
IN THE SUPREME COURT OF ALABAMA

1200240

RICHARD STEPHEN GLASS,

Appellant,

v.

CITY OF MONTGOMERY

Appellee.

(Montgomery County Circuit Court, CV-18-000079)

CORRECTED BRIEF OF APPELLANT

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STATEMENT REGARDING ORAL ARGUMENT

This case involves issues that have been before this Court previously in cases that were consolidated by this Court. Those cases were: City of Montgomery, et al. v. Charles Hunter and Mike Henderson, Case No. 1170959; Michael Moore, Wesley Farmer and Briana Debose v. City of Centerpoint and Redflex Traffic Solutions, Case No. 1171151; Robin Woodgett and Jerome Ruffin v. City of Midfield and American Traffic Solutions, Case No. 1180051; and Jordan Mills and Bradley Brasfield v. City of Opelika and American Traffic Solutions, Case No. 1180268. This Court heard oral argument in those cases at 9:00 a.m. on October 22, 2019 at the Samford University Wright Center.

Thus, oral argument on these issues is probably unnecessary but if the Court thinks that oral argument again on the issues involved in this case would be helpful, the Appellant would be happy to participate in oral argument.

TABLE OF CONTENTS

STATEMENT REGARDING ORAL ARGUMENT	i
TABLE OF CONTENTS	ii
STATEMENT OF JURSDICTION	iv
TABLE OF AUTHORITIES	v
STATEMENT OF THE CASE	1
STATEMENT OF THE ISSUES.....	4
I. RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES.....	13
II. THE APPLICABLE STATUTES, ACT AND ORDINANCE.....	15
A. The Red Light Laws of this State Apply Statewide.....	15
B. Act 2009-740.....	17
C. Montgomery’s Ordinance 10-2007.....	19
III. ACT 2009-740 AND MONTGOMERY’S ORDINANCE 10-2007 CLEARLY ARE IN CONFLICT WITH §32-5A-31, CODE OF ALABAMA 1975, §32-5A-32(3), §32-5A-6, §32-5A-8(A), §32-5A-11 AND §105 OF THE ALABAMA CONSTITUTION OF 1901.....	20
A. The plain meaning of §105 of the Constitution is that “No local law” can be passed on a subject that is provided for by general law.....	20

B.	Act 2009-740 cannot be justified by the judicially created “local need” exemption to §105 of the Alabama Constitution of 1901.....	29
C.	There is no question that the Legislature can provide for a criminal punishment and a civil penalty for traffic violations but it must be enacted on a statewide basis and not by a local act.....	34
IV.	ACT 2009-740 AND MONTGOMERY’S ORDINANCE 10-2007 VIOLATE §89 OF THE ALABAMA CONSTITUTION OF 1901 AND §11-45-1 AND §32-5-1, CODE OF ALABAMA 1975.....	36
V.	ACT 2009-740 CLEARLY VIOLATES §104(14) OF THE ALABAMA CONSITUTION OF 1901.....	40
	STATEMENT OF THE FACTS	5
	STANDARD OF REVIEW	8
	SUMMARY OF THE ARGUMENT	11
	ARGUMENT	13
	CONCLUSION	53
	CERTIFICATE OF COMPLIANCE.....	54
	CERTIFICATE OF SERVICE	54
	APPENDIX A	56

STATEMENT REGARDING JURISDICTION

This Court has jurisdiction of this case pursuant §12-2-7, Code of Alabama (1975).

TABLE OF AUTHORITIES

Cases

<i>Alabama Coalition for Equity, Inc. v. Hunt</i> , 1993 WL 204083 (April 1, 1993)	33
<i>Atkins v. City of Tarrant City</i> , ,369 So. 2d 322 (Ala. Crim. App. 1979) 38, 45	
<i>Baldwin County Elec. Membership Corp.</i> , 355So. 2d 708 (Ala. 1978) ...	50
<i>Bankers Fire & Marine Ins. Co. v. Bukacek</i> , 271 Ala. 182, 123 So. 2d 157 (1960).....	32
<i>Birmingham v. West</i> , 183 So. 421, 423 (Ala. 1938).....	37
<i>Cabiness v. City of Tuscaloosa</i> , 39 Ala. App. 538, 541, 104 So. 2d 778 (1958).....	38, 45
<i>City of Birmingham v. City of Vestavia</i> , 654 So. 2d 532, 541 (1995).....	33
<i>City of Homewood v. Bharat, LLC</i> , 931 So. 2d 697, 701, (Ala. 2005)	26, 31
<i>Club 35, LLC v. Borough of Sayreville</i> , 20 A.3d 451 (Sup. Ct. N.J. 2011)	51
<i>Ellis v. Pople</i> , 709 So. 2d 1161, 1167 (Ala. 1997).....	32
<i>Ex parte E.R.G.</i> , 73 So. 3d 634, 641–42 (Ala. 2011)	8

<i>Ex parte State Alcoholic Beverage Control Bd.</i> , 654 So. 2d 1149 (Ala. 1994)	47
<i>Green v. Austin</i> , 425 So. 2d 411 (Ala. 1982).....	28, 29
<i>Hall v. City of Tuscaloosa</i> , 421 So. 2d 1244, 1249 (Ala. 1982)	39
<i>Harris v. State</i> , 421395 So. 2d 1109(Ala. 1981).....	50
<i>House v. Cullman Co.</i> , 593 So. 2d 69 (Ala. 1992)	28
<i>Jefferson Cty. v. Taxpayers and Citizens of Jefferson Cty.</i> , 232 So. 3d 845, 868 (Ala. 2017)	29
<i>McCaskill v. State</i> , 648 So. 2d 1175 (Ala. Crim. App. 1994)	31
<i>Meadows v. State</i> , 26 Ala. App. 311, 312, 159 So. 268, 269 (1935)	17
<i>Mink v. Brown</i> , 276 Ala. 3, 158 So. 2d 647 (1963).....	31
<i>Opinion of Justices</i> , 260 So. 3d 17, 21 (Ala. 2018).....	9, 22
<i>Opinion of Justices. 315</i> , 468 So. 2d 881 (Ala. 1985).....	50
<i>Opinion of Justices No. 361</i> , 693 So. 2d 21 (Ala. 1987)	50
<i>Opinion of Justices</i> , 373 So. 2d 278 (Ala. 1979).....	37, 45, 50, 51
<i>Opinion of the Justices</i> , 630 So. 2d 444, 446 (Ala. 1994).....	26
<i>Opinion of the Justices</i> , 672 So. 2d 1294, 1296 (Ala. 1996).....	26
<i>Peddycoart v. City of Birmingham</i> , 354 So. 2d 808, 811 (Ala. 1978)10, 21	

<i>Pierce v. State</i> , 292 Ala. 473, 481-482, 296 So.2d 218, 225-226 (1974) ..	49
<i>See also Atkins v. City of Tarrant City</i> , 369 So. 2d 322 (Ala. Crim. App. 1979)	46, 53
<i>State ex rel. Whetstone v. Baldwin County</i> , 686 So. 2d 220 (Ala. 1996).	26
<i>State v. Rogers</i> , 281 Ala. 27, 198 So.2d 610 (1967)	50
<i>Thompson v. State</i> , 274 Ala. 383, 149 So.2d 916 (1963)	43, 49, 50
<i>Turner v. Town of Lineville</i> , 2 Ala. App. 454, 459, 56 So. 603 (1911)	38
<i>Underwood v. Medical Clinic Bd. for City of Montgomery</i> , 904 So. 2d 264, 267-68 (Ala. 2004)	25

Statutes

Ala. Code, §11-45-1 (1975)	11, 14, 36, 39
Ala. Code, §12-2-7 (1975)	4
Ala. Code, §12-12-50 (1975).....	16, 18
Ala. Code, §12-12-53 (1975).....	16
Ala. Code, §13A-12-14 (1975)	44
Ala. Code, §15-7-1 through 2, (1975)	16
Ala. Code, §32, (1975).....	15
Ala. Code, §32-2-9 (1975)	17
Ala. Code, §32-5-1 (1975)	11, 14, 15, 39

Ala. Code, §32-5-1(a), (1975)	39
Ala. Code, §32-5A (1975)	passim
Ala. Code, §32-5A-1, (1975)	22
Ala. Code, §32-5A-3, (1975)	28, 41, 42, 53
Ala. Code, §32-5A-5 (1975)	passim
Ala. Code, §32-5A-8 (1975)	16, 24, 42, 49, 53
Ala. Code, §32-5A-11 (1975)	passim
Ala. Code, §32-5A-31, (1975)	passim
Ala. Code, §32-5A-31(a)	15, 16, 17, 22
Ala. Code, §32-5A-32, (1975)	passim
Ala. Code, §32-5A-32(3) (1975)	15, 16, 18, 23
Ala. Code, §32-5A-35, (1975)	15
Ala. Code, §32-6-13 (1975)	17

Other Authorities

Act No. 2009-740	passim
Montgomery’s Ordinance 10-2007	passim
Section 89 of the Alabama Constitution	11, 14, 36, 38, 53
Section 104 of the Alabama Constitution	40, 43, 51
Section 104(14) of the Alabama Constitution	passim

Section 105 of the Alabama Constitution of 1901 passim

Rules

Rule 201(b)(1), Ala. R. E..... 31

Rule 201(f), Ala. R. E..... 32

STATEMENT OF THE CASE

The Appellant (hereinafter “Glass”) received a ticket for a red light violation which was recorded by a traffic camera at an intersection on September 25, 2017. A hearing date was set for this case on January 22, 2018 in the Montgomery Municipal Court. (C.R. 4). Counsel for Glass appeared at the hearing and raised the constitutionality of Montgomery’s Ordinance 10-2007 and Act No. 2009-740. The Municipal Court stated that it did not have jurisdiction to declare an ordinance or Act unconstitutional and found Glass liable for the red light camera violation. (C.R. 6).

Glass then timely appealed to the Circuit Court of Montgomery on February 5, 2018. (C.R. 4). On June 7, 2018, the Circuit Court entered an order that said, “The undersigned has been victimized by automatic cameras on more than one occasion” and gave any party one week to seek a recusal. (C.R. 23). Neither party sought a recusal. The Court then set this case for a bench trial on August 14, 2018. (C.R. 24).

At that hearing, counsel for Glass informed the Court that the issues in this case were already been considered by another Montgomery County Circuit Court Judge in Charles Hunter and Mike

Henderson v. City of Montgomery and American Traffic Solutions (CV-2015-901274) and asked the Court to stay this case pending a resolution in that case. This was one of the cases that was mentioned in the oral argument section of this brief that was consolidated on appeal with other cases across the State.

On the consolidated appeal, in the opinion in the Hunter case (Case No. 1170959), this Court held that neither Hunter nor Henderson had challenged the legality of the civil violation pursuant to the manner provided for in Act 2009-740 and Ordinance 10-2007 and thus, there was no justiciable controversy before the Court and reversed the Circuit Court's order denying Montgomery's and American Traffic Solutions' Motion to Dismiss and remanded the case to the Circuit Court.

In this case, the Circuit Court set several status conferences and each time the Court was informed that the Hunter case was on appeal. The opinion in Case No. 1170959 was released on May 1, 2020. After learning that the Hunter case was over, the Circuit Court set this case for a bench trial on August 26, 2020. (C.R. 31). On August 25, 2020, Glass filed his answer in this case. (C.R. 32-35). On August 27, 2020, the Circuit Court entered a briefing schedule. (C.R. 36). Glass filed his

brief on September 9, 2020. (C.R. 42-90). Montgomery filed its brief on October 6, 2020. (C.R. 92-139.) On October 15, 2020, the Circuit Court set this case for oral argument on November 18, 2020. (C.R. 140). On October 15, 2020, Glass filed his reply brief with the Circuit Court. (C.R. 142-175).

On November 19, 2020, Glass sought permission to file some supplemental authority. (C.R. 179-80). Glass filed the supplemental authority that same day. (C.R. 183-187). The Circuit Court granted permission to file supplemental authority and gave Montgomery a chance to reply to the supplemental authority. (C.R. 188). On December 10, 2020, the Circuit Court entered an order for a virtual hearing later that day. (C.R. 196). On December 14, 2020, the Circuit Court issued its final judgment in this case. (C.R. 202-203). Hence, this appeal. (C.R. 204-07).

STATEMENT OF THE ISSUES

I. RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES.

II. THE APPLICABLE STATUTES, ACT AND ORDINANCE.

A. The Red Light Laws of this State Apply Statewide.

B. Act 2009-740.

C. Montgomery's Ordinance 10-2007.

III. ACT 2009-740 AND MONTGOMERY'S ORDINANCE 10-2007 CLEARLY ARE IN CONFLICT WITH §32-5A-31, CODE OF ALABAMA 1975, §32-5A-32(3), §32-5A-5, §32-5A-8(A), §32-5A-11 AND §105 OF THE ALABAMA CONSTITUTION OF 1901.

A. The plain meaning of §105 of the Constitution is that "No local law" can be passed on a subject that is provided for by general law.

B. Act 2009-740 cannot be justified by the judicially created "local need" exception to §105 of the Alabama Constitution of 1901.

C. There is no question that the Legislature can provide for a criminal punishment and a civil penalty for traffic violations but it must be enacted on a statewide basis and not by a local act.

IV. ACT 2009-740 AND MONTGOMERY'S ORDINANCE 10-2007 VIOLATE §89 OF THE ALABAMA CONSTITUTION OF 1901 AND §11-45-1 AND §32-5-1, CODE OF ALABAMA 1975.

V. ACT 2009-740 CLEARLY VIOLATES §104(14) OF THE ALABAMA CONSTITUTION OF 1901.

STATEMENT OF THE FACTS

This case involves a constitutional challenge to the local law and Montgomery's ordinance that allegedly authorizes the use of red light cameras within the City of Montgomery.

In 2007, American Traffic Solutions (hereinafter "ATS") approached Montgomery about the installation of red light cameras within the corporate limits of Montgomery. ATS offered to install, maintain, and monitor these cameras at multiple intersections throughout Montgomery.

ATS represented to Montgomery that when ATS catches someone running a red light on camera, ATS would electronically send that picture to a Montgomery official for their review and after their approval, ATS would mail a ticket to the owner of the vehicle that ran the red light. Fines would be collected by ATS and some portion of those fines would be remitted to Montgomery and ATS would retain the other portion of those fines.

In 2007, Montgomery enacted Ordinance 10-2007 which provided for Automated Photographic Enforcement of Traffic Control Device Violations, i.e., red light cameras. (C.R. 44). The first red light cameras

were placed into operation in Montgomery in April 2008 and the first tickets were issued in May 2008. (C.R. 44).

In 2009, the Alabama Legislature enacted 2009-740 which ratified and validated Montgomery's Ordinance 10-2007. (C.R. 44). Act 2009-740 was designated as the "Montgomery Red Light Safety Act." (C.R. 44) Section 2(3) of that Act provides: "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." (C.R. 44). Despite this clear acknowledgment by the Alabama Legislature that there is already in place a misdemeanor offense for running a red light, the Legislature, by local act "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." Act 2009-740, §3(3). (C.R. 45).

The Act defines a "Traffic Signal Violation" as follows (§3(7)):

"Any violation of Section 32-5A-31 [drivers must obey traffic signals], Section 32-5A-32 [vehicles shall stop when facing a red light], Section 32-5A-5 [rules of the road apply to animal drawn vehicles], 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 violation as defined in this act."

Interestingly, this definition includes any violations of the cited code sections, not just those in the City of Montgomery. (C.R. 45)

STANDARD OF REVIEW

It is without dispute that, under Alabama law, laws are presumed to be constitutional. In *Ex parte E.R.G.*, 73 So. 3d 634, 641–42 (Ala. 2011), this Court stated (emphasis added):

“ ‘ “The standard of review for determining the constitutionality of a statute was stated in *State Board of Health v. Greater Birmingham Ass'n of Home Builders, Inc.*, 384 So.2d 1058, 1061 (Ala.1980):

“ ’ ” ‘Before turning to the constitutional issue posed in this case, it is appropriate to reiterate the fundamental proposition that validly enacted legislation is presumed to be constitutional. As we stated in *Mobile Housing Board v. Cross*, 285 Ala. 94, 97, 229 So.2d 485, 487 (1969):

“ ’ “ ‘ “Every presumption is in favor of the constitutionality of an act of the legislature and this court will not declare it invalid unless in its judgment, the act clearly and unmistakably comes within the inhibition of the constitution.’

“ ‘ “ ‘We will not invalidate a statute on constitutional grounds if by reasonable construction it can be given a field of operation within constitutionally imposed limitations. See *Ex parte Huguley Water System*, 282 Ala. 633, 213 So.2d 799 (1968).’

“ ‘ “ ‘In *Home Indemnity Co. v. Anders*, 459 So.2d 836, 840 (Ala.1984), this Court stated:

“ ‘ “ ‘In determining whether the act is constitutional, we are bound by the following presumption:

*642 “ ‘ “ ‘[I]n passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of government. All these principles are embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law.”

“ ‘ ‘ ‘*Alabama State Federation of Labor v. McAdory*, 246 Ala. 1, 9, 18 So.2d 810, 815 (1944).’

“ ‘ ‘ ‘See *Crosslin v. City of Muscle Shoals*, 436 So.2d 862, 863 (Ala.1983).’

“*Town of Vance v. City of Tuscaloosa*, 661 So.2d 739, 742–43 (Ala.1995).”

Lunsford v. Jefferson County, 973 So.2d 327, 329–30 (Ala.2007).

We also noted in *Lunsford*:

“In *Rice v. English*, 835 So.2d 157, 162 (Ala.2002), this Court, citing *Ex parte Selma & Gulf R.R.*, 45 Ala. 696 (1871), reiterated “the settled principle that the people have forbidden the Legislature from conducting itself in a manner inconsistent with their constitution and when it does, it is incumbent upon the judiciary to nullify a legislative enactment contrary to the constitution.”’

Lunsford, 973 So.2d at 330.”

This Court provided further guidance with regard to its consideration of a challenge to the constitutionality of law in *Opinion of Justices*, 260 So. 3d 17, 21 (Ala. 2018) (citations omitted) as follows:

“ ‘the long-settled and fundamental rule binding this Court in construing provisions of the constitution is adherence to the plain meaning of the text.’” *Town of Gurley v. M & N Materials, Inc.*, 143 So.3d 1, 13 (Ala. 2012) (quoting *Jefferson Cty. v. Weissman*, 69 So.3d 827, 834 (Ala. 2011)). “ ‘ ‘ ‘Constitutions are the result of popular will, and their words are to be understood ordinarily as used in the sense that such words convey to the popular mind’ (6 Am. & Eng. Ency. Law, 924, 925).” ‘ *Jefferson Cty. v. Weissman*, 69 So.3d at 834 (quoting *Hagan v. Commissioner's Court of Limestone Cty.*, 160 Ala. 544, 562, 49 So. 417, 423 (1909)).

“In construing a constitutional provision, the courts have no right to broaden the meaning of words used and, likewise, have no right to restrict the meaning of those words.’” This Court is “ ‘not at liberty to disregard or restrict the plain meaning of the provisions of the Constitution.’ ”

“If a legislative act is repugnant to the Constitution, the courts not only have the power, but it is their duty, when the issue is properly presented, to declare it so. State ex rel. Bassett v. Nelson, 210 Ala. 663, 98 So. 715 (1924); Dyer v. Tuscaloosa Bridge Co., 2 Port. 296, 27 Am.Dec. 655 (1835).” *Peddycoart v. City of Birmingham*, 354 So. 2d 808, 811 (Ala. 1978) (emphasis added).

SUMMARY OF THE ARGUMENT

Section 105 of the Alabama Constitution of 1901 states: “No special, private, or local law, ... shall be enacted in any case which is provided for by a general law...” In addition, §32-5A-11 provides that Chapter 5A of Title 32 “shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of various jurisdictions.” The act of running a red light is a criminal misdemeanor statewide, pursuant to Chapter 5A of Title 32 (the Rules of the Road). However, the Legislature, by a local act, has turned this offense into a civil violation in Montgomery, thus, destroying the uniformity of the general law regarding this offense. Since the act of running a red light is already covered by the general laws of this State, Act 2009-740 and Ordinance 10-2007 are clearly unconstitutional.

Section 89 of the Alabama Constitution provides that “[t]he Legislature shall not have the power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this State.” In addition, the Legislature, prohibits municipal corporations from passing ordinances which are inconsistent with State law. Ala. Code, §11-45-1 (1975); Ala. Code, §32-5-1 (1975). The general laws of

this State make the act of running a red light a criminal misdemeanor, which is punishable by a fine, imprisonment or both. Act 2009-740 authorizes Montgomery to make this offense a civil violation just in Montgomery and Ordinance 10-2007 clearly provides that this offense is merely a civil violation punishable by a civil fine only. Thus, Act 2009-740 and Ordinance 10-2007 are clearly inconsistent with the general laws of this State and are unconstitutional.

Section 104(14) of the Alabama Constitution prohibits the Legislature, by local law, from changing the “punishment of crime.” State law makes the act of running a red light a criminal misdemeanor punishable by a fine, imprisonment, or both statewide. Act 2009-740 decriminalizes this offense by making this offense a civil violation in Montgomery and changes the punishment of this criminal offense from a criminal fine, imprisonment, or both, to merely a civil fine. Clearly, Act 2009-740 violates Section 104(14) of the Constitution.

ARGUMENT

I. RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

Glass challenges the constitutionality and legality of Act No. 2009-740, which is entitled the “Montgomery Red Light Safety Act,” and Ordinance 10-2007 which is codified in Article X, §27-601 through §601-607 of Montgomery’s Municipal Code. Prior to the discussion of the State statutes which make it unlawful to run a red light and the “violations” set forth in Act No. 2009-740 and Montgomery’s Ordinance, Glass wishes to set forth the various constitutional and statutory provisions that he relies on in making his constitutional challenges.

Section 105 of the Alabama Constitution of 1901 reads as follows (emphasis added):

“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.”

Section 89 of the Alabama Constitution provides that “[t]he legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this state.”

Section 11-45-1, Code of Alabama 1975 states that (emphasis added),

“Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state to carry into effect or discharge the powers and duties conferred by the applicable provisions of this title and any other applicable provisions of law and to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants of the municipality, and may enforce obedience to such ordinances.”

Article 1 of Chapter 5 of Title 32 of the Alabama Code contains the General Provisions concerning the Regulation of Operation of Motor Vehicles. Section 32-5-1 contains the powers of local authorities to regulate the operation of motor vehicles and paragraph (a) of that section states (emphasis added):

“Except as herein otherwise provided, local authorities shall have no power to pass, enforce, or maintain any ordinance, rule, or regulation requiring from any owner or chauffeur or other authorized driver to whom this chapter is applicable, any additional license or permit for the use of the public highways, or excluding any such owner, chauffeur, or other authorized driver from the public highway, nor to pass, enforce, or maintain any ordinance, rule, or regulation regulating motor

vehicles or their speed contrary to the provisions of this chapter, nor shall any such law now in force or hereafter enacted have any effect.”

Chapter 5A of Title 32 of the Alabama Code contains the Alabama “Rules of the Road” and the running of a red light is prohibited by this Chapter of Title 32. Section 32-5A-11 (emphasis added) states that “[t]his chapter shall be so interpreted and construed as to effectuate its general purpose to make **uniform** the law of various jurisdictions.”

II. THE APPLICABLE STATUTES, ACT AND ORDINANCE

A. The Red Light Laws of this State Apply Statewide.

Title 32 governs traffic offenses in Alabama. Title 32 applies uniformly to all persons statewide, unless Montgomery’s Act is valid, because if it is, then Title 32 would be converted into a local law because it would apply to less than the whole state. Ala. Code, §32-5A-11 (1975). Section 32-5-1, Code of Alabama 1975 allows municipalities to adopt ordinances that are not inconsistent with the laws of the State. The Alabama Legislature has made it illegal to run a red light at any intersection in Alabama. Ala. Code, §32-5A-31(a), §32-5A-32(3), and §32-5A-35 (1975). If a person is charged with any of these offenses, the public entity charging that person must afford that person certain

procedural protections. One of them is that a Uniform Traffic Ticket and Complaint shall be used in all “traffic cases” “where a complaint is made by a law enforcement officer or by any other person or an information is filed by the district attorney.” Ala. Code, §12-12-53, (1975). The Alabama Code defines a “traffic infraction” as “any violation of a statute, ordinance or regulation relating to the operation or use of motor or other vehicles or the use of streets and highways by pedestrians.” Ala. Code, §12-12-50 (1975) (emphasis added). Herein lies the greatest inconsistency because the local acts uses identical language to define “traffic signal violation” as “Any violation...” When a complaint is made to a judge or magistrate that a traffic offense has been committed (i.e, running a red light), the complainant must swear under oath that a particular person ran the red light. Ala. Code, §15-7-1 through -2, (1975). Further, if one is charged with a violation of §32-5A-31(a), §32-5A-32(3), §32-5A-5, that person has a right to an immediate hearing or a hearing within 24 hours before a magistrate. Ala. Code, §32-1-4 (1975). Violations of §32-5A-31, §32-5A-32, and §32-5A-5, are misdemeanors and are punishable by imposition of a fine or imprisonment or both. Ala. Code, §32-5A-8 (1975). The Director of the

Department of Public Safety has promulgated rules pursuant to §32-6-13 and §32-2-9 that requires the designation of points for certain driving violations. Three (3) points is assessed on a driver's license if that driver violates §32-5A-31, §32-5A-32, §32-5A-5.

There are numerous other protections afforded to a person accused of violating §32-5A-31, §32-5A-32, or §32-5A-5. One of the most important is that the burden of proving a violation of these sections is on the prosecuting entity and that entity must prove that the accused is guilty beyond a reasonable doubt. *Meadows v. State*, 26 Ala. App. 311, 312, 159 So. 268, 269 (1935). None of these procedural protections are offered to violators of the Montgomery red light camera ordinance.

B. Act 2009-740.

In 2009, the Alabama Legislature passed Act 2009-740, a local law, which authorized automated traffic safety law enforcement in the City of Montgomery. Act 2009-740. The Legislature's acknowledged in Act 2009-740, Section 2(3) that "[c]urrent 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." (§32-5A-31(a),

§32-5A-32(3) and §32-5A-5). Despite this acknowledgement, the Legislature then in Section 3(7) defined a “traffic signal violation” as

“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.”

In Section 3(3) of the Act, the Legislature stated:

“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.”

From a reading of Section 3(7), “any violation” of §32-5A-31, §32-5A-32 or §32-5A-5 is a traffic signal violation, not just those committed in the City of Montgomery and not just those committed at an intersection where automated photographic cameras have been installed. But §12-12-50 says a “traffic infraction” is any violation of a statute....” (Emphasis added). Thus, in order to violate the local act,

one must first violate the statewide statute. It is not possible to violate the local act without violation of a state statute.

Prior to the imposition of a civil penalty for a violation of Act 2009-740, the City shall mail a notice of violation to the owner of the motor vehicle “which is recorded by the photographic traffic signal enforcement system while committing a traffic signal violation.” Act 2009-740, Section 5(a). The notice must contain the items listed in Section 5(a)(1)-(10). Section 6(a) vests jurisdiction over civil violations to the municipal court. Failure to pay the fine set forth in the notice or to contest liability for the civil violation is an admission of liability. Act 2009-740, (6)(c). If the alleged violator chooses to contest the violation, Montgomery’s burden of proof is “by a preponderance of the evidence.” Act 2009-740, Section 6(e). Exhibits introduced at an adjudicative hearing are admissible with a “certification of authenticity” and without the City making an evidentiary foundation for their admission. Act 2009-740, Section 6(f). If one chooses to contest the violation and is found liable, that person is liable for court costs and fees in addition to the civil fine. Act 2009-740, Section 6(h).

C. Montgomery’s Ordinance 10-2007.

Montgomery's Ordinance does not provide a definition of a "Traffic Signal Violation," It merely states that "a civil penalty of \$60.00" shall be imposed "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." Section 27-602(b).

Just as in Act 2009-740, in order to impose a civil penalty under Montgomery's ordinance, a notice must be sent to the owner of the vehicle that allegedly committed a Traffic Signal Violation. Section 27-603(b).

A list of the many ways that Act No. 2009-740 and Montgomery's Ordinance differ from Alabama's statutes and laws that were in place at the time Montgomery's ordinance and Act No. 2009-740 are attached hereto as Appendix A.

III. ACT 2009-740 AND MONTGOMERY'S ORDINANCE 10-2007 CLEARLY ARE IN CONFLICT WITH §32-5A-31, CODE OF ALABAMA 1975, §32-5A-32(3), §32-5A-5, §32-5A-8 (A), §32-5A-11 AND §105 OF THE ALABAMA CONSTITUTION OF 1901.

A. The plain meaning of §105 of the Constitution is that "No local law" can be passed on a subject that is provided for by general law.

Section 105 of the Alabama Constitution provides (emphasis added):

“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.”

This Court in *Peddycoart v. City of Birmingham*, 354 So. 2d 808, 811

(Ala. 1978) held:

“The only phrase in the pertinent portion of §105 requiring construction is “provided for.” “Provided” ordinarily signifies a condition, or a limitation, qualification, or a restraint or exception. [Stanley v. Colt, 5 Wall. 119, 72 U.S. 119, 18 L.Ed. 502 \(1886\)](#), and, in context, it may mean “of the same import.” Webster's Third International Dictionary (G. & C. Meriam Co., 1971); Webster's New Collegiate Dictionary (G. & C. Meriam Co., 1973); Abbott, Dictionary of Terms and Phrases (Little, Brown & Co., 1879). When we see the phrase ‘provided for’ preceded by the words ‘No . . . local law,’ we are bound to consider the phrase as one of restraint and limitation pertaining to matters of the same import dealt with in the general law. Section 105, then, is an additional constitutional proscription upon the type or kind of legislation which the legislature is allowed to enact, following as it does §104 which also contains limitations upon the legislative power. Nothing in either section prohibits all local legislation, see §106 and 107, but only that prohibited by §§104 and 105.”

The plain meaning of this constitutional provision is the underlined portion of the text above and it couldn't be any plainer. “[T]he long-settled and fundamental rule binding this Court in construing

provisions of the constitution is adherence to the plain meaning of the text.” *Opinion of the Justices*, 260 So. 3d 17, 21 (Ala. 2018). You can’t pass a local law if the subject is already covered by state law. The general law of this state defines the misdemeanor offense of running a red light and sets the punishment for this offense. Running a red light at any intersection in Alabama is unlawful according to the Rules of the Road (§32-5A-1, et seq., Code of Alabama 1975). This subject is covered by the general law. Thus, no local law, including Act 2009-740, can attempt to make the act of running a red light anything other than what is already provided by state law.

The Legislature itself, consistent with §105 of the Constitution, has stated that the Rules of the Road “shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of various jurisdictions.” Ala. Code §32-5A-11 (1975). By making a violation of §32-5A-31, §32-5A-32, and §32-5A-5 a civil violation in Montgomery, Act 2009-740 has destroyed the uniformity of the Rules of the Road.

Section 32-5A-31(a), Code of Alabama 1975 states that a

“driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with law, unless otherwise directed by a police officer, subject to the

exceptions granted the driver of an authorized emergency vehicle in this chapter.”

Section 32-5A-32(3) reads as follows:

“Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word or symbol legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

Steady red indication:

- a. Vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in subdivision (3)b.
- b. Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required by subdivision (3)a. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.
- c. Unless otherwise directed by a pedestrian-control signal as provided in [Section 32-5A-33](#), pedestrians facing a steady circular red signal alone shall not enter the roadway.”

Section 32-5A-5 provides that

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle

by this chapter, except those provisions of this chapter, which by their very nature can have no application.

Any violation of Article 5A of Title 32 is a misdemeanor. Ala. Code, §32-5A-8 (1975). Section 32-5A-11 provides that “This chapter shall be so interpreted and construed as to effectuate its general purpose to make **uniform** the law of various jurisdictions.” (Emphasis added).

There is no question that §32-5A-31, §32-5A-32, §32-5A-5, and §32-5A-8 are general laws. A “general law” is a law which applies to the whole state. Section 110, Alabama Constitution of 1901. The offense of running a red light applies to the whole state and a violation of this offense is a misdemeanor and the punishment for this act applies across the entire State of Alabama, except in Montgomery and several other cities that have a similar act and ordinance.

Indeed, the Alabama Legislature acknowledged that at the time of the enactment of Act 2009-740, “[c]urrent 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” in this State. Act 2009-740, §1(b)(3). Despite this fact, the Legislature made “any violation” of Section 32-5A-31, Section 32-5A-32 or Section 32-5A-5,

Code of Alabama 1975, “a civil violation”. The definition of “Traffic Signal Violation,” contained in Act 2009-740 and Ordinance 10-2007 does not limit this violation to those running a red light at an intersection that is equipped with automated photographic equipment; but instead, includes “any violation” of the above referenced provisions of Article 5A of Title 32. Statutory construction laws in Alabama begin with the rule that courts are “to construe statutes according to their plain meaning.” *Underwood v. Medical Clinic Bd. for City of Montgomery*, 904 So. 2d 264, 267-68 (Ala. 2004). Thus, the plain meaning of the definition of Traffic Signal Violation is “any violation” of the above referenced provisions of Article 5A of Title 32. While the the City may claim that Act No. 2009-740 makes running a red light at locations equipped with automated photographic equipment a civil violation, the act and the ordinance, by their plain language, makes “any violation” for running a red light a civil violation. If this act is valid, then all those traffic citations for running a red light that are issued by a police officer are invalid and void.

There is no dispute between the parties that Act 2009-740 is a local law passed specifically for the City of Montgomery. That is

precisely why it violates §105 of the Constitution which provides that “No special, private, or local law, ... shall be enacted in any case which is provided for by a general law...” This language is unambiguous. What constitutes the offenses of running a red light statewide and the penalty therefore, are already provided for in Chapter 5A of Title 32. Act 2009-740 essentially removes running a red light in Montgomery out of the general law by use of a local law. This is blatantly unconstitutional.

“Section 105 of the Alabama Constitution prohibits the passage of local laws purporting to regulate matters that are *‘provided for by a general law.’*” *City of Homewood v. Bharat, LLC*, 931 So. 2d 697, 701, (Ala. 2005) (emphasis in original). As this Court has held, “[t]he 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,” *Opinion of the Justices*, 630 So. 2d 444, 446 (Ala. 1994) (emphasis added). See also *Opinion of the Justices*, 672 So. 2d 1294, 1296 (Ala. 1996); *State ex rel. Whetstone v. Baldwin County*, 686 So. 2d 220 (Ala. 1996).

As stated above, any violation of §32-5A-31, §32-5A-32, §32-5A-5 is a violation of the Rules of the Road is a misdemeanor under state law and the punishment for this offense is a fine, imprisonment or both. This is state law. Act 2009-740 purports to regulate the act of running a red light and attempts to make this violation a “civil violation” and to impose a civil penalty. Clearly, this local act, Act 2009-740, creates a conflict with and variance from the provisions of the general laws of this state by converting what is clearly a misdemeanor offense under general state law into a civil violation pursuant to a local act. Act 2009-740 also differs from state law by 1) not requiring that a charge be initiated by a complaint made under oath; 2) lessening the burden of proof on the City of Montgomery; 3) not affording various due process rights that would be available under state law; 4) changing the penalty and 5) changing the nature of the violation from a criminal offense to a civil violation. There are many other differences between state law, the local act and the ordinance and they have all been set forth in the chart (Exhibit A to this brief).

The Rules of the Road in the Code of Alabama define the misdemeanor offenses of running a red light in §32-5A-31, §32-5A-32,

§32-5A-5. Section 32-5A-3 provides that “It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.” But in Montgomery, Act 2009-740 provides that “any violation of Section 32-5A-31, Section 32-5A-32, or Section 32-5A-5” is a “civil” “traffic signal violation,” despite the fact that state law makes these offenses criminal misdemeanors. Section 3(7). Clearly, Act 2009-740 is inconsistent with and creates a variance from the provisions of the general laws of this state by making what are clearly misdemeanor offenses into civil violations. Stated another way, a way which clearly shows the subject of running a red light is subsumed by a statewide law, it is quite clear that in order to violate the local law, one must first violate the state statute.

Another similar case is *Green v. Austin*, 425 So. 2d 411 (Ala. 1982), overruled on other grounds, *House v. Cullman Co.*, 593 So. 2d 69 (Ala. 1992). In that case, several local bills had been enacted which purported to authorize Blount County to impose certain court costs. In finding that these bills violated Section 105, this Court noted:

“It must be pointed out that costs and charges of court are already provided for by general law under [Code 1975, § 12-19-20](#).

This section provides that court fees in both civil and criminal cases in circuit and district courts ‘shall be uniform for each type of case and each court level.’ This section also states that the prescribed court fees, except for certain specifically enumerated funds and taxes not applicable here, ‘shall be *exclusive* of all other fees.’ (Emphasis supplied.)”

Green, 425 So. 2d at 413. This Court held that “since the Legislature has already enacted a general law pertaining to the costs and charges of court (§12-19-20), Acts 81-642 and 81-643 are repugnant to §105 of the Constitution of Alabama.” *Green*, 425 So. 2d at 414-14. Likewise, since the Legislature has already enacted a general law pertaining to what constitutes the offense of running a red light (§32-5A-31, §5A-32, §32-5A-5) and the punishment therefore, Act 2009-740 is repugnant to §105 of the Alabama Constitution of 1901 and is unconstitutional.

B. Act 2009-740 cannot be justified by the judicially created “local need” exception to §105 of the Alabama Constitution of 1901.

The City in this case will contend that Act 2009-740 should pass constitutional muster because it addressed a local need. In *Jefferson Cty. v. Taxpayers and Citizens of Jefferson Cty.*, 232 So. 3d 845, 868 (Ala. 2017), this Court stated “[w]here a local act represents the Legislature’s response to demonstrated local needs ... **which had not been previously been addressed by general law**, [the Court must]

find no constitutional infirmity in the Act.” (Emphasis added). As stated herein, the Legislature has already addressed by general law the act of running a red light and the penalty for this offense statewide. There is no local need in Montgomery that cannot be addressed by enforcing the provisions of §32-5A-31, §5A-32, and §32-5A-5. The need is obviously statewide because in order to violate the local law, it is necessary to violate a state statute.

It must be remembered that running a red light at any location, including those equipped with red light cameras, constitutes the offense of running a red light under the Traffic Code of Alabama which applies to the whole state. Merely because you can't prosecute somebody under the Traffic Code with red light camera evidence doesn't make it any less a red light violation under general state law. The conclusion that Act No. 2009-740 is subsumed by the general laws of this state is bolstered by Section 32-5A-11 (emphasis added) which states that “[t]his chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of various jurisdictions.” By enacting Act No. 2009-740, the Legislature has destroyed the uniformity of the laws relating to running a red light in the State of Alabama by creating

an exception to the general laws by making it a civil violation for running a red light in the City of Montgomery rather than a misdemeanor as it is statewide.

Glass does not dispute that “[t]he Alabama Constitution does not prohibit the passage of local acts to address the needs of political subdivisions.” *City of Homewood*, 931 So. 2d at 700. The only finding in Act No. 2009-740 that reflects the need of Montgomery is that “Accident data establishes that vehicles running red lights have been and are a dangerous problem in Montgomery, Alabama.” Act 2009-740, Section 1(b)(1). It doesn’t take an expert to establish that vehicles that run lights have been and are a dangerous problem statewide, and for that matter, nationwide. That is precisely why we have the Rules of the Road that apply statewide. This is a generally known fact and this Court can take judicial notice of this fact. Rule 201(b)(1), Ala. R. E.; *McCaskill v. State*, 648 So. 2d 1175 (Ala. Crim. App. 1994) (judicial notice taken that a BB gun presents a serious danger of injury to the eye); *Mink v. Brown*, 276 Ala. 3, 158 So. 2d 647 (1963) (judicial notice taken that a skidding automobile is difficult to accurately control); *Bankers Fire & Marine Ins. Co. v. Bukacek*, 271 Ala. 182, 123 So. 2d 157

(1960) (common knowledge that use of dynamite as an explosive is inherently dangerous). “Judicial notice may be taken at any stage of a proceeding.” Rule 201(f), Ala. R. E. The Act did not provide that running a red light in Montgomery is any more dangerous than anywhere else in the State of Alabama and the Glass is aware of no evidence which demonstrate that running a red light in Montgomery is more dangerous than anywhere else in the state. It is merely alleged that running a red light is dangerous in Montgomery. A local law can only survive a §105 challenge when it is demonstrated that “unique local needs” “are not substantially provided for by the general law.” *Ellis v. Pople*, 709 So. 2d 1161, 1167 (Ala. 1997). Thus, any argument that somehow the act of running a red light in Montgomery is dangerous is unique to the City of Montgomery is incorrect and Act No. 2009-740 cannot be said to address the local needs of just Montgomery. Indeed, the municipalities of Tuscaloosa, Center Point, Opelika, Midfield, Brantley, and Selma have enacted local acts similar to Act 2009-740. In each of these local acts, the Legislature stated that vehicles running red lights have been and are a dangerous problem in each of those cities named. Every one of these other local acts also

includes the “particularized findings of local need” included in Act 2009-740. This fact alone, shows that the danger of running red lights is not a need local to just Montgomery. If this Court approves of the local need argument in these red light cases before the Court, the Legislature will simply put in some local need finding in every single local act and this judicially created exception to §105 will just swallow this provision of the “constitution, which is the fundamental and paramount law and represents the supreme will of the people.” *Alabama Coalition for Equity, Inc. v. Hunt*, 1993 WL 204083 (April 1, 1993) (not reported in So. 2d).

This Court has said that “local legislation reflecting responses to local needs may be enacted. It 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.” *City of Birmingham v. City of Vestavia*, 654 So. 2d 532, 541 (Ala. 1995) (quoting *Peddycoart v. City of Birmingham*, 354 So. 2d 808, 815 (Ala. 1978)) (emphasis added). If there is a localized special need, why does one have to violate a statewide law in order to violate the local law? The general laws of the State of Alabama already address the need to

prohibit the act of running a red light and thus, Act 2009-740 violates §105 of the Alabama Constitution. Section 105 provides that “No special, private, or local law, ... shall be enacted in any case which is provided for by a general law...” It says no law and makes no distinction between civil and criminal laws. Indeed, the general laws obviously perceive that running a red light is no more dangerous in Montgomery than in the rest of the state because the general laws of the state make running a red light a misdemeanor all over the state while Montgomery sees fit to just make these criminal offenses “civil violations.” Under Alabama law, running a red light is a criminal violation at every location in the state, including those intersections equipped with red light cameras. This Act made running a red light a civil violation only in Montgomery. The general laws of the State of Alabama already have provided what constitutes running a red light under state law and what the penalty for that offense is and a local law cannot change the act of running a red light into a civil violation without violating §105 of the Alabama Constitution.

C. There is no question that the Legislature can provide for a criminal punishment and a civil penalty for traffic violations but it must be enacted on a statewide basis and not by a local act.

The City will argue that Act 2009-740 is valid because it creates a civil scheme rather than a criminal scheme. Again, Section 105 of the Alabama Constitution is pretty clear because it provides that “No special, private, or local law, ... shall be enacted in any case which is provided for by a general law. No local law encompasses both civil and criminal schemes. We do not disagree that the Act creates a civil law. Indeed, it is without question that the Alabama Legislature could make a general law which provides that it is a civil violation to run a red light at locations equipped with automated photographic equipment statewide. What the Legislature cannot do is to pass a local act which makes the act of running a red light a civil violation when general law makes this offense a criminal misdemeanor statewide. The Alabama Legislature has made it clear that the Rules of the Road “shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of various jurisdictions.” Ala. Code §32-5A-11 (1975). Act 2009-740 has destroyed this uniformity. This is precisely why Act 2009-740 violates §105 of the Alabama Constitution and this Court should so find.

IV. ACT 2009-740 AND MONTGOMERY'S ORDINANCE 10-2007 VIOLATE §89 OF THE ALABAMA CONSTITUTION OF 1901 AND §11-45-1 AND §32-5-1, CODE OF ALABAMA 1975.

Section 4(a) of Act 2009-740 provides that the “City of Montgomery is empowered to utilize an automated photographic traffic signal enforcement system to detect and record traffic signal violations.” Section 27-602 provides for a civil penalty of \$60 when a motor vehicle “proceeds into an intersection at a system location when the traffic control signal for the motor vehicle’s direction of travel is emitting a steady red signal.”

Section 89 of the Alabama Constitution plainly states that “[t]he legislature shall not have the power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this state.” Consistent with this constitutional prohibition, §11-45-1, Code of Alabama 1975 provides that “Municipal corporations may from time to time adopt ordinances and resolutions not inconsistent with the laws of the state.” As stated in the above section, just as Act 2009-740 is inconsistent with the general law, so is Montgomery’s Ordinance 10-2007 and the Legislature had no authority to authorize

Montgomery to pass such an ordinance and Montgomery had no authority to enact such an ordinance.

Birmingham v. West, 183 So. 421, 423 (Ala. 1938) provides that “Section 89 simply ‘means that a city cannot make that lawful which the State law has rendered unlawful.’” See also *Opinion of the Justices*, 373 So. 2d 278 (Ala. 1979). It is without question that running a red light at any intersection, system location or not, is unlawful everywhere in the State of Alabama. But by decriminalizing the act of running a red light at a system location, the ordinance is inconsistent with state law. Although the local act changes the nature of punishment of the offense, it nonetheless requires one to violate the state law first. A driver who runs a red light, by state law, commits a criminal misdemeanor whether that red light is in Montgomery or Mobile. However, if that driver runs a red light in Montgomery and that act is captured on a camera, that driver is not subject to criminal sanctions and is only charged with a civil violation. In addition, Act 2009-740 makes “any” violation of §32-5A-31, §32-5A-32 or §32-5A-5 a civil violation, not just those which occur at a system location. By enacting Act 2009-740, the Legislature has decriminalized the criminal offense of

running a red light in Montgomery and authorized Montgomery to pass an ordinance which is inconsistent with state law. This is a class violation of §89. This is true despite the fact that in order to be guilty of a “civil” violation, one must first commit a “criminal” violation.

With regard to Montgomery’s ordinance, “a municipal ordinance is invalid in so far as it undertakes to supersede a state law within the municipality, or where its enforcement would be incompatible with the enforcement of a state law.” *Turner v. Town of Lineville*, 2 Ala. App. 454, 459, 56 So. 603 (1911). By making running a red light a civil violation, Montgomery’s ordinance clearly is an attempt to supersede the laws of Alabama that makes running a red light at any location unlawful and a misdemeanor. “Section 89 is not intended to limit the police power of a city, but means that a city cannot make that lawful which the State law has rendered unlawful.” *Cabiness v. City of Tuscaloosa*, 39 Ala. App. 538, 541, 104 So. 2d 778 (1958) (quoting *City of Birmingham v. West*, 236 Ala. 434, 183 So. 421, 423 (1938)). *See also Atkins v. City of Tarrant City*, 369 So. 2d 322 (Ala. Crim. App. 1979). Montgomery’s ordinance makes running a red light no longer unlawful under the general traffic laws of the State of Alabama and makes these

offenses merely civil violations. “[A] municipal ordinance that contravenes state law, as here, is invalid for that reason alone....” *Hall v. City of Tuscaloosa*, 421 So. 2d 1244, 1249 (Ala. 1982).

The Act and the Ordinance make what is otherwise a criminal traffic violation everywhere in the State a non-criminal (civil) violation in Montgomery. What would otherwise be a misdemeanor traffic violation is now a civil violation just in Montgomery.

Without a doubt, Montgomery’s ordinance is inconsistent with the general laws of this State and the Legislature, pursuant to Section 89, was prohibited from authorizing Montgomery to enact its ordinance. Likewise, Montgomery was prohibited by §11-45-1, Code of Alabama 1975 and §32-5-1, Code of Alabama 1975 from enacting its ordinance. Most importantly, §32-5-1(a), Code of Alabama 1975 specifically provides that that “local authorities have no power ... to pass, enforce, or maintain any ordinance, rule, or regulation regulating motor vehicles or their speed contrary to the provisions of this chapter, nor shall any such law now in force or hereafter enacted have any effect.” It is without question that Montgomery’s ordinance is contrary to the provisions of the law of the State of Alabama and it has no effective

field of operation because running a red light everywhere in the State is a criminal misdemeanor. But if you happen to run a red light at a location equipped with a red light camera in Montgomery, then only in Montgomery is that act a civil violation. Clearly, pursuant to §32-5-1(a), Montgomery is prohibited from making a distinction between running a red light in Montgomery and from doing that same act anywhere else in the State. This Court should declare Montgomery's ordinance and Act 2009-740 unconstitutional because the Act authorizes Montgomery to pass an ordinance which is inconsistent with the general law of this state and Montgomery has passed such an ordinance.

V. ACT 2009-740 CLEARLY VIOLATES §104(14) OF THE ALABAMA CONSTITUTION OF 1901.

Section 104, Alabama Constitution sets out a list of 31 areas in which the legislature is forbidden to pass a local law. There are no exceptions to these prohibitions. The relevant provision of §104, to this case, reads as follows:

“Sec. 104. Special, private or local laws-prohibited in certain cases. The legislature shall not pass a special, private or local law in any of the following cases:
(14) Fixing the punishment of crime.”

This provision of §104 clearly prohibits what the Legislature has done here. We know this is redundant, but this is true because, in order to be punished under the local law, a “criminal” act must first be committed.

A. Act 2009-740 does, in fact, fix the Punishment of Crime, and being a local act, clearly violates §104(14) of the Alabama Constitution of 1901.

Section 32-5A-3, Code of Alabama provides, in very clear and certain terms:

“It is unlawful, and, unless declared otherwise in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.”

(Emphasis added).

In that same vein, §32-5A-11, Code of Alabama 1975 holds, “This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of various jurisdictions.”

By these provisions, it is clear that, any act forbidden or required by Chapter 5A of Title 32 (The Rules of the Road or the Traffic Code) is a criminal act, is to be punished as a misdemeanor (except certain few offenses that are felonies), and that the Rules of the Road are to apply uniformly, “in all jurisdictions,” throughout the State. It cannot be

logically argued that any violation of the Rules of the Road, including running a red light under the general act, is anything other than a criminal act.

At first reading of §104(14), one might think it applies only to a situation where the legislature attempted to alter the penalty of a crime on a local basis. But it does not. It applies in many different situations and establishes the clear will of the people that the criminal laws be uniform across the state.

As does §32-5A-3, Code of Alabama 1975, §32-5A-8, Code of Alabama 1975 also makes it a misdemeanor for any person to violate any Rule of the Road. Section 32-5A-8 goes a step further and prescribes the penalty for such a violation. Under §32-5A-8, it provides the express penalties for violations (and subsequent violations) as follows:

- “a. For the first offense: a criminal fine up to \$100, and imprisonment for up to 10 days
- b. For a second offense within one year: a fine of up to \$200 and imprisonment for up to 30 days, and
- c. For any third or subsequent offense within one year: a fine of up to \$500 and imprisonment for up to three months.”

Act 2009-740 purports to change the punishment for running a red light to simply a “civil fine” of \$60. Act 2009-740 contains no provision for any jail time. We would note that the City Ordinance at issue provides for the fines to be identical to those specified in the Act. Neither the Ordinance, nor the local act, provide for a criminal record, or any of the other penalties for running a red light such as accumulation of “points” on one’s driving record which could lead to suspension of one’s driver’s license. According to the City, if a policeman sees you run a red light at an intersection equipped with a red light camera, it is a misdemeanor. But if you do that same act at the same location and a policeman doesn’t see you but the camera does, it is a civil violation. Thus, one is being punished differently for the same act depending on whether a policeman sees you or not!

Section 104 specifically commands that the legislature cannot adopt local laws for those 31 cases enumerated in §104. Thus, any attempt to pass a local law punishing or fixing a fine for a criminal offense is invalid. *Thompson v. State*, 274 Ala. 383, 149 So.2d 916 (1963) (invalidating that portion of an act, applicable only in Jefferson County, imposing a fine of up to \$500 and imprisonment of up to 12

months for the offense of “contributing to the delinquency of a minor.”) As best we can tell, the statewide statute, at that time Title 13, Section 366 and Section 369, called for a fine of up to \$100 and imprisonment of up to 12 months.

As we have pointed out, the offense of running a red light is a statewide criminal offense. Under §104(14) then, the Legislature cannot make it something else by a local act. But that is exactly what was done by Act 2009-740. Therefore, Act 2009-740 is invalid for several reasons under §104(14) because, on a local basis, it not only changes the nature of the offense, i.e., criminal vs. civil, it changes the punishment and the nature of that punishment.

We ask this Court to consider this example. Currently, possession of marijuana for personal use is a misdemeanor, if it is the Defendant’s first offense. §13A-12-14. This is true statewide. But suppose, for whatever reason, the legislature decided to pass a local law, applicable only in the City of Montgomery, making possession of marijuana for personal use at a certain location a “civil infraction,” subject to a “civil fine” and providing that none of the statewide criminal sanctions (such as repeat offenses) applied whether the Act was all encompassing and

included “any” possession of marijuana in Montgomery or just the possession of marijuana at system locations. Such a local act would have no chance of survival. There is, in fact, no difference here and Act 2009-740 and it should suffer the same fate as would an attempt to locally change the marijuana law. “Section 89 is not intended to limit the police power of a city, but means that a city cannot make that lawful which the State law has rendered unlawful.” *Cabiness v. City of Tuscaloosa*, 39 Ala. App. 538, 541, 104 So. 2d 778 (1958) (quoting *City of Birmingham v. West*, 236 Ala. 434, 183 So. 421, 423 (1938)). *See also Atkins v. City of Tarrant City*, 369 So. 2d 322 (Ala. Crim. App. 1979); *Opinion of the Justices*, 373 So. 2d 278 (Ala. 1979). Like Section 89 of the Constitution, Section 104(14) prohibits decriminalizing the offense of running a red light, which is precisely what Act 2009-740 and Ordinance 10-2007 do.

B. Act 2009-740, if allowed to stand, has converted §32-5A-31, §32-5A-32, and §32-5A-5 into local acts.

As relevant to this case, a “general law” is one which applies to the whole state, a “special or private law” is one which applies to an individual, association or corporation, and a “local law” is one “which is not a general law or a special or private law.” §110, Ala. Const. 1901.

If Act 2009-740 is allowed to stand, then it has converted §§32-5A-31, §32-5A-32, and §32-5A-5, into local laws. This may sound outlandish, but if one will think a minute, it is not. Those code sections apply to the State as a whole. No matter where you are, if you run a red light, you have committed a criminal misdemeanor. But that is no longer true in Montgomery! Under Act 2009-740, if you run a red light (and are caught by a camera), it is no longer a criminal misdemeanor. The trial court states that “the Act does not displace the criminal law.” This is incorrect because the plain language of the Act makes “Any violation of Section 32-5A-31, Section 32-5A-32 or Section 32-5A-5, Code of Alabama 1975” “a civil violation”. Section 3(7). Thus, §§32-5A-31, §32-5A-32, and §32-5A-5, apply to less than the State as whole and become local laws by constitutional definition. Under §104(14) of the Constitution, this is clearly forbidden.

C. Act 2009-740 violates §104(14) by changing the nature of the offense of running a red light from criminal to civil, purely on a local basis.

The City will argue that it is constitutionally permissible to create both a criminal and civil violation for the same act. We do not join issue in this case with that proposition. We only contend that if the

Legislature does that, it must do so on a **statewide basis.** *Ex parte State Alcoholic Beverage Control Bd.*, 654 So. 2d 1149 (Ala. 1994) is not authority for the proposition that the Legislature can authorize a city to impose a civil penalty when an act is otherwise a crime under the Rules of the Road. It merely provides that:

“The acquittal of [a] defendant on a criminal charge is not a bar to the enforcement of a civil right **by the state** against the same defendant based upon the facts which constitute such criminal charge ... unless the civil right thus sought to be enforced is itself a proceeding for the further punishment of the defendant,’ because ‘[u]nder such circumstances “it is regarded as a second attempt to punish for the same crime.”’ *State ex rel. Knight v. DeGraffenried*, 226 Ala. 169, 170, 146 So. 531, 532 (1933).”

ABC Bd., 654 So. 2d at 1152 (emphasis added). In other words, the State can punish something criminally and civilly but it must be done statewide. There is no authority that allows the Legislature to authorize a city to punish something civilly which is punished criminally statewide!

The whole intent of our legal system is that, in particular, the criminal laws of this State contemplate, and our Constitution mandates, uniformity, statewide. Title 32, Chapter 5A, Code of Alabama, the “Rules of the Road,” mandates that the laws regulating the operation of motor vehicles on the roads and streets of this State be

uniform. For instance, see §32-5A-11, which notes that the very purpose of Chapter 5A is to “make uniform the law of various jurisdictions.” In like manner, this Court, in a case involving allegedly obscene materials, had this to say about uniformity of the law:

“An interpretation of ‘community’ which would permit the same act (i.e., selling a given book) to be criminal in one locality in the state and legal in another runs counter to the concept of the uniform administration of justice. Section 104(14) of the Alabama Constitution of 1901 indicates that the framers of our state constitution endeavored to develop a policy that criminal law should be uniformly applied since that section prohibits the legislature from passing a special, private or local act fixing the punishment of crime.

Furthermore, by adopting the new Judicial Article to the state constitution in December of 1973, the people of this state placed Alabama in the vanguard of a nationwide movement to secure uniformity in the administration of justice at the state level. A salient feature of this constitutional plan is a unified court system premised on the concept that in a modern, mobile society, the people have the right to receive uniform administration of justice throughout the entire state. This unified court system has been unanimously recommended by all of the organizations who have made recent in-depth studies in the field of judicial administration among the state court systems. Such system received . . . the stamp of approval of the National Conference of the Judiciary gathered at Williamsburg, Virginia in 1971 in its consensus statement.

Moreover, on the civil side, this court recently adopted the Alabama Rules of Civil Procedure, patterned after the federal rules, which also effect the spirit of uniformity. There is even a specified rule which prohibits local rules unless they are approved by this court. See Rule 83, Alabama Rules of Civil Procedure.

After making such strides forward in requiring a high degree of uniformity in the administration of justice from an organizational and procedural standpoint, to permit the substantive law to become a chameleonic hodgepodge based on localized viewpoints would be a backward step.”

Pierce v. State, 292 Ala. 473, 481-482, 296 So.2d 218, 225-226 (1974).

(Citations omitted). Indeed, §104(14) of the Constitution is the very embodiment of this principle.

Here’s the major problem with Act 2009-740, when measured by §104(14). By state law, running a red light is a criminal misdemeanor under §32-5A-31, §32-5A-32, and §32-5A-5. That’s true with the red lights in Mobile, Birmingham, Montgomery, Midfield, Tuscaloosa, and any unincorporated area anywhere in the State. And the penalty, i.e. punishment, for running a red light is established by §32-5A-8. But Act 2009-740 changes all that. This is exactly what is prohibited by §104(14). The Legislature cannot make running a red light a criminal misdemeanor everywhere in the State except in the City of Montgomery. That is what Act 2009-740 does and for that reason it violates §104(14). *Thompson v. State*, 274 Ala. 383, 149 So.2d 916 (1963) (in which the Court noted that punishment of crime cannot have different penalties in different counties); *State v. Rogers*, 281 Ala. 27,

198 So.2d 610 (1967) (holding unconstitutional under §104(14) an act which made it illegal to catch fish with a trammel net in Limestone County).

Given that the statewide law makes running a red light a crime and fixes the punishment, any local act, such as Act 2009-740 which purports to change the nature of that offense (i.e. civil v. criminal) or the penalty therefore, clearly violates §104(14), i.e. one cannot be guilty of the “civil” infraction unless a “criminal” act has first occurred.

Put another way, §104(14) not only prohibits a local law which makes the punishment of an offense different, it also prohibits criminalization of an act, or decriminalization of an act, by local law. We have found cases in Alabama which say that a local law cannot criminalize conduct. *See Thompson v. State, supra; State v. Rogers, supra; Opinion of the Justices No. 315*, 468 So.2d 881 (Ala. 1985); *Opinion of the Justices No. 361*, 693 So.2d 21 (Ala. 1997); *Harris v. State*, 395 So.2d 1109 (Ala. 1981); *Baldwin County Bd. of Health v. Baldwin County Elec. Membership Corp.*, 355 So. 2d 708 (Ala. 1978).

In *Opinion of the Justices*, 373 So. 2d 278 (Ala. 1979), this Court was asked by the Legislature whether a bill authorizing horse racing in

Lawrence County would violate §65 of the Constitution of 1901 which prohibits the Legislature from authorizing lotteries. In answering that §65 did not restrict the Legislature from authorizing gambling, the Court cautioned, “we ought to mention that the opinions reflected herein do not mean that S.B. 481 passes general constitutional muster. Particularly, we offer no opinion as to the applicability of Article IV, §104(14)....” *Opinion*, 373 So. 2d at 278. Then in a special concurrence by Justice Torbert, he noted that §104(14) prohibits the Legislature from enacting a local law fixing punishment of crime. He said that because there are general laws in this state that prohibit horse racing and make betting on horses a crime, he felt compelled to point out that S.B. 481 would violate §104(14). Thus, this opinion indicates that a local law may not decriminalize conduct that has been made criminal by a general law. It makes sense that the Legislature may not do so.

A similar case is out of New Jersey. In *Club 35, LLC v. Borough of Sayreville*, 20 A.3d 451 (Sup. Ct. N.J. 2011), the Court addresses the validity of an ordinance that purported to allow patrons to bring their own bottle (BYOB) to restaurants that did not have a liquor license. The New Jersey criminal code contained a provision that prohibited an

unlicensed restaurant from allowing any person to consume alcohol on its premises. Finding that the purpose of the State criminal code was to provide a uniform system of law, the Court held that a local municipality had no authority to “decriminalize” such conduct, and held the ordinance to be invalid.

Apparently New Jersey has no Constitutional provisions such as our §§104 and 105, since the Court there did not refer to them. Given that Alabama does have such Constitutional provisions, and given that our Rules of the Road specifically say they are intended to establish uniformity in “all jurisdictions,” the logic of the New Jersey case is highly persuasive. It simply stands to reason that if State laws make it a crime, statewide, to run a red light, the legislature cannot, by a local law, decriminalize running a red light in the City of Montgomery.

As we stated earlier, in this case we do not take issue with the proposition that the legislature has the power to impose a civil penalty for running a red light so long as it is done by a general law applicable statewide. To this point, it has not done so.

Section 104(14) provides that the Legislature cannot, by local act, fix punishment of a crime. Running a red light is a criminal

misdemeanor statewide. §32-5A-3 and §32-5A-8, Ala. Code (1975). Section 32-5A-8 sets the punishment for this misdemeanor offense. It provides that one guilty of running a red light must be “punished” by a fine or imprisonment or both. But by enacting Act 2009-740, the Legislature, by local act, has changed the punishment for running a red light in Montgomery because it is no longer a misdemeanor which is not punishable by a criminal fine or imprisonment. If you run a red light in Montgomery, it is a civil violation punishable by paying a civil fine. This changes, by local law, the punishment of crime and violates §104(14) of the Alabama Constitution.

CONCLUSION

In conclusion, Act 2009-740 is unconstitutional under §105, §89 and §104(14) of the Alabama Constitution and Montgomery’s Ordinance 10-2007 is inconsistent with the general laws of this state and is invalid for that reason. Thus, Glass asks this Court to declare Act 2009-740 and Montgomery’s Ordinance 10-2007 unconstitutional and that all actions taken by City pursuant to Act 2009-740 and Ordinance 10-2007 are null and void.

Respectfully submitted, this the 21st day of April, 2021.

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CERTIFICATE OF COMPLIANCE

Comes Now, Susan G. Copeland, the Attorney for the Appellant, Richard Glass and states the Brief of Appellant complies with Rule 28(j)(1) in that it contains 9,478 words and that it uses type font Century Schoolbook in size 14 complying with Rule 32(a)(7).

Stated this the 22nd day of April, 2021.

/s/ Susan G. Copeland
OF COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the Clerk of Court by electronic filing and that same was electronically mailed and/or mailed via US Mail to the following parties on this the 22nd day of April, 2021:

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APPENDIX A

General law of statewide application	Local Act 2009-740	Ordinance 27-600-606
§32-5A-31 and -32 makes it a criminal misdemeanor to run a right light at any intersection in the State of Alabama.	Section 3(7) defines a “traffic signal violation” as “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.”	Section 27-602(b) makes it a civil violation when a vehicle proceeds into an intersection at a system location when the traffic control signal is emitting a steady red signal.
State law does not provide for the use of automated photographic signals to detect red light violations	Section 4(a) Montgomery is empowered to use automated photographic signals to detect red light violations	Section 27-603(a) The Municipal Court is empowered with the administration of the automated photographic signal systems
§12-12-53 and Rule 19, Ala. R. Jud. Admin. require that a Uniform Traffic Ticket Complaint be used in all traffic cases in the State of Alabama.	Section 4(a) Montgomery is empowered to issue notices of civil violations by mail for a traffic signal violation	Section 27-603(b)The municipal court shall mail a notice of violation
§12-12-50 defines a “traffic infraction” as “any violation of a statute, ordinance or regulation relating to	Section 3(7) defined a “traffic signal violation” as “Any violation of Section 32-5A-31, Section 32-5A-	Section 27-602(b) A person is liable for a civil penalty if a motor vehicle proceeds into an intersection at a

<p>the operation or use of motor or other vehicles or the use of streets and highways by pedestrians.”</p>	<p>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.”</p>	<p>system location when the traffic control signal is emitting a steady red signal</p>
<p>State law does not authorize a municipality to delegate its powers to enforce traffic violations unless that city does not have a police department and in that event, its powers to enforce traffic violations are given to the County Sheriff</p>	<p>Section 4(a) The powers in the Act are given to the City</p>	<p>Section 27-604(d) Montgomery allows its powers to be delegated to an outside entity, and in fact, it has delegated its authority to enforce Act 2009-740 and its ordinance to ATS</p>
<p>§15-7-1 through -2 requires that when a complaint is made to a judge or magistrate that a traffic offense has been committed, the complainant must swear under oath that a particular person ran the red light.</p>	<p>No complaint is required and a notice can be mailed. Act 2009-740, §4; Section 6(e) of the Act -The reliability of the photographic traffic signal enforcement system may be attested to by a trained technician who does not have to be sworn</p>	<p>Section 603(b) –no complaint is required and a notice is mailed. Section 27-604(d) - The reliability of the photographic traffic signal enforcement system can be attested to by an office or employee of the city OR the entity with which the city contracts to install or operate such system</p>

<p>§32-1-4 provides that a person charged with a traffic offense has a right to an immediate hearing or a hearing within 24 hours before a magistrate if that person so desires</p>	<p>Local Act does not provide for such a hearing</p>	<p>Ordinance does not provide for such a hearing</p>
<p>§32-5A-8 provides that violations of §32-5A-31(a) and §32-5A-32(3) are misdemeanors and are punishable by imposition of a fine or imprisonment.</p>	<p>Section 1(3) acknowledges that state law makes it a misdemeanor to run a red light but in Section 3(3) makes this offense a non-criminal “civil violation” and which is punishable by a civil penalty</p>	<p>Section 27-602(b) Imposition of a civil penalty for violations</p>
<p>Public Safety regulations designate 3 points on a person’s driver’s license for running a red light and that fact is provided to insurance companies</p>	<p>Section 10 No adjudication for a civil violation can be recorded on the person’s driver’s license and will not be reported to insurance companies</p>	<p>Section 27-606(c) No record of an adjudication of a civil penalty may be reported on any criminal record or driving record</p>
<p>Burden of proof for running a red light is beyond a reasonable doubt <i>Meadows v. State</i>, 26 Ala. App. 311, 312, 159 So. 268, 269 (1935)</p>	<p>Section 6(e) The burden of proof for the prosecution of civil violation is preponderance of the evidence Section 6(c) The failure to pay the civil penalty or to contest liability is an admission of liability</p>	<p>Section 27-604(d) The burden of proof for the imposition of a civil penalty is that the issues must be proved by a preponderance of the evidence Section 27-604(b) The failure to pay the civil penalty or to contest liability is and</p>

		admission of liability
Section 6 of the Alabama Constitution A person who runs a red light has the right to a hearing and requires no affirmative action by the violator	Section 6(b) In order to contest a civil violation, one must request a hearing in writing	Section 27-604(a) In order to contest the imposition of a civil penalty, one must request a hearing in writing
A person who runs a red light and is faced with the possibility of imprisonment has the right to an appointed lawyer if the person is indigent. <i>Ex parte Shelton</i> , 851 So. 2d 96 (Ala. 2000)	No right to an appointed lawyer	No right to an appointed lawyer
State law does not authorize municipal courts the power to hear and adjudicate civil violations	Section 6(a) Municipal Court has the power to hear and adjudicate civil violations	Section 27-604(a) The administrative hearing shall be held before a hearing officer appointed by the Mayor
Rules of Criminal Procedure and Rules of Evidence apply in cases in which one is subject to a fine. Rule 1.1, 1.4, Rule 5.1 Ala. R. Crim. P, Rule 101 and 1101(a), Ala. R. Evid.	Section 3(3) Prosecution of civil violation carries reduced evidentiary requirements Section 6(g) rules of procedure and evidence shall be the same as are applied in the small claims courts of this State	Ordinance is silent as to what rules of procedure apply
§ 12-14-70(a) Right to appeal for a trial de novo in the Circuit	Section 7(c) Right to appeal to the Circuit Court	Section 27-604(i) Right to appeal to Circuit Court for a trial de

<p>Court Rule 5.1 Rules of Criminal Procedure apply in appeal from Municipal Court</p>	<p>Section 6(g) the evidence and procedures rules shall be the same as for any civil case in the Circuit Court but Section 8(a) says that on appeal the court shall used the procedures that apply to criminal convictions except the proceedings will retain their civil nature and apply the preponderance of the evidence standard applies</p>	<p>novo but ordinance is silent as to which rules should be used</p>
<p>§12-14-70(i) Court costs on appeal to the circuit court are distributed with 90% retained by the circuit court and 10% returned to the municipality and the circuit court retains 10% of the fine and gives 90% of the fine to the municipality</p>	<p>Section 8(a)(2) Court costs on appeal to the circuit court are retained by the circuit court but the circuit court gets none of the fine</p>	<p>Ordinance is silent as to court costs on appeal to the circuit court</p>
<p>Rule 8(d), Ala. R. App. P. The sentence of imprisonment is stayed if an appeal is taken and a fine must be stayed by the trial court or the appellate court if an appeal is taken</p>	<p>Section 7(c) Filing of a notice of appeal stays the enforcement of the civil fine penalty and no bond is required to appeal</p>	<p>Section 27-604(i) Unless a person posts a bond in the amount of the civil penalty plus late fees, an appeal does not stay the enforcement of the penalty</p>

City Attorneys are not authorized to file suit to enforce collections of fines for red light violations	City Attorney are not given the authority to file suit to enforce the collection of a civil penalty	Section 27-606(e) City Attorney is authorized to file suit to enforce collection of a civil penalty
Circuit Court in trial de novo requires a finding of guilt beyond a reasonable doubt. <i>Glenn v. City of Prattville</i> , 12 Ala. App. 609, 67 So. 622 (1915) Rule 5.1, A. R. Crim. P. Criminal Procedure rules apply	Section 8(a) Circuit Court shall apply the Rules of Criminal Procedure Section 8(a)(1) the preponderance of the evidence standard applies	Ordinance is silent as to which rules apply and the burden of proof on appeal to the Circuit Court
§15-14-30 On appeal to the Circuit Court from a municipal court, a person can get a jury trial if they ask for it	Section 8(a)(4) On appeal to the Circuit Court, the judge is the trier of fact and law	Ordinance is silent as to whether the Circuit Court is the trier of fact or whether one can request a jury trial
Rule 20, Ala. R. Jud. Admin. If you pay the fine for running a red light without a trial, the fine is \$20 under state law	Section 4(a) The fine for any violation of §§32-5A-31, 32-5A-32 or 32-5A-5 is not to exceed \$100	The fine for proceeding into an intersection at a system location when the traffic control signal is emitting a steady red signal is \$60
Running a red light under state law requires an eye witness to establish a violation	Section 4(a) empowers Montgomery to use automated photographic traffic signal enforcement system to detect violations and leaves the enforcement up to trained technician	Montgomery can use red light cameras to detect civil violations and leaves the enforcement up to an office or employee of the city or the entity with which the city contracts to install or

	who views the photographs	operate the cameras
There are no late fees for paying a red light ticket	Section 4(a) states that the fine includes court costs but not late fees	If the fine is not paid timely, a late payment penalty of \$25.00 is imposed
Section 104(14) of the Alabama states that a local law cannot fix the punishment and by state law, running a red light is a misdemeanor and the punishment is by fine and/or imprisonment	Act changes the punishment for running a red light in Montgomery to a civil fine	Ordinance changes the punishment for running a red light at a system location to a civil fine
Section 104(19) of the Alabama Constitution provides that a local law cannot create a lien	Section 7(b) An order finding a person liable of a civil violation shall operate as a judicial lien	Ordinance is silent as to liens
Rule 1.1, A.R.Crim.P apply in all criminal proceedings in this state and its political subdivisions	Section 3(3) Act refers to violations as being civil violations then in Section 8(a) says the circuit court shall use the rules of criminal procedure	Ordinance is silent as to rules of procedure
Rule 1.4(h) "Criminal Proceeding" is defined as "the prosecution of any offense as defined in Rule 1.4(s) , and may be commenced only by complaint or indictment. Rule 1.4(s) defines an offense as "conduct ... for which a fine is	Section 3(2) Act characterizes the penalty for running a red light as a civil fine rather than a criminal offense	Ordinance characterizes the penalty for running a red light as a civil fine rather than a criminal offense

<p>provided by any law of this state or by any law, local law, or ordinance of a political subdivision of this state.</p>		
<p>Rule A, Ala. S.C.R. state that the Rules of Small Claims shall apply in small claims cases in district court</p>	<p>Section 6(g) Act purports to make the Small Claims rules applicable in municipal court for a civil violation of running a red light</p>	<p>Ordinance is silent as to the applicable rules</p>
<p>State law does not authorize a judgment of guilty of a traffic infraction to operate as a judicial lien as in a civil case</p>	<p>Section 7(b) Orders issued in the municipal court operate as a judicial lien in the same manner and with the same weight and effect as any other civil judgment</p>	<p>Nothing in the ordinance provides that an adjudication shall operate as a judicial lien</p>