No. 1200240

IN THE SUPREME COURT OF ALABAMA

RICHARD STEPHEN GLASS,

APPELLANT,

V.

CITY OF MONTGOMERY,

APPELLEE.

On Appeal from
the Montgomery County Circuit Court
(CV-18-000079)

BRIEF OF APPELLEE

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Statement Regarding Oral Argument

The issues raised by Appellant Glass's facial challenges to legislative enactments are pure legal questions that can be decided by a straightforward application of settled legal principles. Appellee City of Montgomery believes these questions of law can be resolved without oral argument.

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Statement of Jurisdiction

This Court has jurisdiction over this case under Alabama Code § 12-2-7.

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Statement of the Case

Montgomery adopts Appellant Glass's statement of the case as accurately supplying the course of proceedings in this matter.

Statement of the Issues

1. Section 105 bars local acts only where the case or matter of the local act is already provided for by general law. No general law provides a *civil* enforcement mechanism for running a red light, and the general *criminal* laws remain in effect in Montgomery under the express terms of the Local Act, which was passed with legislative recognition of valid local needs for a civil enforcement program. Does the Local Act violate Section 105?
2. Section 89 forbids ordinances from making lawful what Alabama statutes make unlawful. The Ordinance does not make running a red light lawful. Does the Ordinance violate Section 89?
3. Section 104(14) precludes local acts from fixing the punishment of crimes. The Local Act provides only *civil* penalties for running red lights at certain camera monitored intersections in Montgomery and does not repeal or replace the criminal Traffic Code in any respect. Does the Local Act violate Section 104(14)?

Statement of the Facts

The relevant facts in this case are straightforward and undisputed.

Appellant Richard Glass ran a red light at the intersection of the Eastern Boulevard and Plantation Way in Montgomery, Alabama on or about August 7, 2017. (C. 5). Glass received a civil citation because the automated safety camera equipment installed at this intersection detected and photographed his vehicle running the red light. (*Id.*)

Glass does not deny running the red light. (C. 32–34). Rather, Glass facially challenges Alabama Act 2009-740 (the "Local Act") and Montgomery Municipal Code Chapter 27, Article X, Section 27-601 through 606 (the "Ordinance") under which Montgomery uses automated photographic enforcement cameras to capture red light violations and issue civil violations. Glass has not alleged that the Local Act or Ordinance were applied to him in any manner inconsistent with the express terms of the Local Act and Ordinance.

Standard of Review

As there are no disputed facts in this case, the Court applies a de novo standard of review to the trial court's judgment regarding the constitutionality of state legislation. *Richards v. Izzi*, 819 So. 2d 25, 29 n.3 (Ala. 2001). The Court also presumes that the challenged legislation is constitutional. *Clay Cty. Comm'n v. Clay Cty. Animal Shelter, Inc.*, 283 So. 3d 1218, 1229 (Ala. 2019).

Summary of the Argument

The Local Act and Ordinance provide a *civil* framework pursuant to which *civil* citations can be issued when a vehicle runs a red light at an intersection monitored by a traffic camera. Glass asserts that the Local Act and Ordinance are invalidated by Alabama Constitution Sections 105, 89 and 104. These claims rest on the same incorrect premise: Glass asserts that the Local Act and Ordinance conflict with the general criminal laws of Alabama relating to running red lights, but they do not.

Section 105 provides that no local law "shall be enacted in any case which is provided for by a general law." "It is fully settled that [section 105] does not forbid local legislation on subjects. . . merely because a general law deals with the same matter. If, in the judgment of the Legislature, local needs demand additional or supplemental laws substantially different from the general law, the Legislature has power to so enact." *State ex rel. Jones v. Steele*, 81 So. 2d 542, 544 (Ala. 1955). Furthermore, "[i]t is not the broad, overall subject matter which is looked to in determining whether the local act, taken together with the general law, is violative of § 105; rather, it is whether the object of the local law

is to accomplish an end not substantially provided for and effectuated by general law." *Miller v. Marshall County Bd. of Educ.*, 652 So. 2d 759, 761 (Ala. 1995).

The Local Act and the Ordinance *do not* conflict with Alabama's general traffic code. Alabama's traffic code remains in full effect in Montgomery, and a driver running a red light is still subject to criminal prosecution in the same manner as prior to the enactment of the Local Act and ordinance. Instead, the Local Act and Ordinance create a new category of *civil* violation that expands Montgomery's options in addressing the Local Act's purpose of protecting public health and safety. In fact, the Legislature found in Section 1 of the Local Act that automated traffic camera enforcement is "very effective in reducing the number of red light violations and decreasing the number of traffic accidents, deaths and injuries." Act 2009-740 § 1(a)(2). The Local Act and Ordinance set forth a civil mechanism to meet the local need of additional safety and such mechanism is permissible under Section 105.

Section 89 of the Alabama Constitution simply "means that a city cannot make that lawful which the State law has rendered unlawful." *Birmingham v. West*, 183 So. 421, 423 (Ala. 1938). *See also Congo v. State*,

409 So. 2d 475, 478 (Ala. Crim. App. 1981) ("Whether an ordinance is inconsistent with the general law of the State is to be determined by whether the municipal law prohibits anything which the State law specifically permits."). The Local Act and Ordinance do not purport to make running a red light in Montgomery noncriminal and do nothing to lessen the criminal status. A driver passing through Montgomery must obey the same traffic laws, and is subject to the same criminal sanctions for running a red light, as everywhere else in Alabama, which necessarily ends the Section 89 inquiry.

Glass asserts that the Local Act and Ordinance violate Section 104(14) which prohibits local laws "fixing the punishment of crime." But Alabama allows the same conduct to be subject to both a criminal penalty and a civil citation, which ends the Section 104(14) inquiry. *See, e.g.*, *Ex parte State Alcoholic Beverage Control Bd.*, 654 So. 2d 1149, 1152–54 (Ala. 1994) (selling alcoholic beverages to a minor can be subject to both criminal and civil liability). The local act and ordinance provide for only civil citations and, necessarily, do not "fix the punishment of a crime."

The Local Act and Ordinance do not violate any provisions of Ala. Ala. Code § 32-5-1 *et seq.* or Code § 11-45-1 *et seq.* The Local Act and

Ordinance, as discussed above, set forth a purely civil framework that does not displace or conflict with Alabama general criminal laws. Further, the Ordinance does just what Section 11-45-1 *et seq.*, authorizes—it implements the red light camera program as was expressly authorized in the Local Act itself.

Argument

The Local Act and the Montgomery Ordinance[1] do not conflict with the Alabama Constitution or the Alabama Code. Accordingly, the trial court's rejection of Glass's appeal from the municipal court was proper and is due to be fully upheld.

A. Summary of the applicable statute, local act and ordinance.

Glass's claims all involve the interplay of Alabama's criminal code, the Alabama Legislature's Local Act authorizing Montgomery's civil penalty system for running a red light at a camera monitored intersection, and Montgomery's Ordinance implementing said act. Accordingly, we begin with a brief summary of those enactments.

1. The Criminal Statutes – Alabama Code 1975, § 32-5A-31 *et seq.*

Alabama's traffic code, codified in Title 32, governs the rules of the road throughout the State. Drivers must obey posted traffic control devices and must stop at red lights. Ala. Code §§ 32-5A-31(a), 32-5A-32(3). Failure to do so is a misdemeanor and is punishable by a fine (up to $500) and imprisonment (up to 3 months). Ala. Code § 32-5A-8.

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[1] These provisions are attached at Tab A.

The tickets issued under the traffic code are governed by Ala. Code § 12-12-53. While it is not necessary to consider the precise contours of this statute in order to adjudicate this case, Montgomery provides this brief description to show the procedural requirements it must fulfill to issue a traffic ticket under the criminal traffic code. Section 12-12-53 requires the use of the "uniform traffic ticket and complaint" and permits criminal prosecutions for traffic violations to begin in one of two ways: (1) an officer files a complaint; or (2) "an information is filed by the district attorney." § 12-12-53(b).

The Alabama Rules of Criminal Procedure, in turn, define both "complaint" and "information." A complaint is "a written statement made upon oath before a judge, magistrate, or official authorized by law to issue warrants of arrest, setting forth essential facts constituting an offense and alleging that the defendant committed the offense." Ala. R. Crim. P. 13.1(c) (citing Ala. R. Crim. P. 2.3). An "information" is "a written statement charging the defendant or defendants named therein with the commission of an indictable offense, made on oath, signed, and presented to the court by the district attorney, pursuant to Rule 2.2(e), without action by the grand jury." Ala. R. Crim. P. 13.1(b). There is one additional

Alabama statutory provision that is telling: Alabama's criminal code generally "does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this title." Ala. Code § 13A-1-8(a)(2). Similarly, the Rules of the Road state an intention to not repeal or supersede other laws: "[t]he provisions of this chapter are cumulative and shall not be construed to repeal or supersede any laws not inconsistent herewith. . ." Ala. Code § 32-5A-13.

2. The Local Act – Alabama Act No. 2009-740.

By Act 2009-740 (hereinafter the "Local Act"), the Alabama Legislature created a civil statutory framework to address particular problems in Montgomery and to complement the criminal-penalty provisions of Title 32. The Legislature began with specific findings of a local need that are contained in the text of the Local Act:

(a) Accident data establishes that vehicles running red lights have been and are a dangerous problem in Montgomery, Alabama. (Local Act at § 2(1)).

(b) Studies have found that automated traffic camera enforcement in a municipal area is a highly accurate method for detecting red light violations and is very effective in reducing the number of red light violations and decreasing the number of traffic accidents, deaths, and injuries. (*Id.* at § 2(2)).

(c) Current Alabama law provides that failing to stop and remain stopped at a traffic-control signal which is emitting a steady red signal is a criminal misdemeanor. One who commits such a misdemeanor is subject to prosecution only if the misdemeanor was witnessed by either a duly empowered police officer or other witness who makes a verified complaint to a sworn magistrate. (*Id.* at § 2(3)).

(d) By allowing a program for use of automated traffic cameras in traffic signal enforcement by the City of Montgomery, the Legislature hopes to both decrease the rate of traffic signal violations and learn more about the effectiveness and fairness involved in the use of automated systems. (*Id.* at § 2(5)).

To address these specific concerns, the Legislature passed the Local Act, which authorized Montgomery to use "an automated photographic traffic signal enforcement system to detect and record traffic signal violations" and to issue civil citations of up to $100. (Local Act at § 4(a)). The Local Act contains detailed requirements for posting required signs (*id.* at § 4(b)); the information that must be included in a civil violation citation (*id.* at § 5); and the procedures by which a person may challenge a civil citation (*id.* at § 6).

The Legislature went to great lengths to show that the Local Act was civil, not criminal. For example, it defined "civil violation" to mean a "non-criminal category of state law." (Local Act at § 3(3)). Likewise, the Local Act states that a record of a civil violation cannot be listed on a criminal record, cannot be "considered a conviction for any purpose," and

cannot "be used as evidence that [a] person was guilty of negligence or other culpable conduct." (*Id.* § 10). In fact, the Local Act prohibits the imposition of a civil violation "if the operator of a vehicle was arrested or was issued a citation and notice to appear by a sworn police officer for a criminal violation. . ." (*Id.* § 13).

3. The Ordinance – Montgomery Municipal Code Chapter 27, Article X, Section 27-601 through 606.

Montgomery passed an ordinance, codified at Montgomery's Municipal Code Chapter 27, Article X, Section 27-601 through 606 (hereinafter the "Ordinance"), to implement the Local Act, as the Local Act expressly and specifically authorized it to do. Act 2009-740 § 1(b) ("The City of Montgomery, Alabama, by ordinance, may adopt the procedures set out in this act."). The Ordinance contains provisions that mirror the Local Act. For example, Montgomery also made findings that running red lights poses a public health risk. § 27-602(a). It therefore authorized the use of "photographic traffic signal enforcement systems" to capture images of vehicles running red lights to facilitate the imposition of civil penalties – $60 for the first and second violations in a 12-month period and $100 for additional violations in the 12-month

period. § 27-602(b)–(c). The Ordinance contains detailed procedures for enforcement and administrative adjudication. §§ 27-603, -604.

The Ordinance also provides that "[t]he imposition of a civil penalty under this article is not a criminal conviction for any purpose." § 27-606(a) (emphasis added). Further, in the event that a person is criminally cited for running a red light, that person is then not subject to a civil citation under the ordinance. § 27-606(b).

B. The Court must presume that the Local Act and Ordinance are valid, construe them to avoid conflicts, and interpret them in harmony with the Alabama Constitution.

Glass bears a steep burden in challenging the constitutionality of a local act. *See, e.g.*, *City of Homewood v. Bharat, LLC*, 931 So. 2d 697, 701 (Ala. 2005); *Miller v. Marshall Cty. Bd. of Educ.*, 652 So. 2d 759, 760 (Ala. 1995); *State Bd. of Health v. Greater Birmingham Ass'n of Home Builders, Inc.*, 384 So. 2d 1058, 1061 (Ala. 1980).

The Local Act is presumptively constitutional, and Glass bears the burden of proving that it is not. *King v. Campbell*, 988 So. 2d 969, 980 (Ala. 2007) ("An act of the legislature arrives with a presumption of constitutionality; a party challenging that constitutionality has the burden of overcoming that presumption."); *State v. Ala. Mun. Ins. Corp.*,

730 So. 2d 107, 110 (Ala. 1998). There is a "fundamental proposition that validly enacted legislation is presumed to be constitutional." *Miller*, 652 So. 2d at 760 (citing *State Board of Health,* 384 So. 2d at 1061). Thus, "every presumption is in favor of the constitutionality of an act of the legislature" and courts "will not declare it invalid unless in its judgment, the act clearly and unmistakably comes within the inhibition of the constitution." *Id.* (citing *Mobile Housing Board v. Cross*, 229 So. 2d 485, 487 (Ala. 1969)).

Indeed, Glass bears the heaviest of legal burdens. As the Court noted as the first of four "well established principles of law" in a Section 105 case, "[i]t is the duty of courts to sustain the constitutionality of a legislative act unless it is clear ***beyond a reasonable doubt*** that it is in violation of the fundamental law." *Crosslin v. City of Muscle Shoals*, 436 So. 2d 862, 863 (Ala. 1983), (emphasis added). *See also, e.g.*, *Daphne v. Spanish Fort*, 853 So. 2d 933, 943 (Ala. 2003) ("Our duty is to sustain a legislative act unless it is clear beyond a reasonable doubt that the act violates a fundamental law.").

Alabama courts "will not invalidate a statute on constitutional grounds if by reasonable construction it can be given a field of operation

within constitutionally imposed limitations." *Miller*, 652 So. 2d at 760 (citing *Ex parte Huguley Water System*, 213 So. 2d 799, 805–06 (Ala. 1968)); *see also House v. Cullman Cty.*, 593 So. 2d 69, 71-72 (Ala. 1992) ("Where the validity of a statute is assailed and there are two possible interpretations, by one of which the statute would be unconstitutional and by the other would be valid, the courts should adopt the construction which would uphold it.")(citation omitted); *Homewood*, 931 So. 2d at 701 (courts are "obliged to construe statutes so as to avoid conflicts with constitutional provisions if possible"). "In other words, it is the duty of the courts to adopt the construction of a statute to bring it into harmony with the constitution, if its language will permit." *House,* 593 So. 2d at 72 (citations and quotations omitted). Along those ends, when courts are "confronted with a choice between two possible constructions of a constitutional provision, one that would forbid the legislature to act and one that would permit the legislature to act, [the courts are] not free to choose the construction that would restrict the legislature's power." *Id.* at 80 (citations omitted).

Lastly, this dispute implicates the power of the Legislature. That power is not derived from the Constitution but is plenary. *Ala. Alcoholic*

Beverage Control Bd. v. City of Pelham, 855 So. 2d 1070, 1077 (Ala. 2003) (citations omitted).

C. Section 105 of the Alabama Constitution does not invalidate the Local Act or the Ordinance.

Glass asserts that the Local Act and Ordinance are not permitted by Section 105 of the Alabama Constitution,[2] but this argument rests on the incorrect notion that there is a conflict between the Local Act and Ordinance, on the one hand, and Alabama's general criminal laws (*i.e.*, the Rules of the Road), on the other. Glass's claims under Section 105 are flawed. The Local Act and Ordinance provide a *civil* framework pursuant to which *civil* citations can be issued when a vehicle runs a red light at an intersection monitored by a traffic camera. Montgomery's *civil* Local Act and Ordinance simply do not impermissibly conflict with the general *criminal* laws of Alabama.

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[2] Section 105 states: "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. § 105.

1. The matter of the Local Act is not provided by any general law.

Section 105 of the Alabama Constitution provides that "[n]o special, private, or local law … shall be enacted in any case which is provided for by a general law." Ala. Const. § 105. A plurality of the Court has recently clarified that the Section 105 analysis hinges on how the "case" or "matter provided for" are defined: "the key to assessing a local law under § 105 is determining the subject covered by the general law or—in the phrasing of the text of § 105—determining the 'case' or 'matter' 'provided for' by the general law." *Barnett v. Jones*, -- So. 3d ----, No. 1190470, 2021 WL 1937259 at *3 (May 14, 2021) (Slip Op.) (plurality op). While the Court has not specifically determined how broadly a "case" or "matter" should be interpreted, it has consistently applied and endorsed a narrow test while rejecting a broad test.

The Court's embrace of the narrow test for what constitutes a "case" or "matter" has been consistent and extends to the present. The *Barnett* decision, to take the most recent example, involved a general law that governed the collection of a state use tax and the distribution of that tax to counties. *Barnett*, 2021 WL 1937259 at *1. A local act, applying only in Morgan County, provided that Morgan County had to send most of

proceeds of this tax received by Morgan County to the public schools in Morgan County. *Id.* The county commissioners challenged the local act by arguing that the local act violated Section 105 because the general law governed the subject of the tax distributed to the county. *Id.* The Court disagreed with the commissioners and emphasized that "the general law… covers how the proceeds are collected and get to the Commissioners, and the Local Act covers how the proceeds are to be spent once received." *Id.* at *5. Because the general law provided for taxation and distribution only, the Legislature was free to address appropriation by general law. *Id.* The case provided for was not the SSUT generally, or even the SSUT proceeds sent to Morgan County. Instead, the Court adopted a narrow definition of the "case" and refused to constrain the Legislature's power any more than necessary: "The creation of a tax and the allocation of its proceeds in the first instance are not 'of the same import' as legislative appropriation of the State's own funds at a later time after the requirements of the general law have been completely satisfied." *Id.*

Two other important Section 105 cases reach similar results and show why the Court should affirm in this case. The first of them is

Birmingham v. Vestavia Hills, 654 So. 2d 532 (Ala. 1995). The *Birmingham* case involved annexation: the legislature passed a local act to permit an annexation that would not have been possible under the existing general laws that governed how municipalities can annex territory. *Birmingham*, 654 So. 2d at 539–40. In the face of a Section 105 challenge to the local act, this Court upheld the local act and reasoned that "because the annexation would not have been possible under the preexisting annexation laws," the "'matter' of Act No. 92–708 was not substantially provided for by a general law." *Id.* at 540. It further elaborated that "the advocates of this section of the Constitution [*i.e.*, Section 105] never intended to abolish the legislature's power to pass a local law when no general law provided for its result." *Id.* This case squarely controls and requires affirming the judgment below. The civil enforcement of red-light violations is not provided for by general law (nor is it forbidden by general law). Just as the Legislature had the power to authorize a new mode of annexation, the Legislature has the power to authorize a civil mode of red-light enforcement.

Another case that rejects Glass's broad-brush theory of Section 105 is *Jefferson County v. Taxpayers and Citizens*, a case involving sales

taxes. Even though general laws provide for education sales taxes, this Court upheld the validity of a local act authorizing Jefferson County to levy a sales tax for educational and other purposes and specifically determined that the subject matter of the local act was "not subsumed" by the general law. *Jefferson Cty. v. Taxpayers & Citizens of Jefferson Cty.*, 232 So. 3d 845, 868 (Ala. 2017). The rule of this case is that an existing general law on a topic does not broadly forbid any local act that touches on the topic—it did not matter that sales tax for educational purposes already existed; the Legislature had the authority to authorize a sales for educational and other purposes by local act. *Id.* at 866–68. The broader sales tax authorized by the local act provided greater flexibility for the county, so the Court upheld the local act. *Id.* at 867–68. The Local Act authorizing civil red-light enforcement is the same: it authorizes an additional, non-exclusive means by which Montgomery can enforce Alabama's red-light laws.

Not only has the Court consistently applied a narrow definition to what constitutes the "case" or "matter" of a general law, the Court has repeatedly rejected a broad test. In *City of Birmingham*, this Court rejected the notion that having a general law on a topic forbids local laws

on a closely-related topic: "The mere fact that there are general laws relating to a municipality's power to annex contiguous territory does not prevent the legislature, by local law, from annexing noncontiguous territory into a city." 654 So. 2d at 541. Or, as the Court has repeatedly noted, ""[i]t is not the broad, overall subject matter which is looked to in determining whether the local act, taken together with the general law, is violative of § 105...." *Id.* at 540 (quoting *Drummond Co. v. Boswell*, 346 So. 2d 955, 958 (Ala. 1977)); *see also Miller v. Marshall Cty. Bd. of Educ.*, 652 So. 2d 759, 761 (Ala. 1995) (same).

One compelling reason to define "case" or "matter" in line with established precedents is to defer to the Legislature in its exercise of important powers. Within the limits of the state and federal constitutions, the Legislature's power is plenary. *Broadway v. State*, 60 So. 2d 701, 703 (Ala. 1952). Examples of this plenary authority appear in many Section 105 cases. For example, the Court emphasized the Legislature's plenary control over state finances in *Barnett*[3] and over

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[3] *Barnett*, 2021 WL 1937259 at *5 ("And because the Legislature has an underlying plenary power to control county funds... it may dictate to Morgan County what to do with the SSUT proceeds after they have been deposited in the county's general fund through the mechanisms of the SSUT Act.") (internal citation omitted).

annexation in *City of Birmingham*.[4] To be sure, the Legislature enjoys a similar degree of authority over the exercise of the police power, such as it exercised in the Local Act. *See, e.g., Ala. State Fed'n of Labor v. McArdory*, 18 So. 2d 810, 817 (Ala. 1944) ("[I]t is a peculiar function of the law–makers to determine when the welfare of the people requires the exercise of the state's police power and what are appropriate measures to that end, subject only to the power of the courts to judge whether any particular law is an invasion of rights secured by the Constitution."). Indeed, the Court "has refused to place a limit on the police power of the State, because 'it represents the state's great reserve power, and is at all times coextensive with the necessities of the case and the safeguard of the public interest.'" *In re Opinion of the Justices No. 68*, 22 So. 2d 521, 524 (Ala. 1945) (quoting *Franklin v. State*, 169 So. 295, 298 (Ala. 1936)).

In any event, affirming the trial court in this lawsuit does not require interpreting "case" broadly or narrowly because it can be interpreted literally: the Local Act and the general traffic laws at issue both give rise to ***literal*** cases. A person receiving a criminal citation has

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[4] *City of Birmingham*, 654 So. 2d at 535 ("Unless restricted by the Constitution, the legislature's power with respect to municipalities is plenary.")

a criminal case initiated against him; a person receiving a civil violation (such as Glass received) has a civil case initiated against him. And the Local Act can ***never*** "provide for" the "case" of someone receiving a criminal citation under the general law. If a driver receives a criminal citation for running a red light, the general, criminal law provides for the driver's case—and no civil violation can issue. (Local Act § 13). If the driver does not receive a criminal citation (and if the act of running a red light is captured on photographic enforcement equipment), then the criminal law does not provide for the driver's case and the civil Local Act can apply. The general law applies in the criminal context; the Local Act applies in the civil context, which is a different "matter" altogether.

Glass advocates for a broad and flawed interpretation of the "case" provided for the by general law. He defines the "subject" of the general traffic laws as "running a red light." (Blue Br. at 22). But he makes the same mistake the Court discussed in *Barnett* regarding annexation cases: "the Court refused to treat the matter as annexation generally. Rather, it treated the matter provided for as annexation *in certain contexts*." *Barnett*, 2021 WL 1937259 at *4 (plurality op.) (emphasis in original). By making red-light running a crime, the Legislature did not irrevocably

surrender its plenary authority to make red-light running also a civil violation. The civil context is different from the criminal—a critical fact that Glass concedes. (Blue Br. at 35) ("We do not disagree that the Act creates a civil law.").

Lastly, just as *Barnett* used the "variance" test as a helpful lens to see that the local act in that case did not violate Section 105, applying that test to the Local Act requires affirming the trial court's judgment here. The Local Act does not violate Section 105 because the Local Act and the general traffic laws of Alabama work harmoniously together. The Traffic Code contains uniform criminal laws applicable throughout Alabama and imposes criminal penalties—fines and possibly jail time—where the offender is convicted through the criminal system. In contrast, the Local Act is a civil statute providing civil penalties that are assessed wholly outside of the criminal system with no criminal-law consequences. Moreover, the civil system and the criminal system cannot come into conflict because the Local Act specifically provides that no civil violation can be enforced if a criminal citation is issued to a driver running a red light. (Local Act at § 13). Thus, there can be no variance between the civil and criminal laws because they speak to running red lights in

different contexts: a driver can be pulled over in Montgomery just the same as anywhere else and issued the exact same criminal traffic citation. Only if a driver's act of running a red light occurs outside of the view of a law enforcement officer, but is captured at a camera monitored intersection, can a civil violation issue.

To be sure, Glass cites no case that invalidates a law like the Local Act. In *Green v. Austin*, the sole case he discusses in detail, the general law at issue provided that the court fees authorized by that law were "exclusive of all other fees," so it is not surprising that this Court invalidated a local act imposing different fees. 425 So. 2d 411, 413 (Ala. 1982). There is no corresponding statement in any part of the traffic code that forbids local, civil legislation, making *Green* irrelevant. Just the opposite, the traffic code expresses an intention to not be exclusive: "[t]he provisions of this chapter are cumulative and shall not be construed to repeal or supersede any laws not inconsistent herewith." Ala. Code § 32-5A-13.

In most instances where local legislation has been held to violate Section 105, the legislation either imposed limits on local action that were

not present in the general legislation,[5] or released the local government from obligations that were binding absent the local legislation.[6] Neither problem is present here. Alabama's traffic code remains in full effect in Montgomery, and a person running a red light is still subject to criminal prosecution. Moreover, the Local Act does not purport to lower the procedural requirements Montgomery must fulfill to convict and punish a person for running a red light under the Traffic Code. Instead, the Local Act creates a new category of civil violation that expands Montgomery's options in addressing the Local Act's identified and unambiguously expressed purpose of protecting public health and safety. Doing so does not infringe on the criminal Traffic Code at all.

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[5] *See, e.g.*, *Homewood*, 931 So. 2d at 705 (invalidating local act regarding taxation that limited Homewood's discretion to set lodging tax rates where that discretion was specifically granted by general law).

[6] *See, e.g.*, *Opinion of the Justices No. 342*, 630 So. 2d 444, 447 (Ala. 1994) (invalidating local act that would release Escambia County from obligation to house federal prisoners); *Crandall v. Birmingham*, 442 So. 2d 77, 79–80 (Ala. 1983) (invalidating local act that shortened presentment time for claims against Birmingham from six months to ninety days).

2. The Local Act expressly does not decriminalize running a red light.

Instead of following the majority of Section 105 cases, Glass's argument rests on the false assertion that the Local Act somehow makes running a red light not a crime in Montgomery. Though Glass repeats his assertion repeatedly, it has no foundation in the text of the Local Act. To the contrary, the Local Act affirmatively provides that Alabama's criminal laws regarding red lights remain in effect in Montgomery. Section 13 of the Local Act provides that a person who was issued a criminal citation for running a red light has an absolute defense to a civil violation:

> No civil penalty may be imposed and no adjudication of liability for a civil violation may b[e] made under this act if the operator of the vehicle was arrested or was issued a citation and notice to appear by a sworn police officer for a criminal violation of any portion of Article II, Chapter 5A, Title 32 including, but not limited to, Section 32-5A-31, 32-5A-34, and 32-5A-35 of the Code of Alabama 1975, or any other municipal ordinance which embraces and incorporates the statutes contained in that article, and which occurred simultaneously with and under the same set of circumstances which were recorded by the photographic traffic signal enforcement system.

(Local Act at § 13). This absolute defense necessarily means that every provision of Article II, Chapter 5A, Title 32 remains in effect.

To put the effect of Section 13 in practical terms, ***any*** police officer can pull over ***any*** person who runs a red light at ***any*** intersection in Montgomery just the same as anywhere else in Alabama. The officer's power to issue a citation is unaffected—even if an enforcement camera captured the act of running a red light. A civil violation can be enforced only when no officer issues a criminal citation for the same act of running a red light. When Glass asserts—without citation—that "if you run a red light (and are caught by a camera), it is no longer a criminal misdemeanor" (Blue Br. at 46), he has the Local Act precisely backwards. Under Section 13 of the Local Act, the criminal law is primary and the civil enforcement system can be used only if a police officer does not pull the driver over.

Tellingly, Glass never cites Section 13 of the Local Act. Indeed, it appears that Glass never cited Section 13 of the Local Act at any point in this litigation. This failure to discuss the provision is a tacit admission that it is fatal to his claim.

To be sure, nothing in the Local Act could possibly suggest that the Legislature intended to repeal or override any part of the Traffic Code. No provision expresses the intent to repeal or replace any part of the

Traffic Code, and Section 13 expressly states that the Legislature intends for the Traffic Code to remain in full force and effect.

With no basis to argue for express repeal of the Traffic Code, Glass must rely on the doctrine of implied repeal, a form of repeal that this Court has long disfavored. *See, e.g.*, *State v. Bay Towing & Dredging Co.*, 90 So. 2d 743, 749 (Ala. 1956) ("Repeal by implication is not favored.") (quoting *Birmingham v. So. Express Co.*, 51 So. 159, 162 (Ala. 1909)); *Burnett v. Chilton Cty. Health Care Auth.*, 278 So. 3d 1220, 1224 (Ala. 2018)(same). For one statute to repeal another by implication, "the provisions of two statutes are directly repugnant and cannot be reconciled." *Burnett*, 278 So. 3d at 1234 (quoting *Fletcher v. Tuscaloosa Fed. Saving & Loan Ass'n*, 314 So. 2d 51, 54–55 (Ala. 1975)).

Implied repeal could not exist here because the Local Act is easily reconciled to the Traffic Code: specifically, the Traffic Code takes primacy and the Local Act yields. As Section 13 of the Local Act provides, a person pulled over by a police officer for running a red light is subject to criminal punishment, but not civil enforcement. A civil violation can issue and be enforced only if the driver is not pulled over by a law enforcement officer.

As a result, Glass is simply incorrect to assert that the Local Act affects any citation issued by a police officer. (Blue Br. at 25). The Local Act makes perfectly clear that police officers can issue criminal citations at every intersection in Montgomery exactly as they can at every other intersection in Alabama. And, if a police officer issues a citation for running a red light—that is, if the general Traffic Code provides for the case of a particular driver—then the Local Act provides that no civil violation may issue. (Local Act at § 13).

Similarly, the Local Act does not in any way destroy the uniformity of the Traffic Code. Ala. Code § 32-5A-11. Running a red light means exactly the same thing in Montgomery as it does everywhere else in Alabama. A driver must obey traffic signals in Montgomery whether a camera is present, a police officer is present, both are present, or neither. The possibility of receiving a civil violation instead of a criminal citation does not somehow render the rules of the road different or ununiform.

Glass relies on the definition section of the Local Act to say that the Local Act decriminalizes running red lights in Montgomery, but his argument fails at multiple levels. ***First*** and most importantly, the text will not bear Glass's interpretation. The text is the first and best guide

to the Legislature's intent. *Ex parte Ankrom*, 152 So. 3d 397, 409 (Ala. 2013). The portion of the statute on which Glass relies does not say anything about decriminalizing running red lights. Instead, it merely defines "Traffic Signal Violation" as "[a]ny violation of Section 32-5A-31, Section 32-5A-32, Section 32-5A-5" and further states that "[a] traffic signal violation shall be a civil violation as defined in this act." (Local Act at § 3(7)). This definition does not say that a traffic signal violation is not a crime. While it does say that "any" red light violation will be a civil violation, it does not say that a traffic signal violation will be ***exclusively*** a civil violation. Indeed, Glass concedes[7] that the Alabama Constitution permits the Legislature "to create both a criminal and civil violation for the same act." (Blue Br. at 46). Thus, creating a civil remedy does not necessarily displace the criminal law and the plain meaning of the statute does not repeal the Traffic Code or decriminalize running red lights.

Second, not only is Glass's interpretation of the text of the Local Act flawed, but he also fails to read the act as a whole. The Court requires

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[7] Specifically, Glass states that he "do[es] not join issue in this case with that proposition." (Blue Br. at 46).

that different parts of a law be read as a whole to give effect to each provision. *Craft v. McCoy*, 312 So. 3d 32, 37 (Ala. 2020) ("we must look to the entire Act instead of isolated phrases or clauses") (quoting *Cockrell v. Pruitt*, 214 So. 3d 324, 332 (Ala. 2016)); *see also Grimes v. Alfa Mut. Ins. Co.*, 227 So. 3d 475, 488 (Ala. 2017) (same). As discussed above, Glass ignores Section 13 of the Local Act altogether, even though that section directly addresses the interaction between the civil enforcement system of the Local Act and the existing criminal law. That interaction is the very core of his argument and it is shocking that he refuses to discuss it. When read as a whole, the Local Act shows that the Legislature intended for the criminal law to remain in effect and for the civil enforcement system to compliment the criminal law without displacing or repealing it.

Third, Glass also ignores the permissive structure of Local Act. The Local Act is permissive because it ***allows*** Montgomery to use photographic equipment to catch drivers running red lights. While Montgomery is "empowered to utilize an automatic photographic traffic signal enforcement system to detect and record traffic signal violations," it is not required to do so. (Local Act at § 4(a)). Nor is Montgomery

required to place cameras at every intersection. It would make no sense for the Legislature to repeal the Traffic Code merely to allow Montgomery the option of using cameras at certain intersections—especially when one of the Legislature's expressed purposes for the Local Act is to "decrease the rate of traffic signal violations." (Local Act at § 2(5)). Thus, even if (contrary to fact) Glass's argument were faithful to the text of the Local Act, the Court would still be bound to reject it because it "would produce an absurd and unjust result that is clearly inconsistent with the purpose and policy of the statute." *Bright v. Calhoun*, 988 So. 2d 492, 497–98 (Ala. 2008) (calling this rule a "settled principle[ ] of statutory construction") (quoting *City of Bessemer v. McClain*, 957 So. 2d 1061, 1074–75 (Ala. 2006)).

Fourth, Glass's proposed interpretation violates this Court's long-standing presumption that "the legislature does not intend to make any alteration in the law beyond what it explicitly declares.'" *Grimes*, 227 So. 3d at 489 (quoting *Ware v. Timmons*, 954 So. 2d 545, 556 (Ala. 2006)); *see also Duncan v. Rudolph*, 16 So. 2d 313, 314 (Ala. 1944) (requiring "irresistible clearness" or "unmistakable implication" in legislative enactments to overturn existing law). Presumably, the Legislature did

not intend to repeal something as foundational as the criminal code by passing a permissive and complimentary civil enforcement to compliment the existing law. Glass can point to nothing like an explicit declaration that the Legislature intended to repeal the criminal code in Montgomery and, instead, is left grasping at a definition section.[8]

3. The Local Act is justified by the Legislature's determination of local need.

Even if there were a conflict between the Local Act and Alabama's traffic code, the Legislature's determination of local need would still render the Local Act valid. This Court has uniformly held that Section 105 does not bar the passage of local acts that are "supported by legislative findings of special local needs… which cannot be addressed by [existing general law]." *Jefferson Cty.*, 232 So. 3d at 868. The Legislature made extensive findings to support the Local Act, including the danger of running red lights and the desirability of civil system using photographic enforcement equipment to both "decrease the rate of traffic

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[8] In his briefing below, Glass was more candid and emphatic in admitting that the Legislature did not intend to repeal the criminal code: "By making any violation for running a red light a civil violation in Montgomery, the Legislature has partially repealed the red light laws of the state. ***The Legislature may not have intended the result but that is exactly what it did!***" (C.155) (emphasis added).

signal violations and learn more about the effectiveness and fairness involved in the use of the automated systems." (Local Act at § 2).

Courts "cannot invade the legislative domain to determine whether a [local entity] should have a local law substantially different and in addition to the state law." *Drummond Co. v. Boswell,* 346 So. 2d 955, 958 (Ala. 1977). "If, in the judgment of the Legislature, local needs demand additional or supplemental laws substantially different from the general law, the Legislature has the power to so enact". *State ex rel. Jones v. Steele*, 81 So. 2d 542, 544 (Ala. 1955). This Court has held that "[i]t is only when those local needs already have been responded to by general legislation that § 105 of our state Constitution prohibits special treatment by local law." *Jefferson Cty.*, 232 So. 3d at 867 (citation omitted). Courts look to the "goal of a local law, and not its generic subject matter, when determining whether § 105 has been violated. Thus, where a local act represents the Legislature's response to demonstrated local needs. . . which had not previously been addressed by general law, [the Court must] find no constitutional infirmity in the Act." *Taxpayers & Citizens of Jefferson Cty.*, 232 So. 3d at 868 (citing *State Bd. of Health v.*

Greater Birmingham Ass'n of Home Builders, Inc., 384 So. 2d 1058, 1062 (Ala. 1980)).

Montgomery's "need to protect the safety of the traveling public" is a local need sufficient to survive a Section 105 challenge. *Bradley Outdoor, Inc. v. Florence*, 962 So. 2d 824, 832 (Ala. Civ. App. 2006). Here, the Legislature sought to complement the criminal procedures and penalties available under the state's criminal traffic enforcement provisions. (Local Act at § 2(3)). Because "***in the judgment of the legislature***, local needs demand additional or supplemental law substantially different from the general law, the legislature is not prohibited by § 105 from so enacting." *Walker Cty. v. Allen*, 775 So. 2d 808, 812 (Ala. 2000) (citation omitted) (emphasis added).

The "judgment of the legislature" is a critical aspect of the legal analysis in regard to the local need issue. No court can impose its view on the legislature, but instead "must adhere to the fundamental rule of construction mandated by the separation of powers doctrine – that statutes be construed so as to ascertain and effectuate the intent of the Legislature." *Ex parte TB*, 698 So. 2d 127, 130 (Ala. 1997). It is squarely within the discretion of the Legislature to determine if there is a local

need so as to justify a local act and, in the Local Act at issue, the Legislature expressly stated its judgment that there was a local need in the text of the Act. Because Montgomery has a local need not adequately addressed by the general criminal law of the state, then the Legislature can pass local laws just like the Local Act without violating the Alabama Constitution.

Glass wrongly contends that the local needs exception applies only if the Legislature finds that the local needs are unique to the subdivision of the state covered by the local act. This Court has never adopted such a restriction on legislative power. And, to be sure, the sole case Glass cites for this proposition does not help his argument. Glass relies on the per curiam opinion of *Ellis v. Pope*, which is the only Section 105 case to even mention "unique" local needs. There are several reasons why *Ellis* should not apply here. First, unlike with the Local Act at issue in this appeal, the *Ellis* Court did not have the benefit of legislative findings included in the local act at issue. 709 So. 2d 1161, 1163 (Ala. 1997). As a result, the defendants' failure "to present evidence which establishes unique local needs" meant the defendants could not prevail on the basis of local needs. *Id.* at 1167. Moreover, the relevant portion of the *Ellis*

opinion was lifted from the trial court's judgment verbatim, and only three justices concurred with that reasoning. A five-member majority of the Court either concurred in the result only (three justices) or dissented (two justices), meaning that no majority of the Court embraced a "unique local needs standard." *Id.* Lastly, *Ellis* cites back to *Miller v. Marshall County Board of Education* on the issue of local need, and *Miller* says nothing about requiring local needs to be somehow unique to a locality in order to justify a local act.

More broadly, the Court has consistently—and properly—refused to throw arbitrary barriers to obstruct the Legislature's exercise of its plenary judgment. It has emphatically declared that "the Legislature may legislate by local act, except with regard to those subjects as to which the constitution specifically speaks to the contrary." *Yellow Dog Dev., LLC v. Bibb Cty.*, 871 So. 2d 39, 42 (Ala. 2003). And, make no mistake, creating a "unique local needs" standard would effectively end local acts as the Legislature would have to determine not only that a local need exists in a particular place, but that this need does not exist anywhere else in Alabama. Such a standard would unreasonably handcuff the

Legislature and would turn all of the presumptions on constitutionality on their heads.

4. The Local Act and the Ordinance are civil in both purpose and effect and, accordingly, do not conflict with Alabama's general criminal laws governing red lights.

Glass has conceded that the Local Act is civil, not criminal. (Blue Br. at 35) ("We do not disagree that the [Local] Act creates a civil law."). And he nowhere argues that the Local Act or Ordinance is actually a criminal law. But, if Glass were ever to contend that the Local Act and the Ordinance are actually criminal statutes and not, as the statutes say on their face, statutes that impose mere civil penalties, he is incorrect. The Court looks at how the legislature labeled the law – a law that states that it imposes civil penalties will be found to be civil in nature unless the "scheme [is] so punitive either in purpose or effect as to transform what was clearly intended as a civil remedy into a criminal penalty." *Hudson v. United States*, 522 U.S. 93, 99 (1997) (citations omitted). Because courts must generally defer to the legislature's stated intent, "only the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Smith v. Doe*, 538 U.S. 84, 92 (2003) (citations omitted).

Here, the Alabama Legislature unmistakably intended the Local Act to be civil and not criminal. Section 4(a) of the Local Act authorizes Montgomery to "issue notices of civil violations" and to "prosecute civil violations." (Local Act at § 4(a)). The Local Act defines "civil violation" to mean, in relevant part, a "non-criminal category of law." (*Id.* § 3(3)). In hearings regarding liability for these civil violations, the civil evidentiary standard – preponderance of the evidence – applies. (*Id.* § 6(e)). The Local Act provides that civil violations cannot appear on a person's criminal record, cannot be considered a conviction, and cannot be "used as evidence that the person was guilty of negligence or other culpable conduct." (*Id.* at § 10). Further, the Ordinance also fully encompasses and accomplishes the civil intent expressed by the Legislature. *See* Art. X § 27-606(a) ("The imposition of a civil penalty under this article is not a criminal conviction for any purpose."); Art. X § 27-606(c) ("Nor record of an adjudication of civil penalty made under this article shall be listed, entered, or reported on any criminal record or driving record, whether the record is maintained by the city or an outside agency.").

These indicators of legislative intent, when compared to indications of intent in similar cases, are more than sufficient to establish that the

Legislature intended the Local Act to be civil. The Eleventh Circuit Court of Appeals has examined this very question on a similar Alabama red-light camera ordinance (authorized by a similar statute) and found the enforcement system to be civil, not criminal. *Worthy v. City of Phenix City*, 930 F.3d 1206, 1223–24 (11th Cir. 2019). Moreover, the District Court for the Middle District of Alabama has concluded that the Alabama Sex Offender Registration and Community Notification Act was intended to be civil, even though it was codified in Alabama's criminal code. *See McGuire v. Strange*, 83 F. Supp. 3d 1231, 1246-47 (M.D. Ala. 2015). In the context of red light camera cases involving similar statutes in other jurisdictions and in other Alabama circuit courts, the great weight of cases find that such statutes are civil.[9]

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[9] *See, e.g.*, *Mendenhall v. Akron*, 374 F. App'x 598, 599–600 (6th Cir. 2010) (finding red light camera scheme "civil in nature"); *Shavitz v. High Point*, 270 F. Supp. 2d 702, 716–17 (M.D.N.C. 2003) (same); *Bevis v. New Orleans*, 2011 WL 2899120, at *3 (E.D. La. July 18, 2011) (same); *Schon v. Sioux City*, 2011 WL 9977089, at *6 (N.D. Iowa May 19, 2011) (same); *Mills v. Springfield*, 2010 WL 3526208, at *12 (W.D. Mo. Sept. 3, 2010) (same); *Kilper v. Arnold*, 2009 WL 2208404, at *19 (E.D. Mo. July 23, 2009) (same).

5. As Understood by its Original Proponents, Section 105 Does Not Invalidate the Local Act.

As discussed above, the Court has consistently adopted a narrow view of the "case" or "matter" under Section 105. This approach is directly rooted to the 1901 Constitutional Convention, in which the proponents of Section 105 viewed the provision as barring local acts only if they completely duplicated existing general laws.

The legislative history of Section 105 (called "subdivision 26" or "section 26" in the debates) is discussed at length in an article by Judge McElroy that appeared in The Alabama Lawyer in 1946. J. Russell McElroy, *No...Local Law...Shall Be Enacted in Any Case Which Is Provided for by a General Law*, 7 ALA. LAW. 243 (1946) (attached as Tab B) (hereinafter "McElroy"). Judge McElroy's article reproduces the relevant portions of the debate, and this Court relied on this article in the *Birmingham* decision. *See Birmingham*, 654 So. 2d at 540 ("Judge McElroy, in his article on § 105, points out that the advocates of this section of the Constitution never intended to abolish the legislature's power to pass a local law when no general law provided for its result.").

The proponents of Section 105 viewed the provision very, very narrowly: "the debates... made reasonably clear that the purpose of the

provision was to forbid the enactment of a local law ***only if the local law would operate in the locality precisely the same as an already existing general law would operate***." McElroy at 249 (emphasis added). According to the debates, the concern motivating the framers was preventing unnecessary applications to the legislature when a general law already gave someone everything they could want:

> Now is there any hardship saying to any man, any individual, corporation or association that if the laws of the State have already provided for your case and you can get everything you could possibly get by appealing to the Legislature, you ought not to consume the public time in trying to get Legislature to do what has already been done for you. ***That is all this provision means***.

Id. at 247 (emphasis added) (quoting 2 OFFICIAL PROCEEDINGS, CONSTITUTIONAL CONVENTION 1901, STATE OF ALABAMA at 1996). Another colloquy from the debates reproduced by Judge McElroy focuses on property rights and notes that invalidating a local act under proposed Section 105 could never invalidate a property right because the section would only bar a local act if a general law already gave the right:

> If you obtained your rights under a local law, and the Supreme Court should hold that local law was unconstitutional because the matter of that local law was already provided for by a general law, then a party could not be injured, because the rights were acquired under the local law, and he would still hold his rights under the general law which is in existence.

Id. at 246 (quoting 2 OFFICIAL PROCEEDINGS, CONSTITUTIONAL CONVENTION 1901, STATE OF ALABAMA at 1935).

Thus, the proponents of Section 105 did not think that the section would bar a local act that differed from a general law, even if the local act directly conflicted with the general law. One delegate put forward a hypothetical question: suppose a general law forbade dispensaries and a city desired to have a new one. How does the city get one? Another delegate answered that Section 105 would not bar a local law authorizing dispensaries in such a city:

> That would be just the reverse of the situation. In that case there would be no general law under which the relief could be obtained and this is not a prohibition upon a town or city in that kind of case. It prohibits local or special law only in that class of cases in which the relief could not be obtained.

Id. at 247 (quoting 2 OFFICIAL PROCEEDINGS, CONSTITUTIONAL CONVENTION 1901, STATE OF ALABAMA at 1997). Judge McElroy summarized this discussion by noting "[t]he fair inference... is that Mr. Walker considered the local law to be valid if it operated differently from, or produced effects different from, the general law." *Id.* It is no exaggeration to say that the original understanding of the Section 105 turns more recent jurisprudence on its head. Whereas variances or

changed results were originally indicia of validity, they have more recently been treated as indicia of invalidity. *See, e.g.*, *Homewood v. Bharat, LLC*, 931 So. 2d 697, 701 (Ala. 2005) ("The subject of a local law is deemed to be 'subsumed' in a general law if the effect of the local law is to create a variance from the provisions of the general law.") (quoting *Opinion of the Justices No. 342*, 630 So. 2d 444, 446 (Ala. 1994)).

It is impossible to exaggerate how narrow the framers understood Section 105 to be. Judge McElroy noted that "according to the views of the sponsors of the provision [it] amounted to a nullity." McElroy at 243. A subsequent article from the Alabama Law Review cited and echoed this view by noting that "[t]he delegates interpreted section 105 to mean that a local law would be forbidden only if there were an existing general law having precisely the same operation in all parts of the State." *Local Legislation in Alabama: The Impact of Peddycoart v. City of Birmingham*, 32 ALA. L. REV. 167, 181 (1980). And this Court has recognized that, while these statements "were but the individual opinions of the members speaking" "no opinion was expressed to the contrary, and probably these opinions were very influential with the convention." *Bd. of Rev. of*

Jefferson Cty. v. Kayser, 88 So. 19, 20 (Ala. 1921) (quoting debates regarding Section 105).

Cases decided in the early twentieth century echo the debates and further confirm the original, narrow meaning. *See, e.g.*, *Brandon v. Askew*, 54 So. 605, 607 (Ala. 1911) ("[T]his provision of the Constitution was intended to prohibit the enactment of special, private, or local laws to meet the purposes of particular cases which may be accomplished by proceedings outside of the Legislature under the provisions of general statutes enacted to meet all cases of that general character."); *Ensley v. Simpson*, 52 So. 61, 64 (Ala. 1909) ("Considered in their totality the two acts are not identical as to subject–matter. We therefore conclude that the special act is not obnoxious to section 105 of the Constitution."); *State v. Prince*, 74 So. 939, 941 (Ala. 1917) ("[T]he mere fact that there are general laws relating to circuit and chancery courts does not prevent the Legislature from providing, by local laws, for other courts to do the same work and discharge the same functions and powers as by such general provisions authorized. The general laws and the local laws in this respect are different, and not the same."); *Dudley v. Birmingham R., Light & Power Co.*, 36 So. 700, 702–03 (Ala. 1904) (because the legislation had

never "undertaken by general laws to provide for such removal of cases as this act provides for," local act regarding change of venue did not violate Section 105). Indeed, the issue in *City Council of Montgomery v. Reese* was whether a local law had to literally repeat the words of the general law to be barred by Section 105. 43 So. 116, 117 (Ala. 1906) (holding that a local act need not be "in ipsis verbis of the general law" to be invalid under Section 105).

Two final matters should be considered in connection with the original understanding of Section 105. The first is that, while courts have wrestled with interpreting the provision as narrowly as its progenitors intended, applying Section 105 as intended would avoid the interpretive problems that have plagued the provision from its inception. As Judge McElroy put it:

> [T]here would be no misuse of the judicial powers, if the courts should take the position in the future that the prohibitory provision means what Chairman O'Neal stated it meant: In effect this, the enactment of a local law is forbidden only if the local law operates in the locality affected precisely the same as an already existing general law.

McElroy at 259. He acknowledged that a provision so narrowly-construed would be nonsense, but he located the weakness in the provision itself: "The weakness in the Court's opinion [in *Walker County*

v. Barnett] is that the opinion seeks to rationalize the irrational, and reconcile the irreconcilable. But the decision is powerful proof that befuddling, impolitic, vague, and slippery section 105 has just about come to zero, as ought to be." *Id.* at 260.

Second, and for clarity's sake, the Court need not reach the original understanding to affirm the judgment at issue. The language of Section 105 can be understood in plain terms, at least as applied to this dispute, and can be construed without reference to extrinsic aids. *McGee v. Borom*, 341 So. 2d 141, 143 (Ala. 1976). Glass does not suggest that the meaning of word "case" or "matter" has changed over time or departed from the understanding that existed at the time of ratification of the Section. Instead of requesting that the Court alter its Section 105 jurisprudence, this discussion of ratification history is rather aimed at confirming that the Court's long-running practice of defining the "case" or "matter" of a general law narrowly is consistent with Section 105's original understanding. *Barnett* and its immediate forerunners decide this case, not the recorded debates at the Constitutional Convention.

D. Section 89 of the Alabama Constitution does not invalidate the Local Act or the Ordinance.

Glass's claim that Section 89 of the Alabama Constitution[10] bars the Ordinance is based upon the same incorrect assertion as his Section 105 claim—namely, that there is an impermissible conflict between the Ordinance and the general criminal laws relating to red lights. No such conflict exists.

Section 89 simply "means that a city cannot make that lawful which the State law has rendered unlawful." *Birmingham v. West*, 183 So. 421, 423 (Ala. 1938). *See also Congo v. State*, 409 So. 2d 475, 478 (Ala. Crim. App. 1981) ("Whether an ordinance is inconsistent with the general law of the State is to be determined by whether the municipal law prohibits anything which the State law specifically permits."). Critically, "[a]n ordinance which merely enlarges upon the provision of a statute by requiring more restrictions than the statute requires creates no conflict unless the statute limits the requirement for all cases to its own terms." *Congo*, 409 So. 2d at 478.

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[10] Section 89 states: "The legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this state." Ala. Const. 1901, Art. IV, § 89.

The Ordinance does not make running a red light in Montgomery noncriminal and does nothing to lessen the criminal status of running red lights. Likewise, the Ordinance does not expand criminal liability beyond the bounds of Alabama's Traffic Code. A driver passing through Montgomery must obey exactly the same traffic laws, and is subject to the same criminal sanctions for the act of running a red light, as everywhere else in Alabama. That fact necessarily ends the Section 89 inquiry.

The Ordinance does not displace any general law. The act and ordinance simply do not usurp the existing criminal code and fashion their own replacement inside Montgomery. In fact, it is impossible for the Ordinance (or the Local Act from which it arises) to impede, usurp, replace, or limit Alabama's universally-applicable criminal code or its traffic code, a point that is clear from the plain language of the act itself:

> No civil penalty may be imposed and no adjudication of liability for a civil violation may be made under this act if the operator of the vehicle was arrested or was issued a citation and notice to appear by a sworn police officer for a criminal violation of any portion of Article 2, Chapter 5A, Title 32 . . . .

(Local Act at § 13). The criminal penalty always takes precedence and, accordingly, Glass's claim under Section 89 fails.

E. The Local Act does not fall within any of the specific prohibitions of Section 104(14) of the Alabama Constitution because it does not fix the punishment for a crime.

Glass also alleges the Local Act is invalid under Section 104 of the Alabama Constitution. Where Section 105 of the Alabama Constitution gives a broad prohibition on local acts that conflict with general laws, Section 104 lists specific and narrow cases where the Legislature may not pass local laws. Glass asserts that the Local Act and Ordinance violate Section 104(14), which prohibits local laws "fixing the punishment of crime." This claim is not viable.

The Local Act does not displace any of the criminal law governing running a red light. By the express terms of the Local Act, all provisions of the Traffic Code remain in effect. (Local Act at § 13). Instead of replacing any provision of the criminal law, the Local Act serves as an appropriate and constitutionally permissible means to address Montgomery's local needs through a complimentary civil system. The crime of running a red light remains a crime, and is subject to the exact same penalties as in Montgomery as it is everywhere else.

With respect, all of Glass's discussion of "decriminalization" is pure fantasy. As discussed above, there is no textual basis in the Local Act to

conclude that the Legislature took the drastic step of abolishing the Traffic Code in Montgomery pertaining to red lights, and every presumption and canon of construction confirms that the Traffic Code remains in effect. Moreover, Glass adduced no evidence in the trial court that police officers in Montgomery have stopped issuing citations to drivers who run red lights, and he certainly cites no such evidence to this Court.

Likewise, as discussed above, there can be no doubt that the Local Act and Ordinance are civil in nature. Alabama law allows the same conduct to be subject to both a potential criminal penalty and a civil citation. *See, e.g.*, *Ex parte State Alcoholic Beverage Control Bd.*, 654 So. 2d 1149, 1152–54 (Ala. 1994) (finding no issue with the act of selling alcoholic beverages to a minor being subject to both criminal and civil liability). Thus, the Local Act does not fix the punishment of a crime.

F. The Ordinance does not violate any provisions of Ala. Code § 11-45-1 et seq., or Ala. Code § 32-5-1 et seq.

For the same reasons set forth in the sections above, the Ordinance does not violate any provisions of Ala. Code § 11-45-1 *et seq.*, or Ala. Code § 32-5-1 *et seq.* Section 11-45-1, authorizes municipalities to adopt ordinances "not inconsistent with the laws of the state...." As previously

referenced, Sections 32-5-1 *et seq.*, set forth the general criminal laws relating to the operation of motor vehicles (i.e., the Rules of the Road). For all the reasons stated previously, the Ordinance sets forth a purely civil framework that does not displace or conflict with Alabama's criminal law relating to red lights. Further, the Ordinance does just what Sections 11-45-1 *et seq.*, authorize—it implements the *civil* Local Act just as was expressly authorized in the Local Act itself. Thus, not only is the Ordinance consistent with the laws of Alabama, but its adoption was expressly authorized by the Legislature. Accordingly, the Local Act and Ordinance do not violate either of these sections of the Alabama Code.

Conclusion

For the foregoing reasons, this Court should affirm the judgment of the trial court and uphold the Local Act and Ordinance as consistent with the Alabama Constitution and the Alabama Code.

Respectfully submitted,

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Certificate Of Compliance

As required by Alabama Rule of Appellate Procedure 32(d), undersigned counsel certifies that this document complies with the font and word limitations contained in the Alabama Rule of Appellate Procedure 32. The font for this document is Century Schoolbook and the font size is 14 point. It contains 11,281 words, excluding the items listed in Alabama Rule of Appellate Procedure 32(c).

s/ Robert E. Poundstone IV
OF COUNSEL

Certificate of Service

I hereby certify that a copy of the foregoing document has been served on this 20th day of May 2021, to the following by U.S. Mail or electronic mail to their regular mailing addresses, on the following:

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TAB A

and employ suitable persons to act as police officers to keep off intruders and prevent trespass upon and damage to the property and grounds of the university. Such persons shall be charged with all the duties and invested with all the powers of police officers and may eject trespassers from the university buildings and grounds and may, without a warrant, arrest any person guilty of disorderly conduct or of trespass upon the property of the university, or for any public offense committed in their presence, and carry them before the nearest municipal or district court, before which, upon proper affidavit charging the offense, any person so arrested may be tried and convicted as in cases of persons brought before him on his warrant. Such officers shall have authority to summon a posse comitatus and may, with a warrant, arrest any person found upon or near the premises of the university who is charged with any public offense and take him before the proper officer.

(b) The police officers provided for in this section shall cooperate with and, when requested, may furnish assistance to the regularly constituted authorities of the City of Huntsville and their jurisdiction and authority shall be coextensive with the corporate limits of the city.

Section 2. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

Approved May 22, 2009

Time: 7:33 A.M.

Act No. 2009-740

SB59 – Senator Dixon
Representative Grimes
Senator Ross

AN ACT

Relating to the City of Montgomery, Alabama, in Montgomery County; authorizing automated traffic light enforcement in the City of Montgomery, Alabama, as a civil violation; ratifying and validating ab initio the ordinance of the City of Montgomery adopting and implementing an automated photographic traffic light enforcement system; providing certain procedures to be followed by the city using automated photographic traffic light enforcement; providing that the owner of the vehicle involved in running a traffic light is presumptively liable for a civil violation and the payment of a civil fine, but providing procedures to contest liability; providing for jurisdiction in the Montgomery Municipal Court over the civil violations and allowing appeals to the Montgomery County Circuit Court for

trial de novo; creating a cause of action for any person held responsible for payment of the civil fine against the person who was actually operating a vehicle during the running of a traffic light; and prohibiting the tampering with a photographic traffic signal enforcement system, except by authorized persons; and providing for retrospective operation of the act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) This act shall be known and may be cited as the "Montgomery Red Light Safety Act."

(b) The City of Montgomery, Alabama, may, by ordinance, heretofore or hereafter enacted, adopt the procedures set out in this act.

Section 2. The Legislature finds and declares the following:

(1) Accident data establishes that vehicles running red lights have been and are a dangerous problem in Montgomery, Alabama.

(2) Studies have found that automated traffic camera enforcement in a municipal area is a highly accurate method for detecting red light violations and is very effective in reducing the number of red light violations and decreasing the number of traffic accidents, deaths, and injuries.

(3) Current Alabama law provides that failing to stop and remain stopped at a traffic-control signal which is emitting a steady red signal is a criminal misdemeanor. Under Alabama law one who commits such a misdemeanor is subject to prosecution only if the misdemeanor was witnessed by either a duly empowered police officer or other witness who makes a verified complaint to a sworn magistrate.

(4) Many jurisdictions, including the City of Montgomery, have adopted laws that allow use of automated photographic traffic enforcement, and the Legislature finds that it should adopt legislation that would ratify and validate ab initio Ordinance No. 10-2007 of the City of Montgomery implementing a program for automated photographic enforcement of traffic signal violations, which the Legislature finds is consistent with this act.

(5) By allowing a program for use of automated traffic cameras in traffic signal enforcement by the City of Montgomery, the Legislature hopes to both decrease the rate of traffic signal violations and learn more about the effectiveness and fairness involved in the use of the automated systems.

Section 3. As used in this act, the following terms shall have the following meanings:

(1) CITY. The City of Montgomery, Alabama.

(2) CIVIL FINE. The monetary amount assessed by the City of Montgomery pursuant to this act for an adjudication of civil liability for a traffic signal violation, including municipal court costs associated with the infraction.

(3) CIVIL VIOLATION. There is hereby created a non-criminal category of state law called a civil violation created and existing for the sole purpose of carrying out the terms of this act. The penalty for violation of a civil violation shall be the payment of a civil fine, the enforceability of which shall be accomplished through civil action. The prosecution of a civil violation created hereby shall carry reduced evidentiary requirements and burden of proof as set out in Section 6, and in no event shall an adjudication of liability for a civil violation be punishable by a criminal fine or imprisonment.

(4) OWNER. The owner of a motor vehicle as shown on the motor vehicle registration records of the Alabama Department of Revenue or the analogous department or agency of another state or country. The term shall not include a motor vehicle rental or leasing company when a motor vehicle registered by the company is rented or leased to another person under a rental or lease agreement with the company, in which event "owner" shall mean the person to whom the vehicle is rented or leased, nor shall the term include motor vehicles displaying dealer license plates, in which event "owner" shall mean the person to whom the vehicle is assigned for use; nor shall the term include the owner of any stolen motor vehicle, in which event "owner" shall mean the person who is guilty of stealing the motor vehicle.

(5) PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM. A camera system which is designed and installed to work in conjunction with an electrically operated traffic-control device using vehicle sensors synchronized to automatically record, either by conventional film or digital imaging, sequenced photographs or full motion video of the rear of a motor vehicle while proceeding through a signalized intersection.

The device shall be capable of producing at least two recorded images, at least one of which is capable of clearly depicting the license plate of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.

(6) TRAFFIC-CONTROL SIGNAL. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed as defined in Section 32-1-1.1, Code of Alabama 1975.

(7) TRAFFIC SIGNAL VIOLATION. Any violation of Section

32-5A-31, Section 32-5A-32, or Section 32-5A-5, Code of Alabama 1975, or of any combination thereof, wherein a vehicle proceeds into a signalized intersection at a time while the traffic-control signal for that vehicle's lane of travel is emitting a steady red signal. A traffic signal violation shall be a civil violation as defined in this act.

(8) TRAINED TECHNICIAN. A sworn law enforcement officer employed by the City of Montgomery, who alternatively:

a. Is a professional engineer in the field of civil engineering.

b. Has received instruction and training in the proper use of the photographic traffic signal enforcement system to be used by the city by the city's traffic engineer or his or her designee.

c. Has been trained by the vendor installing the equipment. Under no circumstances shall the salary or other compensation of the trained technician be related to the number of notices of violation issued or amount of fines collected.

Section 4. (a) The City of Montgomery is empowered to utilize an automated photographic traffic signal enforcement system to detect and record traffic signal violations, to issue notices of civil violations by mail, and to prosecute civil violations for the recorded traffic signal violations which may occur within the corporate limits of the City of Montgomery as provided in this act. A civil fine assessed under this act shall not exceed one hundred dollars ($100), and municipal court costs may be assessed in the same manner and in the same amounts prescribed for a municipal criminal traffic-control device violation prosecuted as a misdemeanor under Sections 32-5A-31, 32-5A-32, 32-5A-35, or any combination thereof. An additional fee of ten dollars ($10) shall be added to the Montgomery Municipal Court costs authorized to be collected in connection with notices issued under this act. Court costs collected pursuant to this act shall be distributed in the same manner as prescribed by law for the distribution of municipal court costs for misdemeanor violations. The additional ten dollars ($10) authorized by this act shall be paid to the Alabama Criminal Justice Information Center as compensation for record keeping with respect to violation notices issued under this act. Ordinance No. 10-2007 adopted by the City of Montgomery is hereby ratified and validated ab initio.

(b) The City of Montgomery shall cause a sign to be posted at each of a minimum of 10 roadway entry points to the city to provide motorists with notice that photographic traffic signal enforcement systems are in use. The sign will comply with this requirement if it states substantially the following: "AUTOMATED CAMERAS USED IN RED LIGHT ENFORCEMENT," or if it otherwise gives sufficient notice.

(c) Prior to operating a photographic traffic signal enforcement system, the City of Montgomery made a public announcement and conducted a public awareness campaign of the use of a photographic traffic signal enforcement system a minimum of 30 days before using the devices. The City of Montgomery may place photographic traffic signal enforcement systems at locations without public notice of the specific location, may change locations without public notice, and may install and move as needed decoy devices designed to resemble photographic traffic signal enforcement systems.

(d) The city shall post signs warning of the use of an automated red light photographic device within 60 yards of every intersection at which such a device shall be used. Each sign shall be placed at least 10 feet from the edge of the road or street and shall have reflective light material. The reflective signs shall be placed not lower than six feet and not higher than eight feet.

Section 5. (a) Prior to imposing a civil penalty under this act, the City of Montgomery shall first mail a notice of violation by certified U.S. mail, return receipt requested, to the owner of the motor vehicle which is recorded by the photographic traffic signal enforcement system while committing a traffic signal violation. The notice shall be sent not later than the 30th day after the date the traffic signal violation is recorded to:

(1) The owner's address as shown on the registration records of the Alabama Department of Revenue.

(2) If the vehicle is registered in another state or country, to the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Alabama Department of Revenue.

(b) A notice of violation issued under this act shall contain the following:

(1) Description of the violation alleged.

(2) The date, time, and location of the violation.

(3) A copy of recorded images of the vehicle involved in the violation.

(4) The amount of the civil penalty to be imposed for the violation.

(5) The date by which the civil penalty must be paid.

(6) A statement that the person named in the notice of violation may pay the civil penalty in lieu of appearing at an administrative adjudication hearing.

(7) Information that informs the person named in the notice of violation:

a. Of the right to contest the imposition of the civil penalty in an administrative adjudication.

b. Of the manner and time in which to contest the imposition of the civil penalty.

c. That failure to pay the civil penalty or to contest liability is an admission of liability.

(8) A statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty.

(9) A statement that failure to pay the civil penalty within the time allowed shall result in the imposition of a late penalty not exceeding twenty-five dollars ($25).

(10) Any other information deemed necessary by the department.

(c) A notice of violation under this act is presumed to have been received on the 10th day after the date the notice of violation is placed in the United States Mail.

(d) The civil penalty imposed shall be paid within 30 days of the 10th day after the date the notice of violation is mailed.

(e) It shall be within the discretion of the trained technician to determine which of the recorded traffic signal violations are prosecuted based upon the quality and legibility of the recorded image. In lieu of issuing a notice of violation, the city may mail a warning notice to the owner.

Section 6. (a) The Montgomery Municipal Court is vested with the power and jurisdiction to hear and adjudicate the civil violations provided for in this act, and to issue orders imposing the civil fines and costs set out in this act.

(b) A person who receives a notice of violation may contest the imposition of the civil fine by submitting a request for a hearing on the adjudication of the civil violation, in writing, within 15 days of the 10th day after the date the notice of violation is mailed. Upon receipt of a timely request, the city shall notify the person of the date and time of the adjudicative hearing by U.S. mail, return receipt requested.

(c) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil fine assessed in the notice of violation.

(d) The civil fine shall not be assessed if, after a hearing, the Montgomery Municipal Judge enters a finding of no liability.

(e) If an adjudicative hearing is requested, the city shall have

the burden of proving the traffic signal violation by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the violation may be attested to by affidavit of a trained technician. An affidavit of a trained technician that alleges a violation based on an inspection of the pertinent recorded image is admissible in a proceeding under this act and is evidence of the facts contained in the affidavit.

(f) The notice of violation, the recorded and reproduced images of the traffic signal violation, regardless of the media on which they are recorded, accompanied by a certification of authenticity of a trained technician, and evidence of ownership of a vehicle as shown by copies or summaries of official records shall be admissible into evidence without foundation unless the municipal court finds there is an indication of untrustworthiness, in which case the city shall be given a reasonable opportunity to lay an evidentiary foundation.

(g) All other matters of evidence and procedure not specifically addressed in this act shall be subject to the rules of evidence and the rules of procedure as they apply in the small claims courts of this state, except that on any appeal to Montgomery County Circuit Court for trial de novo the evidence and procedures shall be as for any civil case in the circuit court except as otherwise provided in this act.

(h) A person who is found liable for the civil violation after an adjudicative hearing or who requests an adjudicative hearing and thereafter fails to appear at the time and place of the hearing is liable for court costs and fees set out herein in addition to the amount of the civil fine assessed for the violation. A person who is found liable for a civil violation after an adjudicative hearing shall pay the civil fine and costs within 10 days of the hearing.

(i) Whenever payment of a civil fine is owed to the city, the amount of the civil fine as set by ordinance may not be increased, decreased, or remitted by the municipal court, and the liability may be satisfied only by payment.

(j) It shall be an affirmative defense to the imposition of civil liability under this act, to be proven by a preponderance of the evidence, that:

1. The traffic-control signal was not in proper position and sufficiently visible to an ordinarily observant person.

2. The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer.

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the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle.

4. The motor vehicle was being operated as an authorized emergency vehicle under Sections 32-5A-7 and 32-5-213 of the Code of Alabama 1975, and that the operator was acting in compliance with that chapter.

5. The motor vehicle was stolen or being operated by a person other than the owner of the vehicle without the effective consent of the owner.

6. The license plate depicted in the recorded image of the violation was a stolen plate and being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued.

7. The presence of ice, snow, unusual amounts of rain, or other unusually hazardous road conditions existed that would make compliance with this act more dangerous under the circumstances than non compliance.

8. The person who received the notice of violation was not the owner of the motor vehicle at the time of the violation.

9. There was no sign installed as required by this act near the red light at which the violation allegedly occurred warning that an automated red light camera device was being used.

(k) To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was stolen plate, the owner must submit proof acceptable to the hearing officer that the theft of the vehicle or license plate, prior to the time of the violation, had been timely reported to the appropriate law enforcement agency.

(l) Notwithstanding anything in this act to the contrary, a person who fails to pay the amount of a civil fine or to contest liability in a timely manner is entitled to an adjudicative hearing on the violation if:

1. The person files an affidavit with the hearing officer stating the date on which the person received the notice of violation that was mailed to the person, if not received by the 10 day after same is mailed as set out in subsection (a) of Section 5.

2. Within the 15 days of the date of actual receipt, the person requests an administrative adjudicative hearing.

Section 7. (a) Following an adjudicative hearing, the municipal court judge shall issue an order stating:

(1) Whether the person charged with the civil violation is liable

for the violation; and, if so.

(2) The amount of the civil fine assessed against the person, along with the fees and costs of court provided for herein.

(b) The orders issued under this section may be filed in the office of the Probate Judge of Montgomery County, Alabama, and shall operate as a judicial lien in the same manner and with the same weight and effect as any other civil judgment filed therein.

(c) A person who is found liable after an adjudicative hearing may appeal that finding of civil liability to the Circuit Court of Montgomery County, Alabama, by filing a notice of appeal with the clerk of the municipal court. The notice of appeal must be filed not later than the 14th day after the date on which the municipal court judge entered the finding of civil liability. The filing of a notice of appeal shall stay the enforcement of the civil fine penalty. An appeal shall be determined by the circuit court by trial de novo.

Section 8. (a) The circuit court hearing an appeal shall use the procedures that apply to criminal convictions in municipal court with the following qualifications:

(1) The proceedings shall retain their civil nature on appeal with the circuit court applying the preponderance of the evidence standard.

(2) If the person is adjudicated by the circuit court to be responsible for payment of the civil fine, circuit court costs shall be owed by the person adjudicated responsible, with 100 percent of those court costs retained by the circuit court. Court costs in the circuit court shall be calculated as are court costs for criminal appeals from the municipal court, and in the event the circuit court finds the person appealing to not be responsible, no municipal court costs shall be owed to the city.

(3) Regardless of the civil nature of the proceedings, the circuit court, in its discretion and for its administrative convenience, may assign case numbers as for criminal appeals and place the appeals on criminal dockets in the same manner as criminal appeals from municipal court.

(4) The circuit court shall sit as trier of both fact and law in the civil proceedings in the circuit court.

(5) The city shall be responsible for providing an attorney to represent the city and to prosecute the civil proceedings in the circuit court.

Section 9. In the event the evidence produced by a photographic traffic signal enforcement system does not produce an

image of the license plate with sufficient clarity for a trained technician to determine the identity of the owner, and if the identity cannot otherwise be reliably established, then no notice of violation may be issued pursuant to this act. If, however, a notice of violation is issued, to the degree constitutionally allowed, those issues related to the identity of the vehicle or its owner shall affect the weight to be accorded the evidence and shall not affect its admissibility.

Section 10. The city may provide by ordinance that a late fee not exceeding twenty-five dollars ($25) shall attach to untimely paid civil fines that are authorized in this act. No person may be arrested or incarcerated for nonpayment of a civil fine or late fee. No record of an adjudication of civil violation made under this act shall be listed, entered, or reported on any criminal record or driving record, whether the record is maintained by the city or an outside agency. An adjudication of civil violation provided for in this act shall not be considered a conviction for any purpose, shall not be used to increase or enhance punishment for any subsequent offense of a criminal nature, shall not be considered a moving violation, and shall not be used by any insurance company to determine or affect premiums or rates unless an accident occurred due to the violation. The fact that a person is held liable or responsible for a civil fine for a red light violation shall not be used as evidence that the person was guilty of negligence or other culpable conduct, and any evidence generated by a photographic traffic signal enforcement system may only be used as evidence in other proceedings if it is or becomes admissible under the rules of evidence applicable therein.

Section 11. The city, by Ordinance No. 10-2007, hereby validated ab initio, adopted the procedures authorized by this act, and shall keep statistical data regarding the effectiveness of photographic traffic signal enforcement systems in reducing traffic-control device violations and intersectional collisions and shall communicate the data on an annual basis to the Alabama Department of Transportation and the Alabama Criminal Justice Information Center.

Section 12. The placement of control devices and timing of yellow lights and red light clearance intervals, adopted by the city, shall conform to the most recent edition of the Traffic Engineering Handbook. It shall be presumed that the city is in compliance with this section unless the contrary is shown by a preponderance of the evidence.

Section 13. No civil penalty may be imposed and no adjudication of liability for a civil violation may by made under this act if the operator of the vehicle was arrested or was issued a citation and notice to appear by a sworn police officer for a criminal violation of

any portion of Article II, Chapter 5A, Title 32 including, but not limited to, Sections 32-5A-31, 32-5A-34, and 32-5A-35 of the Code of Alabama 1975, or any other municipal ordinance which embraces and incorporates the statutes contained in that article, and which occurred simultaneously with and under the same set of circumstances which were recorded by the photographic traffic signal enforcement system.

Section 14. Any person against whom an adjudication of liability for a civil violation is made under this act, or the ordinance passed pursuant hereto, and who actually pays the civil fine imposed thereby shall have a cause of action against any person who may be shown to have been operating the vehicle recorded at the time of the violation for the amount of the civil fine actually paid plus any consequential or compensatory damages and a reasonable attorney fee, without regard to the rules regarding joint and several liability, contribution, or indemnity. Provided, however, that as a condition precedent to the bringing of a civil action, that the person held responsible for payment of the civil fine must first make written demand on the other person for reimbursement of the civil fine, giving a minimum of 60 days to remit payment, and if reimbursement is fully made within the 60-day period then the cause of action shall be extinguished and no attorney fees or other damages shall attach to the reimbursement. Any cause of action brought pursuant to this section must be commenced within two years from the date of the payment of the civil fine for a red light violation.

Section 15. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 16. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

Approved May 22, 2009

Time: 7:35 A.M.

Act No. 2009-741 SB63 – Senator Mitchell

AN ACT

To amend Section 34-43-5 of the Code of Alabama 1975, relating to the practice of massage therapy, to specify that a chiropractor, physician, or physical therapist and his or her office employing a licensed massage therapist would be exempt from licensure by the Board of Massage Therapy.

BE IT ENACTED B

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ARTICLE X. - AUTOMATED PHOTOGRAPHIC ENFORCEMENT OF TRAFFIC CONTROL DEVICE VIOLATIONS

Footnotes:
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***Editor's note**— Ord. No. 10-2007, §§ 2—7, adopted February 6, 2007, did not specify manner of inclusion; hence, inclusion as article X, §§ 27-601—27-606 is at the discretion of the editor.*

Sec. 27-601. - Definitions.

In this article:

Department shall mean the municipal court administrator's office of the city.

Intersection shall mean the place or area where two or more streets intersect.

Owner shall mean the owner of a motor vehicle as shown on the motor vehicle registration records of the Alabama Department of Revenue or the analogous department or agency of another state or country.

Photographic traffic signal enforcement system shall mean a system that:

(1) Consists of a camera system installed to work in conjunction with an electrically operated traffic-control signal; and

(2) Is capable of producing at least two recorded images, at least one of which is capable of depicting the license plate attached to the motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.

Recorded image means an image recorded by a photographic traffic monitoring system that depicts the rear of a motor vehicle and is automatically recorded on a photograph or digital image.

System location means the approach to an intersection toward which a photographic traffic monitoring system is directed and in operation.

Traffic control signal shall mean a traffic control device that displays alternating red, amber and green lights that directs traffic when to stop at or proceed through an intersection.

(Ord. No. 10-2007, § 2, 2-6-2007)

Sec. 27-602. - Imposition of civil penalty for violations.

(a) The city council finds and determines that a vehicle that proceeds into an intersection when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal damages the public by endangering motor vehicle operators and pedestrians alike, by decreasing the efficiency of traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers.

(b) Except as provided in subsections (c) and (d), the owner of a motor vehicle is liable for a civil penalty of $60.00 if a motor vehicle registered to that owner proceeds into an intersection at a system location when the traffic control signal for that motor vehicle's direction of travel is emitting a steady red signal. Said $60.00 penalty shall be assessed for a first or second violation of this article within a 12-month period.

(c) For a third or subsequent violation during any 12-month period, the amount of the civil penalty shall be $100.00

(d) An owner who fails to timely pay the civil penalty as set out in section 27-603 shall be subject to a late payment penalty of $25.00.

(Ord. No. 10-2007, § 3, 2-6-2007; Ord. No. 24-2009, 7-21-2009; Ord. No. 30-2012, 5-15-2012)

Sec. 27-603. - Enforcement; procedures.

(a) The municipal court administrator of the city is responsible for the administration of this article.

(b) In order to impose a civil penalty under this article, the department shall mail a notice of violation to the owner of the motor vehicle liable for the civil penalty not later than the 30th day after the date the violation is alleged to have occurred to:

(1) The owner's address as shown on the registration records of the state department of revenue; or

(2) If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the state department of revenue.

(c) A notice of violation issued under this article shall contain the following:

(1) A description of the violation alleged;

(2) The date, time, and location of the violation;

(3) A copy of recorded images of the vehicle involved in the violation;

(4) The amount of the civil penalty to be imposed for the violation;

(5) The date by which the civil penalty must be paid;

(6) A statement that the person named in the notice of violation may pay the civil penalty in lieu of appearing at an administrative adjudication hearing;

(7) Information that informs the person named in the notice of violation:

a. Of the right to contest the imposition of the civil penalty in an administrative adjudication;

b. Of the manner and time in which to contest the imposition of the civil penalty; and

c. That failure to pay the civil penalty or to contest liability is an admission of liability.

(8) A statement that a recorded image is evidence in a proceeding for the imposition of a civil penalty;

(9) A statement that failure to pay the civil penalty within the time allowed shall result in the imposition of a late penalty of $25.00; and

(10) Any other information deemed necessary by the department.

(d) A notice of violation under this article is presumed to have been received on the tenth day after the date the notice of violation is mailed.

(e) The civil penalty imposed by ordinance shall be paid within 30 days of the tenth day after the date the notice of violation is mailed.

(f) In lieu of issuing a notice of violation, the department may mail a warning notice to the owner.

(Ord. No. 10-2007, § 4, 2-6-2007)

Sec. 27-604. - Administrative adjudication hearing.

(a) A person who receives a notice of violation may contest the imposition of the civil penalty by submitting a reque an administrative adjudication of the civil penalty, in writing, within 15 days of the tenth day after the date the n violation is mailed. Upon receipt of a timely request, the department shall notify the person of the date and tim hearing on the administrative adjudication. The administrative adjudication hearing shall be held before a heari officer appointed by the mayor.

(b) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty assessed in the notice of violation.

(c) The civil penalty shall not be assessed if after a hearing, the hearing officer enters a finding of no liability.

(d) In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence. The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the violation may be attested to in an administrative adjudication hearing by affidavit of an officer or employee of the city or the entity with which the city contracts to install or operate the system and who is responsible for inspecting and maintaining the system. An affidavit of an officer or employee of the city that alleges a violation based on an inspection of the pertinent recorded image is admissible in a proceeding under this article and is evidence of the facts contained in the affidavit.

(e) A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for administrative hearing costs in the amount of $25.00 in addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within ten days of the hearing.

(f) It shall be an affirmative defense to the imposition of civil liability under this article, to be proven by a preponderance of the evidence, that:

(1) The traffic-control signal was not in proper position and sufficiently visible to an ordinarily observant person;

(2) The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer;

(3) The operator of the motor vehicle violated the instructions of the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle;

(4) The motor vehicle was being operated as an authorized emergency vehicle under the Code of Ala. 1975, §§ 32-5A-7 and 32-5-213 and that the operator was acting in compliance with that chapter;

(5) The motor vehicle was stolen or being operated by a person other than the owner of the vehicle without the effective consent of the owner;

(6) The license plate depicted in the recorded image of the violation was a stolen plate and being displayed on a motor vehicle other than the motor vehicle for which the plate had been issued;

(7) The presence of ice, snow, unusual amounts of rain or other unusually hazardous road conditions existed that would make compliance with this article more dangerous under the circumstances than non-compliance; or

(8) The person who received the notice of violation was not the owner of the motor-vehicle at the time of the violation.

(g) To demonstrate that at the time of the violation the motor vehicle was a stolen vehicle or the license plate displayed on the motor vehicle was stolen plate, the owner must submit proof acceptable to the hearing

officer that the theft of the vehicle or license plate had been timely reported to the appropriate law enforcement agency.

(h) Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:

(1) The person files an affidavit with the hearing officer stating the date on which the person received the notice of violation that was mailed to the person, if not received be the tenth day after same is mailed as set out in subsection (a), and

(2) Within the 15 days of the date of actual receipt, the person requests an administrative adjudication hearing.

(i) A person who is found liable after an administrative adjudication hearing may appeal that finding of civil liability to the Circuit Court of Montgomery County, Alabama by filing a notice of appeal with the clerk of the municipal court. The notice of appeal must be filed not later than the 14th day after the date on which the administrative adjudication hearing officer entered the finding of civil liability. Unless the person, on or before the filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be determined by the circuit court by trial de novo.

(Ord. No. 10-2007, § 5, 2-6-2007)

Sec. 27-605. - Order.

(a) The hearing officer at any administrative adjudication hearing under this article shall issue an order stating:

(1) Whether the person charged with the civil violation is liable for the violation; and

(2) The amount of any civil penalty, late penalty, and administrative adjudication cost assessed against the person.

(b) The orders issued under subsection (a) may be filed in the office of the municipal court administrator. The municipal court administrator shall keep the orders in a separate index and file. The orders may be recorded using microfilm, microfiche, or data processing techniques.

(Ord. No. 10-2007, § 6, 2-6-2007)

Sec. 27-606. - Effect of liability; exclusion of civil remedy.

(a) The imposition of a civil penalty under this article is not a criminal conviction for any purpose.

(b) A civil penalty may not be imposed under this article on the owner of a motor vehicle if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for a criminal violation of any portion of the Code of Ala. 1975, Article II, Chapter 5A, Title 32 (§§ 32-5A-31, 34, and 35), or any other municipal ordinance that embraces and incorporates the said statutes, that occurred simultaneously with and under the same set of facts which were recorded by the photographic traffic signal enforcement system.

(c) Nor record of an adjudication of civil penalty made under this article shall be listed, entered, or reported on any criminal record or driving record, whether the record is maintained by the city or an outside agency.

(d) An owner who fails to pay the civil penalty or to timely contest liability for the penalty is considered to admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person.

(e) The city attorney or his designee is authorized to file suit to enforce collection of a civil penalty imposed under t article.

(Ord. No. 10-2007, § 7, 2-6-2007)

Secs. 27-607—27-630. - Reserved.

TAB B

No . . . Local Law . . . Shall be Enacted in Any Case Which is Provided for by a General Law

By JUDGE J. RUSSELL MCELROY
Birmingham, Alabama

CERTAIN MIGHTY MEN who were members of the Alabama Constitutional Convention of 1901 were grimly and implacably determined that the evils of local, special and private legislation should come to an end. The success that crowned their onslaught against legislation of this kind is manifested by the presence in section 104 of the Constitution of thirty-one subjects upon which special, private or local laws are prohibited.

But in their zeal, their frenzied zeal one might justifiably say, to stave off future local legislation, they put into the Constitution one provision which according to the views of the sponsors of the provision amounted to a nullity. I refer to that particular part of section 105 which forbids the enactment of a local law in any case which is provided for by a general law.[1] Although this particular provision seemed clear to the Chairman of the Committee on Local Legislation which offered the provision, it has been the cause of much confusion for the Legislature and the courts.

The interpretation of this provision as meaning that a local law was forbidden if, but only if, there was an existing general law having precisely the same operation in all parts of the state (and hence also in the locality specified in the local law) would reduce the provision to an absurdity. In an effort to avoid the reduction of this provision to an absurdity, the Supreme Court in the very first case of any significance involving the provision said:[2]

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[1] The whole text of section 105 is: "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."

[2] *City Council of Montgomery v. Reese,* 149 Ala. 188, 43 So. 116 (1906).

"It is of no consequence that the local act contains matter(s) . . . which are not in the general law; for obviously, if the insertion of such matters in a . . . local law would obviate the constitutional prohibition, then the prohibition could be easily circumvented and rendered practically nugatory. It is not perceivable that the framers of the Constitution intended the prohibition to operate only against . . . local . . . laws which are ipsis verbis of the general law."

Notwithstanding this brave start to read sense into the provision, a meaning, as we shall presently see, that was contrary to what its sponsors in the Convention claimed for the provision, it will be seen that the Supreme Court has found but little service for the provision.

Let us take a look at the debates in the Constitutional Convention, and then at the Supreme Court decisions interpreting the provision.

The debates upon the provision appear in the recently published bound volumes of the Proceedings of the Constitutional Convention, at pages 1924 to 1942, again at pages 1946 to 1972, and finally at pages 1989 to 2006. What is now section 105 of the Constitution was subdivision 26 of section I of the Report of the Committee on Local Legislation; and it was under the designation "subdivision 26," sometimes miscalled "section 26," that section 105 was referred to in the debates.

The chief proponents of the provision were Emmett A. O'Neal, who was Chairman of the Committee on Local Legislation whose report had offered the provision; Thomas H. Watts, a member and apparently vice-chairman of the Committee on Local Legislation; and Richard W. Walker, who was not a member of the Committee on Local Legislation but who battled furiously for the adoption of the provision, apparently with Mr. O'Neal's approval of what he said.

The chief opponents of the provision were Erle Pettus, George P. Harrison, Gregory L. Smith, E. D. deGraffenreid, and William C. Fitts.

One is bewildered considerably as one reads the words: "No . . . local law . . . shall be enacted in any case which is provided for by a general law . . .; and the courts, and not the Legislature, shall judge as to whether the matter of said law is provided for by a general law." One wonders whether the framers intended to prohibit the enactment of

(1) A local law operating, in so far as the locality affected is concerned, precisely the same as an already existing general law; or

(2) A local law dealing with the same subject matter as is dealt with in an already existing general law, even though the local law does not, for the locality affected, operate precisely the same as general law.

Plainly enough the ambiguity is in the words "any case" and "the matter of said (local) law." As nonsensical as it would be to prohibit the enactment of a local law only if the local law operated, in the locality specified, precisely the same as an already existing general law, a study of the statements of Chairman O'Neal, and of the other supporters of this provision, made in the Convention, leads with fair certainty to the conviction that a prohibition of precisely that content was intended by the framers. The statements of the Chairman of the Committee offering the provision are undoubtedly a legitimate and potent factor in interpreting the provision.[3]

In the incipiency of the debate, Mr. Pettus raised the objection that by reason of the vagueness of the provision and hence the uncertainty as to whether the case provided for by a local law would be regarded as a case already provided for by a general law, the adoption of the provision would create the possibility of a person's supposing a local law to be valid, acting upon it, and parting with his money, only to be shorn years afterwards of his supposed rights by a Supreme Court decision holding that the local law was void by reason of the provision. With this sort of issue before the Convention, the following dialogue took place between Mr. Walker, Mr. Gregory L. Smith, and Mr. O'Neal (Chairman of the Committee on Local Legislation):

"MR. SMITH (Mobile) – Suppose the Legislature were to pass a local law which was provided for by a general law, and the Supreme Court should subsequently so decide, what effect would it have? Would it not have the effect to uphold the right under the law because it was covered by the general law?" (p. 1934-35 of the Proceedings).

"MR. WALKER – If it is already covered by a general law, yes." (p. 1935)

"MR. SMITH (Mobile) – What effect on it does the decision of the Supreme Court have? It just simply says that it was covered by a general law." (p. 1935)

"MR. WALKER – If the Supreme Court passes upon the question whether or not the local law or special law is a valid piece of legislation, if rights are claimed to have accrued under that local or special legislation, why if the

[3] 2 Sutherland, Statutory Construction (3rd ed. by Horack), section 5012, p. 502-504; *Louisville & Nashville R. Co. v. State,* 201 Ala. 317, 78 So. 93 (1917) ("this court is not bound by the debates of the Constitutional Convention but they are often looked to, and the one in question is very persuasive . . ."); *Ex Parte Bozeman,* 183 Ala. 91, 63 So. 201 (1913) (saying that if the language of a constitutional provision is plain, resort to debates is inadmissible; but also saying with apparent pride that the "plain purpose" as perceived by the court was shown by the remarks of the Chairman of the Committee from which the provision emanated); 70 A.L.R. 5 (Annotation).

local or special legislation should be held to be invalid, the right could not be sustained." (p. 1935)

"MR. SMITH (Mobile) – If the court held that it was covered by a special law the right would be protected, would it not?" (p. 1935)

"MR. WALKER – Yes, sir." (p. 1935)

"MR. SMITH – If, on the contrary, it held that it was covered by a general law, it would not be covered by the special law, so the adjudication of the court will be a nullity in either case, so far as the rights are concerned." (p. 1935)

"MR. WALKER – I really don't understand the purport of the question." (p. 1935)

"MR. SMITH – If the Court decided that he had a right under a general law, and that it was covered by the general law, he would have the right under the general law." (p. 1935)

"MR. WALKER – Yes, if the local law did not amount to anything." (p. 1935)

"MR. SMITH – And if they decided the other way, and held that he had the right under the special law, but that the special law was covered by the general law, he would still have the right, would he not?" (p. 1935)

"MR. WALKER – The decision of the court would show that this piece of legislation was wholly useless." (p. 1935)

"MR. O'NEAL – This section provides that no special or private law shall be enacted in a case which is provided for by a general law. Now I was going to make the inquiry along the line suggested by the gentleman from Mobile. If you obtained your rights under a local law, and the Supreme Court should hold that local law was unconstitutional because the matter of that local law was already provided for by a general law, then a party could not be injured, because the rights were acquired under the local law, and he would still hold his rights under the general law which is in existence." (p. 1935)

"MR. WALKER – That is true." (p. 1935)

"MR. O'NEAL – Is not that a complete answer to the proposition that this would affect property rights? How could it affect property rights when, if the property rights were acquired under a local law, that local law was void on the ground that a general law existed at that time which covered the case, and the general law which existed would protect his property rights, would it not?" (p. 1935)

"MR. WALKER – Of course if the subject was covered entirely by the general law, the special legislation would amount to nothing." (p. 1936)

Later in the course of the debate, Mr. O'Neal said:

"The argument was made on yesterday that this provision might jeopardize vested rights, that a person or corporation might secure a local law and that afterwards the Circuit Court would declare it unconstitutional on the ground that it was provided for by general law. If that be true no vested rights can be affected because if you secure a local law on any specified subject on

which you make an outlay of money, and the court should hold that the local law was void, because provided for by general law, how can you be hurt – the general law would protect you absolutely so. Hence the argument on that ground is absolutely without merit." (p. 1935)

The clear inference from the colloquy is that Mr. Walker and Mr. O'Neal were interpreting and did in fact interpret the provision as forbidding the enactment of a local law only if the local law would operate in the locality precisely the same as an already existing general law would operate.

Mr. Walker, who seems to have taken over the sponsorship of the provision spoke again about it:

"Now, gentlemen, don't all the members of this Convention concede that the applications to the Legislature for things of that kind (he was referring to special, private and local laws) that have already been provided for fully and completely under law already in existence should not consume uselessly the time of the Legislature. If the thing is already provided for by a general law . . . what necessity can anyone say exists for the passage of a special or local law under those circumstances. . . . Now is there any hardship saying to any man, any individual, corporation or association that if the laws of the State have already provided for your case and you can get everything you could possibly get by appealing to the Legislature, you ought not to consume the public time in trying to get the Legislature to do what has already been done for you. That is all that this provision means." (p. 1996)

Shortly after Mr. Walker made the statement just quoted, Mr. Bethune put to Mr. Walker, the following question:

"Suppose the Legislature, after this Constitution has been made and adopted by the people, suppose the Legislature meets and passes a law forbidding the organizing and establishing of any more dispensaries in this State, and a town or city desires one, how would the town or city obtain one if that section is adopted?" (p. 1997)

To this question Mr. Walker replied:

"That would be just the reverse of the situation. In that case there would be no general law under which the relief could be obtained and this is not a prohibition upon a town or city in that kind of case. It prohibits local or special law only in that class of cases in which the relief could not be obtained. That is the kind of cases." (p. 1997)

It is clear enough that the general law hypothesized by Mr. Bethune dealt in a fashion with the "case" of or "the matter of" dispensaries for cities and towns; but that the local law dealt with the case or matter differently from the way in which the general law dealt with the case or matter. The fair inference from Mr. Walker's answer to Mr. Bethune is that Mr. Walker considered the local law to be valid if it operated differently from, or produced effects different from, the general law.

The opponents of the provision were evidently not satisfied with

the interpretations made by Messrs. O'Neal and Walker, because right after the question and answer about dispensaries referred to above, J. J. Robinson came up with this not-easy question to Mr. Walker:

"I ask the gentleman, suppose the legislature were to pass a general law allowing a county to issue bonds for the purpose of building a courthouse and prescribe the rate of interest at 6 per cent and the county could not float its bonds at 6 per cent but could only float them at 7 per cent and the legislature were to pass a special law allowing them to issue bonds just as in the general law and provide a rate of 7 per cent, how would the courts decide that question?" (p. 1997)

to which Mr. Walker responded:

"I am not able to say, but that would not be governed by the provisions contained in this section. This section prohibits a special law only in cases already provided for by a general law." (p. 1998)

Not satisfied with Mr. Walker's answer, Mr. Robinson prodded him with his courthouse question again:

"Suppose there is a general law providing for the issuance of bonds to build a courthouse and providing for the rate of interest of 6 per cent and this county cannot float the bonds at 6 per cent, could they pass a special law for the issuance of bonds at 7 per cent? Would that be held to be in conflict with the general law?" (p. 1998)

Thereupon Mr. Walker replied:

"I am not able to answer your question." (p. 1998)

This last quoted statement by Mr. Walker is the only statement made in the discussions of the provision by any proponent of the provision indicating any doubt whatever as to the proposition that the provision was intended to prohibit the enactment of a local law only if the local law would operate in the locality precisely the same as an already existing general law would operate. However, the opponents of the provision were full of doubt as to whether or not the provision would be interpreted by the courts as meaning what Mr. O'Neal and Mr. Walker said it meant. Especially was George P. Harrison worried about the darkness of the provision:

"Now I call the attention of the Convention to the fact that the gentleman from Madison (Mr. Walker) could not answer the question propounded by the gentleman from Chambers (Mr. Robinson – his question about the rate of interest on courthouse bonds), and that is a sufficient reason for stating that it could not be answered, and that is the reason, if nothing else, why this provision should be stricken out. (p. 2001)

"I really believe that if this provision is adopted it will tend to produce more litigation than any matter that has been before this Convention. The effect of this would be that more than one-half of the local laws passed on any

subject would go into the hands of the court. . . . It will be a question on one side or the other of every measure as to whether it had been provided for by general legislation." (p. 2001)

Boiled down, the debates on the provision come to this: Mr. O'Neal, the Chairman of the Committee on Local Legislation, made reasonably clear that the purpose of the provision was to forbid the enactment of a local law only if the local law would operate in the locality precisely the same as an already existing general law would operate. Mr. Walker, doughty supporter of the provision, agreed with Mr. O'Neal, but finally admitted that he didn't know the answer to the simple question of whether the provision would prohibit the enactment of a local law authorizing a particular county to issue bonds to build a courthouse bearing 7 per cent interest in the face of an existing general law authorizing counties generally to issue bonds for such purpose bearing 6 per cent interest. The opponents of the provision strongly suspected that the provision would be interpreted by the courts as having a meaning other than that ascribed to it by Chairman O'Neal.

A survey of the interpretative decisions of the Alabama Supreme Court decisions is now in order.

It is believed that there are five lines of Supreme Court decisions interpreting this provision, namely:

(1) A line which takes the position that a local law is prohibited if it deals with the same subject matter (taking the words "subject matter" in a broad way) as an existing general law, even though the operation of the local law is greatly different from the operation of the general law.[4] As we shall see later, this line of decisions was rationalized later into holding the same thing as line (4) below.

(2) A line which takes the position that a local law is not prohibited, notwithstanding the existence of a general law dealing with the subject matter of the local law, if the process of accomplishing results under the general law is "tedious and embarrassing" and no such tedium and embarrassment exists in accomplishing results under the local law – because under those conditions, so the Court said, "the two acts are not identical as to subject matter."[5] The single decision which created this line, like the decisions creating line (1) above, was rationalized later into holding the same thing as line (4) below.

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[4] *City Council of Montgomery v. Reese,* 149 Ala. 188, 43 So. 116 (1906); *Norwood v. Goldsmith,* 168 Ala. 224, 53 So. 84 (1910).

[5] *City of Ensley v. Simpson,* 166 Ala. 366, 52 So. 61 (1909).

(3) A line which takes the position that if the local law "proposes something different from the provisions of the general law," the case provided for by the local law has not been provided for by the general law, and the local law is not invalid by reason of the existence of the general law.[6] The single decision which created this line, like the decisions which created lines (1) and (2) above, was rationalized later into holding the same thing as line (4) below.

(4) A line which takes the position that a local law, dealing with the same subject matter as an existing general law, is prohibited if, but only if, the local law is pretty nearly the same in its operation as the general law, so that the difference between the two laws can be considered as being differences of "details merely," and not "of substantial matter," with the court doing the judging as to whether the difference is of mere details or of substantial matter.[7]

(5) A line which takes the position that a local law dealing with the same subject matter as an existing general law is prohibited only if the difference between the two laws is in respect of "details," but which also holds that the question of whether the difference is of "mere details" or of "substantial matter" is for the exclusive determination of the Legislature.[8] The effect of this line of decisions is that if there is any difference whatever between a local law and a general law, "the matter of" the local law is not to be regarded as being already provided for by the general law; and that the local law is not invalid as providing for a case already provided for by a general law.

When the applicability, vel non, of the provision came up for decision in the first case of any interpretative significance, namely, *City Council of Montgomery v. Reese,*[9] decided in 1906, the Court was naturally reluctant to attribute to the provision a meaning that would make its incorporation into the Constitution an absurdity; and the Court proceeded to hold that a local law authorizing a specified county to issue refunding bonds bearing interest at 4 per cent and to run for not more than 40 years was a matter pro-

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[6] *Brandon v. Askew,* 172 Ala. 160, 54 So. 605 (1911).

[7] *City Bank & Trust Co. v. State ex rel. Langan,* 172 Ala. 197, 55 So. 511 (1911); *Dunn v. Dean,* 196 Ala. 486, 71 So. 709 (1916); *State ex rel. Brandon v. Prince,* 199 Ala. 444, 74 So. 939 (1917); *Board of Revenue of Jefferson County v. Kayser,* 205 Ala. 289, 88 So. 19 (1921); *Polytinsky v. Wilhite,* 211 Ala. 94, 99 So. 843 (1924); *Morgan County v, Edmondson,* 238 Ala. 522, 192 So. 274 (1939); *Johnson v. State,* 245 Ala. 499, 17 So. 2d 662 (1944).

[8] *State ex rel. Day v. Bowles,* 217 Ala. 458, 116 So. 662 (1928); *Standard Oil Co. of Ky. v. Limestone County,* 220 Ala. 231, 124 So. 523 (1929); *Talley v. Webster,* 225 Ala. 384, 143 So. 555 (1932).

[9] 149 Ala. 188, 43 So. 116.

vided for by a general law authorizing counties to issue refunding bonds bearing interest at 5 per cent and to run for not more than thirty years, and hence that the local law was unconstitutional. Although the difference between the local law and the general law was of great importance, certainly not just a matter of "mere detail," the Court said that the "subject matter of the two acts is substantially the same," and held the local law to be invalid. *Norwood v. Goldsmith,*[10] decided in 1910, is similar to *City Council of Montgomery v. Reese.*

The next important case involving the prohibitory provision was *City of Ensley v. Simpson,*[11] decided in 1909. That case involved the validity of a local law rearranging the boundaries of the City of Birmingham so as to include within said city the territory then included in several other municipalities, some of which were contiguous, and some of which were not contiguous, to Birmingham, and also so as to include in Birmingham various unincorporated territories. General laws provided a means by which the addition of all of this territory could have been brought into the City of Birmingham, but the process under the general laws was "tedious and embarrassing." The Court held the local law valid because the two laws were "not identical as to subject matter." The opinion in this case said nothing about the validity of the local law turning upon the question whether the differences between the local law and the general law were of "mere detail" or of "substantial matter."

Brandon v. Askew,[12] decided in 1911, brought the next shift of interpretation. In that case, the Legislature, by what the Court treated as being a local law,[13] created a new judicial circuit, and provided that the salary of the solicitor of the circuit, should be a lesser sum than the salary fixed by general law for circuit solicitors. Holding the fixation of the salary by the local law to be valid, the court said: "But if the local bill proposes something different from the provisions of the general law . . . how has it been provided for, and where is the inhibition to enact the local law?" *This was plain acceptance of Chairman O'Neal's interpretation.* But the Court thereupon proceeded to deliver itself of this bedarkening utterance: "It seems, then, that this provision (sec.

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[10] 168 Ala. 224, 53 So. 84.

[11] 166 Ala. 366, 52 So. 61.

[12] 172 Ala. 160, 54 So. 605.

[13] Later decisions indicate a fair likelihood that an Act creating a judicial circuit would now be held to be a general law: *State ex rel. Montgomery v. Merrill,* 218 Ala. 149, 117 So. 473; *Stone v. State ex rel. Courtney,* 233 Ala. 239, 171 So. 362.

105) of the Constitution was intended to prohibit the enactment of special, private, or local laws to meet the purposes of particular cases which may be accomplished by proceedings outside of the Legislature under the provisions of general statutes enacted to meet all cases of that general character." The Court did not amplify that ambiguous statement, and did not define or explain what was meant by the words "the purposes of particular cases." *Brandon v. Askew* also failed to say anything about the validity of the local law turning upon whether the difference between the local law and the general law was "mere detail" or "substantial matter."

What may be regarded as a genuine landmark decision is *City Bank & Trust Company v. State ex rel. Langan,*[14] decided in 1911, which declared that the prohibitory provision invalidated a local law if, but only if, "the proceeding or action contemplated by the local . . . law might have been in substance and not in respect of detail merely, taken or had under the general law." Although this case brought a radical change of interpretation, the Court cited, as supporting the new interpretation, all of the decisions referred to above in lines of decisions (1), (2) and (3), but in none of which had the new interpretation been mentioned. In truth, as one reads the decisions in lines of decisions (1), (2) and (3), above, one wonders whether, and seriously doubts that, the Court in rendering such previous decisions ever thought of the prohibitory provision as forbidding a local law only if the difference between the local law and the general law is a difference of "detail merely." The interpretation enunciated in *City Bank & Trust Company v. State ex rel. Langan,* was given powerful vitality in *Dunn v. Dean,*[15] decided in 1916; and seems to be the dominant test to the present time.[16] Those decisions referred to in lines (1), (2) and (3) above must not be regarded as today having the interpretative significance which I have attributed to them. Even if my interpretations of them be valid as of the time they were rendered, such interpretations were swallowed up by *City Bank & Trust Company v. State ex rel. Langan.*

As the years went by, evidently the Court was becoming wearied with the task, a task more legislative than judicial it might well be said, of deciding whether or not the difference between a local law and a general law was of "mere detail" or of "substantial matter" — because in 1928, in the case of *State ex rel. Day v. Bowles,*[17] there

[14] 172 Ala. 197, 55 So. 511.

[15] 196 Ala. 486, 71 So. 709 (reviews previous cases).

[16] As is revealed by the decisions cited in footnote 7 above.

[17] 217 Ala. 458, 116 So. 662.

came a revolutionary shift in the interpretation of the provision. The question in that case was whether a local law creating a courthouse commission to build a new courthouse for Morgan County was a matter provided for by an existing general law which authorized courts of county commissioners to build courthouses. Listen to the momentous words of the court:

"Sufficient to say now . . . this section (namely, section 105) does not withdraw the legislative discretion to prescribe or change the governing agencies of counties by local legislation suited to the varied needs of counties of widely different conditions as to population, wealth and local requirements . . . we deem it proper to say section 105 is not intended to strike down as to this class of legislation the provisions of sections 42 and 43 of the same constitution defining the three coordinate departments of government, and committing the legislative, executive and judicial power each to a separate body of magistracy. These sections are fundamental in our institutions. To say by judicial construction that the creation of a courthouse commission is mere matter of form or detail, not of 'substantial matter of such law,' *is to enter the domain of legislative discretion, to pass upon the need of such law in the particular case, a matter open to the inquiry of the Legislature as a guide to legislative discretion, and not open to the courts.*"

Therefore, under *State ex rel. Day v. Bowles,* if there be any difference whatever between the operation of a local law and the operation of an existing general law, the enactment of the local law implies a legislative finding that the difference is not a matter of form or detail, and such finding is not open to review or revision by the courts. This was going a long way in the face of the provision in section 105 that "the courts, and not the legislature, shall judge as to whether the matter of a local law is provided for by a general law." But it is submitted that the end-result is desirable, even though the reasoning by which the result is reached is open to question. The line of decisions instituted by *State ex rel. Day v. Bowles* leads to the same effects in the courts as would the interpretation given to the prohibition by Chairman O'Neal and the supporters of the prohibition in the Convention, namely: A local law is invalid if, but only if, it would operate in the locality affected precisely the same as an already existing general law would operate.

As I read and think upon what I have written above, I have tried to fathom some purpose in the minds of the framers that would make sense out of the prohibitory provision. It certainly does not make sense to say that they intended to prohibit the Legislature from wasting its time in duplicating precisely in a local law that which is already provided by a general law, notwithstanding the fact that the debates indicate that such was the purpose of Chairman O'Neal. Somehow, I have the feeling that possibly what the framers were getting at, but failed to express, was something like this: If

there exists a general law dealing with a matter, a local law dealing with the same matter should be adjudged by the courts to be invalid if the judges looking at the local law from the standpoint of intelligent, fairminded legislators should think that the local law was unwise. The conception, of course, would make of the judges something on the order of super-vetoers supposedly exercising a wisdom superior to that of the Governor and the Legislature. Indeed, a conception of this or a similar content may account for that line of decisions which interpret the prohibitory provision as meaning that a local law dealing with the same subject matter as an existing general law is prohibited if, but only if, the local law is pretty nearly the same in its operation as the general law, that is, if the difference between the two laws is in "mere details" and not of importance. One might easily slip to the conclusion that a smallness of difference between the local law and the general law was a sound ground for saying that the local law was unwise. It is submitted, however, that such a criterion of wisdom would be superficial and in many cases lead to erroneous results. The difference between the local law and the general law might be small indeed – yet, it would not necessarily follow that intelligent, fairminded legislators would think that the local law was not wise. On the contrary, the small difference might make the local law much wiser than the general law. Wise men are certainly not scorners of small things. Granting that my guess (that the framers might have been seeking to make the judges into super-vetoers possessed of superior legislative wisdom as to the desirability of a local law in the face of a general law dealing with the same subject matter) finds but tenuous inferential support in the debates, it must be said also that the Court interpretations to the present time have nothing save tenuous inferential support in the debates.[18] Even if the Court should ever come to the conclusion that the framers meant for the judges to be super-vetoers of superior legislative wisdom, but few local laws would fail, because of that cardinal rule that a court will not hold a legislative enactment unconstitutional unless the court is convinced beyond a reasonable doubt of the unconstitutionality. Mighty few judges there would be who would be willing to say that they were convinced beyond a reasonable doubt that a local law was unwise because of an already existing general law dealing with the same subject matter, howsoever small the differ-

[18] *Brandon v. Askew*, referred to in the text at note 12 above, must be regarded as supported by the debates; but as pointed out in the text above, *Brandon v. Askew* was swallowed up by *City Bank & Trust Co. v. State ex rel. Langan.*

ence between the two laws might be. In view of the veneration shown for the triparte division of the powers of government, in *State ex rel. Day v. Bowles,*[19] it does not seem likely that the Court will ever interpret the prohibitory provision as making judges into super-vetoers having superior legislative wisdom. It hardly needs to be said that even if the framers had any such meaning in mind, their efforts were ill directed, because if there is going to be a veto of a legislative enactment, and that's what a judicial frustration of the enactment on ground of unwisdom in it comes to, the veto ought to be made forthwith, and not lag along to be made in judicial proceedings long afterwards.

There is need of further analysis of that line of decisions holding that the prohibitory provision invalidates a local law dealing with the same subject matter as an existing general law, if, but only if, the local is pretty nearly the same in its operation as the general law. No supporter of this hotly debated provision made any statement in the Convention that gives aid to that line of decisions. And, whatever may have been the means by which this provision was to operate in restricting the enactment of local laws, it is crystal clear that the ultimate objective of the framers of the provision was to curtail the evils of local legislation – because, so they said, local legislation was evil; and, conversely, general legislation was good, and just about the only right way to make laws.[20] Let's see how this thesis of evil and good is accommodated by the line of decisions just mentioned: Although local legislation is evil, the more radical and important the variance between the *evil* local law and the *good* general law, and hence by the thesis of the framers the more evil the local law has in it, the better the chance of the exceedingly evil local law being held to be valid. Conversely, the less the variance between the *evil* local law and the *good* general law, and hence by the thesis of the framers the less evil the local law has it it, the greater the chance of the slightly evil local law being held invalid. In short, this line of decisions produces consequences that are precisely the opposite of the ultimate consequences intended by the framers of the Constitution.

The prohibitory provision has served no useful purpose. By reason of its vagueness and uncertainty, it has done nothing except

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[19] See quotation from this case in the text at footnote 17 above.

[20] See Report of Committee on Local Legislation, at p. 382-388 of the Journal of the Constitutional Convention. Note: This Journal, published in 1901, is a different publication from the volumes giving a verbatim report of the proceedings of the Convention.

create confusion.[21] It has not been much of a barrier to local legislation. Only five local laws have been held to be invalid by reason of it;[22] whereas at least twenty local laws attacked as being invalid under it have been held to be valid.[23] It is submitted that the five

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[21] Similiar prohibitory provisions in the Constitutions of other states seem to have caused endless confusion: Horack and Welsh, "Special Legislation: Another Twilight Zone," 12 INDIANA LAW JOURNAL, 109, 183; Anderson, "Special Legislation in Minnesota," 7 MINN. LAW REVIEW, 133, 187.

[22] Namely, the local laws involved in *City Council of Montgomery v. Reese,* 149 Ala. 188, 43 So. 116 (1906); *Norwood v. Goldsmith,* 168 Ala. 224, 53 So. 84 (1910); *City Bank & Trust Co. v. State ex rel. Langan,* 172 Ala. 197, 55 So. 511 (1911); *Acuff v. Weaver,* 17 Ala. App. 532, 86 So. 167 (1920) (decision based on Response of Supreme Court to certified question); *Evans v. Long,* 227 Ala. 335, 149 So. 837 (1933). All of these decisions are accurately briefed in Skinner's Alabama Constitution Annotated, p. 486-494.

[23] *Ex Parte Kelly,* 153 Ala. 668, 45 So. 290 (1907) (local law providing for holding court at branch county site); *City of Ensley v. Simpson,* 166 Ala. 366, 52 So. 61 (1909) (discussed in text at note 11 above); *Brandon v. Askew,* 172 Ala. 160, 54 So. 605 (1911) (discussed in text at note 10 above); *Dunn v. Dean,* 196 Ala. 486, 71 So. 709 (1916) (local law reconstructing governing body of county); *State ex rel. Brandon v. Prince,* 199 Ala. 444, 74 So. 939 (1917) (local law abolishing, and placing duties of jury commission on county governing body); *Board of Revenue of Jefferson County v. Kayser,* 205 Ala. 289, 88 So. 19 (1921) (local law giving county governing body discretion to pay claims against fine and forfeiture fund out of general treasury of county); *Jackson v. Sherrod,* 207 Ala. 245, 92 So. 481 (1921) (local law providing for trial of misdemeanor cases); *Ex Parte Alabama Brokerage Co.,* 208 Ala. 242, 94 So. 87 (1922) (local law regulating money lenders); *State ex rel. Brooks v. Gullatt,* 210 Ala. 452, 98 So. 373 (1923) (local law to rearrange boundaries of a city); *Polytinsky v. Wilhite,* 211 Ala. 94, 99 So. 843 (1924) (local law regulating jurisdiction of courts); *State ex rel. Day v. Bowles,* 217 Ala. 458, 116 So. 662 (1928) (discussed in text at note 17 above); *Commissioners' Court of Winston County v. Haney,* 22 Ala. App. 571, 118 So. 237 (1928) (local law creating office of deputy sheriff); *Standard Oil Co. of Kentucky v. Limestone County,* 220 Ala. 231, 124 So. 523 (1929) (local law authorizing local tax on privilege of selling motor fuel); *State ex rel. Austin v. Black,* 224 Ala. 200, 139 So. 431 (1932) (local law providing for election of Superintendent of Education); *Court of County Commissioners v. Lightner,* 225 Ala. 22, 141 So. 908 (1932) (local law providing for additional deputy sheriff); *Talley v. Webster,* 225 Ala. 384, 143 So. 555 (1932) (local law requiring plaintiff before instituting suit in justice court to make affidavit showing that such suit is authorized by law); *Morgan County v. Edmondson,* 238 Ala. 522, 192 So. 274 (1939) (local law creating new county governing body); *Johnson v. Robinson,* 238 Ala. 568, 192 So. 412 (1939) (local law creating county highway board); *England v. State,* 240 Ala. 76, 197 So. 365 (1940) (local law regulating trials of misdemeanor cases); *Johnson v. State,* 245 Ala. 490, 17 So. 2d 662 (1944) (local law rearranging boundaries of city; decision also based on other grounds). Skinner's Alabama Constitution Annotated contains an accurate brief of all of the decisions referred to above, up to the time of publication of Judge Skinner's book in 1938.

laws which were invalidated might with equal reason have been held to be valid even under the dominant test of the insignificance or importance of the difference between them and subsisting general laws.[24] Most certainly they would have been held valid under the latter-day interpretation which accords finality to an assumed legislative finding that any difference between a local law and a general law is one of "substantial matter."[25] Even under the test of the insignificance or importance of the difference between the local law and the general law, circumvention of the prohibitory provision may be had with the greatest of ease – simply by making the difference between the local law and the general law big enough. Hundreds of local laws, dealing with the same subjects as general laws in existence at the time of the enactment of the local laws, have been enacted since the adoption of the Constitution of 1901. Whether they are valid or void is to some degree uncertain. However heartily one may agree with the sentiments of the sponsors of the prohibitory provision that local laws are an unmitigated evil, one cannot subscribe to the proposition that a restriction upon the enactment of local laws that renders nearly every local law subject to doubt, even though not a strong doubt, is the part of wisdom. If the Court had adhered to any appreciable extent to the course which it began in *City Council of Montgomery v. Reese,*[26] the validity of nearly every local law enacted by the Legislature would have been open to serious question. A constitutional provision com-

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[24] For example, in *Evans v. Long,* 227 Ala. 335, 149 So. 837 (1933) a local law fixing the salary of the chief deputy sheriff of Walker County at $1800 per annum was invalid by reason of the existence of a general law authorizing county governing bodies to fix the salary of a chief deputy sheriff at an amount not less than $900 nor more than $1800 per annum. The Court's opinion speaks of the change made by the local law as a "detail change." It is believed that there are many reasonable persons who would disagree with the Court's finding that the difference in compensation was a mere matter of detail. The compensation which a public officer is to receive for his services nearly always has a vital effect upon the quality of the service Mr. John Q. Public will receive. (See in this connection, the critical, penetrating and philosophical study of judicial salaries by Glenn R. Winters in his article titled "Salaries of American Judges," 28 JOURNAL OF AMERICAN JUDICATURE SOCIETY, pp. 173-181). Moreover there would be some difficulty in reconciling the two decisions just referred to with *Brandon v. Askew,* 172 Ala. 160, 54 So. 605 (1911) holding that the fixation, by what was assumed to be a local law, of the salary of a circuit solicitor of a new circuit created by the same law, was valid although there existed a general law fixing the salaries of circuit solicitors at a different amount from that fixed by the local law.

[25] As made in *State ex rel. Day v. Bowles,* discussed in the text at footnote 17 above.

[26] Discussed in the text at footnote 9 above.

pletely forbidding any and every sort of local law would have been infinitely preferable to a provision that created serious doubt as to the validity of nearly every local law. Fortunately, however, the Court soon departed from *City Council of Montgomery v. Reese.*[26a] Since that decision, the Court has given many manifestations of its distaste for the provision,[27] and the Court has been astute to find reasons why local laws are not invalid because of the provision — from all of which one may be comforted with the thought that it is not likely that many more, if any, local laws will be held invalid because of the provision.

The radical change of interpretation which came in 1928 in *State ex rel. Day v. Bowles,*[28] according finality to an assumed legislative finding that any difference between a local law and a general law was "of substantial matter," gave promise of a complete ending of the confusion wrought by the prohibitory provision. Other decisions which came in 1929[29] and 1932[30] and accepted the rationale of *State ex rel. Day v. Bowles* increased the assurance. But the measurably vague and slippery test of the insignificance or importance of the difference between the local law and the general law soon came back — in 1933,[31] and in 1939.[32] The validity of only a few of the numerous local laws enacted since the adoption of

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[26a] There have been four departures, namely, the departures made by the decisions cited in footnotes 5, 6, 7 and 8 above. It is true that in *Acuff v. Weaver,* 17 Ala. App. 532, 86 So. 167, and in *Evans v. Long* 227 Ala. 335, 149 So. 837, the Court harked back to the "same subject matter" doctrine of *City Council of Montgomery v. Reese,* but the "same subject matter" doctrine must be regarded as today overborne by the decisions cited in footnotes 7 and 8.

[27] The line of decisions cited in footnote 7 above is one such indication. The opinion in *Brandon v. Askew,* 172 Ala. 160, 54 So. 605 (1911) came pretty close to say the provision was a nullity: "But if the local bill proposes something different from the provisions of the general law . . . how has it been provided for, and where is the inhibition to enact the local law?" *State ex rel. Day v. Bowles,* discussed in the text at footnote 17 above, was a rebellion against the provision.

[28] See discussion of this case in text at note 17 above.

[29] *Standard Oil Co. of Kentucky v. Limestone County,* 220 Ala. 231, 124 So. 523.

[30] *Talley v. Webster,* 225 Ala. 384, 143 So. 555.

[31] *Evans v. Long,* 227 Ala. 335, 149 So. 837 (although this decision harks back to the "same subject matter" doctrine of *City Council of Montgomery v. Reese,* discussed in text at footnote 9 above, the Court's reference to the difference between the local law and the general law as being a "detail change" affords an inference that the Court was also thinking of the doctrine of "mere details v. substantial matter" as created by the decisions referred to in footnote 7 above.

[32] *Morgan County v. Edmondson,* 238 Ala. 522, 192 So. 274.

the Constitution of 1901, as affected by the prohibitory provision, has been decided by the Supreme Court. Therefore, the validity of the overwhelming majority of such local laws is still the subject of some doubt. It is certainly desirable that this doubt be dispelled. It is further desirable that legislators, those persons selected by the people to make their laws, should know hereafter with a fair degree of certainty, whether a proposed local law will clash with the prohibitory provision. Such certainty does not now exist. A movement of the decisions towards a single definitive interpretation would undoubtedly make for a better functioning of the Legislative Department of the State of Alabama.

If the provision be interpreted as making judges into super-vetoers with superior legislative wisdom, the provision is impolitic because vetoes ought not to be unduly deferred by waiting for a judicial decision. If the provision be interpreted as making the insignificance or importance of the difference between the local law and the general law the test of validity, the provision is impolitic because insignificance or importance is a highly relative matter, so much so that a decision one way or the other becomes almost a matter of whim. Moreover, acceptance of an interpretation that validity turns upon whether the difference between the local law and the general law is insignificant or important would in many instances produce consequences precisely the opposite of the ultimate consequences intended by the framers of the Constitution. By reason of these things, it is submitted that there would be no misuse of judicial powers, if the courts should take the position in the future that the prohibitory provision means what Chairman O'Neal stated it meant: In effect this, the enactment of a local law is forbidden only if the local law operates in the locality affected precisely the same as an already existing general law. Such an interpretation makes nonsense of the provision, but such was the interpretation made by the Chairman of the Committee offering the provision; and it certainly cannot be said to be nonsense for the courts to accept the Chairman's interpretation.[33]

Appendix

Since the preparation of the above article, the Alabama Supreme Court has decided that a local law fixing the term of office of a county tax assessor at four years was not violative of the prohibitory provision notwithstanding the existence of a general law fixing the term of office of county tax assessors at six years.[34] The

[33] See authorities cited in footnote 3 above.

[34] *Walker County v. Barnett,* (Ala.) 24 So. 2d 665 (decided Feb. 14, 1946).

Court's opinion in this case is further evidence of the confusion in the decisions relating to the prohibitory provision, and of the distaste of the Court for the provision. Although the ground of the decision is far from clear, and the Court's distinguishment of certain closely analogous decisions[35] is dubious, so that on the whole the Court's opinion cannot be regarded as clarifying the preexisting confusion, the Court's conclusion is eminently correct. The weakness in the Court's opinion is that the opinion seeks to rationalize the irrational, and reconcile the irreconcilable. But the decision is powerful proof that befuddling, impolitic, vague and slippery section 105 has just about come to zero, as ought to be.

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[35] *Acuff v. Weaver*, 17 Ala. App. 532, 86 So. 167 (1920) (based upon Response by Supreme Court to a question certified by the Court of Appeals) (Local law fixing salary of the judge of a specified county court at $1200 per annum held invalid by reason of existence of a general law fixing the salary of judges of county courts at $450 per annum); *Evans v. Long*, 227 Ala. 335, 149 So. 837 (1933) (local law fixing the salary of the Chief Deputy Sheriff of Walker County at $1800 per annum held invalid by reason of existence of general law authorizing county governing bodies to fix salary of a chief deputy sheriff at an amount not less than $900 nor more than $1500 per annum). Therefore the incongruous situation exists that a local law fixing a county officer's term of office at a period of time less than that fixed by an already existing general law is valid, though a local law fixing a county officer's compensation at an amount greater than that fixed by an already existing general law is invalid.