IN THE SUPREME COURT
STATE OF GEORGIA

DEIDRE WHITE et al.,	**Case No.:**
Appellants,	**S24A1273**
v.	
CITY OF MABLETON,	**Lower Court No.:**
Appellee.	**2313734**

BRIEF OF THE APPELLANTS

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Pursuant to Rule 19, DEIDRE WHITE, RONNIE BLUE, JUDY KING, TANYA LEAKE, & ROBERT SWARTHOUT ("Appellants"), by and through their counsel, file their Brief of the Appellants in the above-styled case. Appellants show that this Honorable Court should reverse the trial court's 12(b)(6) dismissal of their constitutional challenge to House Bill 839 (2022) ("HB 839") and the creation of the City of Mableton ("Mableton").

INTRODUCTION

Appellants plainly pled a viable claim that HB 839 is unconstitutional and therefore void under the "Single Subject Rule" of the Georgia Constitution and *Rea v. City of LaFayette*, 130 Ga. 771 (1908). R. 3–13. On the very face of the bill and in its ballot question to the voters, HB 839 creates two separate and legally independent units of local government—Mableton and "one or more community improvement districts" ("CID")—all in the same local act. R. 177–78, 225, 233.

This cannot be done. The creation of two legally independent units of local government cannot ever be a "single purpose" under this Court's Single Subject precedents. Just like two does not equal one, the creation of *two* separate units of local government is not a *single* purpose. Further, under our law for voter referenda, each ballot question must "stand or fall upon its own merits." *Rea*, 130 at 772. Accordingly, this Court should reverse the trial court's 12(b)(6) dismissal and remand the case for further proceedings.

Cities and CIDs have separate legal identities and are provided for in separate parts of the Georgia Constitution. *Compare* Ga. Const. of 1983, Art. IX, Sec. II, Para. II (cities) *with* Ga. Const. of 1983, Art. IX, Sec. VII, Para. I (CIDs). They are not the same thing, and CIDs are not mere departments of a city, like the police or sewer department. A CID has separate constitutional powers to provide services, a separate governing body, a separate taxing authority, and separate debts. *See* Ga. Const. of 1983, Art. IX, Sec. VII, Para. I–IV; *see also Circle H Dev. v. Woodstock*, 206 Ga. App. 473, 474–76 (1992).

CIDs are not subject to the same restrictions on debt and taxation as cities are. *See Circle H Dev.*, 206 Ga. App. at 474. Furthermore, CIDs must cooperate with "the governing authority of the county or municipality for which the community improvement district is created." Ga. Const. of 1983, Art. IX, Sec. VII, Para. V. One does not generally have to cooperate with oneself—underscoring the separateness between a city and a CID.

For over 150 years, this Court has held that any act that creates or regulates two separate, legally distinct units of local government is a quintessential violation of the Single Subject Rule. *See Bd. of Public Education v. Barlow*, 49 Ga. 232, 242 (1873) (Single Subject violation for act that created a new board of education and regulated the mayor of an existing city); *Christie v. Miller*, 128 Ga. 412, 412–13 (1907) (Single Subject violation for act that regulated court fees in the City of Savannah and Chatham

County); *Schneider v. City of Folkston*, 207 Ga. 434, 434–35 (1950) (Single Subject violation for act that created the City of Folkston and nullified the Town of Homeland). The obvious reasoning of these cases (and others) is that you cannot have a *single objective* when you are creating or regulating *two* legally distinct units of local government in the *same bill*. *See also King v. Banks*, 61 Ga. 20, 22 (1878) (Single Subject violation for act incorporating two towns); *Ex Parte Conner*, 51 Ga. 571, 573 (1874) (Single Subject violation for act that incorporated three separate corporate military bodies); *Council v. Brown*, 151 Ga. 564, 566 (1921) (Single Subject violation for the "chartering of two banking corporations in the same act"); *Chamblee v. North Atlanta*, 217 Ga. 517, 521 (1962) (Single Subject violation for act that amended two city charters); *City of Atlanta v. City of Coll. Park*, 311 Ga. App. 62, 67 (2011) (Single Subject violation in provision of the City of Atlanta's charter that prohibited the City of College Park from assessing occupation taxes), *aff'd on other grounds* 292 Ga. 741 (2013).

Single Subject violations are not mere technicalities that can be explained away or ignored. Rather, the Single Subject Rule is an imperative constitutional protection that ensures voters are not subject to "log rolling" where a measure is passed "not on its own merits, [but] by combining it with other measures, each of which has a certain strength, and thus pulling them through by virtue of their combined strength." *Christie*, 128 Ga. at 414.

In its dismissal of Appellants' case, the trial court identified the correct test for Single Subject Rule violations as "whether all of the parts of the [act] are germane to the accomplishment of a single objective," but quickly muddled the question of what a "single objective" is. R. 264 (citing *Fulton Cnty. v. City of Atlanta*, 305 Ga. 342, 346 (2019) (cleaned up)). The trial court reasoned that HB 839 did not violate Single Subject because the City of Mableton and CIDs have a "high degree of overlap" in the powers that they can employ, and thus, are "highly related, or germane, to each other." Order, R. 266. But the overlapping of powers has never been a relevant consideration when an act creates or regulates two local governments in the same local act. *See Christie*, 128 Ga. at 412–13. Moreover, the trial court fundamentally misconstrued the holdings of *Barlow*, *Christie*, and *Schneider* and other cases applying the Single Subject Rule.

The trial court reasoned while "each of these cases dealt with more than one unit of government, it was not this fact alone that rendered these cases violation of the Single Subject Rule—they all also involved legislation on related matters on more than one subject." R. 264. Going further, the trial court held "[a]t best, these cases demonstrate that, while the fact that legislation acts on two units of local government may be a relevant consideration when consideration a Single Subject Rule violation, it is not a determinative one." *Id.*

But this analysis is just wrong. As Appellants will detail herein, these cases (and several others) rather plainly stand for the legal proposition that creating or regulating of two units of local government in the same act is a Single Subject Rule violation. For example in *King v. Banks*, this Court held "[i]f to incorporate more than one military company with the grant of certain privileges be unconstitutional [in *Ex Parte Connor*], because there is more than one subject matter in the act, we cannot see how to incorporate two towns with greater powers and privileges, such as police and taxing powers, and even powers to make courts in some charters, can be upheld. Log-rolling could be used in the one case as in the other." 61 Ga. at 22. Under *King*, two towns are two subjects—plain and simple. *See id*.

Similarly, in *Christie* this Court was rather explicit about the basis of its holding: "The County of Chatham and the City of Savannah are separate and distinct political entities." 128 Ga. at 413. "We believe the act under consideration clearly contains two subject-matters[.]" *Id*. at 414. These cases, and several others, show that the creation of two entities that can each tax and accumulate debt independently has always been two separate subjects, and the trial court erred by misapplying the law and dismissing Appellants' Single Subject Rule challenge to HB 839.

The trial court also erred in dismissing Appellants' ballot question challenge brought pursuant to *Rea v. City of LaFayette*, 130 Ga. 771, 772

(1908). R. 267. Because the creation of a city and a CID are separate subjects, *Rea* instructs that the creation of each entity must be submitted in separate ballot questions—so each measure can "stand or fall upon its own merits." *Rea*, 130 Ga. at 772. Here, the ballot referendum combined the creation of Mableton and CIDs in the same question—which the voters approved in the November 2022 election. Accordingly, the referendum creating Mableton is unlawful under *Rea*, and the trial court erred by failing to apply *Rea* and dismissing Appellants' complaint.

STATEMENT OF JURISDICTION

The Supreme Court of Georgia has jurisdiction over this appeal of a final order dismissing Appellants' challenge to HB 839 pursuant to the Single Subject Rule of the Georgia Constitution and *Rea v. City of LaFayette*. R. 3–13, 261–269. The Supreme Court has "exclusive appellate jurisdiction" over this case because it involves "the construction of . . . the Constitution of the State of Georgia" and is a case "in which the constitutionality of a law . . . has been drawn into question." Ga. Const. Art. VI, Sec. VI, Para. I.

The final judgment below, a 12(b)6) dismissal of an action for declaratory relief, is directly appealable. O.C.G.A. § 5-6-34. It is not one of the types of cases that requires an application for discretionary appeal. O.C.G.A. § 5-6-35. The final order was entered on April 19, 2024. R. 261. Appellants timely filed a notice of appeal on May 10, 2024. R. 1. All transcripts and the

record have been timely filed. Finally, this Brief of the Appellants has been timely filed according to the Rules of this Honorable Court.

STATEMENT OF THE CASE

A. Statement of Material Facts.

These facts are taken primarily from the Complaint and the stipulated as-passed version of HB 839 filed in the trial court. R. 3–13, 173–259. All facts that are not judicially noticeable legislative facts under O.C.G.A. § 24-2-220, should be construed in Appellants' favor, resolving all doubts in their favor as well. *See Stendahl v. Cobb Cnty.*, 284 Ga. 525, 525 (2008). As this case is a Single Subject Rule challenge to a duly enacted Act of the General Assembly the material facts are primarily the text of HB 839 itself.

On May 9, 2022, Governor Brian Kemp signed HB 839 into law after its passage in the Georgia General Assembly. R. 3, 12. HB 839 provides for the creation of the City of Mableton and "one or more community improvement districts." R. 12, 177–78, 233. HB 839's ballot question combined the creation of Mableton with the creation of community improvement districts. R. 12. The voters approved the creation of Mableton and community improvement districts in a ballot referendum on November 8, 2022. R. 3, 12.

The title of HB 839 provides:

> To incorporate the City of Mableton; to provide a charter for the City of Mableton; to provide for incorporation, boundaries, and powers of the city; to

> provide for a governing authority of such city and the powers, duties, authority, election, terms, method of filling vacancies, compensation, qualifications, prohibitions, and removal from office relative to members of such governing authority; to provide for inquiries and investigations; to provide for organization and procedures; to provide for ordinances and codes; to provide for the offices of mayor and city manager and certain duties and powers relative to those offices; to provide for administrative responsibilities; to provide for boards, commissions, and authorities; to provide for a city attorney and a city clerk; to provide for rules and regulations; to provide for a municipal court and the judge or judges thereof; to provide for practices and procedures; to provide for taxation and fees; to provide for franchises, service charges, and assessments; to provide for bonded and other indebtedness; to provide for accounting and budgeting; to provide for purchases; to provide for the sale of property; to provide for bonds for officials; to provide for definitions and construction; to provide for other matters relative to the foregoing; to provide for a referendum; to provide effective dates; to provide for transition of powers and duties; <u>to provide for community improvement districts</u>; to provide for directory nature of dates; to provide for related matters; to repeal conflicting laws; and for other purposes.
>
> R. 177, ll. 1–18 (emphasis added).

HB 839 incorporates Mableton a city and comprises Mableton's charter. R. 178, ll. 24–26. It also creates CIDs; HB 839 provides that "[p]ursuant to Article IX, Section VII of the Constitution of the State of Georgia, <u>there is created one or more community improvement districts</u> to be located in the City of Mableton, Georgia, wholly within the incorporated area thereof, which

shall be activated upon compliance with the conditions set forth in this section." R. 233, ll. 1330–1333 (emphasis added).

HB 839's ballot question states the following:

> Shall the Act incorporating the City of Mableton in Cobb County, imposing term limits, prohibiting conflicts of interest, and creating community improvement districts be approved?

R. 225, ll. 1126–1128 (emphasis added). The ballot question to the voters said that their vote was for "incorporating the City of Mableton" and "creating community improvement districts," and the voters approved the referendum based on the ballot language above on November 8, 2022. R. 12.

B. Proceedings Below.

On May 15, 2023, Appellants filed their Complaint seeking declaratory relief against Mableton, claiming that HB 839 was unconstitutional under the Single Subject Rule and *Rea v. City of LaFayette*. R. 3–94. Mableton waived service on July 10, 2023 (R. 98), and then, on September 8, 2023, Mableton filed an answer and motion to dismiss pursuant to O.C.G.A.§ 9-11-12(b)(6). R. 100–127.

Appellants filed their response to the motion to dismiss on October 20, 2023, after receiving a consent extension. R. 132–151. Mableton filed a reply in support of their motion on November 20, 2023. R. 152–162.

On March 6, 2024, the trial court held a hearing on Mableton's motion to dismiss where both parties presented oral argument and along with visual aids. *See* T. Ex. 1 of Pet; Ex. 1 of Res. At the hearing, the trial court requested the parties to submit proposed orders to chambers within 15 days. T. 36.

On March 8, 2024, Appellants and Mableton filed a joint request for judicial notice of the enrolled as-passed version of HB 839 with a stipulated exhibit of HB 839 attached thereto. R. 173–259. Both parties submitted their proposed orders to the trial court via email, and, on April 19, 2024, the trial court signed Mableton's proposed order, dismissing Appellants' case for failure to state claim upon which relief could be granted. R. 261–269. Thereafter, both parties filed their proposed orders with the clerk of court to ensure their inclusion in the record. R. 270–284, 285–300. Appellants filed their Notice of Appeal on May 10, 2024, within 30 days of the final order of dismissal. R. 1–2.

ENUMERATIONS OF ERROR

Pursuant to O.C.G.A. § 5-6-40, Appellants claim two enumerations of error in the trial court's final order granting Mableton's motion to dismiss.

I. The trial court erred in dismissing Appellants' challenge to HB 839 under the Georgia Constitution's Single Subject Rule.

II. The trial court erred in dismissing Appellants' challenge to HB 839's ballot referendum question pursuant to *Rea v. City of LaFayette*, 130 Ga. 771, 772 (1908).

RELEVANT LEGAL STANDARDS

A. Standard of Review.

"A dismissal of a complaint for failure to state a claim is reviewed de novo" by the Supreme Court of Georgia. *Southstar Energy Servs., LLC v. Ellison*, 286 Ga. 709, 710 (2010). In such a review, the Court must construe the facts of the petitioner's complaint in the light most favorable to the petitioner, and "all doubts regarding such pleadings must be resolved in the [petitioner's] favor." *Stendahl v. Cobb Cnty.*, 284 Ga. 525, 525 (2008). Furthermore, a motion to dismiss should not be granted unless "(1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought." *Stendahl*, 284 Ga. at 525. The main consideration is "whether, under the assumed set of facts, a right to some form of legal relief would exist." *Northway v. Allen*, 291 Ga. 227, 229 (2012).

B. Constitutional Background of Community Improvement Districts

A CID is a distinct unit of government with power to provide governmental services and facilities. "The General Assembly may by local law create one or more community improvement districts for any county or

municipality or provide for the creation of one or more community improvement districts by any county or municipality." Ga. Const. of 1983, Art. IX, Sec. VII, Para. I.

CIDs and cities were made meticulously separate by the structure and text of the Georgia Constitution. A CID has separate constitutional powers, a separate governing body, a separate taxing authority, and separate debts. *See* Ga. Const. of 1983, Art. IX, Sec. VII, Para. I–IV. This separateness ensures that the debts of a CID are not the debts of a city. *Circle H Dev.*, 206 Ga. App. at 474 (a CID's "debt is an obligation not of the local government but of the CID alone"). Specifically, the Georgia Constitution provides that "[t]he administrative body of a community improvement district may incur debt, as authorized by law, without regard to the requirements of Section V of this Article, which debt shall be backed by the full faith, credit, and taxing power of the community improvement district but shall not be an obligation of the State of Georgia or any other unit of government of the State of Georgia other than the community improvement district." Ga. Const. of 1983, Art. IX, Sec. VII, Para. IV

A CID is an independent unit of government, and our Constitution requires the CID to enter into a cooperation agreement with the city or county for which it is created. *Id.* at Para. V. CIDs can provide a variety of services including:

> (1) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads.
> (2) Parks and recreational areas and facilities.
> (3) Storm water and sewage collection and disposal systems.
> (4) Development, storage, treatment, purification, and distribution of water.
> (5) Public transportation.
> (6) Terminal and dock facilities and parking facilities.
> (7) Such other services and facilities as may be provided for by general law.

Id. at Para. II. Some of these powers are similar to that of cities, but CIDs do not have the full panoply of Home Rule supplementary powers that cities and counties enjoy. *See* Ga. Const. of 1983, Art. IX, Sec. II, Paras. I–IV.

C. Georgia's "Single Subject Rule"

The Single Subject Rule is Georgia's oldest and most enduring contributions to state constitutional law. It states: "No bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof." Ga. Const. of 1983, Art. III, Sec. V, Para. III. It has its origins in the infamous Yazoo Land fraud over 200 years ago, and it has featured in some form or another in each of Georgia's Constitutions over the years. *Fulton Cnty. v. City of Atlanta*, 305 Ga. 342, 345 (2019).

The Single Subject rule prohibits legislation with "provisions concerning 'incongruous' or 'unrelated' subject matters in a single legislative act[.]" *Fulton Cnty*, 305 Ga. at 346. Courts apply the standard of whether all

the parts of legislation are "germane to the accomplishment of a single objective." *Id*. The question then becomes what is a "single objective?"

This "single objective" for legislation may be broad, but the boundary is not infinite. One such boundary is when legislation creates or otherwise acts on more than one unit of government in a single local act. In such a case, Georgia courts have consistently found such legislation violates the Single Subject Rule. *See Barlow*, 49 Ga. at 242; *Christie*, 128 Ga. at 412–13; *Schneider*, 207 Ga. at 434–35 (1950); *King*, 61 Ga. at 22; *Ex Parte Conner*, 51 Ga. at 573; *Council*, 151 Ga. at 566; *Chamblee*, 217 Ga. at 566.

ARGUMENT

A. The trial court erred in dismissing Appellants' challenge to HB 839 under the Georgia Constitution's Single Subject Rule.

This case presents a clear violation of the Single Subject Rule. Ga. Const. of 1983, Art. III, Sec. V, Para. III. As detailed herein, it was legal error for the trial court to dismiss Appellants' complaint for failure to state claim, and this Court should reverse the decision below. The standard of review for this Court is *de novo*. *Southstar Energy Servs., LLC*, 286 Ga. at 710.

As Appellants detailed in their complaint, HB 839's title, text, and ballot question provide for two subjects: (1) the creation of the City of Mableton and (2) the creation of "one or more community improvement districts." R. 3–13. Georgia law has long viewed the creation of two separate

units of local government to be two separate subjects for the application of the Single Subject Rule. *See Barlow*, 49 Ga. at 242; *Christie*, 128 Ga. at 413; *Schneider*, 207 Ga. 435. Accordingly, HB 839 violates the Single Subject Rule.

1. HB 839 creates Mableton and "one or more community improvement districts."

To be clear, HB 839 creates the City of Mableton and "one or more community improvement districts." R. 233, ll. 1330–1333. Georgia courts must construe legislative text according to the cannons of statutory construction, giving "plain meaning" to the text. *Deal v. Coleman*, 294 Ga. at 172–73. In doing so, courts "construe the statute according to its own terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage." *Lucas v. Beckman Coulter, Inc.*, 303 Ga. 261, 263 (2018). Further, courts "must also seek to effectuate the intent of the Georgia legislature . . . construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole." *Lucas*, 303 Ga. at 263.

According to those cannons, HB 839 plainly creates the City of Mableton *and* "one or more community improvement districts" by its own operative text. The operative text could not be any plainer: "Pursuant to Article IX, Section VII of the Constitution of the State of Georgia, <u>there is</u>

created one or more community improvement districts to be located in the City of Mableton, Georgia, wholly within the incorporated area thereof, which shall be activated upon compliance with the conditions set forth in this section." R. 233, ll. 1330–1333.

"There is created" cannot be read any other way than that something is being brought into existence from non-existence. This language—there is created—is "clear and unambiguous" and only capable of one meaning. *Deal*, 294 Ga. at 173. This conclusion is also supported by the title of the bill. The Title of HB 839, which must describe the contents of the legislation, states:

> To incorporate the City of Mableton; to provide a charter for the City of Mableton; to provide for incorporation, boundaries, and powers of the city; to provide for a governing authority of such city and the powers, duties, authority, election, terms, method of filling vacancies, compensation, qualifications, prohibitions, and removal from office relative to members of such governing authority; to provide for inquiries and investigations; to provide for organization and procedures; to provide for ordinances and codes; to provide for the offices of mayor and city manager and certain duties and powers relative to those offices; to provide for administrative responsibilities; to provide for boards, commissions, and authorities; to provide for a city attorney and a city clerk; to provide for rules and regulations; to provide for a municipal court and the judge or judges thereof; to provide for practices and procedures; to provide for taxation and fees; to provide for franchises, service charges, and assessments; to provide for bonded and other indebtedness; to provide for accounting and budgeting; to provide for purchases; to provide for the

> sale of property; to provide for bonds for officials; to provide for definitions and construction; to provide for other matters relative to the foregoing; to provide for a referendum; to provide effective dates; to provide for transition of powers and duties; to provide for community improvement districts; to provide for directory nature of dates; to provide for related matters; to repeal conflicting laws; and for other purposes.

R. 177, ll. 1–18 (emphasis added). As such HB 839's own title confirms that the creation of CIDs was part of the essential intent of the bill.

As if that were not enough, the ballot question combines the creation of the City of Mableton with the creation of "community improvement districts." R. 225, ll. 1126–1128. The ballot question is what informs voters what their vote is all about—it's quite literally what they think are voting for or against.

There are over 1800 lines of text in HB 839. The ballot question is the one sentence that distills all of that legislative text into one sentence, so the voters are informed. If something is in the ballot question, it is part of the main purpose of the bill. HB 839's ballot question states the following:

> Shall the Act incorporating the City of Mableton in Cobb County, imposing term limits, prohibiting conflicts of interest, and creating community improvement districts be approved?

R. 225, ll. 1126–1128. The creation of CIDs was so important to the overall scheme of HB 839 that the General Assembly put it in the ballot question for the election that occurred in November 2022. Voters reading the

"plain and ordinary meaning" of "creating community improvement districts" would surely think that HB 839 creates CIDs. *See Deal*, 294 Ga. at 172.

The trial court's decision appears to read out the language creating CIDs without explicitly stating so. The trial court states, "HB 839 seeks to create one unit of local government—the city of Mableton—and simultaneously equip Mableton with a multitude of powers, authorities, and capabilities. [. . .] The authority to create and provide for CIDs is just one of these powers, authorities, and capabilities granted to Mableton." R. 266.

The trial court further cited provisions of HB 839 where the voters are supposed to "create" the CIDs with a referendum at a later date. R. 266 (citing HB 839, ll. 1336–1346.) But HB 839 does not actually say that the CIDs will be "created" upon a subsequent referendum, but rather the already-created CIDs will be "activated." R. 233–34, ll. 1330–1346.

HB 839 itself says, "[p]ursuant to Article IX, Section VII of the Constitution of the State of Georgia, <u>there is created</u> one or more community improvement districts to be located in the City of Mableton, Georgia, wholly within the incorporated area thereof, <u>which shall be activated</u> upon compliance with the conditions set forth in this section." R. 233, ll. 1330–1333 (emphasis added). The CIDs are "created" in HB 839, and *then* "activated."

The creation of the CIDs cannot just be read out of the bill, especially given the ballot language the voters approved in November 2022. The voters

were certainly told they were CIDs with their vote. R. 12. Allowing such a reading—the erasure of the explicit creation of the CIDs—would allow a form of fraud to be perpetrated on the voters. *See Burton-Callaway v. Carroll Cnty. Bd. of Elections,* 279 Ga. 590, 592 (2005) ("To affirm a referendum when voters were misinformed or completely uninformed of its effect . . . would . . . open the door to fraud.").

2. The creation of two independent units of local government violates the Single Subject Rule.

As detailed above, HB 839 plainly creates both the City of Mableton and "one or more community improvement districts." R. 233, ll. 1330–1333. Cities and CIDs are legally separate entities under the Georgia Constitution. This separation is marked in the text and structure of the Constitution itself.

Cities—termed municipalities by our Constitution—are described in Article IX, Section II, Paragraph II. ("The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly"). Cities, like counties, have the full panoply of Home Rule and supplementary powers. Ga. Const. of 1983, Art. IX, Sec., Para. III–V.

CIDs, on the other hand, are described in an entirely different section of Article IX of the Constitution. *See* Ga. Const. of 1983, Art. IX, Sec. VII,

Para. I. CIDs are not the same thing as cities, but they can be created by the General Assembly via local legislation or by existing counties and municipalities according to the process in the Constitution. Ga. Const. of 1983, Art. IX, Sec. VII, Para. I. CIDs have limited powers compared to a city or county. *See id*. at Para. II.

As stated above, CIDs have a legal identity that is independent of the city or county that they serve. First, CIDs have a separate governing body—the administrative body of the CID. *Id.* at Para. III. This CID administrative body is different than the city government. *Id*. Further, a CID can tax and incur debt completely independent of the city or county it serves. *See id*. at Para. III & IV. Any CIDs debt "shall not be an obligation of the State of Georgia or any other unit of government of the State of Georgia other than the community improvement district." *Id*. at Para. IV.

The Georgia Court of Appeals has described CIDs as such:

> A CID is a device that allows local governments to place the cost of infrastructure improvements on businesses that benefit from those improvements. It is created by the General Assembly through local legislation, conditioned on the consent of the local government as well as a majority of landowners within the CID. The local legislation generally designates the local government as the administrative body for the CID. In its capacity as the administrative body of the CID, the local government is able to incur debt without a voter referendum—something it could not do as a local government per se—because the debt is an obligation

> not of the local government but of the CID alone, supported by the CID's power to levy taxes on nonresidential real property within the district. *See* generally Ga. Const. 1983, Art. IX, Sec. VII; *see also* Monacell, "Community Improvement Districts as a Tool for Infrastructure Financing," 27 Ga. St. B. J. 203 (1991).

Circle H Dev., 206 Ga. App. at 474.

Underscoring their separateness with cities, CIDs must enter a cooperation agreement with "the governing authority of the county or municipality for which the community improvement district is created." *Id.* at Para. V. One does not generally cooperate with oneself—only with others. If cities and CIDs were the same, there would be no need for them to get into cooperation agreement with each other to provide services. *See id.*

The separate nature of Mableton and the CIDs is what creates the Single Subject Rule violation. Time and time again, this Court has applied the Single Subject Rule to strike down legislation that purports to create or regulate two separate units of local government in the same local act.

In *Board of Public Education v. Barlow*, 49 Ga. 232, 236 (1873), the Georgia Supreme Court found a Single Subject Rule violation where a law attempted to create the Americus Board of Education and regulate the Mayor of the City of Americus. Even though the two entities—Board of Education of Americus and the City of Americus—were in the same place serving the same

people, the Court found they were separate subject matters. The Court reasoned:

> One subject matter, and the great object of the Act, is to create a local board of education for the city and to give it authority to establish, regulate and superintend the public schools, and to receive the portion of the general State fund coming to said schools. Another subject matter is the grant of power to the Mayor and Council of the city to levy taxes and issue city bonds, and further, the exemption of the citizens of the city from county taxation for public schools.

Barlow, 49 Ga. at 239–240. The Court struck down the legislation, noting that even the title of the bill "shows that something more than one subject matter is intended." *Id.* at 242. The Court held the regulations of the mayor of Americus are "totally different things from creating an independent Board of Education"—plain and simple. *Id.* at 240.

Similarly, in *Christie v. Miller*, 128 Ga. 412 (1907), the Supreme Court of Georgia struck down an act that provided for regulation of the courts in both the City of Savannah and the County of Chatham. In *Christie*, the act in question (1) established fee bills in civil cases filed in Savannah and (2) provided for the payment of costs in criminal cases the Chatham County. *Id.* at 413. Considering whether the two purposes of the act were "germane," the Court held that "we think that the act embraces two entirely different subject-matters. [. . .] The county of Chatham and the city of Savannah are

separate and distinct political entities." *Id.* It was as simple as that. It did not matter whether Chatham County and Savannah shared essentially the same Home Rule powers within the city limits of Savannah.

In *Schneider v. City of Folkston*, 207 Ga. 434, 435 (1950), the Supreme Court of Georgia again struck down an act that attempted to act upon two units of local government. In *Schneider*, the act in question attempted (1) to amend the charter for the City of Folkston and (2) to repeal the charter of the Town of Homeland. *Id.* at 435. Again, the Court applied the germaneness test of *Christie* and found that the act attempted to "amend, repealed, or modify the charters of two separate and distinct municipal corporations." *Id.* Therefore, "to attempt to do so causes the act to refer to more than one subject-matter." *Id.*

There are more cases for the same proposition. In *King v. Banks*, 61 Ga. 20, 22 (1878), the Supreme Court found a Single Subject violation where an act incorporating two towns. In *Ex Parte Conner*, 51 Ga. 571, 573 (1874), this Court found a Single Subject violation for act that incorporated three separate corporate military bodies. In *Council v. Brown*, 151 Ga. 564, 566 (1921), this Court found a Single Subject violation for the "chartering of two banking corporations in the same act." In *Chamblee v. North Atlanta*, 217 Ga. 517, 521 (1962), this Court found a Single Subject violation for act that amended two city charters.

Other courts around the country have come to the same conclusion: bills creating or acting on two separate units of government in the same bill violate the Single Subject Rule. *Simms v. Sawyers*, 101 S.E. 467, 85 W.Va. 245 (W. Va. 1919) (collecting cases and finding Single Subject violation when same bill creates a city and a school district in the identical geographic area); *Cote v. Highland Park*, 173 Mich. 201, 216, 139 N.W. 69, 74 (Mich. 1912) (Single Subject violation for amending charters of two towns).

Just like the acts in *Barlow*, *Christie*, and *Schneider*, and others, HB 839 plainly creates two separate units of government, each with their own unique abilities to tax and incur public debt, in the same local act. Applying the reasoning of these cases leads to one inevitable conclusion—HB 839 is unconstitutional. The Single Subject Rule has consistently been applied to strike down acts that create two legally distinct and separate entities in the same local act. This case is no different than the cases cited above.

The trial court's attempt to distinguish these holdings is unavailing. The trial court reasoned that while "each of these cases dealt with more than one unit of government, it was not this fact alone that rendered these cases violation of the Single Subject Rule—they all also involved legislation on related matters on more than one subject." R. 264. To the contrary, these holdings are quite literally based on the fact that you cannot create more than one unit of government in the same act under Single Subject. For

example, in *Ex Parte Conner* this Court held "[t]his act has for its avowed purpose the creation of three separate corporate bodies, and, as we think, comes exactly within the intent and scope of [the] prohibition [of the Single Subject Rule]." 51 Ga. at 573. Going further, this Court held:

> The evident intent was to prevent what is commonly known as "log rolling," passing through a measure not on its own merits, by combining it with other measures, each of which has a certain strength, and thus pulling them through by virtue of their combined strength. This bill is, too, one for private benefit, and makes just the case provided for. If such a bill as this is not obnoxious to the rule, it will be difficult to find one. A fertile imagination can always get up some sort of a thread that will connect ideas however incongruous. The thread suggested here is that these companies have a common purpose. But that is true of two railroads or two banks.
>
> *Ex Parte Conner*, 51 Ga. at 573 (emphasis added).

Just like two railroads and two banks could be said to have a common purpose, two military bodies could be said to have a common purpose—or overlap. But such common purpose was deemed insufficient in *Ex Parte Connor*, and it is similarly insufficient in the present case. It does not matter that Mableton and a CID may be connected just like it did not matter that two railroads, banks, or military companies could have been connected.

Further, the trial court held "[a]t best, these cases demonstrate that, while the fact that legislation acts on two units of local government may be a relevant consideration when consideration a Single Subject Rule violation, it

is not a determinative one." *Id.* However, this analysis largely ignores or mischaracterizes the cited cases. The fact that legislation was creating or acting on more than one government was determinative repeatedly. *See Council*, 151 Ga. at 566; *Chamblee*, 217 Ga. at 521; *Christie*, 128 Ga. at 412.

Instead of grappling with the reality of these cases, the trial court's decision focuses on the similarities and "high degree of overlap" of powers between a city and a CID. R. 266. However, this reasoning—based on "degrees of overlap"—has never been followed by this Court and is completely irreconcilable with the case law cited above.

As shown above, similar purpose or overlap was insufficient in *Ex Parte Connor*. Similarly, in *Christie*, Chatham County and the City of Savanah had virtually identical Home Rule supplementary powers, but the act regulating the court systems in both governments was nonetheless struck down on Single Subject grounds. 128 Ga. at 413. The fact that the act was regulating the same general thing (courts) in the same general location in two governments with the same general powers did not matter in the least—the act was struck down in its entirety. *See id*. The similarity of powers was irrelevant to the analysis of whether Single Subject was violated—rather, the differences were what mattered.

It is hard to reconcile the trial court's reasoning that Mableton and the CIDs have enough similar powers to be lawfully created in the same bill, but

somehow it is unlawful for the General Assembly to create three similar military bodies in *Ex Parte Connor*, 51 Ga. at 573, or two banks in *Council*, 151 Ga. at 566. If you can't create two banks in the same bill under Single Subject, surely you can't create a city and a CID in the same bill—especially since the CID's debts are solely the responsibility of the CID and not the city for which it is created. Georgia Const. of 1983, Art. IX, Sec. VII, Para. IV.

As shown above, cities and CIDs are distinct, independent units of government, and Georgia law has long considered two independent units of local government to be two separate subjects for the Single Subject Rule. A city and a CID can neither be created in the same local act nor be combined into the same ballot question under *Rea*, as will be discussed *infra*.

"Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." Ga. Const. 1983 Art. I, Sec. II, Para. V(a). HB 839 plainly violates the Georgia Constitution and is therefore void. *See id.* Accordingly, the trial court made an error of law in granting Mableton's motion to dismiss, and this Court should reverse the dismissal and remand for further proceedings.

B. The trial court erred in dismissing Appellants' challenge HB 839's ballot referendum pursuant to *Rea v. City of LaFayette*, 130 Ga. 771, 772 (1908).

Appellants also appeal the dismissal of their complaint that the ballot question to the Mableton voters violated *Rea v. City of LaFayette*. As shown

herein, it was legal error for the trial court to dismiss Appellants' *Rea* challenge for failure to state claim. The standard of review for this Court is *de novo*. *Southstar Energy Servs., LLC*, 286 Ga. at 710.

HB 839 also violates the constitutional principle articulated in *Rea v. City of LaFayette*, 130 Ga. 771 (1908). In *Rea*, the Supreme Court of Georgia held that "two or more separate and distinct propositions cannot be combined into one and submitted to the voters of a county or a municipality as a single question, so as to have one expression of the voter answer all of them." 130 Ga. at 772. The Supreme Court of Georgia has favorably cited *Rea* in the context of Single Subject Rule analysis as recently as 2019. *See Fulton Cnty*, 305 Ga. at 347 n. 7. As shown *supra*, the creation of a city and a CID is two separate subjects for the Single Subject Rule, and it follows that the two subjects must be separated in separate questions when submitted to the voters in a referendum. *See Carter v.* Burson, 230 Ga. 511, 519 (1973). Explaining the *Rea* rule further, the Supreme Court of Georgia has held:

> Each proposition submitted to the voters should stand or fall upon its own merits, without, on the one hand, receiving any adventitious aid from another and perhaps more popular one, or, on the other hand, having to carry the burden of supporting a less meritorious and popular measure. No voter should be compelled, in order to support a measure which he favors, to vote also for a wholly different one which his judgment disapproves, or, in order to vote against the proposition which he desires to defeat, to vote

> against the one which commends itself to the approval of his judgment.

Wall v. Bd. of Elections, 242 Ga. 566, 569 (1978).

In this case, HB 839 plainly combines the creation of two legally distinct units of local government in the same bill. HB 839's ballot question states the following:

> Shall the Act incorporating the City of Mableton in Cobb County, imposing term limits, prohibiting conflicts of interest, and creating community improvement districts be approved?

R. 225, ll. 1126–1128.

As described at length *supra*, HB 839 creates (1) the City of Mableton and (2) "one or more community improvement districts" in the same bill. It further combines those separate and distinct propositions on the same ballot question. Like the Single Subject analysis above, this is fatal to the bill because creating a city and creating a CID are two wholly different things under Georgia law—requiring separate ballot questions under *Rea*.

There are few government functions more quintessentially "government" than the power to tax and accrue public debt. The voluntary creation of a new government with the power to tax is a weighty concern for voters—at least weighty enough to stand or fall by its own merits.

Here, the City of Mableton and the CIDs are wholly independent and distinct entities that can tax and incur debt independently and in different

ways. They are not the same and must cooperate with each other to provide services. Surely, based on *Rea*, the voters deserve better than to be forced to create two independent taxing and debt-accumulating authorities in the same ballot question? The voters deserve a lawful referendum, and there is no way to make HB 839's ballot question legal, as it is already done. The cake is baked. The voters have already been misled under *Rea*.

This ballot question is exactly what the *Wall* Court warned of where a proposition was "on the one hand, receiving any adventitious aid from another and perhaps more popular one, or, on the other hand, having to carry the burden of supporting a less meritorious and popular measure." 242 Ga. at 569. How can anyone be sure Mableton would have passed without the CIDs or vice versa? You can never know—and this is exactly what this Court has warned of for years.

Moreover, the creation of the CIDs cannot just be read out of the bill or ballot question, given the voters already approved it in November 2022. Allowing such a reading would allow a form of fraud to be perpetrated on the voters. See *Burton-Callaway*, 279 Ga. at 592 (2005) ("To affirm a referendum when voters were misinformed or completely uninformed of its effect . . . would . . . open the door to fraud."). Accordingly, HB 839 violates the principles articulated in *Rea*. Two independent measures were submitted to

the voters in the same ballot question. Accordingly, this Honorable Court should reverse the decision to dismiss Appellants' complaint.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Honorable Court REVERSE the dismissal of their complaint and REMAND this case for further proceedings on the merits.

The undersigned counsel certifies that this submission does not exceed the word count limit imposed by Rule 20.

Respectfully submitted this 12th day of August 2024.

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that there is a prior agreement with counsel for Appellee the City of Mableton, Mr. Harold D. Melton, Esq., to allow documents in a .pdf format sent via email to suffice for service under Supreme Court Rule 14. The undersigned counsel certifies that a .pdf copy of this Brief of the Appellants has been emailed to the counsel listed below contemporaneously with filing of the same.

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SUPREME COURT OF GEORGIA
Case No. S24A1273

July 25, 2024

DEIDRE WHITE et al. v. CITY OF MABLETON.

Upon consideration of Appellant's request for an extension of time to file the brief of appellant in the above case, it is hereby ordered that the motion be granted. An extension is given until August 9, 2024, to file.

A copy of this order MUST be attached as an exhibit to the document for which an extension is received.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

SUPREME COURT OF GEORGIA
Case No. S24A1273

August 9, 2024

DEIDRE WHITE et al. v. CITY OF MABLETON.

Upon consideration of Appellants' request for an extension of time to file the brief of appellant in the above case, it is hereby ordered that the motion be granted. An extension is given until August 12, 2024, to file.

A copy of this order MUST be attached as an exhibit to the document for which an extension is received. No further extensions will be granted.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk