No. 1190470

IN THE SUPREME COURT OF ALABAMA

Vernon Barnett, et al., Defendants/Appellants

v.

Dr. Danna Jones, Venita Jones, Dana Gladden, Hartselle City Education Association, Rodney Randell, Decatur Education Association, Rona Blevins, Morgan County Education Association, Plaintiffs/Appellees

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On Appeal from the Circuit Court of Montgomery County

BRIEF OF APPELLEES JONES ET AL.

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Statement Regarding Oral Argument

The Circuit Court's decision was so clearly correct that the Court should affirm without oral argument.

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Statement of the Case

This case lies at the intersection of two important aspects of the Alabama Constitution of 1901. The first is the core principle that the Legislature has plenary control over counties except as otherwise limited in specific provisions of the Constitution; indeed, as a specific example of this relationship, "county funds" simply *are* State funds over which the Legislature has control.[1] The second is the manner in which the Constitution both permits and regulates the enactment of local laws.

In essence, the County Commissioners suggest that by enacting some limited and basic law about county budgets, the Legislature has given up its constitutional power to enact local legislation directing how money in a county general fund shall be used. No prior decision of this Court has ever

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[1] "Counties are agencies or subdivisions of the State, created by law for more efficient administration of government. The legislature, in absence of constitutional limitation, has plenary power to deal with counties. Matters of policy as to counties and county funds and how they shall be handled and preserved are matters of legislative policy. It is well settled that the State may appropriate county funds by act of the legislature for public purposes." *Kendrick v. State*, 256 Ala. 206, 217, 54 So.2d 442, 451 (1951) (citations omitted); *accord*, Clay *Cty. Comm'n v. Clay Cty. Animal Shelter, Inc.*, 283 So.3d 1218 (Ala. 2019).

hinted such a thing. To accept such an argument would be a revolution in Alabama constitutional law.

The original Plaintiffs, on whose behalf this brief is filed, are Dr. Danna Jones, individually and in her capacity as Superintendent of the Hartselle City Schools; Vanita Jones, individually and in her capacity as a member of the Hartselle City Board of Education; Dana Gladden, individually and in her capacity as President of the Hartselle City Education Association; Rodney Randell, individually and in his capacity as President of the Decatur Education Association; Rona Blevins, individually and in her capacity as President of the Morgan County Education Association; and those three local Education Associations as entities.

They brought suit against the members of the Morgan County Commission, and the director of the Alabama Department of Revenue in his official capacity, seeking an order requiring the County Commission to comply with Alabama Act 2019-272. [C-9]. Act 2019-272 controls how the County Commission of Morgan County shall allocate and distribute the SSUT (Simplified Seller Use Tax) funds that it receives from the State. In response, the County Commissioners argued that

Act 2019-272 was unconstitutional under Section 105 of the Alabama Constitution.

The parties agreed that the funds at issue would be held by the Circuit Court in an interest-bearing account while the case proceeded. [C-50 to -51].

Certain school boards within the County intervened as Plaintiffs. [C-59 (motion); C-92 (order)].

The parties agreed that the controlling issue was a legal issue, and so they made their legal arguments to the Circuit Court.

The Circuit Court concluded that Act 2019-272 is constitutionally sound, and ruled in favor of the plaintiffs. [C-445]. This appeal followed. The disputed funds, which grow each month, continue to be escrowed pending decision by this Court.

Statement of the Issue

Did the Legislature, in enacting Alabama Act 2019-272, violate Section 105 of the Alabama Constitution?

Statement of Facts

Alabama law provides for a Simplified Seller Use Tax (SSUT), Ala. Code § 40-23-191 *et seq.*, for certain out-of-

state sellers of goods. For the most part, this means certain internet sellers. (A "use tax" is, for practical purposes though not formally, the same as a sales tax. The reasons for, and the nuances of, the formal distinction between sales and use taxes are immaterial to this case.)

Section 40-23-197 provides for the distribution of the SSUT funds that the State collects (a distribution process which now, pursuant to § 40-23-197.1, occurs on a monthly basis).

> (a) The proceeds of simplified sellers use tax paid pursuant to this part shall be appropriated to the department [of revenue], which shall retain the amount necessary to fund the administrative costs of implementing and operating the program and to cover the amounts paid for refunds authorized in Section 40-23-196. The balance of the amounts collected shall be distributed as follows:
>
> > (1) Fifty percent to the State Treasury and allocated 75 percent to the General Fund and 25 percent to the Education Trust Fund.
> >
> > (2) Twenty-five percent to each county in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution.
> >
> > (3) Twenty-five percent of funds to be distributed to each municipality in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution.
>
> (b) Effective for tax periods beginning on or after January 1, 2019, the net proceeds after the

> distribution provided in subdivision (1) of subsection (a) shall be distributed 60 percent to each municipality in the state on a basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to distribution and 40 percent to each county in the state, and deposited into the general fund of the respective county commission, on a basis of the ratio of the population of each county to the total population of all counties in the state as determined in the most recent federal census prior to the distribution.

The County Commissioners point out that this sends a portion to each county's "general fund." So it does. As explained in the argument, it is well settled that a county's general fund is money belonging to the State, which the Legislature can control as it deems appropriate unless otherwise restrained by a provision of the Constitution.

In 2019, the Legislature enacted Act 2019-272, a local law pertaining to Morgan County. The Act is a direction, from the Legislature to the County and its Commission, about how certain State-derived tax funds coming to the county from the State Department of Revenue must be distributed and utilized.

The Act provided that beginning the following October (that is, at the start of a new county fiscal year, *see* Ala. Code § 11-8-1),

> after Morgan County retains five percent of the gross proceeds for administrative purposes, the

> remaining proceeds of the simplified seller use tax distributed to Morgan County pursuant to Section 40-23-197 of the Code of Alabama 1975, shall be allocated by the county commission each fiscal year and distributed on a monthly basis, as follows: …

Act 2019-272. The Act provided that the county commission should allocate the bulk of the funds (98.5 percent of what was left after the County took five percent off the top) to school systems within the county on a stated mathematical basis. The Act provided that the county commission should forward that money to the school systems monthly.

Therefore, in preparing its budget for the upcoming fiscal year, the county commission knew that those SSUT funds would not be available for other county purposes.

The Act does not impose any burden on any taxpayer in Morgan County. It does not impose any tax on any taxpayer, or impose any unfunded mandate on the County. It does not give less State support to the people of Morgan County than to the people of other counties. It merely reflects a legislative decision about how certain State-tax-derived funds should be allocated.

There is no suggestion that compliance with Act 2019-272 will leave the County Commission unable to obey any duty imposed on it by any other statute.

Standard of Review

"This Court's review of constitutional challenges to legislative enactments is de novo. …

> The standard of review of the trial court's judgment as to the constitutionality of legislation is well established. This Court "'should be very reluctant to hold any act unconstitutional.'" ... "In 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 the government." This is so, because "it is the recognized duty of the court to sustain the act unless it is clear beyond a reasonable doubt that it is violative of the fundamental law."

Clay Cty. Comm'n v. Clay Cty. Animal Shelter, Inc., 283 So.3d 1218, 1228-29 (Ala. 2019), quoting *Magee v. Boyd*, 175 So.3d 79, 106-07 (Ala. 2015) (citations and brackets omitted).

Summary of the Argument

The Circuit Court was correct. The Legislature did not violate Section 105 of the Constitution when it enacted Act 2019-272, a local law that directs the Morgan County Commission what to do with the SSUT revenue that comes to the Morgan County general fund.

The Legislature has plenary control over counties, except as limited by specific provisions of the Constitution. In particular, the Legislature can control so-called "county funds," because "county funds" simply are the State's money. This Court has recently reaffirmed this age-old principle. *Clay Cty. Animal Shelter, Inc.*, 283 So.3d 1218 (Ala. 2019).

There is no rule that the Legislature can do this only by general law. Section 104 contains the list of things that cannot be done by local law; and directing the expenditure or distribution of moneys by county commissions is not on that constitutional list of things that can be done only by general law.

So the county commissioners' challenge is under Section 105 of the Constitution, which forbids local law on a "case" or "matter" or "subject" that is already "provided for by a general law."

But there is simply no general law that speaks to the "case" or "matter" or "subject" of Act 2019-272. No general law says what each county commission shall do with the SSUT proceeds that come to the county general fund. No general law says that the Legislature has abandoned its inherent sovereign authority to direct how such money is further allocated or spent. There is no general law promising that each county commission shall be free to decide for itself how to use the SSUT funds, or any other moneys, that come into its general fund.

The county commission and its amicus are displeased with Act 2019-272 because it creates a different state of affairs in Morgan County. Perhaps the Act does something that is not often done by local law, *on the scale of money involved here*. But as the county commissioners and the amicus themselves say, the constitutionality of Act 2019-272 does not depend on whether it leaves the county with more than enough money to fulfill its other legal obligations. Thus, the argument they are making is truly revolutionary and breathtaking in its scope. It would preclude the Legislature from directing, by local law, even a five dollar expenditure by a county. This Court should reject that revolutionary proposition.

Argument

The trial court was correct: Act 2019-272 is constitutional. It is a permissible exercise of the Legislature's inherent and core constitutional authority to direct the use of "county funds," which are (as a matter of law) State funds. There is no rule in the Constitution that this can be done only by general laws; it can be done by local laws as well. And the Legislature has not given up that inherent and core constitutional authority by enacting the general laws that the county commissioners invoke.

1. The Legislature can control and direct the use of county funds, through local legislation as well as general legislation; the 1901 Constitution intentionally continued this basic principle of Alabama law.

Analysis of the constitutionality of Act 2019-272 begins with the core principle of Alabama law that the Legislature can control county affairs as it sees fit. As this Court has recognized, this extends to the Legislature's power to control money in a county's general fund, because that money simply is the State's money. The "legislature's power includes the ability to designate and to control public revenues being held in county funds." *Clay Cty. Comm'n v.*

Clay Cty. Animal Shelter, Inc., 283 So.3d 1218, 1234 (Ala. 2019). "[C]ounty funds are in reality state funds, subject to state control." *Id.* at 1233. "It is well settled that the State may appropriate county funds by act of the legislature for public purposes." *Jefferson Cty. v. Birmingham*, 251 Ala. 634, 640, 38 So.2d 844, 849 (1948) (involving local law). That is true regardless of how the money came to be in the county fund. *Id.*, 251 Ala. at 641.

"Counties are agencies or subdivisions of the State, created by law for more efficient administration of government. The legislature, in absence of constitutional limitation, has plenary power to deal with counties. Matters of policy as to counties and county funds and how they shall be handled and preserved are matters of legislative policy. It is well settled that the State may appropriate county funds by act of the legislature for public purposes." *Kendrick v. State*, 256 Ala. 206, 217, 54 So.2d 442, 451 (1951) (citations omitted).

There is no requirement in Alabama law that such state control of so-called county funds (again, which are actually State funds) must happen only by general legislation, rather than local legislation. To understand this important (though

undisputed) point, it helps to understand some of the history of the 1901 Constitution.

As the county commissioners point out, there was much discussion in the 1901 constitutional convention about local, special, and private laws; there was a general belief that those had proliferated far too much and were occupying much of the Legislature's energy. But at the same time, and relatedly, there was spirited debate about whether more power should be given to the counties, to decide policy for themselves. Those are the two related themes in this case, so it is important to realize that, while restricting local legislation in some ways, the 1901 Constitution retained the supremacy of the Legislature over all matters of policy at the county level.

As Professor Howard Walthall explains, the 1901 convention did adopt some provisions to reduce local legislation (as well as private and special legislation). But, he notes:

> The convention declined to take the next step, however -- one recommended by the report of the Committee on Local Legislation -- in authorizing home rule for counties. Emmet O'Neal, a future governor, chaired the Local Legislation Committee. Chairman O'Neal told the convention that his committee's proposed provision "sought to prevent the assumption by the State Legislature of the

> direct control of local affairs." To do so, O'Neal's committee proposed a provision, borrowed from the New York Constitution, authorizing the Legislature "to confer upon local courts [i.e., county commissions] powers of local legislation and administration, thereby not only saving the time and expense required in the passage of local acts, but also relegating these matters to the local authorities and forum, which can best appreciate and understand restrictions."

Howard P. Walthall, A Doubtful Mind: Understanding Alabama's State Constitution, 35 Cumb. L. Rev. 7, 75-76 (2004). There was spirited debate; many argued (to put it more nicely than they did in their speeches) that some county commissioners lacked the knowledge and ability that were needed to make good policy decisions. *Id.* at 76-77.

As Professor Walthall explains, the convention retained the Legislature's control over counties even through the enactment of local laws. This was a resounding defeat for those most intent on curbing local legislation. "In the end, distrust of the abilities of county commissioners (coupled perhaps with distrust of an innovation imported from New York) prevailed. The convention defeated O'Neal's proposal by a vote of 46 ayes to 70 nays, adopting Oates's substitute proposal instead. The ultimate result was a failure of the convention to achieve its goal, regarded by many as the most

important priority, following suffrage, of curbing local legislation." *Id.* at 78 (emphasis supplied).

This Court has recognized essentially the same point: that while the 1901 convention was concerned with curbing local legislation in certain ways, it was also very strongly concerned with maintaining legislative control even through local laws rather than devolving power to the counties.

> It must be remembered that one of the predominant themes of the Constitution of Alabama of 1901 is found in the restrictions placed on home rule. Power denied to local governments is reserved to the State Legislature; and, subject only to constitutional proscriptions, the Legislature is free to determine policy and enact local laws accordingly.

Drummond Co. v. Boswell, 346 So.2d 955, 958 (Ala. 1977). "In other words, the Legislature may legislate by local act, except with regard to those subjects as to which the constitution specifically speaks to the contrary." *Yellow Dog Dev., LLC v. Bibb Cty.*, 871 So.2d 39, 42 (Ala. 2003) (citing *Drummond*).

So, in the end, the 1901 Constitution puts only certain limits on local legislation. The most prominent provisions, and the ones most important to this case, are in Sections 104 and 105.

Section 104 contains a list of subjects on which the Legislature is forbidden from enacting local, private, or special laws. Any subject on which local legislation is forbidden is laid out in Section 104, subparts 1 through 31. (Some of them will sound strange to modern ears – it is hard for us to imagine the Legislature enacting a special or private law granting a person a divorce, or changing his name, or exempting him from jury duty – but apparently that sort of thing had been a problem in the late 19th century.)

Section 104 does not include any prohibition against local laws directing what any county commission shall do with any part of its general fund. Had the framers of the 1901 Constitution meant to prohibit that or anything like it, they would have put it in Section 104. The framers had no such goal. They did not seek to prevent the Legislature from controlling county funds (which, to reiterate, are actually State funds), whether through general laws or local laws.

So, as the county commissioners and their amicus appear to concede, the Legislature could (just to create a hypothetical example) require the Baldwin County Commission to pay $10,000 per year from its general fund to a specific charitable entity; or it could impose a new governmental

obligation on Marengo County that required expenditures from the county's general fund. No one disputes this. The amount of money involved in this case is larger, but the principle is just the same. That is what the county commissioners and their amicus fail to see.

2. Understanding Section 105 of the Constitution.

With that important background, we come now to the county commissioners' argument that Act 2019-272 is invalid under Section 105 of the 1901 Constitution. Section 105 provides:

> 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.

The part critical to this case is "No … local law … shall be enacted in any case which is provided for by a general law …; and the courts … shall judge as to whether the matter of said law is provided for by a general law …"

Section 105 is different from other constitutional provisions, in a notable way. It does not, by itself, put any limits on what the Legislature may do. Unlike other

constitutional provisions, Section 105 requires an additional ingredient before it imposes any constraint at all: it requires a pre-existing general law that "provide[s] for" the "case" or "matter" in question. In other words, Section 105 requires the Legislature itself to have done something in "a general law" that tied the Legislature's own hands about local legislation.

This Court has recognized that "our Constitution authorizes local legislation, and sets out a procedure for its enactment. Under that authorization 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." *Peddycoart v. Birmingham*, 354 So.2d 808, 814-15 (Ala. 1978) (emphasis supplied).

> Judge McElroy, in his article on § 105, points out that the advocates of this section of the Constitution never intended to abolish the legislature's power to pass a local law when no general law provided for its result. Judge J. Russell McElroy, No ... Local Law ... Shall be Enacted in Any Case Which is Provided for by a General Law, 7 Ala. Law. 243, 259 (1946); see also Note, Local Legislation in Alabama: The Impact of Peddycoart v. City of Birmingham, 32 Ala. L. Rev. 167, 181-82 (1980). A local law violates § 105 only when the substance of the local law is already

> substantially provided for under an existing general law …

City of Birmingham v. City of Vestavia Hills, 654 So.2d 532, 540 (Ala. 1995) (emphasis supplied).

This Court has held that Section 105 (with some exceptions) ordinarily "prohibits local laws that create variances from general laws." *Jefferson County v Taxpayers and Citizens*, 232 So.3d 845, 864 (Ala. 2017).

> A matter is 'provided for by a general law' within the meaning of § 105 if the 'subject [of the local act] is already subsumed by [a] general statute.'" *City of Homewood v. Bharat, LLC,* 931 So. 2d 697, 701 (Ala. 2005) (quoting *Peddycoart v. City of Birmingham*, 354 So. 2d 808, 813 (Ala. 1978)). "'The subject of a local act 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.'" *Bharat*, 931 So. 2d at 702 (quoting *Opinion of the Justices No. 342*, 630 So. 2d 444, 446 (Ala. 1994) (emphasis added in *Bharat*)).

Jefferson County, 232 So.3d at 864-65.

This "variance" test, it must be remembered, does not prohibit local laws that create differences among localities. That is the nature of every local law. Nor does the "variance" test ask whether the local law creates a "variance" from the state of affairs that would exist without the local law. It is the nature of every law ever passed, that it creates a "variance" from the pre-existing state of affairs. Section

105 does not prohibit local variation, or variation from a preexisting state of affairs.

A critical question in any Section 105 case will be how one defines what "case" or "matter" – or "subject," *Jefferson County*, *supra* – is provided for in the general law and in the local law. This Court's precedents show that the "case," "matter," or "subject" must not be described too generally.[2] This Court's precedents also show one must remember that the Legislature does not give up its own authority to do things simply by enacting laws about when or whether or how localities can do those things.

Indeed, even where general law explicitly provides that local governments can or cannot do something, Section 105 does not forbid a local law whereby the Legislature decides to do something in the same sphere. Thus, for instance, if a general law says that local governments cannot impose a certain type of tax, Section 105 does not forbid a local law that imposes that same type of tax in one area. The "case" or

[2] "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 …." *Opinion of the Justices No. 376*, 825 So.2d 109, 112 (Ala. 2002), quoting *Kiel v. Purvis*, 510 So.2d 190, 192 (Ala. 1987).

"subject" or "matter" of the general law was not "a certain kind of tax"; it was the more precise and specific topic "whether local governments can impose such a tax." Thus, in those cases, the Legislature was still as free as it always was to impose such a tax itself by local law. *Walker County v. Allen*, 775 So.2d 808, 812 (Ala. 2000).[3]

As another example, even though a general law provides certain ways that cities can annex territory and limits the circumstances under which they can do that, Section 105 does not forbid the Legislature from enacting a local law that annexes territory to a city. The "case" or "matter" or "subject" of the general law was not "annexation"; it was "how cities may annex," leaving the Legislature again free to

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[3] In *Walker County* this Court explained case law demonstrating that principle:

> In each of those cases, the general law contained a provision that prohibited the county from assessing a certain tax and the local law provided for an assessment of that tax in a certain county. However, the local law did not conflict with the general law because the passage of the local law did not authorize the county to levy the prohibited tax; instead, the local law provided for a levy of the tax by the Legislature. Thus, there was no violation of § 105 because the local law did not create a variance from the general law.

(emphasis supplied).

use its own power by local law in the general field of "annexation." *Town of Vance v. City of Tuscaloosa*, 661 So. 2d 739, 743-44 (Ala. 1995).[4]

3. Act 2019-272 does not violate Section 105. There is no general law about whether SSUT proceeds will remain under the control of each county commission to use as it sees fit, or whether in some places the Legislature will use its fundamental power to direct how those state funds shall be used.

Now we turn to the application of Section 105 in this case. That application must begin with the question: what general law do the county commissioners claim already "provide[s] for" the "case" or "matter" or "subject" that Act

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[4] In *Town of Vance* this Court held as follows, upholding the law against a Section 105 challenge:

> [T]he general laws do not address the authority of the legislature to annex territory to existing cities. … The general laws provide legislatively prescribed procedures for *municipal governments, voters, or property owners* to annex territories; under Act No. 94- 533, the *legislature* has altered or rearranged a city's boundaries. … A legislative annexation by local act is substantially different from a municipal annexation done under the general laws.

(emphasis in original).

2019-272 deals with? When asked that in discovery, the county commissioners were clear: Ala. Code § 40-23-197(b), and Ala. Code § 11-8-3. (C-155).[5] And those are the general laws they rely on in this Court.[6] Notably, they do not claim and have never claimed that the general school funding laws render the Act invalid under Section 105.

Let us take, first, § 40-23-197(b). The only thing that the county commissioners rely on, in that code section, is that distribution of some SSUT proceeds is made to each county's general fund.

So the Court must then ask, what is the "case" or "matter" or "subject" of Act 2019-272, and is that "provided for" or "subsumed" in § 40-23-197(b)? The answer is that Act 2019-272 is about a choice by the Legislature as to what the county commission shall do with the SSUT distribution to Morgan County after it reaches the general fund. And § 40-23-197(b)

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[5] For some unknown reason they also mentioned Ala. Code § 40-28-2 (C-155), but they do not mention that statute to this Court and they have waived any such argument.

[6] The county commissioners passingly mention the fact that Chapter 8 of Title 11 includes other provisions too, and they attach the whole chapter to their brief, but their actual legal argument focuses solely on § 11-8-3. Nor do they explain how any other part of the chapter "provides for" or "subsumes" the subject of Act 2019-272.

says absolutely nothing about that subject, statewide or otherwise.

All that § 40-23-197(b) does, as pertinent to this case, is send funds to the counties' general funds. And as we have shown above, there is simply no rule in Alabama that a county's general fund has a big "hands off!" sign forbidding the Legislature from directing its allocation, distribution or expenditure by any local or general law. For the Legislature to put that money into Morgan County's general fund, by § 40-23-197(b), simply does not mean, as a matter of law, that it will remain in the hands of the county commission for general operating purposes with no possibility of further Legislative control by local law. Those funds remain State funds, subject to State control.

Act 2019-272 and § 40-23-197 speak to entirely different matters. Act 2019-272 is about a Legislative choice as to what is to be done with certain money, in Morgan County, once § 40-23-197 has entirely exhausted its own field of operation. Section 105 does not prohibit that; and the county commissioners cite no case suggesting that Section 105 has any such force.

The county commissioners and their amicus argue that there is great meaning in the fact that an amendment to the SSUT law specified that proceeds would be distributed into counties' general funds, rather than just to the counties generically. They emphasize that this change must have meaning, because amendments to legislation always have some meaning. What they ignore, however, is that this argument cuts against them rather than in their favor.

A county's "general fund" is distinguished from other sorts of "funds" that a county has. Those other funds, unlike the general fund, are for specified purposes – often limited by law to those purposes. As Morgan County's audited financial statement shows, it has a Gasoline Tax Fund that is used on highways, bridges and streets; and it has an Environmental Services Fund that is used to provide waste services to residents. It has other funds that are restricted to being used for debt service, for capital projects, or for other purposes. It has still other funds that it holds in a fiduciary capacity. [C-352 to -53][7]

[7] *See also* Financial Statement for FY 2017-2018, http://www.co.morgan.al.us/commission/finance/documents/statements/2017-18 Audited FS.pdf, pp. 18-19.

So, by specifying that SSUT funds would go to the county general fund rather than just generically to the county, the Legislature was specifying that the SSUT funds would go to the fund from which it is most particularly appropriate and lawful for the Legislature to direct whatever expenditures or appropriations it might see fit. By doing this, the Legislature ensured that the SSUT money was not squirreled away by the county in any restricted or special-purpose fund. The money would go to the fund from which it was most especially easy for the Legislature to make further directions by local law if it chose to do so.

Again, to say that certain money goes to the county general fund does not amount to a declaration by the Legislature that the county commission gets to allocate that money in its discretion. The Legislature does know exactly how to say that, when it means to: to say that money is being put in a county's general fund to be used by the county commission within its discretion. An example appears in *Jefferson Cty. v. Taxpayers & Citizens*, 232 So.3d 845 (Ala. 2017). That case involved an act providing that certain money "shall be deposited into the general fund of the county for use and appropriation as the county commission shall

determine in its discretion." *Id.* at 853, 854. (That was a local law, but the point is to show that when the Legislature wants to say that, it says it.) Another example is Act 2019-91, a local act saying that a certain tax proceeds "shall be deposited into the county general fund to be expended as determined by the county commission."

When the Legislature means to create a policy that certain tax money is the county's to do with as the county commission sees fit, the Legislature says something like that. When the Legislature does not say that, it doesn't mean it. The Legislature did not say it in § 40-23-197.

Implicitly admitting that § 40-23-197 alone does not make Act 2019-272 unconstitutional under Section 105, the county commissioners contend that Act 2019-272 creates a variance from Ala. Code § 11-8-3, one section of the "Budget Control Act." (They have attempted to give it a new nickname – the "Allocation General Law" (Blue brief, p. vii) – even though the words "general fund" and "allocation" do not appear anywhere in the section. That nickname adds nothing to their argument.)

The county commissioners purport to find in § 11-8-3 the dictate that money in the county's general fund can only be

used for purposes listed in § 11-8-3(c). (Blue brief, pp. vii-viii, 28-29, 33, 37-38). That is the cornerstone of their argument that Act 2019-272 creates a variance from general law. But that view of § 11-8-3 is baseless to put it mildly.

Section 11-8-3 requires each county to have a yearly budget, and includes some provisions about what that budget must contain at a minimum. It does not promise that every penny that comes into the general fund, from any source or from all sources, will be available to the county commission for its chosen expenditures. Again, the words "general fund" do not even appear in the section. Nor does the section contain any provision that any county money is off-limits from State control, or that any county money will always be available to the county for use in its general fund budgeting.

The very concept of a budget is that one must begin by knowing what money is available for discretionary spending, and what money is not. Section 11-8-3 does not control, nor indeed does it say anything about, that subject. It does not say that all general fund money is subject to the commission's control.

Section 11-8-3(c), which is the portion that the commissioners rely on in particular, plainly does not even

purport to list exhaustively the expenditures that a county commission may include in its budget. Much less does it say anything about the general fund. On the contrary, it merely says "The budget adopted, at a minimum, shall include any revenue required to be included in the budget under the provisions of Alabama law and reasonable expenditures for the operation of the offices of the judge of probate, tax officials, sheriff, county treasurer, the county jail, the county courthouse, and other offices as required by law." This is not an exhaustive list or a restriction of how county money can be spent; on the contrary it is, on its face, merely a statement that the budget must "at a minimum" include those things.

Nothing in those words remotely suggests that those are the only things that a county commission can pay for out of the county's general fund. No one has ever believed that § 11-8-3 means that – not even the Morgan County Commission. As the commission's own September 2018 report to constituents ("The Voice of Morgan County") reflects, the Commission proudly announced that the budget for FY 2018-2019 would include large distributions to local non-profits – libraries, chambers of commerce, and so forth – that are certainly not

among the things listed in § 11-8-3.[8] And as the county commissioners admit (Blue Brief, pp. 31-32), their budget includes approximately a million dollars for recreation, a subject not mentioned in § 11-8-3. In short, § 11-8-3 does not even purport to set out an exhaustive list of what county commissions can do with county funds.

Much less does that section purport to say anything at all about whether the Legislature can or will, by local legislation, make appropriations from or direct expenditures from a county's general fund. Section 11-8-3 is only about what county commissions must do in terms of budgets, not about the entirely different issue of whether the Legislature might direct or appropriate some money from any county's general fund by local law. This case is therefore analogous to *Town of Vance v. City of Tuscaloosa*, 661 So. 2d 739, 743-44 (Ala. 1995). "[T]he general laws do not address the authority of the legislature to" direct the expenditure of money in county general funds. *Id.* "A legislative [appropriation] by local

[8] The Voice of Morgan County (September 2018), "County Commission set to adopt balanced budget for fiscal 2019," http://www.co.morgan.al.us/community/newsletters/TheVoice_Sept2018/files/September2018.pdf,

act is substantially different from" county budgeting done under the general laws. *Id.*

For these reasons, Act 2019-272 does not violate Section 105. The general laws on which the county commissioners rely simply do not address the same subject as the local law addresses. And, most importantly, the fact that some money comes into a county's general fund does not prohibit the Legislature from deciding – either by local law or by general law – what the county commission must do with that money. The Legislature has always had that power; and the Legislature has not enacted any general law by which it gave up that power.

4. The county commissioners' other arguments lack merit.

The County Commissioners make other arguments, but they are all meritless.

They point out that, in enacting some new taxes and directing the distribution of proceeds among cities and counties, the Legislature has expressly reserved the right to make further local laws on the topic. From this, they seek to convey the impression that the Legislature must enact that sort of "reservation of right" in any such tax law, if it

wants to be able to enact local laws about how the funds shall be used. But that conclusion does not follow.

In the statutes they cite, the Legislature had good reason to make an express reservation of the right to enact local laws. For instance, in the beer tax law, there was enough particular minute detail about the disposition of the tax proceeds in various counties, that there could have been an argument that the general law did actually speak to the "subject" or "case" or "matter" of how the funds would be used. *See* Ala. Code § 28-3-190 (beer tax, with lengthy provisions providing fine-grained and widely varying details about what would be done with the proceeds in 31 counties). And so, it could have been argued, the Legislature had given up its right to enact other local laws on the subject. It seems likely that the Legislature enacted that "reservation of rights" to forestall any such possible argument. This does not suggest that the Legislature must explicitly reserve its right to enact local laws when enacting a general law (like the SSUT) that includes no such county-by-county detail.

As another example, in Ala. Code § 40-26-20, the Legislature dealt with the disposition of another tax and it said that in some counties, the proceeds "shall be paid to

the respective counties to be used for the promotion of tourism, recreation and conventions. Said money shall be controlled by the county commission unless local law provides otherwise." There, the reservation of the right to provide differently by local law was necessary, because the general law had first said on its face that the money would be "controlled by the county commission." The general law thus spoke to who got to decide what to do with the money: it was the county commission, unless local law provided otherwise. Here, by contrast, the SSUT law simply does not speak to that. So, there was no need to include a reservation of rights in the SSUT law.

Here, there is nothing at all in the SSUT law that actually speaks to how the money shall be used once it goes into a county's general fund. So there was no need for the Legislature to state that it was not giving away its sovereign power to control the disposition of state funds through any method it might choose in the future. The Legislature had no need to say any magic words here, in order to protect a right that it had plainly not given away.

The county commissioners also appeal to the notion that the Legislature cannot do indirectly what it is forbidden

from doing directly.[9] But that aphorism has no place here. Here, we are dealing with a constitutional provision (Section 105) that does not, by its own force, prevent the Legislature from enacting laws on any subject. It is a precise provision, which prohibits only what it prohibits. This Court is not at liberty to stretch the words of the Constitution to create prohibitions that do not appear in those words. The Court sticks to the text, and may not broaden it. *Clay County*, 283 So.3d at 1230; *Opinion of the Justices*, 260 So.3d 17, 21 (Ala. 2018).

The county commissioners seem to be asking this Court to ask whether there might be some *other* way of writing a local law directing SSUT moneys to school systems in Morgan County, and whether that other purely hypothetical law would violate Section 105. That is not this Court's task. This Court's task

[9] As support for this notion, the commissioners rely on the final provision of Section 105, in an attempt to suggest that Section 105 has a broad sweep. But that provision is, plainly, inapplicable to this case. It says "nor shall the legislature indirectly enact any such special, private, or local law by the partial repeal of a general law." Act 2019-272 is, by its plain text, not a partial repeal of any general law. And no one has pointed to any statutory text in any general law that the Act even arguably repeals.

is to determine whether Act 2019-272 itself violates Section 105. As we have shown, it does not.

5. The amicus wrongly tries to make new and broader arguments, which are not properly before the Court; but in any event those arguments are wrong.

The amicus makes arguments that the county commissioners did not make below and that the county commissioners do not make in this Court.

For instance, the amicus argues that Act 2019-272 is unconstitutional under Section 105 because the subject of school funding is covered under general law. (Amicus Brief, p. 18). But, as we specifically noted below [C-122, C-293], the county commissioners did not make that argument. This Court will not reverse a trial court's judgment based on arguments not presented to the trial court. "This principle applies with particular force to issues involving the constitutionality of a statute." *Yellow Dog Dev., LLC*, 871 So.2d at 41-42. The amicus's argument about school funding laws is absolutely irrelevant to this case under this well-settled rule.

The amicus makes the same misstep in invoking "other general law[s]" about county expenditures (Amicus Brief, p.

6) other than § 11-8-3. Those arguments were not presented to the trial court, and under the rule discussed above, cannot provide the basis for reversal. In any event, those arguments by the amicus are wrong as well. For instance, while § 11-12-15 sets out a few types of preferred claims that counties must pay, it nowhere purports to override the general background principle that the Legislature can appropriate county funds (because those funds are in fact the State's money).

In the end, the amicus does not even meaningfully attempt to point to a general law which actually, in its own text, contains provisions from which Act 2019-272 creates a "variance." Instead what the amicus is trying to do is to suggest that in the usual course of things, counties are mostly left free to use the money in their general funds to do the various things that counties are authorized by statute to do. But variance from a usual course of things is not what Section 105 prohibits. In general, counties spend general fund money on the things that state law allows them to do, because *counties can do only what state law allows or instructs them to do. Dillard v. Baldwin Cty. Comm'n*, 833 So.2d 11, 16 (Ala. 2002). Act 2019-272 does not create a

variance from that; on the contrary, it is merely one more state law among many, telling a county what to do.

Under Section 105, the party claiming a local law is unconstitutional must point to "a general law" that provides for the same case or matter as the local law. That phrase "a general law" – a general law – is repeated twice in the plain text of this constitutional provision. It is not enough to say "well usually, under a patchwork of various laws, county general funds tend to mostly be used by the county commission …" The task is to point to "a general law" that provides for the same case or matter or subject. The amicus does not even try, because there is no such law to point to. The amicus is simply upset that the Legislature has exercised a local-law power over county funds – State funds – that the Legislature perhaps does not often exercise in such large sums.

6. The policy arguments advanced by the county commissioners and their amicus are not a proper basis for an interpretation of the Constitution; and to hold Act 2019-272 unconstitutional would be an unprecedented ruling with enormously broad effects.

The county commissioners and the amicus argue that, in assessing the constitutionality of Act 2019-272, it is

irrelevant whether the Act leaves the County with plenty of money to fulfill all its legal obligations.

They are correct, as far as that goes. (We noted, in the trial court, that there was no contention that the Act left them unable to meet any other legal obligation; we noted that in order to rule out any sort of novel "as-applied," dollar-amount-based, challenge to Act 2019-272.)

But they are correct that the amount of money left for other county uses is not controlling; and this shows how truly revolutionary their argument is. The constitutionality of Act 2019-272, or any other local act like it, does not depend on whether it instructs county commissioners to send most of the SSUT funds to school boards, or simply instructs county commissioners to send one percent of SSUT funds to school boards. The constitutionality of a local law directing a county commission to make a distribution or expenditure does not depend on whether it involves a million dollars or five dollars.

The argument of the commissioners and their amicus, to the extent it has any logic behind it at all, would forbid any local law requiring any expenditure by a county commission. In any such case, the same argument could be made,

as is made here: that use of money in a county's general fund is "provided for" (*see* Section 105) by § 11-8-3 or some hodgepodge of related general laws, and so no local law can vary that in any degree.

This shows that the argument against Act 2019-272, if accepted by this Court, would be revolutionary and would have a broad reach. The Legislature would be powerless to do anything, by local law, that required an expenditure of so-called "county funds." (The commissioners and the amicus may say that the Legislature could do that if the funds in question are attributable to a state tax under a general law that contains a reservation of right to enact local laws. Even if that slight limitation were accepted, their argument would still sweep very broadly. But frankly the logic of that proposed limitation is hard to understand. If (as the commissioners and their amicus say) general budgeting laws in Title 11 Chapter 8 or elsewhere dictate how county funds may be spent, and if Section 105 therefore forbids local laws that vary from that, then how could the Legislature grant itself the right to vary from that just by enacting some non-budgetary law that says it can?)

The revolution, indeed, would go even more broadly than just to matters of finance. In order to accept the commissioners' position, this Court would have to loosen the law of Section 105 in a way that no cited cases have ever done. No longer would a challenger have to point to "a general law" (the words of Section 105 itself) from which the local law creates a variance. Instead it would be enough to say that the local law creates a variance from a prior state of affairs, or prior assumptions. There is no support in the Constitution or in this Court's precedents for that sort of judicial broadening of Section 105.

Finally, the commissioners and their amicus argue matters of policy. They say that upholding Act 2019-272 would induce the Legislature to enact too many local laws. They say that this would cause political battles. They say that this would make it more difficult for counties to maintain budgetary consistency. All of those pleas should mean nothing to this Court. This case does not call upon this Court to set policy. It is not this Court's role, nor is it within this Court's institutional capacity, to decide what the "right" number of local laws is. Nor to keep the political peace between local elected officials and the Legislature. Nor to be the judge of

what is best in terms of State and county finances. All those things are for the Legislature.

Conclusion

The Court should affirm.

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The required paper copies of this document will be timely filed as well.

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