338 So.3d 757

Vernon BARNETT, in his official capacity as commissioner of the Alabama Department of Revenue, et al.
v.
Dr. Danna JONES, individually and in her official capacity as superintendent of Hartselle City Schools, et al.

1190470

Supreme Court of Alabama.

May 14, 2021

Dorman Walker of Balch & Bingham LLP, Montgomery; and Frank C. Ellis, Jr., J. Bentley Owens III, and William R. Justice of Ellis, Head, Owens, Justice & Arnold, Columbiana, for appellants.

Theron Stokes, Sherri Mazur, and John T. Thomas of Alabama Education Association, Montgomery; Robert D. Segall of Copeland, Franco, Screws & Gill, PA, Montgomery; Samuel H. Heldman of The Gardner Firm, PC, Washington, DC; and Brian Austin Oakes of White & Oakes, LLC, Decatur, for appellees Dr. Danna Jones, Venita Jones, Dana Gladden, Hartselle City Education Association, Rodney Randell, Decatur Education Association, Rona Blevins, and Morgan County Education Association.

J. Thomas Richie and K. Laney Gifford of Bradley Arant Bault Cummings LLP, Birmingham; and Scott Burnett Smith of Bradley Arant Boult Cummings LLP, Huntsville, for appellees Morgan County Board of Education and Decatur City Board of Education.

Morgan G. Arrington, gen. counsel, Association of County Commissions of Alabama, Montgomery; and Kendrick E. Webb and Jamie H. Kidd of Webb & Eley, P.C., Montgomery, for amicus curiae Association of County Commissions of Alabama, in support of the appellants.

Carl Johnson and Melissa B. McKie of Bishop, Colvin, Johnson & Kent, LLC, Birmingham, for amici curiae Alabama Association of School Boards, School Superintendents of Alabama, and Council of Leaders in Alabama Schools, in support of the appellees.

James L. Entrekin, Jr., gen. counsel, Legislative Services Agency, Montgomery; and Othni J. Lathram, secretary, Legislative Council, Montgomery, for amicus curiae Senator Jimmy Holley, chair of the Legislative Council of the Legislature of Alabama, in support of the appellees.

MITCHELL, Justice.

[338 So.3d 759]

This case involves the constitutionality of a 2019 local law that appropriates a large portion of Morgan County's proceeds from the Simplified Sellers Use Tax ("SSUT") to the county and city boards of education in Morgan County. The Morgan County Commissioners have appealed a judgment upholding the local law and contend that the local law violates Ala. Const. 1901 (Off. Recomp)., art. IV, § 105, because, they say, it creates a variance with -- and changes the result under -- preexisting general laws. Because the subject of the local law is not provided for by general law, we hold that it does not violate § 105 and therefore affirm.

Facts and Procedural History

The act at the heart of this case is Act No. 2019-272, Ala. Acts 2019 ("the Local Act"), a local law that sets out how the SSUT proceeds distributed to Morgan County are to be appropriated. The Legislature adopted the SSUT in 2015 through the passage of the Simplified Seller Use Tax Remittance Act ("the SSUT Act"),§ 40-23-191 et seq., Ala. Code 1975. The SSUT Act created mechanisms by which the State can collect a use tax from online sales of goods and services. See id. It also dictates how the proceeds from the tax are distributed. See § 40-23-197(b), Ala. Code 1975. Under this statutory framework, 20% of the SSUT proceeds

are currently distributed to "each county in the state ... 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." § 40-23-197(b). See also § 40-23-197(a).

The Legislature has amended the SSUT Act several times. Relevant to the arguments in this case, a 2018 amendment added what is currently § 40-23-197(b). See Act No. 2018-539, § 1, Ala. Acts 2018. That provision of the SSUT Act now reads, in pertinent part:

> "[T]he net proceeds after the distribution provided in subdivision (1) of subsection (a) shall be distributed ... 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."

§ 40-23-197(b) (emphasis added).

In 2019, the Legislature passed the Local Act, which applies only to Morgan County and serves as the basis of the parties' dispute. The Local Act dictates how the SSUT proceeds distributed to Morgan County must be appropriated following their deposit into the county's general fund. After the proceeds are deposited, Morgan County retains 5% of the proceeds, but the remainder is to be transferred elsewhere. Eighty-five percent of the remaining proceeds are split between the county and city boards of education; another 13.5% goes exclusively to the Morgan County Board of Education; and the final 1.5% goes in equal shares to certified volunteer fire departments in Morgan County. Act No. 2019-272, § 2.

The Morgan County Commission refused to comply with the appropriation requirements of the Local Act. As a result, Dr. Danna Jones, individually and in her official capacity as the superintendent of Hartselle City Schools; Venita Jones, individually and in her official capacity as a member of the Hartselle Board of Education; Dana Gladden, Rodney Randell, and Rona Blevins, individually and in their

[338 So.3d 760]

official capacities as presidents, respectively, of the Hartselle City Education Association, the Decatur Education Association, and the Morgan County Education Association; and the Hartselle City, Decatur, and Morgan County Education Associations brought this suit in the Montgomery Circuit Court in October 2019. They sued the members of the Morgan County Commission -- Ray Long, Jeff Clark, Randy Vest, Don Stisher, and Greg Abercrombie ("the Commissioners") -- in their individual and official capacities and Alabama Commissioner of Revenue Vernon Barnett, seeking a judgment declaring the Local Act constitutional as well as injunctive relief. The defendants answered the complaint and asserted that the Local Act violates § 105. The crux of their argument is that the Local Act creates a variance from preexisting general laws of statewide application and changes the results dictated by the SSUT Act and the Budget Control Act, § 11-8-1 et seq., Ala. Code 1975. This singling out, they say, is prohibited by § 105.

Less than a month after the action began, the Decatur City Board of Education and the Morgan County Board of Education moved to intervene as plaintiffs. Those intervening plaintiffs named the same defendants in their complaint and, in substance, sought the same relief as the plaintiffs. Their motion to intervene was granted.

After briefing, a hearing, and the filing of proposed orders from all parties, the trial court entered its final judgment in favor of the plaintiffs and the intervening plaintiffs. It held that the Local Act did not violate § 105 and ordered the Commissioners to pay all SSUT proceeds distributed to Morgan County after the date of the entry of the order as provided in the Local Act. The Commissioners appealed.[1]

Standard of Review

There are no disputed facts in this case. Thus, our review of the trial court's judgment on the constitutionality of state legislation is de novo. Richards v. Izzi, 819 So.2d 25, 29 n.3 (Ala. 2001). It is also established that this Court will apply a "presumption ... in favor of [the] validity [of state laws]." Alabama State Fed'n of Labor v. McAdory, 246 Ala. 1, 9, 18 So. 2d 810, 815 (1944) ; Clay Cnty. Comm'n v. Clay Cnty. Animal Shelter, Inc., 283 So. 3d 1218, 1229 (Ala. 2019). That is because "it is the recognized duty of the court to sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law." Alabama State Fed'n of Labor, 246 Ala. at 9, 18 So. 2d at 815.

Analysis

The Commissioners challenge the Local Act under § 105 of our State Constitution, which states:

> "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."

(Emphasis added.) In essence, the Commissioners argue that the Local Act violates § 105 because the "case" or "matter"

[338 So.3d 761]

the Local Act covers is already provided for by two general laws: the SSUT Act and the Budget Control Act. Further, the Commissioners argue that because Morgan County's share of the SSUT proceeds is subsequently appropriated by the Local Act after deposit into the county's general fund, but none of the other counties' shares of the SSUT proceeds are similarly appropriated, the Local Act creates an impermissible variance and changes the result otherwise generated by those general laws. We reject those arguments and hold that because the SSUT Act, the Budget Control Act, and the Local Act all provide for distinct cases or matters, the Local Act does not violate § 105.

As a result of the confusion that has arisen around this Court's § 105 jurisprudence, we first explain the proper framework for analyzing that constitutional provision. We then discuss why there is no § 105 violation here.

A. The § 105 Framework

From the time of the adoption of our 1901 Constitution, the text of § 105 and the caselaw interpreting it have been at war. For the first several decades, this Court applied a "substantial difference" test to assess the constitutionality of local laws. See, e.g., State ex rel. Brandon v. Prince, 199 Ala. 444, 74 So. 939 (1917). Instead of assessing what "case[s]" or "matter[s]" the Legislature had already "provided for" by general law, that test charged courts "with the duty to determine whether there is a substantial difference between the general and the local law." Standard Oil Co. of Kentucky v. Limestone Cnty., 220 Ala. 231, 235, 124 So. 523, 526 (1929). The more substantial the difference between the local law and the general law, the more likely it was that the local law would stand. Id. Despite the delegation of authority to the judiciary in the text of § 105, courts applying the "substantial difference" test refused to "invade the legislative domain to determine whether a county should have a local law substantially different and in addition to the state law." Id. The "substantial difference" test focused on the content of the local law and was highly deferential to the Legislature's practice of passing local acts.

That mode of analysis was expressly abandoned in Peddycoart v. City of Birmingham, 354 So. 2d 808 (Ala. 1978). In Peddycoart, this Court held that "[b]eing a limitation upon legislative authority, § 105 clearly means just the opposite of what the Court in [Brandon] held that it

meant." Id. at 813. In explaining the proper framework for analyzing whether a local law violated § 105, this Court held:

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

Id. at 813 (emphasis altered).

After Peddycoart, a "substantial difference" between a challenged local law and general law can no longer save a local law if its subject is "already subsumed" by the contents of a general law. See id. Thus, the key to assessing a local law under § 105 is determining the subject covered by the general law or -- in the phrasing of the text of § 105 -- determining the "case" or "matter" "provided for" by the general law.

[338 So.3d 762]

This Court has held that the phrase "provided for" in § 105 is a "limitation pertaining to matters of the same import dealt with in the general law." Peddycoart, 354 So. 2d at 811 (emphasis added). Accordingly, if the "case" or "matter" of the local law is "provided for" by a general law -- that is, it covers "matters of the same import" -- § 105 has been violated. But if not -- that is, if the laws cover things not of the same import -- the local law does not offend § 105 because "[t]he Alabama Constitution does not prohibit the passage of local acts to address the needs of discrete political subdivisions." City of Homewood v. Bharat LLC, 931 So. 2d 697, 700 (Ala. 2005). Rather, "[i]t is only when those local needs have already been responded to by general legislation that § 105 of our state Constitution prohibits special treatment by local law." Peddycoart, 354 So. 2d at 815.

The rule laid down in Peddycoart has not always been clearly followed. This is partly because that decision applied only prospectively to laws passed after Peddycoart, see id. at 814, and there are therefore several cases decided afterward that properly applied the pre-Peddycoart mode of § 105 analysis. See, e.g., Yancey & Yancey Constr. Co. v. DeKalb Cnty. Comm'n, 361 So. 2d 4, 5 (Ala. 1978) ("That [Peddycoart] holding ... was expressly limited to legislation enacted after the date of that opinion."). Nevertheless, this Court has not always been careful with its language, occasionally slipping into the terminology of overruled cases in post- Peddycoart decisions -- even when the Court ultimately reached the result dictated by Peddycoart. See, e.g., Town of Vance v. City. of Tuscaloosa, 661 So. 2d 739, 744 (Ala. 1995) (noting that "[a] legislative annexation by local act is substantially different from a municipal annexation done under general laws," despite the fact that the "substantial difference" test was no longer good law (emphasis added)).

More confusingly, this Court has sometimes applied a "variance" test to determine what has been "provided for" by general law. See, e.g., Walker Cnty. v. Allen, 775 So. 2d 808, 812 (Ala. 2000) ; Bharat, 931 So. 2d at 702 ; Jefferson Cnty. v. Taxpayers & Citizens of Jefferson Cnty., 232 So. 3d 845, 864 (Ala. 2017) (plurality opinion). Like the old "substantial difference" test, the "variance" test is an incomplete mode of analysis. While it is certainly true that a local law that " 'create[s] a variance from the provisions of a general law,' " Bharat, 931 So. 2d at 701 (citation and emphasis omitted), sufficiently establishes a § 105 violation because it provides for the same case or matter, a variance is not necessary to establish a § 105 violation under its plain terms and the Peddycoart framework. But ultimately, all of this clouds the text of § 105 and the central holding of Peddycoart: that the focus must be on the general law, and local laws cannot be passed on

cases or matters already provided for by a general law.

This Court has not directly defined "case" or "matter" in the context of § 105. In fact, while Peddycoart interpreted the phrase "provided for," it left the meaning of "case" and "matter" open because, at that time, the Court believed those terms did not need to be interpreted. See 354 So. 2d at 811 ("The only phrase in the pertinent part of § 105 requiring construction is 'provided for.' "). But through the decisions of this Court over time, the level of generality this Court has afforded the words "case" or "matter" has become clear -- even if the Court has not described its analysis directly in those terms.

A line of cases dealing with the Legislature's power to annex territory exemplifies how this Court has viewed the breadth of what constitutes subject matter in the § 105 context. In

[338 So.3d 763]

Birmingham v. Vestavia Hills, 654 So. 2d 532, 538 (Ala. 1995), this Court upheld a local law challenged under § 105 relating to the legislative annexation of territory that was not contiguous to the municipality into which it was being annexed. Even though there were preexisting general laws on the topic of annexation, those general laws addressed annexation done by municipal governments, voters, or owners to annex contiguous territories into an existing municipality. Id. at 538-39. The annexation general laws did not address the Legislature's inherent authority to annex territory, which is limited only by restrictions in the Constitution. Id. at 538. Similarly, in Town of Vance v. City of Tuscaloosa, this Court upheld another local law that annexed land to a municipality -- this time involving contiguous tracts of land. 661 So. 2d at 743-44. But the fact that the land was contiguous made no difference in the result under § 105. Id. The Court once again upheld the local law because a general law about municipal, voter, or property-owner annexation did not preempt the Legislature from exercising its own power to annex. In both instances, the Court refused to treat the matter as annexation generally. Rather, it treated the matter provided for as annexation in certain contexts. Put in the terms of Peddycoart, annexation done by municipalities, voters, or property owners was not "of the same import" as annexation done by the Legislature. 354 So. 2d at 811.

While it is crucial that we enforce the constitutional prohibition on local laws covering cases or matters already subsumed by a general law, Vestavia Hills and Town of Vance demonstrate the importance of not extending the boundaries of subject matter too broadly. Determining what is "of the same import" or how broadly to consider the "case" or "matter" addressed by a general law is necessarily an exercise in judicial prudence that will, in many respects, depend on the facts of the case -- chiefly what the local law and general law say. But § 105 and Peddycoart do not speak of substantial differences, variances, or result comparisons -- they speak in terms of cases and matters provided for. Thus, that is what this Court must assess.

B. Application of the § 105 Framework to the Local Act

In this case, the Local Act does not cover the same "case" or "matter" "provided for" by either the SSUT Act or the Budget Control Act. The SSUT Act creates a tax and then provides directions for the distribution and initial deposit of the tax proceeds. Each county's portion of the SSUT proceeds is to be deposited in its general fund. But after the proceeds are distributed according to the provisions of the SSUT Act, the SSUT Act ceases to speak -- its aim has been accomplished. By contrast, the Local Act covers what happens to Morgan County's portion of the SSUT proceeds after it is deposited in Morgan County's general fund. And because the Legislature has an underlying plenary power to control county funds, see Clay Cnty. Animal Shelter, 283 So. 3d at 1218, it may dictate to Morgan County what to do with the SSUT proceeds after they have been deposited in the county's general fund through the mechanisms of the SSUT Act.[2] In other words, the general law (the SSUT Act) covers how the proceeds are collected and get to the Commissioners,

[338 So.3d 764]

and the Local Act covers how the proceeds are to be spent once received.[3] The "case[s]" or "matter[s]" "provided for" are distinct: the general law provides for taxation and distribution and the local law provides for subsequent appropriation.

The Commissioners ask us to treat the "case" or "matter" "provided for" by the SSUT Act like the challengers in Vestavia Hills and Town of Vance asked this Court to treat annexation. They argue that any local law instructing a county commission what to do with SSUT proceeds after they have already been deposited in the county's general fund must fail because its subject is "subsumed by" the SSUT Act itself. But just as the Legislature did not forfeit its ability to annex by passing a general law establishing ways other entities may annex, the Legislature did not forfeit its power of the purse for county funds by passing the SSUT Act and describing where the proceeds must initially be deposited. The creation of a tax and the allocation of its proceeds in the first instance are not "of the same import" as legislative appropriation of the State's own funds at a later time after the requirements of the general law have been completely satisfied.

The Budget Control Act does not come to the Commissioners' rescue either. The Commissioners emphasize that the SSUT Act was amended in 2018 to add the current version of § 40-23-197(b), which includes the phrase "and deposited into the general fund of the respective county commission." This change, they argue, has consequence and "is a clear expression of legislative intent, in general law, about how county commissions can use their SSUT funds." Commissioners' brief at 38. According to them, the SSUT Act's requirement that the proceeds be deposited into the county's general fund triggers the protections of the Budget Control Act, which they argue requires county commissions "to expend ... funds for described public purposes according to allocations entrusted to their discretion." Commissioners' brief at 28 (emphasis added). But such a grant of discretion is nowhere to be found in the Budget Control Act. If anything, the Budget Control Act manifests the Legislature's authority to direct county commissions as to how funds allocated to them by the Legislature must be spent; rather than fiscally liberating county commissions, it actually hamstrings their ability to spend State funds as they might like.

The Budget Control Act requires that counties have a balanced budget and states the items that counties must fund at a minimum. § 11-8-3(c), Ala. Code 1975 ("The budget adopted, at a minimum, shall include ...."). Nowhere does the Budget Control Act grant county commissions the discretion over remaining funds after those required items are funded.[4] Nor does it

[338 So.3d 765]

exhaustively cover the subjects that a county must fund or prevent the Legislature from requiring counties to fund additional items -- like public education. In fact, the section cited by the Commissioners -- § 11-8-3 -- does not even mention counties' general funds. While the "case" or "matter" addressed by the Budget Control Act may subsume the subject of county budgeting procedures, it does not cover the subject of the Legislature's ability to appropriate funds sent to counties -- which is what the Local Act does. To say that the Legislature relinquished its ability to appropriate State funds in a subsection buried in the Budget Control Act would be the quintessential elephant hidden in a mousehole. See Whitman v. American Trucking Ass'ns, 531 U.S. 457, 468, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001) (noting that a legislature "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions -- it does not, one might say, hide elephants in mouseholes").

Finally, to the extent that the "variance" test is a helpful § 105 mode of analysis, the Local Act does not -- contrary to the Commissioners' assertions -- " 'create a variance from the provisions of a general law.' " Bharat, 931 So. 2d at 701 (citation and emphasis omitted). While this test "prohibits local laws that create variances from general laws," Taxpayers & Citizens of Jefferson Cnty., 232 So. 3d at 864,

the measuring stick for the variance is the general law, not the state of affairs in other counties. See Bharat, 931 So. 2d at 702 ; Opinion of the Justices No. 342, 630 So. 2d 444, 446 (Ala. 1994). Here, the Local Act does not create a variance with either the SSUT Act or the Budget Control Act. In accordance with the SSUT Act, Morgan County's share of the proceeds is still deposited in its general fund. And the Commissioners' obligations and abilities under the Local Act are not at variance with their obligations and abilities under the Budget Control Act, either. As has been discussed, the Budget Control Act, specifically § 11-8-3, requires counties to have a balanced budget, to follow certain budgetary procedures, and to fund "at a minimum" a list of enumerated services. There is no factual contention here that the Commissioners cannot, because of the Local Act, do those things. They argue that the Local Act strips them of discretion over the SSUT proceeds -- but the Budget Control Act never conferred that discretion. The disparity of discretion over SSUT proceeds between Morgan County and all other counties in the state, though unfortunate for the Commissioners, is not unconstitutional even under a variance standard.

Conclusion

The SSUT Act created a new tax and distributes the proceeds of that tax to entities across the state. It says where those proceeds must be deposited, but it says nothing about how those proceeds must be spent once there. The Budget Control Act requires each county to have a balanced budget and to cover certain services the State has deemed important. The Local Act touches on none of these things. Instead, it tells Morgan County that it must spend certain moneys already deposited in its general fund on specific expenditures. How to spend the SSUT proceeds was a case or matter left for another day -- and the Legislature opted to answer that open-ended question in Morgan County with the Local Act.

The power -- or lack thereof -- of localities in this state to control their own political

[338 So.3d 766]

destinies has long been the subject of heated debate. But resolution of that debate lies outside the judicial power; our job is only to assess the constitutionality of the Local Act. And because the Local Act does not intrude on a "case" or "matter" "provided for" by either the SSUT Act or the Budget Control Act, we affirm the judgment of the trial court.

AFFIRMED.

Wise and Stewart, JJ., concur.

Parker, C.J., and Mitchell, J., concur specially.

Mendheim, J., concurs in part and concurs in the result.

Shaw, J., concurs in the result.

Bolin, Bryan, and Sellers, JJ., dissent.

PARKER, Chief Justice (concurring specially).

I write only to clarify what I understand the main opinion to mean by its use of the word "appropriation" to describe the act of directing money under Act 2019-272, Ala. Acts 2019, after the money has been deposited in Morgan County's general fund. I read the main opinion's use of "appropriation" as simply a generic word for direction of tax revenue to particular recipients, synonymous with "allocation." In my view, the opinion's use of the word should not be read as having any bearing on the meaning of "appropriation" in other contexts relating to the constitutionality of allocations of tax revenue, such as challenges under Article IV, §§ 45 and 71 (single-subject rule) and § 73 (voting requirement for charitable and educational appropriations), Ala. Const. 1901 (Off. Recomp.).

MITCHELL, Justice (concurring specially).

As the author of the main opinion, I fully concur with it. I write separately to state my view that our courts should interpret the Alabama Constitution of 1901 in accordance with its original public meaning and to invite parties and amici curiae in future cases to provide

scholarship and arguments that help us do that.

It is critical to interpret the Alabama Constitution according to its text. But the key to understanding any text is its context. One vital source of context is the time period in which a provision was adopted. This is relevant "[b]ecause '[w]ords change meaning over time, and often in unpredictable ways.' " Ex parte Tutt Real Estate, LLC, [Ms. 1190963, Mar. 26, 2021] ––– So. 3d ––––, ––––, 2021 WL 1152878 (Ala. 2021) (Mitchell, J., concurring specially) (citation omitted). Thus, to keep courts from improperly changing the law to fit contemporary policy preferences, it is important to give words the meaning they had at the time the law was adopted. Id. This approach upholds the separation of powers and preserves our role as interpreters of the existing Constitution. Cf. Blankenship v. Kennedy, [Ms. 1180649, May 29, 2020] ––– So. 3d ––––, ––––, 2020 WL 2781241 (Ala. 2020).

The process of searching for the original meaning of constitutional provisions can be misunderstood. Some seek to frame the endeavor as an attempt to discover and give effect to the intent of the drafters. But that's an impossible task that can lead courts astray. See, e.g., Antonin Scalia, A Matter of Interpretation 38 (Princeton Univ. Press 1997) ("What I look for in the Constitution is precisely what I look for in a statute: the original meaning of the text, not what the original draftsmen intended."). Not only is it impossible to discern a single, unified intent for a legal document

[338 So.3d 767]

drafted by a convention of dozens of delegates and ratified by thousands of people, but the intentions themselves were not what was ratified -- the text was. See Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts § 67 at 392 (Thomson/West 2012). Thus, the focus must be on the objective meaning of the text itself -- because that is the law that was adopted by the public. And when it comes to an older provision within a constitution, particular attention should be paid to what the text was understood by the public to mean at the time it was adopted. See Smith v. Baptiste, 287 Ga. 23, 32, 694 S.E.2d 83, 90 (2010) (Nahmias, J., concurring specially). In sum, original public meaning is "simply shorthand for the meaning the people understood a provision to have at the time they enacted it." Olevik v. State, 302 Ga. 228, 235, 806 S.E.2d 505, 513 (2017) (emphasis added).

Ascertaining the original public meaning of a constitutional provision can be arduous, but rarely is it impossible. See Scalia & Garner, Reading Law § 69 at 399 (dismantling "[t]he false notion that lawyers and judges ... are unqualified to do the historical research originalism requires"). Of course, that job is made easier when scholarship is generated and issues before us are briefed from that perspective. See Morgan v. Fairfield Cnty., Ohio, 903 F.3d 553, 575 (6th Cir. 2018) (Thapar, J., concurring in part and dissenting in part).

When seeking to determine the original public meaning of a constitutional provision, it is necessary to examine relatively contemporaneous sources and older, pre-enactment sources that shed light on a provision's historical context. See Scalia & Garner, Reading Law § 69 at 400-02; III Roscoe Pound, Jurisprudence 491 (1959) ("In the case of constitutional provisions historical interpretation is often necessary."). Further, research should include the examination of more than one source to capture a more accurate understanding of what terms would have meant to the informed public. Cf. Tutt Real Estate, ––– So. 3d at –––– (Mitchell, J., concurring specially) (cautioning against the use of a single, modern dictionary to determine the meaning of a statutory phrase first adopted in 1923).

Logically, when briefing an issue concerning a provision from the Alabama Constitution of 1901, some think to consult the records of the 1901 Constitutional Convention to find evidence of meaning. And while those records are certainly one source that can reveal the common understanding of provisions at the time, "they are not the exclusive documents to which we may refer." Smith, 287 Ga. at 32, 694 S.E.2d at 90 (Nahmias, J., concurring specially). Nor

should they be. Much like legislative history can be cherry-picked to find remarks favorable to a particular interpretation of a statute, records of constitutional conventions can be similarly abused. Cf. Conroy v. Aniskoff, 507 U.S. 511, 519, 113 S.Ct. 1562, 123 L.Ed.2d 229 (1993) (Scalia, J., concurring in the judgment) (likening the use of legislative history to looking over a crowd to find one's friends). So it is also important to consider "contemporaneous dictionaries, legal treatises, and cases, as well as histories of the period," to get a full scope of the relevant terms' public meaning. See Smith, 287 Ga. at 32, 694 S.E.2d at 90 (Nahmias, J., concurring specially).

This approach to constitutional interpretation is not novel. Perhaps the best-known examples of originalism come from the United States Supreme Court. Indeed, many of that Court's recent landmark decisions are rooted in original-public-meaning analysis of provisions in the United States Constitution. See, e.g.,

[338 So.3d 768]

Ramos v. Louisiana, 590 U.S. ––––, ––––, 140 S. Ct. 1390, 1396, 206 L.Ed.2d 583 (2020) (holding that the "original public meaning" of the Sixth Amendment, as incorporated by the Fourteenth Amendment, requires a unanimous jury verdict to convict a defendant of a serious offense); District of Columbia v. Heller, 554 U.S. 570, 625, 635, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008) (analyzing the "the original understanding of the Second Amendment" to hold that it protects the right to possess and lawfully use a firearm for self-defense within the home); Crawford v. Washington, 541 U.S. 36, 68, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) (holding that, absent a prior opportunity for cross-examination by the defendant, the use of testimonial out-of-court statements from unavailable witnesses is barred based on the original understanding and history of the Sixth Amendment).[5]

Less well known, but equally significant, is how several state supreme courts interpret their own constitutions based on original public meaning. See, e.g., Elliott v. State, 305 Ga. 179, 181, 824 S.E.2d 265, 268 (2019) ("We have often explained that we interpret the Georgia Constitution according to its original public meaning."); State v. Antonio Lujan, 459 P.3d 992, 999 (Utah 2020) ("We have repeatedly reinforced the notion that the Utah Constitution is to be interpreted in accordance with the original public meaning of its terms at the time of its ratification."); Rafaeli, LLC v. Oakland Cnty., 505 Mich. 429, 456, 952 N.W.2d 434, 450-51 (2020) ("Our 'primary objective' in interpreting a [state] constitutional provision ... is 'to determine the text's original meaning to the ratifiers, the people, at the time of ratification.' " (citation omitted)). And while other state supreme courts do not consistently take this approach, Justices on those courts have used original-public-meaning methodology when writing in concurrence or dissent. See, e.g., Bartlett v. Evers, 393 Wis. 2d 172, 286, 945 N.W.2d 685, 741 (2020) (Hagedorn, J., concurring) ("Our starting point in constitutional interpretation must be the original public meaning of the constitution's language because this is the law the people have enacted."); State v. Riffe, 308 Kan. 103, 113, 418 P.3d 1278, 1286 (2018) (Stegall, J., concurring) ("[W]e have made it clear that 'ascertaining the meaning of constitutional provisions' requires us to go back to the 'understanding of the people at their adoption.' " (citation omitted)); Cadena Com. USA Corp. v. Texas Alcoholic Beverage Comm'n, 518 S.W.3d 318, 353 (Tex. 2017) (Willett, J., dissenting) ("When interpreting language, both statutory and constitutional, we aim to determine original public meaning, what the words meant to those who wrote and ratified them.").

In this case, it would have been helpful to have research and arguments before us about the original public meaning of Ala. Const. 1901 (Off. Recomp.), art. IV, § 105. What the words "case" or "matter" were understood by the Alabama public to mean in 1901 would be of great interest to me in determining the scope of § 105 -- especially because today's decision rests on an earlier case, Peddycoart v. City of Birmingham, 354 So. 2d 808 (Ala. 1978), that did not interpret those particular terms. See id. at 811 ("The only phrase in the pertinent portion of § 105

requiring construction is ‘provided for.’ "). I therefore take this opportunity to encourage parties and amici

[338 So.3d 769]

curiae in future state-constitutional cases to provide appropriate research and arguments about the original public meaning of the provision they are asking us to interpret.

Parker, C.J., concurs.

MENDHEIM, Justice (concurring in part and concurring in the result).

I concur with Part B. of the "Analysis" section of the main opinion, and I concur in the result of the main opinion affirming the Montgomery Circuit Court's judgment.

SHAW, Justice (concurring in the result).

I concur in the result. I write specially to note the following.

The presumption inherent in the argument of the appellants ("the Commissioners") is that, because the Simplified Seller Use Tax Remittance Act ("the SSUT Act"), § 40-23-191 et seq., Ala. Code 1975, directs certain money it generates into the general fund of each county commission, county commissions are provided the discretion and control to spend the money as they see fit. If that is true, then it would appear that Act No. 2019-272, Ala. Acts 2019 ("the Local Act"), which is applicable to only Morgan County, would conflict with that presumption. But Ala. Const. 1901 (Off. Recomp.), art. IV, § 105, does not prohibit a local law from conflicting with a presumption; it instead prohibits a conflict with a general law.[6] The SSUT Act, which is a general law, does not itself provide a county commission with control over a county general fund, it just provides money to the fund. Thus, on its face, the Local Act does not conflict with the SSUT Act.

The presumption of a county commission's exclusive discretion or control over a county general fund could be provided by a general law; thus, the SSUT Act, by providing money to the county general fund, would, by the operation or effect of that other general law, essentially be providing a county commission funds over which it would have exclusive discretion or control. The Local Act would conflict with that general law because it conflicts with a county commission's power provided by that general law to spend the money.

In the context of the arguments in the instant case, what is known as the Budget Control Act, Ala. Code 1975, § 11-8-1 et seq., does not appear to be a general law that provides a county commission with exclusive discretion or control over a county general fund. The Budget Control Act purports to apply to public funds "under" a county commission's "management and control." Ala. Code 1975, § 11-8-2. County commissions are required to create a budget, Ala. Code 1975, § 11-8-3(a), and in doing so they must estimate "the anticipated revenue of the county for all public funds under its supervision and control." Ala. Code 1975, § 11-8-3(a)(1). Thus, if revenues and public funds are not under a county commission's management, supervision, and control, they are excluded for budgeting purposes.

In this case, the Local Act, by prescribing how the applicable SSUT tax funds designated for the Morgan County general fund are to be spent, removes those funds from the Morgan County Commission's

[338 So.3d 770]

management, supervision, and control. Those funds are also not an "anticipated revenue" for purposes of budgeting. The Commissioners cite the Budget Control Act for the proposition that it gives a county commission discretion over its county general fund, which would include the proceeds of the SSUT, but, as the main opinion notes, "such a grant of discretion" over all money in the county general fund "is nowhere to be found in the Budget Control Act." ––– So. 3d at ––––.

The Commissioners argue that Morgan County is being treated differently from all other counties, which are able to spend the SSUT tax funds they

receive without limitation by a local law. That is true, and I sympathize with that position. But that shows only that the Local Act conflicts with a general principle. Section 105, by its words, is explicit about the nature of the "conflict" it prohibits. It is limited to prohibiting a local law from providing for a case or matter that a general law -- not a general principle -- provides.

SELLERS, Justice (dissenting).

I respectfully dissent. As outlined in the main opinion, the Simplified Seller Use Tax Remittance Act ("the SSUT Act"), § 40-23-191 et seq., Ala. Code 1975, provides for a use tax to be collected by vendors selling goods or services in Alabama with no physical presence here. Under the SSUT Act, a percentage of the use-tax revenue collected is designated for the benefit of the counties in this State. § 40-23-197(a)(2), Ala. Code 1975.

The SSUT Act specifically requires that the counties' shares of use-tax revenues are to be deposited in the general funds of the county commissions. Section 11-8-3, Ala. Code 1975, a part of what is commonly referred to as the Budget Control Act, § 11-8-1 et seq., Ala. Code 1975, requires each county commission to adopt an annual budget detailing the amount of "public funds under [their] supervision and control" and the estimated amount of funds that will be expended by county offices. § 11-8-3(a)(1).

It is clear to me that the SSUT Act and the Budget Control Act, both laws of general application, designate that a percentage of the total use-tax funds collected pursuant to the SSUT Act are to be spent by the county commissions in this State on county operations generally. But, Act No. 2019-272, Ala. Acts 2019 ("the Local Act"), requires the Morgan County Commission to give nearly all of the use-tax revenue it receives under the SSUT Act to the county and city school systems in Morgan County, which will spend the money on public education, not on the general operations of the county.

> "Section 105 of the Alabama Constitution prohibits the passage of local laws purporting to regulate matters that are 'provided for by a general law.' 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.' Peddycoart [v. City of Birmingham], 354 So. 2d [808], 813 [(Ala. 1978)]."

City of Homewood v. Bharat, LLC, 931 So. 2d 697, 701-02 (Ala. 2005) (emphasis omitted). The matter regulated by the Local Act, i.e., how and by whom county-designated use-tax revenue generated under the SSUT Act will be spent, is a matter already provided for by the general laws at issue. Thus, the Local Act violates Ala. Const. 1901 (Off. Recomp.), art. IV, § 105. It is also noteworthy that the SSUT Act itself provides that a percentage of use-tax revenue is to be distributed to the Alabama Education Trust Fund, see § 40-23-197(a)(1), Ala. Code 1975, thus providing use-tax revenue for the funding of education and lending further support for the

[338 So.3d 771]

conclusion that the SSUT Act and the Local Act cover the same matters.

I would hold that the Local Act violates § 105, and I would reverse the trial court's judgment. Cf. Bharat, 931 So. 2d at 704 (holding that a local law capping the amount of lodging tax that municipalities in Jefferson County could levy and a general law allowing cities to levy lodging taxes with no cap involved the same subject for purposes of § 105 because the local law "change[d] the result that would obtain without its application"); County Comm'n of Jefferson Cnty. v. Fraternal Ord. of Police, Lodge No. 64, 558 So. 2d 893, 895 (Ala. 1989) (holding that a general law establishing county-wide civil-service systems and personnel boards charged with determining the salaries of classified civil-service employees and a local law providing an additional subsistence allowance for law-enforcement officers covered the same subject, namely, "compensation for certain classes of civil service employees"). Accordingly, I respectfully dissent.

Bolin, J., concurs.

Notes:

[1] Although Commissioner Barnett is listed as an appellant on the notices of appeal, the briefs filed in this Court on behalf of the appellants indicate that they were filed only on behalf of the Commissioners.

[2] " 'So, after all is said and done, county funds are in reality state funds, subject to state control, and no part of which can be expended by the county without express or implied authorization by the state.' " Clay Cnty. Animal Shelter, 283 So. 3d at 1233 (quoting Montgomery v. State, 228 Ala. 296, 301, 153 So. 394, 398 (1934)) (emphasis added in Clay Cnty. Animal Shelter).

[3] It is also notable that the SSUT Act uses the distinct terms "appropriated" and "distributed" to describe different actions. § 40-23-197. The act of payment of the proceeds from the tax in the first instance to the Alabama Department of Revenue is described as appropriation. § 40-23-197(a). On the other hand, the transfer of the proceeds to counties after they have been acquired by the Department of Revenue is described as distribution. § 40-23-197(b). " '[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.' " Trott v. Brinks, Inc., 972 So. 2d 81, 85 (Ala. 2007) (quoting 2A Norman Singer, Sutherland on Statutes and Statutory Construction § 46:06 at 194 (6th ed. 2000)).

[4] The inference to be drawn from the Legislature's inclusion of the phrase "and deposited into the general fund of the respective county commission" actually supports the opposite conclusion than the one asserted by the Commissioners. By requiring that SSUT proceeds go into a county's general fund, as opposed to a county fund created for a specific purpose, the Legislature placed those proceeds in the location where a subsequent act of appropriation would make the most sense.

[5] Several of the United States Courts of Appeals apply the same methodology. See, e.g., United States v. Beaudion, 979 F.3d 1092, 1094 (5th Cir. 2020) ("We therefore begin with the original public meaning of the [Fourth] Amendment."); United States v. Phillips, 834 F.3d 1176, 1181 (11th Cir. 2016) ("Nothing in the original public meaning of 'probable cause' or 'Warrants' excludes civil offenses. At the Founding, 'probable cause' meant 'made under circumstances which warrant suspicion.' " (citation omitted)).

[6] Section 105 does not actually say that a local law cannot "conflict" with a general law. It instead says that no local law shall be enacted in any "case" which is provided for by a general law and that the "matter" of a local law cannot be "provided for" in a general law. This language is awkward to the modern ear. For simplicity's sake, I will discuss the prohibition in § 105 in terms of a "conflict," with the proviso that this means that a local law cannot cover the same "case" or "matter" "provided for" by a general law.
