IN THE SUPREME COURT
STATE OF GEORGIA

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

REPLY BRIEF OF THE APPELLANTS

Allen Lightcap
Georgia Bar No. 553459
Mayer & Harper, LLP
50 Hurt Plaza, Suite 1640
Atlanta, Georgia 30303
Tel: (404) 584-9588
Cell: (404 989-4445
Fax: (404) 832-8203
alightcap@mayerharper.com

Counsel for Appellants

Pursuant to Rule 19(3), DEIDRE WHITE, RONNIE BLUE, JUDY KING, TANYA LEAKE, & ROBERT SWARTHOUT ("Appellants"), by and through their counsel, file their Reply Brief of the Appellants in the above-styled case. This Honorable Court should reverse the trial court and remand Appellants' constitutional challenge to House Bill 839 (2002) ("HB 839") and the Appellee City of Mableton ("Mableton") for further proceedings.

ARGUMENT

A. Creating two legally independent units of local government in the same local act can never be germane to a "single objective."

The General Assembly cannot create two legally independent units of local government in the same local act. Period; full stop. Just like two is more than one, the creation of two legally independent units of local government in the same local act is not a "single objective." This case remains that simple. HB 839 is a local act that creates Mableton and "one or more community improvement districts." HB 839 even put the creation of community improvement districts ("CIDs") on the ballot question to the voters. R. 225, ll. 1126–1128. It may be unfortunate and inconvenient that HB 839 violated the Georgia Constitution, but *fiat justitia ruat caelum*.

On a Single Subject Rule challenge, this Court must determine "whether all of the parts . . . of [HB 839] are germane to the accomplishment of a single objective." *Fulton Cnty. v. City of Atlanta*, 305 Ga. 342, 346 (2019)

(citing *Wall v. Bd. of Elections of Chatham County*, 242 Ga. 566, 570 (1978)). The word "single" in this context is an adjective that means "unaccompanied by others" or "consisting of or having only one part, feature, or portion" or "consisting of only one in number." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/single (visited September 25, 2024). Surely, one objective of HB 839 was to create a new city called Mableton in Cobb County, Georgia. Without a doubt, the creation of Mableton was the *primary*[1] objective of the bill. But that does not end the matter—the test is the "Single Subject Rule" not the "Primary Subject Rule."

There was another objective that was explicitly stated and effectuated in HB 839. That objective—prominently displayed on HB 839's ballot question—was to create CIDs. R. 225, ll. 1126–1128; 233, ll. 1330–1333. CIDs are legally independent units of local government that are separate from the city or county that they serve. *See Circle H Dev. v. Woodstock*, 206 Ga. App.

---

[1] Appellants concede this point, not only because it is obvious but also to maintain their credibility and demonstrate their willingness to make obvious concessions. And this concession does not matter much because Appellants do not have to make any arguments about severability in this appeal. The trial court did not make a ruling on severability and dismissed Appellants' suit wholesale. For what it's worth, Appellants contend that HB 839's constitutional defects are not severable because doing so would frustrate the purposes of the act and would make the ballot question become misleading and fraudulent to the voters. Further, because the referendum ballot question itself violated *Rea v. City of LaFayette*, 130 Ga. 771, 772 (1908), the vote that created Mableton was void and unconstitutional *ab initio*. As such, Mableton does not legally exist.

473, 474–76 (1992). CIDs have separate governing bodies, separate debts, separate powers, and separate taxing authority. The separateness between a city and a CID cannot meaningfully be disputed because it is literally written into text of the Georgia Constitution of 1983 in plain English. *See* Ga. Const. of 1983, Art. IX, Sec. VII, Para. I–IV.

It also cannot be reasonably disputed that HB 839 creates Mableton and CIDs. HB 839 states: "Pursuant to Article IX, Section VII of the Constitution of the State of Georgia, there is 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 (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). As shown in the ballot language, one of the objectives—which is constitutionally independent from Mableton—was to create CIDs. The ballot language is important because it's what distilled the entire Act into one understandable sentence to the voters.

Accordingly, Mableton and "one or more" CIDs were created in HB 839. Whether the drafters of HB 839 at Legislative Counsel knew it or not, they

baked in two separate subjects into the Act. In doing so, they baked in a fatal constitutional defect. And once a cake is baked, you can't tinker with its ingredients to fix it by adding another egg or baking soda. Similarly, if a law is unconstitutional and void at its inception, no judicial tinkering can save it after the fact. *See Strickland v. Newton County*, 244 Ga. 54, 55 (1979) ("The general rule is that an unconstitutional statute is wholly void and of no force and effect from the date it was enacted."); *Gilbert v. Richardson*, 264 Ga. 744, 751 (1994) ("A statute declared unconstitutional is deemed void from its inception and is not revived merely because the constitutional infirmity is subsequently eliminated."); *Comm'rs of Rds. & Revenues v. Davis*, 213 Ga. 792, 794 (1958) ("A void statute can be made effective only by re-enactment.").

The creation of Mableton and the CIDs in the same local act presents a clear Single Subject violation under this Court's precedents. If you can't create two banks in the same local act, surely you can't create a city and a CID in the same local act. *See Council v. Brown*, 151 Ga. 564, 566 (1921). If you can't create more than one military body in the same act, surely you can't create a city and a CID in the same act. *See Ex Parte Conner*, 51 Ga. 571, 573 (1874). What would the *Council* Court think about a bill that created a city and a military body? What would the *Ex Parte Conner* Court think about a bill that created a city and a bank? I think we know the answers. Neither

Court would allow these bills. It goes to reason that if you can't create a bank and a city in the same local act, how could you possibly create a city and CIDs—when the CIDs governing body and debts are completely separate from the city itself? It may be inconvenient for Mableton and everyone else involved that HB 839 violated the Georgia Constitution. But we have a constitution for a reason—and there's no "it's inconvenient" exception to the Single Subject Rule. The law must be followed regardless the consequences.

This Court has held firm on this principle for over 150 years. *See Bd. of Pub. Ed. v. Barlow*, 49 Ga. 232, 236 (1873). And that does not mean that the General Assembly is impotently circumscribed so it cannot draft broad, encompassing legislation—nothing is further than the truth. In *Cent. G. R. Co.*, this Court held the following:

> What the constitution looks to is unity of purpose. It does not mean by one subject-matter only such subjects as are so simple that they can not [sic] be subdivided into topics; but it matters not how many subdivisions there may thus exist in a statute or how many different topics it may embrace, yet if they all can be included under one general comprehensive subject which can be clearly indicated by a comprehensive title, such matter can be constitutionally embodied in a single act of the legislature. On the other hand, should the legislature embody in one act two or more different subjects, however simple they may be, which have no relation or connection whatever one with the other, the constitution is violated. The following very apt illustration has been suggested to this court: "You can, in one act, charter Greater New York, with its

> millions, and embrace therein an endless variety of legislation concerning Police, Streets, Wharves, Courts, Jails, Mayor, Council, Tax-Collecting, Tax-Assessing, Legislative and Executive functions, but you can not [sic] in the same act charter two small villages like High Shoals and Belton."
> See *King* v. *Banks*, 61 Ga. 20.

Cent. G. R. Co. v. State, 104 Ga. 831, 846–47 (1898) (emphasis supplied) (quoting *King v. Banks*, 61 Ga. 20 (1878)). Way back in 1898 this Court made it that simple: you cannot create two legally independent units of local government in the same act. An act can be as complex and intricate as New York City's charter, but you cannot charter two humble towns in the same act. This is really the same principle as this case, where HB 839 creates Mableton and "one or more community improvement districts."

"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. 571, 573 (1874) (emphasis added). Ever since 1874, as *Ex Parte Conner* and *King v. Banks* show, this Court has made an explicit distinction between broad legislation with a single wide-ranging, intricate purpose on the one hand and the creation of two local units of governments in the same act on the other hand. The former is totally fine under Single Subject, the latter is not.

"A fertile imagination" can make up arguments to try to excuse this—like saying that there is overlap in a city's and a CID's powers—but the result remains the same. Appellee's Br. at 9–12. And this Court has heard similar arguments before and rejected them. There are numerous cases finding that local acts that create, destroy, or regulate two separate units of local government in the same local act violate the Single Subject Rule. *See Barlow*, 49 Ga. at 242 (Single Subject violation for local 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); *Council*, 151 Ga. at 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).

The holdings in each of these cases, contrary to Mableton's assertions otherwise, were each based on the separateness of the two units of local

government involved. Mableton argues that the "Court found violations of the Single Subject Rule in these cases, but not because the legislation in question touched on two units of local government. Rather, the legislation's provisions were wholly unrelated to any overarching objective—the legislation failed the germaneness test." Appellee's Br. at 13. As detailed in their Appellants' Brief, each of these cases in fact centered on the separateness of the multiple units of local government. Appellants' Br. at 21–27. The separateness of the units of local government was determinative each and every time.

Appellee Mableton argues that Mableton and CIDs can be created together in the same local act because "the General Assembly may include in a single act or constitutional amendment all matters having a logical or natural connection." Appellee's Br. at 7 (citing *Fulton Cnty.*, 305 Ga. at 346). But that is not the law. This is just Mableton's repackaging of the arguments made over a century ago in *Ex Parte Conner*, where the Court warned that a "fertile imagination" can always come up with a "sort of a thread that will connect ideas however incongruous." 51 Ga. at 573. There has to be a limit to logical connection, or the rule itself becomes meaningless. The outward limit on Single Subject has always been creation or regulation of two local governments in the same local act. *See, e.g., King*, 61 Ga. at 22.

At a certain point of abstraction, everything can be related. CIDs and cities are related in a broad sense. But so are cities and counties. And so are

school districts and counties or cities. Anything Earth can be found to have some sort of "logical or natural connection" given enough time or inspiration. *See* Appellee's Br. at 7. If this Court says that a city and a CID can be created in the same local act, what is stopping a city and an independent municipal school district in the same city from being created in the same local act? Nothing would stop such an act under Mableton's "logical or natural connection" test. The city and municipal school district might be legally distinct entities, but they have some "logical or natural connection" because they are serving the same general people in the same general place. But that type of argument has been soundly rejected by this Court time and time again. *See Cent. G. R. Co.*, 104 Ga. at 846–47; *King*, 61 Ga. at 20–22.

Furthermore, Mableton mischaracterizes Appellant's proposed test as a "single unit test," stating that Appellants seek to prohibit any act that attempts to regulate more than one unit of local government. Appellee's Br. at 8. This "single unit test" is not the test Appellant's has pressed in this litigation, and it is not what any of the cases cited *supra* stand for. It is totally fine that general legislation touches many or all units of local government, and most of the O.C.G.A. does just that, including pretty much all of Title 36. But when it comes to creating, destroying or regulating local governments in the same local act—the Single Subject Rule has <u>always</u> forbidden that practice ever since *King*, *Council*, *Cent. G. R. Co.*, and *Barlow*.

Much of Mableton's discussion of *Barlow*, *Christie*, and *Schneider* goes a long way to distinguish each case on anything other than the fact that each case held that two independent units of local government cannot be regulated, created, or destroyed in the same local act. *See* Appellee's Br. at 13–16. Every case Appellants cite can be distinguished, according to Mableton. Appellants will not rehash the holdings of *Barlow*, *Christie*, and *Schneider* here, but suffice it to say, Mableton's attempts to distinguish these cases fails because those cases are self-evidently based on the holding that the General Assembly cannot create or regulate two legally independent units of local government in the same local act. *King v. Banks*, one of the first cases on the subject, says it explicitly. 61 Ga. at 20–22 ("If to incorporate more than one military company with the grant of certain privileges be unconstitutional, 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."). The creation of two towns violates Single Subject. *See id*.

Going further, Mableton distinguishes *Council v. Brown*—the case where one local act created two banks—on the basis that one bank was being created in Americus and one was being created in Macon, as if it would have mattered if the banks had been in the same city or region. *Id*. at 17. The

Council Court said nothing in its holding to support that geographic closeness would have been relevant at all. 151 Ga. at 564–66. Mableton distinguishes *City of Chamblee v. Village on North Atlanta*, 217 Ga. 517 (1962), stating that *City of Chamblee* was "applying *Schneider* and deeming amendment of charter of two separate municipalities was Single Subject Rule violation where the title referred to only one municipality." Appellee's Br. at 17. Except *City of Chamblee* quoted *Schneider* for the following proposition of law, which supports Appellants' rule explicitly:

> It is not competent for the General Assembly in one act to amend, repeal, or modify the charters of two separate and distinct municipal corporations, and to attempt to do so causes the act to refer to more than one subject-matter.

City of Chamblee, 217 Ga. at 521 (citing *Schneider*, 207 Ga. at 435). It is not Appellants who said that modifying two charters in the same act violates Single Subject—it's this Honorable Court for several generations.

Essentially, Mableton argues that the creation of a city and a CID is close enough for Single Subject because "there must be a complete lack of connection—or germaneness—between the various legislative provisions and the stated objective of the legislation." Appellee's Br. at 16–17. But this is a rule that does not have a practical outer limit to the Single Subject Rule.

The structure of the Georgia Constitution of 1983 and how CIDs and cities are created is helpful to understand why these entities are

constitutionally separate and require separate processes for their creation. The Georgia Constitution itself says that the General Assembly can create a city. Georgia Const. of 1983, Art. IX, Sec. II, Para. II. HB 839 did just that here with Mableton.

The General Assembly can also create a CID. Georgia Const. of 1983, Art. IX, Sec. VII, Para. I ("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."). SB 333 cited this language when it provided "pursuant to Article IX, Section VII of the Constitution of the State of Georgia, there is 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.

As shown in Section VII, Paragraph I, CIDs can either be created by the General Assembly itself or the General Assembly can "provide for the creation of one or more community improvement districts by any county or municipality." Accordingly, for lack of a better analogy, cities and CIDs are often siblings—as in they are both created by the General Assembly in different local acts at different times. The General Assembly is the parent who created the city and the CID, making the city and the CID siblings. Or,

on the other hand, the General Assembly can provide that at a city or a county can create a CID at a later date by themselves. In such a situation, the CID is really the child of the county or municipality—to keep the analogy going. Either way—whether siblings or parent/child—the relationship of CIDs to cities is a relationship between two legally independent units of local government that the Georgia Constitution. CIDs and cities are not the same thing. They must be created according to the Georgia Constitution, or they are invalid. As stated before, the separateness of the governing bodies and debts of cities and CIDs is determinative to show that these are truly separate entities of local government.

Mableton finally argues that following the law in this case would lead to absurd results. Appellee's Br. at 18–20. Mableton creates an effective strawman to knock down, but that's all it is. Mableton's example that Appellant's rule would create a mandatory e-filing system unconstitutional is specious—Appellants never made such a claim. Broad, wide-ranging general laws in the Official Code of Georgia Annotated that center on a single objective like mandatory e-filing, balanced budget requirements, or election laws are not at issue in a case like this. All of the cases Appellants have cited have been regarding acts that create, destroy, or modify more than one local government in the same local act—none of them involved general laws. As such, Mableton's parade of horribles is simply mischaracterizes Appellants'

arguments. For the record, Appellants do not have a problem with Title 36 of the Official Code of Georgia Annotated—those are all general laws, not local acts. None of those code sections are city charters that also create independent local governments separate than the city. Appellants have made no argument that general laws cannot have broad scope and breadth, and this Court should disregard Mableton's mischaracterizations of Appellants' arguments.

For the foregoing reasons, Appellants have clearly articulated a Single Subject violation that warrants reversal and remand to the trial court.

B. Mableton is wrong that the trial court properly dismissed Appellants' challenge based on *Rea v. City of LaFayette*, 130 Ga. 771, 772 (1908).

Rea v. City of LaFayette created a rule applying the Single Subject Rule to voter referendum and ballot questions. 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. 771, 772 (1908). The *Rea* Court cited the Single Subject Rule and held the following for basis of its holding:

> The constitution of this State declares that "No law or ordinance shall pass which refers to more than one subject-matter." The obvious purpose of this constitutional provision is to prevent combinations by which different and distinct matters of proposed

> legislation are presented as one measure, whereby each of them gains strength and support which it would not have if it were presented solely upon its own merits and voted upon separately.

Rea, 130 Ga. at 772–73; *see also Carter v. Burson*, 230 Ga. 511, 519 (1973). Despite being over a century old, *Rea* remains good law and was cited favorably 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. Accordingly, it follows that the two subjects must be separated in separate questions when submitted to the voters in a referendum. *See Carter*, 230 Ga. at 519. 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 combined the creation of two legally distinct units of local government in the same bill, stating:

> 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 voters approved Mableton and the CIDs in May 2022 based on that exact ballot language. Further, Mableton does not substantively dispute that HB 839 creates CIDs. Appellee's Br. at 6 ("Mableton does not dispute the fact that the Charter seeks to create the City of Mableton as well as at least one CID within the boundaries of the city."). So the question goes back to the Single Subject Rule analysis cited *supra* but this time for the ballot question.

This ballot question appears to be exactly the type of log-rolling that the *Rea* and *Wall* Courts 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." *Wall*, 242 Ga. at 569. This Court cannot be sure that Mableton would have passed without the CIDs. And that's exactly the evil that the *Rea* rule was trying to combat. The *Rea* Court decried this evil and held the following:

> Why should it be lawful to combine different and independent measures, the adoption of which is dependent upon the votes of the qualified electors, and submit them to the voters, for their adoption or rejection, as a single question, when the people have declared in their constitution that such a course shall

> not be pursued in the legislature when laws are to be enacted? The evils to be prevented by prohibiting such a practice are as apparent in the one case as in the other.

Rea, 130 Ga. at 773. Going further the *Rea* Court held that to "present both propositions in a single submission, thus rendering the success of the one dependent upon the success of the other, or the defeat of the one dependent upon the defeat of the other, is clearly unfair to the voters, and not at all conducive to a free and untrammelled expression of public sentiment as to the merits of either." *Id.*

Some people may have been against Mableton but wanted CIDs and vice versa. We will never know because a legal vote did not occur. HB 839 violates *Rea* because two independent propositions—the creation of Mableton and the creation of CIDs—were submitted to the voters in the same ballot question. Accordingly, this Honorable Court should reverse the trial court's decision below.

CONCLUSION

For the foregoing reasons and for the reasons in their Brief of the Appellants, Appellants respectfully request that this Honorable Court REVERSE the dismissal of their complaint and REMAND this case for further proceedings on the merits. This brief was originally due on September 27, 2024, but this Court extended the deadline for the brief to today,

September 30, 2024, in its Order issued on September 25, 2024, on account of Hurricane Helene.

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

Respectfully submitted this 30th day of September 2024.

Mayer & Harper, LLP
50 Hurt Plaza, Suite 1640
Atlanta, GA 30303
Tel: 404-584-9588
Fax: 404-832-8203
alightcap@mayerharper.com

/s/ Allen Lightcap
Allen Lightcap
GA Bar No. 553459
Counsel for Appellants

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 Reply Brief of the Appellants has been emailed to the counsel listed below contemporaneously with filing of the same.

Harold D. Melton, Esq.
Michael G. Foo, Esq.
Troutman Pepper
600 Peachtree Street, NE, Suite 3000
Atlanta, GA 30308-2216
harold.melton@troutman.com
michael.foo@troutman.com
Counsel for Appellee

Respectfully submitted this 30th day of September 2024.

/s/ Allen Lightcap
Allen Lightcap
GA Bar No. 553459
Counsel for Appellants

Mayer & Harper, LLP
50 Hurt Plaza, Suite 1640
Atlanta, GA 30303
Tel: 404-584-9588
Fax: 404-832-8203
alightcap@mayerharper.com

SUPREME COURT OF GEORGIA

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

IN RE: COURT CLOSING AND DEADLINE EXTENSIONS.

Hurricane Helene is expected to strike Georgia on September 26 and 27, 2024. In consideration of the possibility that the hurricane may create difficulties with access to and from the Nathan Deal Judicial Center (both in-person and electronically), the Supreme Court Clerk's Office will close on **Thursday, September 26, 2024, and Friday, September 27, 2024**.

To account for potential disruptions in communication by lawyers, parties, and others due to the hurricane, it is hereby ordered that all filings with deadlines on Thursday, September 26, 2024, and Friday, September 27, 2024, are **extended until Monday, September 30, 2024, unless otherwise ordered by the Court.**

The Clerk will notify counsel and the public of this order by posting it on the Court's website, in accordance with Supreme Court Rule 1.

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