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# IN THE SUPREME COURT OF ALABAMA

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**1200240**

**RICHARD STEPHEN GLASS,**

**Appellant,**

**v.**

**CITY OF MONTGOMERY**

**Appellee.**

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

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# REPLY BRIEF OF APPELLANT

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## SUMMARY OF THE ARGUMENT

The best illustration that Act 2009-740 violates §105 of the Alabama Constitution is that in order to commit a traffic signal violation pursuant to the Act, you have to violate "Section 32-5A-31, Section 32-5A-32 or Section 32-5A-5, Code of Alabama 1975, or any combination thereof." Section (3)(7) of Act 2009-740. Thus, clearly, a traffic signal violation (in other words, running a red light), is already "provided for" by the general laws of this State.

Section 89 of the Alabama Constitution prohibits the Legislature from authorizing local governments to pass laws that are inconsistent with the general law. Under the general laws of this State, the act of running a red light is a criminal misdemeanor and is punishable by a fine and/or imprisonment. Act 2009-740 authorized the City of Montgomery to pass an Ordinance (which they did) to make the act of running a red light in Montgomery a civil violation with a civil penalty. Clearly, this violates §89 of the Constitution.

Section 104(14) prevents the Legislature from passing a local law that fixes the punishment of crime. Act 2009-740 changes the nature and the punishment for the act of running a red light from a criminal

misdemeanor punishable by a fine and/or imprisonment to a civil violation punishable by a civil fine. Thus, Act 2009-740 violates §104(14) of the Alabama Constitution.

## ARGUMENT

### I. IF A LOCAL ACT IS CLEARLY UNCONSTITUTIONAL, THIS COURT HAS A LEGAL DUTY TO DECALRE IT SO.

It is without dispute that, under Alabama law, laws are presumed to be constitutional. However, as stated recently by this Court:

> "' "the long-settled and fundamental rule binding this Court in construing provisions of the constitution is adherence to the plain meaning of the text."' ... ' " '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.'...
> "'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.' "

*Opinion of Justices*, No. 393, 260 So. 3d 17, 21 (Ala. 2018). "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." *Peddycoart v. City of Birmingham*, 354 So. 2d 808, 811 (Ala. 1978) (emphasis added).

## II. ACT 2009-470 CLEARLY VIOLATES §105 OF THE ALABAMA CONSTITUTION OF 1901.

### A. The Act of Running a Red Light is, Without a Doubt, "provided for" by the General Laws of this State.

Montgomery frames one of the issues regarding the §105 argument as "The matter of the Local Act is not provided by any general law." (Montgomery's brief, p. 18). Montgomery has its argument backwards. As this Court recently stated in *Barnett v. Jones*, 2021 WL 1937259 (Ala., May 14, 2021), ___ So. 3d ___ (Ala. 2021) (quoting from *Peddycoart*, 354 So. 2d at 813 (emphasis in *Barnett)*:

> "We do not look upon the presence of a general law upon a given subject as a bare segment, but to the contrary, its presence is primary, and means that a local law cannot be passed upon that subject. By constitutional definition, a general law is one which applies to the whole state and to each county in the state with the same force as though it had been a valid local law from inception. ... The constitutional framers have prohibited the enactment of a local act when the subject is already subsumed by the general statute."

This Court went on to say "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.

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) (emphasis added). By making any 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.

The offense committed covered by Act 2009-740 is "any violation of §32-5A-31, §32-5A-32, and §32-5A-5, Code of Alabama 1975." If you violate Act 2009-740, you have also violated the general laws of this state. The same act is covered by §32-5A-31, §32-5A-32, and §32-5A-5 and Act 2009-740. What the Act does is to change the nature and penalty of the offense by making a violation of §32-5A-31, §32-5A-32, and §32-5A-5 a civil violation instead of a misdemeanor and changes the penalty from a criminal fine and/or imprisonment to a civil fine.

Montgomery contends that Act 2009-740 doesn't cover the same subject as the general law because it provides for a civil violation for running a red light and the general act doesn't provide for civil violations. Again, this is getting it backwards. State law already

makes it a misdemeanor to run a red light at every intersection in the State of Alabama, including every intersection in Montgomery. Thus, any local law that attempts to make the act of running a red light not a misdemeanor and punish it differently runs afoul of the general laws of this state and §105 of the Constitution.

Montgomery argues that, citing *Birmingham v. Vestavia Hills*, 654 So. 2d 532 (Ala. 1995), "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." (Montgomery's brief, p. 20). As we have said repeatedly, we do not disagree that the Legislature has the power to authorize a civil mode of red-light enforcement. However, it must be authorized statewide, not by a local law. In *Vestavia Hills*, the Legislature was exercising its powers of annexation that can be employed anywhere in the State, not just in Vestavia Hills.

Next, citing *Jefferson Cty. v. Taxpayers and Citizens of Jefferson Cty,* 232 So. 3d 845 (Ala. 2017), Montgomery argues that Act 2009-740 "authorizes an additional, non-exclusive means by which Montgomery can enforce Alabama's red-light laws." (Montgomery's brief, p. 21).

Once again, Montgomery attempts to divert the inquiry from the subject, "case" or "matter" "provided for" in the general law to the subject of the local act. The general laws of this State provide the method of enforcing Alabama's red light laws and a local law can't be passed on this same subject.

Montgomery then quotes from *Vestavia Hills* as follows: "it 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." This is directly contrary to this Court's holding in *Barnett*, which was released after we filed our initial brief. This Court, in its opinion in *Barnett*, repeatedly emphasizes "the central holding of *Peddycoart*" which is "the focus must be on the general law, and local laws cannot be passed on cases or matters already provided for by a general law." *Barnett* at p. 4. Thus, if the general laws of this state cover the act of running a red light, the nature of that act, the enforcement of violations for that act and the penalties therefore, then a local a law cannot be passed which alters the nature of the act of running a red light, the enforcements for violations of that act and the penalties for violations of that act.

Montgomery argues that "The general law applies in the criminal context; the Local Act applies in the civil context, which is a different 'matter' altogether." (Montgomery's brief, p. 24). Montgomery completely ignores that Act 2009-740 is changing the nature of an act (running a red light is a crime) that is already provided for by general law.

Making the offense of running a red light in Montgomery a civil violation does not cure the unconstitutionality of Act 2009-740. As Montgomery has argued and we have conceded, there is no doubt that the Legislature has the authority to pass a law that makes running a red light a civil offense. However, it would have to make it applicable statewide, not just at intersections in Montgomery or Tuscaloosa or Midfield or Brantley. The Legislature cannot change the act of running a red light from a criminal act to a civil violation by a local act, without violating §105.

Montgomery argues that there is no variance between the general law and the local law because Act 2009-740 provides that you cannot be prosecuted for the act of running a red light criminally and civilly. This misses the point. Act 2009-740 converts what are misdemeanors under

the Rules of the Road into civil violations in Montgomery. A person doesn't just run a red light if a police officer witnesses the act. By state law, if someone runs a red light, it is still the misdemeanor offense of running a red light whether that person is caught or not. It makes no difference if the person who runs the red light is seen by a police officer, a red light camera or another driver!

What Montgomery is arguing is that if you run a red light, whether you will be prosecuted civilly or criminally will depend upon how you are caught, i.e., if a police officer catches you, it is a crime, but if a camera catches you, it is a civil violation. This is nonsense. By statewide statute, if you run a red light, you have committed a criminal misdemeanor offense, whether you are caught or not. Consider this scenario. If a man goes into a grocery store, conceals a package of steaks in his clothing, and walks out the door without paying for it and is caught by someone, he will be prosecuted for theft. But what if he is not caught? Has he then, in the eyes of the law not stolen the steaks? Has he, since no one caught him, not committed a crime? What if he is caught on the store's video and is later arrested? Has he, somehow, committed something other than a crime? Of course not! To say

otherwise is nonsense. If you steal a package of steaks, you have committed the crime whether you are caught or not.

Likewise, when you run a red light, you have committed a crime whether you are caught or not and it doesn't matter how you are caught. A local law cannot determine whether you will be prosecuted civilly or criminally for running a red light based on whether you are caught or not or whether you are caught by a police officer or a camera.

Montgomery contends that the Rules of the Road contemplate such a civil framework because §32-5A-13 states that "the provisions of this chapter are cumulative and shall not be construed to repeal or supersede any laws not inconsistent herewith." The problem Montgomery has is that Act 2009-740 is inconsistent with the general law that provides that the act of running a red light is a crime and is contrary to §32-5A-11 which states, "[t]his chapter shall be so interpreted and construed as to effectuate its general purpose to make **uniform** the law of various jurisdictions." Act 2009-740 destroys the uniformity of the Rules of the Road because it makes running a red light a civil violation in Montgomery while running a red light in Wetumpka is a misdemeanor.

Montgomery acknowledges that this Court has invalidated local acts that have "released the local government from obligations that were binding absent the local legislation." (Montgomery's brief, p. 27). Without a doubt, Act 2009-740 released Montgomery from obligations that were binding on it absent this local act. Before Act 2009-740 was passed, if one committed the act of running a red light, that person was issued a Uniform Traffic Ticket and Complaint pursuant to §12-12-53. Act 2009-740 relieved Montgomery from this obligation. Under general law, a person running a red light is entitled to a hearing within 24 hours of the offense. §32-1-4. This is not required by Act 2009-740. The biggest obligation that Montgomery is released from by Act 2009-740 is the burden of proof. Prior to the Act's passage, Montgomery had to prove guilt beyond a reasonable doubt. Now Montgomery merely has to prove the act of running a red light by a preponderance of the evidence. If the local acts violated §105 by releasing the local governments from obligations present before the local act was passed in *Opinion of the Justices No. 342*, 630 So. 2d 444, 447 (Ala. 1994) and *Crandall v. Birmingham*, 442 So. 2d 77, 79-80 (Ala. 1983), then clearly

Act 2009-740 violates §105 because it releases Montgomery from major obligations provided for by the general laws of this State.

### B. Act 2009-740 Clearly Decriminalizes the Act of Running a Red Light in Montgomery.

Montgomery spent the first 18 pages of its brief telling this Court that Act 2009-740 doesn't violate §105 of the Alabama Constitution because it provides for a civil method of prosecuting the act of running a red light. Then in this section of its brief, it states that "The Local Act expressly does not decriminalize running a red light." (Montgomery's brief, p. 28). Montgomery claims that our argument that Act 2009-740 decriminalizes the act of running a red light in Montgomery "has no foundation in the text of the Local Act." That is simply wrong. Section 3(3) of Act 2009-740 creates 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" but it only applies in Montgomery. Thus, making it a local law. Section (3)(7) of the Act (emphasis added) then 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 any combination thereof, wherein a vehicle proceeds into a signalized intersection at a time while the traffic-control signal for that vehicle's land of travel is

emitting a steady red signal. A traffic signal violations shall be a civil violation as defined in this act."

Montgomery claims that every provision of the Rules of the Road remain in effect in Montgomery. That is, unless you run a red light in Montgomery. The act explicitly makes a criminal act civil in Montgomery and you have committed a civil violation instead of a criminal misdemeanor. How Montgomery can argue that the Act 2009-740 doesn't decriminalize the act of running a red light in Montgomery is beyond comprehension. Again, under the general law, the act of running a red light is always a crime whether you are pulled over by a police officer or not, except in Montgomery (and a few other cities), where any red light violation is a civil violation.

Montgomery seems to allege that the fact that Section 13 of Act 2009-740 has not been discussed in our briefs to this Court is somehow an acknowledgment that the language contained in this Section is fatal to our argument. This is ludicrous. Section 13 does not change the fact that if you commit the crime of running a red light in Montgomery, you have committed a civil violation instead of a crime!

Montgomery claims that the Legislature didn't intend to "override" any part of the Rules of the Road. Whether the Legislature

intended or not to "override" the general laws of this State is irrelevant because that is what they did by passing Act 2009-740 which makes any red light violation a civil violation. The Legislature in Section 2(3) of the Act specifically acknowledges that the act of running a red light is a criminal misdemeanor in Alabama but then goes on to make it a civil violation if the act is in Montgomery.

Montgomery then leads this Court astray again by saying that we are arguing that Act 2009-740 implicitly repeals the Rules of the Road. By making this long argument, Montgomery is trying to change the inquiry set forth by this Court just last month in *Barnett*. That is, does the general law provide for the subject of the act of running a red light, the nature of the act, and the punishment for such act. If it does, then a local act that changes the nature of the act and the punishment thereof violates §105 of the Constitution. This is the sole question this Court needs to answer. By its implied repeal argument, Montgomery is again trying to focus this Court's inquiry onto the subject of the local act rather than determining whether the subject, case or matter of running a red light (i.e. a violation of §32-5A-31, §32-5A-32, or §32-5A-5) has been "provided for" by the general laws of the State of Alabama.

One need only look at the definition of a traffic signal violation to see that the subject of the Act 2009-740 is already covered by the general law. In order to violate the local act, you have to first violate §32-5A-31, §32-5A-32, or §32-5A-5. One cannot violate Act 2009-740 without violating one of these State statutes. Indeed, if these state statutes were repealed, it would be impossible to violate Act 2009-740 because you could no longer violate §32-5A-31, §32-5A-32, and §32-5A-5. This clearly shows that the subject of the Act has been "provided for" by the general law of this State.

Montgomery argues that Act 2009-740 does not destroy the uniformity of the Rules of the Road. Section 32-5A-11 provides 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." Is the act of running a red light a civil violation statewide? The answer to this question is clearly no. There are a handful of cities that have similar local acts providing for civil violations for the act of running a red light. Running a red light anywhere in Alabama, is a crime except in Montgomery and a few other cities. Clearly, because of these local

acts, the laws providing for the act of running a red light are not uniform throughout the State of Alabama.

Montgomery states that Act 2009-740 "does not say that that a traffic signal violation will be **exclusively** a civil violation." (Montgomery's brief, p. 32, emphasis is Montgomery's). Section 3(7) of Act 2009-740 clearly states that a "traffic signal violation **shall** be a civil violation as defined in this act." This completely ignores the fact that "any" violation of §32-5A-31 is, under this local act, now a civil violation.

Montgomery and Tuscaloosa argue that we have conceded that the Legislature has the ability to create a civil violation and a criminal violation for the same act. While this is true, Montgomery fails to point out that our concession is only valid if the Legislature should create a civil and criminal violation for the same act **Statewide.** What we have clearly stated is that the act of running a red light has already been provided for by the general laws of this State and a local act cannot provide that this same act is a civil violation without violating Section 105 of the Constitution.

Tuscaloosa argues at p. 3 of its brief that "The Rules of the Road contemplate a parallel non-criminal enforcement scheme:

> 'This title 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)."

This argument is totally nonsense. Tuscaloosa obviously doesn't know that the Rules of the Road are contained in Title 32 of the Alabama Code, not in "this title" which is Title 13A, the Criminal Code of Alabama. Thus, the quotation above doesn't remotely pertain to the Rules of the Road.

Again, Montgomery argues that it is "shocking" that we have not cited Section 13 of the Act. What is shocking is that Montgomery has failed to acknowledge that Act 2009-740 makes any red light violation in Montgomery a civil violation despite the provisions of Section 13 which provides that no civil penalty can be imposed if you are caught by a police officer running a red light. Again, a pretty good argument could be made that by definition, you have only committed a civil violation if you run a red light in Montgomery, regardless of whether you were

pulled over by a police officer or not. Section 13 is totally contrary to the definition of a traffic signal violation which makes any and every red light violation a civil violation. Indeed, what would a police officer be able to charge you with because Act 2009-740 says violations of §32-5-A-31, §32-5A-32 and §32-5A-5 are civil violations punishable by a civil fine.

Tuscaloosa argues that requiring an officer to witness the act of running a red light "is a recipe for sporadic enforcement." (Tuscaloosa's brief, p. 4). While this may be true, the Legislature can cure this problem by passing a statewide act authorizing red light camera violations. But it cannot do so by passing a local act that is already "provided for" by state law. Tuscaloosa argues that its local law is needed because it "has nearly 40,000 student drivers in the community through most of the year – many of whose wheels whir while they tap on their phones." (Tuscaloosa's brief, p. 4). Tuscaloosa's local act will have no impact on these student drivers since the vast majority of these students' vehicles are owned by their parents, who will be issued the tickets instead of these careless student drivers.

The argument that the Act permissively allows Montgomery to use red light cameras to punish those running a red light is ludicrous. The Act plainly makes any red light violation a civil violation in Montgomery regardless of the use of cameras. Montgomery claims that we are not being faithful to the text of Act 2009-740. One needs only to look at the plain language of the definition of a traffic signal violation set forth in Section 3(7) of the Act to see that it is Montgomery who is not being faithful to the text of Act 2009-740. It clearly states that <u>any</u> red light violation under State law is a civil violation in Montgomery. A red light violation and the penalty therefore has been provided for by the general laws of this State and a local act which makes this criminal act a civil violation in Montgomery violates §105 of the Constitution. Montgomery, quoting *Grimes v. Alfa Mut. Ins. Co.*, 227 So. 3d 475, 489 (Ala. 2017), states that "the legislature does not intend to make any alteration in the law beyond what it explicitly declares." The Legislation in Section 3(7) of the Act explicitly declares that any red light violation under State law in Montgomery is a civil violation. Montgomery somehow faults us for using the definition of a traffic signal violation to make our argument. This makes no sense. What

else would you possibly use to see if the Legislature intended to change the law other than seeing how they plainly define a traffic signal violation? Again, this may not have been the Legislature's intention but it is what it explicitly did which violates §105.

### C. The Violation of Section 105 Cannot be Justified by the Local Need Exception.

"[A] local Act dealing with a subject matter already provided for by general law ... is in clear violation of § 105" of the Alabama Constitution." *ABC Bonding Co. v. Montgomery Cty. Sur. Comm'n,* 372 So. 2d 4, 6 (Ala. 1979). Is the act of running a red light and the punishment therefore already provided for by general law? The answer is clearly yes and thus, Act 2009-740 is prohibited by §105 of the Constitution. "'[W]hen those local needs already have been responded to by general legislation ... § 105 of our state Constitution prohibits special treatment by local law.' " *Miller v. Marshall County Board of Education*, 652 So.2d 759, 761 (Ala. 1995) (quoting *Peddycoart v. City of Birmingham,* 354 So.2d 808, 815 (Ala.1978)).

Quoting *Taxpayers & Citizens of Jefferson Cty.,* 232 So. at 868, Montgomery states that "where a local act represents the Legislature's response to demonstrated local needs ... which had not been previously

addressed by general law, [the Court will] find no constitutional infirmity in the Act." The problem with this argument is that Montgomery's local need, that running red lights is a dangerous problem, has already been addressed by general law because you have to violate the general law to commit a traffic signal violation under the Act. Indeed, if there was some special need in Montgomery, why did the Legislature "create" this "civil violation" by defining as a violation of the general law that already existed?

Montgomery argues that it has a local need "to protect the safety of the traveling public." (Montgomery's brief, p. 37.) This misses the point. The Rules of the Road have already addressed this local need. When someone runs a red light whether or not a police officer is present, that act is still a misdemeanor offense prohibited by state law and is still dangerous. It should also be remembered that the definition of traffic signal violation in Act 2009-740 isn't limited to just those instances when a police officer isn't present. Those violations include "any" violations of the relevant state statutes prohibiting running a red light. Because of this broad definition, Act 2009-740 deals with the act of running a red light which is already covered by the general laws of

this State. If a local need is already covered by the general laws of this State, there can be no local need exception to the general laws. The general laws of the State provide for the act of running a red light, the nature of this act and the punishment for this act. The local act uses the specific sections of the Alabama Code to define what a traffic signal violation is. This is an acknowledgment by the Legislature that it has already defined what a red light violation is in this State.

Montgomery argues that Montgomery has a local need not adequately addressed by the general laws of this State but it has failed to state what that local need is other than that running a red light is dangerous in Montgomery and to protect the traveling public. This is undoubtedly true statewide. 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). There has been absolutely no evidence presented that running red lights is a dangerous problem that is unique to Montgomery. Indeed, other local acts on this same subject belie this assertion. To our knowledge, the Legislature has passed local laws for 8 municipalities which are almost identical to Montgomery's. They all

find that running a red light is a dangerous problem in each of those municipalities. Tuscaloosa sets out several reasons Tuscaloosa has a special local need for its local act. There is absolutely no evidence that the Legislature considered these special circumstances when it passed Tuscaloosa's local law. If this Court upholds the validity of these type of local acts, there is no doubt that every municipality in Alabama will seek to pass a local act for its jurisdiction (because these schemes are nothing but cash cows for municipalities) and the Legislature will no doubt find that each of those municipalities have a "local need" because running a red light is dangerous in that community. If the Legislature wants to create these cash cows for local governments, then they just need to pass a Statewide statute that authorizes municipalities to enforce red light violations by the use of red light cameras.

The local needs exception to §105 is a judicially created exception. But it only applies when those local needs are not covered by state law. Has the general law already made it unlawful to violate §32-5A-31, §32-5A-32, and/or §32-5A-5 and provided what the nature of the act is, the enforcement procedures and the penalty for these violations? It has and thus, no local law can be justified on the local need exception by

changing the nature of these violations and the penalty for these violations because the act, a violation of §32-5A-31, §32-5A-32, and §32-5A-5 has already been provided for by State law.

The law doesn't require this Court to ignore what it knows to be true, i.e., that failing to stop at a red light is a dangerous problem statewide. This Court can certainly take judicial knowledge that committing traffic offenses in Alabama is a dangerous problem statewide and that is why the Legislature has enacted the Rules of the Road which are to be applied uniformly among the various jurisdictions of this state.

There is no local need that can justify Act 2009-740 because the act of running a red light, the nature of this act, the enforcement procedures and the punishment for the act has already been provided for by the general laws of this State. Thus, Act 2009-740 violates §105 of the Alabama Constitution.

### D. The Fact that Act 2009-740 makes Any Red Light Violation a Civil Violation in Montgomery is Precisely the Reason that it Conflicts with the General Laws of this State which is a violation of §105.

Montgomery's and amicae's entire arguments in this section of their briefs is that, because Act 2009-740 provides that red light

violations in Montgomery are civil, it doesn't conflict with the general laws of this State. This is after arguing in section 2 of Montgomery's brief that Act 2009-740 doesn't decriminalize the act of running a red light in Montgomery. As stated above, this argument is precisely the reason the Act violates §105 of the Constitution. The general laws of this State make the act of running a red light (a violation of §32-5A-31, §32-5A-32, and §32-5A-5) a criminal misdemeanor. A local act cannot, without violating §105, make the same act of running a red light a civil violation. As we have stated repeatedly, the Legislature could impose a civil penalty for running a red light while maintaining the criminal nature of the act. But to do so, it would have to do it by a statewide act, not by a local act making it only civil in a select municipality.

The Eleventh Circuit did indeed find a similar local act to be a civil enforcement system in *Worthy v. City of Phenix City*, 930 F. 3d 1206 (11th Cir. 2019). However, the Court made no finding that this civil enforcement system did not violate §105 of the Constitution and it appears that this argument was not even at issue in that case. Moreover, Montgomery's citation to *McGuire v. Strange*, 83 F. Supp. 3d 1231 (M.D. 2015) merely demonstrates that Alabama Sex Offender

Registration and Community Notification Act is civil. It should be noted that that Act applies statewide and was not included in a local act.

Tuscaloosa argues at p. 1 of its brief that "Appellant must in all circumstances maintain that the local act is actually criminal and not civil – because only then is does the local law fall within the purview of Section 104). This is entirely incorrect and again an attempt to focus on the local act and not the general laws of this State. Sections 32-5A-31, 32-5A-32 and 32-5A-5, Code of Alabama provides for the offenses of running a red light. The Rules of the Road make a violation of these Code sections a criminal misdemeanor and provide for the punishment of these violations. Because Act 2009-740 makes violations of §32-5A-31, §32-5A-32, and §32-5A-5 civil violations and imposes a penalty different than the Rules of the Road provides, then it violates §105 of the Alabama Constitution.

### E. This Court's Reasoning in *Barnett* Should Decide this Case.

As early as 1865, the people of Alabama began to realize that in a well ordered society, our activities should be controlled by laws of a general nature. Special laws on certain subjects were forbidden. In the

Alabama Constitution of 1865, Sec. 38, special laws for the benefit of individual or corporations were prohibited in cases in which the matter is already provided for by general laws, or when the relief can be given by any court of this state.

In the Constitution of 1875, the restriction on local laws became broader. Article IV of that Constitution contained four sections limiting the enactment of local or special laws. (In fact, Sec. 23 is the first time the word "local" was used). Section 23 prohibited the passage of any "local" or "special" law for the benefit of individual or corporations " in cases" which are, or can be, provided for by a general law. Section 24, required notice of the intention to apply for a local or special law which cannot be provided by a general law. Section 25 requires the legislature to pass general laws, under which local and private interests were to be provided for and protected. And Sec. 50 prohibited the legislature from authorizing municipalities to pass any law inconsistent with the general law.

The Constitution of 1875 was followed by our present Constitution of 1901. The 1901 Constitution carries forward the disfavor of local legislation. Such "special" or "local" legislation is addressed, and to

some extent, limited by certain sections of the Constitution. Of course, Section 104 is the most restrictive because it lists 31 specific subjects on which local laws are absolutely prohibited. Then comes Section 105. Just what does Section 105 mean when it says, in simple terms, that no local law may be enacted "in any case which is provided for by a general law"? Going further, what does it mean when it provides that the Courts, and not the legislature, "shall judge as to whether the matter of said law is provided by a general law"? (Emphasis added in quotes).

As Justice Mitchell noted in his concurring opinion in *Barnett v. Jones*, *supra*, at least to an originalist (of which this writer is one), the meaning of "case" and "matter" ascribed to those words in 1901 may well be important.

As is true in most situations, the meaning of a word depends upon the context in which it is used. The word "case" is no different. When referring to a business man's valise, it is often called a case, or briefcase. When an investigator is looking into a situation, it becomes his "case." When referring to a contingency, we often say "in case." Often a given set of facts, or a situation is called a "case."

But, in our world, the most common usage of the word refers to a legal proceeding, i.e. "I filed the complaint in the case today." *See First National Bank v. Watters*, 201 Ala. 670, 671-672, 79 So. 242, 243-244 (1918), (finding that the word "case" normally refers to a legal proceeding).

But the word also means an "event," "happening," "situation" or "circumstance." *Highfield v. Delaware Trust Co.*, 188 A. 919, 922 (Del. Super). See also *Deal v, U.S.*, 508 U.S. 129, 133, 113 S.Ct. 1993, 1997, 124 L. Ed2d. 44 (1993) where the Court said:

> The word "case" can assuredly refer to a legal proceeding, and if followed by a name, such as "*Marbury v. Madison* 5 U.S. ( 1 Cranch) 137, 2 L.Ed. 60 (1803)" that is the apparent meaning. When followed by an act or event, "in case of "normally means "in the event of"- and we think that is its meaning here.

Since the word "case" in section 105 is followed by "which is provided for by a general law", the prohibition would normally mean, stated another way, " No special, private, or local law....shall be passed in the event the subject is provided for in a general law". Giving the word "case" that meaning, then, the local act here clearly violates Section 105 and is void. This is exactly what this Court held in *Barnett.*

In *Barnett*, this Court, quite correctly, says we've been looking at this the wrong way. Rather than looking at the local law to see if this is a "substantial difference" or "variance" from the general law, we should look to the general law to see if this "case" or "matter" is already covered by the general law. If it is, this Court said, then a local law cannot be passed in that "case" or "matter."

If one in the case *sub judica*, looks to the general law, as *Barnett* says we must, one finds that the general law, §32-5A-31, §32-5A-35 and §32-5A-5 address the "case" of a vehicle running a red light, designates the "matter" as being a crime, and provides (in §32-5A-8) a penalty for the wrongful act. Thus, the general law identifies the wrongful act (running a red light) classifies the nature of the wrong (i.e. it's a crime) and provides the punishment (a fine and possible jail time).

It seems that the framers of Section 105, when they used the word "matter" really meant "subject-matter." For instance as early as 1906, this Court struck down a local law upon finding that the "subject-matter" of that local law was the same as a general law. *City Council of Montgomery v. Reese*, 149 Ala. 188, 190, 43 So. 116, 117 (1906). See also, *Evans v. Long*, 227 Ala. 335 149 So. 837 (1933) (a local law fixing

the salary of a chief deputy at $1,800 per annum violated §105 in light of a general law setting the salaries of chief deputies at no more than $1,500 per annum.)

And perhaps this was a Freudian slip, but in quoting the language of Section 105, this Court inserted the phrase "subject-matter" rather the correct word "matter". *Forman v. Hair*, 150 Ala. 589, 591, 43 So. 827, 828 (1907). Clearly then, any originalist, would say that if the subject-matter of a local law is addressed by a general law, the local law would be in violation of Section 105, and thus, void.

We agree with Montgomery that *"Barnett* and its immediate forerunners decide this case." (Montgomery's brief, p. 49).

## III. MONTGOMERY'S RED LIGHT ORDINANCE VIOLATES SECTION 89 OF THE CONSTITUTION AS WELL AS §11-45-1, et seq., CODE OF ALABAMA 1975 AND §32-5-1, et seq., CODE OF ALABAMA 1975.

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." With regard to traffic laws, the Legislature has clearly stated that "[L]ocal authorities shall have no power ... to pass, enforce, or maintain any ordinance, rule, or regulation regulating motor vehicles ... contrary to the provisions of this chapter, nor shall any such law now in force or hereafter enacted have any effect." Ala. Code, §32-5-1 (1975). Section 32-5A-11 provides that the Rules of the Road are to be interpreted to make uniform the laws of the various jurisdictions of this State.

State law provides that running a red light is a criminal misdemeanor statewide. Does making "any" violation of §32-5A-31, §32-5A-32, and/or §32-5A-5 a civil violation in Montgomery inconsistent with the general law? Of course, it is. Section 105 prevents the Legislature from passing a local act on a subject that is covered by general law and §89 prevents the Legislature from authorizing a local government from doing what it is prohibited from doing in §105. It is abundantly clear that the people of Alabama did not want the Legislature to do what it did when it passed Act 2009-740 by enacting §105 and §89 of the Constitution.

Montgomery states that "Section 89 simply 'means that a city cannot make that lawful which the State law has rendered unlawful.'" Montgomery's brief, p. 50, quoting *Birmingham v. West*, 183 So. 421, 423 (Ala. 1938). We couldn't agree more. The State has made it unlawful and a criminal misdemeanor to run a red light anywhere in the State of Alabama. Act 2009-740 and the Ordinance makes the same exact conduct (running a red light) which is a criminal misdemeanor statewide, a civil violation with a civil penalty in Montgomery. Thus, Act 2009-740 has decriminalized the same conduct that the State has rendered unlawful, which is a clear violation of §89 and is totally inconsistent with State law.

We have clearly explained how Act 2009-740 and Montgomery's ordinance are inconsistent with the Rules of the Road. Montgomery cannot have a civil framework for punishing the same conduct the State punishes criminally statewide. Running a red light is a criminal misdemeanor everywhere in Alabama no matter if you are caught or not but not in Montgomery. In Montgomery, "<u>any</u>" traffic signal violation is a civil violation. Clearly this alters, changes and supersedes the Rules of the Road which are the general law of the State of Alabama which

are to be applied uniformly and ordinances of the various jurisdictions may not be inconsistent with this general law. §89 of the Alabama Constitution; §11-45-1, §32-5-1 and §32-5A-11, Code of Alabama 1975; *Birmingham v. West*, 183 So. 421, 423 (Ala. 1938) ("a city cannot make that lawful which the State law has rendered unlawful.")

Montgomery states "the Ordinance does not make the act of running a red light in Montgomery noncriminal and does nothing to lessen the criminal status of running red lights." (Montgomery's brief, p. 51). This is simply not true. The Act and the Ordinance make "any violation of Section 32-5A-31, Section 32-5A-32 or Section 32-5A-5" a civil violation. In other words, Act 2009-740 authorizes Montgomery to pass an ordinance and Montgomery has passed such an ordinance that penalizes the same act differently in Montgomery than the general law of this State which is to be applied uniformly throughout the various jurisdictions of this state. The Act and Ordinance makes this criminal traffic violation non-criminal in Montgomery. Pursuant to the general laws of the state of Alabama, when you run a red light anywhere in the State, you have committed a criminal misdemeanor and it doesn't matter if it is captured on a camera or witnessed by a police officer or

not seen by anybody. The Act and Ordinance cannot make these criminal violations anything other than criminal violations. But because the Act does allow Montgomery to make these violations civil by ordinance in Montgomery, it absolutely violates §89 of the Constitution as well as §11-45-1 and §32-5A-11. This constitutional provision and these statutes either mean what they say or they don't. That is what this Court must decide.

## IV. ACT 2009-740 VIOLATES §104(14) OF THE CONSTITUTION.

Montgomery's whole argument is based on the premise that Act 2009-740 and the Ordinance do not displace the Rules of the Road. Again, this ignores the plain meaning of the Act and Ordinance. The Act applies to "any violation of Section 32-5A-31, Section 32-5A-32 or Section 32-5A-5," which are state statutes prohibiting running a red light anywhere in the State of Alabama. The word "any" has been described as "all inclusive." *Fuller v. Associates Commercial Corp.*, 389 So. 2d 506, 507-08 (Ala. 1980) (holding that the word "any," when applied to the allowable interest rates on a loan means all types of loans.) As a result, under the local act and ordinance, all violations of §32-5A-31, §32-5A-32 and/or §32-5A-5 are now civil infractions. These

are criminal misdemeanors. Since the Act proscribes the punishment for this same exact criminal conduct in Montgomery as civil penalties, the Legislature has fixed the punishment of crime. It has changed the punishment of a crime everywhere else in the State to a civil fine in Montgomery.

The Rules of the Road makes running a red light a crime and fixes the punishment, and any local act or ordinance, such as Act 2009-740 and Montgomery's Ordinance, which purports to change the nature of those offenses (i.e. civil v. criminal) or the penalty therefore, clearly violates §104(14).

Tuscaloosa and Montgomery argue, citing *Ex parte State Alcoholic Beverage Control Bd.,* 654 So. 2d 1149 (Ala. 1994), that "Alabama law allows the same conduct to be subject to both a potential criminal penalty and a civil violation". (Montgomery's brief, p. 53). *Ex parte State Alcoholic Beverage Control Bd.* 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)."

654 So. 2d at 1152 (emphasis added). In other words, the State can punish something criminally and civilly. We have always said that the Legislature could authorize red light camera schemes but it must do so statewide.

Tuscaloosa argues, citing §32-5A-13, that the Rules of the Road "shall not be construed to repeal or supersede any laws not inconsistent herewith." (Emphasis added). But these local laws are inconsistent with the general law. State law makes a violation of §32-5A-31, §32-5A-32, and/or §32-5A-5 a criminal misdemeanor and provides the punishment for these violations. These local laws make the same violations a civil offense and change the penalty of these violations to a civil fine. Tuscaloosa's argument is without merit.

Tuscaloosa cites a number of cases of other states that have upheld red light camera programs. However, these other states may not have a similar constitutional provision such as found in §105 of

Alabama's Constitution and Tuscaloosa has not demonstrated that they did.

The provisions of Act 2009-740 and the City's Ordinance are clear violations of §104(14), Alabama Constitution of 1901. All one has to do to see this is look to Section 3(7) of Act #2009-740. That section reads:

> 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.

As we said earlier in our argument regarding §105 of the Constitution, under Act 2009-740, in order to commit the violation proscribed there, one must violate the statewide law. In other words, a Traffic Signal Violation is <u>not</u> a violation of the terms of Act 2009-740, it is, in fact, a violation, for instance, of §32--5A-31 (running a red light). Thus, in reality, the violation is, in fact, a violation of §32-5A-31, Code of Alabama 1975. By law, any violation of §32-5A-31, §32-5A-32 and §32-5A-5 or any other provision of Title 32 is a <u>crime</u>!

The true flaw in Act 2009-740, and a fatal flaw, is that this Act addresses violations of a criminal statute, but <u>changes</u>, or <u>fixes</u>, the

punishment on a local basis. In Montgomery, if one runs a red light, they commit a "Traffic Signal Violation" which in reality is nothing more than a violation of §32-5A-31, Code of Alabama 1975. That code section, by statewide law is a crime and under §32-5A-8(b) is punishable by a criminal fine and possible jail time. That criminal fine, for a first offense is "not more than $100." Jail time may be up to 10 days. For subsequent offenses, the fine gets bigger and the jail time longer. But under Section 4(a) of Act 2009-740, the penalty is a "civil fine" only of up to $100, but also includes court costs, and an additional $10 which goes to the Alabama Criminal Justice Information Center. Under Ordinance 10-2007, passed by the City, the "civil fine" is only $60 for the first and second "violation" but $100 for a third or subsequent violation. There is no provision for the $10 extra fee, and no provision for jail time.

Clearly Act 2009-740 changes the punishment for a violation of §32-5A-31 (running a red light). This is exactly what §104(14), Alabama Constitution of 1901 forbids. This Court has faced such a situation before. In *Thompson v. State*, 274 Ala. 383, 149 So. 2d 916 (1963), this Court answered a question certified to it about the

constitutionality of a local act, for Jefferson County, fixing the punishment of contributing to the delinquency of a minor. It seems at the time there was a statewide statute, T. 13, §366, Alabama Code 1940, that criminalized the same conduct. *See Waldrop v. State*, 42 Ala. App. 609, 173 So. 2d 601 (1965). This Court held that §104(14) prohibits different punishments of the same act, in different counties. The scheme here is no different. Statewide, the punishment for violating §32-5A-31 is punished by a criminal fine and possible jail time. Under Act 2009-740 punishment of a violation of §32-5A-31, only in the City of Montgomery, is fixed at payment of a "civil fine."

Clearly, this violates §104(14), Alabama Constitution of 1901. A violation cannot be punished one way in Prattville, and a different way in Montgomery.

## CONCLUSION

Sections 32-5A-31, 32-5A-32 and 32-5A-5, Code of Alabama 1975 forbids the disobedience of traffic control signals, including running a red light. Section 32-5A-8(a), Code of Alabama 1975 declares a violation of Title 32 to be a criminal misdemeanor and Section 32-5A-8(b)

prescribes the punishment for such violations. These provisions are general laws.

By Act 2009-740, the legislature has purported to create a different scheme, operative only in the City of Montgomery. That make the Act a local act. The City has also passed its ordinance implementing the scheme established by Act 2009-740.

Given that the above cited state Code sections forbids the running of a red light, classifies the offense as a criminal misdemeanor and provides the punishment for any violation, any local law, such as Act 2009-740, which purports to create a scheme of civil violations with a civil penalty for the very conduct prohibited, made criminal, and punished by the general law, is a violation of §105, Alabama Constitution of 1901.

Lest there be any question whether this local act addresses a matter, or the subject-matter, of the general law, all one has to do is look to Section 3(7) of Act 2009-740. There, the offense is denominated as a "Traffic Signal Violation" and is defined as "any violation of Section 32-5A-31, Section 32-5A-32, or Section 32-5A-5, Code of Alabama 1975, ...." It goes on to provide that a traffic signal violation is a civil

violation. It cannot. in good sense, be said that the legislature was not attempting to change the impact of the general law, but only in Montgomery.

It is this kind of legislation that §105, Alabama Constitution, specifically forbids. This point is a no-brainer.

In like manner, §89, Alabama Constitution of 1901 forbids the legislature to authorize a city to adopt any ordinances that are inconsistent with the general laws. As noted, the general law, in fact, the specific statute that Act 2009-740 relies on to define its Traffic Signal Violation, makes running a red light a criminal misdemeanor and specifies that it is to be punished by a criminal fine and possible jail time. It is impossible to logically argue that Act 2009-740 is not inconsistent with the general laws of this State.

Lastly, §104(14), Alabama Constitution of 1901 specifically prohibits the legislature from passing a local law "fixing the punishment of a crime." This is a clear statement that the people of this state demand that crimes be punished in the same way throughout the State, no matter where the offense occurs. Montgomery, and its *amicae*, contend that Act 2009-740 does not "decriminalize" the act of

running a red light. If that's true, what on earth does Section 3(7) of the local act mean when it says a Traffic Signal Violation is any violation of Sections 32-5A-31. 32-5A-32 and/or 32-5A-5? What does it mean when it says a Traffic Signal Violation is a "civil violation." There is only one word to adequately respond to that argument – nonsense.

This local act and the ordinance adopted pursuant to it clearly are unconstitutional under all three of the Constitutional sections we rely on. As we said earlier, this is a no-brainer.

Accordingly, this Court should find Act 2009-740 and the City's ordinance to be unconstitutional and remand this case for the trial court to fashion an appropriate remedy.

Respectfully submitted, this the 10th day of June, 2021.

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## CERTIFICATE OF COMPLIANCE

Comes Now, Susan G. Copeland, the Attorney for the Appellant, Richard Glass and states the Reply Brief of Appellant complies with Rule 28(j)(1) and the Motion for Word/Page Limitation that was granted in that it contains 8,919 words and that it uses type font Century Schoolbook in size 14 complying with Rule 32(a)(7).

Stated this the 10th day of June, 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 10th day of June, 2021:

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