Richard Stephen Glass
v.
City of Montgomery

No. 1200240

Supreme Court of Alabama

February 11, 2022

Appeal from Montgomery Circuit Court (CV-18-79)

STEWART, JUSTICE.

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Richard Stephen Glass appeals from a judgment of the Montgomery Circuit Court ("the trial court") upholding the constitutionality of a municipal ordinance and a corresponding local act that authorize automated photographic enforcement of traffic-light violations within the corporate limits of the City of Montgomery ("the City"). Glass claims that the ordinance and the local act violate Art. VI, §§ 89, 104, and 105, Ala. Const. 1901 (Off. Recomp.). For the reasons below, we affirm the trial court's judgment.

Facts and Procedural History

In 2007, the City enacted Ordinance No. 10-2007 ("the Ordinance"), which established a traffic-light camera system and instituted civil penalties for traffic-light violations recorded on that system. In 2009, the Alabama Legislature enacted Act No. 2009-740, Ala. Acts 2009, a local act known as the "Montgomery Red Light Safety Act" ("the Act"), which ratified and validated the Ordinance "ab initio." See Title to Act No. 2009-740.

On August 7, 2017, Glass ran a red light at an intersection within the corporate limits of the City. The automated camera equipment at the

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intersection detected and photographed Glass's vehicle running the red light. As a result, the City issued Glass a civil citation. In response to his citation, Glass requested and attended an administrative hearing in the Montgomery Municipal Court ("the municipal court").

At the hearing, Glass did not dispute that his vehicle was photographed running the red light. Instead, Glass challenged the constitutionality of the Ordinance and the Act. The municipal court concluded that it lacked jurisdiction to decide Glass's constitutional claims, and it found Glass liable for the red-light violation.

Glass timely appealed that finding of liability to the trial court on February 5, 2018. After an initial hearing, the trial court stayed the proceedings pending this Court's resolution of the consolidated appeals in *City of Montgomery v. Hunter*, 319 So.3d 1213 (Ala. 2020), in which one of the plaintiffs had challenged the constitutionality of the Ordinance and the Act on the same grounds as Glass. Following this Court's decision in *Hunter*, in which this Court determined that the plaintiff challenging the constitutionality of the Ordinance and the Act had mooted the controversy between the parties by paying the civil penalty and accepting liability

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under the Ordinance and the Act, proceedings in the trial court resumed. After a bench trial, the trial court entered a final judgment in favor of the City on December 14, 2020. This appeal followed.

Standard of Review

There are no disputed facts in this case. Therefore, our review of the trial court's judgment on the constitutionality of the Ordinance and the Act is de novo. *Richards v. Izzi*, 819 So.2d 25, 29 n.3 (Ala. 2001). This Court also applies" '" 'every presumption and intendment in favor of [the] validity [of state laws].'" '" *Clay Cnty. Comm'n v. Clay Cnty. Animal Shelter, Inc.*, 283 So.3d 1218, 1229 (Ala. 2019) (quoting *Magee v. Boyd*, 175 So.2d 79, 107 (Ala. 2015), quoting in turn *McInnish v. Riley*, 925 So.2d 174, 178 (Ala. 2005), quoting in

turn *Alabama State Fed'n of Labor v. McAdory*, 246 Ala. 1, 9, 18 So.2d 810, 815 (1944)).

This Court will sustain a legislative act" 'unless it is clear beyond reasonable doubt that it is violative of the fundamental law.'" *White v. Reynolds Metals Co.*, 558 So.2d 373, 383 (Ala. 1989) (quoting *McAdory*, 246 Ala. at 9, 18 So.2d at 815). However, "[i]f a legislative act is repugnant to the Constitution," we have a "duty, when the issue is

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properly presented, to declare it so." *Peddycoart v. City of Birmingham*, 354 So.2d 808, 811 (Ala. 1978).

Analysis

Glass presents three issues for our consideration: (1) whether the Act violates § 105, which prohibits certain local laws, (2) whether the Ordinance and the Act violate § 89, which prohibits the authorization of municipal laws that are inconsistent with the State's general laws, and (3) whether the Act violates § 104, which prohibits local laws that fix the punishment for a crime.

A. The Act

Section 2 of the Act sets forth, among others, the following legislative findings:

> "(1) Accident data establishes that vehicles running red lights have been and are a dangerous problem in Montgomery, Alabama.
>
> "(2) Studies have found that automated traffic camera enforcement in a municipal area is a highly accurate method for detecting red light violations and is very effective in reducing the number of red light violations and decreasing the number of traffic accidents, deaths, and injuries.
>
> "(3) Current Alabama law provides that failing to stop and remain stopped at a traffic-control signal which is emitting a steady red signal is a criminal misdemeanor. Under Alabama law one who commits such a misdemeanor is subject to prosecution only if the misdemeanor was witnessed by either a duly empowered police officer or other witness who makes a verified complaint to a sworn magistrate."

Although § 2 of the Act acknowledges that existing Alabama law designates running a red traffic light to be a criminal misdemeanor, § 3 of the Act provides that any traffic-signal violation under certain provisions of the Alabama Rules of the Road Act ("the ARRA"), § 32-5A-1 et seq., Ala. Code 1975, will also be designated as a civil violation for purposes of the Act:

> "(3) CIVIL VIOLATION. There is hereby created a non-criminal category of state law called a civil violation created and existing for the sole purpose of carrying out the terms of this act. The penalty for violation of a civil violation shall be the payment of a civil fine, the enforceability of which shall be accomplished through civil action. The prosecution of a civil violation created hereby shall carry reduced evidentiary requirements and burden of proof as set out in Section 6, and in no event shall an adjudication of liability for a civil violation be punishable by a criminal fine or imprisonment.
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> "....
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> "(7) TRAFFIC SIGNAL VIOLATION. Any violation of Section 32-5A-31, Section 32-5A-32, or Section 32-5A-5, Code

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of Alabama 1975, or of any

> combination thereof, wherein a vehicle proceeds into a signalized intersection at a time while the traffic-control signal for that vehicle's lane of travel is emitting a steady red signal. A traffic signal violation shall be a civil violation as defined in this act."

Section 4 of the Act provides, in pertinent part:

> "(a) The City of Montgomery is empowered to utilize an automated photographic traffic signal enforcement system to detect and record traffic signal violations, to issue notices of civil violations by mail, and to prosecute civil violations for the recorded traffic signal violations which may occur within the corporate limits of the City of Montgomery as provided in this act. A civil fine assessed under this act shall not exceed one hundred dollars ($l00), and municipal court costs may be assessed in the same manner and in the same amounts prescribed for a municipal criminal traffic-control device violation prosecuted as a misdemeanor under Sections 32-5A-31, 32-5A-32, 32-5A-35, or any combination thereof. An additional fee of ten dollars ($10) shall be added to the Montgomery Municipal Court costs authorized to be collected in connection with notices issued under this act. Court costs collected pursuant to this act shall be distributed in the same manner as prescribed by law for the distribution of municipal court costs for misdemeanor violations."

Section 5 of the Act outlines the procedures for assessing and satisfying a civil penalty under the Act. Section 6, among other things, vests the municipal court with the jurisdiction to adjudicate civil violations under the Act. Section 7 provides the right of appeal to the trial

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court for a trial de novo. Section 10 provides, in pertinent part, that "[n]o person may be arrested or incarcerated for nonpayment of a civil fine or late fee." Section 13 provides, in pertinent part, that "[n]o civil penalty may be imposed and no adjudication of liability for a civil violation may [be] made under this act if the operator of the vehicle was arrested or was issued a citation and notice to appear by a sworn police officer for a criminal violation of any portion of Article II, Chapter 5A, Title 32 .... "

B. Section 105

Glass contends that the general laws provide for the conduct at issue in this case -- running a red light -- and that the Act consequently violates § 105 by addressing a "case" that is already provided for by the general laws. Section 105 provides:

> "No special, private, or *local law*, except a law fixing the time of holding courts, shall be enacted in *any case* which is *provided for by a general law*, or when the relief sought can be given by any court of this state; and *the courts, and not the legislature, shall judge as to whether the matter of said law is provided for by a general law*, and as to whether the relief sought can be given by any court; nor shall the legislature indirectly enact any such special, private, or local law by the partial repeal of a general law."

(Emphasis added.) The general laws implicated in this case include

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various provisions of Alabama's motor-vehicle and traffic code, Title 32 of the Alabama Code of 1975. The ARRA, a part of the motor-vehicle and traffic code, broadly governs the operation of vehicles on Alabama roadways. Section 32-5A-31, Ala. Code 1975, addresses traffic-signal enforcement and provides, in pertinent

part:

> "(a) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with law, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in [the ARRA]."

Section 32-5A-32(3), Ala. Code 1975, specifically prescribes the law pertaining to red lights and provides, in pertinent part:

> "(3) Steady red indication:
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> "a. Vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on either side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to proceed is shown ...."

Section 32-5A-8, Ala. Code 1975, designates violations of the above-quoted traffic-signal provisions as criminal misdemeanors and describes possible penalties:

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> "(a) It is a misdemeanor for any person to violate any of the provisions of [the ARRA] or of Title 32, unless such violation is by [the ARRA] or other law of this state declared to be a felony.
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> "(b) Every person convicted of a misdemeanor for a violation of any of the provisions of [the ARRA] for which another penalty is not provided, shall for a first conviction thereof be punished by a fine of not more than $100.00 or by imprisonment for not more than 10 days; for conviction of a second offense committed within one year after the date of the first offense, such person shall be punished by a fine of not more than $200.00 or by imprisonment for not more than 30 days or by both such fine and imprisonment; for conviction of a third or subsequent offense committed within one year after the date of the first offense, such person shall be punished by a fine of not more than $500.00 or by imprisonment for not more than three months or by both such fine and imprisonment."

In addition, § 32-5A-11, Ala. Code 1975, states that the ARRA "shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of various jurisdictions."

Whether the Act was enacted in a "case which is provided for by a general law" ultimately hinges on how this Court understands the phrase "provided for" in § 105. We most recently addressed the framework for § 105 analysis in *Barnett v. Jones*, [Ms. 1190470, May 14, 2021]__So. 3d __(Ala. 2021) (plurality opinion with respect to § 105 framework). In

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Barnett, a plurality of this Court observed that, "[f]rom the time of the adoption of our 1901 Constitution, the text of § 105 and the caselaw interpreting it have been at war." *Barnett*, __So. 3d at__. In particular, the plurality opinion noted that the initial mode of analysis, which had 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), was expressly abandoned in *Peddycoart v. City of Birmingham*, 354 So.2d 808 (Ala. 1978), and replaced with a framework that was far less deferential to the legislature's practice of passing local acts. *Barnett*, So.3d at__.

In *Peddycoart*, this Court concluded that a "substantial difference" between a local act and

a general law could no longer save a local act if its subject was "already subsumed" by the contents of the general law. *Peddycoart*, 354 So.2d at 813 (emphasis omitted). This Court further held that only the "provided for" language in § 105 required construction, and this Court defined the phrase as a "limitation pertaining to matters of the same import dealt with in the general law." *Id.* at 811. Thus, under

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Peddycoart, if a local act covers matters of the same import dealt with in a general law, the local act violates § 105. We agree with the *Barnett* plurality's affirmation of *Peddycoart*'s "same import" standard and apply that standard here.

Importantly, the City offers valuable historical context pertaining to the framers' original understanding of § 105, and it asserts that it "is no exaggeration to say that the original understanding of the § 105 turns more recent jurisprudence on its head." City's brief at 45. As the City later clarifies, however, "[i]nstead of requesting that the Court alter its Section 105 jurisprudence, this discussion of ratification history is rather aimed at confirming that the Court's long-running practice of defining the 'case' or 'matter' of a general law narrowly is consistent with Section 105's original understanding." *Id.* at 49.

Although we acknowledge the significance of giving words in a constitutional or statutory provision the meaning they had at the time the provision was ratified, we are also mindful of the plain meaning of the text of § 105 -- in particular, the plain meaning of the portion of the text of § 105 that provides that "the courts, and not the legislature, shall judge

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as to whether the matter of said law is provided for by a general law." Section 105 clearly and affirmatively directs the judicial branch to determine whether the "matter" of a local act is provided for by a general law and compels us to give substantial weight to the judiciary's interpretive power when clarifying the framework for § 105 analysis.

As discussed in more detail below, this case is also factually distinguishable from those cases that the City claims are illustrative of this Court's "long-running practice" of narrowly defining "case" or "matter." Although we decline to directly define those terms in the context of § 105 analysis, embracing a narrow interpretation of the term "case" does not undercut our conclusion that the Act addresses a "case" or "matter" of the same import dealt with in the general laws. Moreover, as the plurality opinion in *Barnett* noted, "[d]etermining 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." *Barnett*, __So. 3d at__. Accordingly, we now address the application of § 105 to the facts in this case.

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Both the Act and the relevant provisions of Alabama's motor-vehicle and traffic code, specifically, the provisions of the ARRA quoted and discussed earlier in this opinion, indisputably address the consequences of running a red light. The City, however, contends that, because the Act provides for civil enforcement of red-light violations and civil enforcement is not provided for by the general laws, the Act does not violate § 105. As the City explains: "If the driver does not receive a criminal citation (and if the act of running a red light is captured on photographic enforcement equipment), then the criminal law does not provide for the driver's case and the civil Local Act can apply." City's brief at 24.

In light of this Court's duty to make"' "[e]very presumption ... in favor of the constitutionality of an act of the legislature," '" *Miller v. Marshall Cnty. Bd. of Educ.*, 652 So.2d 759, 760 (Ala. 1995) (quoting *State Bd. of Health v. Greater Birmingham Ass'n of Home Builders, Inc.*, 384 So.2d 1058, 1061 (Ala. 1980), quoting in turn *Mobile Hous. Bd. v. Cross*, 285 Ala. 94,

97, 229 So.2d 485, 487 (1969)), we accept the City's contention that the Act should be interpreted as narrowly pertaining to cases in which a motorist runs a red light, is captured on photographic-

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enforcement equipment, and does not receive a criminal citation. Crucially, however, a careful examination of the general laws applicable in this case fails to reveal any language in the ARRA that limits the applicability of the ARRA to instances in which a motorist who runs a red light signal receives a criminal citation but is not captured on photographic-enforcement equipment. Indeed, as noted in our initial examination of the relevant general laws, § 32-5A-8(a) provides that "[i]t is a misdemeanor for any person to violate any of the provisions of [the ARRA] or of Title 32," and no exception is made for violators who evade a criminal citation but are captured on photographic-enforcement equipment.

Moreover, a statutory provision pertaining to the enforcement, rather than the classification, of violations of Title 32 does not narrowly apply to instances in which a law-enforcement officer initiates a complaint. Instead, § 12-12-53(b), Ala. Code 1975, provides that a "uniform traffic ticket and complaint shall be used in traffic cases where a complaint is made by a law enforcement officer *or by any other person or an information is filed by the district attorney*." (Emphasis added.)

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Therefore, the general laws broadly classify violations of Title 32 as criminal misdemeanors and do not foreclose the possibility of enforcement against violators who are captured on photographic-enforcement equipment.

The City further argues that this Court's decisions in *Barnett*, *City of Birmingham v. City of Vestavia Hills*, 654 So.2d 532 (Ala. 1995), and *Jefferson County v. Taxpayers & Citizens of Jefferson County*, 232 So.3d 845 (Ala. 2017) (plurality opinion), dictate a holding that the Act does not address a "case which is provided for by a general law." As previously noted, the plurality opinion in *Barnett* urged a context-specific construction of the term "case" in § 105, and this Court determined in *Barnett* that the "case" provided for by the general law at issue in that case was not the broad "matter" of the use tax, but the more limited domain of the creation of the tax as well as "distribution and initial deposit of the tax proceeds" into a county's general fund. *Barnett*, __So. 3d at__ (majority opinion with respect to application of §105 to the facts). On the other hand, this Court determined, the local act at issue in *Barnett* covered only how a county spent those tax proceeds after the

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initial deposit. Thus, this Court concluded that "[t]he 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." *Barnett*, __So. 3d at__.

Here, however, both the general laws and the Act cover the designation and penalization of identical violations of Alabama's motor-vehicle and traffic code. This is not a situation in which the general laws create and classify the traffic violation, but are entirely silent with respect to enforcement, and the Act merely addresses that void by providing for a civil penalty. Instead, both the general laws and the Act broadly, and dissimilarly, classify the same violations of Title 32; the general laws provide for enforcement of those violations, and the Act seeks to introduce a distinct, albeit nonexclusive, enforcement scheme.

In *Vestavia Hills*, the local act at issue in that case pertained to the legislature's authority to annex, to an existing municipality, land that was not contiguous to that municipality. 654 So.2d at 539. In that case, this Court recognized that the Alabama Constitution expressly empowers the

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legislature to alter a city's boundaries but that the general laws only provide for "municipal governments, voters, or property owners to annex contiguous territories into an existing city." *Id.* at 539-40 (emphasis omitted). None of the legislatively prescribed procedures in the general laws, this Court held, could have facilitated the legislature's annexation of noncontiguous land to an existing municipality.

Here, however, there is no constitutional provision that specifically empowers the legislature to authorize a civil traffic-light enforcement scheme in a single city. The general laws also, as previously discussed, do not provide an exception for red-light violators that are captured on photographic-enforcement equipment but do not receive a criminal citation; the procedures set out in the general laws -- although different from the procedures set out in the Act -- are capable of being applied to such red-light violators.

Finally, in *Jefferson County*, this Court concluded that the subject matter of the local act at issue in that case was not provided for by the general law at issue in that case because, the Court determined, the county's *demonstrated local needs* could not be addressed by a tax levied

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under the general law. *Jefferson County*, 232 So.3d at 868. This Court's decision, however, was premised on the "demonstrated local needs" line of cases -- further discussed below -- and provides limited guidance with respect to the appropriate construction of the terms "case" or "matter" or the phrase "provided for" in § 105. Therefore, the opinion in *Jefferson County* does not control the analysis of this discrete issue, and we conclude that the instant Act addresses a "case which is provided for by a general law."

Nevertheless, the Act passes constitutional muster under the "demonstrated local need" exception to § 105, and the City's need to protect the safety of the traveling public is sufficient to permit the Act to survive the § 105 challenge in this case. As this Court concluded in *State ex rel. Jones v. Steele*, 263 Ala. 16, 81 So.2d 542 (1955)," '[i]f, in the judgment of the Legislature, local needs demand additional or supplemental laws substantially different from the general law, the Legislature has the power to so enact.'" 263 Ala. at 19, 81 So.2d at 544 (quoting *Standard Oil Co. of Kentucky*, 220 Ala. at 235, 124 So. at 526). Of particular relevance here is that this Court, in *Jefferson County*,

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rejected the taxpayers' argument that the county had failed to sufficiently demonstrate local need by pointing out that the local act at issue was "supported by *legislative findings* of special local needs ...." *Jefferson County*, 232 So.3d at 868 (emphasis added).

Here, the passage of the Act was also supported by legislative findings of special local needs. Specifically, § 2 of the Act asserts that accident data "establishes that vehicles running red lights have been and are a dangerous problem in Montgomery, Alabama," and further affirms that automated traffic-camera enforcement is "very effective in reducing the number of red light violations and decreasing the number of traffic accidents, deaths, and injuries."

Although Glass acknowledges the legislative findings supporting the Act, he argues that, because those findings fail to establish that red-light violations within the corporate limits of the City are more dangerous than anywhere else in the State, the local-need exception cannot apply in this case. Specifically, Glass contends that a local act can survive a § 105 challenge only when there is a "unique" local need not substantially

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provided for by the general laws, and he cites *Ellis v. Pope*, 709 So.2d 1161 (Ala. 1997), in support of this proposition.

Importantly, however, *Ellis*'s persuasive power is limited by the fact that (1) unlike the Act, the local act at issue in *Ellis* did not

incorporate legislative findings, (2) *Ellis* is the only authority that references "unique" local needs, and (3) only a plurality of this Court concurred with the reasoning in *Ellis*. Moreover, even assuming that our caselaw provides that a local act can survive a § 105 challenge only when the local need is "unique," Glass has nevertheless failed to demonstrate that the "local need" exception would not apply in this case.

Glass broadly contends that running a red light is dangerous statewide and notes that local acts providing for automated traffic-camera enforcement in other municipalities also include "particularized findings of local need." Glass's brief at 32-33. According to Glass, these observations establish that the needs articulated in the legislative findings supporting the Act are not particular to the City.

However, as this Court observed in *Jefferson County*, if the legislative findings supporting the Act are erroneous, Glass "could have

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presented evidence to the contrary in the trial court." 232 So.3d at 868. The record, however, is bereft of any evidence presented by Glass that undermines the findings of local need in § 2 of the Act. Although Glass claims that he is "unaware" of any evidence that demonstrates that running a red light within the corporate limits of the City is more dangerous than doing so anywhere else in State, he fails to offer any affirmative evidence (1) showing that the danger posed within the corporate limits of the City is equivalent to the danger posed in the rest of the State or (2) disproving the City's alleged need for additional measures to address that danger.

As previously noted, the Act is presumptively constitutional, and Glass bears the burden of proving that it is not. *King v. Campbell*, 988 So.2d 969, 980 (Ala. 2007) ("An act of the legislature arrives with a presumption of constitutionality; a party challenging that constitutionality has the burden of overcoming that presumption."). Here, Glass has not met his burden, and this Court has no basis for disputing the legislature's conclusion that supplementary and substantially different means of monitoring intersections were needed to address the

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City's local need for additional protection and safety. Accordingly, we affirm the trial court's judgment insofar as it concluded that the Act survived the § 105 challenge in this case.

C. Section 89

Section 89 of the Alabama Constitution of 1901 provides: "The legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this state." The meaning of the term "inconsistent" in § 89 is narrower, and comparatively more straightforward, than the meaning of the phrase "provided for" in § 105.

As this Court stated in *Lanier v. City of Newton*, 518 So.2d 40 (Ala. 1987)," '[i]nconsistent' is defined ... as 'mutually repugnant or contradictory; contrary, the one to the other, so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other.' It implies 'contradiction -- *qualities which cannot coexist* -- not merely a lack of uniformity in details.'" *Id.* at 43 (quoting *Black's Law Dictionary* 689 (5th ed. 1979) and *City of*

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Montgomery v. Barefield, 1 Ala.App. 515, 523, 56 So. 260, 262 (1911)) (emphasis added).

Significantly, "we cannot say a conflict exists merely because the [general law] ... is silent where the ordinance speaks," *Alabama Recycling Ass'n v. City of Montgomery*, 24 So.3d 1085, 1090 (Ala. 2009), and "it is no objection to a municipal ordinance not in contravention of a state law that it affords additional regulation 'complementary to the end state legislation would effect.'" *Standard Chem. & Oil Co. v. City of Troy*, 201 Ala. 89, 92, 77 So. 383, 386 (1917) (quoting *Borok v. City of Birmingham*, 191 Ala.

75, 78, 67 So. 389, 390 (1914), citing in turn *Turner v. Town of Lineville*, 2 Ala.App. 454, 459, 56 So. 603, 605 (1911)). An ordinance is inconsistent with state law when it "permits what a state statute forbids or forbids what a statute permits." *Ex parte Tulley*, 199 So.3d 812, 821 (Ala. 2015). In other words, to violate § 89, the Ordinance and the Act, which ratified and validated the Ordinance, must "make that lawful which the State law has rendered unlawful." *City of Birmingham v. West*, 236 Ala. 434, 436, 183 So. 421, 423 (1938).

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Glass contends that the Ordinance and the Act violate § 89 by effectively decriminalizing the criminal offense of running a red light within the corporate limits of the City. According to Glass, "[b]y making running a red light a civil violation, Montgomery's ordinance clearly is an attempt to supersede the laws of Alabama that make[ ] running a red light at any location unlawful and a misdemeanor." Glass's brief at 38. The text of the Ordinance and the Act, however, do not support Glass's interpretation. In contrast to the § 105 analysis, the nonexclusivity of the Ordinance's and the Act's provisions is crucial to our examination of their constitutionality under § 89.

Although the Ordinance and the Act do provide that any red-light violation will be a civil violation, they do not provide that such violations will no longer qualify as misdemeanors or otherwise purport to displace the general laws categorizing red-light violations as criminal misdemeanors. In fact, the opposite is true. Section 13 of the Act affirms the supremacy of our state's general laws by providing that "[n]o civil penalty may be imposed and no adjudication of liability for a civil violation may [be] made under this act if the operator of the vehicle was arrested

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or was issued a citation and notice to appear by a sworn police officer for a criminal violation of any portion of Article II, Chapter 5A, Title 32 ...." Section 7(b) of the Ordinance similarly provides that a "civil penalty may *not* be imposed under this article ... if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for a criminal violation of any portion of [Ala. Code 1975,] Article II, Chapter 5A, Title 32 ...." (Emphasis added.)

As noted above, to establish that the Ordinance and the Act violate § 89, Glass must demonstrate that both possess" 'qualities which cannot coexist'" with the general laws. *Lanier*, 518 So.2d at 43 (quoting *Barefield*, 1 Ala.App. at 523, 56 So. at 262). Moreover," '[a]n ordinance which merely enlarges upon the provision of a statute by requiring more restrictions than the statute requires creates no conflict unless the statute limits the requirement for all cases to its own terms.'" *Ex parte Tulley*, 199 So.3d at 821 (quoting *Congo v. State*, 409 So.2d 475, 478 (Ala.Crim.App.1981)).

Here, Glass concedes that the Alabama Constitution empowers the legislature to create both a criminal violation and a civil violation for the

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same act. Glass's brief at 35. Although Glass contends that this power can be exercised only on a statewide basis, citing *Ex parte State Alcoholic Beverage Control Board*, 654 So.2d 1149 (Ala. 1994), in support of this proposition, nothing in *Ex parte State Alcoholic Beverage Control Board* prohibits the State from authorizing municipalities to bring civil actions and to recover civil penalties for violations of municipal ordinances.

The Ordinance and the Act, moreover, do not exempt motorists from compliance with the general laws, and Glass has not identified any conditions in the general laws that are" 'mutually repugnant'" to conditions in the Ordinance or the Act. *Lanier*, 518 So.2d at 43 (quoting *Black's Law Dictionary*). Glass generally argues that the Ordinance and the Act conflict with § 32-5A-11, which commands that the ARRA be interpreted to effectuate its purpose to "make uniform the law of various jurisdictions." Section 32-5A-11 does not,

however, suggest that the legislature intended the provisions of the ARRA to be exclusive. Indeed, § 32-5A-13 expressly contemplates a nonexclusive scheme by providing that "[t]he provisions of [the ARRA] are cumulative and shall not be construed to repeal or supersede any laws not inconsistent herewith."

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Glass, moreover, fails to explain how the Ordinance and the Act -- which directly affirm the supremacy of Alabama's motor-vehicle and traffic code, of which the ARRA is a part -- infringe on any provisions of the ARRA.

Glass does not challenge that the same behavior can simultaneously be classified as both a criminal violation and a civil violation, and the Ordinance and the Act do not operate to displace or undermine the applicable provisions of the ARRA. Accordingly, the Ordinance and the Act are not inconsistent with the general laws; rather, the Ordinance and the Act merely and permissibly enlarge upon the general laws. Therefore, we affirm the trial court's judgment insofar as it concluded that the Ordinance and the Act survived the § 89 challenge in this case.

D. Section 104

The pertinent portion of § 104 of the Alabama Constitution of 1901 provides: "The legislature shall not pass a special, private, or local law in any of the following cases: .... (14) Fixing the punishment of crime ...." Glass contends that, although an initial reading of § 104(14) might suggest that the provision applies only to situations in which the legislature has attempted to "alter the penalty of a crime on a local basis, "

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§ 104(14) actually "applies in many different situations and establishes the clear will of the people that the criminal laws be uniform across the state." Glass's brief at 42. Glass, however, cites to no controlling authority in support of this proposition.

A survey of our prior decisions, moreover, reveals that challenges involving § 104(14) generally fall into one of three categories. The first category encompasses cases in which this Court has upheld the constitutionality of an act after determining that the challenged act was in fact a general law and therefore not subject to § 104(14). See, e.g., *Opinion of the Justices No. 349*, 665 So.2d 1378 (Ala. 1995). The second category consists of cases in which this Court has found local acts that either treat violations as criminal misdemeanors or punish violations with potential imprisonment unconstitutional under § 104(14). See, e.g., *Opinion of the Justices No. 361*, 693 So.2d 21, 23 (Ala. 1997) (concluding that proposed senate bill authorizing a limited class of counties to enact ordinances prohibiting certain kinds of dancing and punishing violations of such ordinances with a fine or imprisonment would violate § 104(14)); *Opinion of the Justices No. 315*, 468 So.2d 881 (Ala. 1985) (asserting that

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proposed local act that would have prohibited willfully casting rays of artificial light from any motor vehicle to locate wildlife and that would have made a violation of that act a criminal misdemeanor punishable by fine would be unconstitutional under § 104(14)); *State v. Rogers*, 281 Ala. 27, 198 So.2d 610 (1967) (holding that a local act that prohibited the use of nets for fishing in Limestone County and that made a violation of that act a criminal misdemeanor punishable by a fine or imprisonment violated § 104(14)); *Thompson v. State*, 274 Ala. 383, 149 So.2d 916 (1963) (holding that a local act that prohibited contributing to the delinquency of a minor in Jefferson County and that made a violation of that act a criminal misdemeanor punishable by a fine or imprisonment violated § 104(14)). The third category is composed of cases in which an administrative agency enacts regulations that do not expressly fix punishment but that do provide that the penalties for violations are governed by provisions of Alabama's criminal code, Title 13A of the Alabama Code of 1975. *Baldwin Cnty. Bd. of Health v. Baldwin Cnty. Elec. Membership*

Corp., 355 So.2d 708, 711 (Ala. 1978); *Williams v. Kelley*, 289 Ala. 440, 442, 268 So.2d 485, 487 (1972).

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Crucially, all of this Court's prior decisions invalidating local acts for impermissibly fixing punishment for a crime did so with respect to acts that either designated violations of the local act as criminal misdemeanors, explicitly provided imprisonment as a potential penalty for violations of the local act, or otherwise referred to Alabama's criminal code when prescribing sanctions for violations of the local act.

Here, in contrast, the Act exclusively provides for civil violations and civil penalties. Indeed, § 3(3) expressly creates a "non-criminal category of state law called a civil violation" and provides that "[t]he penalty for violation of a civil violation shall be the payment of a civil fine, the enforceability of which shall be accomplished through civil action." The Act, moreover, makes no reference to Alabama's criminal code, except by implication when stating in § 13 that "[n]o civil penalty may be imposed and no adjudication of liability for a civil violation may [be] made under this act if the operator of the vehicle was ... issued a citation ... for a criminal violation of any portion of Article II, Chapter 5A, Title 32 ...." Thus, our prior decisions do not dictate that the Act would be unconstitutional under § 104(14).

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Glass, however, broadly contends that the Act violates § 104(14) by, he says, changing the nature of both the offense and the punishment for running a red light. According to Glass, the Act has

> "changed the punishment for running a red light in Montgomery because it is no longer a misdemeanor which is not punishable by a criminal fine or imprisonment. If you run a red light in Montgomery, it is a civil violation punishable by paying a civil fine. This changes, by local law, the punishment of crime and violates §104(14) of the Alabama Constitution."

Glass's brief at 53. As already noted, our prior decisions involving § 104(14) challenges have invalidated only local acts that designate violations as criminal offenses or otherwise impose criminal penalties on violators.

Moreover, for the reasons already articulated in our § 89 analysis, we emphasize that the Act contains language stating that it is permissive and nonexclusive, which contravenes the central premise of Glass's argument pertaining to the unconstitutionality of the Act under § 104(14). The text of the Act does not render Alabama's motor-vehicle and traffic code inoperative within the corporate limits of the City. The Act, furthermore, expressly yields to the criminal-enforcement processes

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provided for by the general laws and, in any event, authorizes the assessment of a civil penalty identical to the criminal fine assessed under the motor-vehicle and traffic code. Accordingly, red-light violations under the motor-vehicle and traffic code remain criminal misdemeanors under the Act, and, when criminal punishment is enforced for such violations, the civil-enforcement scheme of the Act has no field of operation.

Finally, Glass fails to explain why the civil penalty imposed by the Act would constitute punishment in the context of § 104(14). In *Hudson v. United States*, 522 U.S. 93 (1997), the United States Supreme Court gave substantial weight to Congress's express designation of statutory sanctions as civil in nature when concluding that the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States prohibits only "the imposition of multiple *criminal* punishments for the same offense." *Id.* at 99. According to the Supreme Court, "[w]hether a particular punishment is criminal or civil is, at least initially, a matter of statutory construction," *id.*, and only when

sanctions are" 'so punitive in form and effect as to render them criminal despite Congress' intent to the contrary'" will the sanctions be considered punishment for double-

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jeopardy purposes. *Id*. at 104 (quoting *United States v. Ursery*, 518 U.S. 267, 290 (1996))

Applying the rationale in *Hudson*, as well as the analysis in our own prior decisions, see, e.g., *Ex parte State Alcoholic Beverage Control Bd*., supra, we conclude that the legislature's clear intent that the sanctions set out in the Act be civil in nature matters in the context of the § 104(14) analysis and indicates that the Act does not impermissibly fix punishment for a crime by assessing a civil penalty for a civil violation. Therefore, we affirm the trial court's judgment insofar as it concluded that the Act survived the § 104 challenge in this case.

Conclusion

Glass has not demonstrated that the Ordinance and the Act violate §§ 89, 104, or 105 of the Alabama Constitution. Accordingly, we affirm the trial court's judgment upholding the constitutionality of both.

AFFIRMED.

Sellers, J., concurs.

Mendheim and Mitchell, JJ., concur in part and concur in the result.

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Bolin and Bryan, JJ., concur in the result.

Parker, C.J., dissents.

Shaw, J., recuses himself.

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

I agree with the main opinion's conclusion that plaintiff Richard Glass has not demonstrated that Ordinance No. 10-2007 ("the Ordinance") or Act No. 2009-740, Ala. Acts 2009 -- which is known as the Montgomery Red Light Safety Act ("the local Act") and which ratified the Ordinance --violates the Alabama Constitution under his asserted grounds. Moreover, I agree with the main opinion's rationale as to why the local Act does not violate Article IV, § 104(14), Ala. Const. 1901 (Off. Recomp.)[1]: Because the local Act expressly provides that the red-light violations described therein are civil in nature, the penalty for violating the local Act plainly is not fixing the punishment for a "crime." I also agree with the substance of the main opinion's rationale as to why the Ordinance and the local Act do not violate Article IV, § 89, Ala. Const. 1901 (Off. Recomp.)[2]: The Ordinance ratified by the local Act does not prohibit anything that State law permits because State law already prohibits running a red light; the Ordinance

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and the local Act merely enlarge upon State general laws concerning red-light violations, which categorize such violations as criminal misdemeanors, by adding a civil violation. Because the general laws and the local law can coexist, the Ordinance and the local Act do not violate § 89.

However, I cannot assent to the rationale the main opinion offers for upholding the local Act from Glass's challenge based on Art. IV, § 105, Ala. Const. 1901 (Off. Recomp.). Section 105 provides:

> "No special, private, or local law, except a law fixing the time of holding courts, shall be enacted in any case which is provided for by a general law, or when the relief sought can be given by any court of this state; and the courts, and not the legislature, shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be given by any court; nor shall the legislature indirectly enact any such

special, private, or local law by the partial repeal of a general law."

The main opinion concludes that the local Act is constitutional under § 105 because it meets "the 'demonstrated local need' exception to § 105." __So. 3d at__. Specifically, this Court has previously stated:" 'If, in the judgment of the Legislature, local needs demand additional or supplemental laws substantially different from the general law, the

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Legislature has the power to so enact.'" *State ex rel. Jones v. Steele*, 263 Ala. 16, 19, 81 So.2d 542, 544 (1955) (quoting *Standard Oil Co. of Kentucky v. Limestone Cnty.*, 220 Ala. 231, 235, 124 So. 523, 526 (1929)). The main opinion notes that the local Act "asserts that accident data 'establishes that vehicles running red lights have been and are a dangerous problem in Montgomery, Alabama,' and further affirms that automated traffic-camera enforcement is 'very effective in reducing the number of red light violations and decreasing the number of traffic accidents, deaths, and injuries.'" *Id.* at__. The main opinion further observes that Glass did not challenge those legislative findings with data or studies to the contrary and determines that, because we presume legislative acts are constitutional, the local-need findings must prevail here.

I have two objections to employing the "demonstrated local need" exception. First, I am at a loss as to how Glass could have generated evidence contradicting the proclaimed legislative findings contained in the local Act. Indeed, § 2 of the local Act itself provides no such evidence: It generically states that "[a]ccident data establishes that vehicles running

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red lights have been and are a dangerous problem in Montgomery, Alabama," and that "[s]tudies have found" that traffic cameras are effective in reducing such violations. Apparently we are just supposed to take the legislature at its word because there are no citations to the mentioned accident data or the traffic studies in the local Act. However, if Glass had generically asserted that "some studies show that traffic cameras routinely capture false violations" or that "cameras have not reduced red-light violations to a measurable degree in municipalities that have used them for long periods," I doubt we would have accepted such assertions as proper evidence for contradicting the legislature's findings.

I assume that the rejoinder to the foregoing observation would be along the lines that because the legislature is the people's representative body, its findings are owed a deference that we do not afford to factual assertions in a lawsuit. But in relying upon such deference, we are left to wonder just how much evidence would be enough to overturn the legislative findings contained in the local Act that purportedly establish the local need for the local Act? The "demonstrated local need" exception to § 105 offers no criteria on this score, and so use of the exception

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effectively places the constitutionality of a local law in the hands of the legislature as long as it makes a generic finding that the issue addressed by a local law fulfills a local need. Indeed, the legislative findings in the local Act were so generic that the legislature did not even state that red-light violations are *more prevalent* in Montgomery than elsewhere in the State, but only that such violations are "a dangerous problem in Montgomery." Where, exactly, are red-light violations not a dangerous problem? I fail to see how that legislative finding establishes that there is a "demonstrated local need" for the local Act that is" 'substantially different from the general law.'" *Jones v. Steele*, 263 Ala. at 235, 81 So.2d at 544. Regardless, the amount of deference the "demonstrated local need" exception seemingly affords to the legislature cannot be correct under § 105 given that it specifically provides that "*the courts*, and not the legislature, shall judge as to whether the matter of said law is provided for by a general law." (Emphasis added.) Thus, applying the main

opinion's version of the "demonstrated local need" exception to § 105 leaves us with an untenable quandary: either obliterating the courts' role in assessing potential violations of § 105 or requiring courts to delve into "questions of

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propriety, wisdom, necessity, utility, and expediency" that traditionally "are held exclusively for the legislative bodies, and are matters with which the courts have no concern." *Alabama State Fed'n of Labor v. McAdory*, 246 Ala. 1, 9, 18 So.2d 810, 815 (1944).

But beyond the unworkable nature of the "demonstrated local need" exception that is illustrated in this case, there is the more fundamental problem that the text of § 105 contains no hint of such an exception. Boiled down, § 105 dictates that "[n]o special, private, or local law ... shall be enacted in any case which is provided for by a general law." The only stated exception to this command is for "a law fixing the time of holding courts." The "demonstrated local need" exception is a judicial gloss on § 105 that is not contained in its text, one that has taken on a different meaning than when it was originally enunciated. The idea that local laws that reflect local needs do not run afoul of § 105 was first expressed in *Opinion of the Justices No. 138*, 262 Ala. 345, 350-51, 81 So.2d 277, 283 (1955): "If, in the judgment of the legislature, local needs demand additional or supplemental laws *substantially different from the general law*, the legislature is not prohibited by § 105 from so enacting."

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(Emphasis added.) That statement can be interpreted as nothing more than a rephrasing of the declaration in § 105 that a local law cannot be enacted in a "case which is provided for by a general law." The specific phrase "demonstrated local need" first appeared in *State Board of Health v. Greater Birmingham Ass'n of Home Builders, Inc.*, 384 So.2d 1058 (Ala. 1980). *State Board of Health* concerned a local law involving approval for sewage-disposal systems in Jefferson County housing subdivisions. The Court summarized its reasoning for concluding that the local law did not violate § 105 by saying: "Because Section 6 of Act No. 659 represents the Legislature's response to demonstrated local needs of Jefferson County *which had not previously been addressed by the general law*, we find no constitutional infirmity in the Act." 384 So.2d at 1062 (emphasis added). Once again, the Court was simply restating that the local law filled in a gap not addressed by the general law and that, therefore, there was no violation of § 105. However, in *Miller v. Marshall County Board of Education*, 652 So.2d 759 (Ala. 1995), the tenor of what a "demonstrated local need" entailed began to change. In *Miller*, the Court considered a § 105 challenge to a local law that levied a gross-receipts tax in Marshall

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County to support its public schools. The plaintiffs argued that the local law was subsumed by § 40-12-4, Ala. Code 1975, which the *Miller* Court described as "a general act that specifically authorizes county commissions to levy a tax measured by gross receipts, parallel to the state sales and use tax, in order to provide for public education in the counties." *Id.* at 760. The *Miller* Court found that "[t]he record indicates that conditions in Marshall County created the need for special attention by the legislature," in particular that, after certain cities had left the Marshall County School System to form their own city schools, "the Marshall County Board of Education found itself having to operate a primarily rural school system with a greatly diminished tax base." *Id.* at 761. Because of that diminished tax base, the Court concluded that the local law "represents the legislature's response to demonstrated local needs of Marshall County. Therefore, we find no violation of § 105 of the constitution." *Id.* at 762. Thus, in *Miller*, the "demonstrated local need" exception became a matter of presenting empirical data to establish a local need rather than assessing whether a local law occupied a field not specifically covered by a general law. In *Walker County v. Allen*, 775

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So.2d 808, 813 (Ala. 2000), the Court hinted at the potential for such a "demonstrated local need" exception to be misused: "If local need were the sole criterion for determining the constitutionality of a local law, then probably no local act imposing a tax could ever be successfully challenged, because every county in the State could probably show it has a need for more funds." Despite that warning, the Court picked up the "demonstrated local need" baton in *Jefferson County v. Taxpayers & Citizens of Jefferson County*, 232 So.3d 845, 868 (Ala. 2017), finding that the need for the local law at issue was demonstrated "by legislative findings of special local needs."

The main opinion in this case continues the *Miller/Jefferson County* take on the "demonstrated local need" exception instead of adhering to the text of § 105. Yet, reliance on that expansive understanding of the exception is entirely unnecessary in this case.

> "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)]. ... 'The subject of a local law is deemed to be "subsumed" in a general law if the effect of the local law is to *create a variance* from the provisions of the
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> general law.' *Opinion of the Justices No. 342*, 630 So.2d 444, 446 (Ala. 1994) (emphasis added)."

City of Homewood v. Bharat, LLC, 931 So.2d 697, 701 (Ala. 2005) (some emphasis omitted). For a local law to be at "variance" with a general law, it must contradict the general law at issue. Specifically, a "variance" arises when a local law actually changes the effect or enforcement of the general law in some degree in the geographic area covered by the local law. For example, in *City of Homewood*, the Court explained:

> "On the undisputed facts of this case, we are compelled to conclude, as did the Justices in *Opinion of the Justices No. 342*, [630 So.2d 444 (Ala. 1994),] that the local act *creates a variance* from the general act. In that case, the proposed local act purported to grant discretion as to certain duties where the general acts provided that those duties were mandatory. In this case, the local act purports to *limit the discretion* of municipalities in levying a lodgings tax, while the general act *specifically grants* that discretion. Section 7 necessarily changes the result that would obtain without its application. In effect, the legislature has purported to *cap by use of local law a tax authorized by a general law*. This the constitution will not permit."

931 So.2d at 703-04. See, e.g., *Walker County*, 775 So.2d at 813 (finding that "the local law is more than an additional or supplemental law" and is "in direct conflict with the general laws" because the local law required

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certain professionals to pay a county license tax, whereas the general law provided that "no license tax shall be paid to the county"); *Town of Brilliant v. City of Winfield*, 752 So.2d 1192, 1199 (Ala. 1999) (finding that a local law stating that an extension of the City of Winfield's corporate limits would not extend its police jurisdiction was at variance with § 11-40-10, Ala. Code 1975, which mandated the extent of police jurisdiction in municipalities throughout the state).

As the main opinion notes, both the local Act and the Ordinance expressly provide that the general laws in Title 32 of the Alabama Code of 1975 take precedence over the local Act and the Ordinance:

> "Section 13 of the Act ... provid[es] that '[n]o civil penalty may be

> imposed and no adjudication of liability for a civil violation may [be] made under this act if the operator of the vehicle was arrested or was issued a citation and notice to appear by a sworn police officer for a criminal violation of any portion of Article II, Chapter 5A, Title 32 ....' Section 7(b) of the Ordinance similarly provides that a 'civil penalty may *not* be imposed under this article ... if the operator of the vehicle was arrested or was issued a citation and notice to appear by a peace officer for a criminal violation of any portion of [Ala. Code 1975,] Article II, Chapter 5A, Title 32 ....' (Emphasis added.)"

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__So. 3d at__. In other words, there is no conflict or overlap between the general laws concerning red-light violations and the local Act and the Ordinance. The local Act and the Ordinance can operate only in instances in which the general laws have not been invoked. Therefore, by definition, the local Act does not constitute a "case which is provided for by a general law." In essence, the local Act and the Ordinance create a new category of red-light violations: those that are captured by video camera and enforced through a civil-fine system. Thus, based on the plain text of the local Act, the Ordinance, and § 105, there is no constitutional violation.

In sum, although I would affirm the circuit court's judgment with respect to Glass's § 105 challenge to the local Act, I would do so based on the foregoing rationale as opposed to utilizing, as the main opinion does, the nontextual and unworkable "demonstrated local need" exception to § 105.

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

I concur with the main opinion, except for the rationale of Part B of the Analysis section. While I agree with the text-focused approach that Part B uses to analyze § 105 of the Alabama Constitution of 1901, that approach leads me to a different conclusion -- that the local act at issue (Act No. 2009-740, Ala. Acts 2009) does not cover the same "case" or "matter" "provided for" by the statewide motor-vehicle and traffic code. The City of Montgomery does an excellent job in its brief explaining why this is so and provides valuable supporting evidence of the original understanding of those terms at the time they were adopted in 1901.[3] *See*

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City's brief at 17-35, 43-49; *Barnett v. Jones*, [Ms. 1190470, May 14, 2021] __So. 3d__, __ (Ala. 2021) (Mitchell, J., concurring specially) (encouraging parties and amici curiae in Alabama constitutional cases to provide arguments that help us determine the original public meaning of the provisions we are being asked to interpret).

Whenever we are asked to interpret a constitutional provision, our analysis must begin and end with the text. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 2, at 56 (Thomson/West 2012) ("The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means."). That is all that is necessary here, and I see no reason to consider the propriety or applicability of the judicially created "local need" exception.

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PARKER, Chief Justice (dissenting).

Despite the sometimes cloistered environs of the appellate bench, the Justices of this Court have not been living under a rock. No, we live in the same society and drive the same roads that our cases arise from, and we ought not discard our common sense at the door of judicial chambers. That common sense teaches that running a red light is dangerous everywhere, not just in Montgomery. And that simple fact undercuts the City's argument that the

Legislature found a local need for red-light cameras.

Now for the legal analysis. I agree fully with the main opinion's analysis of petitioner Richard Stephen Glass's arguments under Article IV, §§ 89 and 104(14), of the Alabama Constitution, challenging the constitutionality of the Montgomery Red Light Safety Act, Act No. 2009-740, Ala. Acts 2009 ("the Act"), and City of Montgomery Ordinance No. 10-2007. As for the § 105 challenge, however, I agree with parts of the main opinion's analysis but disagree with other parts. And my points of disagreement lead me to dissent from affirming the judgment.

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Before I explain, I have to admit that I question whether this Court's current § 105 jurisprudence bears any resemblance to the original meaning of this constitutional provision.[4] Nevertheless, no one has asked us to overrule all or part of that jurisprudence in this case, so the bulk of the following analysis presumes that our precedent is sound.

I. Facial inconsistency with § 105

On the initial question whether the Act, on its face, "provide[s] for" the same "case" or "matter" as the general law does, I do not necessarily agree with all of the main opinion's analysis, but I agree with its

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conclusion. In my view, the subject of the general law and of the Act is the same: prohibition of running a red light, and the resulting consequences. In arguing otherwise, the City of Montgomery and the other special writings seem to implicitly rely on a rather granular distinction. That distinction is that the general law's subject is prohibition of running a red light and the resulting *criminal* consequences, whereas the local law's subject is prohibition of running a red light and the resulting *civil* consequences. Although I agree that we should "not extend[] the boundaries of subject ... too broadly," *Barnett v. Jones*, [Ms. 1190470, May 14, 2021] __So. 3d__, __ (Ala. 2021) (plurality opinion as to § 105 framework), I also do not think we can slice and dice so finely. Thus, although the line between "the same subject" and "different subjects" is admittedly still very fuzzy under our § 105 precedent, I believe that this case falls on the "same" side of that line.

I acknowledge that the City's and the other special writings' apparently constricted view of the general law's subject might be required if we were operating under our usual obligation to uphold the constitutionality of laws whenever reasonably possible. But in the § 105

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context, I believe that the deference we ordinarily owe the Legislature is forbidden to us by the constitution's express command: "*[T]he courts, and not the legislature*, shall judge as to whether the matter of [a local] law is provided for by a general law ...." § 105 (emphasis added). On this basic point, I agree with Justice Mendheim that "the courts' role in assessing potential violations of § 105," __So. 3d at__ (Mendheim, J., concurring in part and concurring in result), cannot constitutionally be abdicated.

I differ with Justice Mendheim's special writing, however, as to continuing reliance on the "variance" test. Under that test, a local law violates § 105 if it creates a "variance" -- a difference in legal effect -- from the general law. See *City of Homewood v. Bharat, LLC*, 931 So.2d 697, 701-04 (Ala. 2005). Respectfully to all who have contributed to the § 105 discussion over the decades, the variance test cannot coherently be squared with the rest of our current § 105 jurisprudence, particularly *Peddycoart v. City of Birmingham*, 354 So.2d 808 (Ala. 1978), and its progeny. *Peddycoart* attempted to embrace a facially simple test that was at least perceived as rooted in the original meaning of the constitution: whether the general law and local law provide for the same subject. *Id.* at

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813.[5] And our decisions since then[6] have regularly claimed adherence to, and have more or less consistently followed, this "same subject" test. See *Opinion of the Justices No. 245*, 357 So.2d 148, 149 (Ala. 1978); *ABC Bonding Co. v. Montgomery Cnty. Sur. Comm'n*, 372 So.2d 4, 5-6 (Ala. 1979); *State Bd. of Health v. Greater Birmingham Ass'n of Home Builders, Inc.*, 384 So.2d 1058, 1061-62 (Ala. 1980); *Green v. Austin*, 425 So.2d 411,

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413-14 (Ala. 1982), overruled on other grounds by *House v. Cullman Cnty.*, 593 So.2d 69 (Ala. 1992); *Opinion of the Justices No. 311*, 469 So.2d 105, 107-08 (Ala. 1985); *Opinion of the Justices No. 316*, 469 So.2d 112, 113-14 (Ala. 1985); *Johnson v. City of Fort Payne*, 485 So.2d 1152 (Ala. 1986); *Baldwin Cnty. v. Jenkins*, 494 So.2d 584, 585-87 (Ala. 1986); *Kiel v. Purvis*, 510 So.2d 190 (Ala. 1987) (plurality opinion); *Stokes v. Noonan*, 534 So.2d 237 (Ala. 1988); *County Comm'n of Jefferson Cnty. v. Fraternal Order of Police, Lodge No. 64*, 558 So.2d 893 (Ala. 1989); *Opinion of the Justices No. 342*, 630 So.2d 444, 446 (Ala. 1994); *Miller v. Marshall Cnty. Bd. of Educ.*, 652 So.2d 759, 761 (Ala. 1995); *City of Birmingham v. City of Vestavia Hills*, 654 So.2d 532, 538-41 (Ala. 1995); *Opinion of the Justices No. 354*, 672 So.2d 1294, 1296 (Ala. 1996); *State ex rel. Whetstone v. Baldwin Cnty.*, 686 So.2d 220 (Ala. 1996); *Ellis v. Pope*, 709 So.2d 1161, 1166-67 (Ala. 1997) (plurality opinion); *Bharat*, 931 So.2d at 701; *Jefferson Cnty. v. Taxpayers & Citizens of Jefferson Cnty.*, 232 So.3d 845, 864 (Ala. 2017) (plurality opinion); *Barnett*, [Ms. 1190470, May 14, 2021] __So. 3d at__ -__ (plurality opinion as to § 105 framework); *id.* at__ -__ (majority opinion as to application of § 105).

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In contrast to the same-subject test, the variance test asks, as Justice Mendheim summarizes, whether the "local law actually changes the effect or enforcement of the general law in some degree in the geographic area covered by the local law," __So. 3d at__ -- i.e., whether it creates a difference in effect. Thus, although the variance test purports to be an interpretation of *Peddycoart*'s same-subject test, see *Bharat*, 931 So.2d at 701, in substance the variance test is a different test altogether. And because they are different in substance, the two tests may yield different results when applied to the same local law. For example, a general law and a local law may be identical in effect and thus pass the variance test, while they provide for the same subject and thus fail the same-subject test. Conversely, two laws may address different subjects and thus pass the same-subject test, but incidentally (in some perhaps tangential or unintended way) cause a difference in legal effect and thus fail the variance test.

Further, the variance test is merely the logical opposite of the "substantial difference" test overruled by *Peddycoart*, see 354 So.2d at 812-13, and it equally misses *Peddycoart*'s mark. Both tests focus on the

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difference in legal effect between the general and local laws. Under the substantial-difference test, a difference saves the local law; under the variance test, a difference condemns it. In their respective ways, then, both tests have merely distracted from the key inquiry under *Peddycoart*: whether the local law addresses the *same subject* as the general law, regardless of whether it creates a different effect. Cf. *Barnett*, __So. 3d at__(plurality opinion as to § 105 framework) ("*Peddycoart* do[es] not speak of substantial differences, variances, or result comparisons -- [it] speak[s] in terms of cases and matters provided for.").

For these reasons, I agree with the main opinion's conclusion that the Act, on its face, "provide[s] for" the same "case" or "matter" -- addresses the same subject -- as the general law.

II. Local need

Nevertheless, I disagree with the main opinion's analysis of the "local need" issue under § 105 because I believe that that analysis is inconsistent with our precedent. In my view, the City has not met its burden to show that the Act was supported by a specifically local need.

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Under our precedent, when a local law is challenged under § 105 and appears on its face to be "in [a] case" or be a "matter" that is "provided for by a general law" (see Part I above), the defender of the local law may nevertheless establish its constitutionality by persuading the finder of fact that the local law is supported by a local need. Our precedent indicates that the defender bears this burden of persuasion. Specifically, we have repeatedly referred to this local-need concept as one of "*demonstrated* local need[s]." (Emphasis added.) See *State Bd. of Health v. Greater Birmingham Ass'n of Home Builders, Inc.*, 384 So.2d 1058, 1062 (Ala. 1980) ("*Home Builders*"); *Miller v. Marshall Cnty. Bd. of Educ.*, 652 So.2d 759, 761-62 (Ala. 1995); *Walker Cnty. v. Allen*, 775 So.2d 808, 812 (Ala. 2000); *Jefferson Cnty. v. Taxpayers & Citizens of Jefferson Cnty.*, 232 So.3d 845, 866, 868 (Ala. 2017) (plurality opinion) ("*Taxpayers*"); see also *Opinion of the Justices No. 354*, 672 So.2d 1294, 1296 (Ala. 1996). If the need must be "demonstrated," then in the context of litigation the party that must do the demonstrating is logically the defender.

This understanding of the allocation of the burden is reflected in *Miller*, in which this Court, after summarizing the evidence regarding

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local need, concluded that "these facts *showed* that [the defender] had a demonstrated local need that was not provided for by the general law," 652 So.2d at 762 (emphasis added). A plurality of this Court concluded similarly in *Taxpayers*: "Although the [challengers] argue that the [defenders] did not demonstrate local need, the [defenders] *pointed out* that [the local law] was supported by legislative findings of special local needs ... which cannot be addressed by [the general law] ...." 232 So.3d at 868 (emphasis added). This same understanding is implied in our caveat in *Allen* that, regarding local need, "every county in the State could probably *show* it has a need for more funds," 775 So.2d at 813 (emphasis added). Moreover, this allocation of the burden of persuasion on the issue of local need was relied on by the trial court in *Ellis v. Pope*, 709 So.2d 1161 (Ala. 1997). And a plurality of this Court adopted the trial court's following reasoning:" '[T]he evidence presented by the [defenders] catalogued the [purported local needs]. ... [T]he evidence relating to local needs was neither remarkable nor compelling. ... [T]he [defenders] *failed to present evidence which establishes* ... local needs which are not substantially provided for by the general law.'" *Id.* at 1167 (emphasis

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added); see also *id.* at 1169 n.7 (See, J., concurring in result) ("[T]he defend[ers] *fail to establish* satisfactorily that [the] local [law] serves any particular local needs in [the locality] not addressed by [the general law]." (emphasis added)).

Further, if the burden of persuasion were instead allocated to the challenger, that would require him to prove a negative: that no conceivable local need existed that supported the local law. Requiring a party to prove a negative is something that procedural law generally tries to avoid. See *Ex parte Rogers*, 68 So.3d 773, 775 (Ala. 2010) ("[R]equir[ing] the claimant to prove a negative[] [is] a requirement the law generally is reluctant to impose."); *Hellums v. Reinhardt*, 567 So.2d 274, 277 (Ala. 1990) (declining to adopt certain other states' allocation of burden of persuasion on a particular issue partly because that allocation would "require[] the [party] to prove a negative, which is rarely possible"); *Ex parte CIT Commc'n Fin. Corp.*, 897 So.2d 296, 301 (Ala. 2004) (rejecting party's interpretation of a statute because it would "essentially place[] objecting parties ... in the unreasonable position of having to prove a negative"); *Intergraph Corp. v Bentley Sys. Inc.*, 58 So.3d 63, 76 (Ala.

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2010) ("[C]ases applying the 'reasonable certainty' standard [to evidence of lost profits] have rejected imposing a burden on the plaintiff in the first instance to prove negatives, i.e., to exclude every conceivable cause for its lost

profits.").

Along with the ultimate burden of persuasion, the defender also bears the initial burden of production. Burdens of production are generally allocated to the same party as the burden of persuasion. See 2 *McCormick on Evidence* § 337 (Robert P. Mosteller gen. ed., 8th ed. 2020) ("[T]he burdens of producing evidence and of persuasion with regard to any given issue are both generally allocated to the same party."). And there is no reason to think it should be otherwise in this context, especially because allocating the burden of production to the challenger would require him to make a prima facie showing of a negative.

The defender of the local law may meet its burden of production by relying on legislative findings of a local need, see, e.g., *Taxpayers*, 232 So.3d at 868; *Bradley Outdoor, Inc. v. City of Florence*, 962 So.2d 824, 827, 832 (Ala. Civ. App. 2006), or by presenting extrinsic evidence of a local

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need, see, e.g., *Home Builders*, 384 So.2d at 1062; *Miller*, 652 So.2d at 761-62.

If the defender meets its initial burden of production by showing a purported local need, the burden of production then shifts to the challenger to show that that purported need either is not peculiarly local (i.e., is a general need not specific to the locality) or is not actually a need. Cf. *Ellis*, 709 So.2d at 1167; *Allen*, 775 So.2d at 812-13. This burden-shifting procedure is similar to the procedure applied in intermediate-scrutiny review in certain constitutional challenges, under which the government must first show a substantial interest supporting the law and then the challenger must rebut that showing, see *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 438-39 (2002) (plurality opinion).

Here, the City attempted to meet its initial burden of production to show a local need for the Act by pointing to the Legislature's findings. In the circuit court, the City argued:

> "Section 1 of the ... Act expressly states that automated safety camera enforcement is 'very effective in reducing the number of red light violations and decreasing the number of traffic accidents, deaths[,] and injuries.' ... The Legislature further justified the local need by stating that Alabama's traffic code

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> only permits prosecution 'if the misdemeanor was witnessed by either a duly empowered police officer or other witness who makes a verified complaint to a sworn magistrate.'
>
> "....
>
> "The ... Act was expressly enacted to address the 'dangerous problem' posted by drivers running red lights in Montgomery."

On appeal, the City adds that "[t]he Legislature made ... [findings regarding] ... the desirability of [a] civil system using photographic enforcement equipment to both 'decrease the rate of traffic signal violations and learn more about the effectiveness and fairness involved in the use of the automated systems.'" City's brief at 35-36 (quoting § 2(5) of the Act).[7] The essence of the Legislature's findings relied on by the City is that:

- red-light running is a dangerous problem in Montgomery;

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- the State motor-vehicle and traffic code's prohibition of running red lights is enforceable only if a police officer or other witness catches and reports the driver;
- red-light cameras are effective at reducing red-light running; and
- the Legislature hoped to learn

> about the effectiveness and fairness of a red-light-camera system.

In response to the City's reliance on the finding that red-light running is dangerous in Montgomery, Glass pointed out that the Legislature did not find that red-light running is more dangerous in Montgomery than elsewhere in the State. In essence, Glass attacked the dangerousness finding not on the basis that it was false, but on the basis that it was legally insufficient on its face because it did not articulate a specifically *local* need. This argument challenged only the sufficiency of the finding itself; it was facial, not factual. In procedural terms, the argument did not seek to meet Glass's burden of production, but instead contended that that burden had never shifted to him because the City had not met its own burden of production. Thus, contrary to what the main

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opinion seems to assume, it was not necessary for Glass to present evidence to support this argument. Cf. 2 Gregory C. Cook, *Alabama Rules of Civil Procedure Annotated* § 56.6 (5th ed. 2018) ("[A summary-judgment nonmovant] must rebut the [movant's showing] to avoid summary judgment *unless the motion fails on the law*." (emphasis added); "[The nonmovant] may agree that there is no genuine issue as to any material fact and concentrate their activities upon persuasion of the court that under the law and undisputed facts, ... the movant[] ... [is not] entitled to a judgment.").

And Glass's argument is correct; the City did not meet its burden of production by showing a local need. As Justice Mendheim's special writing points out, "the legislative findings in the ... Act were so generic that the legislature did not even state that red-light violations are *more prevalent* in Montgomery than elsewhere in the State, but only that such violations are 'a dangerous problem in Montgomery.'" __So. 3d at__ (quoting § 2(1) of the Act).

Logically, a bare finding that a generalized need exists in a particular locality does not show that that need is unusual, peculiar,

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unique, or otherwise different from a statewide need. A few cases have illustrated this local-need/statewide-need distinction. In *Home Builders*, a general law required that construction plans for sewage systems be approved by a government agency before construction began. A local law required that the plans be approved before a subdivision plat was recorded (a pre-construction step). This Court held that a local need for prerecording approval had been demonstrated by the following:

> "The record reflects several conditions in [the locality] which create the need for special attention by the [local government agency] early in the planning stages of residential subdivision development. The existence of conditions such as [the local government's] moratorium on connections to existing off-site sewage treatment plants and the shortage of building sites in the [locality] suitable for conventional on-site waste treatment facilities necessitates close cooperation between developers in the [locality] and the [agency]. The Legislature's focus in [the local law] upon the initial subdividing of land in [the locality] is thus not impermissible under Section 105 ...."

384 So.2d at 1062. In this way, the variant provision of the local law was logically connected to a specifically local need. Similarly, in *Miller*, we held that a local law imposing a tax to support a county's school system (but not city school systems within the county) was supported by extensive evidence that the primarily rural county school system had become

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underfunded as a result of cities' forming their own school systems and thereby diminishing the county system's tax base, enrollment-based

State and federal funding, and capital assets. 652 So.2d at 761. The same principle was at work in *City of Birmingham v. City of Vestavia Hills*, 654 So.2d 532 (Ala. 1995). There, we held that a local law annexing noncontiguous territory to a city was supported by a local need because two other cities' territory lay between the subject city and the territory to be annexed, and the other cities were not willing to sacrifice their territory to allow the subject city to establish contiguity. Finally, perhaps the most relevant example of a demonstrated local need was in *Taxpayers*. There, a general law restricted local sales taxes to funding education, but a local law created a sales tax that partly funded noneducational expenses. In arguing that a local need for noneducational funding existed, the defender pointed to the Legislature's findings, including the facts of" 'the county's recent financial difficulties, the invalidation of certain taxes that previously provided significant revenues to the county, and the conclusion of the county's Chapter 9 bankruptcy proceedings, '" 232 So.3d at 850.

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Based partly on those findings of a specifically local need, the plurality opined that a local need had been established.

By contrast, a plurality of this Court concluded that a local need had not been established in *Ellis*. A general law required that, in multi-division counties, jury venires be drawn from the division in which the case was tried. A local law instead required that venires be drawn from the entire county. In asserting a local need, the defenders presented evidence that" 'catalogued the difficulties involved in complying with the general act and its divisional jury pool requirement.'" 709 So.2d at 1167 (quoting trial court's order). But this Court's plurality concluded that that purported need was merely a generalized need not peculiar to the locality:

> " '[T]he evidence relating to local needs was neither remarkable nor compelling. The evidence did not establish any hardship or special need in [the c]ounty which would not be experienced in any other [multi-division county] and therefore required under the general act to have divisional jury pools. If it is determined that compliance with the general act creates a hardship, then the solution lies in a [new] general act, not a local act.' "

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Id. (quoting trial court's order).[8] See also *id.* at 1169 n.7 (See, J., concurring in result) ("[T]he defend[ers] fail to establish satisfactorily that [the] local Act ... serves any particular local needs in [the locality] not addressed by [the general law].").

Importantly, as seen from these illustrative cases, local need is not merely a rational-basis test. To survive scrutiny, the defender must do more than show that there is a valid police-powers/health-and-safety reason for the local law; the defender must go beyond that and show that there is a distinctively *local* reason for the law.

Here, the Legislature's findings relied on by the City -- essentially that red-light running is dangerous, is not easy to catch, and is reduced by camera-enforcement systems -- did not even attempt to articulate a distinctively local need like those in *Home Builders*, *Miller*, *Vestavia Hills*, and *Taxpayers*. Instead, like the evidence in *Ellis*, the findings here were merely statements of generalized need that could be true anywhere in the

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State where traffic lights exist. Moreover, as in *Ellis*, the findings merely highlighted difficulties inherent in the application of the general law, not difficulties specific to Montgomery's circumstances. Therefore, the findings did not meet the City's burden of production to show a local need.[9]

Further, even if the Legislature's finding that "vehicles running red lights have been and are a dangerous problem in Montgomery," §

2(1), could somehow be read as a finding that red-light running is a danger peculiar to Montgomery, and thus shifted the burden of production to Glass, he met that burden. Contrary to the main opinion, Glass factually showed that red-light running is a general statewide danger by asking the circuit court and this Court to take judicial notice of that fact. The fact that red-light running is dangerous wherever there are red lights is

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precisely the kind of "generally known" fact, Rule 201(b)(1), Ala. R. Evid., that courts can and should take judicial notice of. Cf. *Bankers Fire & Marine Ins. Co. v. Bukacek*, 271 Ala. 182, 190, 123 So.2d 157, 164 (1960) (" '[I]t is a matter of common knowledge that the use of dynamite as an explosive is intrinsically dangerous, and of this the courts will take judicial notice.'" (quoting *City of Chicago v. Murdoch*, 212 Ill. 9, 12, 72 N.E. 46, 47 (1904))); *McCaskill v. State*, 648 So.2d 1175, 1178 (Ala.Crim.App.1994) ("We take judicial notice that BB guns present a serious danger of injury to the eye ...."). As Justice Mendheim rhetorically asks, "Where, exactly, are red-light violations not a dangerous problem?" So.3d at__. And if red-light running is generally dangerous throughout the State, then it is not a danger peculiar to Montgomery. So, for this reason too, the circuit court incorrectly entered its judgment.

In sum, the Legislature did not find a peculiarly local need for red-light cameras in Montgomery. And even if the Legislature's finding about the danger of running red lights was specific to Montgomery, that finding is answered by commonsense knowledge that it is dangerous throughout

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the State. Accordingly, under this Court's jurisprudence, I would reverse the judgment.

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Notes:

[1]Section 104(14) prohibits the legislature from passing "local law[s]" that "fix[] the punishment of crime."

[2]Section 89 prohibits the legislature from authorizing a municipality to pass "any laws inconsistent with the general laws of this state."

[3]The City's brief focuses on two categories of historical evidence: (1) the debates surrounding § 105 during the 1901 Constitutional Convention, and (2) judicial opinions issued shortly after § 105's enactment. While the City's analysis of these two sources is persuasive, litigants in future cases should not limit themselves to discussing Convention transcripts and judicial opinions. To obtain "a full scope" of a term's original public meaning, it is often necessary to consider a broad range of sources, including, for example, contemporaneous dictionaries, scholarly texts and treatises, histories of the period, and newspaper articles or similar texts written for lay audiences. *Barnett v. Jones*, [Ms. 1190470, May 14, 2021] So. 3d, (Ala. 2021) (Mitchell, J., concurring specially). These additional forms of evidence can provide crucial context for Convention debates -- in part because debate transcripts are vulnerable to "cherry-picking" and in part because statements made during debates often reveal more about the private intent of individual delegates than they do about the original public understanding of the text -- and should not be overlooked. *Id*.

[4]See J. Russell McElroy, *No . . . Local Law . . . Shall Be Enacted in Any Case Which Is Provided for by a General Law*, 7 Ala. Law. 243 (1946) (reviewing debates preceding adoption of § 105 and concluding that its proponents' understanding was that it prohibited only local laws that operate precisely the same as a general law); *Local Legislation in Alabama: The Impact of* Peddycoart v. City of Birmingham, 32 Ala.L.Rev. 167, 181-82 (1980) (concluding similarly); *Board of Revenue of Jefferson Cnty. v. Kayser*, 205 Ala. 289, 88 So. 19 (1921) (commenting on proponents' view and concluding similarly); City's brief at 43-49 (analyzing original meaning similarly). But see Glass's reply brief at 26-28 (tracing history of § 105 through prior Alabama constitutions). I reiterate Justice Mitchell's prior invitation for parties in future cases to thoroughly brief the question of the original meaning. See *Barnett v. Jones*, [Ms. 1190470, May 14, 2021] So. 3d, (Ala. 2021) (Mitchell, J., concurring specially). And I expand that invitation to scholarly publications throughout the State, whose authors may be less constrained by the necessities of client advocacy.

[5]Although *Peddycoart* ostensibly defined only "provided for" and not "case" and "matter," see 354 So.2d at 811, that distinction was ultimately a logical and linguistic impossibility. In the context of § 105's language -- prohibiting local laws "in any case which is provided for by a general law" or when "the matter of [the local] law is provided for by a general law" --a court cannot define"provided for" without implicitly ruling on the meaning of "case" and "matter." And even if such a

gymnastic feat were possible, *Peddycoart* did not achieve it. The Court construed "provided for" as a "phrase ... of restraint and limitation pertaining to *matters of the same import* dealt with in the general law." *Id.* (emphasis added). Elsewhere, *Peddycoart* referred to § 105 as prohibiting laws directed to the same subject: "[T]he presence of a general law upon a given subject ... means that a local law cannot be passed upon that subject. ... [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 omitted). Respectfully, *Peddycoart*'s statements are not merely definitions of "provided for"; they are definitions of "case" and "matter" provided for. Thus, in a roundabout way and perhaps without realizing it, *Peddycoart* necessarily defined "case" and "matter."

[6]*Peddycoart* expressly limited its test to prospective application, 354 So.2d at 814, so I have attempted to exclude from my discussion of this particular point cases addressing pre-*Peddycoart* local laws.

[7]Glass does not object to the City's reliance on these additional legislative findings that were not pointed out to the circuit court, so Glass, as the appellant, has waived any such objection. Cf. *Brett/Robinson Gulf Corp. v. Phoenix on the Bay II Owners Ass'n*, [Ms. 1180945, June 30, 2021] So. 3d, n.10 (Parker, C.J., dissenting) (explaining that document provision that was cited in party's oral-argument demonstrative exhibit was properly before this Court because opposing party had not objected to party's raising of that provision through exhibit).

[8]Although the *Ellis* plurality referred in passing to the absence of a "unique" local need, 709 So.2d at 1167, I do not believe that our jurisprudence requires that the need be one-of-a-kind, but only that it be sufficiently different in kind or degree from generalized statewide needs.

[9]Although, in the circuit court and this Court, Glass has not specifically challenged the legal sufficiency of the findings other than the finding of dangerousness, that procedural fact does not affect the appropriateness of my showing that those other findings were also legally insufficient. The main opinion's rationale -- that Glass failed to present evidence to rebut the Legislature's findings -- was similarly not raised by the City below or here. Instead, the City has argued that the Legislature's findings were conclusive for purposes of judicial review (and thus implicitly *could not be* rebutted). Therefore, the main opinion's sua sponte basis for affirmance, that Glass failed to meet an evidentiary burden, is properly rebutted by my explanation of why Glass met his burden.
