CASE NUMBER: 1190470

IN THE SUPREME COURT OF ALABAMA

VERNON BARNETT, RAY LONG, JEFF CLARK, RANDY VEST, DON STISHER, GREG ABERCROMBIE

DEFENDANTS/APPELLANTS

v.

DR. DANA JONES, VENITA JONES, DANA GLADDEN, HARTSELL CITY EDUCATION ASSOCIATION, RODNEY RANDELL, DECATUR EDUCATION ASSOCIATION, RONA BLEVINS, MORGAN COUNTY EDUCATION ASSOCIATION,

PLAINTIFFS/APPELLEES

ON APPEAL FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY, CASE NO. 2019-477

MOTION AND BRIEF OF AMICUS CURIAE ASSOCIATION OF COUNTY COMMISSIONS OF ALABAMA IN SUPPORT OF APPELLANTS

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ORAL ARGUMENT REQUESTED

MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE

Comes Now the Association of County Commissions of Alabama (hereinafter referred to as the "ACCA"), and hereby respectfully files this Motion for Leave to Appear as Amicus Curiae in support of the Appellants, Vernon Barnett, Ray Long, Jeff Clark, Randy Vest, Don Stisher, and Greg Abercrombie, in the above-referenced case. In support of this Motion, the ACCA states as follows:

1. The ACCA was formed in 1929 to serve as an education, technical, legal, legislative, and public policy resource for Alabama's sixty-seven counties. Each county commission in the state is a member.

2. This Court's decision in this case will greatly affect each of the ACCA's sixty-seven member counties and the citizens that depend on the services they provide. If the circuit court's ruling stands, it will open the door for the counties' general funds to be raided by local laws benefiting various special interest groups.

3. As discussed herein, well-established general law, including, *inter alia*, Ala. Code (1975) §§ 11-8-1 *et seq.*, establishes a comprehensive system of fiscal management that is designed to ensure that each county is able to provide

essential services to its citizens within the confines of a balanced budget. These services include, but are not limited to: critical public safety services through the funding of the county sheriff and jail; emergency management; maintenance of county roads and bridges; maintenance of each county's courthouse and other important public facilities; funding community libraries, law libraries, and parks; funding for the probate office; etc., etc. *See, e.g.*, Ala. Code (1975) §§ 11-12-13 (Utilities for courthouse offices); 11-12-14 (Books, stationery, telephones, etc. for probate judge, tax assessor, sheriff, etc.); 11-12-15 (Preferred Claims statute); 11-25-1 (County Law Libraries); 31-9-10 (Local emergency management organizations).

4. The county commissions' portions of the Simplified Seller Use Tax ("SSUT"), as distributed by Ala. Code (1975) § 40-23-197, is an important part of the funding mechanism for county government in the modern era. Education is, of course, also a worthy cause – but, unlike the various services that must be funded from the counties' general fund budgets, education also has multiple additional streams of revenue. Indeed, § 40-23-197 itself provides for an allocation of the SSUT funds to the Education Trust Fund.

In passing the general law, the Legislature certainly could have provided for additional funds for education from the SSUT; however, § 40-23-197 instead specifically provides that the counties' portions of the funds are to be deposited in their respective general funds. The ACCA agrees with the Appellants in this case that Alabama Act 2019-272 creates an impermissible variance from this general law and is therefore unconstitutional pursuant to Section 105 of the Alabama Constitution of 1901.

5. The ACCA has been accepted as an amicus party previously in both federal and state court in cases involving important questions of county governance and finance, including by this Court in, e.g., *Smitherman v. Marshall County Commission*,756 So.2d 1001 (Ala. 1999).

WHEREFORE, because this Court's decision in the above-referenced case will affect all county commissions and their employees in the State of Alabama, the ACCA respectfully requests that this Court grant permission to enter its appearance as Amicus Curiae in support of the Appellants. The ACCA agrees with Appellants that oral argument is necessary in this case. If oral argument were to be granted,

Amicus Curiae the ACCA hereby respectfully requests the opportunity to participate in any such argument.

Respectfully submitted this 3rd day of June, 2020.

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STATEMENT REGARDING ORAL ARGUMENT

Amicus Curiae Association of County Commissions of Alabama agrees with Appellants that oral argument is appropriate in this case. The negative consequences of allowing funds specifically appropriated to the Morgan County Commission's General Fund for use in accordance with general law to be diverted by a local act is expected to have far-reaching implications that will affect all sixty-seven counties in this State. The ACCA also respectfully requests that it be allowed to participate in any oral argument that is held in the case.

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SUMMARY OF THE ARGUMENT

Section 105 of the Alabama Constitution of 1901 was enacted as part of an effort to curb the previous century's excess of local laws. Over the next few decades, a patchwork of local acts creating an uneven application of law across the State again begin to proliferate until this Court's decision in *Peddycoart v. City of Birmingham*, 354 So.2d 808 (Ala. 1978), refocused courts on § 105's plain language and purpose. Although it cited *Peddycoart*, Circuit Court of Montgomery County still incorrectly interperted § 105 to permit the diversion, via local law, of Simplied Seller Use Tax proceeds that were specifically appropriated to the Morgan County Commission's General Fund by Ala. Code (1975) § 40-23-197. This result is contrary to both well-established Alabama law and public policy. Amicus Curiae the Association of County Commissions of Alabama therefore respectfully urges that this Court reverse the decision of the circuit court in this case.

ARGUMENT

I. THE CIRCUIT COURT MISINTERPRETED SECTION 105 OF THE ALABAMA CONSTITUTION OF 1901.

Section 105 of the Alabama Constitution of 1901 provides as follows:

> No special, private, or local law, except a law fixing the time of holding courts, shall be enacted in any case which is provided for by a general law, or when the relief sought can be given by any court of this state; and the courts, and not the legislature, shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be given by any court; nor shall the legislature indirectly enact any such special, private, or local law by the partial repeal of a general law.

Ala. Const. 1901, § 105. Although the circuit court correctly cited *Peddycoart v. City of Birmingham*, 354 So.2d 808 (Ala. 1978), and its progeny, as the relevant controlling authority for determining whether a local law violates this provision, its actual holding harkens back to a much older, laxer interpretation of this Section.

Appellants' principal brief contains a well-argued discussion of the legislative and judicial history of § 105 which, in the interest of judicial economy, the ACCA hereby adopts and incorporates by reference this portion of Appellants' Brief (pgs. 4-30.) As stated therein, § 105 was

part of a deliberate effort by the framers of the 1901 constitution to address "the task of preventing the growing evil of local legislation." *Byrd v. State*, 212 Ala. 266, 225, 102 So. 223 (1924), *overruled on other grounds, St. Elmo Irvington Water Authority v. Mobile County Com'n*, 212 Ala. 266, 102 So. 233 (1924). This purpose was somewhat lost in the decades between 1901 and *Peddycoart*, as § 105 was eventually interpreted "in at least three different ways: (1) It was intended to prevent local laws whose purposes might be accomplished outside the legislature; (2) It was intended to prevent duplication in legislative enactments; and (3) It was not intended to prevent the enactment of a local law on a subject already covered by a general law, when the local law is substantially different from the general law." 354 So.2d at 812. *Peddycoart* disregarded the prior decades of judicial gloss and reexamined the plain language of the phrase "provided for" as used in § 105, holding that the Court is "bound to consider the phrase as one of restraint and limitation pertaining to matters of the same import dealt with in the local law." *Id.* at 811. This Court accordingly overturned earlier cases that minimized the importance of "mere[]" general laws, and stated that § 105 instead prohibits

any local act "when the subject is already subsumed by the general statute." *Id.* at 813.

Since *Peddycoart*, this Court has consistently reinforced the principle that § 105 goes beyond simply prohibiting a direct conflict between a local law and a general law to forbid a local law that is concerned with the same subject as the general law. *See, e.g., City of Homewood v. Bharat, LLC*, 931 So.2d 697 (Ala. 2005); *County Comm'n of Jefferson County v. Fraternal Order of Police*, 558 So.2d 893 (Ala. 1989); *Opinion of the Justices No. 311*, 469 So.2d 105 (Ala. 1985); *Crandall v. City of Birmingham*, 442 So.2d 77 (Ala. 1983); *ABC Bonding Co. v. Montgomery County Surety Comm'n*, 372 So.2d 4 (Ala. 1979).

The cases admit of two primary exceptions to this principle: first, when a general law specifically contemplates the existence of local laws. *See Baldwin County v. Jenkins*, 494 So.2d 584, 587 (Ala. 1986). Several of the local laws cited by Appellees in their briefs to the circuit court as examples of local laws permitting additional disbursements of funds fall into this category; for example, local laws concerning the distribution of the beer tax are expressly contemplated in the general law, Ala. Code (1975)

§ 28-3-190(c). Second, local laws have been allowed in a few cases when there has been a finding of a specific local need; however, as stated in Appellants' Brief, this exception has never been an issue in this case, and was not the basis of the circuit court's holding.

The Legislature certainly could have included language allowing local variations from the distribution of SSUT funds pursuant to § 40-23-197, thereby making this statute fall under the first exception; yet, it chose not to do so both when the statute was enacted and when it was amended. Nevertheless, the circuit court held that the Act did not create an impermissible variance from § 40-23-197 because "[n]othing in the general SSUT law restricts how SSUT proceeds must be allocated, nor does the general SSUT law bar the Legislature from using local acts to direct how the SSUT proceeds should be distributed." (C.447.)

Neither part of this statement is correct. As to the first part (that the general SSUT law does not restrict how these proceeds must be allocated): as discussed *infra*, it is the position of the ACCA that Act 2019-272 is indeed in direct conflict with the appropriation of SSUT proceeds to the "general fund of the respective county commissions" in § 40-

23-197. Section 40-23-197 does not merely "leave off" at some undefined point, as stated by the circuit court. (C.446.) Its appropriation to the commissions' general funds is complete in and of itself. From that point, other general law, most notably including the Budget Control Act, further governs the disposition of the monies in the general fund.

Second, even if there were not a direct conflict, the circuit court's reliance on the absence of an explicit prohibition against the re-appropriation of SSUT proceeds by local law betrays the central flaw in the circuit court's interpretation of § 105: namely, that it improperly disregarded the significance of the very existence of § 40-23-197 in the same manner as, e.g., the Court in *State ex rel. Brandon, et al. v. Prince*, 199 Ala. 444, 74 So. 939 (1917), which was disavowed in *Peddycoart*, 354 So.2d at 813. The notion that a general law must specifically prohibit local laws on the same subject is literally the opposite of both the plain language of § 105 and the post-*Peddycoart* cases based thereon. *Baldwin County v. Jenkins*, 494 So.2d 584, 587 (Ala. 1986). The Legislature may allow for local variations of a general law, but, in the absence of such a provision, § 105 acts to prohibit such local acts. *Cf. Id.* (holding that

a local law regarding the election of county commissioners was valid when the general law specifically provided for the existence of local acts).[1]

Holding that local laws that add to a general law are allowed unless they are explicitly prohibited or directly contradictory would be a return to the pre-*Peddycoart* days of all sorts of "contrivances" around the general law in contravention of the purposes of § 105. *Baldwin County v. Jenkins*, 494 So.2d at 589 (Adams, J. dissenting). The Association of County Commissions of Alabama therefore respectfully urges this Court to reverse the ruling of the Circuit Court of Montgomery County.

II. PURSUANT TO WELL-ESTABLISHED ALABAMA LAW, THE "GENERAL FUND" OF A COUNTY IS A SPECIFIC DESIGNATED FUND.

The general Simplified Seller Use Tax Remittance Act currently provides for distribution of the monies collected from the tax as follows:

> (1) The amount necessary to fund the administrative costs of the program and to provide for refunds issued pursuant to Ala. Code (1975) § 40-23-196 are to be retained by the Alabama Department of Revenue;

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[1] As noted in this Opinion, the ACCA "drafted the proposed legislation to amend [the general law at issue in *Baldwin County v. Jenkins*]…so that local laws concerning county commissions could be passed without violating this Court's decision in *Peddycoart*." 494 So.2d at 587.

> (2) Fifty percent of the remaining monies to the State Treasury, which is to be allocated 75% to the General Fund and 25% to the Education Trust Fund;
>
> (3) The net proceeds remaining after the distribution to the State Treasury is then to be "distributed 60 percent to each municipality in the state on a basis of the ratio of the population…and 40% to each county in the state, **and deposited into the general fund of the respective county commissions**, on a basis of the ratio of the population of each county to the total population of all counties in the state…"
>
> Ala. Code (1975) § 40-23-197 (emphasis added).

The circuit court held that it was enough that the funds distributed to Morgan County by the general act would still "assume[dly]" first alight into the County Commission's General Fund before being re-distributed by Act 2019-272. This holding fundamentally misunderstands the nature of the General Fund. It is not simply a bank account, but a specific fund with both designated revenue and expenditures set by law.

Section 40-23-197 originally provided that twenty-five percent of the funds would be distributed "to each county in the state…" without further elaboration. Ala. Code § 40-23-197(a)(2). The statute was then amended in 2018 to specify that, "for tax periods beginning on or after January 1, 2019,"

the counties' share of SSUT proceeds was to be distributed to the counties "and deposited into the general fund of the respective county commission." Ala. Code § 40-23-197(b). Of course, any amendment to the plain language of a statute must be recognized as significant. *See Pinigis v. Regions Bank*, 977 So.2d 446, 452 (Ala. 2007); *see also City of Montgomery v. Town of Pike Road*, 35 So.3d 575, 584 (Ala. 2009) ("There is a presumption that every word, sentence, or provision of a statue was intended for some useful purpose, has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used…it is presumed that the Legislature did not do a vain and useless thing." (internal quotations and citations omitted)). This addition is particularly significant, however, in light of the well-established understanding of the "general fund" as the specific designated funding source for a multitude of essential county services. *Rice v. English*, 835 So. 2d 157, 167 (Ala. 2002) ("It is a familiar canon of statutory construction that 'where there is doubt as to the meaning and intent of a statute by reason of the language employed, or arising from the context, courts may look to the history, conditions which lead to that enactment, the material

surrounding circumstances, the ends to be accomplished, and evils to be avoided or corrected, in order that the legislative intent be ascertained and given effect, if possible.'" (quoting *Eagerton v. Graves*, 252 Ala. 326, 331-32, 40 So.2d 417, 422 (1949))); *see also State Farm Fire & Cas. Co. v. Lambert*, 291 Ala. 645, 648, 285 So.2d 917, 918 (1973) ("This question [of statutory construction] cannot be answered apart from the historical context within which the statute was passed."), *cited in Rice*, *supra*.

It has long been understood in Alabama that the "general fund" is a distinct entity that is separate and apart from other county funds. *See, e.g.*, *Hall v. Underwood*, 258 Ala. 392, 63 So.2d 683 (1953) (discussing distinction between a general fund and road and bridge fund); *Jefferson County v. Hawkins*, 232 Ala. 398, 400, 168 So. 443, 445 (1936) (differentiating between tax proceeds that are to be paid into the "general fund of the county" and proceeds that are to be paid merely into the "county treasury" without a "provision directing that such cost should be paid into the treasury for the benefit of the general fund"). While the purposes for which general fund monies may be spent may not be as restricted as, e.g., the gasoline tax fund, Ala. Code

(1975) § 40-17-359, neither are they a free-for-all. Alabama law sets out the process and priority by which a county commission must budget its general fund expenditures. Ala. Code (1975) §§ 11-3-11; 11-8-3; 11-12-15. The mandatory order of expenditures is as follows:

> (1) Costs of heating the county jail, of supplying it with wholesome water for drinking and bathing, of keeping it in a cleanly condition and free from offensive odors and of providing it with necessary water closets and dry earth, beds, bedding, and clothing; fuel; water; light; janitor's services of the courthouse and jail; premiums for fire insurance on the public buildings of the county; and premiums on surety bonds of public officers where authorized by law to be paid by the county.
>
> (2) Compensation of the members of the county commission; compensation of deputy sheriffs, the probate judge, the sheriff, the tax assessor, the county treasurer, and jailers for services performed by them and authorized to be paid to them by law; claims for the removal of prisoners; and, claims for conveying insane persons to state institutions.
>
> (3) Claims for necessary stationery and office supplies, including typewriters and supplies and telephones and telephone services, for offices of the probate judge, tax assessor, and tax collector; claims for the use of a building or buildings for a courthouse and a jail where the county does not have a suitable building or buildings for a courthouse and jail; and, claims of the Secretary of State for certified copies of field notes.
>
> (4) All claims authorized to be paid from funds appropriated by the county commission of the county to assist in financing a program of agriculture and farm home life in cooperation with the extension

> service created under an act of the Congress of the United States approved May 8, 1914, and generally known as the Smith-Lever Act for extension work in agriculture and home economics.
>
> (5) Interest on bonds heretofore and hereafter lawfully issued by the county, in the order of their issuance, as evidenced by the interest coupons attached to such bonds or by the bonds themselves.

Ala. Code (1975) § 11-12-15. After all the mandatory spending has been accomplished, various general laws grant county commissions discretion to expend general fund money for a wide variety of public purposes. *See, e.g.*, Ala. Code (1975) §§ 2-15-151 (allowing county commissions to appropriate funds to aid state or federal authorities in suppressing livestock diseases); 11-80-4.1 (authorizing appropriations to certain community action agencies); 11-86-5 (allowing appropriations from general funds to recreation boards and to improve and equip lands and buildings for recreational purposes).

The problem with Act 2019-272 is that it turns an appropriation that is at best discretionary, and thus secondary, by the general law into a mandatory, primary appropriation, placing it above all other legally mandated obligations. Obviously, the Morgan County Commission could not choose to commit itself to such an appropriation before first adequately funding its statutorily mandated priorities.

The "obligations absolutely fixed by law are preferred claims" and "all voluntary obligations assumed or incurred after the exhaustion of the full amount of revenues on hand or in valid expectancy are debts which are repugnant to the Constitution, and are therefore invalid as to their payment." *Brown v. Gay-Padgett Hardware Co.*, 188 Ala. 423, 431, 66 So.161, 163 (1914); *see also*, *Shelby County Commission v. Smith*, 372 So.2d 1092 (Ala. 1979) (holding that the county could not establish a defense of lack of funds to a suit brought by deputies for their pay when items that are lower priority claims are funded)[2]; *Allen v. Watts*, 88 Ala. 497, 499, 7 So.190 (1890) (affirming judgment in favor of county treasurer who had refused to pay certain allowed claims when he only had sufficient funds to pay other, higher-priority claims).

Importantly for this case, it is also well-established that the Legislature also cannot attempt to expend monies

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[2] The circuit court's reliance on *Shelby Cnty. Commission v. Smith* for the proposition that the Budget Control Act cannot be used "as a shield to ward off [the Commission's] legal responsibilities" is misplaced. Section 105 was not at issue in that case; instead, the Budget Control Act was raised as an affirmative defense that it simply lacked the funds to pay deputies their salary.

from the county general fund in a manner not authorized by law. *Clay Cty. Comm'n v. Clay Cty. Animal Shelter, Inc.*, 283 So.3d 1218 (Ala. 2019); *Abrasley v. Jefferson County*, 241 Ala. 660, 665, 4 So.2d 153, 157 (1941) (holding that a legislative mandate that county funds be expended to procure new voting machines would be ineffective if the county cannot afford to do so) ("It is the province of the legislature to prescribe the priority of payments out of county funds. It has undertaken to do so…[a]nd claims made so by law, called involuntary, take precedence over general and voluntary claims")

The circuit court's citation of *Clay Cty. Comm'n* suggests that it incorrectly viewed the case through Appellees' suggested lens as a power struggle between the Morgan County Commission and the Legislature over the SSUT funds. Specifically, the circuit court cited *Clay Cty. Comm'n* for the proposition that the Legislature "has the power to appropriate, or otherwise direct the allocation and distribution of, money in counties' general fund," which is true enough insofar as it goes. (C.447.) It is first important to note that *Clay Cty. Comm'n* is easily distinguishable from the instant case because it concerned

purely local acts, without any reference to a general act. But the actual holding of *Clay Cty. Comm'n.* – which, tellingly, was not discussed by the circuit court – was that this power must still be exercised within the confines of the Alabama Constitution of 1901, without resort to false devices. In that case, the relevant local act authorizing a tobacco tax provided that the tax's proceeds, less administrative costs, were to be "distributed" to the Clay County General Fund, and then a certain percentage "expended" via a donation to the Clay County Animal Shelter. 283 So.3d at 1221. This Court held that, for all intents and purposes, this expenditure was an appropriation to a charitable institution not under the complete control of the State, and accordingly should have been voted on by two-thirds of each house pursuant to Ala. Const. 1901, § 73. *Id.* at 1234-35. Because it was passed in an inappropriate manner, the relevant portion of the law was held to be invalid. *Id.*

In the case *sub judice*, the relevant limiting factor is § 105's prohibition against a local law that varies from the general law. Like in *Clay County Comm'n*, this restriction on the Legislature's power is fatal to the local law. When put in its proper context, the circuit court's ruling can only

stand if the "general fund of the respective county commission" has no particular independent meaning or restrictions under the general law. As discussed *supra*, however, the "general fund" has long been understood to be a specific and distinct fund under Alabama law, with mandatory funding priorities that must be accounted for prior to any other discretionary spending occurring.

Opinion of the Justices, 665 So.2d 1357 (Ala. 1995), is particularly instructive. In that case, the Court was presented with a bill that attempted to divert interest earnings on the Alabama Trust Fund's investments from the General Fund into the Alabama Incentives Financing Authority by appropriating them to the AIFA before they ever reached the General Fund – in other words, by basically making the monies skip the General Fund. *Opinion of the Justices*, 665 So.2d at 1359. This Court first held that this "subterfuge" was invalid because the "constitution has 'earmarked' these funds for the General Fund," so that they must be paid into the General Fund. *Id.*

The Court then held that these funds could not be appropriated from the General Fund to pay AIFA's obligations because doing so would create a new debt of the State. *Id.*

at 1361. In so holding, it explicitly rejected the argument that the monies at issue were a "'special fund' sufficient to evade the constitutional prohibition against any new debt of the state" as follows: "The fact that the legislature can identify and segregate an existing revenue source does not change the fact that the funds are the general funds of the state heretofore available for other state purposes." *Id.* at 1361, 1362.

In this case, the circuit court held that the Act avoided the first problem identified in *Opinion of the Justices* because it "assumes" that the "deposit is made into Morgan County's general fund because the distributions the Local Act requires are made 'after Morgan County retains five percent of the gross proceeds…'" (C.446.) This assumption is not warranted by the plain language of the Act. But even if this assumption is valid *arguendo*, the more fundamental problem is that the Act attempts to divert an existing revenue source from the Morgan County Commission's General Fund, which was previously available for other purposes.

It is important to note that the diversion *sub judice* not only violates the general law governing a county commission's general fund expenditures, but also violates the

general law governing school boards' revenues. The general law extensively regulates school funding via taxes; this statutory scheme cannot be varied by local act. *See, e.g.*, *Opinion of the Justices* No. 311 469 So.2d 105 (Ala. 1985 (opining that a bill providing for the levy and distribution of school taxes in a different way than was provided for by general law would be unconstitutional). The Legislature certainly could have appropriated additional funds to education purposes either in the original enactment or in the 2018 amendment. It did not do so on either occasion, instead choosing to specifically appropriate these funds to "the general funds of the respective county commissions" so that they could be used for myriad general fund expenditures as set by general law. Act 2019-272 directly contravenes this appropriation as to Morgan County and is therefore due to be deemed void.

III. PUBLIC POLICY MILITATES AGAINST APPELLEES' INTERPERATION OF SECTION 105 OF THE ALABAMA CONSTITUTION OF 1901.

If the interpretation of Section 105 advanced by Appellees and adopted by the circuit court is allowed to stand, it would open the door to various and sundry local laws that would drain the county commissions' general fund

budgets and render them unable to meet their other important obligations under law. What makes Act 2019-272 uniquely dangerous is its "skim off the top" approach that, for all intents and purposes, entirely removes a source of revenue from the Morgan County Commission's General Fund without any regard whatsoever for the County's financial health.

The circuit court dismissed this consequence of its decision by noting that "Morgan County has sufficient funds to comply with any and all other laws that dictate how it shall spend money in its general fund." (C.445.) First, as discussed by Appellants (App. Br., pg. 31), the assertion that this statement is an undisputed fact is not actually supported by the record. Substantively, the problem with this argument is that it proves too much.

The facial constitutionality of a law cannot depend on a circuit court's impression of a particular county's financial situation at a particular moment in time. It is not difficult to imagine the chaos and uncertainty of allowing important decisions about our State's fundamental law to depend on such variables: not only would identical local laws be constitutional in one county and unconstitutional in another – which would present a serious equal protection problem –

but also a single disaster that affected a county's finances could render a law unconstitutional overnight. Further, such litigation would nullify the doctrine of separation of powers expressed in Ala. Const. Art. III, § 42, because the courts would necessarily have to conduct substantive reviews of county commissions' budgets to decide, e.g., whether the jail really needed that much money. *See Ex parte James*, 836 So.2d 813 (Ala. 2002).

Allowing the constitutionality of a local law like Act 2019-272 to hinge on the relative financial positions of the parties would also provide a perverse disincentive for counties and other public entities to be fiscally responsible. As discussed in Appellant's Brief, the County's audited financial statements do show a so-called "surplus" in the budget, as do all of the school systems involved in this case. (App. Br., pgs. 31-32.) Public policy strongly favors encouraging county commissions to act prudently in setting aside a reserve fund from year to year, if possible, for unexpected events, like a natural disaster or a global pandemic. *See* Ala. Code (1975) § 11-8-6 (providing that "any unexpended balances remaining in the several funds set up under the provisions of this chapter shall go forward into

the respective several funds for the succeeding year"). Such careful savings will only be discouraged by the specter of monies in a general fund budget being drained away from county use by a local law at any time.

The bottom line is that § 40-23-197 mandates that Morgan County's share of the SSUT funds is to be deposited in the Commission's General Fund, where its further appropriation is then governed by the Budget Control Act and other general law. Act 2019-272 redistributes these funds from their original destination to the various school systems. This Act accordingly creates a variance from the general law and is unconstitutional.

CONCLUSION

Based on the foregoing, Amicus Curiae Association of County Commissions of Alabama, respectfully requests that this Court rule in favor of the Appellants and reverse the judgment entered by the Montgomery County Circuit Court.

Respectfully submitted this 3rd day of June, 2020.

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