NO. 16-_____

In the Supreme Court of the United States

TAXPAYERS MARY MOORE,
JOHN ROGERS, WILLIAM MUHAMMAD
AND ANDREW BENNETT,

Petitioner,

v.

JEFFERSON COUNTY, ALABAMA,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Alabama

PETITION FOR WRIT OF CERTIORARI

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JUNE 15, 2017

QUESTIONS PRESENTED

1. Does a constitutional amendment which repeals a 33-year-old voter approved constitutional limit on legislative powers, retroactive to the date the limit was first put into the State constitution, violate due process guaranteed individual citizens by the 14th amendment?

2. Does a retroactive constitutional amendment which reverses a judicial decision upholding a 33-year-old voter approved constitutional limit on legislative powers violate due process guaranteed individual citizens by the 14th Amendment?

3. Does the 14th Amendment due process clause bar the Alabama State legislature from validating its past violations of mandatory constitutional provisions protecting rights of citizens by sponsoring and having approved by voters a retroactive constitutional amendment repealing the mandatory constitutional provision?

PARTIES TO THE PETITION

Petitioners

Petitioners, and defendants below, Taxpayers and Citizens of Jefferson County, Alabama are an unincorporated group of individuals whose members include Andrew Bennett, Mary Moore, John Rogers, William Muhammad and other individuals living in Jefferson County.

Respondents

The Respondent and plaintiff below is Jefferson County, Alabama.

A separate defendant below, Keith Shannon, is not a party to this petition, and therefore is served as a Respondent.

In addition, due to the Constitutional issues this case involves, per Sup. Ct. R. 29.4(c), the provisions of 28 U.S.C. § 240 may apply. Thus, the Attorney General of Alabama is served a Respondent.

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The decision of the Alabama Supreme Court is reported at *Jefferson Cnty. v. Taxpayers & Citizens*, 2017 Ala. LEXIS 24 (Ala. Mar. 17, 2017), and is reproduced in the Appendix at App.1a. The district court's May 12, 2005, Finding of Facts and Declaratory Judgment granting Petitioners' motions for summary judgment is unreported and is reproduced at App.60a.

JURISDICTION

The judgment of the Alabama Supreme Court was entered on March 17, 2017. App.1a. This Court has jurisdiction under 28 U.S.C. §§ 1257(a) and 2101(c).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution states in relevant part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Introduction

On December 10, 1984, the Citizens of the State Alabama voted to approve Constitutional Amendment §71.01(C) requiring the State Legislature to pass a basic appropriations bill prior to the passage of other

legislation. Thirty-two years later, on March 17, 2017, the Alabama Supreme Court approved a Retroactive Constitutional Amendment, §71.01(G), which repealed §71.01(C) limits on legislative powers, from the date it was passed. The Constitutional Amendment was initiated by the State Legislature immediately following a decision by the Jefferson County District Court which upheld §71.01(C).

State Constitutional limits on legislative authority represent, by definition, vested rights of the citizens who voted to approve the Constitutional limits. This Court has upheld retroactive modification of state statutes (*see, Williamson v. Lee Optical of Oklahoma, Inc,* 348 U.S. 483 (U.S. Mar. 28, 1955)*;* retroactive change of tax law; *see, Pension Benefit Guar. Corp. v. R. A. Gray & Co.,* 467 U.S. 717, 727-728 (U.S. June 18, 1984)); retroactive remedial and social enactments involving shifting economic burdens (*see, Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (U.S. July 1, 1976). But after an extensive review, Taxpayers' counsel has not found, in the jurisprudential history of this Honorable Court, a case which sustained a State Supreme Court retroactive repeal, revocation or cancellation of a State Constitutional law, forfeiting and terminating all citizens rights accrued thereunder from the inception of the law, immediately following a judicial enforcement of the law.

If State Constitutions can be rescinded retroactively by majority vote of the current legislature if approved by voters, there is no rule of law. Supposed "organic" and "supreme law" protecting citizens individual rights and limits on legislative powers exist only so long as they can be enforced by the

courts. The separation of powers of courts from the legislative and executive branches does not protect citizens reliance on the sanctity of protections contained in constitutional provisions, if, as here, as soon as a court upholds a law that imposes a limit on the legislature or protects individual rights, that law is changed by a new constitutional amendment applied to all past transactions found to have violated the constitution from the date the repealed constitutional provision was passed.

This result clearly violates due process. As this Honorable Court has stated:

> In this country, where the legislative power is limited by written constitutions, declaratory laws, so far as they operate upon vested rights, can have no legal effect in depriving an individual of his rights, or to change the rule of construction as to a pre-existing law. Courts will treat such laws with all the respect that is due to them as an expression of the opinion of the individual members of the legislature as to what the rule of law previously was. But beyond that they can have no binding effect; and if the judge is satisfied the legislative construction is wrong, he is bound to disregard it." When counsel, in *Ogden v. Blackledge* (2 Cranch, 272, 277), announced that, to declare what the law is, or has been, is a judicial power, to declare what the law shall be is legislative, and that one of the fundamental principles of all our governments

> is that the legislative power shall be separate from the judicial.

Koshkonong v. Burton, 104 U.S. 668, 678-679 (U.S. Mar. 6, 1882.

From early childhood, we have learned that changing the rules *after the game has been played* is wrong and unfair. If a Constitutional provision can be retroactively rescinded after 30 years, then where is the limit? Can all Constitutional rights be wiped out retroactively as if they never existed? A state's retroactive cancellation of a constitutional law is *ipso facto* a state's deprivation of all life, liberty, or property, without due process of law. This retroactive cancellation requires a different Supreme Court response than the retroactive modification of a tax or economic, remedial, regulatory statute, for example.

What good is the supreme constitutional law creating vested rules of the game if it can be repealed retroactively as in this instance? Constitutional laws are supposed to be, by definition, vested rights. If the highest, most supreme constitutional laws can be retroactively changed from their inception, then the people have no vested rights that can be relied and therefore no protections of a free society.

What if the legislature decides to put on the ballot a retroactive modification of the State constitution to disenfranchise a group of voters to change the result of a certain election 10 years prior, or to overturn every court decision for the last 50 years that found a bill passed by the legislature unconstitutional? Just because the constitutional amendment changing the election results or overturning court decisions is made "expressly

retroactive" does that insulate the amendment against a violation of due process? Just because the legislature's sponsorship of the constitutional amendment is approved by the voters does not cleanse it as a non-legislative act.

In Alabama, there is no referendum process. All constitutional amendments are initiated by legislative action. They must first be approved by a constitutional convention or the constitutional amendment must first be approved by the State Legislature. (Alabama Const., Article XVIII, §§284-286). If the organic law contained in state constitutions may be changed retroactively only by initiation of majority vote of the legislature subsequently approved by the electorate, there is no organic rule of law that a state legislature must accord due process of law.

Constitutional provisions, unlike statutes dealing with taxes and allocation of economic benefits approved for retroactive cancellation or modification under precedents of this Honorable Court, must be changed prospectively only. Any retroactive modification of a Constitutional provision by constitutional amendment must necessarily be found unconstitutional, and a denial of due process and equal protection of the laws, to preserve our present system of supreme, constitutional rule of law.

B. Statement of the Case

Petitioners Mary Moore, John Rogers, William Muhammad and Andrew Bennett brought this case based upon the settled principle that where the people have forbidden the Legislature from conducting itself in a manner inconsistent with their constitution, it is incumbent upon the judiciary to nullify a legislative enactment contrary to the constitution. The District Court agreed stating:

> In *Magee v. Boyd*, the Alabama Supreme Court addressed an issue of non-justiciability and concluded that, where the text of a Constitutional provision is clear in what it requires, it is the Court's duty to enforce the language of that provision. The Court stated that
>
> > "Such abdication of judicial responsibility is inconsistent with the settled principle that the people have forbidden the Legislature from conducting itself in a manner inconsistent with their constitution and when it does, it is incumbent on the judiciary to nullify a legislative enactment contrary to the constitution."
>
> 137 So. 3d 79, 103 (Ala. 2015) (quoting *Rice v. English*, 835 So. 2d 157 (Ala. 2002)). The Court continued:
>
> > "If the question is not one of discretion but of power, the separation-of-powers doctrine is no bar to judicial review. In other words, where the issue is whether the legislative

> branch has exceeded the limits of its authority, thereby acting unlawfully, the courts will not hesitate to say so." *Id.* (quoting *McInnish v. Riley*, 925 So. 2d 174 (Ala. 2005). The Constitution does not grant the legislature power to "determine its own compliance with constitutional procedural limitations." Id. at 104. Therefore, this Court is bound to comply with its duty to enforce the Constitutional provisions of § 71.01 as they are written."

(App.75a, 76a)

In the appeal, Taxpayers argued, *inter alia*:

> Any bar to a final resolution of this appeal and cross-appeal impairs the obligations of a single judgment and usurps the judicial power in violation of §43 separation of powers and the Equal Protection and Due Process clauses of the Federal constitution. The proposed amendment disturbs an existing defense to a single lawsuit after suit has been commenced violating section 10, Article I, of the Constitution of the United States, in addition to the due process and equal protection provisions of the Fourteenth Amendment of the Constitution of the United States. *** The legislature's duplicity violates section 10, Article I, of the Constitution of the United States, and the due process and equal protection provisions of the Fourteenth Amendment of the Constitution of the United States.

See, Taxpayers "Opposition to Motion to Stay Pending November 8, 2016 Vote on Ratification of Proposed Constitutional Amendment," dated September 27, 2016, p. 10

On February 17, 2017, Taxpayers further stated:

> …defenses and judgment are property rights warranting due process protection. An accrued cause of action or defense to a claim is "constitutional" property, a vested property right, because the holder has a legitimate expectation that state law will recognize the claim or defense. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1981) (considering it "settled" that "a cause of action is a species of property" protected by the Fourteenth Amendment due process clause). Once a lawsuit is filed, subsequent action by the state interferes not with possible or potential rights that might accrue in the future, but with existing expectations and rights that have accrued—that have "vested"—and that constitute a present property interest. A cause of action is an entitlement to employ the state's adjudicatory machinery which is deniable only for cause, that being the failure to establish the elements of the claim to comply with reasonable procedural requirements. *Washington-Southern Navigation Co. v. Baltimore & Philadelphia S.B. Co.*, 263 U.S. 629, 635 (1924) ("The right of a citizen of the United States to sue in a court having jurisdiction of the parties and of the cause of

action includes the right to prosecute his claim to judgment"). Alabama Courts have likewise recognized the implication of Fourteenth Amendment due process protections when a violation of vested legal rights is being asserted. *Wall-Hay-Wall Lumber Co. v. Mathews*, 100 So. 824, 826 (Ala. 1924); *IEC Arab Alabama, Inc. v. City of Arab*, 7 So. 3d 370, 374 (Ala. Civ. App. 2008) ("When a court is called on to consider whether retroactive legislation is constitutional, its focus is on whether the retroactivity of the legislation denies due process"). To the extent Amendment 14[1] could apply to this case (a doubtful assumption, since Sections 13 and 95 were not suspended in Amendment 14's text), Amendment 14 was enacted to eviscerate Shannon's vested rights and defenses. Application of the amendment in this case would violate Shannon's constitutional right to due process protection." *See,* Supplemental Brief of Appellee Shannon Concerning inapplicabilty of Amendment 14 to this appeal [adopted by Taxpayers on February 17, 2017 in their "Supplemental brief of appellees and cross-appellants concerning inapplicability of Amendment 14 to this appeal" p.3]

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[1] Amendment 14, the State constitutional amendment is not the be confused with the 14th Amendment, even though, ironically, the State constitutional amendment revoking Taxpayers rights has the same name as the Federal Constitutional provision protecting those rights.

The Alabama Supreme court addressed Taxpayers' due process and equal protection Fourteenth Amendment arguments but then overruled the trial court by disregarding the fact that Amendment 14 revoked a 32-year-old constitutional provision retroactively, as if Amendment 14 was just a retroactive modification of a statute, and based its opinion on a theory that all Amendment 14 did was modify a legislative procedural rule, as follows:

> The taxpayers further argue that their defenses and judgment are property rights warranting due-process protection. An accrued cause of action or defense to a claim, they say, is "constitutional" property, a vested property right, because "the holder has a legitimate expectation that state law will recognize the claim or defense." *Shannon's* supplemental brief, at 17. Once a lawsuit is filed, the taxpayers argue, subsequent action by the state does not interfere with rights that might accrue in the future, but with existing expectations and rights that have already accrued. To the extent that § 71.01(G) could apply to this case, the taxpayers conclude, it was enacted to eviscerate their vested rights and defenses and violates their constitutional right to due-process protection.
>
> Finally, the taxpayers argue that the constitutional right to have the annual budgets passed before other bills is a substantive, not a remedial, vested right of

which citizens can be deprived only prospectively

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This Court has previously held that "there is no reason why a constitutional amendment cannot be using express and clear terms validate and confirm an act of the legislature previously enacted but invalid on account of a failure to observe provisions of the State Constitution." *Bonds*, 254 Ala. at 555, 49 So. 2d at 282. See also *Ex Parte Southern Ry.*, 556 So. 2d 1082, 1090 (Ala. 1989) ("We have been cited to Alabama cases recognizing two exceptions to the general rule that subsequent amendments to a constitution cannot revive a statute that is ineffective because of constitutional deficiencies that existed when the statute was passed. The first exception is applicable where the subsequent constitutional amendment by clear and express terms validates and confirms the statute that had been invalid on account of its failure to comply with constitutional provisions that existed at the time of its passage. *Bonds v. State Dep't of Revenue*, 254 Ala. 553, 49 So. 2d 280 (1950)."). Because Amendment No. 14, now § 71.01(G), Ala. Const. of 1901, used "clear and express terms" to validate and confirm the procedure used to pass BIRs underlying local bills before November 8, 2016, we agree with the County parties, and we hold that § 71.01(G) can properly be applied retroactively to cure the

> argued constitutional deficiency affecting Act No. 2015-226."

(App.38a-40a) *Jefferson Cnty. v. Taxpayers & Citizens*, 2017 Ala. LEXIS 24, 44-45 (Ala. Mar. 17, 2017)

Accordingly, the 14th Amendment due process protection issue was timely and properly raised and this Court has jurisdiction to review the Alabama Supreme Court judgment on a writ of certiorari.

In this case, §71.01, a part of the Alabama Constitution, was retroactively repealed by Amendment 14 on November 8, 2016, after 32 years. The legislature sold Amendment 14, not as a repeal of organic law but as a "remedial provision" as necessary to "cure" defects in bills primarily related to taxes and bonded indebtedness. (*Id.* ("The County parties first contend that § 71.01(G) is retroactive by its terms and by its remedial nature.") However, the facts show that Amendment 14 was designed for only one reason: to take away the judgment of Judge Graffeo that HB 573-Act 2015-226 was unconstitutional.

This means Amendment 14, which approved the retroactive amendment of §71.01(C) had no legitimate legislative purpose. The Alabama Supreme Court's approval of the legislature's sponsorship and later public approval of a retroactive constitutional amendment subverts the very foundation of all written constitutions. It would declare that a Constitutional Act—§71.01—under which citizens have had vested rights for 32 years, and a judicial determination of its applicability by Judge Graffeo, entirely void. This Honorable Court's inaction, allowing the Alabama Supreme Court's decision to stand, would declare

that if the Legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the Legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at the pleasure of the Legislature any time it wishes by creating a false emergency, needing an immediate "cure" or other equally disingenuous sales pitch to voters.

REASONS FOR GRANTING THE WRIT

I. THE RETROACTIVE REPEAL, REVOCATION AND ELIMINATION OF A CONSTITUTIONAL LAW MAKE DUE PROCESS UNDER THAT LAW IMPOSSIBLE.

If this review is not granted, a State Legislature is free to eliminate due process under the law simply by retroactively eliminating the Constitutional law the citizen is seeking to enforce as if it never existed in the first place. As the Court has stated: "Evaluating whether a right has vested is important for claims under the Contracts or Due Process Clauses, which solely protect pre-existing entitlements. *See, e.g.*, *Wood v. Lovett*, 313 U.S. 362, 371 (1941); *Dodge v. Board of Education*, 302 U.S. 74, 78-79 (1937). *See also United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174 (1980)." *Weaver v. Graham*, 450 U.S. 24, 29-30 (U.S. Feb. 24, 1981). However, if this Court now upholds the elimination of the constitutional law that vests the rights to "pre-existing entitlements" as if it never existed, there is no possible way to evaluate whether the right has vested in the first

place since there is no law to enforce, and all the protections of the due process clause are circumvented.

II. A General Presumption Against the Retroactive Application of Laws, Rooted in Fairness and Freedom from Arbitrary Governmental Actions, Which Presumption Is Now Expressed in Various Constitutional Provisions Considered [at Least Before This Case] to Be the Repository of Vested Citizens' Rights, Makes the Precedential Value of Retroactive Amendment of State Statutes and Federal and State Regulatory Laws Inapplicable to This Case.

The Alabama Supreme court held that if a vested constitutional right is taken away retroactively by a subsequent constitutional amendment, made expressly retroactive, no violation of due process exists. This legal analysis is only applicable to state statutory law. If this reasoning is applied to constitutional provisions, then no constitutional rights exist or they exist only if no subsequent constitutional amendment retroactively takes them away. Under the Alabama Supreme Court ruling for which Certiorari is sought, the state constitution is analyzed no differently than a state statute. This is wrong because state constitutional provisions carry the imprimatur of vested, supreme laws. A retroactive statutory change may not be a due process violation because the state legislature has a right to change benefits and burdens in economic regulation. If this same rule is applied to state constitutions, such constitutional laws cannot create the vested rights for which constitutions are supposed to exist. In *People*

v. Ramsey, 192 Ill. 2d 154, 164-174 (Ill. Aug. 10, 2000), the Illinois Supreme Court articulated this issue as follows:

> The United States Supreme Court has also explained the basis for its traditional presumption against the retroactive application of statutes. "The presumption against the retroactive application of new laws is an essential thread in the mantle of protection that the law affords the individual citizen. That presumption "is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Lynce v. Mathis*, 519 U.S. 433, 439, 137 L. Ed. 2d 63, 71, 117 S. Ct. 891, 895 (1997). "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Landgraf*, 511 U.S. at 265, 128 L. Ed. 2d at 252, 114 S. Ct. at 1497. "This doctrine finds expression in several provisions of our Constitution. The specific prohibition on ex post facto laws is only one aspect of the broader constitutional protection against arbitrary changes in the law. In both the civil and the criminal context, the Constitution places limits on the sovereign's ability to use its lawmaking power to modify bargains it has made with its subjects." *Lynce*, 519 U.S. at 439 The Supreme Court has elaborated on the various federal constitutional provisions that possibly may be violated by a retro-

active application of new statutes." '*The Ex Post Facto* Clause flatly prohibits retroactive application of penal legislation. Article 1, § 10, cl. 1, prohibits States from passing another type of retroactive legislation, laws "impairing the Obligation of Contracts." The Fifth Amendment's Takings Clause prevents the Legislature (and other government actors) from depriving private persons of vested property rights except for "public use" and upon payment of "just compensation." The prohibitions on "Bills of Attainder" in Art. 1, §§ 9-10, prohibit legislatures from singling out disfavored persons and meting out summary punishment for past conduct. [Citation.] "The Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation." *Lynce*, 519 U.S. at 440 n.12, 137 L. Ed. 2d at 71 n.12, 117 S. Ct. at 895 n.12, quoting *Landgraf*, 511 U.S. at 266, 128 L. Ed. 2d at 253, 114 S. Ct. at 1497. The above list of potential constitutional problems is not exhaustive. For example, both this court and the Supreme Court have concluded that retroactive application of a statute may violate the constitutional principle of separation of powers. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 131 L. Ed. 2d 328, 115 S. Ct. 1447 (1995); *In re Marriage of Cohn*, 93 Ill. 2d 190, 203-04, 66 Ill. Dec. 615, 443 N.E.2d 541 (1982). 40, 137 L. Ed. 2d at 71, 117 S. Ct. at 895. (Emphasis supplied)

CONCLUSION

Certiorari is warranted because the decision below is wrong on the merits, deprives Taxpayers of due process, and will cause future taxpayers and citizens, in a variety of cases, to lose their constitutional right to a day in court.

Respectfully submitted,

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JUNE 15, 2017

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PER CURIAM OPINION OF THE SUPREME COURT OF ALABAMA (MARCH 17, 2017)

SUPREME COURT OF ALABAMA

JEFFERSON COUNTY and
JEFFERSON COUNTY COMMISSION

v.

TAXPAYERS and
CITIZENS OF JEFFERSON COUNTY

1150326

ANDREW BENNETT, MARY MOORE,
JOHN ROGERS, and WILLIAM MUHAMMAD

v.

JEFFERSON COUNTY and
JEFFERSON COUNTY COMMISSION

1150327

Appeals from Jefferson Circuit Court (CV-15-903133)

Before: STUART, BOLIN, MAIN,
WISE, and SHAW, JJ.

Jefferson County and the Jefferson County Commission (hereinafter referred to collectively as "the County parties") appeal from the judgment of the Jefferson Circuit Court ("the trial court") denying a petition for validation of the warrants filed by the County parties, pursuant to § 6-6-750 *et seq.*, Ala. Code 1975, and opposed by the taxpayers and citizens of Jefferson County.[1] Andrew Bennett, Mary Moore, John Rogers, and William Muhammad cross-appeal from the portion of the trial court's judgment declining to address alternative arguments they raised. As to the County parties' appeal (no. 1150326), we reverse. We dismiss the cross-appeal (no. 1150327).

I. Factual Background and Procedural History

Section 40-12-4(a), Ala. Code 1975, provides, in pertinent part:

> "In order to provide funds for public school purposes, the governing body of each of the several counties in this state is hereby authorized by ordinance to levy and provide for the assessment and collection of franchise, excise and privilege license taxes with respect to privileges or receipts from privileges exercised in such county, which shall be in addition to any and all other county taxes heretofore or hereafter authorized by law in such county. . . . All the proceeds from any tax levied pursuant to this section less the cost

[1] Andrew Bennett, Mary Moore, John Rogers, William Muhammad, and Keith A. Shannon each responded in his or her capacity as an individual taxpayer and citizen of Jefferson County.

> of collection thereof shall be used exclusively for public school purposes, including specifically and without limitation capital improvements and the payment of debt service on obligations issued therefor."

In 2004 and 2005, Jefferson County issued warrants to raise funds to make certain grants to local boards of education to construct school buildings and to retire other debt.[2] Those warrants are currently outstanding. All the revenue from Jefferson County's existing 1% education sales and use taxes levied under § 40-12-4, Ala. Code 1975, is pledged and required to pay the debt service on the outstanding warrants and certain related costs.

Jefferson County has experienced severe financial difficulties in recent years that eventually resulted in the County's filing a petition in bankruptcy. In 2009, this Court held that Jefferson County's occupational tax, imposed since 1987, was unconstitutional. *Jefferson Cty. Comm'n v. Edwards*, 32 So.3d 572 (Ala. 2009). Even though the legislature attempted to pass a new occupational tax, that effort did not survive judicial scrutiny. *Jefferson Cty. v. Weissman*, 69 So.3d 827 (Ala. 2011). In 2015, Jefferson County and its legislative delegation proposed local legislation in an effort to bolster the County's finances without an occupational tax. Jefferson County proposed a new 1% sales tax and a 1% use tax to replace its existing 1% education

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[2] Those previously issued warrants are the Limited Obligation School Warrants, Series 2004-A, in the original principal amount of $650,000,000; the Limited Obligation School Warrants, Series 2005-A, in the original principal amount of $200,000,000; and the Limited Obligation School Warrants, Series 2005-B, in the original principal amount of $200,000,000.

sales and use taxes, the purpose of which was to fund new warrants at lower interest rate and a lower required debt service that would allow the County to retire its existing warrants. Jefferson County intended to use the replacement taxes to pay the reduced debt service on the new warrants and to use any excess for other purposes stated in the legislation, including additional school funding and its general fund. The replacement sales and use taxes for Jefferson County were proposed as House Bill 573 ("H.B. 573").

Section 71.01(C), Ala. Const. of 1901, prevents a house of the legislature from voting on a non-appropriations bill in a session until that house passes the basic annual appropriations bills. Section 71.01(C) also provides, however, that a house of the legislature may vote on a non-appropriations bill before the basic annual appropriations bills if that house takes an extra procedural step of passing a budget isolation resolution ("BIR") by "three-fifths of a quorum present." Section 71.01(C) does not specify whether "present" means present and voting or only present—whether voting or not. House Rule 36 interprets this constitutional provision to require three-fifths of the members "present and voting" to pass a BIR. Before voting on H.B. 573, the House of Representatives passed a BIR on May 21, 2015, with 13 yes votes and 3 no votes from the Jefferson County delegation. The remaining members of the House either abstained or did not vote. The House passed H.B. 573 on May 21. The Senate then passed the bill, the Governor signed it, and on May 27, 2015, H.B. 573 became Act No. 2015-226, levying the local sales and use taxes at issue in this case. Act No. 2015-226 provides:

"ENROLLED, An Act,

"Relating to Jefferson County; to authorize the Jefferson County Commission to levy and assess, subject to the limitations set forth herein, a privilege or license tax against retail sales of tangible personal property and amusements (a 'sales tax') and an excise tax on the storage, use, or consumption of tangible personal property (a 'use tax'); to make legislative findings; to provide for definitions; to provide that the rate of sales and use taxes authorized by this act shall not exceed one percent; to require the simultaneous cancellation of a certain existing sales and use tax levy in the county if the taxes authorized by this act are levied by the county; to provide additional restrictions; to provide that the provisions of the state sales and use tax laws and regulations which are not inconsistent with this act shall be applicable with respect to the taxes authorized by this act; to provide for the continued levy of the taxes authorized herein following the repeal of either or both of the state sales tax or the state use tax; to provide for the collection and enforcement of the taxes authorized by this act; to require the sales taxes authorized by this act to be collected at the point of sale; to provide for the promulgation of rules and procedures; to provide for distribution of the proceeds of the taxes authorized herein first to debt service and other amounts due with respect to certain warrants issued for certain designated public school purposes, second to the general fund of the county, third to the Jefferson County 2015 Sales Tax Fund, fourth to the Jefferson County Community Service

Fund, fifth to the Birmingham-Jefferson County Transit Authority, sixth to the Birmingham Zoo, Inc., and seventh to the general fund of the county; to create and provide for the Jefferson County 2015 Sales Tax Fund; to provide for distributions from the Jefferson County 2015 Sales Tax Fund to schools serving county residents; to create and provide for the Jefferson County Community Service Committee; to create and provide for the Jefferson County Community Service Fund; to provide for the expenditure of amounts deposited in the Jefferson County Community Service Fund by the Jefferson County Community Service Committee upon recommendations from members of the Jefferson County Legislative Delegation; to provide for the termination of the taxes authorized by this act upon the defeasance or other full payment of refunding school warrants provided for herein; to provide that the provisions of this act are severable; and to provide for an effective date.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. This act shall only apply to Jefferson County.

"Section 2.

(a) It is the intention of the Legislature by the passage of this act to authorize the county to levy and provide for the collection of, in addition to all other taxes authorized by law, except as provided in Section 4, a sales tax and a use tax conforming with and parallel to the state sales tax and the state

use tax at a rate not exceeding the maximum rates set forth herein.

"(b) The Legislature hereby finds and declares that each tax authorized by this act is a sales or use tax and is not a gross receipts tax in the nature of a sales tax, as such term is defined in Section 40-2A-3(8) of the Code of Alabama 1975, as amended, and used in Section 11-51-209 of the Code of Alabama 1975, as amended.

"(c) In view 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, the Legislature hereby finds and declares that it is necessary, desirable, and in the best interests of residents of the county that the Jefferson County Commission be provided additional flexibility with respect to its revenue sources and budget.

"(d) The Legislature hereby finds and declares that providing additional funding for public schools in the county will benefit the public welfare and education of residents of the county.

"(e) This act shall be liberally construed in conformity with the intentions and findings expressed in this section.

"Section 3.

(a) As used in this act, the following words, terms, and phrases shall have the following

respective meanings except where the context clearly indicates a different meaning:

"(1) ACT 405. Act 405 of the 1967 Regular Session of the Legislature (Acts 1967, p. 1021), as amended.

"(2) AVERAGE DAILY MEMBERSHIP. The meaning ascribed in Section 16-13-232, Code of Alabama 1975.

"(3) COMMITTEE. The Jefferson County Community Service Committee authorized in Section 11.

"(4) COUNTY. Jefferson County, Alabama.

"(5) COUNTY COMMISSION. The Jefferson County Commission.

"(6) EXISTING SCHOOL WARRANTS. Collectively, the following limited obligation warrants issued by the county for the benefit of public schools in the county: a. Limited Obligation School Warrants, Series 2004-A, b. Limited Obligation School Warrants, Series 2005-A and c. Limited Obligation School Warrants, Series 2005-B.

"(7) JEFFERSON COUNTY LEGISLATIVE DELEGATION. The elected members of the House of Representatives and the Senate from districts wholly or partially within the county.

"(8) REFUNDING SCHOOL WARRANTS. Any warrants or other obligations of the county issued after the effective

date of this act to refinance, on such terms as the county commission shall determine in its discretion, either a. the existing school warrants, or b. any warrants subsequently issued for the purpose of refinancing such warrants. Refunding school warrants shall be issued under the statutes codified as Chapter 28 of Title 11, Code of Alabama 1975, as heretofore or hereafter amended, or any other law of the state available for such purpose. Refunding school warrants shall be limited obligations of the county secured by, and payable solely from, the portion of the taxes authorized by this act and described in Section 9(a). Refunding school warrants shall not be payable from any other revenues of the county and shall not constitute a general debt or obligation of the county within the meaning of any provision of the Constitution of Alabama of 1901, as heretofore or hereafter amended.

"(9) STATE SALES TAX. The tax or taxes imposed by the state sales tax statutes.

"(10) STATE SALES TAX STATUTES. Division 1 of Article 1 of Chapter 23 of Title 40, Code of Alabama 1975, as heretofore or hereafter amended, including all other statutes of the State which expressly set forth any exemptions from the computation of the tax levied in the state sales tax statutes and all other statutes of the state which expressly

apply to or purport to affect the administration of the state sales tax statutes, and the incidence and collection of the taxes imposed therein.

"(11) STATE USE TAX. The tax or taxes imposed by the state use tax statutes.

"(12) STATE USE TAX STATUTES. Article 2 of Chapter 23 of Title 40, Code of Alabama 1975, as heretofore or hereafter amended, including all other statutes of the state which expressly set forth any exemptions from the computation of the tax levied in the state use tax statutes and all other statutes of the state which expressly apply to or purport to affect the administration of the state use tax statutes, and the incidence and collection of the taxes imposed therein.

"(13) 2015 SALES TAX FUND. A governmental fund of the county which is created hereunder and shall be entitled 'Jefferson County 2015 Sales Tax Fund.'

"(b) Except where another meaning is clearly indicated by the context, all definitions set forth in the state sales tax statutes and the state use tax statutes shall be effective as definitions of the words, terms, and phrases used in this act. All words, terms, and phrases used herein, other than those hereinabove specifically defined, shall have the respective meanings ascribed to them in the state sales tax statutes or the state use tax statutes and shall have the same scope and effect

that the same words, terms, and phrases have where used in the state sales tax statutes or the state use tax statutes.

"Section 4.

(a) Subject to subsection (d) of this section, the county commission is authorized, by resolution duly adopted, to levy, in addition to all other taxes now imposed or authorized by law, and to collect as herein provided, a privilege or license tax, herein called a sales tax, against each person making retail sales of tangible personal property or amusements in the county at a rate not to exceed one percent of gross proceeds of sales or gross receipts, as the case may be, and an excise tax, herein called a use tax, on the storage, use, or other consumption of tangible personal property in the county purchased at retail at a rate not to exceed one percent of the sales price of such property.

"(b) Any sales tax or use tax levied by the county commission pursuant to this section shall apply to and be levied upon every person or other entity required to pay, or upon whom shall have been levied, the state sales tax or state use tax.

"(c) Notwithstanding the foregoing, the taxes authorized to be levied pursuant to this act shall not apply to the sale or use of property or services which are exempt under the state sales tax statutes or the state use tax statutes and corresponding regulations promulgated thereunder.

"(d) Upon initial levy by the county of the taxes authorized by this act, the county commission shall simultaneously cancel the county's existing sales and use taxes currently being levied by the county under Ordinance 1769 of the county commission, as amended, that are pledged to the existing school warrants, provided that the county has previously or will simultaneously retire or defease the existing school warrants. The sales and use taxes authorized by this act and the sales and use taxes authorized to be levied by the county pursuant to Ordinance 1769 of the county commission shall not both apply to any taxable sale or storage, use, or consumption so as to result in a cumulative tax rate from both such taxes that is greater than one percent.

"(e) In the event of the repeal of either or both of the state sales tax statutes or state use tax statutes, the county is authorized to continue to levy, administer, collect, and enforce the sales and use taxes authorized by this act.

"Section 5. Pursuant to and in conformity with Article I of Chapter 3 of Title 11, Code of Alabama 1975, the county may, by ordinance or resolution, administer and collect, or contract for the collection of, the sales and use taxes authorized by this act.

"Section 6. Each person engaging or continuing in a business subject to the sales taxes authorized to be levied by this act shall add to the sales price or admission fee and collect from the purchaser or the person paying the admission fee the amount due by the taxpayer on account of the sale or

admission. It shall be unlawful for any person subject to the sales taxes authorized to be levied by this act to fail or refuse to add to the sales price or admission fee and not collect from the purchaser or person paying the admission fee the amount required to be added to the sale or admission price. It shall be unlawful for any person subject to the sales taxes authorized to be levied by this act to refund or offer to refund all or any part of the amount collected or to absorb or advertise directly or indirectly the absorption or refund of any portion of such tax or taxes. The sales taxes authorized by this act shall conclusively be presumed to be a direct tax on the retail consumer, pre-collected for the purpose of convenience only.

"Section 7. The taxes authorized to be levied by this act shall constitute a debt due the county. Such taxes, together with any interest and penalties permitted by law, shall constitute and be secured by a lien upon the property of any person from whom the tax or taxes are due or that is required to collect the tax or taxes.

"Section 8. All provisions of the state sales tax statutes and state use tax statutes with respect to the payment, assessment, and collection of the state sales tax and state use tax, making of reports, keeping and preserving records, interest or penalties, or both, for failure to pay such taxes or late payment of such taxes, promulgating rules and regulations with respect to the state sales tax and state use tax, and the administration and enforcement of the state sales tax statutes and state use tax statutes shall apply to the taxes authorized to be levied by this act, except for the

rate of tax and except where otherwise inapplicable or otherwise expressly provided for by this act. The county and any designee or agent shall have and exercise the same powers, duties, and obligations with respect to the taxes authorized to be levied under this act that are provided the Department of Revenue and the Revenue Commissioner by the state sales tax statutes or state use tax statutes or provided the county under Act 405. All provisions of the state sales tax statutes and state use tax statutes or of Act 405 that are made applicable by this act to the taxes authorized to be levied under this act, and the administration and enforcement of this act, are incorporated by reference and made a part of this act as if fully set forth herein.

"Section 9.

(a) The proceeds of the taxes authorized herein collected each month by the county, after any deductions for cost of collection, shall be distributed at such times as shall be directed by the county commission in the priority and respective amounts set forth below:

"(1) First, for so long as any refunding school warrants are outstanding and are not defeased or otherwise fully paid, so much of the proceeds received during a fiscal year of the county as may be necessary to satisfy the county's obligations with respect to the refunding school warrants, including payment of the principal of, premium, if any, and interest on the refunding school warrants, due during such fiscal year of the county, any

ongoing expenses of administration of the refunding school warrants, amounts required to be deposited in any debt service reserve fund for the refunding school warrants, and amounts necessary to provide for payment of rebate, if any, or other amounts due to the United States, shall be paid over to the trustee or paying agent for the refunding school warrants to be held in a fund or funds solely for payment of such amounts due with respect to the refunding school warrants. The portion of the taxes authorized herein and required to be paid over to the trustee or paying agent for the refunding school warrants shall be segregated from all other receipts from the taxes authorized herein, shall be devoted solely to the payment of amounts due with respect to the refunding school warrants, and shall not be available to pay general governmental expenses of the county.

(2) Second, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivision (1), such remaining additional proceeds, up to thirty-six million three hundred thousand dollars ($36,300,000) per fiscal year of the county, shall be deposited into the general fund of the county for use and appropriation as the county

commission shall determine in its discretion.

(3) Third, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivisions (1) and (2), such remaining additional proceeds, up to eighteen million dollars ($18,000,000) per fiscal year of the county, shall be deposited into the 2015 Sales Tax Fund. Funds on deposit in the 2015 Sales Tax Fund shall be distributed in accordance with the provisions of Section 10.

(4) Fourth, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivisions (1), (2), and (3), such remaining additional proceeds, up to three million six hundred thousand dollars ($3,600,000) per fiscal year of the county, shall be deposited in the Jefferson County Community Service Fund to be expended as provided in Section 11.

(5) Fifth, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivisions (1), (2), (3), and (4), such remaining additional proceeds, up to two million dollars ($2,000,000) per fiscal year of the county, shall be paid over to the Birmingham-Jefferson County Transit

Authority for each of the first 10 fiscal years of the county following the adoption of this act, and thereafter up to one million dollars ($1,000,000) per fiscal year of the county.

(6) Sixth, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivisions (1), (2), (3), (4), and (5), such remaining additional proceeds, up to five hundred thousand dollars ($500,000) per fiscal year of the county, shall be paid over to Birmingham Zoo, Inc.

(7) Seventh, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivisions (1), (2), (3), (4), (5), and (6), such remaining additional proceeds, shall be deposited into the general fund of the county for use and appropriation as the county commission shall determine in its discretion.

"(b) The amounts specified in subdivisions (1) through (6) shall be paid and distributed in full so long as the proceeds of the taxes authorized to be levied herein are sufficient for such purposes.

"Section 10.

(a) There is hereby created a governmental fund of the county to be designated the Jefferson County 2015 Sales Tax Fund. The county

commission shall maintain the 2015 Sales Tax Fund and shall administer it according to its normal fund administration procedures.

"(b) As promptly as practicable after the end of each fiscal year of the county, funds on deposit in the 2015 Sales Tax Fund as of September 30 of each year shall be distributed to the city or county boards of education then serving students resident in the county according to the following procedure:

"(1) Each county or city board of education serving any portion of the county shall certify in writing to the county commission its average daily membership of students resident in the county, its certified enrollment, calculated in accordance with Article 11 of Chapter 13 of Title 16, Code of Alabama 1975, or any successor thereto. County or city boards of education may use their certification to the state Department of Education under the state Foundation Program for this purpose to the extent such certification includes only students resident in the county.

"(2) Upon receipt of the certified enrollment from each board of education described in this section, the county commission shall determine the total number of students resident in the county and enrolled in public schools serving the county.

"(3) As promptly as practicable thereafter, the county commission shall distribute from the 2015 Sales Tax Fund to each board of education described in this section an amount equal to its pro rata share of the amount on deposit in the 2015 Sales Tax Fund as of September 30 of the prior fiscal year of the county, taking into account each board of education's certified enrollment and the total number of students resident in the county and enrolled in public schools serving the county.

"(c) Absent manifest error, the determination by the county commission of the distribution of funds from the 2015 Sales Tax Fund shall be conclusive.

"Section 11.

(a) There is hereby created the Jefferson County Community Service Committee. The committee shall consist of four members, one of whom shall be elected by each of the Jefferson County Democratic House Delegation, the Jefferson County Republican House Delegation, the Jefferson County Democratic Senate Delegation, and the Jefferson County Republican Senate Delegation. Members of the Jefferson County Legislative Delegation shall not be eligible for election to the committee. Members of the committee shall be elected at a meeting of the Jefferson County Legislative Delegation held in the first year of each quadrennium of the Legislature and shall be residents and qualified

electors of the county. The committee shall establish rules and procedures for its proceedings and activities.

"(b) There is hereby created a public fund to be designated the Jefferson County Community Service Fund. The committee shall be the custodian of, and shall be responsible for the proper expenditure of, the Jefferson County Community Service Fund.

"(c) Funds on deposit in the Jefferson County Community Service Fund shall be used solely for one or more of the following purposes in the county, provided that any use of such funds must serve a public purpose:

"(1) To support public schools, public roads, public museums, public libraries, public zoos, public parks, neighborhood associations, public athletic facilities, public youth sports associations, public sidewalks, public trails, or public greenways;

"(2) To support the performing arts;

"(3) To support nonprofit entities that, at the time a recommendation for expenditure is filed with the committee, have received funding from the United Way of Central Alabama within the last 12 months and are not excluded from receiving additional United Way funding;

"(4) To support police departments, the county's sheriff's office, or fire departments or districts in the county; or

"(5) To support publicly available assistance programs established for the benefit of low income residential customers of the county's public sanitary sewer system.

"(d) Subject to the provisions of this act, the amount deposited in the Jefferson County Community Service Fund shall be allocated equally between the Jefferson County House Delegation and the Jefferson County Senate Delegation. The amounts so allocated shall be further allocated equally among the members of the House Delegation and the Senate Delegation. From the amounts so allocated to them, the members of the House and Senate Delegations may recommend one or more expenditures from the Jefferson County Community Service Fund for purposes described in subsection (c). Such expenditures shall be made from revenues derived from the taxes authorized herein for the prior fiscal year of the county and deposited in the Jefferson County Community Service Fund.

"(e) The committee shall consider and approve or deny each recommended expenditure pursuant to its rules for review and approval of disbursements from the Jefferson County Community Service Fund.

"(f) Any amounts derived from the taxes authorized herein during the prior fiscal year of the county remaining on deposit in the Jefferson County Community Service Fund on September 30 of any year shall be paid over to the county for deposit into the general fund.

> "Section 12. The taxes authorized to be levied by this act shall be levied only for so long as any refunding school warrants are outstanding and are not defeased or otherwise fully paid, and when all refunding school warrants have been fully paid in accordance with the terms thereof, the levy of the taxes authorized by this act shall terminate unless extended by law.
>
> "Section 13. The provisions of this act are severable. If a court of competent jurisdiction adjudges invalid or unconstitutional any clause, sentence, paragraph, section, or part of this act, the judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this act, but the effect of the decision shall be confined to the clause, sentence, paragraph, section, or part of this act adjudged to be invalid or unconstitutional.
>
> "Section 14. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law."

On July 20, 2015, Bennett, Moore, Rogers, and Muhammad (hereinafter "the class plaintiffs") filed in the Jefferson Circuit Court a class action against Jefferson County on behalf of a purported class composed of "persons or entities who pay or are otherwise subject to franchise, excise, and privilege license taxes ('sales and use taxes') on receipts from sales made within Jefferson County," challenging the constitutionality of Act No. 2015-226. On August 13, the County adopted a resolution levying sales and use taxes pursuant to Act No. 2015-226 authorizing the County to implement the taxes, to issue approximately $595 million in warrants, and to pledge a por-

tion of the taxes to pay the cost of servicing the debt created by the issuance of the warrants. On the same day, pursuant to § 6-6-751, Ala. Code 1975, the County parties filed in the trial court a petition, seeking to validate the proposed issuance and sale by the County of its limited-obligation refunding warrants, the sales and use taxes levied by the County pursuant to the resolution adopted by the Commission on August 13 and Act No. 2015-226, and the pledge of the proceeds of the sales and use taxes for the payment of the warrants.[3]

On September 10, the class plaintiffs appeared at the hearing in the validation action held pursuant to § 6-6-753, Ala. Code 1975, and filed a motion requesting the trial court "to deny [the] Validation Petition" and "to transfer the case" to the judge hearing their class action. On September 11, Keith Shannon, a taxpayer and citizen of Jefferson County, filed a separate response to the validation action. On September 12, the class plaintiffs joined the responses filed by the district attorney (see supra note 3) and Shannon. On September 14, the trial court denied the class plaintiffs' motion to have the validation action consolidated with the class action. The class plaintiffs then dismissed their action. Shannon and the class

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[3] The trial court ordered the publication of a notice of the hearing to be held on the validation proceeding "to the taxpayers and citizens of Jefferson County, Alabama." In accordance with § 6-6-752(d), Ala. Code 1975, the notice was published once a week for three consecutive weeks in a newspaper of general circulation in Birmingham. Pursuant to § 6–6–752(c), Ala. Code 1975, the Jefferson County District Attorney was served with the petition and filed an answer.

plaintiffs will hereinafter sometimes be referred to jointly as "the taxpayers."

At the bench trial held by the trial court in the validation proceeding, the taxpayers raised four arguments against the validity of Act No. 2015-226 and Jefferson County's resolutions approving the taxes and issuance of the new warrants: (1) that the vote on the BIR for H.B. 573, which became Act No. 2015-226, did not comply with § 71.01(C), Ala. Const. of 1901 (quorum provisions); (2) that Act No. 2015-226 violates § 105, Ala. Const. of 1901 (local law subsumed by general law); (3) that Act No. 2015-226 violates § 104, Ala. Const. of 1901 (bar on certain types of local laws); and (4) that the County's resolutions violate § 45-37-162.03, Ala. Code 1975 (Local Laws, Jefferson County)(requiring the County to hold a public hearing before issuing debt). On December 14, 2015, the trial court entered a judgment denying the County parties' validation petition on the basis that the BIR adopted by the House to enable H.B. 573 to be considered before the annual appropriations bills was not passed in compliance with § 71.01(C). The trial court held that H.B. 573 was passed out of order in violation of § 71.01(C) and, therefore, that Act No. 2015-226 was unconstitutional. The trial court declined to reach the other arguments raised by the taxpayers. The County parties appealed, and the class plaintiffs cross-appealed.

On August 26, 2016, while these appeals were pending, the legislature, at a Special Session, passed a proposed constitutional amendment to add a subsection (G) to § 71.01, Ala. Const. of 1901 (proposed amendment no. 14), as follows:

> "(G) Notwithstanding any provision of this amendment, any resolution authorizing the consideration of a bill proposing a local law adopted before November 8, 2016, that conformed to the rules of either body of the Legislature at the time it was adopted, is ratified, approved, validated, and confirmed and the application of any such resolution is effective from the date of original adoption."

Act No. 2016-430, codified as § 71.01(G), Ala. Const. 1901. The purpose of proposed amendment no. 14 was to retroactively validate BIRs underlying local laws that were adopted before November 8, 2016, and that conformed to the rules of either house at the time they were adopted. Proposed amendment no. 14 was placed on the ballot for the November 8, 2016, general election, and the people of Alabama ratified proposed amendment no. 14 by a vote of 69%-31%.

II. Standard of Review

"In *Monroe v. Harco, Inc.*, 762 So.2d 828, 831 (Ala. 2000), this Court restated the long-standing rules governing review of acts of the Legislature under constitutional attack:

> ""'In reviewing [a question regarding] the constitutionality of a statute, we 'approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government.'" *Moore v. Mobile Infirmary Ass'n*, 592 So.2d 156, 159 (Ala. 1991) (quoting *Alabama State Fed'n of Labor v. McAdory*, 246 Ala. 1, 9, 18 So.2d 810, 815 (1944)). Moreover, "[w]here the validity of a statute is assailed and

there are two possible interpretations, by one of which the statute would be unconstitutional and by the other would be valid, the courts should adopt the construction [that] would uphold it." *McAdory*, 246 Ala. at 10, 18 So.2d at 815. In *McAdory*, this Court further stated:

> """[I]n passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government. All these principles are embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law."

"'246 Ala. at 9, 18 So.2d at 815 (citation omitted). We must afford the Legislature the highest degree of deference, and construe its acts as constitutional if their language so permits. *Id.*'"

Rice v. English, 835 So.2d 157, 163-64 (Ala. 2002).

III. Retroactive Application of § 71.01(G)

In their initial brief on appeal, the County parties first argued that this Court should reverse the trial court's judgment either because the issue presented a nonjusticiable political question or, alternatively, because Act No. 2015-226 was not unconstitutional in that the BIR that enabled the House to consider H.B. 573 was passed in accordance with a long-standing internal rule of the House. The taxpayers urged this Court to decide the issue, *i.e.*, it did not present a

nonjusticiable political question, and argued that we should affirm the trial court's judgment because, they argued, Act No. 2015-226 was unconstitutional in that the BIR that allowed the House to consider H.B. 573 out of order was not passed in accordance with the quorum requirements of § 71.01(C). After amendment no. 14 passed in the November 8 general election, this Court requested briefs from the parties on the issue whether the passage of amendment no. 14 retroactively validated Act No. 2015-226 and therefore rendered the BIR issue moot.

The County parties argue that § 71.01(G) expressly applies retroactively and validates the BIR underlying Act No. 2015-226 because that BIR was passed in accordance with House Rule 36. Therefore, the County parties argue, the basis for the trial court's judgment in this case is no longer valid and the judgment should be reversed.

The County parties first contend that § 71.01(G) is retroactive by its terms and by its remedial nature. "When a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 226 (1995). The County parties note that Section 71.01(G) expressly applies retroactively to "any resolution authorizing the consideration of a bill proposing a local law adopted before November 8, 2016," including the BIR underlying Act No. 2015-226. Citing *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801), the County parties contend that the application of a new law intended to be retroactive to cases pending on appeal has been a sound principle

of appellate review for centuries. In Schooner Peggy, discussing the applicability of a treaty signed during the pendency of an appeal, Chief Justice Marshall explained:

> "It is in the general true that the province of an appellate court is only to enquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional, and of that no doubt in the present case has been expressed, I know of no court which can contest its obligation. . . . In such a case the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside."

5 U.S. (1 Cranch) at 110. In *Ex parte Luker*, 25 So.3d 1152, 1155 (Ala. 2007), this Court stated the principle as follows:

> "'[T]his Court has often noted that "retrospective application of a statute is generally not favored, absent an express statutory provision or clear legislative intent that the enactment apply retroactively as well as prospectively." This general rule is, however, subject to an equally well-established exception, namely, that "[r]emedial statutes . . . are not within the legal [concept] of 'retrospective laws,' . . . and do operate retroac-

> tively, in the absence of language clearly showing a contrary intention." In other words, "[r]emedial statutes—those which do not create, enlarge, diminish, or destroy vested rights—are favored by the courts, and their retrospective operation is not obnoxious to the spirit and policy of the law." Remedial statutes are exemplified by those that "'impair no contract or vested right, . . . but preserve and enforce the right and heal defects in existing laws prescribing remedies.'" Such a statute "may be applied on appeal, even if the effective date of that statute occurred while the appeal was pending, and even if the effective date of the statute was after the judgment in the trial court."'"

(Quoting *Ex parte Bonner*, 676 So.2d 925, 927 (Ala. 1995) (citations omitted).)

The County parties contend that § 71.01(G) is remedial in that it "heals defects in existing laws," if any, by providing that BIRs authorizing the consideration of local laws passed before November 8, 2016, such as the one at issue here, are "ratified, approved, validated, and confirmed." Therefore, the County parties argue, Act No. 2015-226 was properly passed and "the newly ratified amendment, on its face, definitively disposes of the issues raised by the trial court's opinion in this case." County parties' supplemental brief, at 6.

The County parties next argue that retroactive application of § 71.01(G) to this case is appropriate because the trial court's judgment is not the Judicial Department's final word on the issue here—this Court has not spoken. Although future changes in the law

cannot alter the outcome of a truly final judgment, the County parties argue, there is a difference between a final judgment for the purpose of applying a retroactive law and a final judgment for the purpose of being appealable. Retroactive laws, they contend, may be applied to judgments that are pending on appeal, but such laws cannot be applied to judgments that are final in the sense that all appellate rights have been exhausted. In *Ex parte Jenkins*, 723 So.2d 649, 656 (Ala. 1998), this Court explained that "'"a judicial Power" is one to render dispositive judgments.'" (Quoting *Plaut*, 514 U.S. at 219 (quoting, in turn, Easterbrook, Presidential Review, 40 Case W. Res. L. Rev. 905, 926 (1990)) (emphasis omitted).) This Court further stated in *Jenkins* that there are types of legislation that infringe upon judicial power:

> "Under the federal constitution, the Supreme Court of the United States has held that three types of legislation violate the separation-of-powers principle by encroaching on the judicial power. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218-19 (1995). First, legislation that prescribes rules of decision for the Judiciary is, under certain circumstances, unconstitutional. Id. at 218 (citing *[United States v.] Klein*, 80 U.S. (13 Wall.) 128, 20 L.Ed. 519 [(1871)]. Second, legislation that requires the review of judicial decisions by the other branches of government is impermissible. *Plaut*, 514 U.S. at 218 (citing *Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792)). Third, legislation that would change the law incorporated into a final judgment rendered

> by the Judiciary violates the separation-of-powers principle. *Plaut*, 514 U.S. at 218-19."

723 So.2d at 655. The *Jenkins* Court then discussed the United States Supreme Court's explanation in *Plaut* as to when retroactive application of law infringes on the judicial power:

> "'It is the obligation of the last court in the [Article III] hierarchy that rules on the case to give effect to Congress's latest enactment, even when that has the effect of overturning the judgment of an inferior court, since each court, at every level, must "decide according to existing laws." . . . Having achieved finality, however, a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was.'
>
> "*Plaut*, 514 U.S. at 227 (emphasis in original) (citations omitted). Thus, the core judicial power is the power to declare finally the rights of the parties, in a particular case or controversy, based on the law at the time the judgment becomes final."

Ex parte Jenkins, 723 So.2d at 656. Here, the County parties argue, because this case remains on appeal from the trial court's judgment, a new law such as § 71.01(G) that is intended to be retroactive must apply to that judgment and have retroactive effect on this appeal.

The taxpayers argue that § 71.01(G), passed after the trial court declared Act No. 2015-226 unconstitutional for lack of a proper BIR, cannot be used to revive a statute already determined to be unconstitutional.

> "At this point we note that Amendment No. 375 to the Constitution amended § 110 upon its ratification in 1978 and changed the definition of a local law to 'a law which is not a general law or a special or private law.' This amendment was not in effect, however, at the time Act 689 was passed. Therefore, the classification of the Act is to be determined under the definitions in the quoted portion of the original 110."

Jefferson Cty. v. Braswell, 407 So.2d 115, 117 (Ala. 1981). The taxpayers also argue that §§ 13 and 95, Ala. Const. of 1901, prohibit retroactive application of § 71.01(G) to their vested rights and the trial court's final judgment, which, they argue, are afforded protection under the Alabama Constitution. *McCullar v. Universal Underwriters Life Ins. Co.*, 687 So.2d 156, 165 (Ala. 1996) ("A cause of action has vested if it has accrued at the time of the legislation or the judgment. It accrues 'when a person sustains a legal injury upon which an action can be maintained.'"); *Mayo v. Rouselle Corp.*, 375 So.2d 449, 451 (Ala. 1979) (holding that the right to bring an action can be modified, limited, or repealed as the legislature sees fit, except where such action has already accrued).

Section 13, Ala. Const. of 1901, guarantees "[t]hat all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of

law; and right and justice shall be administered without sale, denial, or delay." The taxpayers argue that § 13 prohibits the retroactive application of § 71.01(G) because, they say, § 13 preserves a remedy for their cause of action, which they say as accrued and their right vested. Alabama courts must follow the mandate of § 13, they argue, regardless of the intent or motives of the legislature. *Lankford v. Sullivan, Long & Hagerty*, 416 So.2d 996, 1000 (Ala. 1982) ("'Where legislation infringes upon a right protected by § 13, however, we are dealing with a limitation on the power of the legislature. By determining the validity of such legislation, we do not pass judgment on its wisdom, but follow our own supreme mandate to uphold the constitution of this state.'" (quoting *Fireman's Fund American Ins. Co. v. Coleman*, 394 So.2d 334, 353 (Ala. 1980) (Shores, J., concurring in the result))).

The taxpayers rely on *United Companies Lending Corp. v. Autrey*, 723 So.2d 617, 624 (Ala. 1998), in which this Court stated:

> "'[Section 13] of the Constitution provides "that every person, for an injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law." It will be noticed that this provision preserves the right to a remedy for an injury. That means that when a duty has been breached producing a legal claim for damages, such claimant cannot be denied the benefit of his claim for the absence of a remedy. But this provision does not undertake to preserve existing duties against legislative change made before the breach occurs.'"

(Quoting *Pickett v. Matthews*, 238 Ala. 542, 545, 192 So. 261, 263 (1939) (emphasis added in *Autrey*).) The taxpayers then argue that § 13 prohibits taking away rights that vested before a lawsuit is filed. In this case, they say, the County parties sued seeking to validate Act No. 2015-226 and the new taxes levied therein. In defense of that action, the taxpayers state, the taxpayers argued that Act No. 2015-226 was unconstitutional because of the legislature's failure to pass a proper BIR. For purposes of § 13, the taxpayers argue, their defense accrued and right to a remedy vested as of the date of the enactment of Act No. 2015-226 and before the legislature exercised its power to propose amendment no. 14; therefore, they contend, applying § 71.01(G) retroactively would violate their rights under § 13.

The taxpayers also argue that § 95, Ala. Const. of 1901, preserves their existing defenses. Section 95 provides:

> "There can be no law of this state impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; and the legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this state. After suit has been commenced on any cause of action, the legislature shall have no power to take away such cause of action, or destroy any existing defense to such suit."

The taxpayers, citing *Jefferson County Commission v. Edwards*, 49 So.3d 685, 691 (Ala. 2010), maintain that this Court has held that § 95 prohibits "the legislature from acting on matters that are within

the breast of the judicial system by taking away a cause of action" after a lawsuit has been filed. Section 95, the taxpayers argue, prohibits any legislative encroachment upon a right asserted in a pending case. *Ex parte Alfa Fin. Corp.*, 762 So.2d 850, 852 (Ala. 1999)(holding that § 95 prevented the legislature from taking away existing claim where suit had been filed before enactment of statutory amendment); *United Cos. Lending Corp. v. Autrey*, 723 So.2d at 622 (concluding, in considering whether amended Code section should be afforded retroactive effect to bar plaintiffs' claims and damages, that right to recovery had vested within the meaning of § 13 of the Constitution, and any attempt to reduce the damages recoverable in the action would violate the last sentence of § 95).

The County parties argue that no other constitutional provision can bar retroactive application of § 71.01(G) to this case. Section 71.01(G), they argue, is now itself a provision of the Alabama Constitution; therefore, they argue, it is entitled to the deference afforded all other constitutional provisions, which is that it should not be read to violate other provisions of the Alabama Constitution or read in ways that would make the Alabama Constitution self-contradictory. Any such reading, the County parties contend, violates two well settled canons of construction: (1) Laws ""must be construed *in pari materia* in light of their application to the same general subject matter. . . . Our obligation is to construe [the] provisions 'in favor of each other to form one harmonious plan,' if it is possible to do so."" *Brandy v. City of Birmingham*, 73 So.3d 1233, 1242 (Ala. 2011) (internal citations omitted), and (2) "[w]hen there is a conflict, or

apparent conflict, between sections of the Constitution, the more specific will prevail as against a more general statement pertaining to the same subject matter." *Jefferson Cty. v. Braswell*, 407 So.2d 115, 119 (Ala. 1981). The County parties insist that § 71.01(G) is the more specific provision when compared to the other constitutional sections argued by the taxpayers. By its very terms, they say, § 71.01(G) applies only to BIRs underlying local laws passed under the procedure stated in § 71.01(C) before November 8, 2016. *Baldwin Cty. v. Jenkins*, 494 So.2d 584, 588 (Ala. 1986) ("[I]n cases of conflicting statutes on the same subject, the latest expression of the legislature is the law.").

The County parties argue that retroactive application of § 71.01(G) does not violate § 13 because no one has a vested right in the House's voting procedure on BIRs. Section 71.01(G), they argue, applies retroactively to this case because, they say, no person has a "vested right" to sue based on the voting procedure used in the House to pass BIRs. "[N]o person has a vested right in a particular remedy . . . or in particular modes of procedure." *Perdue v. Green*, 127 So.3d 343, 390 (Ala. 2012) (internal quotation marks omitted). Section 71.01(G) expressly applies retroactively to "any resolution authorizing the consideration of a bill proposing a local law adopted before November 8, 2016." The County parties maintain that the reach of § 71.01(G) includes BIRs underlying local acts involved in cases still pending before the State's trial courts and on appeal, as well as BIRs that have not been the subject of litigation. Those parties with actual vested rights, the County parties say, would be local governments like Jefferson County, hospital boards, and schools that constructed courthouses,

hospitals, and school buildings in reliance on the local acts that were retroactively validated by § 71.01(G).

The County parties also argue that retroactive application of § 71.01(G) does not violate § 95 because, they argue, the constitutional amendment is an act of the people of Alabama, not an act of the legislature purporting to take away a cause of action; § 95, they argue, bars legislation, not constitutional amendments. The County parties note that this Court held in *Jefferson County Commission v. Edwards*, *supra*, that § 95 barred the retroactive application of a new statute that attempted to cure an old tax statute because the new statute took away a cause of action. "But a proposal to amend the Constitution is not an act of legislation." *Bonds v. State Dep't of Revenue*, 254 Ala. 553, 554, 49 So.2d 280, 281 (1950). Because § 95 does not apply to constitutional amendments, the County parties argue, § 71.01(G) applies retroactively to cure any defect in Act No. 2015-226.

The taxpayers maintain that the County parties' § 13 argument is wrong for two reasons. First, they argue, they did not sue the County parties; the County parties sued taxpayers and citizens of Jefferson County in a validation proceeding, and the taxpayers defended the case based in part on the legislature's failure to pass a constitutionally adequate BIR before passing H.B. 573, which became Act No. 2015-226. Second, they argue, insisting that the legislature comply with the voting requirements of § 71.01(C) of the Alabama Constitution is not a matter of "remedy" or even a "mode of procedure." The taxpayers maintain that the voting requirements in § 71.01(C) were a constitutionally imposed gate the legislature needed to unlock before it could consider a bill without passing the

basic appropriations bills. The taxpayers contend that a constitutional guarantee cannot be retroactively disregarded after the issue has been raised in a lawsuit and proceeded to a final judgment in the trial court.

The taxpayers also argue that the County parties' § 95 argument is wrong for two reasons. The County parties, the taxpayers say, contend that § 71.01(G) does not violate § 95 because (1) it is an "act of the people, not an act of the Legislature taking away a cause of action," and, therefore, (2) § 95 applies only to actions of the legislature resulting in "statutes," not constitutional amendments. The taxpayers insist that § 95 places a constitutional check upon all "power" of the legislature, not solely upon the legislative power to enact statutes.

The taxpayers further argue that their defenses and judgment are property rights warranting due-process protection. An accrued cause of action or defense to a claim, they say, is "constitutional" property, a vested property right, because "the holder has a legitimate expectation that state law will recognize the claim or defense." Shannon's supplemental brief, at 17. Once a lawsuit is filed, the taxpayers argue, subsequent action by the state does not interfere with rights that might accrue in the future, but with existing expectations and rights that have already accrued. To the extent that § 71.01(G) could apply to this case, the taxpayers conclude, it was enacted to eviscerate their vested rights and defenses and violates their constitutional right to due-process protection.

Finally, the taxpayers argue that the constitutional right to have the annual budgets passed before other

bills is a substantive, not a remedial, vested right of which citizens can be deprived only prospectively, citing *Ex parte Bonner*, 676 So.2d 925, 926 (Ala. 1995), in which this Court stated:

> "'[R]emedial statutes . . . are not within the legal [concept] of "retrospective laws," . . . and do operate retroactively, in the absence of language clearly showing a contrary intention.' *Street v. City of Anniston*, 381 So.2d 26, 29 (Ala. 1980). . . . In other words, 'remedial statutes—those which do not create, enlarge, diminish, or destroy vested rights—are favored by the courts, and their retrospective operation is not obnoxious to the spirit and policy of the law.'"

The extension of the sales and use taxes in Act No. 2015-226, the taxpayers argue, will produce over $100 million a year for approximately 23 years. Therefore, they argue, they have a vested interest in the trial court's judgment declaring Act No. 2015-226 unconstitutional.

This Court has previously held that "there is no reason why a constitutional amendment cannot by the use of express and clear terms validate and confirm an act of the legislature previously enacted but invalid on account of a failure to observe provisions of the State Constitution." *Bonds*, 254 Ala. at 555, 49 So.2d at 282. *See also Ex parte Southern Ry.*, 556 So.2d 1082, 1090 (Ala. 1989) ("We have been cited to Alabama cases recognizing two exceptions to the general rule that subsequent amendments to a constitution cannot revive a statute that is ineffective because of constitutional deficiencies that existed when the statute was passed. The first exception is applicable where

the subsequent constitutional amendment by clear and express terms validates and confirms the statute that had been invalid on account of its failure to comply with constitutional provisions that existed at the time of its passage. *Bonds v. State Dep't of Revenue*, 254 Ala. 553, 49 So.2d 280 (1950).”). Because amendment no. 14, now § 71.01(G), Ala. Const. of 1901, used “clear and express terms” to validate and confirm the procedure used to pass BIRs underlying local bills before November 8, 2016, we agree with the County parties, and we hold that § 71.01(G) can properly be applied retroactively to cure the argued constitutional deficiency affecting Act No. 2015-226. Our holding that § 71.01(G) applies retroactively to Act No. 2015-226 does not, however, dispose of this case. We now must address the alternative arguments made by the taxpayers challenging the constitutionality of Act No. 2015-226.

IV. The Taxpayers' Alternative Constitutional Challenges

The taxpayers argue that the trial court had before it alternative grounds—other than the non-retroactivity of § 71.01(G)—for declaring Act No. 2015-226 invalid and that those alternative grounds provide separate and independent reasons aside from the BIR issue on which this Court can affirm the trial court's judgment. We now address these alternative grounds.

A. Section 105, Ala. Const. of 1901

Section 105 prohibits local laws that create variances from general laws:

> “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 taxpayers contend that Act No. 2015-226 is void under § 105 because, they argue, it is a local law that conflicts with general laws.

The taxpayers first argue that § 105 voids Act No. 2015-226 because the matter of Act No. 2015-226 is subsumed by § 40-12-4, Ala. Code 1975. "A matter is 'provided for by a general law' within the meaning of § 105 if the 'subject [of the local act] is already subsumed by [a] general statute." *City of Homewood v. Bharat, LLC*, 931 So.2d 697, 701 (Ala. 2005) (quoting *Peddycoart v. City of Birmingham*, 354 So.2d 808, 813 (Ala. 1978)). "'The subject of a local act is deemed to be "subsumed" in a general law if the effect of the local law is to create a variance from the provisions of the general law.'" Bharat, 931 So.2d at 702 (quoting Opinion of the Justices No. 342, 630 So.2d 444, 446 (Ala. 1994)(emphasis added in *Bharat*)).

The taxpayers argue that § 40-12-4 is the only general law that provides counties with the authority to impose sales and use taxes for educational-funding purposes. They state that counties have no general authority to levy, impose, or collect privilege taxes in the nature of sales taxes without express authority from the legislature. *Jefferson Cty. v. Johnson*, 333

So.2d 143, 145 (Ala. 1976). However, they say, § 40-12-4 authorizes the levy of such privilege taxes in the nature of sales taxes but contains significant restrictions on the counties' use of educational-funding taxes, specifically, all the proceeds of such taxes must be used solely for educational purposes. Under § 40-12-4(a), for example, "[a]ll the proceeds from any tax levied pursuant to this section less the cost of collection thereof shall be used exclusively for public school purposes, including specifically and without limitation capital improvements and the payment of debt service on obligations issued therefor." Similarly, the last sentence of § 40-12-4(b) dictates that moneys distributable to school systems operating within a county must be distributed according to the "Foundation Program" protocol for local boards of education within the county.

The taxpayers state that this Court has held that local laws that attempt to fund local school systems in counties outside the restrictions of § 40-12-4 violate § 105. In Opinion of the Justices No. 311, 469 So.2d 105, 107-08 (Ala. 1985), a proposed local law authorized Madison County to levy and collect sales and use taxes in areas served by the Madison County School System, the proceeds of which were to be distributed solely to that school system. This Court unanimously held that the proposed local law violated § 105:

> "Both § 40-12-4 and H.B. 704 authorize the governing body of Madison County to levy sales or use taxes in order to generate revenue for the Madison County School System. They differ only in that § 40-12-4 authorizes a county-wide tax to generate revenue for all school systems within the county (including

> the Madison County School System), while H.B. 704 authorizes a tax only in those areas of the county served by the Madison County School System, with the revenues generated to be given only to the Madison County School System. The subject matter of H.B. 704 is already subsumed by § 40-12-4 and therefore § 105 prohibits its enactment."

The taxpayers argue that Act No. 2015-226 is a more overt violation of § 105 than the proposed local law in Opinion of the Justices No. 311, in which all the money was at least being used for educational purposes consistent with the requirements of § 40-12-4. However, the taxpayers argue, because the restrictions in § 40-12-4 were not being followed, the proposed law was invalid because the local act created a variance from § 40-12-4. In this case, they contend, the sales and use taxes authorized by Act No. 2015-226 contravene § 40-12-4 in at least two distinct ways.

First, the taxpayers say, $42.4 million of the annual distributions of the sales and use taxes authorized by Act No. 2015-226 are to be paid to non-educational recipients, in direct contravention of the educational-exclusivity requirements of § 40-12-4. Second, they say, even the money earmarked for educational purposes is not to be distributed according to the "Foundation Program" as required by § 40-12-4(b) but, rather, according to a freestanding methodology contained in § 10 of Act No. 2015-226.

The taxpayers maintain that a direct conflict is not required for a local law to violate § 105. If the local law addresses a "subject matter" already addressed in the general law, the taxpayers argue, that local

law is "subsumed" by the general law and is void under § 105. Opinion of the Justices No. 311, 469 So.2d at 107-08. Here, the taxpayers say, the § 105 problem is all the more obvious because there is direct conflict between the local law and the general law, conflict that is even more striking in this case, they argue, because the new warrants are to replace the existing school warrants. In fact, the taxpayers state, Act No. 2015-226 provides that the tax authorized therein cannot be imposed unless the existing tax imposed under § 40-12-4 is canceled. The very purpose of Act No. 2015-226 then, the taxpayers argue, is to create an exception to the exclusivity provisions of § 40-12-4 with respect to the education-sales tax currently in place.

The taxpayers next argue that the County parties have not demonstrated any local need. The County parties, citing *Miller v. Marshall County Board of Education,* 652 So.2d 759, 761-62 (Ala. 1995), argued that Act No. 2015-226 could be sustained based on the "demonstrated local need" exception to § 105. In *Miller*, this Court sustained a local act that authorized Marshall County to impose a sales tax in portions of the county not served by the municipal systems, with the proceeds to be provided solely to the county system. The defenders of the local act developed an extensive evidentiary record demonstrating that over time, the three municipal school systems in Marshall County had siphoned off large numbers of students, leaving the Marshall County school system "having to operate a primarily rural school system with a greatly diminished tax base." *Miller*, 652 So.2d at 761. In addition, a Public Affairs Research Council of Alabama report noted that, in the relevant time frame, the Marshall

County School System was last in Alabama in local per child expenditures. Under those circumstances, the Court held that Marshall County "had a demonstrated local need that was not provided for by the general law." 652 So.2d at 762. *Miller* does not apply to this case, the taxpayers argue, because the County parties did not demonstrate in the record a local need.

The taxpayers argue that *Miller* is distinguishable on its facts. Here, they say, the County parties offered no evidence of a local need that was not provided for by general law. The County parties' current educational-funding needs are, in fact, being met, the taxpayers say, because the existing school warrants are being paid through the proceeds of the education-sales tax currently in place. Moreover, the taxpayers argue, the County parties have pointed to no record evidence concerning any alleged need to refinance the existing school warrants or that such refinancing is economically desirable.

Finally, the taxpayers argue that, even if the County parties had demonstrated a local need, § 105 has been violated. The taxpayers contend that the "demonstrated-local-need" line of cases is unmoored from § 105 and, they argue, should be overruled. The taxpayers say that this Court's last decision addressing the "demonstrated-local-need" exception was 16 years ago in *Walker County v. Allen*, 775 So.2d 808, 812 (Ala. 2000), in which this Court made it clear that a local-need argument would not prevail where the use of such an argument is at total variance from the intent of the general law. The Court stated:

> "Walker County contends[] Act No. 97-903 was enacted in order to finance the construc-

> tion and operation of a mandated county jail and to fund recurring general operations. We note however, that Act No. 97-903 provides that the proceeds from the tax or fee levied shall be deposited into the Walker County general fund. Unlike the local act in *Miller*, which provided that the tax was levied for a specific purpose (the support of Marshall County schools in areas not served by city school systems), Act No. 97-903 does not specify what the tax is to be used for. In addition, both the general law and the local law involved in *Miller* levied taxes to support school systems. In the present case, the local law permitting the levy of license taxes 'on engaging in or carrying on any business' has no relation to the construction of a new county jail. 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."

775 So.2d at 812-13.

The taxpayers maintain that there is a fundamental problem of constitutional misinterpretation with *Miller*'s "demonstrated local need" exception to § 105: They allege that it is grounded in no constitutional language whatsoever. Decisions on constitutional law must be grounded in the constitutional text itself, and, the taxpayers argue, there is no textual basis within § 105 or any other provision of the Alabama Constitution that recognizes a "demonstrated-local-need" exception to a variance from the

general law created by a local law. The taxpayers insist that § 105 establishes a bright-line rule: Local laws cannot create exceptions from general laws. They argue that *Miller* and the "demonstrated-local-need" exception are unsound and lack any basis in the context of § 105, and they ask this Court to overrule *Miller* and the demonstrated-local-need line of cases.

In response, the County parties first argue that Act No. 2015-226 is not subsumed by § 40-12-4 and does not violate § 105 because it is a nonexclusive act that meets specific local needs. The County parties state that the taxpayers argued in the trial court that Act No. 2015-226 violated § 105 on two grounds. First, the County parties say, the taxpayers argued that § 40-12-4, a general law, is the exclusive authority under which a county may levy sales and use taxes. Second, the County parties say, the taxpayers argued that Act No. 2015-226 is subsumed by § 40-12-4.

The County parties argue that § 40-12-4 is a general law authorizing counties to levy sales and use taxes for the support of all county public-school systems but that it is not the exclusive authority for such taxes. The County parties contend that § 40-12-4(a) states that the taxes authorized therein "shall be in addition to any and all other county taxes heretofore or hereafter authorized by law in such county." The County parties argue that that language does not reflect an exclusive authorization, but requires the County to terminate the levy of the 2004 education-sales tax upon initial levy of the new sales and use taxes, and does not prohibit the County from levying taxes under § 40-12-4 in the future.

Second, the County parties argue, this Court has held that "local legislation reflecting responses to local needs may be enacted. It is only when those local needs already have been responded to by general legislation that § 105 of our state Constitution prohibits special treatment by local law." *Peddycoart*, 354 So.2d at 815. Moreover, the County parties state, a court looks to the goal of a local law, and not its generic subject matter, when determining whether § 105 has been violated. Thus, where a local act "represents the Legislature's response to demonstrated local needs of Jefferson County which had not previously been addressed by the general law, [the Court will] find no constitutional infirmity in the Act." *State Bd. of Health v. Greater Birmingham Ass'n of Home Builders, Inc.*, 384 So.2d 1058, 1062 (Ala. 1980). In this case, the County parties argue, Act No. 2015-226 provides for the levy of sales and use taxes to support educational and noneducational purposes. Section 40-12-4 does not authorize a county to levy sales and use taxes for general-fund purposes or any of the other non-educational purposes provided for in Act No. 2015-226. Therefore, they argue, Act No. 2015-226 is not subsumed by § 40-12-4. Furthermore, the County parties state, the legislature made findings in §§ 2(c) and (d) of Act No. 2015-226 describing the demonstrated local needs of Jefferson County, which clearly cannot be addressed by a tax levied under § 40-12-4 because, they argue, § 40-12-4 provides no authority for the County to levy taxes for noneducational purposes. If the taxpayers believed those findings were erroneous, the County parties argue, they could have presented evidence to the contrary in the trial court, but they did not. The County parties argue that Act No. 2015-226 does not violate § 105 because it represents the

legislature's response to demonstrated local needs of Jefferson County that are not provided for by general law.

We agree with the County parties that Act No. 2015-226 is not subsumed by § 40-12-4 and that it does not violate § 105. Although the taxpayers argue that the County parties did not demonstrate local need, the County parties pointed out that Act No. 2015-226 was supported by legislative findings of special local needs, both educational and non-educational, which cannot be addressed by § 40-12-4, findings that were made before Act No. 2015-226 was enacted. We further decline to overrule either *Miller* or the demonstrated-local-needs line of cases.

B. Section 104, Ala. Const. of 1901

Section 104 states, in pertinent part:

> "The legislature shall not pass a special, private, or local law in any of the following cases:
>
> . . . .
>
> "(15) Regulating either the assessment or collection of taxes, except in connection with the readjustment, renewal, or extension of existing municipal indebtedness created prior to the ratification of the Constitution of eighteen hundred and seventy-five;
>
> . . . .
>
> "(17) Authorizing any county, city, town, village, district, or other political subdivision of a county, to issue bonds or other securities unless the issuance of said bonds or other

> securities shall have been authorized before the enactment of such local or special law, by a vote of the duly qualified electors of such county, township, city, town, village, district, or other political subdivision of a county, at an election held for such purpose, in the manner that may be prescribed by law; provided, the legislature may, without such election, pass special laws to refund bonds issued before the date of the ratification of this Constitution;
>
> . . . .
>
> "(19) Creating, extending, or impairing any lien . . . ."

The taxpayers contend that Act No. 2015-226 is void under §§ 104(15), (17), and (19) because, they argue, it is a local act touching upon subjects forbidden by those provisions.

The taxpayers first argue that Act No. 2015-266 violates § 104(15). They state that § 4(e) of Act No. 2015-226 provides that if either or both of the State sales-tax statutes or State use-tax statutes are repealed, Jefferson County is nonetheless authorized to continue to levy, administer, collect, and enforce the sales and use taxes authorized by Act No. 2015-226. The taxpayers argue the sections of Act No. 2015-226 regulating "collection" violate the prohibition in § 104(15) against a local law "regulating either the assessment or collection of taxes." The taxpayers contend that this Court has recognized that the purpose of § 104(15) is to provide uniform laws for the assessment and collection of taxes. The taxpayers contend that the sales tax authorized to be levied

under Act No. 2015-226 is like the type of privilege taxes in § 40-12-4 that are both assessed and collected. The taxpayers argue that the County parties' argument that § 104(15) does not apply to the levy, assessment, and collection of the sales tax involved in this case completely disregards the language of § 40-12-4 stating that sales taxes are both assessed and collected just like property taxes. In this case, the taxpayers contend, the "manifest injustice" of not assessing property taxes in a single property-tax bill is equally applicable to "point of sale" retail sales taxes where a different set of local-law collection regulations for sales taxes would be unworkable. The taxpayers maintain that local laws creating a non-uniform assessment and collection system for a portion of the sales tax are the type of taxes that violate the requirement in § 104(15) for uniform general law.

The taxpayers next argue that Act No. 2015-266 violates § 104(17). They argue that Act No. 2015-226 is a local law that purports to empower Jefferson County to issue new refunding warrants, which were subsequently authorized in the principal amount of $595 million, even though there has been no County election regarding the matter. Warrants, the taxpayers say, are a form of indebtedness covered by § 104(17). As this Court stated in *Newton v. City of Tuscaloosa*, 251 Ala. 209, 216, 36 So.2d 487, 492 (1948):

> "The term 'bonds or other securities' [in § 104(17)] of course comprehends warrants, too, and the intention is plain that the purpose of this constitutional proscription was to inhibit such local legislation as is intended by the act now under consideration without the matter first being authorized by a

> majority vote of the duly qualified electors of the county."

Because there was no election regarding the issuance of new warrants before the enactment of Act No. 2015-226, the taxpayers argue, it violates § 104(17).

The taxpayers also argue that the purpose of § 104(17) is to prohibit local-law statutes authorizing refunding warrants because, they say, the general law in § 11-28-4, Ala. Code 1975, subsumes the field. The taxpayers contend that Act No. 2015-226 provides that there can be no tax levy without a prior or simultaneous issuance of refunding warrants to refinance the existing warrants, but, they say, a local-law authorization to issue debt is prohibited by § 104(17). If Jefferson County were relying on general law as its sole authority to issue the refunding warrants, the taxpayers say, no detailed language would be necessary defining, discussing the terms and conditions of, and mandating how proceeds of refunding warrants would be used to defease the existing warrants.

Finally, the taxpayers argue that Act No. 2015-266 violates § 104(19). They argue that Act No. 2015-226 imposes a lien in connection with the authorized taxes. Section 7 of Act No. 2015-226 states that all taxes, interest, and penalties "shall constitute and be secured by a lien upon the property of any person from whom the tax or taxes are due or that is required to collect the tax or taxes." The taxpayers argue that Act No. 2015-226 is a "plain English violation" of § 104(19), which prohibits a local law "creating, extending or impairing any lien." Under § 104(19), the creation of a lien must be a general law, and, the taxpayers argue, it is impossible to say the language

"creating a lien" is not violated by the clear language of Act No. 2015-226.

The County parties argue that Act No. 2015-226 does not violate any provisions of § 104. They first contend that § 104(15) bars local laws that impose property taxes, but that Act No. 2015-226 authorizes sales and use/privilege taxes. The County parties maintain that, although on its face § 104(15) might appear to broadly cover all local taxation, this Court has long held that § 104(15) relates only to property taxes, not to privilege taxes like the sales and use taxes authorized in Act No. 2015-226. *See Bedingfield v. Jefferson Cty.*, 527 So.2d 1270, 1274 (Ala. 1988).

The County parties next contend that, although § 104(17) prohibits local laws "[a]uthorizing any county, city, town, village, district, or other political subdivision of a county, to issue bonds or other securities," Act No. 2015-226 does not authorize the County to issue any debt. Instead, the County parties argue, Act No. 2015-226 authorizes the County, upon compliance with certain conditions, to levy the sales and use taxes and to pledge the proceeds thereof as security for obligations issued under other provisions of Alabama law to refinance the outstanding school warrants.

Finally, the County parties argue that § 104(19) bars local laws that establish non-tax liens. The County parties state that Act No. 2015-226 authorizes only a tax lien. The County parties argue, however, that numerous local acts have authorized counties to levy sales and use taxes that expressly provide for a lien to secure the collection of such taxes because this Court has held that § 104 does not prohibit the legislature from making local sales and use tax laws

complete by providing for the collection of such taxes in the local law, and because a lien to secure the collection of county sales and use taxes is either authorized by or created under general law by §§ 11-3-11.2 and -11.3, Ala. Code 1975. The County parties argue that § 104 does not prohibit the levy or authorization to levy sales and use taxes by local act, nor does it prohibit the legislature from including provisions for the collection of such taxes. If a local act is to levy a tax, the County parties argue, the governmental entity must be able to collect the tax, or the purpose of the act is frustrated.

The County parties contend that this Court has long held that "[e]ach section of the Constitution must necessarily be considered *in pari materia* with all other sections." *Jefferson Cty. v. Braswell*, 407 So.2d 115, 119 (Ala. 1981). The County parties maintain that this Court's holding in *Standard Oil Co. v. Limestone County*, 220 Ala. 231, 124 So. 523 (1929), that the legislature has essentially unabridged power to provide for local levy of privilege taxes, clearly indicates that § 104 was not intended to hinder the legislature's authority to provide for the levy and collection of privilege taxes by local law. Moreover, the County parties argue, the legislature has provided by general law broad powers to counties with regard to the administration and collection of sales and use taxes, powers that clearly include the authority to impose tax liens to enforce the collection of taxes levied. Ignoring those provisions of general law, the County parties argue, would retroactively invalidate numerous local acts.

Section 11-3-11.2(b) provides:

> "Any county commission which elects to administer and collect, or contract for the collection of, any local sales and use taxes or other local taxes, shall have the same rights, remedies, power and authority, including the right to adopt and implement the same procedures, as would be available to the Department of Revenue if the tax or taxes were being administered, enforced, and collected by the Department of Revenue."

In describing these powers and limitations, the County parties argue, § 11-3-11.3(a) provides:

> "Any county . . . tax levy administered and collected by the Department of Revenue . . . shall parallel the corresponding state tax levy, except for the rate of tax, and shall be subject to all . . . regulations . . . as applicable to the corresponding state tax, except where otherwise provided in this section, including provisions for the enforcement and collection of taxes."

By the express terms of § 11-3-11.3(a), the County parties argue, the provisions for the enforcement and collection of the State sales and use taxes must be incorporated into the county tax levy in order for the Department of Revenue to be authorized to administer and collect the taxes. Because, they say, § 11-3-11.2(b) provides that the County "shall" have the same authority with regard to enforcement and collection as would the Department of Revenue, the provisions for the enforcement and collection of the State sales and use taxes must be incorporated into Act No. 2015-

226. Those requirements, the County parties argue, are part of the general laws of the State.

Sections 40-1-2 and 40-29-20, Ala. Code 1975, provide that there shall be a lien to secure the payment of certain State taxes on all property of a person liable for such taxes. Under § 11-3-11.3(a), given that such a lien provision is applicable to the enforcement and collection of State sales and use taxes, such a provision must also apply to the levy of a local tax if the tax is to be eligible for collection by the Department of Revenue. For a county commission or any other administrator of the local tax to have the same powers as the Department of Revenue, it follows that a parallel provision establishing a lien must be incorporated into the levy of the tax, regardless of who administers it. Therefore, the County parties conclude, the provision in Act No. 2015-226 providing for the establishment of a lien is either declarative of general law applicable to the County or is required by general law to be expressly incorporated into the Act. In either case, the County parties conclude, Act No. 2015-226 does not violate § 104(19).

After reviewing the various detailed provisions of Act No. 2015-226, we see no merit to the taxpayers' arguments that any of the provisions of § 104 render Act No. 2015-226 unconstitutional.

C. §§ 45-37-162.02 and .03, Ala. Code 1975 (Local Laws, Jefferson County)

The taxpayers argue that Act No. 2015-226 and the County's implementing resolutions violate §§ 45-37-162.02 and .03, Ala. Code 1975 (Local Laws, Jefferson County), which require that before the County issues new debt, it must provide notice concerning

the terms of the debt and hold a public hearing. The taxpayers state that the County parties' answer to this argument is that, because the County has not yet entered into any "binding agreement" to issue debt, the time for notice or a hearing has not yet come. The problem with the County parties' position, the taxpayers argue, is that a judgment in a validation proceeding under § 6-6-750 *et seq.*, Ala. Code 1975, forecloses any right of a taxpayer to contest any aspect of the proposed indebtedness.

The County parties indeed contend that they have not failed to hold the hearing provided for in § 45-37-162.03 because, they argue, no such hearing is required to be held at this time. The County parties state that the taxpayers fail to note that the hearing is required to be held 3 to 10 days before entering into a "binding agreement to issue debt." The term "binding agreement," the County parties state, clearly contemplates an agreement or contract with a purchaser to whom the debt will be issued. This concept, they state, includes contracts or agreements such as a warrant purchase agreement between the County and an underwriter, a loan agreement with a commercial bank buying the debt, or an implicit contract arising from a notice of sale distributed by the County to potential purchasers of debt at a public bid. The County parties state that Jefferson County has not entered into any such agreement; thus, they argue, this requirement has not been violated. The notice requirement in § 45-37-162.03 ties to the public hearing; therefore, the County parties argue, that statute has not been violated either. The County parties state that they are well aware of these requirements and will satisfy them at the appropriate time.

We see no merit to the taxpayers' argument that the notice and hearing requirements in §§ 45-37-162.02 and .03 have any effect upon the constitutionality of Act No. 2015-226.

V. The Cross-Appeal

The County parties filed a motion to dismiss the cross-appeal because, they argued, the class plaintiffs were not aggrieved by the judgment on which the taxpayers prevailed—the trial court's denial of validation. *Alcazar Shrine Temple v. Montgomery Cty. Sheriff's Dep't*, 868 So.2d 1093, 1094 (Ala. 2003) ("Only a party prejudiced or aggrieved by a judgment can appeal."). The County parties pointed out that, as appellees, the class plaintiffs could, in their appellate brief, argue that this Court should affirm the trial court's judgment for any reason without the necessity of filing a cross-appeal. In *Municipal Workers Compensation Fund, Inc. v. Morgan Keegan & Co.*, 190 So.3d 895, 908 (Ala. 2015), this Court stated:

> ""[A]n appellee, though he files no cross-appeal or cross-petition, may offer in support of his judgment any argument that is supported by the record, whether it was ignored by the court below or flatly rejected. . . ."
>
> "' . . . .'
>
> " . . . Here, MAM and Morgan Keegan prevailed in the trial court and do not seek to have an 'alteration of the judgment to enlarge [their] rights.' [*McMillan, Ltd. v. Warrior Drilling & Eng'g Co.*, 512 So.2d 14, 25 (Ala. 1986)]. They simply argue for

> affirmance of the trial court's order on an alternative ground that was presented to the trial court but that was not relied upon by the trial court. Accordingly, MAM and Morgan Keegan were not required to file a cross-appeal in this case in order to challenge the denial of their motion to strike the Fund's evidentiary materials."

(Quoting 9 J. Moore and B. Ward, Moore's Federal Practice ¶ 204.11[2] (2d ed. 1985).) We agree with the County parties that the cross-appeal is due to be dismissed.

VI. Conclusion

We conclude that by its express terms § 71.01(G) applies retroactively to this action. We further find no merit in the alternative grounds on which the taxpayers argue that Act No. 2015-226 is unconstitutional. We therefore reverse the trial court's judgment declaring Act No. 2015-226 unconstitutional on the basis that the proper quorum was not present pursuant to § 71.01(C) when the BIR underlying H.B. 573 was enacted.

1150326—REVERSED.

1150327—APPEAL DISMISSED.

Stuart, Bolin, Main, and Wise, JJ., concur.

Shaw, J., concurs in the result.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECLARATORY JUDGMENT (DECEMBER 14, 2015)

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, CIVIL DIVISION/BIRMINGHAM

JEFFERSON COUNTY, ALABAMA; and, JEFFERSON COUNTY COMMISSION, as the Governing body of JEFFERSON COUNTY, Alabama,

Plaintiffs/ Petitioners,

v.

THE TAXPAYERS AND CITIZENS OF JEFFERSON COUNTY, ALABAMA; ANDREW BENNETT; MARY MOORE; JOHN ROGERS; WILLIAM MUHAMMED; and, KEITH A. SHANNON [each as individual TAXPAYERS and CITIZENS of JEFFERSON COUNTY, Alabama],

Defendants/ Respondents.

CV 15-903133-MGG

Before: Michael G. GRAFFEO, Circuit Judge

I. The Parties and Issues Presented

This action, filed August 13, 2015, is a validation proceeding brought under Ala. Code § 6-6-750 *et seq.*

[1975].[1] PLAINTIFFS/PETITIONERS are JEFFERSON COUNTY, ALABAMA and JEFFERSON COUNTY COMMISSION [hereinafter, collectively, "PETITIONERS" and/or the "the COUNTY" and/or "the COMMISSION"]. PETITIONERS seek to validate and confirm the proposed issuance of new "Warrants" to replace "Existing School Warrants".[2] Obligations on the Existing School Warrants are currently funded through an "Education Sales Tax," imposed by the COUNTY under § 40-12-4. The COUNTY also seeks to validate a new "Sales and Use Tax," to be imposed under a new "Sales and Use Tax Resolution" adopted by the COUNTY pursuant to new authority purportedly granted it under Act No. 2015-226 ("the 2015 Act" and/or "Act 15-226"), a local law passed during the 2015 Regular Session of the Legislature of the State of Alabama, introduced as HB 573.

Pursuant to § 6-6-752(b) the TAXPAYERS AND CITIZENS OF JEFFERSON COUNTY are named DEFENDANTS/RESPONDENTS ["RESPONDENTS" and/or "the TAXPAYERS"] and are represented herein by the Honorable Brandon K. Falls, District Attorney of JEFFERSON COUNTY, Alabama. The District Attorney filed an "Answer" [Doc. 33] raising no specific grounds as to invalidity, however, demanding "strict proof" that JEFFERSON COUNTY has proven all allegations of the PETITION, and, more particularly, satisfied all requirements as to giving proper, adequate

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[1] Hereafter, all reference to any statute[s] is to Ala. Code [1975].

[2] These terms are defined in the PETITION and this FINAL DECLARATORY JUDGMENT uses the same definitions.

notice to the TAXPAYERS and CITIZENS of JEFFERSON COUNTY.

Pursuant to § 6-6-753, five individual JEFFERSON COUNTY citizens and taxpayers have also appeared in this action. These are: MARY MOORE, JOHN ROGERS, WILLIAM MUHAMMAD, ANDREW BENNETT, and KEITH A. SHANNON ["SHANNON"]. Prior to their appearance in this action, on July 20, 2015, MOORE, ROGERS, MUHAMMAD and BENNETT filed a COMPLAINT FOR DECLARATORY JUDGMENT in JEFFERSON COUNTY Circuit Court [CV 15-902825-MG-G] on behalf of themselves and a class of persons similarly situated, *i.e.*, JEFFERSON COUNTY citizens and taxpayers. Their COMPLAINT sought a judicial declaration that Act 2015-226 is illegal and void in that it was enacted in violation of the Constitution of Alabama Constitution of 1901, as Amended. All JEFFERSON COUNTY Circuit Judges recused from this action and the Chief Justice appointed another Alabama Circuit Judge from outside JEFFERSON COUNTY to preside over the case.

However, after the PETITION herein was filed, MOORE, ROGERS, MUHAMMAD and BENNETT voluntarily dismissed that case and entered this action as DEFENDANTS/RESPONDENTS [hereafter, collectively, "the MOORE-ROGERS RESPONDENTS"], arguing the same contention they brought in their initial action, to-wit: Act 2015-226 was improperly enacted and therefore, all resolutions adopted by the COUNTY pursuant to Act 226 are invalid. Their RESPONDENTS' SUPPLEMENTAL MOTION [Doc. 37] makes this clear, to-wit: ¶¶ 1 and 3 so state, with the COMPLAINT in CV 15-902825-MGG attached as Exh. A. And, at ¶ 2, the MOORE-ROGERS RESPOND-

ENTS "join in and adopt by reference" the respective pleadings and positions of the TAXPAYERS and CITIZENS, as well as SHANNON.

SHANNON also maintains Act 226 was improperly enacted and therefore unconstitutional.[3] SHANNON filed his ANSWER [Doc. 24] raising four grounds on which Act 226 and all RESOLUTIONS passed by the COMMISSION under its purported authority are void. Those are:

1. pertaining to final passage of HB 573 of the 2015 Regular Session of the Alabama Legislature, enacted as Act 226, the Alabama House of Representatives ["the HOUSE"] failed to comply with Article IV, § 71.01 of the Constitution of Alabama of 1901, as Amended[4] by AL CONST Amend. No 448 ("AMENDMENT 448"], in that prior to considering HB 573 for final passage the HOUSE did not properly adopt a resolution, commonly referred to as a Budget Isolation Resolution ["BIR"], suspending application of Article IV, § 71.01(c) in order to take up HB573;

2. Act 226 violates Ala.Const. Art. IV. § 105 because it is subsumed in the general laws of the State of Alabama, more particularly § 40-12-4;

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[3] The Honorable Luther Strange, Alabama Attorney General, was served herein but filed an ACCEPTANCE AND WAIVER [Doc. 49] on September 14, 2015.

[4] Hereafter, all references to any 'Article and §' are to the Constitution of Alabama of 1901, as Amended.

3. Act 226 violates Ala.Const. Art. IV, §§ 104(17) and (19) because (as to (¶ 17)) there has been no election on the proposed new Warrants before introduction of Act 15-226, and (as to (¶ 19)), Act 15-226 creates an unlawful lien by local act; and,

4. the resolutions passed by the JEFFERSON COUNTY COMMISSION to date violate §§ 45-37-162.02 and -.03 because the COUNTY failed to issue notice and hold a hearing prior to their passage.

II. The Hearing on the Petition

Pursuant to its prior ORDER [Doc.4], on September 16, 2015, the Court held a Hearing. At that Hearing, all TAXPAYERS and CITIZENS of the COUNTY were given an opportunity to testify or address the Court. The Court received no oral testimony at the hearing. The parties STIPULATED to certain facts and that certain exhibits were to be admitted without objection. The Court then heard extensive oral argument.

The Evidence Before the Court

(A) Amended Joint Stipulations of Fact [Doc. 61]

1. The Birmingham News is a newspaper published in, and of general circulation in, the COUNTY.

2. Alabama Messenger is a newspaper published in, and of general circulation in, the COUNTY.

3. George F. Bowman, Sandra Little Brown, James A. Stephens, Joe Knight and David Carrington constitute, and have continuously constituted since the beginning of their respective current terms of office

in November, 2014, the duly elected, qualified and acting commissioners of the County Commission of the County.

4. With respect to the "Resolution Authorizing the Issuance of Limited Obligation Refunding Warrants" and the "Resolution Levying Sales and Use Tax Pursuant to Act No. 2015-226 of the Alabama Legislature," the County did not provide notice of a public hearing under Ala. Code § 45-37-162.02(b), in a newspaper of general circulation in the county, at any time before August 13, 2015, containing the items enumerated in Ala. Code § 4S-37-162.02(b).

5. At the time Respondent Keith Shannon filed his answer on September 11, 2015, the County's website reflected the Minutes from the August 13, 2015 meeting were the same document as the Agenda for the August 13 meeting.

6. The Alabama House of Representatives passed H.B. 573 on May 12, 2015, during the 2015 Regular Session of the Alabama Legislature. The Senate passed H.B. 573 on May 21, 2015, during the 2015 Regular Session of the Alabama Legislature. On May 21, 2015, after the Senate passed H.B. 573, the presiding officer of the House of Representatives signed H.B. 573 and delivered it to the Alabama Senate, where it was signed by the presiding officer of the Senate. The Governor signed H.B. 573 into law on May 27, 2015, and the bill became Act No. 2015-226.

7. Prior to the enactment of Act 2015-226, bills making the basic appropriations for the then ensuing budget period (*i.e.*, the 2016 budgets) had not been signed by the presiding officer of each house of the Legislature and presented to the Governor. On or about

September 16, 2015, the Alabama House of Representatives and the Alabama Senate passed a general appropriations bill (a budget) and delivered it to the Governor.

(B) Stipulated Exhibits

At the hearing the Court ADMITTED into evidence COURT EXHIBIT 1 consisting of seventeen [17] Exhibits. However, after the hearing, the parties filed an AMENDED STIPULATION REGARDING EXHIBITS OF RECORD [Doc. 55], attached hereto and incorporated herein as Exhibit A.

Following this *ore tenus* Hearing, the Court gave all parties an opportunity to submit post-trial briefs[5] and proposed orders. The Court has extensively REVIEWED and CONSIDERED all of the foregoing.

III. Summary of the Holding

The Court AGREES with the TAXPAYERS and CITIZENS, and, SHANNON as well, that Act 2015-226 is UNCONSTITUTIONAL and therefore, VOID. This is because HB 573 was enacted by the Alabama Legislature [more specifically, those members of the Alabama HOUSE and SENATE representing parts of Jefferson County, Alabama' in a manner that is contrary to, and therefore violates, Art. IV, § 71.01 of the Alabama Constitution. Having so determined, the Court need not reach nor discuss the other three contentions raised by SHANNON and the TAXPAYERS and CITIZENS.

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[5] Each party did submit post-hearing briefs (totaling over 150 pages) and proposed orders.

IV. Discussion

The Budget Isolation Amendment (§ 71.01)

The TAXPAYERS and SHANNON argue that Act 2015-226 is invalid because the BIR for HOUSE Bill 573 did not receive an affirmative vote of "three-fifths of a quorum present," as required by § 71.01 of the Alabama Constitution. The HOUSE Journal reflects the vote on the BIR was 13 yeas, 3 nays, and 35 abstains. Pursuant to § 71.01, the TAXPAYERS and SHANNON argue the 13 "yea" votes are insufficient because a quorum of the HOUSE is 53 members, and therefore "three-fifths of quorum present" would require at least 32 "yeas." JEFFERSON COUNTY responds that HOUSE Rule 36 provides that a resolution under § 71.01 will pass if it "receives three-fifths majority of the members present and voting required by the Constitution" (emphasis added). For the BIR at issue, there were 16 "members present and voting," and three-fifths of 16 is 10. Therefore, because the BIR received 13 votes, JEFFERSON COUNTY contends it was validly passed pursuant to HOUSE Rule 36.

[A] Does House Rule 36 Conflict with § 71.01?

The Court must first determine whether there is an actual conflict between the language of § 71.01 and HOUSE Rule 36. Having analyzed the language of both, the Court DETERMINES there is a conflict between the two—with § 71.01 setting a higher standard. § 71.01 states that a Budget Isolation Resolution can be adopted "by vote of either house of not less than three-fifths of a quorum present," while HOUSE Rule 36 requires only an affirmative vote of "three fifths majority of the members present and

voting." Thus, while HOUSE Rule 36 only requires an affirmative vote of three fifths of the total votes cast, § 71.01 requires an affirmative vote of three fifths of the total members who are present (with there being at least a minimum quorum present).[6] The crucial distinction is that HOUSE Rule 36 does not take into account those members of the quorum who are present, but who neither vote "yea" or "nay" on the resolution. § 71.01 takes into account all members of the quorum who are present—not only the ones who cast a vote of either "yea" or "nay." Therefore, the Court DETERMINES that the affirmative vote of only 13 HOUSE members, although enough to satisfy HOUSE Rule 36, is insufficient to satisfy § 71.01.

[B] Is the Correct Interpretation of § 71.01 a non-*Justiciable Issue*?

Next this Court must determine if the issue of whether HOUSE Rule 36 correctly interprets § 71.01 is a non-justiciable issue. JEFFERSON COUNTY contends the Court is precluded from analyzing the correct interpretation of § 71.01 pursuant to *Birmingham-Jefferson Civic Center Auth. v. City of Birmingham*, 912 So.2d 204, 218 (Ala. 2005) *["BJCCA"],* in which the Alabama Supreme Court stated "whether the legislature conducted its internal voting procedures in compliance with [the Constitution] is a non-justiciable issue." For a number of reasons, however, the issues here are substantially different from *BJCCA.*

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[6] The HOUSE Journal in Exhibit 7 shows that immediately before the vote was cast on the BIR, the clerk ascertained that a quorum was present.

In *BJCCA*, Jefferson County challenged the validity of two Acts of the Legislature on the basis that neither was passed by a majority of a quorum of the HOUSE of Representatives. Jefferson County cited to § 63 of the Alabama Constitution, which provides that "no bill shall become a law, unless . . . a majority of each house be recorded thereon as voting in its favor." Jefferson County argued the term "house" in the phrase "a majority of each house" in § 63 meant a quorum of that house, and the fact that neither bill was passed by a majority of a quorum of each house rendered both bills invalid. In contrast, the Birmingham-Jefferson Civic Center Authority (the "Authority") argued that the proper question was not whether a majority of a quorum voted for the bill, but rather whether the bill received a majority of the yea and nay votes cast in the presence of a quorum.

The Alabama Supreme Court then noted the following:

> The legislature has interpreted § 63 to mean that when a quorum is present and a bill receives a favorable majority of those votes cast for and against it, then the bill has passed that house of the Legislature . . . HOUSE Rule 93 provides that any matter not specifically addressed by the rules of the HOUSE shall be governed by Mason's Manual of Legislative Procedure . . . which provides: "a majority of the legal votes cast, a quorum being present, is sufficient to carry a proposition . . . Members present but not voting are disregarded in determining whether an action carried."

Id. at 211.

Thus, the Court acknowledged the Legislature had definitively adopted the interpretation of § 63 advocated by the Authority. The Court then proceeded to analysis of whether it was being asked to address a non-justiciable issue; in doing so, it referred to the factors set out by the United States Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1982). The Court concluded that the issue was non justiciable due to the presence of [a]t least three of the factors enunciated in *Baker v. Carr*"; namely, (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving the question; and (3) a lack of respect due coordinate branches of government.

The *BJCCA* Court focused primarily on the first factor—whether there was a "textually demonstrable constitutional commitment of the issue to a coordinate political department." On that issue, the Court noted that § 53 of the Alabama Constitution provided that "[e]ach house shall have power to determine the rules of its own proceedings." The Court then focused on the language of § 63 that it was being asked to interpret, which provided that "no bill shall become a law, unless . . . a majority of each house be recorded as voting in its favor." There, the Court noted that the language of § 63 was unclear—nothing in the text of the Constitution explained what was meant by the phrase "majority of each house." This provision could be reasonably interpreted to mean either (1) a majority of all members of that house, (2) a majority of a quorum of that house, or (3) a majority of the members casting votes in that house. Importantly, nothing in the text of the Constitution spelled out how that

phrase was to be interpreted. Because the phrase "majority of each house" in § 63 was ambiguous, the language in § 53 granting to each house "the power to determine the rules of its proceedings" governed. The Court would not disturb a reasonable interpretation of § 63 by the legislature, where the correct interpretation was not expressly clear from the Constitution. The Court stated as follows:

> [T]here is in the case before us no provision of the Alabama Constitution that defines or limits what is meant by the term "a majority of each house" . . . Because the Alabama Constitution contains no limitation on the manner in which the legislature might interpret the phrase "majority of each house" and because the Constitution clearly grants to the legislature the power to determine the rules of its own proceedings, whether a "majority of each house" has voted in favor of a bill must be decided by the rules established by the legislature.

Id. at 217-18 (emphasis added)

The same is not the case here, however; this Court is being asked to determine the meaning of the phrase "three fifths of a quorum present" and the quantity term quorum has been expressly defined elsewhere in the Constitution. This Court does not have to guess at whether a "quorum present" means "a quorum present who cast votes" or simply "a quorum present." § 52 of the Alabama Constitution defines a quorum as follows: "A majority of each house shall constitute a quorum." The Court in *BJCCA* explained that "A quorum of the House of Representatives is 53 members; a quorum of the Senate is 18 members." *Id.* at 207.

Thus, where § 71.01 requires "three fifths of a quorum present" to vote in favor of a BIR, it is not ambiguous how this number is calculated; there is no place for the legislature to exercise discretion. Rather, one multiplies the fraction "three fifths" by the number present constituting a quorum—at least 53. Thus, the absolute minimum number of votes required to pass a BIR in the HOUSE is 32. There is no ambiguity in this provision from the plain text of the Constitution; and the mere fact that the legislature has interpreted it in a different way does not render the text ambiguous. In other words, ambiguity cannot be "created" by the legislature's interpretation.

The Court in *BJCCA* recognized other similar instances in which it had determined it was not dealing with a non-justiciable issue. For example, in *State of Alabama ex rel. James v. Reed*, 364 So.2d 303 (Ala. 1978), the Court considered whether the question of a legislator's ability to hold office was non-justiciable. There, Reed had been previously convicted of attempted bribery, and § 60 of the Alabama Constitution provided that "[n]o person convicted of . . . bribery . . . shall be eligible to the legislature, or capable of holding any office of trust or profit in this state." However, Reed contended that § 51 and § 53 constituted a textually demonstrable constitutional commitment of the issue of a house member's eligibility to the legislature, and therefore, that the question was non-justiciable. § 51 provided that "Each house shall choose its own officers and shall judge the election, returns, and qualifications of its members," and § 53 provided that "Each house shall have power to determine the rules of its proceedings. . . ." There, the Court held that the issue it was being asked to decide was justiciable, explaining

that [b]ecause § 60 expressly limits legislative authority . . . judicial enforcement of its mandate does not 'derogate the principle of separation of powers.'" 364 So.2d at 306 (emphasis added). The *BJCCA* Court explained that "to construe §§ 51 and 53 as vesting in the legislature exclusive authority on the issue, thereby removing it from judicial cognizance, would deprive § 60 of its field of operation." 912 So.2d at 217. The *BJCCA* Court then contrasted the case it was considering with the one presented in *Reed*: "Unlike *Reed*, in which an express constitutional prohibition on a felon's serving in the legislature was applicable, . . . there is in the case before us no provision of the Alabama Constitution that defines or limits what is meant by the term 'a majority of each house . . . " *Id.* (emphasis added).

The Constitutional provision at issue in the case before this Court bears much greater resemblance to the *Reed* case than to the situation presented in *BJCCA*. There is no term in § 71.01 which has a questionable meaning. "Three fifths" is an exact numerical quantity, and "a quorum" is calculable with exact numerical precision based on the definition provided in § 52. Therefore, the requirement that "three fifths of a quorum present" vote affirmatively for a Budget Isolation Resolution is "an express constitutional prohibition" on the passage of a BIR with any lesser number of votes. The meaning of what constitutes "three fifths of a quorum present" is clearly evident from the text of the provision itself, and therefore there was no "textually demonstrable constitutional commitment to the legislature" to decide the issue.

The Court in *BJCCA* next turned to the issue of whether there was a "lack of judicially discoverable and manageable standards for resolving the question." The analysis on this issue was very similar to the Court's analysis of whether there was a "textually demonstrable constitutional commitment to the legislature." There, the Court once again contrasted the situation it was presented with, with the specific provision which had been at issue in *Reed.* The holding in *Reed*, the Court explained, "rested on the existence of a separate constitutional provision limiting the authority of the legislature . . . [t]he specific limitation of § 60 as to who could serve in the legislature provided the Court with a judicially discoverable and manageable standard for its review of the issue." *Id.* at 218. (Emphasis added). In contrast, the Court explained "[t]he Constitution does not define the term 'majority of each house . . . [t]herefore, there is no manageable standard this Court can discover to guide our review of the legislative action at issue in this case." *Id.* at 219. (Emphasis added).

Once again, such is not the case here: the term "quorum" is defined in the Constitution, and thus § 71.01 is a specific "constitutional provision limiting the authority of the legislature." Therefore, in this case, § 71.01 provides a "judicially discoverable and manageable standard" for resolving the question of what is meant by "three fifths of a quorum present."

Finally, the *BJCAA* case addressed the question of whether declaring an issue justiciable would demonstrate a "lack of respect due coordinate branches of government." The Court explained that deciding an issue before it would not demonstrate a lack of respect due to coordinate branches of government "in

the presence of a clear constitutional requirement that binds [the legislature]." *Id.* at 220. (emphasis added). In light of the ambiguity of the Constitutional provision it was being asked to interpret, the Court stated as follows: "In the case before us today, there is no clear constitutional provision binding the legislature to a certain manner of determining whether a 'majority of each house has voted in favor of a bill. Thus . . . the judiciary should not question the determination by the legislative branch." *Id.* at 220. For the reasons discussed above, however, § 71.01 is a "clear constitutional requirement" and thus this Court is not demonstrating a lack of respect for the legislature by enforcing its provisions as written.

In *Magee v. Boyd*, the Alabama Supreme Court addressed an issue of non-justiciability and concluded that, where the text of a Constitutional provision is clear in what it requires, it is the Court's duty to enforce the language of that provision. The Court stated that "Such abdication of judicial responsibility is inconsistent with the settled principle that the people have forbidden the Legislature from conducting itself in a manner inconsistent with their constitution and when it does, it is incumbent on the judiciary to nullify a legislative enactment contrary to the constitution." 137 So.3d 79, 103 (Ala. 2015) (quoting *Rice v. English*, 835 So.2d 157 (Ala. 2002)). The Court continued: "If the question is not one of discretion but of power, the separation-of-powers doctrine is no bar to judicial review. In other words, where the issue is whether the legislative branch has exceeded the limits of its authority, thereby acting unlawfully, the courts will not hesitate to say so." *Id.* (quoting *Mclnnish v. Riley*, 925 So.2d 174 (Ala. 2005). The Constitution

does not grant the legislature power to "determine its own compliance with constitutional procedural limitations." *Id.* at 104. Therefore, this Court is bound to comply with its duty to enforce the Constitutional provisions of § 71.01 as they are written.

Further support for the clarity of § 71.01 can be found in Opinion of the Justices No. 328, 524 So.2d 365, 365-67 (Ala. 1988). There, the Supreme Court of Alabama was asked to provide an opinion on the exact issue at hand—namely, what number of votes would be required to comply with the provisions of § 71.01 [referred to in the Opinion as "Amendment 448(C)"] requiring that "three fifths of a quorum present" vote in favor of a Budget Isolation Resolution. There, the Court stated as follows:

> "It would appear from a reading of the amendment itself that an answer to your [] question is readily available . . . [I]n the Senate, which has 35 members, the presence of 18 members would be required to constitute a quorum. The only requirement of Amendment 448(C) is that 3/5 of a quorum present vote in favor of passing the resolution. Therefore, if a quorum of only 18 members were present, 3/5 of 18, or 12, Senators would have to vote affirmatively for the resolution.
>
> . . .
>
> A vote of 12 members would meet the constitutional requirement of "three fifths of a quorum present" if 18, 19, or 20 members were present. On the other hand, 13 votes would be required if 21 members were

> present and 14 votes would be required if 22 members were present. Therefore, in the event that either 21 or 22 members were present, a vote of 12 members would fall below the 3/5 requirement".

Id. at 366-67.

This Court acknowledges that such "Opinions of the Justices" are not binding authority. However, this Opinion certainly provides persuasive support for an already-clear proposition—"three fifths of a quorum present" is a clear, specific, unambiguous requirement, and is calculated by simply multiplying the fraction 3/5 by the number constituting a quorum. Due to the clarity of the provision at issue, the interpretation of § 71.01 is certainly a justiciable issue that this Court is bound to enforce.

[C] Is § 71.01 a *Substantive Limitation* on the Legislature's Authority?

Finally, this Court must address the issue raised by JEFFERSON COUNTY in its post-trial brief—whether § 71.01 is a substantive limitation on the power of the legislature to enact laws. JEFFERSON COUNTY contends, at p. 35 of its post-trial brief, III, B.2, that "Section 71.01(C) merely provides that if a Budget Isolation Resolution is adopted, the 'no signing' rule will not apply to the bill (after it's been passed) and the bill 'may proceed to final passage.' Section 71.01 does not prohibit the Legislature, pending passage of the budget bills, from enacting laws without each house having first adopted a Budget Isolation Resolution." This Court does not agree.

In the opinion of this Court, § 71.01 does impose a substantive limitation on the legislature's authority. § 71.01(C) provides as follows, in pertinent part: "[N]o bill . . . shall be signed by either the presiding officer of the House or Senate and transmitted to the other house until [the budget has been passed]; . . . and provided further, that following adoption . . . of a resolution declaring that the provisions of this paragraph (C) shall not be applicable in that house to a particular bill, . . . the bill so specified may proceed to final passage therein." § 71.01 (D) then continues as follows; "Upon the [passage of the budget], the provisions of the foregoing paragraph (C) prohibiting the final passage of bills in the House and Senate . . . shall cease to be effective . . ."

Together, § 71.01 (C) and (D) impose two restrictions on any bill at third reading before the budget has been passed and for which a BIR has not been adopted. The first restriction is that such bills may not "proceed to final passage." § 71.01(C) states that, if a BIR is passed with respect to a particular bill, that bill may then "proceed to final passage" in that house. This implies that without the passage of a BIR, the bill may not proceed to final passage. But the Court need not guess at what § 71.01(C) implies, because § 71.01(D) explicitly clarifies the meaning of § 71.01(C): "Upon the [passage of the budget], the provisions of the foregoing paragraph (C) prohibiting the final passage of bills in the HOUSE and Senate . . . shall cease to be effective . . ." Thus § 71.01 prohibits a bill from proceeding to final passage in each house of the legislature until either (1) the budget has passed, or (2) that house has adopted a BIR by vote of three fifths of a quorum present.

The term "final passage" has been expressly defined by Alabama case law. In *State v. Buckley*, 54 Ala. 599, 613 (Ala. 1875), the Court defined "final passage" as follows: "What we understand as the 'final passage' of a bill, under section 21, article 4 of the Constitution, is the vote on its passage in either house of the general assembly, after it has received three readings on three different days in that house."[7] The requirement of "final passage" is further explained in *Jemison v. Town of Ft. Deposit*, 108 So. 396, 396 (Ala. Ct. App. 1926):

> Under the Constitution of this state both the Legislature and the Governor have a part in the transformation of proposed legislation into binding law. The enactment proper is committed to the Legislature, the requirement being for three readings and final passage by each house, and signature by the presiding officer of each house. By positive mandate (section 125) every bill which shall have passed both houses of the Legislature, except as otherwise provided, shall be presented to the governor. (emphasis added).

The above-described procedure is based on § 63 of the Alabama Constitution, which provides that "no

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[7] Art. IV, § 21of the Alabama Constitution of 1875 is essentially identical to § 63 of the current Alabama Constitution, and provided as follows: "Sec. 21. Every bill shall be read on three different days in each house, and no bill shall become a law unless on its final passage it be read at length, and the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journals." *See State v. Buckley*, 54 Ala. 599, 612 (Ala. 1875).

bill shall become a law, unless on its final passage it be read at length, and the vote taken by yeas and nays, the names of the members voting for and against the same be entered upon the journals, and a majority of each house be recorded thereon as voting in its favor . . .” Thus, without “final passage,” which means the final vote taken on the bill in each house of the legislature, a bill may not become a law.

The next restriction is what JEFFERSON COUNTY refers to as the “no signing” rule. This portion of § 71.01 provides that “no bill . . . shall be signed by either the presiding officer of the House or Senate and transmitted to the other house until [the budget has passed].” As noted by JEFFERSON COUNTY, this provision can only refer to the “signing requirement” in § 66. There, the Constitution mandates that “The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislature . . . ” JEFFERSON COUNTY is correct that such signing can itself only take place after a bill has been passed. The “no signing” requirement merely adds another layer of protection to the “no final passage” requirement, both of which are prohibited without each house having first adopted a BIR. Once a bill has passed both houses of the legislature, the Constitution requires that the bill be signed by the presiding officer of each house in the presence of the house over which he/she presides. Thus, the bill would necessarily have to be signed by the presiding officer of one house, and then transmitted to the presiding officer of the other house for signing. In contemplation of this procedure, § 71.01 prohibits a bill from being “signed by either the presiding officer of the House or Senate” and from being

"transmitted to the other house" until either (1) the budget has passed or (2) each house has adopted a BIR.

Thus, § 71.01 imposes two restrictions on any bill at third reading before the budget has been passed and for which a BIR has not been adopted. Such bills may neither (1) proceed to final passage in accordance with § 63 of the Alabama Constitution nor (2) be signed by the presiding officer of each house in accordance with § 66. Both Constitutional mandates (§§ 63 and 66) must be complied with before a bill may become a law. Thus, it is clear to this Court that, on Nov. 6, 1984, by voting to add Amendment 448 [§ 71.01] to the Alabama Constitution of 1901 as Amended, the citizens of the State of Alabama imposed a substantive restriction on the legislature's ability to pass laws, to wit: "The duty of the Legislature at any regular session to make the Basic Appropriations for any Budget Period that will commence before the first day of any succeeding regular session shall be paramount . . . " (emphasis added). In other words, the passage of a budget is a matter which is to take precedence over the passage of any other bill. The entirety of § 71.01 would be meaningless if that section did not prohibit the legislature from passing other laws before it first passed the budget or adopted a BIR. Therefore, both the plain text of § 71.01 and the purpose behind its enactment demonstrate that it is a substantive restriction on the legislature.

JEFFERSON COUNTY has emphasized the holding in *Stevenson v. King*, 10 So.2d 825 (Ala. 1942) to support its contention that § 71.01 should be regarded as a mere procedural rule which is "directory" and not "mandatory." The Court has considered *Stevenson*,

and a review of that case reveals no analysis of why the *Stevenson* Court held the provision at issue to be merely directory. On that note, the Court is more persuaded by the recent holding of the Alabama Supreme Court in *Howard v. Cullman County*, 2015 WL 7890026 (Ala. Dec. 4, 2015) and the thorough discussion contained therein. There, the Court explained "[t]he distinction between a mandatory provision and one which is only directory is that when the provision of a statute is the essence of the thing to be done, it is mandatory. Under these circumstances, where the provision relates to form and manner, or where compliance is a matter of convenience, it is directory." As discussed above, the high bar required for passage of a BIR (namely, an affirmative vote of "three fifths of a quorum present") is the essence of § 71.01. Without that requirement of § 71.01, the provision as a whole is meaningless. *See also Ex parte Dan Tucker Auto Sales, Inc.*, 718 So.2d 33, 42 (Ala. 1998) (J. Lyons, concurring specially) ("[F]or purposes of construing the Constitution, the word 'shall is presumptively mandatory unless something in the character of the provision being construed requires that it be considered differently."); *Hornsby v. Sessions*, 703 So.2d 932, 939 (Ala. 1997) ("As a general proposition, constitutional provisions are given mandatory effect . . . . Whenever a constitutional provision is plain and unambiguous, when no two meanings can be placed on the words employed, it is mandatory, and courts are bound to obey it."). Accordingly, the Court is not persuaded the requirements of § 71.01 are merely directory.

Finally, at III. B. 1(d) of its POST-TRIAL BRIEF, p. 35, JEFFERSON COUNTY and the

JEFFERSON COUNTY COMMISSION submit," there is an unusual need to avoid questioning the Alabama Legislature's prior action with regard to Budget Isolation Resolutions. The consequences would be severe and far reaching, and the disruption to the affairs of local governmental entities throughout the State could not possibly be justified by the purported harm to be remedied by judicial review." (emphasis added). Attached to their BRIEF as Exhibit 1 is a list of local JEFFERSON COUNTY bills enacted between 1999 and 2015 that received fewer than 32 Budget Isolation Resolution votes in the House of Representatives. To this Court, this argument borders on suggesting the very "lack of respect due coordinate branches of government" as addressed by the United States Supreme Court in *Baker v. Carr*. *Id.*

The only legal issue before this Court, in this action, at this time, is whether or not Alabama Act 2015-226, as enacted by passage of HB 573 in the 2015 Regular Session of the State of Alabama and the May 27, 2015, signature of the Honorable Robert Bentley, Governor of Alabama, is constitutional per application of Ala.Const. Art. IV, § 71.01. The only evidence before this Court, in this action, at this time, to that issue relates only to the legislative history of HB 573.

The Court understands PETITIONERS are concerned were this Court to deny the PETITION for the reasons stated above, that might cause " . . . disruption to the affairs of local governmental entities throughout the State . . . not possibly . . . justified by the purported harm to be remedied by judicial review." However, to the undersigned, the denial of meaningful, substantive, "local home rule" under the

Constitution of the State of Alabama of 1901, as Amended, causes a far more significant "disruption to the affairs of local governmental entities." Even so, it is this Court's solemn duty to uphold the Constitution of the State of Alabama of 1901, as Amended, and this Court is compelled to DENY the PETITION.

IV. Conclusion

It is clear from the undisputed facts of this case Act 2015-226 was passed prior to the passage of the budget. In addition, it is undisputed the Budget Isolation Resolution purporting to exempt HB 573 from the prohibitions of § 71.01 received only thirteen (13) affirmative votes in the HOUSE. These votes were, as a matter of law, insufficient to meet the requirement for an affirmative vote of "three fifths of a quorum present" for the HOUSE to validly adopt a BIR. Therefore, a Budget Isolation Resolution with respect to HB 573 was never adopted, and the bill was prohibited from "proceeding to final passage" or being "signed by the presiding officer of each house." Consequently, Act 2015-226 was never validly enacted law, and is hereby DECLARED, VOID. JEFFERSON COUNTY's VALIDATION PETITION is therefore due to be DENIED.

VII. Final Declaratory Judgment

Accordingly, it is hereby ADJUDGED, DECLARED and ORDERED as follows:

1. The prayer for relief in the PETITION at ¶¶ 1-4 has been previously GRANTED and all actions taken pursuant thereto are RATIFIED;

2. The Court specifically DECLARES that Act 226 of the 2015 Regular Session of the Legislature of the State of Alabama, is VOID and of NO legal effect or authority in that HB 573 was passed in violation of Art. IV, § 71.01, of the Constitution of the State of Alabama, as Amended;

3. The Court specifically DECLARES that any and all official action of any nature taken by the JEFFERSON COUNTY COMMISSION purportedly under the authority of Act 2015-226, more particularly passage of one or more RESOLUTIONS, are VOID and of NO legal effect or authority;

4. All of the relief prayed for in ¶ 5 is specifically DENIED;

5. The Court NOTES attorney's fees and expenses are prayed for by the MOORE-ROGERS RESPONDENTS and SHANNON; therefore, it is DIRECTED as follows:

(a) any pleading, with supporting brief and exhibits, seeking fees and expenses SHALL be filed on or before January 4, 2016;

(b) any response to same SHALL be filed within fourteen [14] business days from the date any pleading seeking attorney's fees is filed;

(c) thereafter, the Court will proceed to rule or otherwise enter an order as necessary;

6. Pursuant to Ala. R. Civ. Pro. 54(b) the Court expressly DETERMINES there is no just reason for delay and hereby DIRECTS the ENTRY of this FINAL DECLARATORY JUDGMENT denying the PETITION filed herein by JEFFERSON COUNTY,

ALABAMA and JEFFERSON COUNTY COMMISSION[8];

7. As other issues and matters remain to be addressed, taxing of costs is HELD.

DONE, DECLARED and ORDERED this date, December 14, 2015.

/s/ Michael G. Graffeo
Circuit Judge

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[8] This Court recognizes "Rule 54(b) certifications are not to be entered routinely and should be made only in exceptional cases" and "[a]ppellate review in a piecemeal fashion is not favored," *Austin v. Austin*, 102 So.3d 403, 407 (Ala. Civ. App. 2012), but in this case certification would expedite the ultimate resolution of the matters at issue. Furthermore, the issue of requested attorney's fees is ancillary to the merits of case. "Attorney-fee matters are separate and distinct from matters going to the merits of a dispute and . . . an appeal may be taken from a final judgment as to either aspect of a case." *Hunt v. NationsCredit Financial Services Corp.*, 902 So.2d 75, 80 (Ala. Civ. App. 2004). *See Robbins v. Coldwater Holdings, LLC*, 2015 WL 2161158 at *1 (Ala. Civ. App. May 8, 2015) ("[A]n appellate court could still exercise jurisdiction in spite of the pendency of Coldwater's attorney-fee claim"); *see also Orr v. Orr*, 631 So.2d 1041, 1041 (Ala. Civ. App. 1993) and *Ex parte Eagerton*, 129 So.3d 267, 269 (Ala. 2013) (in both cases recognizing the trial court's certification of judgment as final pursuant to Rule 54(b) and specifically reserving jurisdiction to determine at a later date the appropriate amount of attorney fees to be awarded). Therefore, there being no just reason for delay, this order is certified as final pursuant to Rule 54(b).

ALABAMA CONSTITUTIONAL AMENDMENT PROPOSAL SB7, TOURISM AND MARKETING (READ AUGUST 15, 2016)

ENROLLED, An Act,

To propose an amendment to Amendment 448 to the Constitution of Alabama of 1901, now appearing as Section 71.01 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, to ratify, approve, validate, and confirm the application of any budget isolation resolution authorizing the consideration of a bill proposing a local law adopted by the Legislature before November 8, 2016, that conformed to the rules of either body of the Legislature at the time it was adopted.

Be It Enacted by the Legislature of Alabama:

Section 1

The following amendment to the Constitution of Alabama of 1901, as amended, is proposed and shall become valid as a part thereof when approved by a majority of the qualified electors voting thereon at the 2016 General Election and in accordance with Sections 284, 285, and 287 of the Constitution of Alabama of 1901, as amended:

Proposed Amendment

Amendment 448 of the Constitution of Alabama of 1901, is amended to read as follows:

- Amendment 448.

(A) The following words and phrases, whenever used in this amendment, shall have the following respective meanings:

> Basic Appropriations" means, with respect to any regular session of the legislature, such appropriations as the legislature may deem appropriate for the expenditures by the state during the ensuing budget period for the ordinary expenses of the executive, legislative and judicial departments of the state, for payment of the public debt, and for education (excluding, however, any item within the scope of the foregoing that is at the time provided for by a continuing appropriation or otherwise).
>
> Budget Period" means a fiscal year of the state or such period other than [a] fiscal year as may hereafter be fixed by law as the period with respect to which state budgets are prepared and state appropriations are made.

(B) On or before the second legislative day of each regular session of the legislature, beginning with the first regular session after January 1, 1983, the governor shall transmit to the legislature for its consideration a proposed budget for the then next ensuing budget period.

(C) The duty of the legislature at any regular session to make the basic appropriations for any budget period that will commence before the first day of any succeeding regular session shall be paramount; and, accordingly, beginning with the first regular session held after January 1,

1983, no bill (other than a bill making any of the basic appropriations) shall be signed by either the presiding officer of the house or senate and transmitted to the other house until bills making the basic appropriations for the then ensuing budget period shall have been signed by the presiding officer of each house of the legislature in accordance with Section 66 of this Constitution and presented to the governor in accordance with Section 125 of this Constitution; provided, that this paragraph (C) shall not affect the adoption of resolutions or the conduct of any other legislative functions that do not require a third reading; and provided further, that following adoption, by vote of either house of not less than three-fifths of a quorum present, of a resolution declaring that the provisions of this paragraph (C) shall not be applicable in that house to a particular bill, which shall be specified in said resolution by number and title, the bill so specified may proceed to final passage therein.

(D) Upon the signing and presentation to the governor in accordance with the said Sections 66 and 125 of bills making the basic appropriations, the provisions of the foregoing paragraph (C) prohibiting the final passage of bills in the house and senate (other than bills making any part of the basic appropriations) shall cease to be effective and shall not be revived or become again effective as a result of (i) the subsequent legislative history of any bill so signed and presented, including any veto, return with executive amendment, or any other action, or failure to act, by either the governor or the legislature under the provisions

of the said Section 125; or (ii) a determination, by either judicial decree or opinion of the justices of the Alabama Supreme Court, that any bill so signed and presented is wholly or in part invalid.

(E) The legislature may, by statute or rule, make such further provisions for the timely passage of bills making the basic appropriations as are not inconsistent with the provisions of this Constitution.

(F) Nothing contained herein shall be construed as requiring the legislature to make any appropriation not otherwise required by this Constitution to be made.

(G)Notwithstanding any provision of this amendment, any resolution authorizing the consideration of a bill proposing a local law adopted before November 8, 2016, that conformed to the rules of either body of the Legislature at the time it was adopted, is ratified, approved, validated, and confirmed and the application of any such resolution is effective from the date of original adoption."

Section 2

An election upon the proposed amendment shall be held in accordance with Sections 284 and 285 of the Constitution of Alabama of 1901, now appearing as Sections 284 and 285 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, and the election laws of this state.

Section 3

The appropriate election official shall assign a ballot number for the proposed constitutional amendment on the election ballot and shall set forth the following description of the substance or subject matter of the proposed constitutional amendment:

> Proposing an amendment to the Constitution of Alabama of 1901, to amend Amendment 448 to the Constitution of Alabama of 1901, now appearing as Section 71.01 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, to ratify, approve, validate, and confirm the application of any budget isolation resolution relating to a bill proposing a local law adopted by the Legislature before November 8, 2016, that conformed to the rules of either body of the Legislature at the time it was adopted.
>
> "Proposed by Act _____."

This description shall be followed by the following language:

"Yes ( ) No ( )."

/s/
President and
Presiding Officer of the Senate

/s/
Speaker of the
House of Representatives

SB7
Senate 17-AUG-16

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 25-AUG-16

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

Patrick Harris
Secretary

House of Representatives
Passed: 23-AUG-16, as amended

House of Representatives
Passed: 25-AUG-2016, as amended by Conference Committee Report.

By: Senator Ward