since.[5] The original language regarding impairment of contracts that was included in the Constitutions prior to 1875, as laid out *supra*, was **never** omitted in subsequent constitutions, which indicates that the drafters **never** intended to remove an individual's contractual rights and remedies with local municipalities. This was clearly evidenced in *Askew v. Hale County*, 54 Ala. 639 (1875), which was decided the exact same year that the new constitutional language was added to provide immunity to the state.

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[5] *See e.g., Ex parte Wilcox Cnty Bd. of Edu.*, 285 So.3d 765 (Ala. 2019); *Ex parte Jackson Cnty Bd. of Edu.*, 164 So.3d 532 (Ala 2014); *Ex parte Phoenix City Bd. of Edu.*, 109 So.3d 631 (Ala. 2012); *Bd. of Sch. Comm'rs of Mobile Cnty v. Weaver*, 99 So.3d 1210 (Ala. 2012); *Ex parte Montgomery Cnty. Bd. Of Edu.*, 88 So.3d 837 (Ala. 2012); *Colbert Cnty Bd. of Edu. v. James*, 83 So.3d 473 (Ala. 2011); *Ex parte Monroe Cnty Bd. of Edu.*, 48 So.3d 621 (Ala. 2010).

In *Askew*, an individual sued Hale County, then newly created, for damages he suffered when a bridge he was crossing "careened," throwing his horses and carriage from it, killing one horse, injuring the other, and damaging the carriage. The trial court dismissed the claims against the county. Although this Court sustained the demurrer on appeal, it wrote:

> "It is true the statute declares, 'every county which has been or may be established in this State, is a body corporate, and with power to sue and be sued in any court of record.' -- R.C. § 897. Counties are necessarily invested with some corporate functions, and as to these, each county is ... a quasi corporation."

54 Ala. at 643.

While the *Hale* court acknowledged the *Askew* holding, it claimed that when the *Kimmons* court extended a county's liability to suit to county boards of education, it "failed to consider that county boards of education are "local agencies of the state" and thus immune from suit under the constitutional bar of § 14." *Hale*, 14 So. 3d 848. Again, *Kimmons* was decided in 1920 – much closer to 1875 when the Constitutional language was added and *Askew* was decided – which means that the Courts that interpreted *Askew* and *Kimmons* clearly had a better understanding of the drafters' intentions than did the *Hale* court

or the 1984 Court, which *Hale* relied upon for its contention that "'County boards of education are not agencies of the counties, but local agencies of the state, charged by the legislature with the task of supervising public education within the counties.'" *Id.*, quoting *Hutt v. Etowah County Bd. of Education*, 454 So. 2d 973, 974 (Ala. 1984).

The *Hale* Court, however, was misguided in its interpretation of *Kimmons*, because *Kimmons* clearly considered that county boards were "local agencies of the state," as *Kimmons* specifically held and has been cited to numerous times for the holding that 'The county board of education has been designated as a quasi corporation, an independent agency of the state for the purposes enumerated in the statute." 204 Ala. 384, 387-88; *Greeson Mfg. Co. v. County Board of Education*, 217 Ala. 565, 566 (Ala. 1928); *Turk v. County Bd. of Education*, 222 Ala. 177, (Ala. 1930) In fact, *Kimmons* also specifically contemplated whether the statute being imposed could be applied on a county or state level. The bill that it interpreted alleged:

> ...**the board of education is not a legally constituted body**, and is without power to issue said warrants; that the law under which it is attempted to be created is unconstitutional, in that it violates section 45, art. 4, of the Constitution, which declares that each law shall contain but one

> subject which shall be clearly expressed in the title; and, further, that said law is also unconstitutional, in that **it does not relate to the entire state; that in many of its aspects it relates only to certain counties or school districts which may or may not have levied a school tax, or which may or may not have a combined county school system, and that therefore said act is a local act applying only to certain counties or school districts**....

Kimmons, 204 Ala. 384, 384. (Emphasis added.)

Responding to that specific portion of the bill, the Court struck down the idea that the county was not an arm of the state, holding: "The suggestion that the law is a local one, for the reason at the time of its passage there may be in the state certain localities where there is no need for its operation, is also without merit." *Kimmons*, 204 Ala. 384, 386-87 quoting *State ex rel. Collman v. Pitts*, 160 Ala. 133, 49 South. 441, 686, 135 Am. St. Rep. 79. The *Pitts* court held that under the Alabama Constitution, a prohibition law was a general law, not a local law, because it applied to the entire state and was not confined to a political subdivision, even though it might not operate in every detail throughout the state. *Id.*

The *Kimmons* Court then moved directly on to analyzing the functions of what a county board of education does, and specifically

concluded: "The county board of education is given the right to sue, and the implied right to be sued, and to hold property in trust. We are of the opinion that a reading of the act will disclose that this board is in fact a quasi corporation (*Askew*, 54 Ala. 639, 25 Am. Rep. 730), and constitutes in fact **an independent agency of the state** for the purposes therein enumerated." *Kimmons*, 204 Ala. 384, 387-88 (emphasis added), quoting *Mobile County v. Kimball & Slaughter*, 54 Ala. 56, 58-59 (Ala. 1875), holding "[t]he harbor board [a 'board for the improvement of the river, harbor and bay of Mobile,'] was a body created by the general assembly of Alabama, and not an agent appointed by the county of Mobile. Its authority as well as its existence was derived through the statute from the State."

Thus, when the *Kimmons* Court held that the county board was "an independent agency of the state," it specifically relied on precedent which had already analyzed another county board that was created as an "arm of the state." *Id.* This is the exact logic that the *Hale* Court claimed *Kimmons* did not contemplate, and later used to reverse the decision, which was clearly not the intention of either the Constitutional drafters nor the *Kimmons* Court. In the face of the exact issue the *Hale* Court

claimed *Kimmons* did not address – that "county boards are not agencies of the counties, but local agencies of the state" – *Kimmons* still held that "The county board of education is given the right to sue, and the implied right to be sued." 204 Ala. 384, 387.

Thus, it is abundantly clear that the *Hale* court was misguided in its analysis, as it misinterpreted the precedent upon which *Kimmons* was based, and used that misinterpretation, alone, without further analyzing the intentions of the Constitutional drafters or the actual functions of a county board of education to overturn decades old precedent – precedent pursuant to which this State's Constitution obviously never intended to take away contractual rights and obligations from individuals with local municipalities, such as county boards of education. Therefore, the *Hale* precedent, and all decisions following it, which give a county school board absolute immunity from suit, should be overturned based on the original intentions of the drafters of the Constitution of Alabama. For every right, there is a remedy.

B. State and Local Policies Never Required Jefferson County Board of Education to Approve Contracts with Respondent

As was made abundantly clear by Dr. Campbell, items purchased with school funds [local monies], whether public or non-public, were not

subject to the Alabama bid law (*see* Ala. Code §16-13B-2(b)(2)) because they were purchased with "local funds," which are not "moneys raised by taxation or received through appropriations from state or county services." Dr. Campbell highlighted that the services rendered by Alabama Lockers at Fultondale High School complied with the relevant provisions of the Alabama State Department of Education's Financial Procedures for Local Schools, which states: "The Principal should approve all expenditures that will be paid from school funds," and "Contracts, including service contracts for…maintenance…must have the approval of the School Superintendent before the services begin." (Writ of Mandamus, at p. 86.) **Nothing within the Alabama Department of Education's purchase orders procedure requires a County Board of Education to approve a vendor contract paid through school funds, which is exactly what happened in this case.** *Id.*

The simple issue that this case comes down to is that the State of Alabama and the Board's own policies and procedures allow for local principals to contract with suppliers for services that are paid for with "local funds." In this case, those "local funds" are monies that are paid for

by students for locker services (no taxpayer money was used, so therefore the Alabama Bid Law was never triggered). The Board used the unnecessary "Bid Law" in this case as an excuse to breach the contract with Alabama Lockers that it was clearly bound by, according to its own policies and procedures, to claim it did not technically have to pay for the services rendered. Alabama Lockers was never required to be the "lowest bidder," nor was its contract required to be approved by the Board, as is evidenced throughout the record provided in the Writ of Mandamus. Yet, the Jefferson County Board of Education clearly breached its contract with Alabama Lockers, LLC. It did not honor its contract. And, as we've read somewhere, "for every right, there is a remedy."

VIII. CONCLUSION

Respondent respectfully asks this Court to reanalyze its prior precedents regarding absolute immunity regarding county boards of education. A closer look at the original intent of the Constitutional drafters and the *Kimmons* decision makes clear that it was never their intent to deprive individuals of the right to contract with county boards of education. The clear harm of the misguided *Hale* decision is apparent in this case, as Petitioner misrepresented its own policies in order to avoid liability for a valid contract entered into by Respondent with Petitioner's agents. Because "for every right, there is a remedy," *Hale* is due to be overturned.

Respectfully Submitted,

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IX. CERTIFICATE OF COMPLIANCE[6]

1. This brief complies with the page limitations of Ala. R. App. P. 32(a)(6) because this brief is double-spaced (except for quotations from cases and footnotes). The margins are at least one-inch on all four sides, and page numbers are included in the margins.

2. This brief complies with the typeface requirements of Ala. R. App. P. 32(a)(7) because this brief has been prepared in proportionally spaced typeface using Microsoft Word Century Schoolbook 14-point type with plain, Roman style type. The margins of headings, sentences and paragraphs in text and footnotes are fully justified.

3. This brief complies with the form and type-limitations of Ala. R. App. P. 32(b)(3) because it includes the contents required by Ala. R. App. P. 28(b) and does not exceed 6,000 words or 30 pages. In compliance with Ala. R. App. P. 32(b)(3), this brief contains 5,750 words as determined by the Word Count function of Microsoft Word.

/s/ *Karli B. Guyther*
Attorney for Appellant
Dated: 02/23/2021

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[6] Petitioner's Writ of Mandamus is not in compliance with Ala. R. App. P. 28 or 32.

X. CERTIFICATE OF SERVICE

I hereby certify that I have, on February 23, 2021, electronically filed the foregoing *Answer to Petitioner's Writ of Mandamus* with the Clerk of Court using the Court's electronic filing system. I have filed 9 hard copies of the foregoing by U.S. mail, properly addressed to the following:

Supreme Court of Alabama
ATTN: Clerk of Court
300 Dexter Avenue
Montgomery, Alabama 36104

I have also served a copy of the foregoing by U.S. Mail, properly addressed to the following:

Hon. Donald E. Blankenship
Jefferson County Circuit Judge
Jefferson County Courthouse, Room 360
716 Richard Arrington, Jr. Blvd. N.
Birmingham, AL 35203

I have also served a copy of the foregoing by email, properly addressed to the following:

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/s/ Karli B. Guyther
OF COUNSEL