ALABAMA LEGISLATION

Tenth Edition*

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**Updated to reflect*
2022 changes in the Alabama Constitution
and 2023 changes in the Legislative Rules

ALABAMA LAW INSTITUTE

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PREFACE

This book is written to be a resource to legislators, lawyers, law students and interested citizens on the legislative process in Alabama and the technical aspects of legislation.

This book is one piece of a reference library that we hope will give those interested, a fuller picture of the structure and function of Alabama Government. When read in conjunction with the Alabama Government Manual, The Alabama Election Handbook, and The Legislative Process, an interested person can get a fairly complete view of how our state government functions from candidate to elected official to implementation of the policies and laws they create. Each of these books is updated on a regular basis by the Alabama Law Institute.

The book is structured in six parts. The first part is to provide the reader or researcher with the historical background of the Alabama Legislature and the legislative services available to legislators.

The second part is an orientation in the organization of the Legislature, discussing the general requirements of candidates, their election to office, reapportionment law, legislative sessions, and finally, Senate and House Rules.

Part three is a review of legislative procedure and covers legislative powers, oversight functions, local legislation, the non-law making functions of the Legislature, and the passage of bills through both houses of the Legislature and the Governor's action on them.

The fourth part deals with the mechanics of drafting, covering such subjects as resolutions, constitutional amendments, statute drafting, amendments, codification of acts, and repealing of laws.

The fifth part deals with interpretation of statutes, the rules of construction, legislative intent, legislative history and judicial

meaning of words used within statutes.

Finally, part six reviews the obligations of legislators, the ethics act, and rules for lobbyists.

This book draws heavily from a tremendous legacy of scholarship provided by Robert L. McCurley, Jr. who served as director of the Alabama Law Institute for nearly four decades. In that time, Mr. McCurley was the principle drafter of the Legislative Process, The Alabama Election Handbook and Alabama Legislation along with numerous other works to aide specific public officials in their roles. Mr. McCurley now teaches both undergraduate and law students on various aspects of the legislative process. Mr. McCurley's work is still pervasive throughout this book and the book is better for it.

This book is written as a legal guide and not as a political science commentary or offering. Although this is only a compilation of notes, statutes, constitutional provisions and cases, we hope it is helpful to lawyers, law students and those researching legislation law. **As a caveat, let us remind you to read the entire case cited for application of a particular legal principle and not to rely solely on the digested material in this book.**

This publication, although digesting statements of the law, is not a substitute for the Constitution, the Code of Alabama, the reading of the text of the cases cited, or other legal materials cited herein. This publication seeks only to serve as a general guide to lead interested persons to the resources and information they seek.

Othni J. Lathram
Director

November, 2022

ACKNOWLEDGEMENTS

This book is labor of love for Robert L. McCurley, Jr. who served as Director of the Law Institute for 37 years and continues to teach in this area at both the undergraduate and law school level. During his time as Director, Mr. McCurley served as the principle drafter and editor of this work. His work is and will continue to be the foundation of this book.

The first four editions were co-edited by Keith Norman who began his work on this book while employed by the Alabama Law Institute. We hope we have continued his high degree of excellence in this edition. We further wish to thank the late Dr. Jim Thomas, professor of political science, for his contributions to the first edition of the book, and especially for the drafting of initial provisions of parts one and two which originally were a part of *The Legislative Process, A Handbook for Alabama Legislators*, and *Alabama Election Handbook*.

We wish to thank the students in the Spring 1982 and 1983 Alabama Legislation classes at the Alabama School of Law for their research to the initial draft of this book. Some of the students whose papers provided valuable research as a part of this book are: James B. Prude; Karen Kremer; David Taylor; Rennie Stettler; Joe Cassady; Kevin Johnson; Bob Baker; Dennis Schilling; Dwight Mixon; Debra Lee; Charles Norton; Ann Morris; Phil Philpot; and Clara Fryer.

We appreciate the late Mr. Louis G. Green, former Director of the Legislative Reference Service and his staff for reviewing the initial draft of this book. His suggestions have made this a more useful research tool. We thank in particular the late Mr. Willis Bell, Research Analyst, Legislative Reference Service for his assistance on codification of laws and Ms. Marilyn Terry, Legislative Reapportionment Committee, for her help on the initial section on reapportionment.

For the fourth edition, we thank Walter Turner, Chief Administrative Law Judge, Office of Attorney General and Laura Walker, Assistant Attorney General for her review and update on Chapter 30, "Privileges and Immunities".

Appreciation is due to Jim Sumner, Executive Director of the Alabama Ethics Commission for revising Chapter 31, "Ethics Act" for the fourth, fifth, sixth, seventh and eighth editions. We are also grateful to Jerry Bassett, Director of Legislative Reference Service, for his advice and for allowing us to include his office's Drafting Style Manual in this publication.

We wish to thank: Mary Ellen Lamar for her editorial review on the first edition; Richard Whidden for his research on the second edition; Amy Owen, Marjorie Dabbs and Ed Sanders for the research on the third edition; Chris Pankey for his research and advice for the fourth edition; Joe Stutz, principal research assistant with Stephanie Blackburn for work on the fifth edition, Scott Baldwin who was principle research assistant on the sixth edition, and Jessica Welch. All students at The University of Alabama School of Law. The eighth edition benefitted from extensive work by Steven Struthers, a law student at Cumberland School of Law.

Daneal Barnaby and Andrew Toler who, as law students at The University of Alabama, worked on the ninth edition under the leadership of Buddy Rushing, an attorney with the Law Institute.

For this, the 10th edition, a special thank you to Brad Deem, a law student at The University of Alabama School of Law, for his extensive work, and also the helpful input of ALI Deputy Director David Kimberley, Senior Attorney Michael Hill, and Staff Attorney Jackson Colburn for their helpful editing.

A special note of gratitude is also due to the staff of the Alabama Law Institute who are second to none in their professionalism and competence. In particular, Linda Wilson, Nancy Foster, and Jill Kjar have each taken turns over the years typing, proofing, and generally improving the readability and usefulness of this text. I also thank Teresa Norman for her efforts to help edit this and prior editions of this book.

Othni J. Lathram
Director

November, 2022

DEDICATION

To the Presidents of the Institute:

Representative Hugh Merrill	1967 – 1978
Senator Finis St. John	1978 – 1984
Honorable Oakley Melton	1984 – 1991
Representative Jim Campbell	1991 – 2001
Representative Demetrius Newton	2001 – 2011
Senator Cam Ward	2011 – 2021
David Boyd, Esq.	2021 –

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PART I

INTRODUCTION

Chapter 1

Historical Background of Alabama Legislature[1]

Most of the area now comprising the State of Alabama was at one time a part of the Mississippi Territory. Legislation enacted by the United States Congress in 1798 established a government for the area.[2] In the earliest stages of territorial development, the governmental system was, of course, quite rudimentary. Nevertheless, organized society requires rules for the regulation of human behavior and, in response to this need, the act of 1798 provided structures and processes for the adoption of necessary legislation. In a functional sense, Alabama's modern Legislature descends from the law-making structure established for this earliest form of territorial government.

Technically, the 1798 legislation establishing the Mississippi Territory did not itself set out a structure of government for the territory. The legislation dealing with the Mississippi Territory merely authorized the President of the United States to establish a territorial government in Mississippi, "in all respects similar to that now exercised in the territory northwest of the River Ohio," except for the exclusion of slavery.[3] Thus, the system of territorial government established by Congress in the famous Northwest Ordinance of 1787 was by reference extended to the Mississippi

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[1]*The Legislative Process, A Handbook for Alabama Legislators*, (12th Edition 2023).

[2]An Act Establishing the Mississippi Territory, ch. 28, 1 Stat. 549 (1798). This act and other documents figuring prominently in Alabama's history are printed in Volume I of the 1923 *Code of Alabama*. References made in this chapter to Congressional enactments and early Alabama constitutions are to the versions of these documents printed in Volume I of the 1923 Code. The act establishing the Mississippi Territory appears on pp. 20-21 of this source.

[3]1 Stat. 549, § 3; M. McMillan, Constitutional Development in Alabama 1798-1901, at 3 (1955).

Territory.

Under the Northwest Ordinance a territorial government first consisted of a governor, a secretary, three judges, and such magistrates and other civil officers in each county or township as were necessary to preserve peace and good order. Until a general assembly was organized, the governor and the judges were authorized to adopt such laws of the original states as were "necessary and best suited to the circumstances." These laws would remain in force until the organization of the general assembly (unless sooner disapproved by Congress), but after the formation of the legislature that body could alter them as it saw fit.

A second stage of territorial government became effective when the population contained as many as 5,000 free male inhabitants of adult age. At that time, the voters received authority to elect representatives from their counties or townships to represent them in a general assembly. It was provided that there would be one representative for every 500 male inhabitants until the number of representatives amounted to twenty-five. Then, the number and proportion of the representatives would be regulated by the legislature. As qualifications for office, representatives were required to have been citizens of one of the United States for three years, to have residence in the territory, and to possess a freehold of 200 acres of land within the territory. Elected representatives served for a term of two years. In case of the death or removal of a representative, the governor was authorized to issue a writ to the county or township concerned for the election of a successor to serve the remainder of the term.[4]

The general assembly, or legislature, consisted of the governor, the house of representatives, and an upper house known as the legislative council. This council was composed of five members appointed by the President from a group of ten persons nominated by the representatives. A property qualification consisting of a freehold in 500 acres of land was imposed as an

[4]*See Boyd v. Nebraska*, 143 U.S. 135 (1892) (describing the requirements to gain authority to elect representatives to a general assembly under the Northwest Ordinance).

eligibility requirement for membership in the legislative council. Members of the council served for terms of five years. Vacancies were filled by the President from a list of two names nominated by the representatives for each vacancy.[5]

The governor, legislative council, and House of Representatives were vested with authority to make laws "for the good government of the [territory], not repugnant to the principles and articles in this ordinance."[6] Bills passed by the representatives and the council had to be referred to the governor for his approval; no bill or legislative act could be of any force without the governor's assent. The governor, moreover, had the power to convene, prorogue, and dissolve the general assembly when, in his opinion, it became expedient.

In 1800, Congress enacted further legislation providing for the government of the Mississippi Territory. This legislation stepped up political development in the territory through a provision stating that so much of the Northwest Ordinance as related to the organization of a general assembly should at that time become operative in the Mississippi Territory. The act went on to state, however, that until the number of male inhabitants in the territory amounted to 5,000, the membership of the general assembly would be limited to no more than nine representatives. The counties of Adams and Pickering were authorized to choose four representatives each and the Tensaw and Tombigbee settlements were assigned one representative.

The act provided that the first election for representatives to the general assembly would be held on the fourth Monday in the next July and that all subsequent elections would be regulated by

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[5] The Northwest Ordinance refers to Congress as the appointing authority. However, McMillan, *supra* at 2, points out that in 1789, Congressional legislation changed the appointing authority from Congress to the President to harmonize the procedure with the language of the newly adopted United States Constitution.

[6] *See Bd. of Trustees of Vincennes Univ. v. Indiana*, 55 U.S. 268 (1852) (describing the authority of authority of territories to make law under the Northwest Ordinance).

the legislature. The general assembly was required to meet at least once in every year, on the first Monday of December, unless the assembly by law designated a different day. The governor was given the power to convene the general assembly on extraordinary occasions. Neither house during a session of the general assembly could, without the consent of the other, adjourn for more than three days or move to any place other than that in which the two houses were sitting.

Seventeen years later, in 1817, Mississippi was admitted into the Union as a state. Concomitantly with that event, Congress established the Alabama Territory in the area formerly comprising the eastern part of the Mississippi Territory.[7] This act provided that the President of the United States would appoint a governor and a secretary for the Alabama Territory and that these officers would exercise the same powers, perform the same duties, and receive for their services the same compensation, as had been provided for the governor and secretary of the Mississippi Territory. Appointments to the offices of governor and secretary were subject to senatorial confirmation. Other offices were continued in their existing form until provision was made for them by law.

The act of 1817 provided that the governor appointed under its terms should immediately after entering into office convene at the town of St. Stephens such members of the legislative council and house of representatives of the former Mississippi Territory as were representatives from counties situated within the area established as the Alabama Territory. These members would constitute the Alabama legislative council and House of Representatives. However, the Alabama legislature was authorized to nominate six persons to the President of the United States for appointment to the legislative council. Three of the nominees were to be selected by the President as members of the legislative council in addition to the number that the territory then possessed.

Because of Alabama's rapid growth, it moved from territorial status to statehood in a relatively brief period of time. It was only

[7] 3 Stat. 371.

fifteen months after the establishment of the territory that the United States Congress, on March 2, 1819, passed an enabling statute authorizing the people of the Alabama Territory to form a constitution and a state government in preparation for the territory's admission into the Union.[8] A constitution was soon drafted and adopted by a convention held at Huntsville for that purpose. Alabama was then admitted into the Union by a joint resolution of the Congress, approved December 14, 1819. Subsequently, five other constitutions have been adopted by the state. Four of these constitutions (1861, 1865, 1868, and 1875) were products of the Civil War and Reconstruction periods in Alabama's history. The sixth state constitution was adopted in 1901 and remained the foundation of Alabama's present system of government until 2022. In 1969, a constitutional commission was created by the Legislature[9], and amended in 1971.[10] The commission issued a report and a proposed constitution on May 1, 1973. That same year, the legislature[11] and people of Alabama approved the "judicial article" section of the constitutional commission recommendations. Ala. Const. amend. 328. The balance of the proposal has yet to be acted on. In 1983, the legislature passed a "cleaned up" version of the 1901 Alabama Constitution, only to see it taken off the ballot by the Alabama Supreme Court. Acts of Alabama, 83-683. The Court ruled that the entire Constitution could not be amended by one Amendment.[12]

Each of Alabama's six constitutions established the Legislature as a separate and coordinate department of government vested with the legislative power of the State of Alabama. The first Constitution established a bicameral legislative body consisting of two houses, a Senate and a House of Representatives, which is the structural arrangement that has prevailed ever since. Until the

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[8]McMillan, *supra* note 2, at 26-29.

[9]Alabama Legislative Acts, No. 753, p. 1330 (1969–1970).

[10]Act No. 95, p. 165 (1971).

[11]Act No. 1051, p. 1676 (1973).

[12]*State v. Manley*, 441 So. 2d 864 (Ala. 1983).

Constitution of 1901, both houses together were designated "the General Assembly of the State of Alabama." Since 1901 the assembly has been known as the "Legislature of Alabama."[13]

Amendment 951 was proposed by Act 2019-271 and proclaimed as ratified on November 24, 2020. It provided for a recompilation of the Alabama constitution which "upon the recommendation of the Director of the Legislative Services Agency through a proposed draft, may arrange this constitution, as amended, in proper articles, parts, and sections removing all racist language, delete duplicative and repealed provisions, consolidate provisions regarding economic development, arrange all local amendments by county of application…"[14]

This recompilation was then prepared by the Director of the Legislative Services Agency, with advice and recommendations from the Joint Interim Legislative Committee on the Recompilation of the Constitution. It was ratified by a wide margin of the electorate in the November 8, 2022 general election and became the Constitution of Alabama of 2022.

[13] *See* Ala. Const. § 44 (1901) (stating that the legislative power of this state shall be vested in a legislature).

[14] Thomson Reuters, *Preface to the Proposed Constitution of Alabama of 2022* (2022)

PART II

LEGISLATIVE ORGANIZATION

Chapter 2

Election Law[1]

A. Alabama Elections

Alabama's election laws evolved from paper ballots to machine ballots, to electronic voting machines. Each law when passed did not repeal the previous law but contained a provision that, unless otherwise changed by this law, the existing statutes applied. This required further layers of law through Electronic Voting Machine Administrative Rules, Attorney Generals Opinions, and court interpretations. The Federal Government becomes involved by mandating states pass election laws consistent with the Help America Vote Act. *See* 42 USCA § 15301.

The Legislature in 2006 passed a restatement of the election laws combining and reorganizing this maze of unorganized elections laws into a new organized Title 17. The revision markedly improved the state's election laws, primarily through the deletion of obsolete provisions and placing them in a usable fashion. This revision was effective January 1, 2007 subject to Justice Department approval. Approval was not sought by the Alabama Attorney General on July 13, 2007 and subsequently approved in November 2007. The revised election laws continue to provide for five basic types of elections: primary, general, municipal, presidential preference and special (a constitutional amendment election is construed here as a form of special election).

A partisan primary like Alabama's is an election held by the voters who are members of a particular political party, for the

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[1] The *Alabama Election Handbook* is available as an authoritative guide to Alabama's election laws. The Election Handbook is currently in its 20th edition and is published by the Alabama Law Institute every two years.

purpose of nominating candidates for public office.

Presidential Preference Primaries are held once every four years prior to the party national convention as determined by the Legislature.

A general election is an election at which the voters actually select office holders from among party nominees or independent candidates for office.

Municipal elections are elections held by cities and towns for the selection of municipal officers.

Special elections are held in extraordinary situations such as the necessity to fill a vacancy that occurs during the term for which a person was elected, or when a referendum is held on some particular question or proposition such as the issuance of bonds or the wet-dry question.

1. ***Primary Elections***

Primary elections are regulated mainly in Ala. Code §§ 17-13-1 through 17-13-89. For purposes of the primary law, a political party is defined as an ... assemblage or organization ... which at the preceding general election for state and county offices received more than 20 percent of the entire vote cast in any county or more than 20 percent of the entire vote cast in the state. However, in order for any political group to be considered a political party in any county or in the state, it is necessary only that one candidate of the party obtain the required 20 percent in the particular county or in the state at large. § 17-13-40. A political party may, by action of its state executive committee, elect whether it will come under the primary election law. Any political party is presumed to have accepted and come under the provisions of the primary law but, any party may signify its election not to accept and come under the primary law by filing a statement to that effect with the secretary of the state at least 60 days before the election. § 17-13-42. Except for compensation paid by the state as provided in § 17-8-12(b) for election officials when a party chooses to be governed by the state primary law, the expense of primary

elections is paid by the state or county. § 17-13-4 and §§ 17-16-2 through 17-16-6. Further, these expenses will be paid by (1) the state reimbursing half the election expenses when there are candidates for both federal or state and county officers or constitutional amendments affecting a county. § 17-16-3. Also (2) the state will reimburse a county for all election costs where there are only federal or state offices nominated or constitutional amendments affecting only the state at large. §§ 17-16-4 and 17-16-5.

In 1976, primaries were held during the month of May. The primary election law passed in 1975 and revised in 1977 changed the election date to the first Tuesday after the first Monday in September. Elections remained in September until 1985 when the primary date was moved to the first Tuesday in June with the second or run-off primary held the sixth Tuesday following the primary election. Beginning with 2019, the primary date was set for the fourth Tuesday in May with the second or run-off primary to be held on the fourth Tuesday following the initial primary election. § 17-13-3(a). However, in years in which a presidential preference primary is conducted, the primary election is held the first Tuesday in March, with any reference in any existing statutes to a primary election in May or June construed to refer to the primary election held in March. § 17-17-3(b).

A political party subject to the primary law may establish governing committees for the state and any political subdivision of the state, including counties, but general authority is vested in the party's state executive committee. The State executive committee may establish additional rules governing contests. § 17-13-88. There is, however, no statutory right of appeal from a finding by the party as to the winner of a run-off election. *Ex parte Graddick*, 495 So. 2d 1367 (Ala. 1986).

The state committee, however, may delegate to county committees the power to regulate party affairs within their respective counties. State and county executive committees may by an appropriate resolution require that their members be elected. When these committee members are elected, the election is held at the same time as gubernatorial primary elections, and candidates

for the party committees must file their declarations of candidacy in the same manner and within the same time as candidates for nomination to public office. § 17-13-45.

Also, political parties may provide for the election of delegates to national party conventions by holding presidential preferential primaries, by popular election of delegates, or otherwise. The names of candidates for convention delegates appear on the ballots, with the name of the presidential candidate to whom each delegate candidate is pledged opposite the delegate candidate's name. However, if the delegate candidate is not pledged, his or her name is followed by the word "uncommitted." § 17-13-43.

The state executive committee of each political party may fix the political or other qualifications of its own members and may determine who is qualified to be a candidate or to vote in the primary. § 17-13-7(a). In addition, qualifying fees may be established by each party to be paid by candidates for nomination who are able to pay. § 17-13-47. It is important to note that a person may seek nomination for office in only one primary election. No person may simultaneously be a candidate for the same office on both the Democratic and Republican tickets.

2. ***Second (Run-Off) Primary***

If in any particular race in the initial primary no candidate seeking the party's nomination receives a majority of the votes cast, a second primary (or run-off) must be held between the two candidates with the largest number of votes in the initial primary. § 17-13-18(b). The run-off primary must be held on the fourth Tuesday following the primary election. § 17-13-3(a), § 17-13-18(b).

Under Alabama Law, no elector who votes in the first primary election of one political party is eligible to vote in the run-off primary of a second party. § 17-13-7.1.

Names of voters on official voting lists may be color coded to indicate in which party's primary voters had participated. This procedure is not a duplication of the poll list and assists in the

implementation of the Democratic Party's rule against "crossover" voting. *Haughton v. McCollum*, 530 So. 2d 758 (Ala. 1988).

3. *Presidential Preference Primaries*

Presidential preference primaries beginning in 2016 are held on the first Tuesday in March. For the presidential election years, the party primaries are held in conjunction with the presidential primaries. Previously presidential preference primaries were held in June at the same time as the regular primary elections. § 17-13-100.

As a historical note, in 2012, the Legislature moved the primary to the second Tuesday in March. In 2006, the Legislature moved the presidential preference primary to the first Tuesday in February. The primary had been the first Tuesday in June since 1990. From 1979 to 1990, the primary had been the second Tuesday in March of presidential election years in order to accommodate the National Democratic Party and to be a part of "Super Tuesday" primaries in the South.

In order for a presidential candidate to appear on the ballot, a petition must be filed with the state party chairman of the appropriate political party 116 days prior to the presidential preference primary election. § 17-13-102.

The petition must be signed by at least 500 qualified voters of the state, or a series of petitions must be signed by at least 50 qualified voters in each congressional district of the state. Each person signing the petition must indicate in which county he/she resides. Should there be any question regarding the signatures on the petitions, the state party chairman shall decide the regularity of all the petition signatures. § 17-13-102. Upon filing the required petitions, the candidate must pay a fee as the party may prescribe. § 17-13-103.

Any candidate desiring to withdraw from the preference election must do so within 76 days of the primary. Otherwise, the candidate's name will appear on the ballot of his/her party at the presidential preference primary. § 17-13-104.

4. *General Elections*

General elections are held on the first Tuesday after the first Monday in November in every other even-numbered year. Ordinarily, there is no run-off election following general elections; the candidates receiving the highest number of votes are elected to the office. In municipal elections, however, a majority vote is required for election and run-off elections may be necessary in municipal contests.

The following state and county officers are elected every four years at every other general election, with the next election scheduled for 2022: Governor, Lieutenant Governor, Attorney General, Auditor, Secretary of State, Treasurer, Commissioner of Agriculture and Industries, senators and representatives in the Legislature, sheriffs, coroners, and two associate public service commissioners. §§ 17-14-3 & 36-3-1.

Judges, district attorneys, circuit clerks, tax assessors, tax collectors, and members of county boards of education serve for terms of six years. §§ 17-14-5, 36-3-2 & 36-3-6. Circuit judges, district judges, probate judges, judges of the courts of appeal, circuit clerks, and members of county boards of education whose terms all expire at the same time were selected at the general election held in 2018. §§ 17-14-5 & 17-14-6. Tax assessors and collectors were selected in 2014, and district attorneys in 2016. §§ 36-3-5 & 17-14-8. From one to five justices of the state Supreme Court and half of the members of the State Board of Education are elected every two years at each general election. §§ 17-14-9 & 16-3-1. Beginning with the 2022 statewide election, permanent place numbers will be designated on the ballot for the seats of the supreme court and appellate courts. § 17-6-48.1

The President of the Public Service Commission, county commissioners, county treasurers (where the office exists), and constables are elected every four years, following the sequence 2020, 2024, etc. §§ 17-14-3 & 17-14-4. Members of county commissions and county boards of education who serve for overlapping terms, as well as a number of elective county superintendents of education, are selected at each general election.

Federal elections are held for President and Vice-President every four years, the last being in 2020. Congressmen are elected at every general election, by district, to serve for two-year terms in the United States House of Representatives. United States senators are elected from the state at large for overlapping six-year terms, with alternating senatorial elections.* *See*, in part, §§ 17-14-1 through 17-14-11.

5. ***Special Elections***

Special elections held to fill vacancies in state or federal legislative bodies or for state or county offices filled by election are held on a day specified by the Governor. §§ 17-15-1 through 17-15-7. The Governor also gives notice by proclamation of any special election for representatives in Congress or state officers § 17-15-4. The Governor notifies the probate judges, who are the chief election officials, in the counties in which the special elections are to be held, and they give notice in their respective counties by proclamation of the time, place, and purpose of the elections. §§ 17-15-3, 17-15-5, & 17-17-31. The probate judge must also notify the sheriff and the circuit clerk that a special election has been called. §§ 17-15-6 & 17-17-32. Under the general municipal election laws, special elections may be held on the second or fourth Tuesday of any month, as ordered by the municipal governing body provided proper notice has been given. § 11-46-21. *See also* § 11-46-22.

Constitutional amendments may be voted upon either at the next general election or at a special election held not less than three months after the final adjournment of the legislative session at which the amendments were proposed, as the Legislature directs. Ala. Const., Art. XVIII § 284. Unless otherwise expressly provided, special elections are conducted in the same manner as general elections. § 17-15-7.

**A special election to fill an unexpired term was held in 2017 due to Jeff Sessions leaving office upon becoming the United States Attorney General.*

B. Voting Rights Act[2]

1. *Preclearance*

Prior to the United State Supreme Court's decision in *Shelby County v. Holder*, Alabama, several other southern states, Arizona, and Alaska were singled-out under the guidance in Section 4(b) of the Voting Rights Act, 42 USC 1973c, as being subject to Section 5 of the Act which requires that all changes in voting procedure must be approved by the U.S. Justice Department in a process called "preclearance", or by filing a lawsuit in the United States District Court for the District of Columbia Voting changes are defined broadly to include:

1. Any new procedure that who can vote in any election (registration procedures and annexations), changes in the election system (redistricting etc.)
2. Changes in the manner of conducting the election (hours, polling place locations, precinct boundaries, etc.)
3. Changes in office or candidate requirements (filing fees, election vs. appointment, etc.)

Thus, preclearance had to be obtained for only certain jurisdictions based on their histories of discrimination in voting before a proposed change could be legally unenforceable. Until then, any change as described under the Voting Rights Act would be subject to injunction by a local federal court.

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[2]*See also Voting Rights Act of 1965, Alabama Election Handbook, 14th edition.* Section originally written by John Tanner, former Chief of the U.S. Department of Justice Civil Rights Division Voting Rights Section.

Under the Act, the Justice Department or the federal court is required to focus on a single issue: racial discrimination. The burden of proof is on the state or local government to establish that the change has neither "the purpose [nor] the effect of denying or abridging the right to vote on account of race or color." 42 USC 1973c(a).

Traditionally, almost all changes have been reviewed through the faster and less expensive administrative route, and almost all have been pre-cleared. Under the administrative procedure, the Justice Department has 60 days in which to review the proposed change. If the information provided is incomplete, however, the Department can request additional information. The 60-day clock starts again when the information is received by the Justice Department.

In 2013, the United States Supreme Court in a 5-4 vote determined one provision in the Civil Rights Act, Section 4(b), to be unconstitutional. That particular provision set forth a coverage formula used to determine which states and political subdivisions were subject to preclearance. The "coverage formula" defined the "covered jurisdictions" as states or political subdivisions that maintained tests or devices as prerequisites to voting, and had low voter registration or turnout, in the 1960's or 1970's. In those covered jurisdictions, as stated *supra*, Section 5 of the Act provides that no change in voting procedures can take effect until approved by specified federal authorities in Washington, D.C.

The Court agreed that the coverage, in 1966, was rational in both practice and theory. But, the Court also stated that "[t]hings have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." *Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013). That is, by 2009, the Court believed that the coverage formula

raised serious constitutional questions. As a result, the Court stated the rule that the "current burdens" of a statute must be justified by "current needs," and any "disparate geographic coverage" must be "sufficiently related to the problem that it targets. *Id*. In reaching its conclusion, the Court stated that "[t]he coverage formula met that test in 1965, but no longer does so" in 2013. *Id.* Also, in considering that "the fundamental principle of equal sovereignty remains highly pertinent in assessing subsequent disparate treatment of States," the Court concluded that Section 4(b) of the Act conflicted with the constitutional principles of federalism and "equal sovereignty of the states" because the disparate treatment of the states is "based on 40 year-old facts having no logical relationship to the present day" and thus is not responsive to current needs. *Id.* Furthermore, not only had certain jurisdictions been subject to Section 5 under the coverage formula subscribed in Section 4(b), due to facts on voting discrimination from 40 years prior, Congress in 2006 had increased the already significant burdens of Section 5 to prohibit more than before.

Based on this analysis, the majority of the Court in *Shelby County v. Holder* held that Section 4(b) is unconstitutional. Furthermore, notwithstanding this ruling, the Court did not rule on the constitutionality of Section 5's federal preclearance requirements. Nonetheless, without the enforceability of Section 4(b), no jurisdiction will be subject to Section 5 preclearance unless Congress enacts a new coverage formula. That is, the effect of the *Shelby County v. Holder* decision is that the jurisdictions previously identified by the coverage formula in Section 4(b), such as Alabama, no longer need to seek preclearance for the new voting changes, unless they are covered by a separate court order entered under Section 3(c) of the Voting Rights Act.

2. *Other Requirements under the Voting Rights Act*

The Act's 1975 amendment permanently suspended the use of literacy tests and established provisions for bilingual ballots. Thus, discrimination on the grounds that an individual cannot speak English is prohibited. Criminal and civil sanctions are also available in helping to enforce the guarantees of the Voting Rights Act.

In 1984, Congress added 42 U.S.C. §§ 1973ee through 1973ee-6 to promote improved access for handicapped and elderly individuals to polling and registration places. Each state is responsible for providing access for the handicapped and elderly to all polling places unless the state election officer can show why it is not feasible to provide access at a polling site, and why another site would not be available. The Officer must report to the Federal Election Commission by the end of every even numbered year, listing which polling places are not accessible to the handicapped, and what provisions are made for those handicapped individuals as far as absentee ballots, or providing alternative voting places.

There is also a provision mandating the use of large print ballots and telecommunication devices for the deaf, as well as proper publication of the availability of these devices. This section only applies to federal elections.

In 1986, Congress repealed 42 U.S.C. §§ 1973cc and 1973dd which related to absentee and overseas voting. These were replaced by § 1973ff. This section authorizes the President to appoint a department head to consult with the States and provide an official postcard form of the federal election ballot. The States are required to permit overseas and military voters to use absentee registration forms and vote by absentee ballot in all federal elections. States are also required to accept and honor any application received not less than 30 days prior to a federal election. There are also provisions for a federal absentee registration form and ballot, but the States can ignore these provisions if they make their State absentee ballots available in an acceptable length of time.

At large elections for the Mobile school board were found to be discriminatory due to dilution of black voting strength. *Brown v. Board of School Commissioners of Mobile*, 706 F.2d 1103 (11th Cir. 1984). Yet, the at-large election of Opelika's city commission was permitted when the plaintiff failed to prove polarized voting procedure. *Lee County Branch of NAACP v. City of Opelika*, 748 F.2d 1473 (11th Cir. 1984). In the same year that the Mobile and Opelika decisions were rendered, the Eleventh Circuit Court of Appeals supported the use of the "results test" in holding that at-large system of elections diluted the black vote. *United States v. Marengo County Comm'ns*, 731 F.2d 1546 (11th Cir. 1984). The appeals court also declared the at-large election of a commission chairperson invalid holding that because the duties of the chairperson were vague, the position could be used to control the commission. *Dillard v. Crenshaw County, Ala.*, 831 F.2d 246 (11th Cir. 1987).

Ala. Const. of 1901 Amendment 579 provided persons were disqualified from registering, and from voting who had been convicted of, among other offenses, of "any infamous crime or crime involving moral turpitude". *See* Ala. Const. of 1901 Art. VIII, Sec. 177(b). Although Amendment 579 was racially neutral on its face, enforcement produced disproportionate effects along racial lines. Consequently, once racial discrimination is shown to have been a "substantial" or "motivating" factor behind enforcement of the law, the burden shifts to the law's defenders to prove that the law would have been enacted without this factor. Section 182 (the predecessor in the Alabama Constitution to Amendment 579) was no longer able to deny voting privileges to persons who had committed misdemeanors. *Hunter v. Underwood*, 471 U.S. 222, 228(1985).

Hunter is essentially codified in the Ala. Const. of 2022 revisions at Sec. 177(b). "No person convicted of a *felony* involving moral turpitude…. shall be qualified to vote until restoration of civil and political rights…" (emphasis added).

Ala. Const. of 2022 § 177
Suffrage and elections.

(a) Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence. The Legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting. The Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.

(b) No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

(c) The Legislature shall by law provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.

White
v.
Alabama
74 F.3d 1058 (11th Cir. 1996)

In this case, Hoover White, a black voter and representative of a class of all black voters in Alabama, contended that the at-large election scheme dilutes the voting strength of black voters in Alabama in violation of Section 2 of the Voting Rights Act because it affords black voters, on account of their race, "less opportunity [than white voters] ... to participate in the political process and to elect representatives of their choice." Voting Rights Act of 1965, Pub. L. No. 89-110, § 2(b), 79 Stat. 437, 42 U.S.C. § 1973(b)(1988). White also contended that the challenged at-large election scheme denies Alabama's black voters the equal protection of the laws guaranteed them by

the Fourteenth Amendment. He sought injunctive relief sufficient to remedy these deficiencies in the method of electing Alabama's appellate judges. Finally, White claimed that the legislature's alteration of the structure and composition of Alabama's appellate courts, in 1969 and on two subsequent occasions, had not been precleared under Section 5 of the Voting Rights Act. He seeks an order declaring the legislature's actions inoperative. *See* 42 U.S.C. § 1973c (1988); *See also Shelby County v. Holder*, 133 S. Ct. 2612 (2013) (discussed *supra* holding that Section 4(b) of the Civil Rights Act unconstitutional and, therefore, no jurisdiction would be subject to Section 5 of the Act's preclearance requirements unless Congress enacted a new coverage formula).

Shortly after White commenced this action, his attorneys and the Attorney General of Alabama entered into settlement negotiations; these negotiations led to an agreement, which the United States Department of Justice precleared. The district court, over the objection of the appellants, who had intervened in the case, approved the agreement and made it part of the final judgment. *White v. State of Alabama*, 867 F. Supp. 1519 (M.D. Ala. 1994). The Eleventh Circuit Court of Appeals stated that the district court's judgment, if implemented, would restructure the Supreme Court of Alabama and the two courts of appeals by increasing the size of those courts and creating a selection process that would ensure that the black voters of Alabama have at least two "representatives of their choice" on each court.

The appellants, a black voter and a judge on the Court of Criminal Appeals, contended that in fashioning such relief the district court exceeded its authority under Section 2 of the Voting Rights Act, and that the court's entry of the judgment therefore constituted an abuse of discretion. The Eleventh Circuit Court of Appeals agreed and therefore vacated the district court's judgment and remanded the case for further proceedings.

C. Candidate Requirements

1. *Political Parties*

Alabama law grants the governing body of a political party wide discretion in determining who may vote in its primaries as well as in establishing qualifications for those seeking the party nomination. Indeed, the qualifications of electors entitled to vote in a party's primary do not as a matter of necessity have to be the same as the qualifications for electors to become candidates. § 17-13-7. Consequently, candidates for office must be mindful that a political party may have specific requirements which it may impose on candidates. *See Ex parte Graddick*, 495 So. 2d 1367 (Ala. 1986).

2. *Filing*

Anyone desiring to become a candidate for a federal, state, or county office is required to file a declaration of candidacy no later than 5:00 p.m., 116 days prior to the date of the primary. For offices other than county offices, i.e., federal, state, district, circuit, the state Senate and the state House, a person must file a statement of candidacy with the state party chair. He or she must file with the county party chairman if a county office is sought. § 17-13-5. Declaration of candidacy forms may be obtained from either the county party chairman or the parties' state headquarters. Candidates should also make sure they have an ethics statement on file. § 36-25-15.

Even where state officials may attempt to bring election information to the attention of all citizens through local channels, each candidate for office still bears the sole responsibility for timely filing of all forms. *Dillard v. Town of North Johns*, 717 F. Supp. 1471 (M.D. Ala. 1989).

The Supreme Court of Alabama determined in *Megginson v. Turner* that a candidate who properly qualified for office was removed as a candidate for failing to file a statement naming his principal campaign committee within the required five-day period. *Megginson v. Turner,* 565 So. 2d 247 (Ala. 1990); (§ 17-22A-4 is now

§ 17-5-4. *See* also changes to § 17-5-4, created by Act 2021-314 and effective August 1, 2023, to require all campaign finance reports and statements to be filed electronically with the Secretary of State). *Megginson* was overruled a year later in *Davis v. Reynolds,* 592 So.2d 546 (Ala. 1991). In *Davis,* the Alabama Supreme Court held that there were two distinct sanctions for failure to file such a statement. If the statement was not filed prior to the election, the forfeiture sanction of § 17-22A-21 (later repealed as § 17-5-18) applied, which was forfeiture of the election. If the statement was filed before the election, but after the five-day period required by § 17-22A-4 (now § 17-5-4), the criminal penalties of § 17-22A-22(b) (later repealed as § 17-17-35(b)) applied. *Davis*, 592 So. 2d at 556. Section 17-22A-22(b) (later repealed as § 17-17-35(b)) made this violation a Class B misdemeanor.

Although the Alabama Supreme Court held in *Davis* that there were two distinct sanctions for failure to file a statement, two justices dissented from this approach which distinguished between statements filed before the election and those filed after the election or not at all. Justices Maddox and Houston disagreed with the court's decision to overrule *Megginson,* finding it "especially disturbing" that it made no difference when the statement was filed as long as it was filed "before the election."

The Supreme Court decided another case involving § 17-22A-21 (later repealed as § 17-5-18) in T*alledega v. Pettus*, 602 So. 2d 357 (Ala. 1992), where the Court held that the trial court had sufficient authority to prevent the issuance of a certificate of election to any person nominated to state or local office but that it lacked jurisdiction to revoke a certificate of election already issued in a municipal election. *Pettus*, 602 So. 2d at 360. It did not address the line drawn between statements filed before and after election day by *Davis*, but it is relevant because Justice Maddox's special concurring opinion stated that the facts of *Pettus* illustrated the need to re-evaluate the holding in *Davis v. Reynolds,* 592 So. 2d 546 (Ala. 1991). *Pettus*, 602 So. 2d at 361-362.

The court in *Ex Parte Krages*, 689 So. 2d 799 (Ala. 1997), overruled *Pettus* in whole by asserting "[i]n short, *Pettus's* construction of § 17-22A-21(later repealed as § 17-5-18) is

unworkable. Therefore, to the extent it construes the second sentence of § 17-22A-21 (later repealed as § 17-5-18) as excluding municipal offices, *Pettus* is overruled."

Beginning with the Special Session in December 2010 and continuing through the 2013 Regular Session, the Alabama legislature revised several statutes regarding Alabama's Fair Campaign Practices Act (FCPA) and repealed others, such as § 17-5-18 (§ 17-22A-21) and § 17-17-35(b) (§ 17-22A-22(b)), among several other statutes. The sweeping changes, known as Act No. 2013–311 and found in Chapter 5 of Title 17, went into effect August 1, 2013, and included the following measures:

1) PAC to PAC Ban – The legislature banned political action committees (PACs) from making contributions to other PACs, to political parties, or other 527 organizations. Similar restrictions, with some minor exceptions, were placed on candidate's principal campaign committees (PCC), which were prohibited from contributing to PACs or other PCCs.
2) Schedule for Campaign Finance Disclosure Reports - PCCs and PACs are now required to file many more campaign finance disclosure reports and must now do so on an annual, monthly, weekly, and (in some cases) daily basis. The revisions further modified the requirements for filing these reports in the 2014 election cycle when some electronic filing were to be in place and eliminated some duplicative, overlapping reporting obligations.
3) Disclosure Associated with "Electioneering Communications" – Disclosure requirements for "electioneering communications" (modeled to some extent on federal election law requirements) were added to the FCPA.
4) Robocall Disclosure and Source Identification – It is unlawful for an "automated or pre-recorded communication … transmitted through an automated telephone dialing service" (such as a "robocall") to be conducted without providing clear notice at the end of the communication that it was a

paid political advertisement and identifying the person or entity that paid for the communication. The revisions also made it unlawful for a person or entity to knowingly misrepresent the person or entity that paid for such an automated or pre-recorded communication.

5) Enforcement Provisions – The 2013 revisions substantially revised the enforcement provisions of the FCPA. *See* § 17-5-19.

Other 2013 FCPA Revisions – Other revisions were made to the FCPA in 2013, such as: Candidate Registration Thresholds, Repeal of Corporate Contribution Limit (utilities may not contribute to candidates for the PSC, though), Fundraising Blackouts, Refund of Contributions, and Eliminating Filing in Multiple Courthouses.

In addition to its changes in location of filing reports, Act 2021-314 (effective August 1, 2023, also alters the penalty provisions of § 17-5-19.1 by designating penalties levied by the State Ethics Commission for failure to comply with reporting requirements as civil rather than administrative.

See §§ 17-5-1 through 17-5-20 (note: § 17-5-18 has been specifically repealed by the 2013 revisions) for all rules and requirements under the current FCPA; *See also* further discussion of the FCPA *infra*.

Filing Declaration of Candidacy and Certification of Names. The names of all primary candidates must be certified to the Secretary of State or the respective probate judge, depending on the office sought. The state party chairman must no later than 5:00 p.m., 82 days prior to election, certify to the Secretary of State the names of all primary candidates, except those for county offices. The Secretary of State is then required to certify to the probate judge of every county in which an election is to be held, the names of all the candidates, except, of course, candidates for county office. This must be accomplished not less than 74 days prior to the date of the primary election. The county party chairman certifies to the probate judge all the names of candidates

for local county office not later than 5:00 p.m. 82 days prior to the date of the primary election. The probate judge is then responsible for seeing that the names of all legally qualified candidates, federal, state, and local, appear on the ballot. § 17-13-5.

3. *Independent Candidates Filing*

Independent candidates or candidates nominated by caucuses or mass meetings follow a different procedure to have their names printed on the general election ballots.

All candidates who have been put in nomination by any caucus, convention, mass meeting, or other assembly of any political party or faction and certified in writing by the chair and secretary of the nominating caucus, convention, mass meeting, or assembly and filed with the probate judge, in the case of a candidate for county office, and the Secretary of State in all other cases, on or before 5:00 P.M. on the date of the first primary election. § 17-9-3. Each candidate who has been requested to be an independent candidate for a specified office by written petition signed by electors qualified to vote in the election to fill the office when the petition has been filed with the probate judge, in the case of a county office and with the Secretary of State in all other cases, on or before 5:00 P.M. on the date of the first primary election as provided in § 17-13-3. The requirement in § 17-9-3 for the number of qualified electors signing the petition to equal or exceed three percent of the qualified electors who cast ballots for the office of Governor in the last general election for the state, county, district, or other political subdivision in which the candidate seeks to qualify was challenged as unconstitutional, but a trial court ruling in favor of the plaintiff was vacated by the 11th Circuit in *Hall v. Secretary, Alabama*, 902 F.3d 1294 (11 Cir. 2018), cert. denied, 140 S.Ct. 117 (2018) due to the grounds for plaintiff's challenge being moot and not meeting the evading review exception to the mootness doctrine. *Id.* at 1298.

The Secretary of State within 74 days after the second primary must certify to each probate judge of each county the independent candidates to be voted for by the voters of the entire

state or those independent candidates or candidates of a party to be voted for by the voters of a district or circuit who have qualified to appear on the general election ballot. The probate judge is then responsible for the printing of candidates' names on the ballot. § 17-13-5.

Any officer of the state whose duty it is to prepare and have printed ballots who intentionally fails to have printed the names of all persons entitled to have their names on the ballot shall be guilty, upon conviction, of a Class A misdemeanor. § 17-17-54.

4. *General Qualifications for Office*

A person must meet three basic requirements to be eligible for candidacy in a primary election.

(1) The person must be legally qualified for the office. This means a person must fulfill both statutory and state constitutional requirements for the office.

(2) The person must be eligible to vote in the primary election in which he seeks to run. Thus, a person has to be a registered voter of the state.

(3) The person must possess the political qualifications prescribed by his political party. § 17-13-6.

5. ***Qualifications for a Specific Office***

Certain elective offices have qualifications mandated by the Alabama Constitution of 2022.

a. Legislators. Senators shall be at least twenty-five year of age, and representatives twenty-one years of age at the time of their election. They shall have been citizens and residents of this state for three years and residents of their respective counties or districts for one year next before their election, if such county or district shall have been so long established; but if not, then of the county or district from which the same shall have been taken; and

they shall reside in their respective counties or districts during their terms of office. Ala. Const. of 2022 Art. IV, § 47.

b. Governor and Lt. Governor. The governor and lieutenant governor shall each be at least thirty years of age when elected, and shall have been citizens of the United States ten years and resident citizens of the state at least seven years next before the date of their election. The lieutenant governor shall be ex officio president of the senate, but shall have no right to vote except in the event of a tie. Ala. Const. of 2022 Art. V, § 117.

c. Attorney General, *et al*. Any candidate for the office of Attorney General, State Auditor, Secretary of State, State Treasurer, or Commissioner of Agriculture and Industries must have been a citizen of the United States for at least seven years, have resided in the state for at least five years prior to election, and be twenty-five years old or older when elected. Ala. Const. of 2022 Art. V, § 132.

d. The Commissioner of Agriculture and Industries. The Commissioner is required by statute to be a person of good moral character, to have recognized executive ability, and to be trained in the practice and science of agriculture. § 2-2-2.

e. Judicial Officers. Constitutional Amendment No. 328, which was adopted in 1973, repealed Article VI of the Constitution of Alabama, 1901, and authorized the establishment of an entirely new judicial department. Under the provisions of this new article, changes in a number of qualifications for officers of the judicial branch were enacted.

The judicial article specifies that judges of the state Supreme Court, courts of appeals, circuit courts and district courts must be licensed to practice law and meet other qualifications as the law provides. Amendment No. 328, Art. VI, § 6.07 Judges of the probate court shall have such

qualifications as may be provided by law. (These requirements are now codified at Sec 146 in the Constitution of 2022). *See* also § 12-10B-2. They must also meet the following: Persons elected to the Supreme Court, or appointed to fill a vacant term of office on the Supreme Court, after January 1, 2010, must have been licensed by the Alabama State Bar Association a combined total of 10 years or more, or by any other state bar association for a combined total of 10 years or more, prior to beginning a term of office or appointment to serve a vacant term of office. For the election and terms of office of the justices, the law requires the Chief Justice and eight associates be elected for six-year terms with the Chief Justice and four associates being elected at the general election in November, 2018; one associate justice elected at the general election in November, 2020; and three associate justices elected at the general election of November, 2022. § 12-2-1. The judges of the criminal and civil courts of appeals are likewise elected to serve for six years. §§ 12-3-2, 12-13-3. The judges of the criminal and civil courts of appeal may reside anywhere with the state. § 12-3-5.

Circuit and district court judges are required by the Alabama Code to have resided in the circuit for at least twelve months prior to election or appointment. Additionally, the judge is to reside within the bounds of the circuit or district for the length of the term. §§ 12-17-22 & 12-17-64. A person elected to or appointed to a circuit clerk judgeship must have bene admitted to practice law in this state a combined total of seven years or more or admitted to practice law by any other state for a combined total of seven years or more, prior to beginning a term of office or appoint to serve a vacant term of office. In addition, the person must not have received from any state or state bar association a suspension or disbarment within the 10 years preceding election or appointment. § 12-11-1. District court judges must have been admitted to practice law in this state for a combined total of four years or admitted to practice law by any other state for a combined total of four years or more prior to beginning a term of office or appointment to serve a vacant term of office. In

addition, the person must not have received from any state or state bar association a suspension or disbarment within the 10 years preceding election or appointment. § 12-12-1. Circuit and district judge terms are six years. Ala. Const. Article VI, § 154(a).

Under the judicial article, circuit clerks are to be elected for six-year terms. Should a vacancy occur, the judges of the circuit are empowered to select a suitable replacement. Alabama Constitution Art. VI, § 160(b). Constables, elected to assist the court, may receive remuneration for the performance of official duties in addition to holding any other elected or appointed office. Ala. Const. Art. VI, § 160(c).

As provided by the Alabama Code, a candidate for the office of probate judge must be, a citizen of the state who has resided in the county for which he seeks the office for one year prior to the election. § 12-13-31. The term of office is six years. § 12-13-30. Note: some counties by local law/constitutional amendment additionally require the probate judge(s) of that county to have legal training. *See, e.g.* Ala. Const. § 35.2.21; Ala Code § 45-49-85.42.

Minimum Qualifications for Public Office

Office[1]	Minimum Age	State Resident	US Citizen	Term of Office	Number of Terms
US Senate[2]	30	1 day	9 years	6	no limit
US House of Representatives[3]	25	1 day	7 years	2	no limit
Governor[4, 6]	30	7 years	10 years	4	2
Lt. Governor [4, 6]	30	7 years	10 years	4	2
Secretary of State[5, 6]	25	5 years	7 years	4	2
Attorney General[5, 6]	25	5 years	7 years	4	2
State Auditor[5, 6]	25	5 years	7 years	4	2
State Treasurer[5, 6]	25	5 years	7 years	4	2
Commissioner of Agriculture and Industry[5, 6]	25	5 years	7 years	4	2
Public Service Commission[7, 8]	18	1 day	1 day	4	no limit
Supreme Court Justice[7, 9, 25]	18	1 day	1 day	6	no limit
	Must be licensed to practice law in Alabama. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of 10 years or more, or by any other state bar association for a combined total of 10 years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				
Court of Criminal Appeals[7, 9, 26]	18	1 day	1 day	6	no limit
	Must be licensed to practice law in Alabama. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of 10 years or more, or by any other state bar association for a combined total of 10 years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				

Office[1]	Minimum Age	State Resident	US Citizen	Term of Office	Number of Terms
Court of Civil Appeals[7, 9, 26]	18	1 day	1 day	6	no limit
	Must be licensed to practice law in Alabama. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of 10 years or more, or by any other state bar association for a combined total of 10 years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				
State Board of Education[7, 9]	18	1 day	1 day	4	no limit
State Senate[7, 11]	25	3 years	1 day	4	no limit
	Must be a resident of the district for one year prior to the election.				
State House of Representatives[7, 11]	21	3 years	1 day	4	no limit
	Must be a resident of the district for one year prior to the election.				
Circuit Judge[7, 9, 12, 27]	18	1 year	1 day	6	no limit
	Must be licensed to practice law in Alabama. Must have resided in the circuit which candidate seeks to represent for one year prior to election. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of seven years or more, or by any other state bar for a combined total of seven years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				
District Judge[7, 9, 13, 28]	18	1 year	1 day	6	no limit
	Must be licensed to practice law in Alabama. Must have resided in the circuit which candidate seeks to represent for one year prior to election. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of four years or more, or by any other state bar association for a combined total of four years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				
District Attorney[7, 14, 16]	18	1 year	1 day	6	no limit
	Must be licensed to practice law in Alabama. Must have resided in the district which candidate seeks to represent for one year prior to election.				

Office[1]	Minimum Age	State Resident	US Citizen	Term of Office	Number of Terms
Judge of Probate[7, 9, 15]	18	1 year	1 day	6	no limit
	Must have resided in the district which candidate seeks to represent for one year prior to election. No one may be elected or appointed to a judicial office after reaching the age of 70.				
Circuit Clerk[7, 16]	18	1 day	1 day	6	no limit
Sheriff[7, 17]	18	1 day	1 day	4	no limit
Coroner[7, 18, 24]	25	1 day	1 day	4	no limit
County Superintendent of Education[7, 19]	18	1 day	1 day	varies	varies
	See § 16-9-2 for qualifications.				
County Board of Education[7, 20]	18	1 day	1 day	4 & 6	no limit
	Must be a resident of the county which the candidate seeks to represent one year prior to election.				
County Commission[7, 21]	18	1 year	1 day	4 & 6	no limit
	Must be a resident of the county for at least one year prior to the date of taking office. If representing a specific district, must be a resident of the district for at least one year prior to the date of taking office.				
Mayor[7, 22]	18	90 days	1 day	4	no limit
	Must be a resident of the city for 90 days prior to election.				
City Council[7, 23]	18	90 days	1 day	4	no limit
	Must be a resident of the city or district for 90 days prior to election.				

Footnotes

1. All candidates participating in party primary elections must be registered voters. § 17-13-6
2. U.S. Constitution, Art. 1, § 3
3. U.S. Constitution, Art. 1, § 2
4. Ala. Const. § 117
5. Ala. Const. § 132
6. Ala. Const. § 116
7. §§ 17-3-30 and 36-2-1
8. § 37-1-3
9. Ala. Const. §§ 146, 154, and 155
10. §§ 16-3-1 and 16-3-3
11. Ala. Const. § 47
12. § 12-17-22
13. §§ 12-17-63 and 12-17-64
14. §§ 12-17-180 and 12-17-183
15. §§ 12-13-30 and 12-13-31
16. Ala. Const. § 160
17. Ala. Const. § 138
18. § 11-5-1
19. §§ 16-9-1 and 16-9-2
20. §§ 16-8-1 and 16-8-2
21. §§ 11-3-1 and 36-3-4
22. §§ 11-43-1, 11-43-2, and 11-46-25
23. §§ 11-43-63 and 11-46-25
24. § 11-5-33
25. § 12-2-1(b)
26. § 12-3-1
27. § 12-11-1
28. § 12-12-1

6. ***Disqualifications***

Alabama law provides general restrictions which disqualify persons from becoming public officers.

> (1) Those who are not qualified electors, except as otherwise expressly provided;
>
> (2) Those who have not been inhabitants of the state, county, district or circuit for the period required by the constitution and laws of this state;
>
> (3) Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or any other crime punishable by imprisonment in the state or federal penitentiary, and those who are mentally incompetent;
>
> (4) Those against whom there is a judgment unpaid for any moneys received by them in any official capacity due to the United States, this state, or any county or municipality thereof; and
>
> (5) Soldiers, seamen, or marines in the regular Army or Navy of the United States.

Moreover, a person may not simultaneously hold an office of profit under the United States and the State of Alabama, except in the case of constables, notaries public and commissioners of deeds. § 36-2-1.

The provision of the section making the right to vote one of the requisites of eligibility for the office of probate judge is a valid enactment. *Mitchell v. Kinney*, 242 Ala. 196, 5 So. 2d 788 (1942). The word "ineligible," as used in this code section, means inelectable - not capable of being chosen - and hence, the qualifications enumerated relate not merely to the date of actual induction into office. *Finklea v. Farish*, 160 Ala. 230, 49 So. 366 (1909). "Public officer" is defined as one who performs a public function and whose authority is derived directly from a state

legislative enactment, and the law prescribes his duties, powers, and authority. *Montgomery v. State Ex rel. Enslen*, 107 Ala. 372, 18 So. 157 (1895). The word "office," in its broad terms, means that the individual must be invested with a portion of the sovereign power of the state. *Alexander v. State ex rel. Carver*, 274 Ala. 441, 150 So. 2d. 204 (1963).

7. *Assessments (Fees) of Candidates for Party Nomination*

The governing body of a political party determines the amount of the qualifying fee and any other qualifications for persons desiring to become candidates. Such fees cannot exceed 2 percent of one year's salary of the office sought. If the office being sought by the candidate is for an unpaid county political office or a county party position, the fee shall not exceed $50.00. For an unpaid state political office or a state party position the fee shall be no more than $150.00. § 17-13-47.

Imposition of an excessive fee upon a candidate is a misdemeanor which, in the event of conviction, can result in the guilty party's being fined not less than $25 nor more than $100. § 17-17-47.

8. *Candidate Declines Run-Off*

In order to become a party's nominee for office, the candidate must receive a majority of the votes in the initial primary. But, if a candidate fails to obtain a majority vote, a second primary (run-off) becomes necessary between the two candidates who received the highest number of votes in the first primary. § 17-13-18.

Should, however, one candidate decide against entering the run-off, that candidate must notify either the state party chairman or the county party chairman, depending on the office sought, not more than three days after the first primary. The party official will then declare the other candidate the nominee and certify his or her name to the Secretary of State or the probate judge, whichever is appropriate. § 17-13-19.

If a legally qualified candidate for election to a public or party office is unopposed after the last qualifying date, the candidate's name will not appear on the ballot used in the primary. The unopposed candidate will be declared elected to the party office or the party's nominee for the public office for which he or she qualified. § 17-13-5.

9. ***Mass Meeting Nominations***

Alabama law explicitly provides for and officially recognizes individuals nominated or selected by a political party in a mass meeting. Mass meetings may be utilized by a political party for the purpose of nominating candidates for public office to be voted on in the general election, for the purpose of selecting representatives to any convention which may select candidates for public office, or for the purpose of selecting party officials. All such meetings shall be held before the first primary election. Notice of the meeting, including reference to time and place, must be filed not less than five days prior to the meeting date with the probate judge of the county in which the meeting is scheduled. Notice must also be published in a newspaper of general publication. Although the general public may attend the meeting, it may not participate. The probate judge forwards a certified copy of mass meeting notices to the Secretary of State. § 17-13-50.

10. ***Commissions, Bonds and Oaths***

Commissions are issued in the name of the State of Alabama and sealed with the state seal. The Governor signs all commissions, with the Secretary of State countersigning them (only the Governor signs the Secretary of State's commission). § 36-2-7. The judges of the various courts, the Attorney General, district attorneys, the Auditor, the Secretary of State, the Treasurer, the public service commissioners, circuit clerks, the sheriffs, the tax collectors, the tax assessors, county commissioners, constables, county treasurers and other officers when specifically required by law § 36-2-6 must obtain a commission prior to assuming office or be subject to a fine. § 36-2-9.

Before any elected official can obtain a commission,

however, a bond must be filed with either the Secretary of State in the case of state officials, or with the appropriate public offices in the case of a county official, within 40 days after the declaration of election or after appointment to office. Tax collectors and tax assessors are to file their bonds on or before September 1, following their election or appointment. §§ 36-5-1, 36-5-2. Any official who fails to file a required bond on time vacates his office. § 36-5-15.

Official oaths may be administered by any officer authorized to administer an oath. The oath must be written out and subscribed by the person taking it and accompanied by the certificate of the officer administering the oath. § 36-4-1. The oaths taken by the Governor, any Supreme Court justice, judge of the Court of Civil Appeals or Criminal Appeals, judge of the circuit court, Auditor, Treasurer, Attorney General, district attorney, or any officer whose general duties are not limited to any one county, must be filed with the Secretary of State. (The Secretary of State files an oath with the Auditor. § 36-4-2) Probate judges file their official oaths in the circuit clerk's office of the respective counties, § 36-4-3, while judges of district courts and other officers whose duties are confined to a single county file their oaths in the office of the probate judge of the respective counties. § 36-4-4.

D. Ethics Law Requirements

Candidates at every level of government must file a completed statement of economic interests for the previous calendar year (unless a current statement of economic interests is already on file) with the State Ethics Commission not more than five days after the candidate files his or her qualifying papers with the appropriate election official or in the case of an independent candidate, not more than five days after the date the person complies with the requirements of § 17-9-3. § 36-25-15(a). Winning the nomination is not a prerequisite to becoming a "candidate" for state or elective office. *Muncaster v. Alabama State Ethics Commission,* 372 So. 2d 853 (Ala. 1979). Merely filing a declaration of candidacy triggers the necessity for compliance with the Alabama Ethics Law.

Every election official who receives a declaration of candidacy or petition to appear on the ballot for election from a candidate and every official who nominates a person to serve as a public official must, within five days of the receipt or nomination, notify the Ethics Commission of the name of the candidate and the date on which the person became a candidate or was nominated as a public official. § 36-25-15(b).

If a candidate does not submit a statement of economic interests as required, the name of that person will not appear on the ballot and that candidate will be deemed not qualified as a candidate in that election. However, the Ethics Commission may, for good cause shown, allow the candidate an additional five days to file a statement of economic interests. If a candidate is deemed not qualified, the candidate's name must be removed from the ballot. § 36-25-15(c).

E. Election Contests[3]

Alabama election law allows any qualified voter to contest the election of any candidate elected to a position in state government (i.e., Governor, Auditor, Treasurer, Attorney General, Public Service Commissioner, senator, representative, supreme court justices, circuit court judges, district judges or any county office) for any of the following reasons:

(1) Malconduct, fraud or corruption on part of any inspector, clerk, returning officer, canvassing board, or other person;

(2) When the person whose election to office is contested was not eligible thereto at time of such election;

(3) On account of illegal votes;

(4) On account of rejection of legal votes;

(5) Offers to bribe, bribery, intimidation, or other malconduct

[3]Prude, James B., Contesting Elections (1982).

calculated to prevent a fair, free and full exercise of the elective franchise

(6) If the results of a recount conducted under Section 17-16-20 name as a winner a person other than the person initially certified, the outcome shall constitute grounds for an election contest. § 17-16-40.

The contest of an election is strictly statutory and the statute must be strictly construed. *Walker v. Junior*, 247 Ala. 342, 24 So. 2d 431 (1945); *Groom v. Taylor*, 235 Ala. 247, 178 So. 33 (1939). Generally, the court has adhered to the doctrine of strict construction when dealing with election contests.

Whenever an elector chooses to contest the election of one elected to a legislative, judicial, or county office, he is required by § 17-16-47 to give a written statement setting forth specifically:

(1) The name of the contesting party and a statement that he was a qualified voter when the election was held;

(2) The office the election was held to fill and time of holding the same;

(3) The particular grounds of protest.

An affidavit of the contesting party in which he must affirm his belief that the statement is true is also required. If the allegation concerns only illegal votes, it is sufficient to allege that the winning candidate would not be the winner if such illegal votes were not counted. § 17-16-47.

Strict construction is likewise applicable to this provision. *Pearson v. Alverson*, 160 Ala. 265, 49 So. 756 (1909). Though the contestant has the right to amend his petition if it fails to meet the statutory requirements, he must amend before the time for commencing an action has expired. Under § 17-16-49 the contest must be commenced within 20 days after the election result is declared. Thus, if a petition is defective, it must be amended

before the expiration of the 20 days. *Ex parte Hartwell*, 238 Ala. 62, 188 So. 891 (1939). The filing of a defective petition, therefore, does not toll the statute of limitations imposed by the statute.

Section 17-16-49 also requires that the contesting party give security for the cost of the contest. The giving of security is a jurisdictional requirement. *Cosby v. Moore*, 259 Ala. 41, 65 So. 2d 178 (1953). Although there is no requirement as to the form of the security, provided that it secures all the costs without limit, *Cosby*, *supra*, a deposit of a sum of money has been held insufficient. *Ex Parte Brassell*, 261 Ala. 265, 73 So. 2d 907 (1954). While the filing of the security does not have to be contemporaneous with the filing of the statement, the security must be filed within the time period for commencing a contest. *Ex parte Shephard*, 172 Ala. 205, 55 So. 627 (1911). Both the security and the declaration of statement must be filed, however, in the court with jurisdiction to hear the case. *Robinson v. Winston Cnty.*, 203 Ala. 671, 85 So. 22 (1920).

The requirement of notice and the nature of the evidence has been more controversial than the preceding statutes. Section 17-16-48 mandates that in contests which allege reception of illegal votes or rejection of legal votes, no testimony may be received unless the adverse party has been given a 10-day notice in writing of the testimony to be taken, the number of illegal votes or rejected votes, by whom given and for whom given, and the precinct where the illegal act occurred.

In a case involving election of mayor and councilmen of Prichard, Alabama, the losing candidates as contestants alleged violations of all grounds of § 17-16-40. *Turner v. Cooper*, 347 So. 2d 1339 (Ala. 1977). Their claims were based primarily, however, on the reception by officials of illegal votes for the mayor and rejection of legal votes for the contestants. The court refused to allow the contestants to open the voting machines and ballot boxes, but the court did take and retain control of the voting machines and ballot boxes, all of which were sealed, as well as the record of information inside them. The court on the defendant's motion ordered the contestants to give written notice, within 21 days, of the number of illegal votes cast and rejection of legal votes. The contestants failed to do so. Several days before the

testimony of witnesses was to be taken, the court dismissed the claim with prejudice on the grounds that the list was not provided 10 days prior to scheduled testimony of witnesses. On appeal the contestants argued that they were precluded from providing the information since they needed the lists of names in the machines which had been denied them by the lower court.

The Supreme Court of Alabama, citing *Dobbs v. Brunson*, 17 Ala. App. 318, 85 So. 38 (1920), stated:

These statutes ... establish clearly that [when] election contests ... turn upon the number of legal or illegal votes rejected or cast ... [the statute] requires notice of nature of evidence. Without that written notice having been [given] ... 'at least ten days before the taking of testimony in reference to such votes .... [n]o testimony must be received of any illegal votes, or of the rejection of any illegal votes.' ... The legislature [made this a] part of the procedure for engaging in an election contest when [these types of votes were] in issue. Thus, defendant had a right to demand production of notice and compliance by the plaintiff is mandatory.

Though the court acknowledged contestants' argument that they needed the information inside the machines to present and prosecute their case, the court refused to grant the petition since there was no proof in the record of a ground for annulment. There would have to have been a showing that illegal votes were received while legal votes were rejected. The machine shows only total votes cast, so any evidence of illegal votes must be substantiated by testimony. Absent such proof, the case must be dismissed.

The court adhered to strict construction in *Cooper*, *supra*, and later in *Carter v. Wiley*, 406 So. 2d 340 (Ala. 1981). There the plaintiff had alleged grounds of § 17-16-40(1), malconduct on behalf of election officials, but when told to conform to the § 17-16-48 notice statute, the plaintiff gave notice of evidence that would only support violations of § 17-16-40(2) and (3). He argued that compliance with the notice statute was impossible because the notice statute refers to allegations of specific rejection of legal votes or acceptance of illegal votes, yet his complaint referred only to

malconduct of officials.

The Court found that, while the language of the notice statute does not explicitly mandate a method by which notice of the nature of the evidence in contest based on malconduct of election officials must be given to contestee, the statute does implicitly contemplate that notice of a sort applicable to the grounds asserted be required.

Just any malconduct on behalf of officials will not be sufficient to have an election annulled. The courts have applied the general rule that for malconduct as stated in § 17-16-41 to cause annulment of elections, the malconduct must change the results of the election. *City of Florence v. State*, 211 Ala. 617, 101 So. 462 (1924); *Garrett v. Cunninghame*, 211 Ala. 430, 100 So. 845 (1924). However, in *Turner v. Cooper*, 347 So. 2d 1339 (Ala. 1977), the Alabama Supreme Court has seemingly limited annulment to only those cases involving acceptance of illegal votes or rejection of legal votes by saying that no other instances of election law violations may be used to annul an election. The court did say that although fraudulent misconduct does not cause annulments, errors and irregularities of election officials which are shown to affect the result might be considered.

If ballots were unchallenged at time of elections and received and counted by the managers, they are prima facie legal. *Brunson v. Dobbs*, 202 Ala. 603, 81 So. 545 (1919).

Where a voting machine malfunctioned and failed to register any votes for a candidate and where no candidate received a majority of the votes, the only remedy is a new election. *Ex parte Vines*, 456 So. 2d 26 (Ala. 1984).

For evidence to challenge an election, witnesses can be compelled to testify. § 17-16-42. The witness may be required to state whether he voted, whether he was qualified to vote, and, if not qualified to vote, for whom he voted. If the witness testifies truthfully and incriminates himself, he cannot be prosecuted. *Ex parte Bullen*, 236 Ala. 56, 181 So. 498 (1938).

Defendant was convicted of mail fraud from the mailing of fraudulently marked absentee ballots. After the conviction and while the case was on appeal, the Supreme Court in *McNally v. United States*, 483 U.S. 350, 107 S. Ct. 2875 (1987) held that the federal mail fraud statute 18 U.S.C.A. § 1341 did not proscribe a scheme or artifice to defraud citizens of the "intangible" right to honest government. The *McNally* case applied retroactively and, therefore, a voting fraud case based on mail fraud could reach only schemes involving money or property. *U.S. v. Gordon*, 836 F.2d 1312 (11th Cir. 1988), *cert. denied*.

In 1988, in response to the decision in *McNally*, Congress enacted 18 U.S.C.A. § 1346, which prohibits, *inter alia*, mail fraud under § 1341 and wire fraud under § 1343. Also, the term 'scheme or artifice to defraud' now includes a scheme or artifice to deprive another of the intangible right of honest services by governmental officials. In 2010, the United States Supreme Court in *Skilling v. United States*, 561 U.S. 358 (2010), determined that Congress, therefore, enacted 18 U.S.C.A. § 1346 to reverse McNally on its facts. Furthermore, the Court determined that the honest services fraud statute, 18 U.S.C. § 1346, is properly confined to cover only bribery and kickback schemes.

The contesting parties also have the right, for a fee, to obtain a certified copy of the registration lists and the poll lists of the county or any election precinct therein. The registration list gives the names of qualified voters while the poll list gives the names of those who voted. § 17-16-43.

Because of the strict construction doctrine, the courts have refused to apply this to non-county elections. For example, a contestant for mayor of a municipality was not entitled to mandamus a judge of probate to furnish him with a certified copy of the lists. The court refused to extend the embrace of the statute to municipal elections. *Stiles v. Endsley*, 219 Ala. 350, 122 So. 458 (1929); *Endsley v. Culpepper*, 219 Ala. 349, 122 So. 457 (1929).

A political party which conducts a primary has exclusive jurisdiction to hear a primary election contest and once the contest is filed and the party exercises jurisdiction over the contest, courts

are without authority to intervene. A circuit court lacks authority to enjoin the proceedings. *Ex parte Baxley*, 496 So. 2d 688 (Ala. 1986); followed in *Wells v. Eustace*, 612 So. 2d 453 (Ala. 1993). Furthermore, there is no right to appeal to the Supreme Court of Alabama where a political party has made a determination of the winner in a contested primary. *Ex parte Graddick*, 495 So. 2d 1367 (Ala. 1986).

For an in-depth examination of judicial review involving state primaries, *see Curry v. Baker*, 802 F.2d 1302 (11th Cir. 1986) and *Henderson v. Graddick*, 641 F. Supp. 1192 (M.D. Ala. 1986).

Chapter 3
Reapportionment[1]

A. The State-at-Large

Although the Alabama Constitution called for a legislative reapportionment on a modified population basis after every federal census, the Legislature never enacted the necessary legislation between 1901 and 1972. Consequently, when the United States Supreme Court handed down its reapportionment decision in the case of *Baker v. Carr*, [2] the Alabama Legislature was still apportioned as originally provided in the Constitution of 1901.

In *Baker v. Carr*, the Supreme Court accepted jurisdiction of a suit involving the apportionment of representation in the Tennessee Legislature. Previously, the Court had seemed to take the position that reapportionment was a political question to be settled by other than judicial means. [3] However, the Court decided in *Baker* that the national judiciary had the power to adjudicate reapportionment suits brought under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Following the *Baker* decision, the U.S. Supreme Court decided a number of cases dealing with legislative apportionment in other states. Among these was a 1964 case, *Reynolds v. Sims*,[4] that dealt with the Alabama Legislature. This case held that the Equal Protection Clause required both houses of a bicameral state legislature to be apportioned on a population basis. According to the Court's view of the question:

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[1] *The Legislative Process, A Handbook for Alabama Legislators* (11th Edition 2015).

[2] 369 U.S. 186 (1962).

[3] *Colegrove v. Green*, 328 U.S. 549 (1946).

[4] 377 U.S. 533 (1964).

Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.[5]

In April of the following year, the U.S. District Court for the Middle District of Alabama rendered a decision that directed the Alabama Legislature to reapportion before the legislative election to be held in November 1962. Consequently, the court made adjustments in the reapportionment measures enacted by the Legislature, combining the House provisions of one measure with the Senate provisions of another. New reapportionment bills were introduced in the 1963 and 1965 regular legislative sessions but failed to pass.

The court then proceeded to prepare its own plan for the apportionment. The court plan became effective with the election of November 1966.

When the Legislature did not reapportion after the 1970 census, a special three-judge panel issued an order in January 1972, that provided for the election of 105 Representatives and thirty-five Senators, to represent single-member House and Senate districts.[6] The thirty-five Senate districts were established by grouping House districts into units of three, with each unit comprising a senatorial district. In order to achieve the mathematical precision with which the apportionment reflected the principle of equal representation, the court substantially abandoned the use of counties as units of representation and based the apportionment on census districts. As a result, many of the legislative districts crossed existing county and precinct boundaries. Recognizing the time-consuming administrative tasks necessary to implement such a plan, the court did not order it into effect immediately. Rather, the plan was to become effective at the election of 1974.

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[5]*Id*. at 568.

[6]*Sims v. Amos*, 336 F.Supp. 924 (M.D. Ala. 1972), *modified*, 340 F.Supp. 691 (M.D. Ala. 1972), *aff'd mem*., 409 U.S. 942 (1972).

After the 1980 census, the Alabama Legislature received census information in April 1981. In a special session called for the purpose of reapportionment, the Legislature passed a plan in 1981[7] substantially similar to the 1974 plan then in effect. Only minor changes were made to accommodate shifts in population which were predominately in Birmingham and Montgomery. This plan was challenged by the United States Justice Department and in Federal Court.[8]

The Justice Department objected to certain districts in the 1981 plan and rejected the entire reapportionment. The Legislature again met in special session in 1982 and adopted a reapportionment plan.[9] The Federal Court allowed legislative elections to be held under the 1982 plan but expressed a reservation to accepting the entire plan. While studying the plan, the Court limited the terms of legislators elected under the 1982 plan to one year.

The Legislature met in special session in 1983 to again reapportion itself for the third time.[10] The Legislature adopted a plan proposed by the plaintiffs in the Federal Court suit. The Justice Department and Federal Court accepted this plan but ordered new elections for 1983. The Alabama Supreme Court in their opinion to the Governor[11] declared that the newly elected legislators took office as soon as they were elected, thus completing the first successful legislative reapportionment plan to be adopted by the Legislature since 1901.

The Legislature met for a second time in 1983 in the third

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[7]Act of Oct. 26, 1981, No. 81-1049, 1981 Ala. Acts 2d Ex. Sess. 253.

[8]*Burton v. Hobbie*, 561 F. Supp. 1029 (M.D. Ala. 1983).

[9]Act of June 1, 1982, No. 82-629, 1982 Ala. Acts 1st Ex. Sess 3.

[10]Act of Feb. 23, 1983, No. 83-154, 1983 Ala. Acts 2d Ex. Sess. 163 (codified as amended at Ala. Code § 29-1-1.2).

[11]Opinion of the Justices, No. 305, 442 So. 2d 42 (Ala. 1983).

special session to make a technical correction to the most recent apportionment plan.[12] Then, in 1984, the legislature made one last adjustment to the reapportionment plan based on the 1980 census and subsequent litigation.[13]

The Legislature created the Permanent Legislative Committee on Reapportionment in 1990.[14] This committee was composed of three members of each house appointed at the organizational session by the presiding Lt. Governor and Speaker of the House. During the quadrennium when the United States official decennial census was released, the committee was expanded to 22 members.[15]

The reapportionment committee employed staff to prepare maps and provide demographic information as well as obtained the advice of an attorney. Hearings were conducted around the state resulting in over 20 plans being considered by the committee. The legislative reapportionment plans introduced in each house of the legislature were never voted on by the legislators. Simultaneously, a suit was brought in the circuit court of Montgomery by black plaintiffs raising the issue of an implied right of proportionate representation as enumerated in *City of Richmond v. U.S.*, 422 U.S. 358 (1975). The Montgomery court approved the proposed plan. The decision was upheld by the Alabama Supreme Court.[16] Consequently, the legislature was reapportioned in 1994 by a court order and not the legislature.[17]

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[12]Act of Nov. 28, 1983, No. 83-824, 1983 Ala. Acts 3d Ex. Sess. 40 (amending Ala. Code § 29-1-1.2).

[13]Act of May 17, 1984, No. 84-371, 1984 Ala. Acts 864 (amending Ala. Code § 29-1-1.2).

[14]Ala. Code § 29-2-50.

[15]Ala. Code § 29-2-51(c).

[16]*Brooks v. Hobbie*, 631 So. 2d 883 (Ala. 1993).

[17]*Sinkfield v. Camp*, CV-93-689-PR, May 12, 1993.

The Permanent reapportionment committee of the 1990s remained active and prepared for the 2000 reapportionment. The committee was composed of twelve House and twelve Senate members and held twenty-two hearings around the state.

Prior redistricting plans were all "nested," i.e. three House districts comprised one Senate district. The House of Representatives and Senate each drew their own districts irrespective of the other house plan. The Legislature was called into special session solely for the purposes of redistricting.

The House of Representatives reapportionment plan, Act 2001-729, was enacted July 3, 2001 and approved by the U.S. Justice Department on November 5, 2001. The Senate plan, Act 2001-727, was also signed into law on July 3, 2001 and approved by the Justice Department on October 15, 2001. This was the first time the Alabama Legislature was reapportioned without court intervention.

Following the 2010 Census, and receipt of the final data, the congressional, legislative and state school board redistricting plans were drafted and subsequently taken up by the Legislature. The House of Representatives reapportionment plan, Act 2011-518, was passed by the Legislature on June 2, 2011 and signed by the Governor on June 8, 2011. The Senate plan, Act 2011-677, was passed by the Legislature on June 9, 2011 and signed by the Governor on June, 15, 2011. Because Alabama was under the provisions of the Voting Rights Act at that time, all such plans were subject to approval by employees of the United States Justice Department. The plans were both subsequently approved by the Justice Department on November 21, 2011.

These maps were later challenged in Federal Court as impermissibly gerrymandered based on race. This challenge failed in district court and the maps were used in the 2014 statewide election. However, in 2015 the Supreme Court overruled the district court's ruling and remanded the case for further proceedings. *See AL Leg. Black Caucus v. Alabama*, 135 S.Ct. 1257 (2015). As a result, the district court ruled that parts of the maps were unconstitutionally drawn and ordered updated maps be submitted to the court.

These updated maps were drawn in 2017 and passed by the Legislature. Following the submission of the new maps to the federal court, the district court dismissed the suit. The maps were slated for use in the 2018 election cycle.

See further discussion in Chapter 2 regarding the United States Supreme Court's holding in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013) that the jurisdictions previously identified by the coverage formula in Section 4(b) of the Voting Rights Act, such as Alabama, no longer needed to seek preclearance for new voting changes.

For the decade of congressional and state legislative district lines proposed by the Alabama Legislature following the 2020 decennial census, potentially significant reapportionment cases were filed. *Thomas v. Merrill*, No. 21-1531 (N.D. Ala. 2021), *Milligan v. Merrill*, No. 21-1086 (N.D. Ala. 2021), *Singleton v. Merrill*, No. 21-1291 (N.D. Ala. 2021), and *Caster v. Merrill*, No. 21-1087 (N.D. Ala. 2021) allege that Alabama's electoral maps are racially gerrymandered in violation of the United States Constitution and/or dilute the votes of black Alabamians in violation of the Voting Rights Act of 1965. *Singleton* challenges the congressional map on constitutional grounds only. *Milligan* challenges the congressional map on constitutional and statutory grounds. *Thomas* challenges the state legislative map on constitutional grounds only. *Caster* challenges the congressional map on statutory grounds only. *See Caster v. Merrill*, 2022 WL 264819 (N.D. Ala. 2022).

The federal district judge granted a preliminary injunction on the grounds that the plaintiffs were likely to succeed in establishing violations of Section Two of the Voting Rights Act. The district court determined the plaintiffs were thus likely to prevail in the effort to create a second majority-black congressional district since (1) voting in the challenged districts is intensely racially polarized and (2) black voters have less opportunity than other Alabamians to elect candidates of their choice to Congress, despite being sufficiently numerous to constitute a voting-age majority in a second congressional district.

Therefore, the federal district court extended a January 28, 2022 qualification deadline until February 11, 2022 for the Alabama Legislature to enact a remedial districting plan that complies with federal law for use in Alabama's 2022 congressional elections. *Caster v. Merrill*, 2022 WL 264819 (N.D. 2022).

However, on February 7, 2022, the United States Supreme Court stayed the district court's ruling, stating "this Court has repeatedly stated that federal courts ordinarily should not enjoin a state's election laws in the period close to an election, and this Court in turn has often stayed lower federal court injunctions that contravened that principle." *Merrill v. Milligan* and *Merrill v. Caster*, 142 S.Ct. 879 (2022).

The Supreme Court went on to note that it has "recognized that practical considerations sometimes require courts to allow elections to proceed despite pending legal challenges," and going on to say "{I}f the District Court's judgment is eventually affirmed after appellate review, the injunction can take effect for congressional elections that occur after 2022." *Id.*

As a result, the 2022 primary elections were held as scheduled using the district maps as proposed by the Alabama Legislature. The cases discussed hereinabove were still pending as of the publishing date of this 10th edition of *Alabama Legislation*.

B. Constitutional Provisions

Ala. Const. of 2022 Art. IX § 197
Ratio of senators to representatives.

The whole number of senators shall not be less than one-fourth or more than one-third of the whole number of representatives.

Ala. Const. of 2022 Art. IX § 198
Maximum number of members of House of Representatives; apportionment of house based on decennial census of United States.

The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken.

Ala. Const. of 2022 Art. IX § 199
Duty of legislature to fix number of representatives and apportion them among counties following each decennial census; each county entitled to at least one representative.

It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative.

The House and Senate districts thus established are illustrated in their accompanying maps. *See* §§ 29-1-1.2, 29-1-2.3.

C. Important Dates in Redistricting History[18]

1842 **5 Stat. 491**
Congressional
First federal statute requiring states to establish congressional districts. First congressional attempt to

[18]Compiled by the National Conference of State Legislatures.

impose standards in congressional redistricting: compactness, contiguity, single-member districts.

1880 ***Ex Parte Siebold*, 100 U.S. 371 (1880)**
Congressional
Congress has supreme authority over congressional election rules.

1911 **1, 2, 36 State. 13, 14**
Congressional
Reiterated 1872 requirements. Fixed number of U.S. House members at 435.

1929 **46 Stat. 21**
Congressional
Required automatic reapportionment on basis of population after each decennial census.

1946 ***Colegrove v. Green* (Ill.) 328 U.S. 549 (1946)**
Congressional
Courts lack authority to judge fairness of a political matter such as redistricting plans.

1960 ***Gomillion v. Lightfoot* (Al.) 364 U.S. 339 (1960)**
Legislative
Gerrymandering of city boundaries with a clearly defined racial motive is unconstitutional.

1962 ***Baker v. Carr* (Tenn.) 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed. 2d 663 (1962)**
Legislative
Federal courts have authority to judge fairness of legislative redistricting plans.

1964 ***Wesberry v. Sanders* (Ga.) 376 U.S. 1 (1964)**
Congressional
"One man, one vote" ("as nearly as practicable") standard: strict numerical equality among populations in congressional districts.

1964 ***Reynolds v. Sims*** **(Al.) 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964)**
Legislative
Both houses in state legislature must meet the "as nearly as practicable" standard; some deviation is allowed to accommodate other relevant considerations (e.g., preserving political subdivisions).

1965 **Voting Rights Act, 52 U.S.C. 10101, 10301, et seq**.
Congressional/Legislative
States with past history of discrimination must submit electoral changes to Department of Justice for preclearance. State plan may be rejected if either intent or effect is to dilute minority power. Protected language minorities include Alaskan natives, American Indians, Asian Americans, persons of Spanish heritage.

1967 **2 U.S.C. § 2c**
Congressional
Banned at-large congressional elections.

1971 ***Connor v. Johnson*** **(Mississippi) 402 U.S. 690 (1971)**
Legislative
Where a federal court fashions a redistricting plan, single-member districts are preferable to multi-member districts.

1973 ***White v. Regester*** **(Texas) 412 U.S. 755 (1973)**
Legislative
Certain population deviations are permissible in legislative redistricting plans if effected to accommodate rational state policies (e.g., preserving political subdivisions), multi-member districting is unconstitutional if it dilutes the votes of a racial minority.

1977 ***United Jewish Organizations v. Carey*** **(New York) 430 U.S. 144 (1977)**
Legislative
Racial criteria may be used in drawing legislative district lines if designed to comply with Voting Rights Act.

1980 ***City of Mobile v. Bolden*** **(Alabama) 446 U.S. 55 (1980)**
Legislative
Public officials may be elected at-large even though preclusion of election of minorities may thereby result, where plaintiffs in non-Voting Rights Act jurisdiction fail to show intent to discriminate in the election mechanism or procedure. Abrogated by *Thornburg v. Gingles*, 478 U.S. 30 (1986). *See* infra.

1982 ***Rogers v. Lodge*** **(Georgia) 458 U.S. 613 (1982) rehearing denied 459 U.S. 899 (1982)**
Legislative
At-large election of county commissioners declared unconstitutional vote dilution.

1986 ***Thornburg v. Gingles*** **(North Carolina) 478 U.S. 30 (1986)**
Legislative
Court need not show racial intent "results test".

1986 ***Davis v. Bandemer*** **(Indiana) 478 U.S. 109 (1986)**
Legislative Party designed reapportionment not unconstitutional. One election result not determinative. Abrogated in 2019 by *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), in which the Supreme Court determined that partisan gerrymandering claims present political questions beyond the reach of the federal courts.

1993 ***Shaw v. Reno*** **(North Carolina) 509 U.S. 630 (1993)**
Congressional Redistricting legislation was so extremely irregular on its face that it could rationally be viewed only as effort to segregate races for purposes of voting, without regard to traditional districting principles and without sufficiently compelling justification, was sufficient to state claim upon which relief could be granted under equal protection clause.

1993 ***Wesch v. Hunt*****, 785 F.Supp. 1491 (S.D. Ala. 1992) aff'd sub nom** ***Camp v. Wesch*****, 507 U.S. 902 (1992)** District Court declared the 1990 Congressional districts unconstitutional.

The court adopted one of six plans offered by the parties. Court further noted the legislatures recently adopted plan was not pre-cleared by the justice department.

1993 ***Brooks v. Hobbie*** **631 So. 2d 883 (Ala. 1993**)
The circuit courts of Alabama, as courts of general jurisdiction, have the same power and duty to provide relief for violations of federal law as do the federal courts. The *Brooks* plaintiffs and other African-American citizens then brought a separate action in the Circuit Court of Montgomery County, in which they challenged the existing state legislative district lines under both federal and state law.

1993 ***Sinkfield v. Camp*** **CV-93-689-PR, slip op. (Ala. Cir. Ct. Aug. 13, 1993).**
This plan was later found to contain some districts the Court concluded to have been drawn for racially predominant reasons and therefore declared unconstitutional.

1993 ***Sinkfield v. Bennett*** **No. CV-93-689 PR (Cir.Ct. Montgomery Co., Aug. 13, 1993)** Montgomery County Circuit Court entered a consent decree between the Sinkfield parties and the Sec. Of State approving a redistricting plan for the Legislature. The plan was precleared by the U.S. Atty gen.

1993 ***Wesch v. Hunt*****, No. 91-0787, 1993 WL 468747 (S.D.Ala. July,13, 1993)** On a motion to stay the state court proceedings of *Sinkfield* the court denied the motion to stay the election

1995 ***Miller v. Johnson*** **(Georgia) 515 U.S. 900 (1995)**
Congressional
A bizarre shape was not threshold requirement of claim of racial gerrymandering under *Shaw* and allegation that race was legislature's dominant and controlling rationale in drawing district lines was sufficient to state claim under *Shaw*.

1996 ***Bush v. Vera*** **(Texas) 517 U.S. 952 (1996)**

Congressional

New district lines were drawn with race as the predominant factor and, thus, the districts were subject to strict scrutiny and one district could not be upheld under the "non-retrogression" principle underlying the Act's preclearance requirement where Texas substantially augmented, and did not just maintain, the African-American population percentage in the district.

2003 ***Georgia v. Ashcroft*** **(Georgia) 539 U.S. 461 (2003)**

Legislative

The Supreme Court held that the trial court erred in denying pre-clearance of the Georgia Senate's redistricting plan when it focused too narrowly on a decline in minority voting age population in three particular districts. The Court held that the trial court should have looked at the plan from a whole statewide perspective, considering instead increases in that minority's voting age population in other districts. The Supreme Court held that neither the Constitution nor an act of Congress prohibits a state from redrawing Congressional boundaries drawn earlier within the same decade, particularly when those earlier boundaries are drawn by a court rather than a state legislature, the entity normally charged with such a duty. The Court majority reasoned that the plaintiff's claim that the new redistricting plan constituted political gerrymandering was without merit, partly due to the fact that the even though the plan may secure a partisan advantage it would only speak to discriminatory *intent* yet would not by itself prove discriminatory *effect*. This case led to the passage by Congress of the Voting Rights Renewal Act (VRARA) in 2006 as an effort to supersede *Ashcroft* and diminish its impact.

League of United Latin American Citizens
v.
Perry (Texas)
126 S.Ct. 2594 (2006)

The Supreme Court held that neither the Constitution nor an act of Congress prohibits a state from redrawing Congressional boundaries drawn earlier within the same decade, particularly when those earlier boundaries are drawn by a court rather than a state legislature, the entity normally charged with such a duty. The Court majority reasoned that the plaintiff's claim that the new redistricting plan constituted political gerrymandering was without merit, partly due to the fact that even though the plan may secure a partisan advantage it would only speak to discriminatory *intent* yet would not by itself prove discriminatory *effect*.

Shaw
v.
Reno
509 U.S. 630, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993)

This case involves two of the most complex and sensitive issues this Court has faced in recent years: the meaning of the constitutional "right" to vote, and the propriety of race-based state legislation designed to benefit members of historically disadvantaged racial minority groups. As a result of the 1990 census, North Carolina became entitled to a twelfth seat in the United States House of Representatives. The General Assembly enacted a reapportionment plan that included one majority-black congressional district. After the Attorney General of the United States objected to the plan pursuant to Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. § 1973c, the General Assembly passed new legislation creating a second majority-black district. Appellants allege that the revised plan, which contains district boundary lines of dramatically irregular shape, constitutes an unconstitutional racial gerrymander.

* * *

The first of the two majority-black districts contained in the revised plan, District 1, is somewhat hook shaped. ... District 1 has been compared to a "Rorschach ink-blot test". ...

The second majority-black district, District 12, is even more unusually shaped. It is approximately 160 miles long and, for much of its length, no wider than the I-85 corridor. It winds in snake-like fashion through tobacco country, financial centers, and manufacturing areas "until it gobbles in enough enclaves of black neighborhoods." ...

* * *

... [A]ppellants did not claim that the General Assembly's reapportionment plan unconstitutionally "diluted" white voting strength. Rather, appellants' complaint alleged that the deliberate segregation of voters into separate districts on the basis of race violated their constitutional right to participate in a "color-blind" electoral process.

... This Court never has held that race-conscious state decision making is impermissible in all circumstances. What appellants object to is redistricting legislation that is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling justification. For the reasons that follow, we conclude that appellants have stated a claim upon which relief can be granted under the Equal Protection Clause.

* * *

... [W]e conclude that a plaintiff challenging a reapportionment statute under the Equal Protection Clause may state a claim by alleging that the legislation, thought race-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into

different districts on the basis of race, and that the separation lacks sufficient justification. ...

* * *

... [W]e hold only that appellants have stated a claim under the Equal Protection Clause by alleging that the North Carolina General Assembly adopted a reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race, and that the separation lacks sufficient justification. ...

Bush
v.
Vera
116 S.Ct. 1941, 517 U.S. 952 (1996)

Registered voters brought action for injunctive and declaratory relief from Texas' redistricting plan adopted after the 1990 census revealed a population increase entitling Texas to three additional congressional seats. The three judge United States District Court for the Southern District of Texas, 861 F. Supp. 1304, held that the three new districts were unconstitutional. Appeal was taken. The Supreme Court, Justice O'Conner, held that: (1) the new district lines were drawn with race as the predominant factor and, thus, the districts were subject to strict scrutiny; (2) the challenged districts could not be upheld under the Voting Rights Act's "results" test; and (3) one district could not be upheld under the "non-retrogression" principle underlying the Act's pre-clearance requirement where Texas substantially augmented, and did not just maintain, the African-American population percentage in the district.

We must now determine whether those districts are subject to strict scrutiny. Our precedents have used a variety of formulations to describe the threshold for the application of strict scrutiny. Strict scrutiny applies where "redistricting legislation .... is so extremely irregular on its face that it rationally can be viewed only as an effort to

segregate the races for purposes of voting, without regard for traditional districting principles, "*Shaw I supra,* 509 U.S., at 642, 113 S.Ct., at 2824, or where "race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines, "*Miller,* 515 U.S., at 913, 115 S.Ct., at 2486, and "the legislature subordinated traditional race-neutral districting principles .... to racial considerations," *id.,* at 916, 115 S.Ct., at 2488. *See also id.,* at 928, 115 S.Ct., at 2497 (O'CONNER, J., concurring) (strict scrutiny only applies where "the State has relied on race in substantial disregard of customary and traditional districting practices").

Strict scrutiny would not be appropriate if race-neutral, traditional districting considerations predominated over racial ones. We have not subjected political gerrymandering to strict scrutiny. *See Davis v. Bandermer,* 478 U.S. 109, 132, 106 S.Ct. 2797, 2810, 92 L.Ed.2d 85 (1986) (White, J., plurality opinion) ("[U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole"); *id.,* at 147, 106 S.Ct., at 2818 (O'CONNER, J., concurring in judgment) (*[P]urely political gerrymandering claims" are not justiciable). And we have recognized incumbency protection, at least in the limited form of "avoiding contests between incumbent[s]," as a legitimate state goal. *See Karcher v. Daggett,* 462 U.S. 725, 740, 103 S.Ct. 2653. (State may draw irregular district lines in order *965 to allocate seats proportionately to major political parties). Because it is clear that race was not the only factor that motivated the legislature to draw irregular district lines, we must scrutinize each challenged district to determine whether the District Court's conclusion that race predominated over legitimate districting considerations, including incumbency, can be sustained.

Section 2(a) of the VRA prohibits the imposition of any electoral practice or procedure that "results in a denial or abridgement of the right of any citizen .... to vote on

account of race or color." In 1982, Congress amended the VRA by changing the language of § 2(a) and adding § 2(b), which provides a "results" test for violation of § 2(a). A violation exists if,

> "based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b).

We assume, without deciding, that the State had a "strong basis in evidence" for finding the second and third threshold conditions for § 2 liability to be present. We have, however, already found that all three districts are bizarrely shaped and far from compact, and that those characteristics are predominantly attributable to gerrymandering that was racially motivated and/or achieved by the use of race as a proxy. *See* Part II, *supra.* District 30, for example, reaches out to grab small and apparently isolated minority communities which, based on the evidence presented, could not possibly form part of a compact majority-minority district, and does so in order to make up for minority populations closer to its core that it shed in a further suspect use of race as a proxy to further neighboring incumbents' interests. *See supra,* at *1954-1955, 1956-1958.*

The problem with the State's argument is that it seeks to justify not maintenance, but substantial augmentation, of the African-American population percentage in District 18. At the previous redistricting, in 1980, District 18's population was 40.8% African-American. Plaintiffs' Exh. 13B, p. 55. As a result of Hispanic population increases and African-American emigration from the district, its population had reached 35.1% African-American and 42.2%

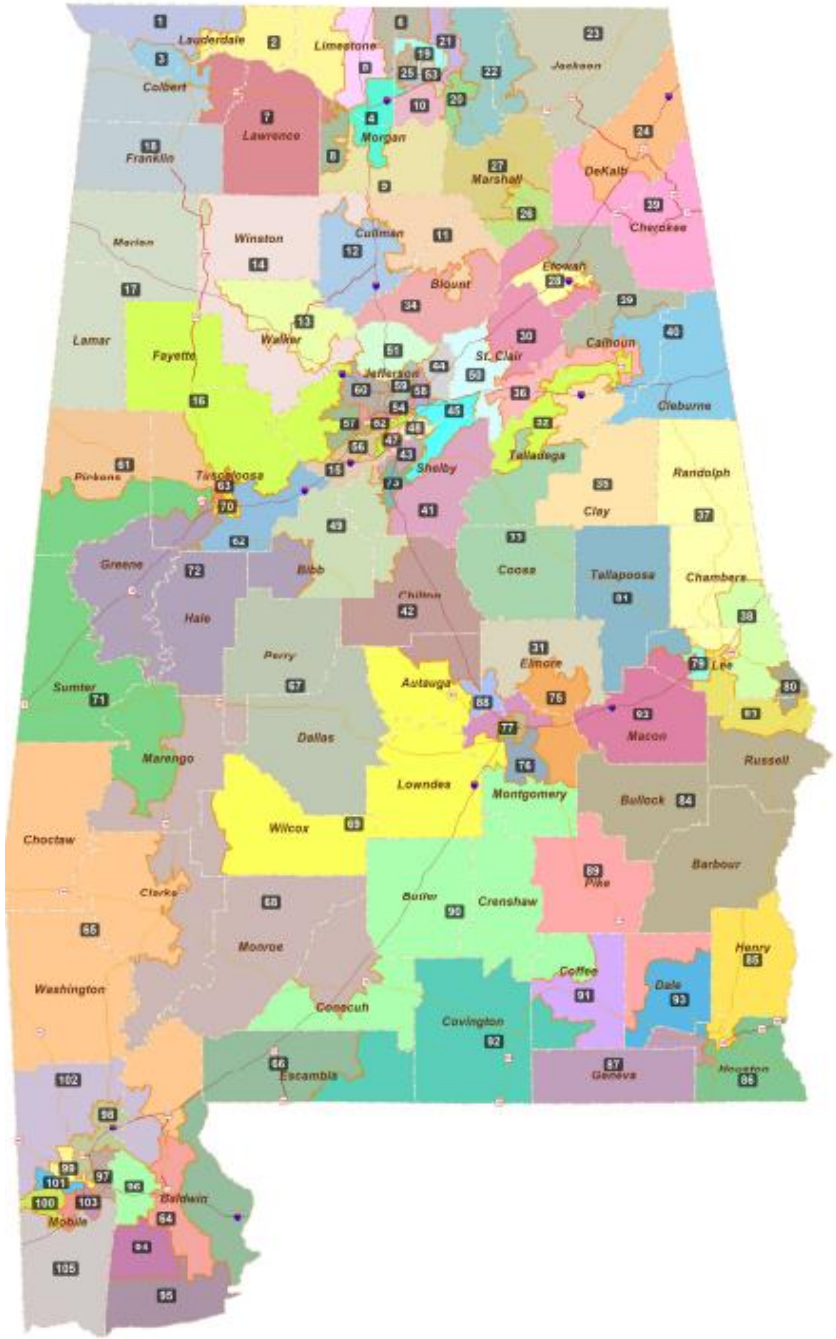
Hispanic at the time of the 1990 censes. The State has shown no basis for concluding that the *increase* to a 50.9% African-American population in 1991 was necessary to ensure non-retrogression. Non-retrogression is not a license for the State to do whatever it deems necessary to ensure continued electoral *success;* it merely mandates that the minority's *opportunity* to elect representatives of its choice not be diminished, directly or indirectly, by the State's actions. We anticipated this problem in *Shaw I,* 509 U.S., at 655, 113 S.Ct., at 2831: "A reapportionment plan would not be narrowly tailored to the goal or avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression." Applying that principle, it is clear that District 18 is not narrowly tailored to the avoidance of Section 5 liability.

Alabama Senate Districts[19]

This map is available online at:
https://alison.legislature.state.al.us/senate-district-map-2021

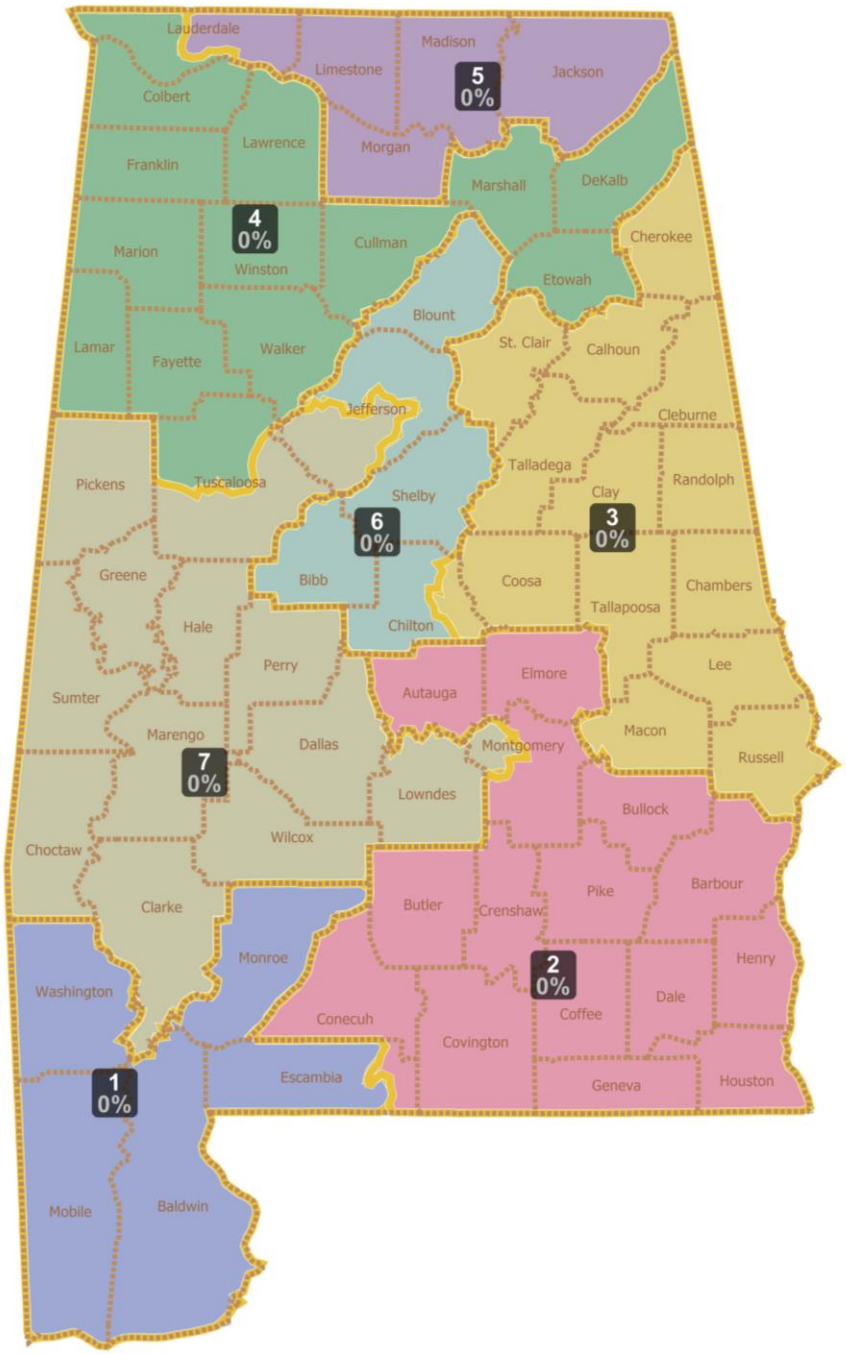
19 The Northern District of Alabama had originally ordered the redistricting maps to be redrawn (*Singleton v. Merrill*, *2022* WL 265001), however, that decision was ultimately overturned by the U.S. Supreme Court in *Merrill v. Milligan*, 142 S.Ct. 879 (2022).

Alabama House Districts



This map is available online at:
https://alison.legislature.state.al.us/house-district-map-2021

Alabama Congressional Districts



This map is available online at:
https://www.sos.alabama.gov/sites/default/files/State%20Districts/Pringle%20Congressional%20Plan%201_Letter%20size%20map.pdf

D. Alabama Cases on Reapportionment

Sims
v.
Amos
336 F. Supp. 924 (M.D. Ala 1972)

Per Curiam.

This litigation consists of three consolidated cases, each presenting the same or similar questions of law and fact. In each case the plaintiffs as citizens of the United States and of the State of Alabama, and as duly qualified and registered voters in Alabama and in various counties thereof, jointly and severally bring this action in their own behalf and in behalf of all other voters in Alabama who plaintiffs claim are denied the right of free and equal suffrage and of equal protection of the laws.

* * *

In bringing these actions, plaintiffs contend that the present Alabama Legislature is malapportioned and that, as a result, their voting strength is minimized or diluted, they are under represented in the State Legislature and they are denied the right to equal suffrage in contravention of the Fourteenth and Fifteenth Amendments to the United States Constitution and of Sections 198, 199, 200, and 284 of the Constitution of Alabama (1901). Plaintiffs seek to have Alabama's present apportionment scheme declared unconstitutional and the State statutes and federal court decision upon which it is based declared null and void and of no effect. Plaintiffs urge that this Court adopt their proposed reapportionment plan and, thereby, reapportion the Alabama Legislature on the basis of state-wide single-member legislative districts, impartially selected, without regard to the racial or economic conditions of the district. Plaintiffs further ask that following this Court's adoption of a reapportionment plan, an election to effectuate such plan be held mid-term, that is, before the expiration of the four-year terms to which the members of the present

Alabama Legislature were elected.

In response to the complaints filed in this litigation, defendants concur in plaintiffs' assertion that the Alabama Legislature is malapportioned. Nevertheless, they contend that this Court should allow further time for the State Legislature to reapportion itself. Defendants also oppose the single-member district reapportionment plan advanced by plaintiffs, and advocate, as alternatives, multi-district plans which several of said defendants have proposed. In addition, defendants deny that there is any constitutional requirement that, following reapportionment, an election be held before the expiration of the State legislators' current four-year terms. They contend that to allow the legislators to serve their full terms is equitable, fair and legally permissible.

These actions have been brought under Title 42, Sections 1983 and 1988, United States Code, to prevent the deprivation under color of state law of rights secured by the Constitution of the United States. Federal jurisdiction is properly grounded in Title 28, Section 1343(3). ...

To summarize the constitutional requirements declared by the Supreme Court with respect to state apportionment schemes:

(1) One man's vote must, "as nearly as practicable," be equal in weight to the vote of any other citizen of his state;

(2) no amount of population variance is *per se de minimis*, though in actuality greater deviation may be allowed in the context of state apportionment than in the context of congressional districting; and

(3) any deviation from the ideal of one man one vote must be justified by the state as fostering the effectuation of a legitimate state policy.

On behalf of the defendants, the Attorney General of Alabama has presented three plans of reapportionment to this Court, and on behalf of certain of the defendant-interveners, Pierre Pelham has proffered one plan. All four plans utilize a multi-member district form of representation, provide for 106 House seats and 35 Senate seats, and hold absolute the sanctity of county lines. As noted above, maintenance of county lines and achievement of mathematical equality in representation are often incompatible. With respect to the four plans submitted by the defendants in these cases, that incompatibility has produced wide variances from the ideal of one man one vote. ...

Defendants assert that because the plans tabulated above preserve the integrity of county lines, they satisfy constitutional standards, even though they exhibit wide discrepancies from equality of representation. We cannot accept that contention. ...

The Court in *Reynolds v. Sims*, [377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964)], announced that equal representation must be the "overriding objective" and cannot be "submerged" in an effort to preserve county lines. Furthermore, in *Abate* [*v. Mundt*, 403 U.S. 182, 91 S.Ct. 1904, 29 L.Ed.2d 399 (1971),] the Supreme Court stated that, in the context of local apportionment, preservation of political subdivisions cannot justify a deviation of substantially more than 11.9% and that where state apportionment schemes are at issue less leeway is to be afforded. Owing to both *Reynolds* and *Abate* and to the various other court decisions noted in footnote 13, this Court cannot approve any of the plans submitted by defendants in these cases.

There is an additional reason for refusing to approve any of the defendants' plans. ... We feel justified in pointing out that in Alabama it is reasonable to conclude that multi-member districts tend to discriminate against the black population. ...

Accordingly, we see no difficulty in adopting a plan that reduces the present number of House seats from 106 to 105. Such a plan is particularly valid where the reduction promotes simplicity and is justified by logical reasons. ...

In fashioning their plan, plaintiffs employed seven criteria: (1) that there be single member districts; (2) that the population variance among the individual districts be held to a bare minimum; (3) that county lines be crossed in as few instances as possible; (4) that all areas of each district be contiguous; (5) that each district be as compact as possible (i.e., not overly elongated); (6) that on a broad, state-wide basis the districts be constructed in such a manner as to insure proper representation of the urban and the rural populations; and (7) that the selection of a starting point around which each district was to be constructed be made at random. Plaintiffs eschewed consideration of the racial, economic and ethnic composition (and concentration) of the population in devising their plan. By selecting a starting point at random, plaintiffs have obviated any hint of racial gerrymandering. ...

The standard expounded in *Reynolds* must here be emphasized: If equality of population among the various voting districts is submerged as the controlling consideration, a plan becomes unacceptable. Plaintiffs' plan crosses county lines in as few instances as possible: it substantially maintains the integrity of the counties. More importantly, it achieves near precision in guaranteeing that one man's vote is essentially equal to that of another. We emphasize that to obtain the primary goal of equal representation it is impossible to preserve county lines in all, or even in nearly all, instances. The plaintiffs' plan draws a fair and reasonable balance between the competing interests of affording equal representation and of maintaining county lines. Boundary lines are sacrificed only where absolutely necessary to satisfy the constitutional requirement of one man one vote. ...

In sum we find that, unlike the defendants' plans, the plaintiffs' plan satisfied all requirements of the federal Constitution. Any administrative inconveniences precipitated by its implementation can be resolved prior to the 1974 election. ...

Burton
v.
Hobbie
561 F. Supp. 1029 (M.D. Ala. 1983)

* * *

II.

The litigation was initiated on November 5, 1981, when plaintiffs brought this class action on behalf of themselves and all other black citizens of Alabama, claiming that the newly enacted legislative reapportionment plan, Act No. 81-1049, violated the rights of black citizens under the State and Federal Constitutions, *see* generally supra note 3, and under Section 5 of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973c. Because Act No. 81-1049 was rendered legally unenforceable by the United States Attorney General's objections to the Act on May 6, 1982, under Section 5 of the Voting Rights Act, this Court never passed on the merits of the plaintiffs' challenges to the Act. On May 21, 1982, it ordered defendants to file an amended plan and submit it to the Attorney General for preclearance. The plaintiffs were also directed to file their proposed plan. On June 1, 1982, the Legislature enacted a second reapportionment plan, Act No. 82-629, and submitted it for preclearance. By letter of June 8, 1982, the Assistant Attorney General of the United States stated that, in the limited time available, evaluation of Act No. 82-629 could not be favorably completed.

At a hearing on June 14, 1982, all parties agreed that the Court had to adopt an interim plan, within the week, in order for the plan to be available for use for the fall primary and general elections. Plaintiffs urged the adoption of their

Plan B. They argued that Act No. 82-629 impermissibly diluted black voting strength in several districts and disregarded the integrity of county lines. Defendants, on the other hand, urged implementation of Act No. 82-629, arguing that they lacked sufficient time to study plaintiffs' Plan B, that the Attorney General had found no unfavorable impact on black voters in sixty of sixty-seven counties, and that the legislative plan was entitled to deference. At the Court's request the parties provided suggested modifications for Act No. 82-629 to meet the Attorney General's expressed concerns that predominantly black communities would be fragmented in the seven districts which had not yet been precleared.

The legal guidelines . . . were largely framed by *Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518, 71 L.Ed.2d 725 (1982), wherein the Supreme Court stated that:

> Whenever a district court is faced with entering an interim reapportionment order that will allow elections to go forward it is faced with the problem of "reconciling the requirements of the Constitution with the goals of state political policy." *Connor v. Finch*, 431 U.S. 407 at 414, 97 S.Ct. 1828 at 1833, 52 L.Ed.2d 465 (1977). An appropriate reconciliation of these two goals can only be reached if the district court's modifications of a state plan are limited to those necessary to cure any constitutional or statutory defect.

456 U.S. at 43, 102 S.Ct. at 1522. The *Upham* Court also acknowledged that where "necessity has been the motivating factor," district courts have been authorized to permit elections to be held pursuant to apportionment plans that do not in all respects measure up to legal and even constitutional requirements. *Id*., at 44, 102 S.Ct. at 1522.

... On August 2, 1982, the Attorney General of the United States formally objected to Act No. 82-629 pursuant to Section 5 of the Voting Rights Act, rendering the Act

legally unenforceable as a legislative reapportionment plan and making it very clear to all those concerned that the 1982 elections were for a term of one year only.

III.

Act No. 83-154 was passed by the Alabama Legislature on February 17, 1983, pre-cleared by the United States Attorney General on February 28, 1983, and filed with this Court on March 1, 1983. On March 14 the parties submitted to this Court a joint motion for approval of a settlement of this action. ...

And since reapportionment is primarily a matter for legislative consideration and determination, *White v. Weiser*, 412 U.S. 783, 795, 93 S.Ct. 2348, 2354, 37 L.Ed.2d 335 (1973), it is not within the province of this Court to comment on the wisdom of the various legislative decisions from which this plan evolved. ...

It is our understanding that the only times reapportionment plans are not subject to Section 5 scrutiny are when a court "fashions the plan itself instead of relying on a plan presented by a litigant," *McDaniel v. [Sanchez]*, *supra*, 452 U.S. at 148-49, 101 S.Ct. at 2235, or when a court is forced to implement an interim plan so that elections can be held. *See Upham*, *supra*, 456 U.S. at 44, 102 S.Ct. at 1522, *McDaniel, supra*, 452 U.S. at 153 n. 35, 101 S.Ct. at 2238 n.35. ...

Brooks
v.
Hobbie
631 So. 2d 883 (Ala. 1993)

* * *

The question certified arose out of litigation that began in March 1992, when a group of African-American plaintiffs brought an action in the United States District Court for the Middle District of Alabama challenging, under

federal law, the way district lines are currently drawn for the Alabama State Legislature. (*Brooks v. Camp*, Civil Action No. 92-T-364-N (M.D. Ala.). In February 1993, another group of plaintiffs, identifying themselves as Republicans, brought another action in federal court, which also claimed that the legislative district lines as then drawn violated federal law. (*Peters v. Folsom*, Civil Action No. 93-T-124-N (M.D. Ala.). These two cases were consolidated by the United States District Court, which, without reaching the merits of the contentions of the parties, stayed further proceedings in both cases on the ground that the Alabama legislative process had not run its course with regard to redistricting the legislature.

* * *

In light of *Baker v. Carr* [369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962)] and its progeny, it is no longer legitimate for a court to decline to enforce the right of every citizen to a vote with a weight equal to the weight of every other citizen's vote.

Since *Reynolds v. Sims* [377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964)], state courts have shown little reluctance to entertain cases involving "political" issues where there is a constitutional right at issue. Federal courts have a long history of entertaining such cases . ...

* * *

... A judicial determination that an apportionment statute violates a constitutional provision is no more an encroachment on the prerogative of the Legislature than the same determination with respect to some other statute. ...

... The question is not whether circuit courts in Alabama have jurisdiction — the question is whether the redistricting issue is a justiciable one. Alabama's circuit courts possess general subject-matter jurisdiction to decide all justiciable issues of federal and state constitutional and statutory law. These courts of general jurisdiction have

inherent power and responsibility to enforce constitutional rights under both the federal and the state Constitutions. Ala. Const. Art. VI (Amend. 328).[20]

* * *

The law is now clear that "legislative reapportionment cases are justiciable, and judicial relief becomes appropriate when the legislature fails to reapportion according to the constitutional requisites in a timely fashion after having adequate opportunity to do so, or where there is no effective political remedy to obtain relief." 16 C.J.S. *Constitutional Law* § 178 (1984)(footnotes omitted).

... Any lingering doubt as to the power of state courts to decide apportionment questions has been laid to rest by the United States Supreme Court in *Growe v. Emison*, [507 U.S. 25, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993)].

* * *

> "Today we renew our adherence to the principles expressed in *Germano* [*Scott v. Germano*, 381 U.S. 407, 85 S.Ct. 1525, 14 L.Ed.2d 477 (19650(per curiam)], which derive from the recognition that the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts. *See* U.S. Const., Art. I, § 2. 'We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature *or other body*, rather than a federal court.' *Chapman v. Meier*, 420 U.S. 1, 27, 95 S.Ct. 751, 766, 42 L.Ed.2d 766 (1975). Absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it."

[20] Ala. Const. of 1901.

507 U.S. at 34, 113 S.Ct. at 1081. (Emphasis added).

Redistricting is both a sensitive and a political issue. There is no dispute that the legislature has the initial responsibility to act in redistricting matters. Ala. Const., Art. IX, §§ 198, 199, 200. However, in the event the legislature fails to act, the responsibility shifts to the state judiciary. (Assuming, of course, that a citizen of this state properly invokes the state court's jurisdiction in an adversary proceeding. [Footnote of the court.]) ...

Rice, et al.
v.
English, et al.
835 So. 2d 157 (Ala. 2002)

* * *

This case involves a state-law challenge to the new redistricting plan for Alabama senate districts. That plan, proposed by Act No. 2001-727, 2001 Ala. Acts (hereinafter "the redistricting plan", was approved by Governor Don Siegelman on July 3, 2001, and was precleared by the Attorney General of the United States on October 15, 2001. John W. Rice, et al., challenged the redistricting plan, naming as defendants state election officials and contending that the plan failed to satisfy the one-person, one-vote standard they viewed as mandated by Art. IX § 200, Ala. Const. 1901. The Montgomery Circuit Court entered a summary judgment in favor of the state election officials. This appeal followed.

By the redistricting plan, the Legislature established 35 senate districts for the State. The Senate, according to the redistricting plan, is to be composed of 35 members, each representing a district whose population is within plus or minus five percent of the ideal population of a senate district. In creating those districts, the Legislature split 30 of the State's 67 counties.

> "It is a familiar canon of statutory construction that 'where there is doubt as to the meaning and intent of a statute by reason of the language employed, or arising from the context, courts may look to the history, conditions which lead to that enactment, the material surrounding circumstances, the ends to be accomplished, and evils to be avoided or corrected, in order that the legislative intent be ascertained and given effect, if possible.'" *Eagerton v. Graves,* 252Ala. 326, 331-32, 40 So. 2d 417, 422 (1949) (quoting *Henry v. McCormack Bros. Motor Car Co.,* 232 Ala. 196, 198, 167 So. 256, 257 (1936)).

The districts created by the Legislature are within plus or minus five percent of the ideal population of a senate district.

The Rice plaintiffs have failed to overcome the presumption of constitutionality that precedent requires us to attach to the redistricting plan.

AFFIRMED.

Shelby County
v.
Holder
133 S. Ct. 2612 (2013)

As stated *supra*, *see* further discussion in Chapter 2 regarding the United States Supreme Court's holding in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013) that that the jurisdictions previously identified by the coverage formula in Section 4(b) of the Voting Rights Act, such as Alabama, no longer needed to seek preclearance for new voting changes, unless they are covered by a separate court order entered under Section 3(c) of the Act.

Alabama Legislative Black Caucus
v.
State of Alabama
135 S. Ct. 1257 (2015)

* * *

The District Court held in the alternative that the claims of racial gerrymandering must fail because "[r]ace was not the predominant motivating factor" in the creation of any of the challenged districts. 989 F.Supp.2d, at 1293. In our view, however, the District Court did not properly calculate "predominance." In particular, it judged race to lack "predominance" in part because it placed in the balance, among other nonracial factors, legislative efforts to create districts of approximately equal population. *See*, *e.g.*, *id*., at 1305 (the "need to bring the neighboring districts into compliance with the requirement of one person, one vote *served as the primary motivating factor* for the changes to [Senate] District 22" (emphasis added)); *id*., at 1297 (the "constitutional requirement of one person, one vote trumped every other districting principle"); *id*., at 1296 (the "record establishes that the drafters of the new districts, above all, had to correct [for] severe malapportionment ..."); *id*., at 1306 (the "inclusion of additional precincts [in Senate District 26] is a reasonable response to the underpopulation of the District").

[7] In our view, however, an equal population goal is not one factor among others to be weighed against the use of race to determine whether race "predominates." Rather, it is part of the redistricting background, taken as a given, when determining whether race, or other factors, predominate in a legislator's determination as to *how* equal population objectives will be met.

* * *

The District Court, in a yet further alternative holding, found that "[e]ven if the [State] subordinated traditional districting principles to racial considerations," the racial gerrymandering claims failed because, in any event, "the

Districts would satisfy strict scrutiny." 989 F.Supp.2d, at 1306. In the District Court's view, the "Acts are narrowly tailored to comply with Section 5" of the Voting Rights Act. *Id.*, at 1311. That provision "required the Legislature to maintain, where feasible, the existing number of majority-black districts and *not substantially reduce the relative percentages of black voters in those districts*." *Ibid.* (emphasis added). And, insofar as the State's redistricting embodied racial considerations, it did so in order to meet this § 5 requirement.

[9] In our view, however, this alternative holding rests upon a misperception of the law. Section 5, which covered particular States and certain other jurisdictions, does not require a covered jurisdiction to maintain a particular numerical minority percentage. It requires the jurisdiction to maintain a minority's ability to elect a preferred candidate of choice. That is precisely what the language of the statute says. It prohibits a covered jurisdiction from adopting any change that "has the purpose of or will have the effect of diminishing the ability of [the minority group] to elect their preferred candidates of choice." 52 U.S.C. § 10304(b); *see also* § 10304(d) (the "purpose of subsection (b) ... is to protect the ability of such citizens to elect their preferred candidates of choice").

Alabama Legislative Black Caucus
v.
State of Alabama
231 Fed. Supp. 3d 1026 (M.D. Ala. 2017)

* * *

The plaintiffs argue that race predominated when the drafters kept the black population percentage in a district the same as it was before redistricting, but more is necessary under Supreme Court caselaw. It is possible to hit a supposed target solely by considering traditional districting criteria, as the plaintiffs concede when their alternative plans match the previous black population percentage in a

district. The plaintiffs instead must provide evidence of how the drafters subordinated traditional districting criteria to race. We consider all of the evidence offered by the parties on remand, and we have no mechanical formula or system of weights for considering this evidence.

We find that race did not predominate in 22 of the 36 districts, and with respect to those districts, our inquiry ends there. We also find that race predominated in 14 of the 36 districts, and we must next decide whether those districts survive strict scrutiny.

We conclude that Alabama has satisfied strict scrutiny in two of the districts where race predominated. Alabama asserts an interest in complying with the Voting Rights Act, and it relies primarily on statements by two incumbent members of the Black Caucus at public meetings of the redistricting committee. This evidence is sufficient in those members' districts. As we explain, the Supreme Court does not require that the legislature conduct studies. It instead requires only that the legislature had a strong basis in evidence for its use of race. The statement of Senator Hank Sanders in particular is detailed and based on his experience as an influential longtime incumbent. This kind of testimony constitutes a "strong basis in evidence." And despite the plaintiffs' insistence to the contrary, the record does not establish that the drafters had an incorrect understanding of section 5 in these two districts.

Chapter 4
Legislative Sessions

A. Organizational Sessions

Because the terms of both Senators and Representatives begin and end at the same time, the members must reorganize the Legislature every four years soon after their election. As suggested above, this is done in what is known as "organizational" sessions. Organizational sessions convene on the second Tuesday in January following the election of legislators and are limited to ten consecutive calendar days. Ala. Code § 29-1-4. No business can be transacted at these sessions other than the organization of the Legislature, the election of officers, the adoption of rules of procedure, the appointment of committees for each house, the declaration of the results of the elections for constitutional state executive officers, the election of such officers in the event of a tie vote, the determination of contested elections for such offices, the judging of the election returns and qualifications of legislators, and the inauguration of the Governor and other elected state officers whose terms are concurrent with that of the Governor.

Ala. Const. Art. IV, § 48.01
... Organizational Sessions ...

> (a) All sessions of the legislature shall be held at the capitol in the senate chamber and in the hall of the house of representatives, unless at any time it should from any cause become impossible or dangerous for the legislature to meet or remain at the capitol, or for the senate to meet or remain in the senate chamber, or for the representatives to meet or remain in the hall of representatives, in which case the governor may convene the legislature, or remove it after it has convened, to some other place, or may designate some other place for the sitting of the respective houses, or either of them, as necessity may require. The legislature shall convene on the second Tuesday in January next succeeding their election and shall remain in session for not longer than

ten consecutive calendar days. No business can be transacted at such sessions except the organization of the legislature, the election of officers, the appointment of standing committees of the senate and the house of representatives for the ensuing four years, which election and appointment may, however, also be made at such other times as may be necessary, the opening and publication of the returns and the ascertainment and declaration of the results of the election for governor, lieutenant-governor, attorney-general, state auditor, secretary of state, state treasurer, and commissioner of agriculture and industries, the election of such officers in the event of a tie vote, the determination of contested elections for such offices, the judging of the election returns and qualification of the members of the legislature, and the inauguration of the governor and the other elected state officers whose terms of office are concurrent with that of the governor. At the beginning of each such organization session, and at such other times as may be necessary, the senate shall elect one of its members president pro tempore thereof, to preside over its deliberations in the absence of the lieutenant-governor, and the house of representatives shall elect one of its members as speaker, to preside over its deliberations. The president of the senate and the speaker of the house of representatives shall each hold his respective office until his successor has been elected and qualified. The provisions of this Constitution in conflict herewith are hereby modified to conform to the provisions of this amendment. The provisions of this amendment shall become effective at the beginning of the term of the members of the legislature elected at the general election in 1946.

(b) Beginning in the year 1976 regular sessions of the legislature shall be held annually of the first Tuesday in May, or on such other day as may be prescribed by law, and shall be limited to 30 legislative days and 105 calendar days. Special sessions of the legislature convened in the manner provided by this constitution shall be limited to 12 legislative days and 30 calendar days.

1. Place of Meeting

Ala. Const. Art. IV, § 48
(Amend. No. 57 (1945))
... Place of Meeting ...

The Legislature shall meet quadrennially at the capitol in the senate chamber, and in the hall of the house of representatives, on the second Tuesday in January next succeeding their election, or on such other day as may be prescribed by law; and shall not remain in session longer than sixty days at the first session held under the Constitution, no longer than fifty days at any subsequent session. If at any time it should from any cause become impossible or dangerous for the legislature to meet or remain at the capitol, or for the senate to meet or remain in the senate chamber, or for the representatives to meet or remain in the hall of the house of representatives, in which case the governor may convene the legislature, or remove it after it has convened, to some other place, or may designate some other place for the sitting of the respective houses, or either of them, as necessity may require.

Ala. Code § 29-1-3
Annual Sessions; Place of Meeting.

The legislature shall meet annually at the Capitol, in the senate chamber and in the hall of the house of representatives, unless at any time it should, from any cause, become impossible or dangerous for the legislature to meet or remain at the Capitol or for the senate to meet or remain in the senate chamber, or for the representatives to meet or remain in the hall of the house of representatives, then the governor may convene the legislature, or remove it after it has convened, to some other place for the sitting of the respective houses, or either of them, as necessity may require.

Ala. Const. Art. IV, § 48.02
Alabama State House.

> In the event the legislature determines it to be necessary or desirable that the Capitol be repaired, renovated, restored, constructed or reconstructed, the legislature, by resolution, shall designate and provide a suitable place for the meeting of the legislature and the transacting of business of the legislative department. Such place shall be designated and known as the Alabama State House.

The Legislature moved in 1986 to the former Highway Department building which was renamed the Alabama State House. This action was upheld by *Opinion of the Justices No. 318*, 476 So. 2d 611 (Ala. 1985) which stated this move did not violate Ala. Const. Amend. 57 and 427.

2. Election of Officers

Ala. Const. Art. IV, § 51
Election of president pro tem of senate and speaker of house of representatives; temporary president and speaker; officers of each house; each house judge of election, returns and qualifications of members.

> The senate, at the beginning of each regular session, and at such other times as may be necessary, shall elect one of its members president pro tem. thereof, to preside over its deliberations in the absence of the lieutenant-governor; and the house of representatives, at the beginning of each regular session, and at such other times as may be necessary, shall elect one of its members as speaker; and the president of the senate and the speaker of the house of representatives shall hold their offices respectively, until their successors are elected and qualified. In case of the temporary disability of either of said presiding officers, the house to which he belongs may elect one of its members to preside over that house and to perform all the duties of

> such officer during the continuance of his disability; and such temporary officer, while performing duty as such, shall receive the same compensation to which the permanent officer is entitled by law, and no other. Each house shall choose its own officers and shall judge of the election, returns, and qualifications of its members.

In the event that there is neither a lieutenant governor nor a president pro tem to preside and organize the Senate, and both the state constitution and statutes are silent on the matter, the Secretary of the Senate acts as president pro tem. He must call the Senate to order and be presented with the certificates of election of each Senator. The oath of office is then administered and each Senator signs his certificate of election. Following this procedure, the Secretary of the Senate must entertain motions for the election of a president pro tem. The individual elected as president pro tem assumes his duties immediately upon election, and the Secretary of the Senate resumes his normal duties. *In re Opinion of the Justices No. 46*, 237 Ala. 62, 185 So. 376 (1938). When for any reason the Speaker of the House is unable to discharge the responsibilities of his office, the House has the authority to elect a speaker pro tem. *Robertson v. State*, 130 Ala. 164, 30 So. 494 (1901).

3. Member Qualifications

In a challenge to residency qualifications of a candidate for the state senate, the Alabama Supreme Court ruled that the issue properly belonged in the Senate rather than in the Supreme Court. *Buskey v. Amos*, 294 Ala. 1, 310 So. 2d 468 (1975). However, the court has determined that the legislature's power over one of its members is not exclusive. In *State ex rel. James v. Reed*, 364 So. 2d 303 (Ala. 1978), the qualifications of Thomas Reed, a member of the House of Representatives, were challenged on the grounds that he was ineligible to hold office under Section 60 of the Alabama Constitution. A year earlier, Reed had been convicted for attempted bribery, a misdemeanor, and fined $500. Section 60 provides that "No person convicted of embezzlement of public money, bribery, perjury or other infamous crime, shall be eligible to the legislature, or capable of holding any office of trust or profit in this state." Defendant Reed contended that the Alabama

Constitution granted exclusive power to judge the qualifications of legislators in each respective house of the legislature and that his eligibility was not a correct subject for judicial review. Moreover, Reed argued that Sections 51 and 53 made the question of eligibility for membership in the legislature solely a subject for legislative concern.

The Alabama Supreme Court, however, rejected such an assertion, saying that Section 60 was a specific constitutional limitation on legislative authority. The court reasoned that the legislative power "under these sections does not operate to the exclusion of the positive force of Section 60, a specific constitutional limitation upon the ability of any person to hold public office in this state." *State ex. rel. James v. Reed*, 364 So. 2d at 307. Consequently, the court ruled that, since Section 60 was a constitutional limitation on the otherwise exclusive power of the legislature under Sections 51 and 53 to judge the qualifications of the legislative members, Reed's case was a proper subject for judicial review.

4. Appropriation for Organizational Sessions

Ala. Code § 29-1-10
Appropriation for organization sessions and legislative interim committees.

> There shall be appropriated out of the general fund to the treasury of the state of Alabama the sum of $100,000, or so much thereof as may be necessary, for the expenses of the legislature in its 10-day or organization session and for the expense of such legislative interim committees as may be created by said legislature.

Cited in *In re Opinion of the Justices No. 71*, 248 Ala. 590, 29 So. 2d 10 (1947).

5. Time of Meeting

Ala. Code § 29-1-4
Time of meeting and length of organizational and regular sessions.

The legislature shall convene on the second Tuesday in January next succeeding its election in organizational session and shall remain in session for not longer than 10 consecutive calendar days. Commencing in the year 1999, the annual sessions of the Alabama legislature shall commence on the first Tuesday in March of the first year of the term of office of the legislators, on the first Tuesday of February of the second and third years of the term and on the second Tuesday in January of the fourth year of the term. The annual sessions shall not continue longer than 30 legislative days and 105 calendar days.

6. Legislative Compensation

Legislative compensation is governed by Art IV § 49 of the Alabama Constitution. It was originally placed into the constitution as Amendment 871 which was ratified on November 6, 2012. Pursuant to Section 49 legislators beginning with the November, 2014 election receive monetary compensation and expense allowances as follows:

Compensation and expenses of members of Legislature.

Section 1.

(a) The Legislature recognizes that the public trust in the legislative body is of paramount importance. The Legislature further recognizes that government transparency and accountability are vital to the preservation of the public trust. To that end, it is the purpose of this amendment to remove the power of determining legislative compensation or expenses from the hands of the Legislature itself, to validate the basis upon which legislative compensation and expenses are established in an objective manner based on measurable standards, and to allow the

citizens of Alabama to vote on this issue. It is the will of the Legislature to resolve the issue of legislative compensation and expenses once and for all by providing for compensation and expenses for members of the Legislature and the President of the Senate and by providing for compensation to be paid at the same rate as the median household income in Alabama and expenses in the same amounts and manner as expenses are allowed under law for state employees generally.

(b) All laws or parts of laws in conflict with this amendment are repealed, including, but not limited to: Those portions of Amendments 39, 57, and 339 of the Constitution of Alabama of 1901, relating to the compensation and expenses of members of the Legislature; Act 87-209, Act 90-490, Act 91-95, Act 91-108, and Act 2007-75; and Section 29-1-8, Code of Alabama 1975.

Section 2. The annual basic compensation for each member of the Legislature and the President of the Senate shall be the median annual household income in Alabama, as ascertained and adjusted each year by the State Personnel Board to take effect on the first day of January of each year.

Section 3.

(a) No member of the Legislature or the President of the Senate may receive reimbursement for any expenses except as provided in this section.

(b) Subject to approval by the President of the Senate or by the Speaker of the House for the respective members of their Houses, and except as otherwise provided in subsection (d), a member of the Legislature may be reimbursed for any of the following:

(1) Expenses incurred for travel on official business in the same amounts or at the same rates as for state employees traveling in the service of the state under state law, rules, and policies, provided that, for a member of the Legislature, the travel is to a place outside his or her district.

(2) Actual expenses other than travel expenses incurred in the performance of official duties.

(3) Expenses authorized pursuant to Act 1196 of the 1971 Regular Session for the presiding officer of each House.

(c) Reimbursement for expenses may only be made under subdivision (1) and (2) of subsection (b) after a determination of the presiding officer of the member's house that the travel or expense is in the service of the state and on submission of a signed voucher submitted in the same manner as a request for reimbursement of expenses by a state employee.

(d) Except for the expenses of transportation, no member of the Legislature who resides less than 50 miles from the seat of government may be reimbursed for any travel expenses for travel between his or her place of residence and the seat of government.

(e) In making the determination required by subsection (c), the presiding officer of either house may not determine a particular expense incurred by any member of the Legislature was not in the service of the state on any basis that discriminates between members of the Legislature.

(f) Reimbursement for expenses authorized pursuant to this section shall be paid in a timely manner that is consistent with expense reimbursement regulations jointly promulgated by the President of the Senate and the Speaker of the House pursuant to the Alabama Administrative Procedure Act. Such regulations shall, to the extent possible, mirror similar regulations applicable to state employees. The President of the Senate and the Speaker of the House may not discriminate between members of the Legislature regarding the timely reimbursement of authorized expenses.

(g) The State Personnel Board may promulgate such rules as it deems necessary to enforce its responsibilities under this amendment and, in conjunction with the Comptroller, shall provide an annual report on compensation and reimbursement of expenses to members of the Legislature.

Section 4.

(a) The compensation and reimbursement for expenses provided in Sections 2 and 3 shall constitute the total amounts payable to the presiding officers and members of the Legislature, beginning with the terms commencing immediately after the 2014 General Election.

(b) The Legislature may not increase, supplement, or otherwise enlarge the compensation or reimbursement for expenses payable to its members by this amendment.

B. Regular Sessions

The initial constitution imposed no restriction on the length of legislative sessions in Alabama. The 1861 Constitutional Commission set a maximum length of thirty days. The thirty-day limitation also appeared in the Constitution of 1865 and 1868, but was coupled with a stipulation that the session may be extended by a two-thirds vote of each house. Provisions of the 1875 and the 1901 Constitutions increased the length of regular sessions to fifty days. Since it was not specifically stated that the limitation referred to calendar days, the Legislature construed them as "legislative" days, or days on which the Legislature (or one of its houses) actually met in session. Thus, the duration of the session became indefinite (depending upon the rate at which the legislative days were consumed) and in practice extended over a period of months.

The 39th Amendment to the 1901 Constitution, adopted in 1939, imposed a sixty-calendar-day restriction on regular biennial sessions but, in an effort to conserve time during regular sessions, authorized a separate session for the organization of the Legislature. The organizational session was scheduled to meet quadrennially, after the election of each new Legislature, and was limited to ten consecutive calendar days. Ala. Const. Amend. No. 57, adopted in 1946, later established a thirty-six day limitation on regular biennial sessions of the Legislature. With no requirement that these days must be consecutive, the Legislature again construed the limitation in terms of legislative days. However,

Ala. Const. Amend. No. 339, adopted on June 10, 1975 and referred to as the annual sessions amendment, reestablished calendar-day limitations on the duration of sessions. Ala. Const. Art. IV, § 76 was alternatively known as Amend. No. 339 in the 1901 Constitution.

Ala. Const. Art. IV, Sec. 48.01(b)
Annual Sessions of Legislature; Length of Regular Sessions.

> Beginning in the year 1976 regular sessions of the legislature shall be held annually on the second Tuesday in January, or on such other day as may be prescribed by law, and shall be limited to 30 legislative days and 105 calendar days.

Essentially, amendment 339 to the 1901 Constitution (retained in the 2022 Constitution) had reduced the length of regular sessions from thirty-six to thirty legislative days and placed on each regular session a calendar-day restriction of 105 days. It is noted that the 1975 amendment placed similar restrictions on the length of special sessions, but neither the 1946 nor the 1975 amendment affected the Legislature's quadrennial organizational sessions. Dates of the regular session are set by the Legislature.

Ala. Code. § 29-1-4.
Time of meeting and length of organizational and regular sessions.

> The Legislature shall convene on the second Tuesday in January next succeeding its election in organizational session and shall remain in session for not longer than 10 consecutive calendar days. Commencing in the year 1999, the annual sessions of the Alabama Legislature shall commence on the first Tuesday in March of the first year of the term of office of the legislators, on the first Tuesday of February of the second and third years of the term and on the second Tuesday in January of the fourth year of the term. The annual sessions shall not continue longer than

30 legislative days and 105 calendar days.

C. Special Sessions

From the earliest days of state government, the Governor has had authority to convene the Legislature in special session. These sessions were free from constitutional limitation until 1875. The Constitution of that year prohibited the passage, in a special session, of legislation on subjects other than those specifically stated by the Governor in his proclamation calling the session. The Constitution of 1901 retreated from this absolutist position through a provision that permitted legislation on subjects not mentioned in the Governor's proclamation by a two-thirds vote of each house. Special sessions were limited to thirty days in both the Constitution of 1875 and the Constitution of 1901. The 1939 constitutional amendment relating to legislative sessions specified that the thirty days must be consecutive calendar days. Ala. Const. of 1901 Art. IV, § 48.01 (alternatively known as Amendment No. 57), adopted in 1946, later limited special sessions to thirty-six legislative days, the same as regular sessions. More recently, however, the annual session's amendment of 1975 limited special sessions to twelve legislative days within a period of thirty calendar days. These provisions were retained in the Alabama Constitution of 2022 at § 48.01(b).

Ala. Const. Art. IV, Sections 48.01 (b) and 76
Restrictions on legislation at special sessions; duration of special sessions.

> When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house. Special sessions shall be limited to 12 legislative days and 30 calendar days.

The general purpose of this section is to require the legislature to deal primarily with the subjects of legislation for which it is convened, without excluding other legislation approved by a two-thirds vote of each house. While giving the governor a

free hand in defining special subjects to be considered at a special session, this section does not contemplate any restriction on the legislative power to shape the laws or prescribe the details of legislation on the subjects designated. *In re Opinion of the Justices No. 41*, 233 Ala. 185, 171 So. 902 (1936). The two-thirds vote required by this section for the passage of a bill embodying legislation on a subject not designated in the governor's call applies to the final action in each house on the proposed law. *In re Opinion of the Justices No. 40*, 232 Ala. 156, 167 So. 327 (1936). An amendment adding matters not included in the Governor's proclamation requires a two-thirds majority. *In re Opinion of the Justices No. 189*, 281 Ala. 20, 198 So. 2d 304 (1967). A two-thirds majority means two-thirds of the number present and voting when a quorum is present. *Farmers' Union Warehouse v. McIntosh*, 1 Ala. App. 407, 56 So. 102 (1911).

Ala. Const. Art. V, Sec. 122
Governor authorized to convene legislature on extraordinary occasions; proclamation of governor to state matters on which action necessary.

> The governor may, by proclamation, on extraordinary occasions, convene the legislature at the seat of government, or at a different place if, since their last adjournment, that shall have become dangerous from an enemy, insurrection, or other lawless outbreak, or from any infectious or contagious disease; and he shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

A circuit court ordered the Governor to call a special session no later than January 8, 1992 to consider Congressional Redistricting. The Alabama Supreme Court granted a motion to stay the order without comment. However, Justice Houston concurring specially stated that no one in the state judiciary has the authority to direct the Governor to call a special session. *Hunt v. Morris*, 591 So. 2d 83 (Ala. 1992).

When the governor convenes the legislature in a special session, there is no authority for the courts to question the decision

of the governor. *In re Opinion of the Justices No. 189*, 281 Ala. 20, 198 So. 2d 304 (1967), originally stated in *In re Opinion of the Justices No. 74,* 249 Ala. 153, 30 So. 2d 391 (1947). Once the legislature has convened for a special session, recessing or adjourning and the length of the recess or adjournment are solely in the discretion of the legislature. *In re Opinion of the Justices No. 173*, 275 Ala. 102, 152 So. 2d 427 (1963).

Ala. Code § 29-1-5
Length of special sessions.

> No special session of the legislature shall continue for longer than 12 legislative days and 30 calendar days.

See also Ala. Const. Sec 48.01 (Amend. 57 in the 1901 Constitution and retained in the 2022 Constitution) cited in *In re Opinion of the Justices* No. 123, 256 Ala. 154, 53 So. 2d 740 (1951).

STATE OF ALABAMA

PROCLAMATION

BY THE GOVERNOR

WHEREAS an extraordinary occasion exists in the State of Alabama which requires the Legislature to convene in special session, *see* Ala. Const. art. V, § 122;

NOW, THEREFORE, I, Kay Ivey, as Governor of the State of Alabama, do hereby proclaim and direct that the Legislature of the State of Alabama shall convene in special session at the seat of government, in the Alabama State House, in Montgomery, Alabama, at 11:00 a.m. on Wednesday, January 19, 2022, to take up the following specifically described subjects and matters which I, as Governor—in consultation with the legislative leadership—deem necessary for the State of Alabama to best make use of certain "one-time" funds that it has received from the federal government under the American Rescue Plan Act (or "ARPA"):

A. ***ARPA—Coronavirus State Fiscal Recovery Fund.*** The Legislature may consider legislation to appropriate funds from the "American Rescue Plan Act—Coronavirus State Fiscal Recovery Fund" in an amount not to exceed $443,343,362.50 to the Department of Finance to be used to deliver pandemic-related healthcare and related services through the reimbursement of eligible expenses; to improve and expand broadband network access; to improve access to clean water through water and sewer infrastructure projects; to provide tax relief to employers by replenishing the Unemployment Compensation Trust Fund; and to reimburse a state agency or agencies for the costs of administering the allocations specified in such legislation.

B. ***ARPA—Coronavirus State Fiscal Recovery Revenue Replacement Fund.*** The Legislature may consider legislation to appropriate funds from the "American Rescue Plan Act—Coronavirus State Fiscal Recovery Revenue Replacement Fund" in an amount not to exceed $136,796,346.00 to the Department of Finance to be used to improve and expand broadband network access; to facilitate the expansion and use of telemedicine; to deliver pandemic-related healthcare and related services; to assist rural hospitals; to assist emergency response providers; and to reimburse the expenses of housing certain inmates in county jails during a specified portion of calendar year 2021.

C. ***ARPA—Coronavirus Capital Projects Fund.*** The Legislature may consider legislation to appropriate funds from the "American Rescue Plan Act—Coronavirus Capital Projects Fund" to the Department of Finance in an amount not to exceed $191,887,857.00 to be used to deliver broadband and related services related to the coronavirus pandemic and to enable investment in capital assets providing necessary technology infrastructure for work, education, and access to critical services.

D. ***Oversight and transparency.*** Legislation making any or all of the allocations set forth above shall include reasonable oversight and reporting requirements to ensure compliance with ARPA and to promote public accountability and transparency in the use of the funds. Any legislative oversight committee established through such requirements may be authorized to request information from the Department of Finance or any other agency or entity implementing a program financed with funds received by the State of Alabama under ARPA.

* * *

All other legislation, beyond the legislation specifically described above, is expressly excluded from this proclamation and shall require a two-thirds vote for consideration and passage during this special session. *See* Ala. Const. art. IV, § 76.

IN WITNESS WHEREOF, I have hereunto set my hand as Governor of the State of Alabama and caused this proclamation to be attested by the Secretary of State at the State Capitol, in the City of Montgomery, on this the 18th day of January 2022.

Kay Ivey

Kay Ivey
Governor

ATTESTED:

John H. Merrill

John H. Merrill
Secretary of State

Chapter 5
Rules

The Constitution authorizes each house of the Legislature to determine its own rules of procedure. Ala. Const. of 2022 Art. IV § 53. Rules are adopted by the House and Senate at the organizational session, and usually both houses follow the practice of carrying over the rules of previous sessions into the new Legislature. Regarding some matters, the two houses have joint rules. The rules provide a systematic order of business and procedure for each house and otherwise govern legislative operations through provisions relating to such matters as the conduct of the members, the duties of the presiding officers, the standing committees, the duties of the Secretary of the Senate or Clerk of the House, and the keeping of the journal.

In both the Senate and the House, the rules can be changed or suspended during sessions, but a motion to amend the rules can be made only after two days' notice in writing in the Senate, Ala. Senate Rule 35 (2023); and one day's notice in the House, Ala. House Rule 10 (2023). Suspension of the rules requires the unanimous consent of the Senate and a four-fifths vote of a quorum present and voting in the House. Ala. Senate Rule 35 (2023); Ala. House Rule 9 (2023).

The House and Senate rules are both published as legislative documents, and each member is furnished a copy by either the Clerk or the Secretary. When necessary to resolve particularly difficult questions of parliamentary procedure, reference may also be made to such treatises as Robert's Rules of Order and Mason's Manual of Legislative Procedure.

Ala. Const. Art. IV, § 53
Rules of proceedings of both houses; punishment for contempt or disorderly behavior; enforcement of process; protection of members from violence, bribes, etc.; expulsion of members.

Each house shall have power to determine the rules of

> its proceedings and to punish its members and other persons, for contempt or disorderly behavior in its presence; to enforce obedience to its processes; to protect its members against violence, or offers of bribes or corrupt solicitation; and with the concurrence of two-thirds of the house, to expel a member, but not a second time for the same offense; and the two houses shall have all the powers necessary for the legislature of a free state.

The provision that "each house shall have the power to determine the rules of its proceedings" is not restricted to proceedings of the body in ordinary legislative matters. Indeed, such authority extends to the determination of the propriety and effect of any action taken by the body as it proceeds in the exercise of any power, in the transaction of any business, or in the performance of any duty conferred upon it by the constitution. *Opinion of the Justices No. 185*, 278 Ala. 522, 179 So. 2d 155 (l965). *See also Birmingham-Jefferson Civic Ctr. Auth. v. Birmingham*, 912 So. 2d 204 (Ala. 2005). However, unless controlled by other constitutional provisions, the courts cannot look to the wisdom or folly, the advantages or disadvantages of the rules which a legislative body adopts to govern its proceedings. *Id*. accord, *Opinion of the Justices*, No. 265, 381 So. 2d 183 (l980); *see also Town of Brilliant v. City of Winfield*, 752 So. 2d 1192 (Ala. 1999). As for a member faced with expulsion, the minimum procedural due process requirements of the federal constitution must be afforded. *McCarley v. Sanders*, 309 F. Supp. 8 (M.D. Ala. 1970). Similarly, a member cannot be expelled for reasons which violate the first amendment. *Bond v. Floyd*, 385 U.S. 116, 87 S. Ct. 339 (1966). *State ex rel. James v. Reed*, 364 So. 2d 303 (Ala. l978).

The legislative power under Ala. Const. Art. IV, § 53 to expel a member is seemingly unrestricted. However, this power under this section does not exclude the specific requirement under Ala. Const. Art. IV, § 60 which prohibits any person proven not to be of good moral character, through conviction of an infamous crime to hold office. *State Ex Rel. James v. Reed*, 364 So. 2d 303 (Ala. 1978).

Rules of each house relate to the following subject matters:

1. order and procedure
2. members
3. presiding officer
4. committees
5. secretary/clerk and the journal
6. lobbying
7. joint rules of the two houses

Copies of the rules of each house may be obtained from the Clerk's or Secretary's office of the respective houses.

Alabama Education Ass'n.
v.
Grayson
382 So. 2d 501 (Ala. 1980)

The Legislature by joint rule prescribed that each bill "shall have printed at the top of the bill a brief synopsis of its contents." The House further required by rule that every bill making an appropriation or increasing or decreasing state revenue be endorsed with a reliable estimate of the amount of money involved. The contention in this case was the bill as passed failed in both accounts to comply with legislative rules.

The appellant challenged the constitutionality of the act based upon violation of the House and Senate Rules, due to a lack of an accurate synopsis or fiscal note. The Court held " the rules of the House of Representatives and Senate of the State of Alabama are not a part of the Constitution of Alabama of 1901 and thus do not furnish a basis upon which to challenge the constitutionality of Act 594, Acts of Alabama, 1977."

PART III

LEGISLATIVE PROCEDURE

Chapter 6
Legislative Powers and Procedures

A. Powers and Limitations

Alabama's Constitution vests the state's legislative power in a Legislature consisting of a Senate and a House of Representatives. Because of the reserved nature of state authority under the American system of federal government, the extent of the power granted the Legislature is not (and probably could not be) specifically defined in the state Constitution. It may be said, however, that legislative power includes such important functions as the power to tax, make appropriations, propose constitutional amendments, administer the impeachment process, establish or abolish governmental units and agencies, exercise supervision over the administration of the laws, investigate governmental operations, hold hearings, and create corporate bodies. Central to the legislative power is the power to formulate and adopt public policy through the enactment of laws.[1]

Unlike the United States Constitution, which enumerates a delegation of lawmaking powers to Congress, the Alabama Constitution does not, as a rule, define the Legislature's lawmaking power in terms of express authorizations. Owing to the broad and largely undefined nature of state legislative power, the Alabama Constitution is based primarily on the assumption that general law-making power rests with the Legislature and that the Legislature may enact whatever legislation it deems proper, except as it is limited by national law or constitutional prohibitions. For this reason, most of Alabama's constitutional provisions relating to the Legislature appear in the form of restrictions on the law-making power rather than as grants of power.[2]

The state's original Constitution of 1819 contained relatively little in the way of restrictions on the general assembly's capacity to

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[1]J. Thomas & L. Franklin Blitz, *The Alabama Legislature*, at 1-2 (1974); *Alabama Government Manual*, (15h ed. 2022)

[2]J. Thomas & L. Blitz, *supra* at 2.

exercise its lawmaking power. In the constitutions adopted thereafter, however, the tendency to impose such restrictions became increasingly more pronounced.[3] It is important to note, moreover, that the Legislature is bound by national as well as state constitutional provisions. Under the national Constitution states cannot, for example, impair the obligations of contracts; enact *ex post facto* legislation; deny the right to vote on racial grounds or because of age (provided the person is at least 18 years of age), sex, or non-payment of a poll tax; deny equal protection of the law; or deprive any person of life, liberty, or property without due process of law. The latter restriction (a part of the Fourteenth Amendment of the U.S. Constitution) is especially important in view of its role as the means by which most of the rights guaranteed under the Bill of Rights have been made applicable to the states.

Among the many limitations on legislative action found in the Constitution of Alabama are provisions that prohibit:

(l) the passage of any revenue bill during the last five days of a legislative session, Art. IV, § 70;
(2) the imposition of property tax rates or the authorization of bonded indebtedness in excess of specified amounts, Art. XI, § 214; Art. XI §§ 213, 213.01-.41, 214;
(3) the issuance of local governmental bonds unless the bond issue has been approved at an election on the question, Art. XII, § 222, 222.01-.05;
(4) the authorization of lotteries or gift enterprises, Art. IV, § 65;
(5) the enactment of any law, not applicable to every county in the state, regarding costs and charges of courts or the fees, commissions, or allowances of public officers, Art. IV, § 96, 96.01;
(6) the retirement of any officer on pay, or part pay, or making any grant to such retiring officer, Art. IV, § 98;
(7) altering county boundaries, except by a two-thirds vote of each house, Art. II, § 39;

[3]M. McMillan, *Constitutional Development in Alabama 1798-1901*, at 365-367 (1955).

(8) making any irrevocable or exclusive grant of special privileges or immunities, Art. I, § 22; and

(9) authorizing any political subdivision of the state to lend its credit or to grant public funds to, or in aid of, any individual, association, or corporation, Art. IV, § 94, 94.01-.02.

On the basis of geographical impact, legislation can be classified as either general or local. Ala. Const. Art. IV, § 110 defines a general law as one applicable to the entire state and a local law as one applicable to any political subdivision or subdivisions of the state less than the whole. Because many of the problems confronting legislators involve local governments, local legislation always constitutes a significant portion of the legislative output.

Clark
v.
Container Corp. of America, Inc.
589 So. 2d 184 (Ala. 1991)

The Supreme Court held that "[W]hen the constitutionality of a duly enacted act of the legislature is challenged, courts must remember that all questions of 'propriety, wisdom, necessity, utility, and expediency' are exclusively for legislative determination. *Alabama State Fed'n of Labor v. McAdory*, 246 Ala. 1, 9, 18 So. 2d 810, 815 (1944), *cert. dismissed*, 325 U.S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945). When the constitutionality of a duly enacted act is challenged, the only question for the Court is that of legislative power; and to determine that, it must determine whether the Constitution excepted that power from the power given the legislature."

Birmingham-Jefferson Civic Ctr. Auth.
v.
Birmingham
912 So. 2d. 204 (Ala. 2005)

Section 53, Ala. Const. 1901, specifically commits to each house of the legislature the "power to determine the rule of its own proceedings." Our Constitution contains no identifiable textual limitation on the legislature's authority with respect to voting procedures that would permit judicial review of those procedures. There is also a lack of judicially discoverable and manageable standards for resolving whether the House of Representatives constitutionally passed Act No. 288 and Act No. 357. Finally, for the judicial branch to declare the legislature's procedure for determining that a bill has passed would be to express a lack of the respect due that coordinate branch of government. For each of these three reasons, this case presents a non-justiciable political question.

Ex parte Marsh
145 So. 3d 744 (Ala. 2013)

Under the separation-of-powers provision, the Alabama Constitution gives the legislature the unlimited power to determine the rules governing its own proceedings unless another provision of the Alabama Constitution provides otherwise. Ala. Const. 1901, Art. IV, § 53, *Birmingham-Jefferson Civic Ctr. Auth. v. City of Birmingham*, 912 So. 2d 204, 217 (Ala. 2005)("The power of the legislature to determine the rules of its own proceedings is 'unlimited except as controlled by other provisions of our Constitution.' …"). "[U]nless controlled by other constitutional provisions, the courts cannot look to the wisdom or folly, the advantages or disadvantages of the rules which a legislative body adopts to govern its own proceedings." *Opinion of the Justices No. 185*, 278 Ala. 522, 525, 179 So. 2d 155, 158 (1965)(seeking an opinion relating to the validity of a Senate rule governing the procedure for terminating debate or invoking cloture).

> In *Goodwin v. State Board of Administrators*, 212 Ala. 453, 102 So. 718 (1925), the plaintiff alleged that an act was not legally passed because it violated a rule of the House of Representatives. This Court held that "[t]he rule not being required by the Constitution, [15] but adopted by the House for its own convenience, the fact that it may have been overlooked or violated in the passage of the act did not impair its validity." 212 Ala. at 455, 102 So. at 719. The rules controlling legislative procedure are usually formulated or adopted by legislative bodies themselves, and the observance of such rules is a matter that is entirely subject to legislative control and discretion and is not subject to review by a court unless the rules conflict with the constitution. *Town of Brilliant v. City of Winfield,* 752 So. 2d 1192, 1198 (Ala. 1999).

B. Effect of Statutory Legislative Procedural Laws

Alabama case law, while not directly on point, suggests that a bill passed contrary to a statutory procedural requirement such as the budget isolation provision or the sunset restriction would be valid as long as the procedural requirements of the constitution were properly followed. Although the Alabama Supreme Court has stated in dicta that a statutory procedural requirement is, as far as the power of the law is concerned, the same as a House or Senate rule, *Opinion of the Justices No. 289*, 410 So. 2d 388 (Ala. 1982), a non substantive deviation from the procedural rule will not result in the act's being declared invalid. *Opinion of the Justices No. 185*, 278 Ala. 522, 179 So. 2d 155 (1965).

In *Ex Parte Marsh*, 145 So. 3d 744 (Ala. 2012) the Court dismissed a suit seeking that a law was allegedly passed in violation of the Alabama Open Meetings Act. The Court held that such a claim was nonjusticiable based on the separation of powers doctrine in the Alabama Constitution because the Constitution granted the Legislature the exclusive power to set its own rules subject to those prescribed by the Constitution. *Marsh*, 145 So. 3d at 750–751.

The court has in the past upheld a constitutional amendment even though every procedure was not correctly followed. *Doody v.*

State ex rel. Mobile County, 233 Ala. 287, 171 So. 504, 506 (1936). The court, reading from another case, *Realty Inv.Co. v. City of Mobile*, 181 Ala. 184, 61 So. 248, 249 (1913), stated that "as to legislative details the rule has been adopted that if the constitutional requirements are met 'in substance and legal effect' it will suffice. 'To hold otherwise would subordinate substance to form, the ends to the means, and this, we think, the framers of the Constitution did not intend.'"

Chapter 7
Local Legislation

A. History of Enacting Local Legislation

Local legislation generally is that which applies to particular places such as one city or county as distinguished from legislation that applies to the state as a whole. Because Alabama's constitution prohibits "home rule" by counties except by Legislative Act and in many instances by constitutional amendment, the Legislature spends much of its time dealing with issues that apply only to local matters. The Alabama Supreme Court's decision in the case of *Peddycoart v. City of Birmingham*, 354 So. 2d 808 (Ala. 1978), however, radically changed the Legislature's procedure for passing local laws. As discussed in more detail *infra*, the decision in *Peddycoart v. City of Birmingham* has been partially superseded Ala. Const. Art. IV, § 106 regarding the validation of local bills not previously advertised prior to *Peddycoart*. *See Freeman v. Purvis*, 400 So. 2d 389 (1981).

Prior to *Peddycoart*, Alabama lawmakers enacted most local laws by a method that has been termed "legislation by census.[1]" Legislators avoided restrictions on local legislation contained in the 1901 Constitution[2] by utilizing census figures as a means of classifying an act. This permitted the legislature to bypass the constitutional requirements for local laws and to handle directly "detailed arrangements pertaining to local matters.[3]" A bill which in reality applied to a particular geographic locality, such as a

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[1]*See* Adams, *Legislation by Census: The Alabama Experience*, 21 Ala. L. Rev. 401, 401 (1969).

[2]In addition to Ala. Const. Art. IV §§ 105 and 110, Art. IV § 104 lists 31 specific cases in which the legislature is proscribed from enacting a special, private, or local law, while Art. IV, § 106 requires all local bills to be advertised for four consecutive weeks in a countywide newspaper. *See* note 15 *infra*.

[3]Sands and Brewer, *A Time and Motion Study of the Alabama Legislature*, 6 Ala. L. Rev. 157, 163 (1954).

county or municipality, would be introduced with population parameters, thereby limiting its application.[4] As a result, such an act was considered a general act of local application for purposes of Section 110 because the census or the population designations to which the act was attached were viewed as being prospective in operation and thus other localities could conceivably come within the provisions of the act upon reaching the specified population range.[5] More often than not, population parameters were so narrowly drawn that it was obvious that the proposed statute's application was intended for one and only one locale.[6] The supreme court, however, early on limited the scope of its judicial inquiry as to whether there was a "substantial difference in population, and the classification [was] made in good faith, reasonably related to the purpose to be effected and to the difference in population which forms the basis thereof and not merely arbitrary." *Reynolds v. Collier*, 204 Ala. 38, 39, 85 So. 465, 467 (1920). Consequently, for purposes of Ala. Const. Art. IV § 110, the act's territorial operation, and not the subject matter, was the determinative factor in its being denominated as either local or general.[7]

The legislature continued to enact laws in a localized fashion through the regular and special sessions of 1977. Then, on January 13, 1978, the Alabama Supreme Court announced its decision in *Peddycoart v. City of Birmingham*, effectively ending the legislature's custom of *ad hoc* law making. The legislature's reaction to the ban on population-based classifications imposed by *Peddycoart* culminated in the swift passage of an act[8] providing for

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[4]*See e.g.*, Act. No. 213, 1976 Ala. Acts 229. "This Act shall apply only to those counties having populations of not less than 22,575 nor more than 23,800 inhabitants according to the most recent federal decennial census."

[5]*State ex rel Covington v. Thompson*, 142 Ala. 98, 110, 38 So. 679, 683 (1905); *See* Adams, *supra* note 1, at 406-408, for the evolution of the Supreme Court's interpretation of Ala. Const. Art. IV, § 110.

[6]*See* note 4 *supra.*

[7]*See* Adams, *supra* note 1, at 417.

[8]The bill calling for an amendment of § 110, S. 15, was not in the

an amendment to Section 110 of the Alabama Constitution. The amendment as proposed and ratified[9] offered, in essence, three alternative definitions for a general act as well as an unambiguous definition for a local act.[10] In 1979, § 11-40-12 of the Alabama Code was passed by the legislature, establishing eight classes of municipalities as permitted by the amendment.

An additional amendment was proposed to validate all population-based acts enacted prior to January 13, 1978,[11] thus

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Governor's call for the second extraordinary session of 1978. Therefore, a two-thirds vote of each house was necessary to place the proposed legislation on the special session calendar. *See* Ala. Const. Art. IV, § 76.

[9]The proposed amendment was ratified on Nov. 20, 1978, as Ala. Const. Amend. 375, now subsumed into Const. of Alabama 2022, Art. IV, Section 110. It provides:

> A general law is a law which in its terms and effect applies either to the whole state, or to one or more municipalities of the state less than the whole in a class. A general law applicable to such a class of municipalities shall define the class on the basis of criteria reasonably related to the purpose of the law, provided that the legislature may also enact and change from time to time a general schedule of not more than eight classes of municipalities based on population according to any designated federal decennial census, and general laws for any purpose may thereafter be enacted for any such class. Any law heretofore enacted which complies with the provisions of this section shall be considered a general law.
>
> No general law which at the time of its enactment applies to only one municipality of the state shall be enacted after January 1, 1979, unless notice of the intention to apply therefor shall have been given and shown as provided in section 106 of this Constitution for special, private or local laws; provided, that such notice shall not be deemed to constitute such law a local law.
>
> A special or private law is one which applies to an individual, association or corporation. A local law is a law which is not a general law or a special or private law.

[10]*See* 32 Ala. L. Rev. 167 at 176-177 (1980).

[11]Act No. 80-424, 1980 Ala. Acts 585, ratified on Nov. 19, 1980 as Ala.

ensuring that the previously enacted general acts of local application were not later declared unconstitutional for failing to comply with Ala. Const. of 1901 Art. IV § 106.[12] This amendment stipulated, however, that the population acts which it validates can be amended only by acts which are properly advertised as provided under Ala. Const. of 1901 Art. IV § 106.

As added protection against any potential constitutional challenges,[13] the legislature proposed further amendment of Ala.

Const. amend. 389 (now Ala. Const. Art IV § 106.01). It states:

> Any statute that was otherwise valid and constitutional that was enacted before January 13, 1978, by the legislature of this state and was a general act of local application on a population basis, that applied only to a certain county or counties or a municipality or municipalities of this state, shall not be declared invalid or unconstitutional by any court of this state because it was not properly advertised in compliance with section 106 of this Constitution.
>
> All such population based acts shall forever apply only to the county or counties or municipality or municipalities to which they applied on January 13, 1978, and no other, despite changes in population.
>
> The population based acts referred to above shall only be amended by acts which are properly advertised and passed by the legislature in accordance with the provisions of this Constitution.

[12]Ala. Const. Art. IV § 106 requires that no local law is valid until notice which "shall state the substance of the proposed law and be published at least once a week for four consecutive weeks in some newspaper published in such county or counties" or by posting notice for two weeks at five different places in the event there is no newspaper. Moreover, proof of such notice must be attached to the bill before the clerk of the house or senate may certify the bill to be introduced. *See* § 11-13-6.

[13]The language in Ala. Const. Art. IV, § 110 was once questioned about its coordination with Ala. Const. Art. XVIII, § 284, which requires that notice of a proposed constitutional amendment "be published in every county in such manner as the legislature shall direct." The language of the original act, Act No. 79-263, 1979 Ala. Acts 402, omits any such direction. *See* 32 Ala. L. Rev. at 178 nn. 84 and 85.

Const. of 1901 Art. IV § 110[14] confirming every act relating and referring to a class of municipalities established under the provisions of Ala. Const. Amend. 375 (1978).

B. Procedure for Passage of Local Act

Historically, more local legislation has been enacted because consideration and passage of local legislation requires comparatively less time and energy than other types of legislation.[15] This is because members of the Legislature observe the unwritten rule of legislative courtesy that implicitly binds legislators to support local legislation affecting a locality not within their own districts so long as it has the blessings and support of the member or members from the district which includes the affected locality.[16] Prior to *Peddycoart*, legislative courtesy applied to general bills of local application as well as to specific local bills. But, unlike local legislation which is assigned to either the House or the Senate standing committees on local legislation,[17] general

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[14]Act No. 81-273, 1981 Ala. Acts 356, ratified on March 17, 1982 as Ala. Const. 110 added the following provision:

> Act No. 79-263 (House Bill No. 68) entitled AN ACT To establish eight classes of municipalities, by population, based on the 1970 Federal decennial census approved June 28, 1979, and each and every Act of the Legislature thereafter enacted referred or relating to a class of municipalities as established in said Act Number 79-263 are hereby in all things ratified, approved, validated and confirmed as of the date of their enactment, any provision or provisions of the Constitution of Alabama, as amended, to the contrary notwithstanding."

[15]*See Sands and Brewer*, *supra*, note 3, at 161.

[16]*Id*.

[17] The Constitution requires all bills to be referred to a standing committee of each house during the legislative session for consideration. *See* Ala. Const. Art. IV, § 62. Standing committees are appointed by the presiding officer of each house unless another officer is designated in accordance with the rules of that particular house adopted at the organizational session. Also, bills are assigned to the appropriate committee by the Speaker of the House of Representatives and by the Lt. Governor with consent of President Pro-tem of the Senate. *See The Legislative Process - A Handbook for Alabama Legislators* (11th. ed.

bills of local application were assigned along with other general bills according to subject matter. Thus, before *Peddycoart* ceased the practice, general bills of local application flooded the non-local legislation committees, giving them time to consider little else than local legislation.

Ordinarily, local legislation is passed in a perfunctory fashion without the time-consuming formalities of extended discussion or floor debate. Before any legislation reaches the floor of either house, however, a legislation bottleneck develops as bills are reported out of committee and placed on the regular order calendar. The regular order calendar usually becomes so congested that few bills of statewide concern reach the floor until the Rules Committee of each house establishes a special order calendar as a means of enabling the more important bills to receive first consideration.[18] Indeed, as the end of the legislative session draws to a close, the procedural device of unanimous consent[19] allows non-controversial bills to be considered for legislative action out of the order in which they were placed on the regular order calendar. A form of this practice has become known in the House as "playing baseball" when each Representative has a turn proposing a bill out of order. More often than not, local bills, or general bills of local application as was formally the case, constitute the bulk of non-controversial bills which successfully work their way through this labyrinth of procedural devices to become enactments.

For votes needed to pass a local bill *see Birmingham-Jefferson Civic Ctr. v. Birmingham,* 912 So. 2d. 204 (2005). *See* Chapter 12

2015).

[18]*See The Legislative Process – A Handbook for Alabama Legislators* (11th ed. 2015)**.**

[19]This procedure may be utilized by members of either house. Late in a session it allows a member to call up a piece of non-controversial legislation out of order for consideration and passage by that particular house. If any member of that particular house objects to the legislation brought up by another member, the bill cannot be considered. ***Id* at 90.**

"Floor Procedure" paragraph 8 "Local Legislation."

C. Classification of Municipalities

In 1979 the Legislature established eight classes of municipalities. *See* Ala. Const. Art. IV, § 110 (Amend. No.'s 375 and 397). These eight classes, as set forth in § 11-40-12, are as follows:

> **Ala. Code § 11-40-12. Classification of municipalities.**
>
> (a) There are hereby established eight classes of municipalities based on the population as certified by the 1970 federal decennial census, as authorized by Amendment No. 375, Constitution of Alabama of 1901, as follows:
>
> Class 1: All cities with a population of 300,000 inhabitants or more;
>
> Class 2: All cities with a population of not less than 175,000 and not more than 299,999 inhabitants;
>
> Class 3: All cities with a population of not less than 100,000 and not more than 174,999 inhabitants;
>
> Class 4: All cities with a population of not less than 50,000 and not more than 99,999 inhabitants;
>
> Class 5: All cities with a population of not less than 25,000 and not more than 49,999 inhabitants;
>
> Class 6: All cities with a population of not less than 12,000 and not more than 24,999 inhabitants;
>
> Class 7: All cities with a population of not less than 6,000 and not more than 11,999 inhabitants;
>
> Class 8: All cities and towns with a population of 5,999 inhabitants or less.

(b) The Legislature may refer, in the title thereof, to the class or classes of municipalities herein set out, in adopting general laws.

(c) Any municipality incorporated after June 28, 1979, shall be placed in one of the above classes according to the population of the municipality at the time of its incorporation.

It is the opinion of the Court that § 11-40-12 is constitutional having been passed pursuant to one constitutional amendment and ratified, approved, validated and confirmed by another. It is further the opinion of the Court that Art. IV § 110 of the Alabama Constitution now specifically permits general laws to be passed which apply only to one class of municipalities even when that class is made up of only one municipality. Section 110 does, however, still provide for local laws when a law does not apply to the entire state and does not apply to one class as established in § 11-40-12. *Phalen v. Birmingham Racing Comm'n*, 481 So. 2d 1108, 1110 (Ala. 1985) (citing to *Opinion of the Justices No. 268*, 381 So. 2d 632 (Ala. 1980)).

A statute which applies to certain population size cities but does not designate the cities under the classification system as provided in Ala. Const. Amend. 375 (now included in Ala. Const. Art. IV, § 110) is not necessarily a local law. *Alabama Citizens Action Program v. Kennamer*, 479 So. 2d 1237 (Ala. 1985).

Ala. Const. Art. IV, § 110 does not destroy all distinctions between local and general laws thereby permitting wholesale circumvention of Sections 104, 105 and 110 of the Constitution. *Phalen v. Birmingham Racing Comm'n.*, 481 So. 2d 1108 (Ala. 1985). A classification system which affords different treatment of similarly situated persons denies equal protection and is unconstitutional. The standard of analyzing an allegation of unequal protection is the "rational basis" standard. *Gaines v. Huntsville-Madison Cnty. Airport Auth.*, 581 So. 2d 444 (Ala. 1991).

In the absence of a designation of any specific census where

the statute has a population limitation, the last census shall be used in determining the population of a city or town. *Alabama Citizens Action Program v. Kennamer*, 479 So. 2d 1237 (Ala. 1985).

Ala. Const. Art. IV, § 89
Municipalities not to pass laws in conflict with general laws of state.

> The legislature shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this state.

Whether an ordinance is inconsistent with the general law of the state is to be determined by whether the local law prohibits anything which state law permits. *Atkins v. City of Tarrant City*, 369 So. 2d 322 (Ala. Crim. App. 1979). The fact that an ordinance enlarges upon the provisions of a statute by requiring more restrictions than a state statute requires creates no conflict unless the statute limits the requirements for all cases to its own prescriptions. *City of Birmingham v. West*, 236 Ala. 434, 183 So. 421 (1938 *State ex rel. Woodruff v. Centanne*, 265 Ala. 35, 89 So. 2d 570 (1956), *Brooks v. City of Birmingham*, 389 So. 2d 578 (Ala. Crim. App. 1980).

When a municipality enacts an ordinance which is inconsistent with the general laws of the state, the ordinance is void. *Atkins v. City of Tarrant City, 369 So. 2d at* 325.

Ala. Const. Art. IV, § 104
Special, private or local laws --
Prohibited in certain cases.

> The legislature shall not pass a special, private, or local law in any of the following cases:
>
> (1) Granting a divorce;
>
> (2) Relieving any minor of the disabilities of nonage;

(3) Changing the name of any corporation, association, or individual;

(4) Providing for the adoption or legitimizing of any child;

(5) Incorporating a city, town, or village;

(6) Granting a charter to any corporation, association, or individual;

(7) Establishing rules of descent or distribution;

(8) Regulating the time within which a civil or criminal action may be begun;

(9) Exempting any individual, private corporation, or association from the operation of any general law;

(10) Providing for the sale of the property of any individual or estate;

(11) Changing or locating a county seat;

(12) Providing for a change of venue in any case;

(13) Regulating the rate of interest;

(14) Fixing the punishment of crime;

(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;

(16) Giving effect to an invalid will, deed, or other instrument;

(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;

(18) Amending, confirming, or extending the charter of any private or municipal corporation, or remitting the forfeiture thereof; provided, this shall not prohibit the legislature from altering or rearranging the boundaries of the city, town, or village;

(19) Creating, extending, or impairing any lien;

(20) Chartering or licensing any ferry, road, or bridge;

(21) Increasing the jurisdiction and fees of justices of the peace or the fees of constables;

(22) Establishing separate school districts;

(23) Establishing separate stock districts;

(24) Creating, increasing, or decreasing fees,

percentages, or allowances of public officers;

(25) Exempting property from taxation or from levy or sale;

(26) Exempting any person from jury, road, or other civil duty;

(27) Donating any lands owned by or under control of the state to any person or corporation;

(28) Remitting fines, penalties, or forfeitures;

(29) Providing for the conduct of elections or designating places of voting, or changing the boundaries of wards, precincts, or districts, except in the event of the organization of new counties, or the changing of the lines of old counties;

(30) Restoring the right to vote to persons convicted of infamous crimes, or crimes involving moral turpitude;

(31) Declaring who shall be liners between precincts or between counties.

The legislature shall pass general laws for the cases enumerated in this section, provided that nothing in this section or article shall affect the right of the legislature to enact local laws regulating or prohibiting the liquor traffic; but no such local law shall be enacted unless notice shall have been given as required in Section 106 of this Constitution.

This section was new to the Constitution of 1901. The underlying intent was to destroy the practice of "legislative courtesy" in the enactment of the enumerated subjects and compel the enactment of general laws covering these subjects. *Bridges v.*

McWilliams, 228 Ala. 135, 152 So. 457 (1934). Although this section is the major section which regulates enactment of local laws as stated in *Opinion of the Justices No. 268*, 381 So. 2d 632 (Ala. 1980), local laws must satisfy both this section and Ala. Const. Art. IV § 105. *Drummond Co. v. Boswell*, 346 So. 2d 955 (Ala. 1977).

Ala. Const. Art. IV, § 105
Same - Prohibited in cases provided for by general law; exception as to time of holding courts; partial repeal of 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.

Where a local act deals with subject matter already provided for by general law, it is in clear violation of this section. *State Bd. of Health v. Greater Birmingham Ass'n of Home Builders, Inc.*, 384 So. 2d 1058 (Ala. 1980). The determining factor, then, is whether the object of the local law is to accomplish an end not substantially provided for and effectuated by a general law. *Drummond Co. v. Boswell*, 346 So. 2d 955 (Ala. 1977).

Barnett
v.
Jones
2021 WL 1937259 (Ala. 2021)

A local law (2019-272) that appropriated a portion of Morgan County's proceeds from the Simplified Sellers Use Tax (SSUT) to county and city boards of education in Morgan County did not violate Ala. Const. § 105 prohibiting local laws pertaining to matters covered by general law. The SSUT only provided for each county's general fund. The local act in question, however,

set out how Morgan County could spend those monies.

The Court further affirmed its review of such cases would be with a presumption in favor of the validity of state law, and the recognized duty of the court to sustain an act unless it is clearly beyond reasonable doubt it is violative of fundamental law. *See also Ala. State Federation of Labor v. McAdory,* 246 Ala. 1, 18 So. 2d 810 (1944).

Ala. Const. Art. IV, § 106
Publication or posting of notice of intent to apply therefor within county or counties affected prior to introduction of bill.

> No special, private, or local law shall be passed on any subject not enumerated in Section 104 of this Constitution, except in reference to fixing the time of holding courts, unless notice of the intention to apply therefor shall have been published, without cost to the state, in the county or counties where the matter or thing to be affected may be situated, which notice shall state the substance of the proposed law and be published at least once a week for four consecutive weeks in some newspaper published in such county or counties or if there is no newspaper published therein, then by posting the said notice for two consecutive weeks at five different places in the county or counties prior to the introduction of the bill; and proof that said notice has been given shall be exhibited to each house of the legislature through a certification by the clerk of the house or secretary of the senate that notice and proof was attached to the subject local legislation and the notice and proof shall be attached to the original copy of the subject bill and shall be filed in the department of archives and history where it shall constitute a public record. The courts shall pronounce void every special, private, or local law which the journals do not affirmatively show was passed in accordance with the provisions of this section.

Ala. Const. Art. IV, § 106.01
Validation of certain population based acts and method for amendment thereof.

Any statute that was otherwise valid and constitutional that was enacted before January 13, 1978, by the legislature of this state and was a general act of local application on a population basis, that applied only to a certain county or counties or a municipality or municipalities of this state, shall not be declared invalid or unconstitutional by any court of this state because it was not properly advertised in compliance with Section 106 of this Constitution.

All such population based acts shall forever apply only to the county or counties or municipality or municipalities to which they applied on January 13, 1978, and no other, despite changes in population.

The population based acts referred to above shall only be amended by acts which are properly advertised and passed by the legislature in accordance with the provisions of this Constitution.

The effect of this section was to validate all "bracket bills" enacted without advertising before January 13, 1978, and which were not otherwise unconstitutional. *Freeman v. Purvis*, 400 So. 2d 389 (Ala.1981).

Ala. Const. Art. IV, § 107
Same - Notice required by section 106 Prerequisite to repeal or amendment.

The legislature shall not, by a special, private, or local law, repeal or modify any special, private, or local law except upon notice being given and shown as provided in the last preceding section.

Ala. Const. Art. IV, § 108
Suspension of general laws for benefit of individuals or private corporations; exemption of individuals or private corporations from operation of general laws.

The operation of a general law shall not be suspended for the benefit of any individual, private corporation, or association; nor shall any individual, private corporation or association be exempted from the operation of any general law except as in this article otherwise provided.

Ala. Const. Art. IV, § 109
General laws for protection of local and private interests.

The legislature shall pass general laws under which local and private interests shall be provided for and protected.

If there exists no general law, this section is the only limitation on private or local laws. *Sisk v. Cargile*, 138 Ala. 164, 35 So. 114 (1903).

Ala. Const. Art. IV, § 110
"General law," "local law" and "special law" defined.

A general law is a law which in its terms and effect applies either to the whole state, or to one or more municipalities of the state less than the whole in a class. A general law applicable to such a class of municipalities shall define the class on the basis of criteria reasonably related to the purpose of the law, provided that the legislature may also enact and change from time to time a general schedule of not more than eight classes of municipalities based on population according to any designated federal decennial census, and general laws for any purpose may thereafter be enacted for any such class. Any law heretofore enacted which complies with the provisions of this section shall be

considered a general law.

No general law which at the time of its enactment applies to only one municipality of the state shall be enacted, unless notice of the intention to apply therefor shall have been given and shown as provided in Section 106 of this Constitution for special, private or local laws; provided, that such notice shall not be deemed to constitute such law a local law.

A special or private law is one which applies to an individual, association or corporation. A local law is a law which is not a general law or a special or private law.

Act No. 79-263 (House Bill No. 68) entitled "An Act to establish eight classes of municipalities, by population, based on the 1970 Federal decennial census" approved June 28, 1979, and each and every Act of the legislature thereafter enacted referred or relating to a class of municipalities as established in said Act No. 79-263 are hereby in all things ratified, approved, validated and confirmed as of the date of their enactment, any provision or provisions of the Constitution of Alabama, as amended, to the contrary notwithstanding.

A population classification cannot be utilized in the future to avoid the definition of a local act. *Peddycoart v. City of Birmingham*, 354 So. 2d 808 (Ala. 1978) (*see* further discussion of this case *supra*).

Ala. Const. Art. IV § 111
Amendment of bill introduced as general law so as to become special, private or local law on passage.

> No bill introduced as a general law in either house of the legislature shall be so amended on its passage as to become a special, private or local law.

The purpose of this section is prevention of deception which could result from a local bill being passed but not advertised because it was introduced as a general bill. *Mitchell v. Mobile County*, 294 Ala. 130, 313 So. 2d 172 (1975).

Buskey
v.
Mobile County Bd. of Registrars
501 So. 2d 447 (Ala. 1986)

* * *

> The plaintiffs contend that Act No. 36 is unconstitutional because it is a local law that was not enacted in accordance with the notice requirements of Section 106. Defendants contend that Act No. 36, which applies 'to all counties having a population of 300,000 to 500,000,' Act No. 36, § 1, is a 'general law of local application' not covered by Section 106. ...

Local laws enacted as "general acts of local application," *see Peddycoart*, below, were the subject of a subsequent amendment, Amendment No. 389, ratified November 19, 1980. That amendment rendered any such statutes, if otherwise valid, valid if enacted before January 13, 1978 (the date of the *Peddycoart* decision), but declared that such statutes would "forever remain" applicable to their original counties and municipalities, despite population changes.

... It is clearly a "bracket bill," having a population classification of 300,000 to 500,000, and it is conceded that it was not advertised as required under the notice requirements of Section 106.

Nevertheless, Amendment No. 389 specifically legitimated local acts, such as Act No. 36, notwithstanding the failure to meet the notice requirements. Consequently, we conclude that Act No. 36 is not unconstitutional under Section 106 of the Constitution of 1901.

* * *

D. Limited Home Rule

The Alabama Limited Self-Governance Act became law May 26, 2005. The powers authorized in the Act "shall be effective in a county only after an affirmative vote of a majority of the qualified electors of the county residing in the unincorporated

areas of the county and voting in a referendum election held on the question of whether the powers authorized under this chapter shall be effective in the county." § 11-3A-5. The Act, under Ala. Code § 11-3A-2, allows counties to address some or all of the following issues:

(a) Except where otherwise specifically prohibited or provided for either heretofore or hereafter by general law or the constitution of this state and subject to the procedures and limitations set out in this chapter, the county commission of a county may provide for its property and affairs; and for the public welfare, health, and safety of the citizens throughout the unincorporated areas of the county by exercising certain powers for the protection of the county and public property under its control. The powers granted herein to provide for the public welfare, health, and safety of its citizens shall only include the following:

(1) Abatement of weeds as a public nuisance as defined in § 11-67-60.

(2) Subject to the provisions of § 6-5-127, control of animals and animal nuisances.

(3) Control of litter as defined in subsection (b) of § 13A-7-29, or rubbish as defined in subdivision (4) of § 22-27-2.

(4) Junkyard control of areas which create a public nuisance because of an accumulation of items described in the definition of a junkyard under § 11-80-10.

(5) Subject to the provisions of § 6-5-127, abatement of noise, unsanitary sewage, or pollution creating a public nuisance as defined in §§ 6-5-120 and 6-5-121.

(b) Except as provided in subsection (h), the process for implementation of the powers set out in subsection (a) may be authorized by resolution of the majority of the county commission or in response to a petition signed by 10 percent of the total number of qualified electors of the county who reside in the unincorporated areas of the county. A petition shall only be

accepted if signed by 10 percent of the total number of qualified electors who reside in the unincorporated areas of the county. The petition shall include the full legal names and addresses of all persons signing the petition and shall be filed in the office of the judge of probate. The judge of probate shall within 60 days verify that all of the persons signing the petition are in fact qualified electors and legal residents of the unincorporated areas of the county and shall immediately thereafter forward the petition to the chairperson of the county commission. Following receipt of the verified petition, the county commission shall, at its next regularly scheduled meeting, make preparations for the referendum on the issue as set out in Section 11-3A-5.

(c) The powers granted to a county commission by this chapter shall not be construed to extend to any matters which the Legislature by general law has heretofore preempted by operation of law and the powers granted by this chapter shall not be limited or superseded by local law enacted after May 26, 2005. The legislative intent of this chapter is not to diminish any local law previously enacted and such local laws are to be read in pari materia with this chapter. The county commission may adopt ordinances to effectuate the orderly implementation of the powers granted herein under the procedures set out in § 11-3A-3. Ordinances adopted by the county commission shall provide a process for notice to any persons cited for violation of such ordinance, and shall also include procedures for appeal to the county commission to contest any citation issued for an alleged violation of any ordinance adopted by the county commission pursuant to this chapter.

(d) The powers granted to a county commission by this chapter shall not include any of the following:

(1) The authority of a county to levy or collect any tax, to levy or collect any fee except an administrative fee as provided in this chapter, or to implement a county land use plan or to establish and enforce planning and zoning.

(2) Any action extending the power of regulation over any business activity regulated by the federal Surface Transportation Board, the Public Service Commission, the Department of Agriculture and Industries, or the Department of Environmental Management beyond that authorized by general law or by the Constitution of Alabama of 1901.

(3) Any action affecting any court or the personnel thereof.

(4) Any action affecting any public school system.

(5) Any action affecting pari-mutuel betting or any pari-mutuel betting facility.

(6) Any action affecting in any manner the property, affairs, boundaries, revenues, powers, obligations, indebtedness, or government of a municipality or any municipal or public corporation organized pursuant to Chapter 50 of this title.

(7) Any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.

(8) Any action extending the power of regulation over the construction, maintenance, operation, or removal of facilities used in the generation, transmission, or distribution of water, sewer, gas, telecommunications, or electric utility services.

(9) Any action affecting the rights granted to an agricultural, manufacturing, or industrial plant or establishment, or farming operation pursuant to § 6-5-127, or other general laws in effect on May 26, 2005, or thereafter.

(10) Any action affecting or enforcing environmental easements or, except as authorized in this section, to abate a public nuisance, any use of private property otherwise authorized under the constitution and laws of the State of Alabama.

(11) Any action restricting or regulating surface mining or underground mining activities that have been granted federal or state permits and any operation or facility engaged in the activities of processing or distributing any product or material resulting from the mining activity.

(e) Unless otherwise provided by general law, a county may not exercise any of the powers or provide any service authorized by this chapter inside the corporate limits of any municipality or within any other territory in which a municipality or an instrumentality of a municipality is authorized by general law to exercise the power or provide those services, or within any other county, except by contract with the municipality, municipal instrumentality, or county affected.

(f) Nothing in this chapter shall be construed to grant the county commission of a county any general authority to establish or adopt a comprehensive plan for zoning or land use regulation in the unincorporated areas of the county or to grant any taxing authority except as otherwise provided for by law.

(g) This chapter shall not preclude municipal utilities from expanding into the county as otherwise provided by law and shall not grant counties the authority to govern or regulate municipal water and sewer systems which operate within the county.

(h) In counties with a Class 3 municipality with a county commission which is presided over by a chairman elected countywide, a four-fifths majority vote of the county commission

members elected by single member districts shall be required for the implementation of this chapter by the commission pursuant to subsection (b) and Section 11-3A-6 and such four-fifths majority vote shall also be required on all matters related to the utilization of the powers granted under this chapter.

(i) Nothing in this chapter shall be construed to allow a county commission to expend any county funds for any improvement on private property.

§ 11-3A-2. Since 2005, 19 counties have used the Act to protect the health and safety of citizens in unincorporated areas throughout the state.

Additionally, Amendment 909 (Ala. Const. Art. III, § 43.02) granted limited administrative powers to county commissions (excluding Jefferson County).

Ala. Const. Art. III, § 43.02
Administration of county affairs.

(a) Except where otherwise provided for or specifically prohibited by the constitution or by general or local law and subject to the limitations set forth herein, the county commission of each county in this state may exercise those powers necessary to provide for the administration of the affairs of the county through the programs, policies, and procedures described in subsection (b), subject to the limitations set forth in subsection (c).

(b) Subject to the limitations of subsections (a) and (c), each county commission in the state may establish:

(1) Programs, policies, and procedures relating to county personnel, including: Establishment of a county personnel system; the provision of employee benefits; allowing a deputy to be given his or her badge and pistol upon retirement; creating employee incentive programs related to matters such as attendance, performance, and safety; creating

incentive programs related to the retirement of county employees; and creating employee recognition and appreciation programs.

(2) Community programs to provide for litter-free roadways and public facilities and public property and subject to any limitations in general law, programs related to control of animals and animal nuisances, provided no programs shall: a. result in the destruction of an animal unless required by the public health laws of the state; or b. relate to or restrict the use of animals for hunting purposes or the use of animals being raised for sale or kept for breeding, food or fiber production purposes, or otherwise used in connection with farming, poultry and egg, dairy, livestock, and other agricultural or farming operations.

(3) Programs related to public transportation and programs to promote and encourage safety when using public roads and rights-of-way, provided the programs do not in any way conflict with general law.

(4) Programs related to county offices, including one-stop tag programs; commissaries for inmates at the county jail; disposal of unclaimed personal property in the custody of the county; management of the county highway department; automation of county activities; and establishment of unit or district systems for the maintenance of county roads and bridges. Programs involving the operation of the office of an elected county official may only be established pursuant to this subdivision with the written consent and cooperation of the elected official charged by law with the responsibility for the administration of the office.

(5) Emergency assistance programs, including programs related to ambulance service and programs to improve county emergency management services.

(c) Nothing in this amendment may be construed to provide a county commission any authority to levy or assess a tax or fee or to increase the rate of any tax or fee previously established, or to establish any program that would infringe on a citizen's rights with respect to the use of his or her private property or infringe on a right of a business entity with respect to its private property. Except as authorized in subdivision (4) of subsection (b), nothing in this amendment shall authorize the county commission to limit, alter, or otherwise impact the constitutional, statutory, or administrative duties, powers, or responsibilities of any other elected officials or to establish, increase, or decrease any compensation, term of office, or expense allowance for any elected officials of the county.

(d) Any programs, policies, or procedures proposed for adoption by the county commission pursuant to the authority granted under subsection (a) shall only be voted on at a regular meeting of the county commission. Prior to the adoption of the programs, policies, and procedures, the county commission shall provide notice of its intention to consider the matter by announcing at a regular county commission meeting that the matter will be on the agenda at the next regular meeting of the county commission and that any members of the public desiring to be heard on the matter will be granted that opportunity at the meeting where the matter will be considered. Notice of the meeting at which the matter will be considered by the county commission shall be given in compliance with the notice requirements for county commissions provided in the general law. Nothing herein shall authorize a county commission to supersede, amend, or [repeal] an existing local law.

(e) The provisions of this amendment shall not apply to Jefferson County.

E. Constitutionality

Peddycoart
v.
City of Birmingham
354 So. 2d 808 (Ala. 1978)

* * *

> The plaintiffs have placed in issue the constitutionality of that statute [Title 62, § 660, Alabama Code (Recomp. 1958)] under both the state and federal Constitutions. It is contended that § 660 is a local Act notwithstanding the fact that in its original form, Act 257, § 13, Acts of Alabama, Regular Session 1915, it bore a minimum population classification of 100,000. The plaintiffs argue that this section is constitutionally offensive under § 106 of the Alabama Constitution of 1901 because the population classification is not reasonably related to the purpose of the section, and because it permits an unequal application of the law.

Our cases have held that such a relationship must exist between the statute's purpose and the population classification established, otherwise the classification will be deemed arbitrary, *e.g.*, *Dearborn v. Johnson*, 234 Ala. 84, 173 So. 864 (1937). The case of *Couch v. Rodgers*, 253 Ala. 533, 45 So. 2d 699 (1950) reviews many of our decisions on this point, ...

* * *

Article 4, § 105, Alabama Constitution of 1901 mandates that:

> [N]o … local law, … shall be enacted in any case which is provided for by a general law, … nor shall the legislature indirectly enact any … local law by the partial repeal of a general law.

The Alabama Constitution, Art. IV, § 110, defines a general law as one "which applies to the whole state," and a local law as one "which applies to any political subdivision or subdivisions …

less than the whole; …"

If the interpretation of § 105 were being addressed presently for the first time it would be less onerous to give a literal meaning to the language used. We are faced with a more difficult task, however, in view of the numerous instances in the past in which this Court has approved local enactments on subjects already covered by general acts, *e.g.*, *Dudley v. Birmingham Ry., Light & Power Co.*, 139 Ala. 453, 36 So. 700 (1903); *Brandon v. Askew*, 172 Ala. 160, 54 So. 605, 607 (1911); *Board of Revenue v. Kayser*, 205 Ala. 289, 88 So. 19 (1921); *Mathis v. State*, 280 Ala. 16, 189 So. 2d 564 (1966); *Dunn v. Dean*, 196 Ala. 486, 71 So. 709 (1955); *State ex rel. Jones v. Steele*, 263 Ala. 16, 81 So. 2d 542 (1955); *Malone v. State*, 46 Ala. App. 363, 242 So. 2d 409 (1970).

With conscious regard to the doctrine of *stare decisis et non quieta movere*, nevertheless our duty is to apply the highest law in our state as conscientiously as our abilities allow, even though this application runs counter to reasons which heretofore have been espoused for opposite views. In so doing we perform only our judicial function and do not encroach upon the separation of powers doctrine which makes the legislative branch supreme in legislative matters. Indeed, in performing that duty we only re-assert the axiom of the supremacy of our organic law over all branches of government. *State Docks Commission v. State ex rel. Cummings*, 227 Ala. 414, 150 So. 345 (1933). If we entertained any doubt upon the meaning of § 105, we would, of course, accord a weighty consideration to the legislative interpretation which has been manifested through the years by the passage of numerous local laws on subjects already affecting those localities through general laws. *Jansen v. State ex rel. Downing*, 273 Ala. 166, 137 So. 2d 47 (1962). But the fact that a class of statutes has been in existence for a long time and considered constitutional does not prevent this Court from declaring them unconstitutional. *Sadler v. Langham*, 34 Ala. 311 (1859). If a legislative act is repugnant to the Constitution, the courts not only have the power, but it is their duty, when the issue is properly presented, to declare it so. *State ex rel. Bassett v. Nelson*, 210 Ala. 663, 98 So. 715 (1924); *Dyer v. Tuskaloosa Bridge Co.*, 2 Port. 296, 27 Am.Dec. 655 (1835).

... Section 105, then, is an additional constitutional proscription upon the type or kind of legislation which the legislature is allowed to enact, following as it does § 104 which also contains limitations upon the legislative power. Nothing in either section prohibits all local legislation, *see* §§ 106 and 107, but only that prohibited by §§ 104 and 105.

Notwithstanding the unclouded language expressed in § 105, nevertheless it has prompted a large amount of litigation, beginning as early as 1903 and continuing as late as 1976. *Dudley v. Birmingham Ry., Light & Power Co.*, 139 Ala. 453, 36 So. 700 (1903); *Parrish v. Stembridge*, 337 So. 2d 754 (Ala., 1976). Historically this Court has felt it necessary to construe this language, apparently to assure that the separation of powers doctrine would not be inhibited and that the legislative branch of state government would continue to be supreme in legislative matters. *State ex rel. Wilkinson v. Lane*, 181 Ala. 646, 62 So. 31 (1913). Thus, this Court in an early case held that § 105 was intended:

> [T]o prohibit the enactment of special, private, or local laws to meet the purposes of particular cases which may be accomplished by proceedings outside of the Legislature under the provisions of general statutes enacted to meet all cases of that general character … . *Brandon v. Askew*, 172 Ala. 160, 54 So. 605, 607 (1911).

This explanation has been utilized in other cases, *e.g.*, *Dunn v. Dean*, 196 Ala. 486, 495, 71 So. 709 (1914); *Walker County v. Barnett*, 247 Ala. 418, 24 So. 2d 665 (1946).

Another construction was placed upon § 105 in *Board of Revenue v. Kayser*, 205 Ala. 289, 88 So. 19 (1921). In that case, this Court referred to the Proceedings of the Constitutional Convention, p. 114, for an explanation by one of the commentators:

> 'Now is there any hardship [in] saying to any man, any individual, corporation or association, that if the laws of the state have already provided for your case and you can get everything you could possibly get by appealing to the Legislature, you ought not to consume the public time

> in trying to get the Legislature to do what has already been done for you. That is all this provision means.' ...

Those proceedings have been recognized, of course, as proper aids in constitutional construction. *City of Montgomery v. Graham*, 255 Ala. 685, 53 So. 2d 363 (1951). The import of the explanation, however, was that § 105 was designated simply to prevent duplication in legislative enactments. This reasoning was followed in *State ex rel. Brandon v. Prince*, 199 Ala. 444, 74 So. 939 (1917) which resulted from a change in the general law regarding the selection of jurors by legislating a different procedure for Tuscaloosa County. Our Court observed:

> If we should hold that, merely because there is a general law providing for the selecting and drawing of juries for the several counties, none of its provisions can be changed by a local law, it would be tantamount to holding that a local law cannot be passed upon that subject. We do not think that this is the meaning of Section 105 of the Constitution, nor that such was the intent of the Constitution framers in ordaining it.

From this recognition favoring local laws enacted on the same *subject* of the general law, it was a short judicial step to the present explanation:

> If, in the judgment of the Legislature, local needs demand additional or supplemental laws substantially different from the general law, the Legislature has power to so enact. Courts are charged with the duty to determine whether there is a substantial difference between the general and the local law, but cannot invade the legislative domain to determine whether a county should have a local law substantially different and in addition to the state law … . *Standard Oil Co. of Kentucky v. Limestone County*, 220 Ala. 231, 235, 124 So. 523, 526 (1929).

To summarize, this Court has interpreted § 105 in at least three different ways: (1) It was intended to prevent local laws whose purposes might be accomplished outside the legislature; (2)

It was intended to prevent duplication in legislative enactments; and (3) It was not intended to prevent the enactment of a local law on a subject already covered by a general law, when the local law is substantially different from the general law.

* * *

... By constitutional definition a general law is one which applies to the whole state and to each county in the state with the same force as though it had been a valid local law from inception. Its passage is none the less based upon local considerations simply because it has a statewide application, and already having that effect, the constitutional framers have prohibited the enactment of a local act when the subject is already subsumed by the general statute. [emphasis in the original]

* * *

Therefore we respectfully direct the legislature's attention to the fact that § 110 of the Alabama Constitution mandates the definition of a local law. It is one "which applies to any political subdivision or subdivisions of the state *less than the whole*; … " (emphasis added). Applies when? Obviously, when it becomes law! If, when it becomes a law it applies only to a subdivision of the state, it is a local law. That is the clear meaning of the language employed by our constitutional framers. In the face of this plain language, to conclude that the application of a law to less than the entire state makes no difference when a futuristic population classification is employed is to engage in sophistic reasoning. We reject such reasoning in favor of the clear definition of a local act which is contained in the Constitution. A population classification cannot be utilized in the future to avoid the definition of a local act.

... Henceforth when at its enactment legislation is local in its application it will be a local act and subject to all of the constitutional qualifications applicable to it. With regard to legislation heretofore enacted, the validity of which is challenged, this Court will apply the rules which it has heretofore applied in similar cases.

* * *

Densmore
v.
Jefferson County
813 So. 2d 844 (Ala. 2001)
Overruled on other grounds by
Magee v. Boyd, 175 So. 3d 79 (Ala. 2015)

"[T]his Court has held that when a dispute arises over whether a law is local or is general in nature, a court is obligated, when possible, to read the law as a general one ….. In determining whether a act is a general act or a local act, a court considers the principle that '[i]n order for … a law based on a population standard which applies to only one political subdivision to be upheld as a general law, the difference in population must be substantial, the classification must be reasonably related to the purpose sough to be achieved by the act.'

'In addressing the alleged constitutional infirmities of a statute, we are conscious of the well-established rule requiring courts to defer to the policy-making authority of the Legislature, by rejecting constitutional challenges to statutes, where it is possible to do so.'"

Phalen
v.
Birmingham Racing Commission
481 So. 2d 1108 (Ala. 1985)

* * *

> "Among other things, the Act provides for horse racing and pari-mutuel wagering in Class 1 municipalities and for the establishment of a racing commission to regulate those activities." ...

* * *

Each appellant argues that a construction of Amendment 397 that permits the passage of general laws applicable to a class containing a single municipality would somehow destroy all distinctions between local and general laws and would permit the wholesale circumvention of Sections 104, 105, and 110 of the Constitution of Alabama. We are of the opinion that this

argument is not sound in two respects. First, Amendment 397 does not purport to, and does not, abolish all distinctions between general and local laws. The restrictions applicable to local laws remain vital with respect to laws applicable to the various counties, laws applicable to designated individual municipalities, and laws applicable to other types of geographic regions or political subdivisions less than the entire state. Thus, after the enactment of Amendment 397, the distinction between general and local laws remains vital despite the existence of constitutional provisions which permit the Legislature to enact general laws applicable to a class containing only one municipality.

Second, and more fundamentally, this argument is not sound, because it logically suggests that the legislature and the people of this state may amend the Constitution of Alabama only if the new provisions are consistent with every existing provision of the Constitution. This argument ignores the fact that Amendment 397 is part of the Constitution and that legislation passed in accordance with the terms of the amendment cannot be repugnant to that same Constitution. To adopt this argument would be to prohibit amendments.

... The Act under review is a statute applicable only to Class I municipalities, and, as such, it is a general law of the state, because Amendment 397 to the Constitution specifically provides that such a statute is a general law. The act was advertised pursuant to Section 106, as required in Amendments 375 and 397 for laws applicable to only one municipality; therefore, the act is constitutional under the Alabama Constitution.

* * *

F. Publication

The Alabama Constitution, under Sections 106 and 107 of Article IV, requires notice by publication of any proposed special, private or local law before its introduction as a bill before the legislature.

A bill was published in May 1984. The publication stated

that application for passage was to be made in the 1984 Regular Session of the Alabama Legislature. The bill however was not introduced until 1985. Since the bill was not filed at that time, the May 1984 publication does not meet the notice requirement of Art. IV § 106, as amended (No. 341). *Opinion of the Justices No. 312*, 469 So. 2d 108 (Ala. 1985). It is well established that a court is limited to searching the journals of the House and the Senate when determining whether the Act was adopted in accordance with the Constitution. *Byrd v. State ex rel. Colquett*, 212 Ala. 266, 102 So. 223 (1924). This rule, however, will only be applied when it is clear that the legislature has complied with the mandate of § 106 by including in the appropriate journal the date and manner of publication of the notice of the proposed bill. *St. Elmo Irvington Water Authority v. Mobile County Comm'n et al.*, 728 So. 2d 125 (Ala. 1998) (overruling *Byrd* in part).

Section 106 of the Alabama Constitution requires that legislation proposed for enactment at a special session be advertised prior to that special session, even though it was advertised prior to the preceding regular session and not enacted. *City of Adamsville v. City of Birmingham*, 495 So. 2d 642 (Ala. 1986).

By requiring that proposed acts that will have a local impact be published in the areas which will be affected, Ala. Const. Art. IV § 106 provides the public with an opportunity to protest against the proposed enactment. *Gray v. Johnson*, 235 Ala. 405, 179 So. 221 (1938). The publication requirements are met if the published notice advises the local public of the substance of the proposed law and the substance of the proposed act is not materially changed or contradicted upon passage. *Wilkins v. Woolf*, 281 Ala. 693, 208 So. 2d 74 (Ala. 1968). In *Tanner v. Tuscaloosa*, the Ala. Supreme Court overruled the decision in *Wilkins v. Woolf* to the extent that it permitted severance of an act in the face of a § 106 violation. *Tanner v. Tuscaloosa*, 594 So. 2d 1207 (Ala. 1992); *see infra* for further discussion of the decision in *Tanner*. The legislature may, however, change some of the details of such local legislation during passage. *McGehee v. State*, 199 Ala. 287, 74 So. 374 (1916).

Legal publication notice must be in a newspaper printed in English which has a general circulation in the county. Ala. Code

§ 6-8-60. The court in *Gulf Coast Media, Inc. v. The Mobile Press Register Inc.*, 470 So. 2d 1211 (Ala. 1985) held that:

(1) strict compliance with plain language of the legal notice statute was more appropriate than broad or liberal construction of such statute;

(2) publication lost its status as "newspaper," for purposes of legal notice statute, when it was inserted into and distributed with parent newspaper;

(3) fact that publication was inserted into, and distributed along with, another publication allowed conclusion that publication was integral part of newspaper rather than "newspaper" in and of itself;

(4) "principal editorial office" of publication was necessarily in city in which office of its parent newspaper was located; and

(5) statutory classification of the legal notice statute was rationally related to promotion of valid legislative purpose.

Birmingham-Jefferson Civic Ctr. Auth.
v.
Hoadley
414 So. 2d 895 (Ala. 1982)

* * *

The Constitutional framers adopted the notice requirements of Section 106 intending that "the essential or material part, the essence, the meaning or an abstract or compendium of the law, was to be given, and not its mere purpose or subject." *Wallace v. Board of Revenue*, 140 Ala. 491, 37 So. 321 (1904). Out of the many decisions which have considered that section, four well-defined canons of construction have evolved: (1) the "substance" means an intelligible abstract or synopsis of its material and

substantial elements; (2) the substance may be sufficiently stated without stating the details subsidiary to the stated elements; (3) the Legislature may shape the details of proposed local legislation by amending bills when presented for consideration and passage; and (4) the substance of the proposed act as advertised cannot be materially changed or contradicted. *State ex rel. Wilkinson v. Allen*, 219 Ala. 590, 123 So. 36 (1929). ...

"... But if the publication gives details, the public need not pursue the inquiry further in respect to such details; for the information is complete, and it has the constitutional right to assume that such details will not be materially changed throughout the journey of the bill to its final passage and approval." [*Wilkinson*, at 592.]

* * *

Opinion of the Justices No. 320
486 So. 2d 1287 (Ala. 1986)

* * *

[The Justices of the Alabama Supreme Court were asked by the legislature for an advisory opinion on the question:] "Does the advertisement of S. 556 in only Limestone County meet the requirements of Section 106 of the Constitution of Alabama of 1901, as amended by Amendment 341, since it affects municipalities located, in whole or in part, in the counties that adjoin Limestone County?"

* * *

The answer to [the question] is no. In *Jefferson County v. Braswell*, 407 So. 2d 115, 119 (Ala. 1981), this Court discussed who must be given notice under Ala. Const. 1901 § 106:

"[W]e do not think [§] 106 mandates notice to persons who might be *indirectly* affected, however remotely, by enactment of a proposed local law. ...

"We opine that the requisites of 106 are satisfied by the giving of notice of a proposed local law to those who would

be *immediately* affected by its enactment: persons within the locality in which the law is intended to, and by its very terms does, operate." (Emphasis original).

...We have previously held that residents of both the annexed and the annexing territories had a direct interest in a proposed local law that provided for annexation by the City of Hoover of territory in Jefferson and Shelby Counties. *Opinion of the Justices No. 268*, 381 So. 2d 632 (Ala. 1980). Therefore, we conclude that publication in only Limestone County will not satisfy the requirements of § 106.

* * *

Bassett
v.
Newton
658 So. 2d 398 (Ala. 1995)

COOK, Justice.

* * *

The question presented is whether the L.R.S. has the statutory authority to refuse to release details regarding a proposed bill after the sponsoring legislator has initiated public notice of it. L.R.S. Director Jerry Bassett argues that the release of information regarding a bill before its introduction before the Legislature would be improper. Representative Demetrius Newton contends that the detailed substance of a bill should be available to interested parties once the legislator gives public notice of the intent to introduce the bill.

* * *

... On July 9, 1993, Bassett refused Newton's request, claiming the L.R.S. has an attorney-client relationship with legislators and that release of the bill's details would violate the attorney-client privilege. Montgomery Circuit Court Judge Randall Thomas ruled that the L.R.S. could not refuse to supply a copy of a proposed bill to a member of the

Legislature or to any affected citizen after public notice of the proposed bill had been published. We affirm.

* * *

Article IV, Alabama Constitution 1901, §§ 106 and 110, as modified by Amendment 341 and Amendments 375 and 397 respectively, mandate that notice be published of an intent to pass a general law that applies to only one municipality. The policy of the notice requirement is to inform all persons affected by the law and to allow them to challenge the legislation; to prevent the deception of the citizens in the community who would be affected by the law; and to avert a fraud on the public as a result of the community's misunderstanding about the purpose of the legislation. *Deputy Sheriffs Law Enforcement Ass'n v. Mobile County*, 590 So. 2d 239, 241 (Ala. 1991).

* * *

... To that end, § 29-7-6(c) directs that any information related to these services receive attorney-client confidentiality until it is "released" by the legislator. To "release" means to permit to be issued, shown, published, broadcast, to put into circulation. ...

Bassett's argument hinges on the attorney-client privilege. He asserts that the relationship between the L.R.S. and legislators is stronger than the attorney-client relationship, because he says, L.R.S. employees cannot acknowledge that a request to draft a bill or an amendment has been made until the legislator decides to release that information. He likens the privilege created by that relationship to the privilege afforded over Representatives and Senators by the Speech and Debate Clause of the United States Constitution (Art. I, § 6), and claims that that relationship encourages the legislators to reveal all the facts necessary to furnish proper legal representation.

* * *

There is no dispute that Senator Horn, the client and holder of the attorney-client privilege, voluntarily disclosed in a public notice the essential terms of his proposed legislation. His doing

so waived the confidentiality he had previously been entitled to concerning the proposed law. We reject Bassett's contention that the public notice was not "voluntary" because it is required by law. The law does not force lawmakers to give public notice unless and until they are ready to move forward in the process of creating a law. At that point, the legislator is or should be, prepared to publicly communicate and defend the proposed legislation.

* * *

In response to the *Bassett v. Newton* case, *supra*, the legislature amended the Section 29-7-6 of the Code of Alabama to provide the following confidentiality in requests for assistance by members of the Legislature or the Lieutenant Governor. This language, since amended, now appears in Section 29-6-7.1:

> **Ala. Code § 29-6-7.1. Legislative findings as to speech and debate; definitions; privileged and confidential communications; waiver of privilege.**
>
> …
>
> (c) A communication regarding legislation, potential legislation, the legislative process, or legislative activity between legislative staff and a client or a client's agent is privileged and confidential.
>
> (d) A legislative staff member may not disclose the content of a communication or the fact that a communication occurred unless the privilege under subsection (c) is waived expressly by the client to whom the communication was made or, with respect to a communication made to a client's agent, the client on whose behalf the communication occurred.
>
> (e) The introduction or public discussion of a bill by a client does not waive the privilege under subsection (c) with respect to any communication related to the bill.
>
> (f) The advertising of a local bill by synopsis or in a form less than in its entirety is not, in and of itself, a waiver of the

privilege under subsection (c).

G. Errors in Publication

Errors in reporting local legislation may result from variances between published versions of proposed bills and the enacted measures themselves. The word "substance" used in Section 106 means not merely the subject of the bill, but an intelligible abstract or synopsis of its material elements. *Wallace v. Bd. of Revenue of Jefferson Cnty.*, 140 Ala. 491, 37 So. 321 (1904). Substance has also been defined as the material or essential part of the bill and not just a substantial portion of the bill. *Law v. State*, 142 Ala. 62, 38 So. 798 (1905).

The form in which the act is published may affect the amending process. A local act, for instance, can be advertised in its broad or narrow form. The only constitutional requirement is that the public be given notice of the substance of the act. Section 106 of the Alabama Constitution requires that notice be given of a proposed local law to those who would be immediately affected by its enactment. This may include notice to adjoining territories in a proposed annexation. *Opinion of the Justices No. 320*, 486 So. 2d 1287 (Ala. 1987); *State ex rel. Wilkinson v. Allen*, 219 Ala. 590, 123 So. 36 (1929). However, the Alabama Supreme Court has held that a legislative act will not be stricken down merely because notice did not contain the details of the act. *City of Uniontown v. State*, 145 Ala. 471, 39 So. 814 (1905). In one case, the published version of the proposed bill left out that the city would be in charge of granting and renewing liquor licenses. The portion of the bill dealing with municipal authority was deemed to be a "mere detail" in this instance. *Id.*

No bill can be altered, changed, or amended in passage so as to change its original purpose. *State ex rel. Hanna v. Tunstall*, 145 Ala. 477, 40 So. 135 (1905). The only material evidence to be considered in determining whether there is a variance between the notice versions and the enacted versions is the bill as enrolled in the Journals of the House or Senate. *Childers v. Couey*, 348 So. 2d 1349 (Ala. 1977).

Although a court may not usurp the role of the Legislature and amend statutes under the guise of construction, there are times when the court must nonetheless correct, ignore, or supply obvious inadvertences in order to give a law the effect which was primarily intended by the Legislature.

Out of the many decisions which construe Ala. Const. Art. IV § 106, four well defined canons have evolved: (1) the substance of the proposed law means not merely the subject of it, but an intelligible abstract or synopsis of its material and substantial elements *State v. Allen*, *supra*; *Parrish v. Faulk*, 293 Ala. 401, 304 So. 2d 194 (1974); (2) the substance of the act may be sufficiently stated without stating the details which are subsidiary to the stated elements; *Parrish*, *Allen*, *City of Uniontown*, and *Law*, *supra*; (3) the Legislature is not inhibited from shaping up and working out details of local legislation by amending bills when presented for consideration and passage; and (4) the substance of the proposed act cannot be materially changed or contradicted *Hanna v. Tunstall*, *supra*; *First Nat'l Bank v. Smith*, 217 Ala. 482, 117 So. 38 (1928). The Legislature can amend a local act as to the unpublished details. If a proposed act is published at length, however, the Legislature is restricted from making changes in substances and possibly in any details. *Birmingham-Jefferson Civic Center Authority v. Hoadley*, 414 So. 2d 895 (Ala. 1982).

Burnett v. Chilton County Health Care Authority illustrates yet another wrinkle in this scheme. Ala. Const. Art. IV § 107 requires notice for any local law that repeals or modifies another local law. Thus, publication of a proposed bill that fails to provide proper notice that the law will repeal an existing local law, either expressly or by implication, will render the resultant law unconstitutional.

Burnett
v.
Chilton County Health Care Authority
2018 WL 4177518 (Ala. 2018)

[The facts show that in 2014, the Governor originally

declined to sign S.B. 462, instead recommending an amendment repealing a duplicative act, No. 2014-162, passed earlier in the session. The legislature added a new Section 14, which repealed this previously passed local law and returned the bill to the Governor. The Governor signed the bill, which then became Act 2014-422. However, the repealer added as Section 14 was never published in Chilton County as part of the proposed S.B. 462.]

* * *

It is apparent from the text of § 107 that it concerns a subset of the laws addressed in § 106, i.e., § 106 applies to all "special, private or local" laws, and § 107 only to that class of special, private, or local laws that "repeal or modify" another special, private, or local law. It is also clear from its text that § 107 should be read *in pari materia* with § 106, given its direct reference to § 106 and the fact that both sections involve the same overall requirement: Notice to the people who will be affected by the law in question. Cf. *Jefferson Cty. v. Taxpayers & Citizens of Jefferson Cty.*, 232 So. 3d 845, 870 (Ala. 2017) (observing that " '[e]ach section of the Constitution must necessarily be considered *in pari materia* with all other sections' " (quoting *Jefferson Cty. v. Braswell*, 407 So.2d 115, 119 (Ala. 1981))).

* * *

In sum, in assessing whether a violation of § 106 has occurred, we must determine if the variance between the notice and the enacted law is "material" or concerns the "substance" of the law in question. Burnett contends that § 106, read in light of § 107, means that "[a] repealer provision in a local law that repeals another local law is always material" and therefore that the notice for Act No. 2014-422 violates § 106. Burnett's brief, p. 14.

As for his allegation that Act No. 2014-422 violates § 107, Burnett simply argues that a violation occurred because Act No. 2014-422 was a local law repealing another local law, yet no notice of the repeal was provided to the people of Chilton County because Section 14 was not

included in the published notice, which included the text of S.B. 462, before the addition of Section 14.

* * *

… [E]ven if we were to agree with the Chilton defendants that Section 6 of Act No. 2014-162 violates the Alabama Constitution, the ordinary course would be to see if the portion of the act that is constitutionally infirm could be severed in order to preserve the remainder of the act. *See*, e.g., *King v. Campbell*, 988 So. 2d 969, 981 (Ala. 2007) (observing that "[t]his Court is required to sever and save what can be saved in a statute in the event a portion of the statute is determined to be unconstitutional"). In this instance, only a slight change to Act No. 2014-162 would be necessary: rendering the referendum provided for in Section 6 advisory rather than binding upon the Commission. Section 6 could even be stricken in its entirety and the remainder of Act No. 2014-162 would be coherent and enforceable. If Section 6 was altered or stricken to cure the alleged constitutional defect, Act No. 2014-162 would still be good law, and Act No. 2014-422 would be repealing a law, rather than an unconstitutional act, and, therefore, Section 14 of Act No. 2014-422 would appear to be a material and substantive portion of Act No. 2014-422.

* * *

The trial court further concluded -- and the Chilton defendants urge us to agree -- that even if Act No. 2014-162 is not unconstitutional, it was clearly repealed in its entirety by the enactment of Act No. 2014-422 and that, therefore, the repealer clause of Section 14 of Act No. 2014-422 was superfluous…

* * *

However, repeal by implication also reinforces the problem presented by § 107. Section 107 states that "[t]he legislature shall not, by a ... local law, repeal or modify <u>any</u> ... local law except <u>upon notice being given</u> and shown as provided in" § 106. (Emphasis added.) Section 107 does not state that no notice of repeal is required for laws that

impliedly repeal other local laws. It states that notice is required for "any" local law that repeals another local law. If, as the Chilton defendants contend, Act No. 2014-422 so clearly repealed Act No. 2014-162, then the legislature was required to publish notice of this fact in accordance with § 107, but it has conceded that Section 14 was not included in the published notice for Act No. 2014-422.

* * *

As we noted earlier, § 107 plainly addresses a subset of the laws addressed in § 106. Section 106 addresses all special, private, or local laws not prohibited by § 104, and it requires that published notice of their proposed enactment be given to the people affected by such laws. Section 107 addresses all special, private, or local laws that "repeal or modify any special, private, or local law" and requires that published notice be given to the people affected by such laws. In order for § 107 not to be completely redundant of § 106, it is clear that the "notice" required in § 107 must refer to notice of the repeal, not simply notice of the law itself, which is already covered by § 106. In other words, the purpose of § 107 is to ensure that the people affected by a special, private, or local law repealing another such law are expressly informed that the earlier law is being repealed. *Thus, even when one local law does repeal by implication another local law, § 107 still requires the legislature to specifically inform the people affected by those laws of the fact of the repeal.* (Emphasis Added)

* * *

Remembering that § 107 is to be read *in pari materia* with § 106 is key in assessing the remedy for a violation of § 107. Because the overall purpose is the same for both sections -- notice to the people affected by the law in question -- it follows that the remedy must be the same as well…

* * *

Section 107 requires the legislature to provide published notice of the repeal of "<u>any</u> ... local law" by

another local law. (Emphasis added.) The notice for Act No. 2014-422 did not fulfill this requirement. Therefore, Act No. 2014-422 must be struck down as unconstitutional pursuant to § 107.

H. Amendments During Passage

Although there are differences between the Act as advertised and the act as passed, the trial court is authorized to find that none of the alleged variations between the notice and the act is material. Because the public notice is intended to prevent deception of the public, the notice need not state all the details of the bill, only its substance. "Substance" has been defined as the "essential or material part, the essence, the meaning or abstract ... and not [an act's] mere purpose or subject. *Phalen v. Birmingham Racing Comm'n*, 481 So. 2d 1108 (Ala. 1985).

Tanner
v.
Tuscaloosa County Commission
594 So. 2d 1207 (Ala. 1992)

* * *

Prior to the legislature's adoption of Act 90-323, the bill, as originally proposed, was published in a Tuscaloosa newspaper in accordance with Art. IV, § 106, Ala. Const. 1901. However, after the bill was published, it was amended by the legislature before being enacted into law. ...

* * *

On appeal, all of the parties agree that the provisions added to the act by the amendment constitute a material and substantial change from the bill that was originally published; however, Tanner and the county commission argue that because Act 90-323 contains a severability clause, the trial court erred in declaring the act void in its entirety, rather than simply severing that portion added by the amendment from the balance of the act. On the other hand, the intervenors argue that, assuming that Act 90-323

violates § 106, the trial court properly declared the act void in its entirety. Therefore, given the trial court's holding that the amendment created a material and substantial variance from the bill that was advertised, the narrow issue presented for our review is whether those portions of an act added by an amendment that was not published pursuant to § 106 can be severed from an act that otherwise complied with § 106.

* * *

We find the facts of the present case to be identical with those presented in [*Calhoun County v.] Morgan*, [258 Ala. 352, 62 So. 2d 457 (1952)]. Therefore, in reliance on *Morgan*, we hold that the judgment of the trial court in the present case is due to be affirmed in its conclusion that because the amendment to Act 90-323 was not published in accordance with § 106, the act is void in its entirety.

The appellants argue here that the trial court erred in holding the § 106 violation to be fatal to the entire act. In support of their argument that the part of an act that violates § 106 can be severed from the remainder of the act, the appellants rely principally on *Hamilton v. Autauga County*, 289 Ala. 419, 268 So. 2d 30 (1972), and *Wilkins v. Woolf*, 281 Ala. 693, 208 So. 2d 74 (1968). After considering *Hamilton*, we find the appellants' reliance on that case to be misplaced. Although *Hamilton* did concern the severance of unconstitutional parts of an act, we find *Hamilton* to be distinguishable from the present case, because the act in *Hamilton* was not a local act, but rather, was a general act, to which § 106 did not apply.

* * *

Although it appears that the act in *Wilkins*, like the act in the present case, contained a severability clause, such a clause would have no effect in situations where there is a § 106 violation, because, according to *Morgan*, a § 106 violation is fatal to the entire act. Hence, if the entire act is void as unconstitutional, then there are no remaining valid provisions that may be given effect pursuant to a

severability clause. Therefore, in light of the strong directive in *Morgan* regarding the effect of a § 106 violation, we hold that *Wilkins* misstated the law regarding the relationship between severability and § 106 violations. We further hold that *Morgan* correctly states the rule: if any part of an act violates § 106, then the entire act is void. Therefore, we overrule *Wilkins* to the extent that it permits severance in the fact of a § 106 violation.

The judgment of the trial court declaring Act 90-923 void in its entirety is due to be affirmed.

AFFIRMED.

I. Codification and Publication of Local Laws

Ala. Code § 11-13-1. Codification of county laws; furnishing of copies to county officials.

The county commission may, in its discretion, once in every 10 years cause the laws of the county to be codified, with supplements thereto once in every four years, such codification not to embrace any statute embodied in the Code of Alabama, nor any private act relating to persons or corporations, except town corporations and school districts. Every county officer shall, on his application, be furnished with a copy of such code, the same to be delivered to his successor in office.

Ala. Code § 11-13-2. Publication of legislative laws of local nature -- Authorized.

The county commission of any county may have published, at the expense of the county, within 60 days after the adjournment of each session of the legislature, any or all laws of a local nature, said laws to be published in a newspaper published and at least partly printed in the county, which newspaper shall be permanently established and of general circulation in such county to which such laws relate.

Ala. Code § 11-13-3. Publication of legislative laws of local nature -- Contracts for publication.

> County commissions which desire publication of local acts as provided in this chapter shall procure from the secretary of state certified copies of any laws affecting their respective counties and procure bids for the publication of said laws, and contract with the lowest responsible bidder for the publication of said law for three insertions, and the county commissions may contract for the publication of said laws on the basis of the lowest price in proportion to the circulation of newspapers bidding.

Ala. Code § 11-13-4. Publication of legislative laws of local nature-- Cost.

> The cost of publication to the county shall in no instance exceed the rate now announced by law for legal publications.

Ala. Code § 11-13-5. Publication of legislative laws of local nature -- Furnishing of copies to county and precinct officers; recordation of copies.

> The newspapers selected to publish said laws shall furnish to all county and precinct officers copies of the paper containing such publications; and the judge of probate shall preserve in his record book copies of such publications, which record book shall become a public record in the office of the probate judge.

Ala. Code § 11-13-6. Payment of cost of advertising local bill introduced in Legislature; reimbursement to county commission.

> (a) The county commission shall pay from the county treasury, at the regular legal rate, the cost of the advertising of notice and substance of all local bills which may be introduced in the Legislature by any member of the Legislature from the county, if the notice is signed by the

member, whether the bill is passed by the Legislature or not. If the bill is for the benefit of or in reference to subjects or matters exclusively relating to one or more municipalities in the county, the municipality or municipalities shall reimburse the county for the cost of the advertising. If two or more municipalities are liable to reimburse the county for the cost of advertising the same bill, each municipality shall pay to the county an amount which bears the same ratio to the total cost of advertising as such municipality's population bears to the total population of all the municipalities affected by the bill.

(b) After August 1, 1998, except in the case of a bill for the benefit of or on subjects or matters exclusively relating to one or more municipalities in the county, if a proposed local law raising revenue for a public or private local entity other than the county commission becomes law, the public or private local entity receiving the proceeds of the revenue raising measure shall reimburse the county commission for the cost of advertising the local law from the first revenues generated by the local law. If the proposed local law would raise revenue for two or more local public or private entities, including the county commission or a municipality, each entity shall pay from the first revenues generated by the law, a pro rata share of the cost of advertising based upon the proposed percentage of generated revenue to each entity under the local law. The Legislative Reference Service gives the following notice:

No special, private, or local law can be passed, except in reference to fixing the time of holding courts, unless notice of the intention to apply therefor shall have been published, without cost to the State, in the county or counties where the matter or thing to be affected may be situated. The notice must state the substance of the proposed law and be published at least once a week for four consecutive weeks in some newspaper published in such county or counties. Such publication must have been completed prior to the day on which the bill is introduced.

Proof by affidavit (proof of publication) which verifies that notice has been properly published must be exhibited to the House of Representatives and the Senate, and ONE COPY of such proof must be attached to the original copy of the bill which is offered for introduction.

The county or municipality affected by a local law introduced by a legislator must pay for advertising the notice, if the notice is signed by the legislator, even though the bill is not passed.

AFFIDAVIT OF PUBLICATION

The Birmingham News Company
Publishers of
THE BIRMINGHAM NEWS
Agents for
Birmingham Post-Herald

STATE OF ALABAMA)
County of Jefferson)
Paste Clipping Here

On this ___ day of _____ A.D. two thousand and _____ personally appeared before me, _____ a Notary Public in and for the County and State aforesaid _____ who being duly sworn according to law, declares that he is _____ of "The Birmingham News" and "The Birmingham Post Herald", newspapers published in the City of Birmingham, in the County of Jefferson, State of Alabama, and that the advertisement, a true copy of which is herewith attached, appeared in "The Birmingham News" and "The Birmingham Post-Herald" on the following dates: _____

Signed _____

Subscribed and sworn to before me this ____ day of _____, A.D. 20__.

_____
Notary Public

Chapter 8
Non-Lawmaking Functions

As previously indicated, the Legislature possesses non-lawmaking as well as lawmaking powers. Among the more important non-lawmaking functions performed by the Legislature are the conduct of impeachment proceedings, the exercise of general supervision over the administration of the laws, and the declaration of the results of elections for state officers.

A. Impeachment

Elective constitutional executive officers may be removed from office by impeachment proceedings heard in the Senate, on charges preferred by the House of Representatives. Charges on which impeachment proceedings may be brought include willful neglect of duty, incompetence, intemperance in the use of intoxicating liquors or narcotics, and any offense involving moral turpitude while in office. If the Governor or the Lieutenant Governor were to be impeached, the Chief Justice of the state Supreme Court would preside over the proceedings in the Senate.

Ala. Const. Art. VII, Sec. § 173
Governor, lieutenant governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education, commissioner of agriculture and industries of supreme court.

> (a) The Governor, Lieutenant Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, members of the State Board of Education, Commissioner of Agriculture and Industries, and justices of the supreme court may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith.

(b) The House of Representatives shall present articles or charges of impeachment against those persons identified in subsection (a), specifying the cause to the Senate.

(c) The Senate, sitting as a court of impeachment, shall take testimony under oath on articles or charges preferred by the House of Representatives.

(d) The Lieutenant Governor shall preside over the Senate when sitting as a court of impeachment, provided, however, that if the Governor or Lieutenant Governor is impeached, the Chief Justice, or if the Chief Justice be absent or disqualified, then one of the associate justices of the supreme court, to be selected by the court, shall preside over the Senate when sitting as a court of impeachment. No person may be convicted by the Senate sitting as a court of impeachment without the concurrence of two-thirds of the members present.

(e) If at any time when the Legislature is not in session, a majority of all the members elected to the House of Representatives shall certify in writing to the Secretary of State their desire to meet to consider the impeachment of the Governor, Lieutenant Governor, or other officer administering the office of Governor, it shall be the duty of the Secretary of State immediately to notify the Speaker of the House who, within 10 days after receipt of the notice, shall summon the members of the House to assemble at the capitol on a day to be fixed by the Speaker, but not later than 15 days after receipt of the notice by the Speaker from the Secretary of State, to consider the impeachment of the Governor, Lieutenant Governor, or other officer administering the office of Governor.

(f) If the House of Representatives prefers articles of impeachment, the Speaker of the House shall forthwith notify the Lieutenant Governor, unless he or she is the officer impeached, in which event the President Pro Tempore of the Senate shall be notified, who shall summon the members of the Senate to assemble at the capitol on a specified day not later than 10 days after receipt of the

notice from the Speaker of the House, for the purpose of hearing and trying the articles of impeachment against the Governor, Lieutenant Governor, or other officer administering the office of Governor, as may be preferred by the House of Representatives.

Ala. Const. Art. XIV, § 262. The amendment provides for the appointment of the state superintendent of education by the state board of education and further provides that the superintendent shall serve at the pleasure of the board.

Amend. 328 to the 1901 Constitution removed judges from impeachment under this section and created the Judicial Inquiry Commission in Alabama in Const. Art. VI, Sec. 156. However, **Ala. Const. Art VI, § 158** provides that Art. VII § 173 shall apply to Justices of the Supreme Court.

Ala. Const. Art. VII, § 174, provides for the removal of district, circuit, and probate judges, along with any other judges of any court from which an appeal may be taken directly to the supreme court – in addition to district attorneys and sheriffs – "may be removed from office by any of the causes specified in Section 173, or elsewhere in the constitution, by the supreme court, or under such regulations as may be prescribed by rule of the Supreme Court of Alabama or law." This section also empowers the Legislature to provide for impeachment or removal of other officers than those named in the article.

The investigation into the possible impeachment of Governor Robert Bentley in 2017 triggered a legal challenge over the requirement of the House Judiciary Committee to ensure due process for the Governor. While the case was ultimately dismissed as moot following Governor Bentley's resignation, in a concurrence to the Alabama Supreme Court's opinion, then Chief Justice Stuart expressed the opinion that challenges to the Legislature's impeachment rules are non-justiciable on separation of powers grounds.

Alabama House of Representatives Judiciary Committee et al.
v.
Office of the Governor of Alabama and Governor Robert Bentley
213 So. 3d 579 (Ala. 2017)

* * *

STUART, Justice (concurring specially).

* * *

"The Constitution of Alabama expressly adopts the doctrine of separation of powers that is only implicit in the Constitution of the United States. *Opinion of the Justices No. 380*, 892 So. 2d 332, 334 n. 1 (Ala. 2004). This Court has said that the Alabama Constitution provides that the 'three principal powers of government shall be exercised by separate departments,' and it 'expressly vest[s] the three great powers of government in three separate branches.' *Ex parte Jenkins*, 723 So. 2d 649, 653–54 (Ala. 1998). Section 42, Ala. Const. 1901, provides:

" 'The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.'

"Section 43 provides:
" 'In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.'

" ' "Great care must be exercised by the courts not to usurp the functions of other departments of government. § 43, Constitution 1901. No branch of the government is so responsible for the autonomy of the several governmental units and branches as the judiciary." ' *Piggly Wiggly No. 208, Inc. v. Dutton*, 601 So. 2d 907, 911 (Ala. 1992)(quoting *Finch v. State*, 271 Ala. 499, 503, 124 So. 2d 825, 829 (1960)). Thus, just as this Court will declare legislative usurpation of the judicial power violative of the separation-of-powers provision of our Constitution, *see*, *e.g.*, *Ex parte Jenkins*, *supra*, so it must decline to exercise the judicial power when to do so would infringe upon the exercise of the legislative power. "The separation-of-powers provision of the Alabama Constitution limits the jurisdiction of this Court." *Birmingham–Jefferson Civic Ctr. Auth. v. City of Birmingham*, 912 So. 2d 204, 212 (Ala. 2005).

* * *

Before the circuit court, Governor Bentley maintained that the Judiciary Committee was conducting "impeachment proceedings against the Chief Executive of the State of Alabama in [an] unconstitutional manner." The judiciary's consideration of this matter, however, is limited by the separation-of-powers provision of the Alabama Constitution.

Article VII, § 173, Ala. Const. 1901, provides that the House of Representatives has the responsibility "to consider the impeachment of the governor" and that, "[i]f the house of representatives prefer articles of impeachment," then, following the procedure described in § 173, the governor may be removed from office

> "for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under the color thereof,

or connected therewith, by the senate sitting as a court of impeachment."

Additionally, Art. IV, § 53, Ala. Const. 1901, provides that "[e]ach house shall have power to determine the rules of its proceedings." Unequivocally, the method of removal of the governor rests solely in the legislative branch of government. The Alabama House of Representatives is charged in § 173 with "considering" the impeachment of the governor and has the authority under § 53 to provide the rules to govern the consideration of impeachment, which may include an impeachment investigation, and the method for preferring articles of impeachment.

Here, in accordance with its constitutional duty set forth in Art. VII, § 173, and pursuant to Art. IV, § 53, the Alabama House of Representatives, in April 2016, adopted House Rule 79.1(c), providing that "[t]he [Judiciary Committee shall adopt rules to govern the proceedings before it in order to ensure due process, fundamental fairness, and a thorough investigation, provided that the rules are not inconsistent with this rule." The Judiciary Committee then adopted specific rules pursuant to Rule 79.1(c) governing the procedures for conducting the investigation of, and considering, the impeachment of Governor Bentley. Those actions are in accord—not in conflict—with the Alabama Constitution, which grants this Court no power to sit in judgment of those rules. *See Ex parte Marsh*, 145 So. 3d at 751 ("It is not the function of the judiciary to require the legislature to follow its own rules.").

Because the plain language of Art. VII, § 173, and Art. IV, § 53, Ala. Const. 1901, provides that the method of impeachment of the governor rests in the legislature, courts are required to refrain from exercising judicial power over this matter. The exercise of such power would infringe upon the exercise of clearly defined legislative power. "The judicial branch of government must ' "*never* exercise the legislative and executive powers, or either of them." ' " *Birmingham–Jefferson Civic Ctr.*, 912 So. 2d at 213 (quoting *Ex*

parte James, 836 So. 2d 813, 819 (Ala. 2002), quoting in turn Ala. Const. 1901, Art. III, § 43).

> Because the authority to impeach the governor and the method by which to impeach the governor rests in the Alabama Legislature and is not a function of the judicial branch of government, this case presents a nonjusticiable matter over which the courts do not have jurisdiction.

B. Administrative Supervision

Traditionally, legislative bodies exercise supervision over the administrative establishment through such means as legislation, appropriations, the legislative post-audit, investigations, reports, the legislative veto of executive proposals, and senatorial confirmation of executive appointments.

The legislature through the "Legislative Council" provides supervisory authority over legislative personnel by the respective houses hiring the Secretary of the Senate and Clerk of the House. The council may also provide employment standards for personnel, as well as set the salaries of the Secretary of the Senate, Clerk of the House and Director of the Legislative Services Agency. § 29-5A-1.

The legislature further reviews regulatory agencies and other state agencies they select to either terminate the agency or modify their statutory authority. This is known as "sunset". A legislative committee also reviews of state contracts prior to the contracts becoming effective. The committee may not void the contract but they can delay their implementation. Another supervision authority of the legislature is to review state agency rules as the rules are proposed or amended under the "Alabama Administrative Procedure Act". *See* legislative oversight section for more detailed discussion (*see* Chapter 19 text).

C. Canvassing Election Returns

The Constitution provides that the returns of elections for constitutional executive officers of the state must be transmitted to

the Speaker of the House of Representatives. At the organizational session following the election, the Speaker opens and publishes the returns in the presence of both houses of the Legislature in joint convention. Upon ascertainment of the results, the Speaker declares the election of the person having the highest number of votes for each office. In the event of a tie vote, the Legislature fills the office by joint election. The constitutional provision goes on to say that contested elections for these offices should be determined by both houses of the Legislature in a manner prescribed by law.

Ala. Const. Art. V, § 115
Governor, lieutenant governor, attorney-general, state auditor, secretary of state, state treasurer, and commissioner of agriculture and industries — Returns of election transmitted to speaker of house of representatives; opening and publication of election returns; duties of speaker and legislature ministerial in opening and publication of votes; person having highest number of votes elected; tie votes; contested elections.

> The returns of every election for governor, lieutenant governor, attorney-general, state auditor, secretary of state, state treasurer, superintendent of education*, commissioner of agriculture and industries shall be sealed up and transmitted by the returning officers to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session to which such returns shall be made, open and publish them in the presence of both houses of the legislature in joint convention; but the speaker's duty and the duty of the joint convention shall be purely ministerial. The result of the election shall be ascertained and declared by the speaker from the face of the returns without delay. The person having the highest number of votes for any one of said offices shall be declared duly elected; but if two or more persons shall have an equal and the highest number of votes for the same office, the legislature by joint vote, without delay, shall choose one of said persons for said office. Contested elections for governor, lieutenant governor, attorney-general, state auditor, secretary of state,

state treasurer, superintendent of education, and commissioner of agriculture and industries, shall be determined by both houses of the legislature in such manner as may be prescribed by law.

*Ala. Const. Art. XIV, § 262 now provides for the appointment of the state superintendent of education by the state board of education.

Chapter 9
Readings of Bills

No bill can become law until it has been read on three different days in each house.

However, as established in *Magee v. Boyd*, 175 So. 3d 79, 114 (Ala. 2015), readings of bills that are subsequently amended or substituted may still count toward the required three readings so long as the changes are "germane to and not inconsistent with the general purpose of the original bill."

Ala. Const. Art. IV, § 63
Number of Readings for Bills; Recordation of Votes on Bills; Majority Vote Required for Passage of Bills.

> 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 upon the journals, and a majority of each house be recorded thereon as voting in its favor, except as otherwise provided in this Constitution.

Essentially, these readings correspond to critical stages in the legislative process.

A. First Reading

The first reading of a bill takes place on the day of introduction, if the bill is filed on a legislative day before the house adjourns; otherwise, the first reading takes place on the next legislative day following its filing with the Clerk or the Secretary. At this time, the bill is read by title only, unless a member calls for the reading of it in full. After its introduction, the presiding officer assigns the bill to a committee. No bill may be introduced in the Senate after the 24th legislative day. Senate Rule 11 (2023). At the end of each legislative day, the Clerk and the Secretary

prepare a list of "first readings." This list cites the bill number, the committee to which it has been assigned, and the title of the bill. House members may obtain copies of these "first readings" from the office of the Clerk of the House. *See* Senate Rule 23, 64 (2023). *See* House Rule 86 (2023).

B. Second Reading

After a committee has completed work on a bill, it reports the bill to its house membership when the reports of committees are called for in the daily order of business. Reading the committee report constitutes the bill's second reading. The bill is then placed on the calendar for its third reading and further action at a later stage in the proceedings. *See* Senate Rule 15 (2023). *See* House Rule 6 (2023).

C. Third Reading and Passage

When a bill is on the calendar for a third reading, the question of final passage is before the House. House Rule 85 (2023). At this time the bill is read at length, unless a reading at length is dispensed with by motion or by unanimous consent. Amendments or motions regarding the bill may be offered from the floor, and pending amendments or motions are debated and voted on. In the Senate, after the third reading of any bill it can be further amended only by unanimous consent; however, a motion to commit the bill for further committee consideration is in order at any time before its passage. *See* Senate Rule 33 (2023).

Members of the Senate vote by voice while the House members vote by an electrical roll call system. *See* House Rule 32 (2023).[1] When debate ends, the Legislature votes on final passage. If the necessary majority of the members vote favorably, the bill is passed, correctly engrossed, and endorsed/certified prior to

[1] However, when the House electrical roll call system is not operable, votes shall be viva voce. The names of members shall then be called alphabetically and each member shall answer from his or her own seat. House Rule 32(b) (2023).

transmittal. *See* Senate Rules 22, 34, 67 (2023), House Rule 82 (2023).

Previous roll calls may be used in some circumstances. *See* e.g., House Rule 32. (2023).

Chapter 10
Assignment of Bills

Legislative bodies function primarily through committees in considering whether bills should be enacted into law. Hence, committee action is a vitally important phase of the legislative process. The framers of the present Constitution of Alabama understood the importance of the committee stage and inserted a provision in the Constitution to the effect that no bill might become law until it had been referred to, acted upon in session by, and returned from a standing committee in each house. Ala. Const. Art. IV, § 62, Senate Rule 59 (2023). In each house, the rules specify that committee action may be taken on bills only at committee meetings. Senate Rule 48 (2023), House Rule 72 (2023).

At the present time, the rules provide for 16 standing committees in the Senate and 33 in the House. Senate Rule 48 (2023), House Rule 65 (2023). Their function is to consider bills relating to particular subjects of legislation and to report to the House or Senate recommendations regarding their disposition. A bill dealing with motor vehicles, for example, would be referred in the House to the Committee on Public Safety and in the Senate to the Committee on Commercial, Transportation and Utilities. A bill dealing with schools would be referred in both houses to the Committee on Education. Other committees deal with such subjects as business and labor, banking, insurance, constitutions and elections, conservation, transportation, local government, state government, and local legislation. Generally, the House and Senate committees cover the same subjects.

Bills are referred by the Speaker of the House or the Presiding Officer of the Senate who announces at the time of each bill's introduction the name of the committee that will consider the bill. Senate Rule 23 (2023), House Rule 12 (2023).

Any legislation creating pari-mutuel betting or gambling facility must first be assigned to the appropriate local legislation committee and then be reassigned to the Committee on Tourism and Marketing in the Senate, but an appropriate standing

committee in the House (in the House these are treated as general bills rather than a local one) unless it is for creating or affecting a pari-mutuel betting or gambling facility. In that case, such bill will be treated as a local bill by the House, just as in the Senate, and be assigned to the appropriate local legislation committee. *See* Senate Rule 50 (2023); House Rule 39 (2023). Any local bill dealing with environmental issues is first assigned to the appropriate local committee then referred to the appropriate standing committee in the Senate. Senate Rule 50 (2023). Such a bill is treated as a general bill in the House. *See* House Rule 39 (2023). A bill carrying an appropriation may be referred to a committee other than the appropriate finance and taxation committee if the subject matter requires such referral in the judgment of the Presiding Officer in the Senate. Senate Rule 54 (2023).

Ala. Const. Art. IV, § 62
Referral of bills to standing committees.

> No bill shall become a law until it shall have been referred to a standing committee of each house, acted upon by such committee in session, and returned therefrom, which facts shall affirmatively appear upon the journal of each house.

A proposed act to **"raise revenue"** is defined as one which would affect the amount of revenue flowing into the state treasury, either as an original measure or as an amendment to an act already in existence must originate in the House of Representatives. *Opinion of the Justices No. 264,* 379 So. 2d 1267 (Ala. 1980).

Moreover, an act which does not levy a tax but merely **authorizes**, for example, a county commission to impose a tax on the privilege of severing coal in a county is not constitutionally required to originate in the House. *Yancey & Yancey Constr. Co., Inc. v. DeKalb County Comm'n.*, 361 So. 2d 4 (Ala. 1978).

Likewise, a bill which merely proposed to **change the distribution** of certain funds which are received by the state is not a bill for raising revenue. *Opinion of the Justices No. 248*, 357 So. 2d 331 (Ala. 1978).

A bill which proposes to **decrease ad valorem tax** is not considered to be a revenue bill which should originate in the House of Representatives. *Weissinger v. Boswell*, 330 F. Supp. 615 (M.D. Ala. 1971).

Finally, the **right of the Senate to propose amendments** to revenue measures applies to pending bills which originated in the House and not measures after they have been enacted. *In re Opinions of the Justices No. 56*, 238 Ala. 289, 190 So. 824 (1939).

In order to classify a bill as "revenue raising", "**revenue raising" must be the main purpose of the bill**. The fact that revenue is raised as an incident to the other particulars of the bill is not sufficient to bring it within the terms of this provision. *Beeland Wholesale. Co. v. Kaufman*, 234 Ala. 249, 174 So. 516 (1937).

The provision that no revenue bill shall be passed during the last five days of the session applies only to general revenue bills. *Woco Pep Co. of Montgomery v. Butler*, 225 Ala. 256, 142 So. 509 (1932).

Ala. Const. Art. IV, § 70
Revenue bills to originate in house of representatives; preparation of general revenue bill; amendments to revenue bills by senate; time limit for passage of revenue bills.

> All bills for raising revenue shall originate in the house of representatives. The governor, auditor, and attorney-general shall, before each regular session of the legislature, prepare a general revenue bill to be submitted to the legislature, for its information, and the secretary of state shall have printed for the use of the legislature a sufficient number of copies of the bills so prepared, which the governor shall transmit to the house of representatives as soon as organized, to be used or dealt with as that house may elect. The senate may propose amendments to revenue bills. No revenue bill shall be passed during the last five days of the session.

Chapter 11
Calendars

A. Regular Order Calendar

When a bill is reported from a committee, with or without recommendation, and with or without amendments, it is placed on the regular calendar of bills in the order in which the committee reports were read. As indicated previously, the reading of the committee report at the calendar stage constitutes the second reading of the bill.

In each house the regular order calendar is printed and made available to members daily to show the status of pending bills on third reading. Senate Rule 71 (2023), House Rule 85 (2023). Bills are listed on the calendar by number and sponsor, and must be considered for third reading in that order unless action is taken to consider a bill out of order. Senate Rule 9 (2023), House Rule 11 (2023).

B. Special Order Calendar

When the regular calendar becomes congested with pending legislation, as usually happens during the course of a session, the Rules Committee of each house ordinarily establishes a special order calendar as a means of giving first consideration to the more important bills. *See* Senate Rule 9 (2023), House Rule 11 (2023). As a practical matter, few bills of general statewide concern reach the floor for action until after the establishment of a special order calendar.

Action on bills pending on the regular calendar may also be deferred because of business that must come before the house at a prescribed time. Sunset resolutions, for example, take precedence on the tenth legislative day in the house of the Sunset Committee chairman and no other matters may be considered until the house has completed action on those measures. Ala. Code § 41-20-10.

C. Consent Calendar

House - The Rules Committee may propose a consent calendar of bills. A list of bills for every proposed consent calendar shall be posted by placing notice on the notice boards by number and short title. Before the bills on the consent calendar are considered by the House, the notice shall be posted for at least two legislative days after the date the Rules Committee proposed the consent calendar. A list shall also be placed on the members' desks in the Chamber. A list of proposed consent calendar bills, listed by number and short title and the date they were posted, shall be maintained in the Rules Committee office for review by members and the public. Bills on a consent calendar shall be removed from the consent calendar if eleven members sign their names on the Rules Committee list next to the short title of any bill that the members want removed. Any bill removed from a consent calendar shall be so removed at least one legislative day before the consent calendar is to be considered by the House. The House sponsor may remove a bill from the consent calendar at any time. The consent calendar shall be called in the order of business specified in House Rules 6, 10, and 11 (2023). Once bills have been placed on the consent calendar, they shall not be amended or substituted on the floor except by a committee amendment or substitute. House Rule 11 (2023).

D. Unanimous Consent

Unanimous consent is another device by which a house of the Legislature may allow a bill that has received its second reading to be considered out of order. If any member of the particular house objects to a piece of legislation brought up by another legislator, the bill cannot be considered. Late in the session, the House of Representatives may call the roll and permit each Representative to call up a piece of non-controversial legislation (out of order) for consideration and passage by the House. A form of this practice has become known in the House as "playing baseball," as also discussed in Chapter 7 "Local Legislation" Section B "Procedure for Passage of Local Act." The House member is then given 10 minutes to pass the bill. If debate extends beyond the time limit,

the bill is withdrawn and reverts to the regular order calendar. The Senate by agreement creates a special calendar whereby each Senator is allowed one bill of their choosing to be considered by the Senate when their turn is called in a random selection process. *See also* Mason's Manual of Legislative Procedure, Sec. 283 (2020).

Chapter 12
Floor Procedure

Bills are not debatable until called for third reading. When a bill is called, members may debate its merits and offer motions or amendments from the floor. First, a legislator must be recognized by the presiding officer and obtain permission to speak. When any member desires to speak in the House of Representatives, the Legislator must gain recognition by pressing the speak button and request recognition from the Speaker. When recognized, the Legislators speak from a designated podium for their allotted time, unless physically impaired. House Rule 51 (2023). When two or more Senators rise to speak at the same time, the Presiding Officer names the Senator who will speak first. Senate Rule 45 (2023). In general, no member of the House shall speak for more than 10 minutes, nor more than twice on the same issue without permission of the House. House Rule 52 (2023).

Debate in the Senate historically has been unlimited. However, the Rules Committee may report a special rule that the debate cease at a certain hour and a vote be taken. The consideration of this special rule will not exceed 20 minutes and a three-fifths vote of the members is needed to limit the debate. In addition, a cloture petition signed by 21 or more Senators can cut off debate. Senate Rule 20 (2023). An exception to this rule are appropriation bills which require only a majority vote, 18 members, to cut off debate. Further, no member may speak more than twice on any question without permission of the Senate. Nor may a Senator speak more than one hour at each time on bills and 15 minutes on resolutions. Points of personal privilege are limited to 5 minutes. Senate Rule 39 (2023).

Furthermore, members should refrain from profanity and the abusive and derogatory language when referring to other members. House Rule 50 (2023), Senate Rule 40 (2023).

In the Senate, when a question is under debate, Senate Rule 18 (2023) states only the following motions may be entertained, and they have precedence in the order indicated:

1. To adjourn,
2. To adjourn to a day certain,
3. To recess,
4. To table,
5. To carry over,
6. To carry over to the call of the chair,
7. To recommit,
8. To substitute, or
9. To amend.

The House of Representatives classifies the following as procedural motions under House Rule 26 (2023):

Not Subject to Debate or Substitute Motions:

1. To adjourn
2. To lay on the table
3. To remove from the table
4. To move the previous question

Subject to Limited Amendment Motions, but Not Debate:

5. To recess

Subject to Limited Debate but no Substitute Motions:

6. To suspend the rules

Subject to Limited Debate

7. To adjourn to a time certain
8. To carry over to a time certain

A. Voting on Amendments

The motion to amend is the means by which a bill is altered by the legislature's adding new provisions, striking out existing provisions, or substituting new provisions for existing language. Both House and Senate rules contain regulations relating to the motion to amend.

Both houses require that amendments to bills must strike through the existing language to be deleted and underscore the language to be inserted. Amendments to bills must also refer to the line or lines to be amended by number. Joint Rule 12 (2023).

The following simple examples, from the Alabama Senate Manual, show how amendments may be made to a pending bill.

(1) "I move to amend Senate (or House) Bill No. ___, page 1, line 13, by striking out the words: 'and call' after the word 'submission.'"

(2) "I move to amend Senate (or House) Bill No. ___, by striking out Section 2 in its entirety, as it appears on page 1, at lines 19 and 20, and renumbering the remaining sections of the bill."

If extensive amendments are to be made to a pending bill, a substitute bill should be offered for the original measure. In this event, the bill must be redrafted to incorporate the desired insertions and to delete the provisions to be stricken. The substitute is considered for all practical purposes as the original bill, but the substitute is an amendment. In amending bills, it must be remembered, however, that no bill may be so altered during its passage through the Legislature as to change its original purpose. Also, amendments cannot materially change or contradict the substance of a proposed special, private, or local bill which has been published in a newspaper of general circulation. Ala. Const. Art. IV, § 106, *See Deputy Sheriffs Law Enforcement Ass'n of Mobile Cnty. V. Mobile Cnty.*, 590 So. 2d 239 (Ala. 1991) (interpreting Ala. Const. Art IV, § 106).

When a question under debate contains several points, a member may call for a division of the question. But, under Senate Rule 25 (2023), no motion for a division of a motion to strike out and insert words is in order.

Lee
v.
City of Decatur
233 Ala. 411, 172 So. 284 (Ala. 1937)

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The bill is challenged as violative of that provision of Section 64 of the Constitution which reads: "... no amendment to bills by one house shall be concurred in by the other, unless a vote be taken by yeas and nays, and the names of the members voting for and against the same be recorded at length on the journal."

The bill originated in the House, was there amended on third reading, the amendment and the yea and nay vote thereon being entered upon the House Journal. As amended, the bill was passed by yea and nay vote entered on the House Journal, and, on order of the House, sent to the Senate without engrossment.

In the Senate the bill had three readings and was passed by yea and nay vote without amendment in the Senate. All these proceedings appear in regular order on the Senate Journal.

Appellant argues that under the above-quoted provision of Section 64, it was necessary for the Senate to adopt the House amendment by yea and nay vote, the amendment and yea and nay vote thereon being entered on the Senate Journal.

The argument misconstrues such provision. It applies to amendments made in either house to bills theretofore passed by the other house.

The House bill as amended therein went to the Senate to be considered in its entirety. The Constitution does not contemplate that the bill as finally passed by the House should be taken up piecemeal in the Senate. The passage of the bill as it came from the House, duly shown

on the Senate Journal, makes it entirely certain that the Senate passed the identical bill passed by the House. If the Senate had amended the bill as passed by the House it would have been necessary for the bill to be returned to the House for concurrence in or rejection of the Senate amendment. This is the class of amendments covered by the provision of Section 64 in question.

* * *

B. Number of Votes Needed for Passage of a Bill[1]

A statute must be passed by a majority of a quorum of each house of the legislature unless a larger portion of the quorum is necessary. *In re Opinions of the Justices No. 30*, 228 Ala. 140, 152 So. 901 (1934). In general, this is the rule for passage of all bills in the Alabama Legislature. Ala. Const. Art. IV, § 52 defines a quorum as being a majority of the members of the house of the legislature. *See* Senate Rule 43 (2023), House Rule 49 (2023).

Birmingham-Jefferson Civic Center Auth.
v.
City of Birmingham
912 So. 2d 204 (2005)

In 2001 the Legislature passed Act 2001-545 imposing a three percent sales tax by a vote of 23 yeas, 0 nays, and 3 abstentions in the Senate and a vote of 21 yeas, 4 nays and 55 abstentions in the House of Representatives.

The trial Court agreed with the City and County's interpretation of Section 63 of the Constitution and ruled that the requirement in Section 63 that a "majority of each house" cast a favorable vote means a majority of a quorum, which in the House of Representatives would mean that at least 27 members must vote affirmatively on a bill for it to pass. The trial court noted that act received only 21 vote, 6 short of the minimum needed for passage… Consequently

[1]Initially by Cassady, Joe, "Votes Needed for Passage of a Bill in the Alabama Legislature", Student Paper (1982).

failing to meet the constitutional requirement and therefore void.

The legislature's interpretation of Section 63 is reflected in the rules and practice of the legislature. House Rule 93 provides that any matter not specifically addressed by rules of the house shall be governed by *Mason' Manual of Legislative Procedure* which provides:

"A majority of legal votes cast, a quorum being present, is sufficient to carry a proposition unless a larger vote is required by a constitution, charter, or controlling provision of law. Members present but not voting are disregarded in determining whether an action carried"

The trial court in effect ruled the legislature's manner of conducting its own business in this case was unconstitutional.

The Constitution of Alabama expressly adopts the doctrine of separation of powers that is only implicit in the Constitution of the United States. *Opinion of the Justices No. 380,* 892 So. 2d 332, 334 n. 1 (Ala.2004). This Court has said that the Alabama Constitution provides that the "three principal powers of government shall be exercised by separate departments," and it "expressly vest[s] the three great powers of government in three separate branches." *Ex parte Jenkins,* 723 So. 2d 649, 653-54 (Ala.1998). Section 42, Ala. Const. 1901, provides:

"The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another."

Section 43 provides:

"In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men."

"'Great care must be exercised by the courts not to usurp the functions of other departments of government. § 43, Constitution 1901. No branch of the government is so responsible for the autonomy of the several governmental units and branches as the judiciary.'" *Piggly Wiggly No. 208, Inc. v. Dutton,* 601 So. 2d 907, 911 (Ala.1992) (quoting *Finch v. State,* 271 Ala. 499, 503, 124 So. 2d 825, 829 (1960)). Thus, just as this Court will declare legislative usurpation of the judicial power violative of the separation-of-powers provision of our Constitution, *see, e.g., Ex parte Jenkins, supra,* so it must decline to exercise the judicial power when to do so would infringe upon the exercise of the legislative power.

Section 53, Ala. Const. 1901, specifically commits to each house of the legislature the "power to determine the rules of its own proceedings." Our Constitution contains no identifiable textual limitation on the legislature's authority with respect to voting procedures that would permit judicial review of those procedures. There is also a lack of judicially discoverable and manageable standards for resolving whether the House of Representatives constitutionally passed Act No. 288 and Act No. 357. Finally, for the judicial branch to declare the legislature's procedure for determining that a bill has passed would be to express a lack of the respect due that coordinate branch of government. For each of these three reasons, this case presents a non-justiciable political question. We, therefore, vacate the trial court's judgment and dismiss this appeal."

There are at least eight instances in the constitution where it is specifically provided that a named proportion of

the entire elected membership of each house shall favor legislation along stated lines, as a prerequisite to the valid enactment of proposed law. These are Ala. Const. Sections 70, 71.01, 73, 76, 125, 173, 284, and 286. *See State v. Skeggs*, 154 Ala. 249, 46 So. 268 (Ala. 1908).

1. Overriding Governor's Veto

Ala. Const. Art. V, § 125
Presentation of bills to Governor for Signature

> ... If the governor's message proposes no amendment which would remove his objections to the bill, the house in which the bill originated may proceed to reconsider it, and if a majority of the whole number elected to that house vote for the passage of the bill, it shall be sent to the other house, which shall in like manner reconsider, and if a majority of the whole number elected to that house vote for the passage of the bill, the same shall become a law, notwithstanding the governor's veto. If the governor's message proposes amendment, which would remove his objections, the house to which it is sent may so amend the bill and send it with the governor's message to the other house, which may adopt, but cannot amend, said amendment; and both houses concurring in the amendment, the bill shall again be sent to the governor and acted on him as other bills. If the house to which the bill is returned refuses to make such amendment, it shall proceed to reconsider it; and if a majority of the whole number elected to that house shall vote for the passage of the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered, and if approved by a majority of the whole number elected to that house, it shall become a law. ...

If the Governor does not approve a bill that is presented to him in the five days before the legislature's final adjournment, the bill dies, because of these combined factors:

(1) the Governor must approve it or,
(2) if the Governor disapproves it, it must be repassed by

the legislature, thus overriding the Governor's veto, or

(3) the bill may not become law by the passage of time —if the Governor neither approves nor disapproves **a bill is presented in the last five days, it cannot become law by the passage of time. The Governor must sign the bill within 10 days after adjournment;** the legislature cannot act on the bill, of course, after its final adjournment. When the Governor does not approve a bill and thus allows it to die, the Governor is said to have exercised a "pocket veto."

The Governor does not accomplish a pocket veto by taking any affirmative action— returning the bill to the legislature with his objections or amendments, for example — but, rather, the Governor accomplishes a pocket veto by inaction, by not affirmatively approving the bill. *Hunt v. Hubbert,* 588 So. 2d 848, 1991(Ala. 1991).

Allowing the Governor time after adjournment to decide whether to approve a bill or let it die does not provide the Governor a post-adjournment item veto. Section 125 does not even allude to a veto of items within a bill. The only post-adjournment "veto" created by § 125 is the "pocket veto" — a veto of an entire bill achieved by the Governor's doing nothing to that bill. *Hunt v. Hubbert*, 588 So. 2d 848, (Ala. 1991).

When an executive amendment is proposed, that amendment must be approved by the legislature to become law. Presumably, if the item veto is exercised prior to final adjournment, the items approved become law, while the items vetoed are treated in accordance with the provisions of § 125 concerning after-veto procedures. Section 126 is not redundant in relation to § 125, regardless of whether the item veto of § 126 can be used by the Governor after the legislature's final adjournment. *Hunt v. Hubbert*, 588 So. 2d 848 (Ala. 1991).

When the journal of a house of the legislature indicates that a bill was properly passed, the court cannot consider extrinsic evidence regarding the voting of legislators. *Ala. Citizens Action*

Program v. Kennamer, 479 So. 2d 1237 (Ala. 1985).

2. *Impeachment*

Ala. Const. Art. VII, § 173
Impeachments

* * *

(e) If at any time when the Legislature is not in session, a majority of all the members elected to the House of Representatives shall certify in writing to the Secretary of State their desire to meet to consider the impeachment of the Governor, Lieutenant Governor, or other officer administering the office of Governor...

* * *

3. *Constitutional Amendments*

Ala. Const. Art. XVIII, § 284
Amendment of Manner of Proposing Amendments

... [I]f upon the third reading three-fifths of all the members elected to that house shall vote in favor thereof, the proposed amendments shall be sent to the other house, in which they shall likewise be read on three separate days, and if upon the third reading three-fifths of all of the members elected to that house shall vote in favor of the proposed amendments, the legislature shall order an election by the qualified electors of the state upon such proposed amendments, to be held either at the general election next succeeding the session of the legislature at which the amendments are proposed or upon another day appointed by the legislature, not less than three months [90 days] after the final adjournment of the session of the legislature at which the amendments were proposed. ... [I]f it shall thereupon appear that a majority of the qualified electors who voted at such election upon the proposed amendments voted in favor of the same, such amendments shall be valid to all intents and purposes as parts of this Constitution. ...

See State v. Manley, 441 So. 2d 864 (Ala. 1983).

4. Constitutional Convention

Ala. Const. Art. XVIII, § 286
Manner of Calling Convention for
Purpose of Altering or Amending Constitution

No convention shall hereafter be held for the purpose of altering or amending the Constitution of this state, unless after the legislature by a vote of a majority of all the members elected to each house has passed an act or resolution calling a convention for such purpose the question of convention or no convention shall be first submitted to a vote of all the qualified electors of the state, and approved by a majority of those voting at such election. No act or resolution of the legislature calling a convention for the purpose of altering or amending the Constitution of this state, shall be repealed except upon the vote of a majority of all the members elected to each house at the same session at which such act or resolution was passed; ...

5. Budget Isolation

Ala. Const. Art. IV, § 71.01
(Amendment No. 448)
Paramount Duty of Legislature to Make Basic
Appropriations at Regular Sessions

(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, ... 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.

Beginning with the 1985 Regular Session of the legislature, Ala. Const. Section 71.01 states a duty of the Legislature "[is] to make basic appropriations at regular sessions." By the second legislative day, the Governor must submit a proposed budget to the legislature. No other bill shall be signed by either the presiding officer of the house or senate and transmitted to the other house until bills making basic appropriations for the ensuing budget period have been signed by the presiding officer of each house and presented to the governor.

This requirement does not affect the adoption of resolutions or the conduct of other legislative functions that do not require a third reading. Either house may pass a resolution declaring that budget isolation does not apply to a particular bill. The vote must be not less than a three-fifths of a quorum present. This requires 18 of the 35 senators to be present, thus satisfying the requirement of a quorum, and three-fifths of the 18 (or 12) must vote affirmatively. 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. *Opinion of the Justices No. 328*, 524 So. 2d 365 (Ala. 1988).

6. Number of Votes Needed to Pass Revenue Bills

Ala. Const. Art. IV, § 70
Revenue bills to originate in house of representatives; preparation of general revenue bill; amendments to revenue bills by senate; time limit for passage of revenue bills.

All bills for raising revenue shall originate in the house of representatives. The governor, auditor, and attorney-general shall, before each regular session of the legislature, prepare a general revenue bill to be submitted to the legislature, for its information, and the secretary of state shall have printed for the use of the legislature a sufficient number of copies of the bill so prepared, which the governor shall transmit to the house of representatives as soon as organized, to be used or dealt with as that house may elect. The senate may propose amendments to revenue bills. No revenue bill shall be passed during the last five days of the session.

Opinion of the Justices No. 166
269 Ala. 676, 115 So. 2d 484 (Ala. 1959)

[The legislature sought an advisory opinion on a bill which read in part: "To apply in, but only in, counties which have a population of 500,000 or more, according to the last or any subsequent Federal Census, and which counties are, or hereafter become, Wet Counties under Section 68 of Title 29 of the 1940 Code of Alabama; and to require the payment to such counties of a license tax, in addition to all other taxes and licenses required by law, of ten cents on each quantity of less than one half pint, and twenty-five cents on each one half pint or more . . . and to provide for the ascertainment, collection, payment and distribution of such license tax ... and to prescribe penalties and fix punishment for the violation of any of the provisions of this Act."

The court was asked: "Is the bill a 'revenue bill' that

cannot be passed within the last five days of a session of the legislature without violating Section 70 of the Constitution?"].

* * *

We answer this question in the negative. Although the bill levies a tax, it is not a "revenue bill" within the meaning of the last sentence of Section 70 of the Constitution of 1901. That constitutional limitation on the legislative power applies only to the general revenue bill. *In re Opinions of the Justices No. 13*, 223 Ala. 369, 136 So. 589 (1931); *Woco Pep Co. of Montgomery v. Butler*, 225 Ala. 256, 142 So. 509 (1932); *In re Opinions of the Justices No. 42*, 233 Ala. 463, 172 So. 661 (1937); *Dorsky v. Brown*, 255 Ala. 238, 51 So. 2d 360 (1951).

* * *

Ala. Const. Art. IV, § 71
Restrictions on general appropriation bill.

The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for interest on the public debt, and for the public schools. The salary of no officer or employee shall be increased in such bill, nor shall any appropriation be made therein for any officer or employee unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

Advisory Opinion No. 331
582 So. 2d 1115 (Ala. 1991)

* * *

"3. Does House Bill 204 as engrossed violate Section 71 of the Constitution of 1901 which provides in part, "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive,

legislative, and judicial departments of the state, for interest on the public debt, and for the public schools ... . All other appropriations shall be made by separate bills, each embracing but one subject.'?

* * *

General appropriation bills are excepted from the "one subject" requirement of Section 45 of the Constitution, as are "general revenue bills, and bills adopting a code, digest, or revision of statutes," but the overall purpose of Section 45 is broad enough to apply to bills that are excepted specifically.

* * *

Amended House Bill 204 is similar to the bill made the subject of the constitutional challenge in *Wallace State Community College v. Alabama Comm'n on Higher Educ.*, 527 So. 2d 1310 (Ala. Civ. App.), cert. denied (Ala.1988), in that the title of House Bill 204 makes no mention of the substance of Sections 3 and 4, which limit the powers otherwise granted to state departments by Code provisions or statutes and also alter other provisions of law relating to the administration of the distribution and receipt of state monies. We, therefore, opine that Sections 3 and 4 of the amended Bill, by restricting the means by which the various agencies of state government may spend the funds appropriated, create additional subjects in the Bill; and as we have already pointed out, the amended Bill would restrict the general powers of administration heretofore granted by other legislation. Thus, we are of the opinion that House Bill 204, as amended and substituted, would violate Section 45 of the Alabama Constitution of 1901.

Your question 3 -- whether House Bill 204 as engrossed embraces more than appropriations -- is also answered in the affirmative.

* * *

The intent of the people of Alabama, as expressed in Section 71, is clear. General appropriation bills should

"embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for interest on the public debt, and for the public schools." ... It would appear that a fair interpretation of this addition to Section 71 would be that appropriations should be made to agencies in the manner already provided for by law. Clearly, it would seem that the legislature should not be permitted to use a general appropriation bill as a means to repeal provisions of law establishing departments and agencies and granting to those departments and agencies the power to hire necessary employees and to make necessary purchases of equipment.

This Court has steadfastly adhered to the principle of law that an appropriations bill should include only matters that are cognate and germane to that purpose. In *Alabama Educ. Ass'n v. Bd. of Trustees of the Univ. of Alabama.*, 374 So. 2d 258 (Ala. 1979), this Court was presented with a litigated case that had several striking similarities to the facts stated in your request for an advisory opinion. There, the Alabama legislature had included in the education appropriation budget a provision making the appropriations conditional upon each educational institution's furnishing its employees, upon an employee's request, a dues check-off for the Alabama Education Association. The so-called "dues check-off" requirement in the appropriation bill was challenged on grounds that it violated both Section 45 and Section 71 of the 1901 Constitution. This Court held that there was no mention of the "dues check-off" in the title of the bill and thus, that there was "no warning or notice to the members of the legislature nor to the public that 'dues check-off' [was] required as a *prerequisite* to receiving an appropriation." 374 So. 2d at 262. This Court continued:

"If this Act is not violative of § 45 or § 71, then there is little, if any, room for operation of those sections and extensive 'logrolling' would result *to the detriment of the citizens of this state*.

"If this Act does not violate § 45 or § 71, then any appropriation bill could carry in its body a *hidden proviso* that no judge, no legislator, nor the executive could receive the appropriations of his respective office until that official performs some act as a prerequisite."

"If this were permitted, *no legislator, no public official nor the public* would know of the existence of the *hidden proviso* without *reading the entire bill*. To require reading the entire bill so as to discover its pertinent provisions would clearly fly in the teeth of the requirements of § 45." 374 So. 2d at 262 (emphasis original).

Section 71 provides that the legislature may, by separate bill or bills, repeal laws that create and grant powers to the various departments and agencies of the state, unless prohibited from doing so by other provisions of the state or federal Constitution, of course, but the legislature cannot, in our opinion, in view of the prohibition so clearly expressed in Section 71, include such provisions in the general appropriations bill.

Based on the foregoing reasons, we express our opinion that House Bill 204, as amended and substituted, does violate Section 71 of the Constitution of Alabama, 1901.

7. Appropriations to Charities

Ala. Const. Art. IV, § 73
Appropriations to charitable or educational institutions not under absolute control of state.

No appropriation shall be made to any charitable or educational institution not under the absolute control of the state, other than normal schools established by law for the professional training of teachers for the public schools of the state, except by a vote of two-thirds of all the members elected to each house.

Alabama Educ. Ass'n
v.
James
373 So. 2d 1076 (Ala. 1979)

Per Curiam.

[At issue in this case was whether the Alabama Student Grant Program violated the Constitution of Alabama of 1901?]

* * *

On August 2, 1978, House Bill 146 was sent to Governor George C. Wallace for his signature of approval after receiving a majority of the votes in both the House and Senate; thereafter, Governor Wallace affixed his signature to House Bill 146 which thereupon became Act No. 90, Acts of Alabama, Special Session, 1978. Act No. 90 basically established a student assistance program in the state which provided state grants for eligible students who are bona fide residents of Alabama. Such grants would be paid to certain approved institutions of post secondary education in Alabama on behalf of such eligible students. The Act further designated the Alabama Commission on Higher Education (ACHE) as the administrator of the program and directed it to establish various procedures and regulations concerning the availability of grants, applications for grants, approval and award of grants, renewal of grants, and revocation of grants. Act No. 90 also prohibited the use of grants for sectarian purposes; prohibited the use of money raised for the support of public schools to support schools of a predominantly sectarian or denominational character; required the periodic auditing of approved institutions; and prescribed other regulatory functions. Act No. 90 was separately funded by a $3,000,000 line item contained in the General Education Appropriation Bill, Act No. 12, Acts of Alabama, Second Special Session 1978.

* * *

The argument that the Act violates Article IV, Section

73 is weak and must fail. Article IV, Section 73, states that a two-thirds vote is required for any appropriation to any charitable or educational institutions not completely under the control of the state. Plaintiffs/appellants contend the Act was not passed by a two-thirds vote. This is true, but irrelevant. A two-thirds vote was not required because the Act did not appropriate any money. The program structured by the Act was funded by a separate appropriation bill which did receive a two-thirds vote.

* * *

For the above stated reasons we find the lower court correctly decided the merits of this case; therefore, its judgment is due to be, and is, affirmed.

Magee v. Boyd, 175 So. 3d 79 (2019) addressed the question of whether "appropriation" in § 73 includes tax credits granted to the parents of children enrolled in failing schools and to taxpayers who donated to organizations which grant scholarships to such students. The Court found that because these credits were granted to individual tax payers, § 73 was not implicated. Additionally, the Court expressed that "appropriation" as used in § 73, does not include tax credits, based upon existing case law and the commonly accepted definition of "appropriation."

8. Local Legislation

Birmingham-Jefferson Civic Ctr. Auth.
v.
Birmingham
912 So. 2d 204 (2005)

The City and the County argue that the term "house" in the phrase "a majority of each house" in § 63 means a quorum of that house, and they allege that neither Act No. 288 nor Act No. 357 was passed by a majority of a quorum of the House of Representatives.

The legislature is made up of two houses: the House of Representatives and the Senate. The House of Representatives is composed of 105 members and the Senate of 35. Section 52, Ala. Const. 1901, provides that in order for each house to do business, a quorum, that is, a majority of the members, must be present. A quorum of the House of Representatives is 53 members; a quorum of the Senate is 18 members. The City and the County contend that the word "house" as used in § 63 actually means a quorum of the house and that a bill must receive a minimum of 27 favorable votes (a majority of the quorum of 53) in the House of Representatives in order to become law.

Act No. 288, was introduced and given its first reading, and it was read again on each of two different days. On June 11, 2003, the date of the bill's third reading, the House of Representatives convened; 101 of its 105 members were present, thus constituting a quorum. House Bill 769 received 21 yea votes, 4 nay votes, and 55 abstentions; House Bill 769 was delivered to the Senate, where it was read three times and, on June 16, passed by a vote of 23 yea votes, 0 nay votes, and 3 abstentions. The bill was then returned to the House of Representatives and delivered to and signed by the Governor.

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.

This interpretation of § 63 is reflected in the rules and practice 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* (1989 ed.). With respect to voting procedure, the House adheres to § 510 of *Mason's Manual*, which provides:

"A majority of the legal votes cast, a quorum being present, is sufficient to carry a proposition unless a larger vote is required by a constitution, charter, or controlling

provision of law. Members present but not voting are disregarded in determining whether an action carried."

It is undisputed that for at least 30 years the legislature's interpretation of § 63 has been consistently applied as the parliamentary practice of the Alabama House of Representatives.

Section 63, Ala. Const. 1901, states that "no bill shall become a law, unless ... a majority of each house be recorded [upon the journals] as voting in its favor." The question presented in the case before us today is whether the rules and procedure by which the Alabama House of Representatives determined that the bills that became Act No. 288 and Act No. 357 each received a majority vote of the House are subject to judicial review. Section 53, Ala. Const. 1901, expressly provides that "[e]ach house shall have power to determine the rules of its proceedings." The power of the legislature to determine the rules of its own proceedings is "unlimited except as controlled by other provisions of our Constitution," and "unless controlled by other constitutional provisions the courts cannot look to the wisdom or folly, the advantages or disadvantages of the rules which a legislative body adopts to govern its own proceedings." *Opinion of the Justices No. 185*, 278 Ala. 522, 524-25, 179 So. 2d 155, 158 (1965).

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. We conclude that there is a textually demonstrable constitutional commitment to the legislature of the question of how to determine what constitutes a "majority of each house ... voting in [the bill's] favor." *See* Nixon, 506 U.S. at 230, 113 S. Ct. 732 (1993). Therefore, whether the legislature conducted its internal voting proceedings in

compliance with § 63 is a non-justiciable issue.

C. Sunset Bills

The legislature in Ala. Code § 41-20-3 enumerated those agencies that would automatically terminate unless continued by legislative act. To ensure that the legislature would be able to consider bills to continue the agencies reviewed in a particular year, Ala. Code § 41-20-10 provides for debate and voting. Voting must commence on the tenth legislative day of the regular session, one hour after the convening of the house of which the chairman of the Sunset Committee is a member. Likewise, voting is to commence in the other house on the fifth legislative day after passage in first house. Voting on the sunset bills is the first order of business, from day to day, until voting on them is completed. However, either house may, by a three-fifths vote of those members present, consider other business before that house.

Debate is limited to one hour, and it must be continuous and uninterrupted. An additional hour of continuous and uninterrupted debate is permitted by a two-thirds vote of the house considering the bill. An additional hour of debate is granted only once per bill. In the event the bill is amended by the second house and returned to the originating house, the originating house is permitted one hour of debate upon return of the bill with an additional hour of debate if supported by a two-thirds vote of the members.

D. Number of Votes Needed for Passage During a Special Session

Ala. Const. Art. IV, § 76
Restrictions on Legislation at Special Sessions ...

> When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by vote of two-thirds of each house. ...

Ala. Const. Art. V, § 122 gives the governor the power to call special sessions. When a special session is called, there must be a proclamation of the extraordinary subjects to be voted on. If the subject is covered in the proclamation, all that is needed to pass a bill on the subject is a majority vote of each house. This limits the legislative agenda of special sessions. A subject not included in the Governor's call may be included for consideration during the special session, but this action requires a two-thirds vote of each house.

Ala. Const. Art. IV, § 71.01 provides that no bill (other than a bill making basic appropriations) shall be signed by the presiding officer of either house until the basic appropriation bills are presented to the governor, unless a house first passes a resolution, by vote of three-fifths of a quorum present, declaring that a particular bill be taken up for consideration.

Opinion of the Justices No. 189
Supreme Court of Alabama
281 Ala. 20, 198 So. 2d 304 (Ala. 1967)

> [The original proclamation of the Governor calling the extraordinary session of the Legislature for March 2, 1967, then in progress, did not include matters relating to the taxation of aviation fuels. Later, on March 14, 1967, the Governor sought to amend the proclamation by including "Legislation to amend or modify existing law regarding the taxation of fuel used for aviation and the distribution of proceeds from the tax imposed on aviation fuel."
>
> The legislature asked the question: "Would the legislation proposed by said H.B. 82 require a vote of two-thirds of each house for passage under Article 4, Section 76 of the Constitution?"].
>
> * * *
>
> The effect of your question is whether the Governor could amend the call for an extraordinary session of the Legislature so as to include H.B. 82... . If the call could be

legally amended, then H.B. 82 could be passed by a majority vote of either house of the Legislature. If the call could not be amended by the Governor, then H.B. 82 would be subject to the two-thirds majority vote as required by Sec. 76 of the Constitution, which provides:

"When the legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session, except by a vote of two-thirds of each house. Special sessions shall be limited to thirty days."

The general purpose of Sec. 76 is to have the Legislature deal primarily with the subjects of legislation for which it is concerned, without entirely excluding other legislation enacted by a two-thirds vote of each house. *In re Opinions of Justices No. 41*, 233, Ala. 185, 171 So. 902 (Ala. 1936).

Section 122 of the Constitution provides:

"The governor may, by proclamation, on extraordinary occasions, convene the legislature at the seat of government, or at a different place if, since their last adjournment, that shall have become dangerous from an enemy, insurrection, or other lawless outbreak, or from any infectious or contagious disease; and he shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary."

The justices of this court have stated that there is no authority for the courts to question the decision of the Governor in the exercise of his power under Sec. 122 of the Constitution to call an extraordinary session of the Legislature. *In re Opinion of the Justices No. 74*, 249 Ala. 153, 30 So. 2d 391 (Ala. 1947).

It will be noticed that Sec. 122 requires the Governor to "state specifically in such proclamation each matter concerning which the action of that body is deemed

necessary"; and Sec. 76 requires that there shall be no legislation upon subjects other than those designated in the call except by a two-thirds vote.

* * *

This court said in *State v. Skeggs*, 154 Ala. 249, 46 So. 268: "We therefore conclude that the intent expressed by section 76 is to prohibit legislation - the enactment of a law - upon subjects outside those designated in the proclamation unless two-thirds of each House favor the enactment."

Chapter 13
Engrossment and Enrollment

When a bill is passed by the originating house it is sent to the enrolling-engrossing department of that house for engrossment. Engrossment is the process of retyping to add in amendments, producing a copy of the bill as it was amended in the house in which it originated, preparatory to its transmittal to the second house. An engrossed bill is checked for accuracy by the Committee on Rules before its transmittal by the Secretary or the Clerk to the other house. In actual practice, however, bills are sometimes ordered forward without engrossment.

Ala. Code § 29-1-15
Papers and documents of legislature - Engrossed copies of laws, etc., to be preserved.

> The engrossed copies of all laws and joint resolutions passed by the Legislature must be preserved by the Secretary of the Senate and Clerk of the House, and deposited in the office of the Secretary of State.

When a bill has passed both houses in identical form, it is enrolled (that is, typed in final form as it was passed by the Legislature), signed by the presiding officer of each house, and transmitted to the Governor. The enrolling clerks in each house have responsibility for enrollment of the bills that originated in that house. Upon completion of enrollment, the bill is compared by the Committee on Rules in the house of origin with the copy of the bill as it passed both houses. If the enrolled bill is found correct, the committee reports it ready for signature. *See* Senate Rules 48, 64, 65, 66 (2023). *See* House Rules 80, 82 (2023). *See* Joint Rules 2,5 (2023).

Enrollment is more than a mere formality: it represents the final language of a law as adopted by the Legislature. During the evolution of a law as it is considered by committees in both houses, debated upon the floor, and sometimes considered by a joint committee, the proposed law changes. Amendments are added,

language is deleted and changed, and the final bill adopted as law may differ significantly from the piece of legislation initially introduced. The enrolled bill represents a definitive copy of what exactly is the law.

Only when there is a question about the language of an engrossed law does this process take on significance. The standard applied by the court in such controversies is whether a "material variance" exists between the enrolled bill and the records of the House and Senate Journals. If a "material variance" is found to exist, the court is likely to order a change in the law.

The effect of a failure of the presiding officers of the Legislature to sign the bill as required by Constitutional provisions is that the bill, and subsequent law, will be held invalid. In the case of *King Lumber Co. v. Crow*, 155 Ala. 504, 46 So. 646 (Ala. 1908), a substituted bill neglected to contain certain provisions that the original bill in the House had contained. When the bill passed the Senate, it was not the same bill which had passed and been enrolled in the House. The result was that the bill passed by the Legislature was not the same bill signed by the presiding officers. Their signatures are essential to a valid enactment.

Childers
v.
Couey
348 So. 2d 1349 (Ala. 1977)

At issue in this case is the constitutionality of a 1973 Amendment of Tit. 26, § 312, Code of Ala. (Liability of party other than employer, etc.). This is an appeal by permission pursuant to Rule 5, ARAP.

Joe Couey, plaintiff below, seeks to maintain a third party action in tort against Robert Childers, a co-employee, and four individuals who are supervisory personnel of Couey's employer.

* * *

[The defendant argues] ... that the basis of plaintiff's

action arose out of and in the course of his employment and that by reason of Tit. 26, § 312, Code of Ala., the defendants are not third-party tortfeasors against whom a suit can be maintained. ...

In opposition to the motion, plaintiff filed affidavits of former State Senator William Melton and John Pemberton, Clerk of the Alabama House of Representatives. Both affidavits concern an Amendment to Tit. 26, § 312, Code, which, because it contains an alleged clerical error, failed to achieve its alleged purpose deleting that portion of § 312 which prohibits third-party actions against co-employees and others. Plaintiff also filed what purports to be a certified copy of original House Bill 1273, and a certificate of Mable S. Amos, former Secretary of State, containing a copy of House Bill 1273 as adopted by the 1973 Alabama Legislature as Act No. 1062.

* * *

... Prior to that time it was possible to maintain a third-party tort action against co-employees. *United States Fire Insurance Co. v. McCormick*, 286 Ala. 531, 243 So. 2d 367 (1970). It is this language, precluding the maintenance of a civil action by an employee for damages from an injury occurring in his employment against another employee of the same employer, which plaintiff-appellee contends is invalid. Plaintiff bases this contention on the allegation that there is a material variance between the enrolled bill (Act No. 1062, Approved Sept. 17, 1973) signed by the Governor, and the bill which actually passed the 1973 Legislature.

The amendment on which plaintiff's contentions are based, as deleting the pertinent portion of § 312, reads:

"Delete § 27 *amending* § 36 of Title 26 as it appears on page 29 and renumber remaining sections." (emphasis added)

The use of § 36 in the Amendment was a mistake, says plaintiff[;] the section cited should have been § 312. He

urges the Court to look at page 29 of the original bill, to which the Amendment refers, and there it will be discovered there is no § 36 on page 29, but there is § 312. Plaintiff says that if we simply delete the words "amending § 36" from the Amendment, we can see that the true intent of the Amendment was to delete that portion of the statute prohibiting suits against co- employees. Thus corrected, the Amendment will achieve its "true purpose," which it did not achieve when actually passed by the Legislature.

An Act of the Legislature as enrolled and approved by the Governor is valid unless it varies in a material respect from the bill passed by the Legislature. *King Lumber Co. v. Crow*, 155 Ala. 504, 46 So. 646 (1908); *Moog v. Randolph*, 77 Ala. 597 (1884).

In determining whether there is a material variance between a bill actually passed by the Legislature and the enrolled bill signed by the Governor the only competent evidence which can be considered by this Court is the enrolled bill and the Journals of the House and Senate. It must affirmatively appear from an inspection of these two sources that the bill signed and approved by the Governor, and enrolled, materially varies from the bill passed by the Legislature. *Robertson v. State*, 130 Ala. 164, 30 So. 494 (1901); *Ex Parte Howard-Harrison Iron Co.*, 119 Ala. 484, 24 So. 516 (1898).

Through the cooperative efforts of the Department of Archives and History of Alabama we were able to examine the enrolled bill (Act No. 1062) and the bill as it appears in the Journals of the House and Senate. . . . The Journals completely fail to show that § 312 should not have been in the enrolled bill as passed by the Legislature and signed by the Governor. Thus § 312, as it appears in the 1975 Supplement to the Code, became law upon its approval by the Governor. § 125, Constitution of 1901. Therefore, it does not affirmatively appear that the bill signed by the presiding officers of the Legislature and approved by the Governor is materially variant from the bill passed by the

Legislature. In the absence of a material variance we cannot hold the statute, or any portion of it, constitutionally invalid.

Assuming without deciding, that a clerical error in the Melton Amendment did occur, we would be forced to look beyond the enrolled bill and the Journals of the Legislature in order to establish the existence of an ambiguity which would require a construction of the statute. We cannot engage in such collateral attack. It is not the province of this Court to correct, edit, or otherwise amend the Legislative Journals. It is the inherent right and power of the Legislature to amend its Journals so as to make them reflect the true meaning and purpose of legislation. *Mayor and Alderman of West End v. Simmons*, 165 Ala. 359, 51 So. 638 (1910).

* * *

Plaintiff attacks the statute but has not successfully carried the burden of proving its invalidity. ... The order of the trial court is due to be and is hereby reversed.

* * *

Chapter 14
Messages

A bill that is passed in the Senate is endorsed by the Secretary; a bill passed in the House of Representatives is certified by the Clerk. It is then the responsibility of the Secretary or the Clerk to send the bill along with a formal "message" to the other house. Such messages are always in order and are read (in the second house) at any suitable pause in business. When the message is read, the House then proceeds with the business engaged in when interrupted. House Rule 7 (2023).

Messages may be called by the President Pro-Tempore or in his or her absence, then the Majority Leader, in the Senate at any time the Senate is not voting. Senate Rule 21 (2023).

When a bill passes the house of origin it is conveyed to the second house via a "message". Senate Rule 67 (2023), House Rule 83 (2023), Joint Rule 2 (2023).

In the second house, a bill is received and must pass successfully through the same steps of procedure as in the first house and must pass in exactly the same form as it passed the house of origin. The following courses of action may take place in the second house:

Passage without amendment: If the second house passes the bill without amendment, the bill is returned to the house of origin as being ready for enrollment before it is sent to the Governor for his signature.

Failure to pass: If the second house fails to act on the bill at any stage in the proceedings or fails to pass it on third reading, the bill is defeated.

Amendment and passage: The Second house may amend and then pass the bill. Since a bill must pass both houses in the same form, the bill with amendment is returned to the house of origin via a "message" for further consideration.

When House or Senate bills are signed by the presiding officer of the respective house, the Clerk or Secretary, as the case may be, shall notify the other presiding officer. As soon as the message is read by the receiving presiding officer, the officer shall immediately sign the bills. Joint Rule 2 (2023).

Messages from the Governor relating to bills or measures of one house need only be sent to that house, but messages relating to general matters should be communicated to both houses. *Mason's Manual of Legislative Procedure*, Sec. 750 (2020). Messages from one house to the other shall take precedence over all other questions. Joint Rule 1 (2023).

Executive or Senate messages have priority over other business. House Rule 7 (2023).

Executive messages are considered with open doors in the Senate unless it is otherwise requested in the message or otherwise ordered by a majority vote of the Senate. Senate Rule 31 (2023).

Chapter 15
Consideration on Return to House of Origin

The house of origin, upon receipt of the amended bill, may:

Concur in amendments: The house of origin may concur in the amendments by the adoption of a motion to that effect. Upon such concurrence, the bill, having been passed by both houses in identical form, is ready for enrollment and transmittal to the Governor for his/her signature.

Refuse to concur in amendments: The originating house may adopt a motion to non-concur, and the bill fails to pass.

Refuse to concur in amendments and request a conference committee: The house of origin may refuse to accept the amendments made by the second house. In this case, a motion is usually made to request a conference committee. The fact that the originating house has not concurred in the amendments and requests a conference committee is "messaged" to the other house. The other house usually agrees to the request, and each house appoints three members to the conference committee. *See* House Rule 93 (2023), *Mason's Manual of Legislative Procedure* Chapter 71. *See also* Senate Rule 47 (2023), Joint Rule 21 (2023).

When the identical bill passes both houses, the bill is returned to the house of origin for enrolling (*see* Chapter 13). The enrolled bill is then signed by both presiding officers in the presence of the House or Senate and transmitted to the Governor (*see* Chapter 17). *See* also Joint Rules 2, 5 (2023).

Chapter 16
Conference Committee

The conference committee, which is generally composed of three members from each house, meets and discusses the points of difference between the two houses in an attempt to reach an agreement on a version of the bill that is acceptable to both chambers. Joint Rule 21 (2023).

The committee is made up of three Senators appointed by the Senate Committee on Assignments, and three Representatives from the House. Joint Rule 21 (2023), Senate Rule 47 (2023).

Meetings of a conference committee must be posted at least one hour prior to the meeting except on the last day of the session. Joint Rule 21(b) (2023).

A conference committee or an appropriation bill may only address differences in monetary amounts between the Senate passed and House passed version of the pending bill. No new appropriation item may be introduced. The amount of any entity's appropriation may not be increased higher than an amount passed by one of the houses. This provision may be suspended as to particular items of appropriation by recorded majority vote of each house. Joint Rule 21(c) (2023).

For a conference committee to report, at **least two members of each house must agree**. The conference report is considered first by the house of origin. When approved by the house of origin, the report is then considered by the second house. Neither house may amend a report. Joint Rule 21(d) (2023).

The conference committee may also report a minority report. In the event the house of origin rejects the majority report the house may proceed to consider the minority report. Upon its passage, the second house may proceed to consider the minority report. Joint Rule 21(e) (2023).

When a committee agreement is reached and if both houses

adopt the conference committee report by a yea and nay vote, the bill is finally passed. But, if either house refuses to adopt the report of the conference committee, a motion may be made for further conference. If a conference committee is unable to reach an agreement, it may be discharged, and a new conference committee may be appointed. Some highly controversial bills may be referred to several different conference committees. Should agreement never be reached in conference, the bill is lost. *Bd. of Revenue of Jefferson Cnty. v. Crow*, 141 Ala. 126, 37 So. 469 (Ala. 1904); Joint Rule 21(d) (2023).

The legislature apparently has the right to determine its own rules concerning acceptance or rejection of a minority conference committee report for the constitution neither specifically prohibits the filing of such a report nor specifically permits the filing of such a report. *Opinion of the Justices No. 220*, 295 Ala. 26, 322 So. 2d 107 (Ala. 1975).

Ala. Const. Art. IV, § 64
Procedure for amendment of bills;
adoption of reports of committees of conference.

> No amendment to bills shall be adopted except by a majority of the house wherein the same is offered, nor unless the amendment with the names of those voting for and against the same shall be entered at length on the journal of the house in which the same is adopted, and no amendment to bills by one house shall be concurred in by the other; unless a vote be taken by yeas and nays, and the names of the members voting for and against the same be recorded at length on the journal; and no report of a committee of conference shall be adopted in either house, except upon a vote taken by yeas and nays, and entered on the journal, as herein provided for the adoption of amendments.

Chapter 17
Transmittal to Governor

Alabama's Constitution requires the presiding officer of each house to sign the bill in the presence of the house after the bill has been read at length: however, reading at length may be dispensed with by a two-thirds vote of a quorum. A bill signed in the house of origin is transmitted by the Clerk or the Secretary to the presiding officer of the other house for signature. After being signed in both houses, the bill is transmitted by the Secretary or Clerk to the Governor. *See* Joint Rules 2, 5 (2023).

Ala. Const. Art. IV, § 66
Signature of bills by presiding officer of each house; reading of bills at length may be dispensed with.

> 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, after the same shall have been publicly read at length immediately before signing, and the fact of reading and signing shall be entered upon the journal; but the reading at length may be dispensed with by a two-thirds vote of a quorum present, which fact shall also be entered on the journal.

The actual transmittal of a bill to the governor is accomplished by the Secretary or the Clerk. This transmittal is usually hand-carried to the governor's office by such person and presented to someone of the governor's staff who is authorized to receive such transmissions. The final form of the bill is what is actually delivered for signature, with all of the appropriate contents.

"Presentation" to the governor of a bill which has been duly enacted, enrolled, and signed by the appropriate legislative officers is a term of art and is somewhat involved. The Alabama Constitution, Article V, § 125 requires that: "Every bill which shall have passed both houses of the legislature, except as otherwise provided in this Constitution, shall be presented to the governor

...." *See Bldg. Comm'n v. Jordan*, 254 Ala. 433, 48 So. 2d 565 (Ala. 1950); *Opinion of the Justices No. 295*, 412 So. 2d 279 (Ala. 1982) (*see* Chapter 20).

The approval of the Governor is not required on a bill enacted by the legislature proposing constitutional amendments. *Gafford v. Pemberton*, 409 So. 2d 1367 (Ala. 1982). *See* Ala. Const. of 2022 Art. XVIII, § 284.

Bldg. Comm'n
v.
Jordan
254 Ala. 433, 48 So. 2d 565 (Ala. 1950)

[The legislature passed a bill and took it to the Governor's office at 5 o'clock p.m. after it was duly enrolled and signed by the presiding officer of both houses. The Governor's office was locked even though there has been the standing custom for the Governor's office to remain open while the Legislature was in session. The Legislature then presented the bill to the Governor's secretary who was on the floor of the Senate.

The issues were: (1) Should the Governor's office have been open to receive bills and the offices were closed purposely to prevent delivery; (2) Was delivery of a bill to the Governor's secretary on the floor of the Senate a presentation under § 125 of the Alabama Constitution.]

* * *

Omitting consideration of "appropriation bills," for which special provision is made under § 126 of the Constitution, and bills presented to the Governor within five days before the final adjournment of the Legislature, after a bill has been presented to the Governor, within the meaning of § 125 of the Constitution, he may take one of several courses, as he may be advised:

1. He may approve the bill by signing it within the period prescribed.

2. He may permit it to become a law by withholding therefrom his approving signature until the period prescribed has elapsed.

3. He may return the bill, without his signature, and within the period prescribed, to the house in which it originated, with his objections thereto, and with such amendments as would obviate his objections.

4. He may, within the period prescribed, return the bill to the house originating it, without proposing an amendment which would remove his objections.

Alternatives 3 and 4 as noted above are, in effect, affirmative disapprovals--a veto--but the subsequent legislative course is different in the two instances. As to alternative number 3, it is the legislative prerogative to consider and determine whether the amendment seasonably proposed by the Governor shall be accepted by the legislative bodies. But, as to alternative number 4, the legislative right is to decide whether the bill shall pass, notwithstanding the seasonably expressed objection of the Governor; in which event, to make the bill a law, a majority of the elected membership of each house must vote to that end.

... But a majority of the participating justices [in the case of *State ex rel. Crenshaw v. Joseph*, 175 Ala. 579, 57 So. 942 (1911)] agreed that the provisions of § 125 hereinabove italicized should be construed as follows.

1. The *adjournment* of the Legislature therein contemplated is a final adjournment--the end of the session stipulated in the organic law.

2. The reference therein to *recess* is to suspensions of legislative deliberation by the house in

which the bill originated, and to which the Governor must return the bill, for some measure of time beyond one day.

3. The period of time during which the Governor has the right to consider a bill without its becoming law independently of him must be measured by calendar days.

4. The sixth day must also be a legislative day, for the Governor is required to return the bill to the house in which it originated and such return must be made while that house is in session.

5. On the sixth day, which must be a legislative day, the Governor does not necessarily have the full calendar day in which to return a bill. He must return the bill while the originating house is in session, however brief that session may be. To that extent the full calendar day, on the sixth day, must yield to the other mentioned requirement of the organic law, namely, that the return must be made while the house in which the bill originated is in session. *See In re Opinion of the Justices No. 104*, 252 Ala. 541, 42 So. 2d 27 (1949).

6. If the house in which the bill originated is in *recess* on the sixth day after the presentation of the bill to the Governor, two *legislative* days after reassembling are allowed the Governor to return the bill; that is, he must return it either on the day that the house in which the bill originated reassembles, or on its next legislative day.

In computing the six-day period in which the Governor has to act on a bill presented to him, the day of presentation is not included in the computation. The first day of the six-day period is the first week day following that on which the presentation is made ... .

* * *

[A] Joint Rule of the House and Senate provides as follows:

That the Secretary of the Senate or the Clerk of the House, as the case may be, shall, when a bill is duly enrolled and signed by the presiding officers of both houses, deliver the bill to the Governor, noting thereon the day and hour and minute of delivery, and shall make a written report thereof to the House or Senate, where the bill originated, showing the number and title of the bill and time of delivery *which shall be spread upon the Journal, and shall become a part of such Journal.* (Emphasis supplied)

* * *

In view of the way in which this case was tried, we find it necessary to decide whether or not there can be a presentation within the meaning of § 125 to any person other than the Governor. That question has not heretofore been determined by this court, although it was considered in the case of *State ex rel. Crenshaw et al. v. Joseph et al.*; but in that case Justices Sayre, Mayfield and Somerville declined to finally pass on the question. The other three participating justices, however, seem to have been of the opinion that a presentation within the meaning of § 125 may be had to the recording secretary of the Governor.

We are of the opinion that such a presentation may be made by delivery to the recording secretary of the Governor or other person to whom that authority has been delegated by the Governor.

* * *

There is absolutely no evidence tending to show that the Governor himself sought to evade presentation or that he gave any instructions to his recording secretary, or any other person authorized to receive bills from the Legislature, to evade such presentation.

The Governor's office was closed at 4:30 p.m. on

August 26, 1949. This was in accord with the proclamation issued by the Governor many months before the attempted presentation with which we are here involved. The evidence amply supports the finding that it had been the practice to close the Governor's office at 4:30 p.m., irrespective of the fact that the Legislature was in session, ever since the proclamation was issued, and bills were not received after that time unless notice was given to those persons in the Governor's office who were authorized to receive bills from the Legislature that a bill or bills would be brought to the Governor's office after 4:30 p.m. No such notice was given as to Senate Bill 172.

* * *

Appellants next insist that the presentation of the bill to the executive secretary of the Governor on the floor of the Senate and his refusal to accept it constituted a presentation within the meaning of § 125 of the Constitution. We cannot agree. In the first place, there is nothing in the evidence to show that the executive secretary was authorized to receive bills from the Legislature. It affirmatively appears from the evidence that he had received no bill during the 1947 session of the Legislature, when he served the Governor as executive secretary, nor during that portion of the 1949 session that he served in that capacity. We also are unwilling to hold that the Governor or anyone authorized by him to receive bills must accept such presentation on the floor of the Senate.

* * *

As heretofore shown, the journals affirmatively show an actual presentation on August 29, 1949. The sixth calendar day after August 29, 1949, excluding Sunday, was not a legislative day. Hence, the Governor could not have returned the bill to the Senate on that day. September 9, 1949, was the first legislative day thereafter. Senate Bill 172, according to the Senate Journal, reached the Secretary of the Senate at 11:48 p.m. on that night, one minute after a motion to adjourn sine die had been made. The Senate adjourned sine die at 11:59 p.m., the vote to adjourn being had on the motion made at 11:47. Appellants argue that Senate Bill 172

reached the Senate too late for that body and the House of Representatives to give consideration to the Governor's veto, and hence there was no return within the meaning of § 125 of the Constitution.

Appellee argues that this position taken by appellants is unsound for two reasons, which we will treat in inverse order from that in which they are argued in brief.

It is insisted that it was not necessary for the Governor, in order to perfect a constitutional veto, to return the bill on September 9, 1949, at all, for the reason that the Senate was in recess when the six-day period after presentation expired, and that in such instances § 125 of the Constitution, as construed by this court, gives to the Governor not one, but two legislative days within which to make return after the Senate reconvenes. In *State ex rel. Crenshaw et al. v. Joseph et al., supra*, § 125 of the Constitution was construed as giving to the Governor two legislative days in which to return a bill to the originating body where that body is in recess on the sixth calendar day after presentation. But we do not think that § 125 of the Constitution is subject to that construction when the first legislative day after such a recess is the last day on which the Legislature can meet under the Constitution. Hence, where the Governor is unable to return a bill on the sixth calendar day after presentation because the originating body is not in session on that day, he must return it on the next legislative day thereafter if it is the last day on which the Legislature can meet under the Constitution. There is no second legislative day on which he can make a return. Any other construction would give to the Governor the power to pocket veto a bill presented to him more than five days prior to final adjournment, which is clearly contrary to the express language of said § 125.

However, we agree with the other insistence of appellee to the effect that the return of the bill to the Senate at 11:48 p.m. on September 9, 1949, while it was in session, was a sufficient return. Under § 125 the Governor could

return the bill to the Senate any time on September 9, 1949, while that body was in session. He did so. True, the return was but a few minutes before the expiration of the last legislative day. The Constitution, § 125 draws the line. We cannot say that it is incumbent upon the Governor to make his return at any particular time during the last legislative day in order that the Legislature may consider his veto. We have no way of knowing how much time would be needed for such action. Undoubtedly more time would be needed for action on some bills than on others. The conclusion reached on this question finds support in our holding in *State ex rel. Crenshaw et al. v. Joseph et el., supra*, and in our opinion expressed in *In re Opinion of the Justices No. 104, supra*, to the effect that the Governor does not have six full days in which to return the bill if the originating body is in session on the sixth day and adjourns before return can be made.

We are in accord with the conclusion reached by the trial court that Senate Bill 172 never did become a law.

Opinion of the Justices No. 295
412 So. 2d 279 (Ala. 1982)

* * *

The journal . . . contains a communication from the enrolling and engrossing clerk of the Senate which states:

"At 11:45 a.m., on Thursday, April 8, I attempted to deliver Senate Bills 28, 307, 356, 397, 454, 482, 493, and Senate Joint Resolutions 179, 195, 198, 211, 216, and 223 to the Governor's Recording Secretary in the basement office." ... The door to the office was locked, the blinds drawn, and the lights were out. At 12:00 Noon, accompanied by Senator Earl Goodwin, we attempted to deliver same to the Governor's Offices on the first floor. The same conditions prevailed. At 12:01 p.m. the Senator and I attempted to deliver same to the Recording Secretary in the basement and encountered the same conditions.

"At 3:15 p.m., accompanied by Senator McDonald, Senator Gulledge, Representative Manley and members of the news media, we attempted to deliver Senate Bill 4 to every door to the Governor's Offices on the first floor and the basement. The same conditions prevailed.

"Ann S. Worthington
"Enrolling and Engrossing
"Clerk
"Senate of Alabama ..."

The journal entry, by universal rule, must be accepted by this Court, which has no authority to go beyond the legislative journals. *Cammack v. Harris*, 234 Ky. 846, 29 S.W.2d 567 (1930).

However, we can take judicial notice that Thursday, April 8, 1982, was not a state holiday and had not been proclaimed such by the Governor. Also, we note that the times mentioned by the enrolling and engrossing clerk were all within the normal business hours of the state.

* * *

Whether the Governor actually refused to accept a bill or whether the closing of his office was a deliberate attempt of evasion is immaterial here. The Senate journal entry establishes without contradiction that an actual, physical presentment of the bill was impossible because, for whatever reasons, the Governor was not present, his office was closed, and no one with authority to receive bills in his behalf was found.

Although nothing in the Constitution prevents the Governor from fixing his office hours as he wishes, he cannot thereby thwart the constitutional process by which legislation becomes law. ... Under the circumstances reflected by the Senate journal, we hold that the **Senate's attempt was a presentment in a constitutional sense, and the fact that the offices were closed did not render**

ineffective this presentment.

To hold otherwise would give the Governor the power to control the presentment of bills to him, thereby undermining the intent of that portion of § 125 of the Constitution. ...

* * *

For the presentment to be fulfilled, i.e., the formal offer or tender of the bill to the Governor, there is no requirement that he actually receive it. From that moment of formal tender, the clock begins to run and he must act, if he intends to veto, within the prescribed six days.

Chapter 18
Committees

A. Standing Committees

At the organizational sessions, the Speaker of the House appoints the standing committees of that house and designates the chairman and vice-chairman of each committee. The committees are to reflect the racial diversity, gender, and political party affiliations where at least 10 members are of the same race or party. House Rule 63 (2023). In the Senate, committee appointments are made by the Senate committee on Assignments, which consists of the President pro tempore, the Majority Leader and three additional Senators appointed by the Senate President Pro Tempore. Senate Rule 47(b) (2023).

During regular and special sessions, the Speaker of the House assigns bills and other legislative documents to the various committees for study and consideration. House Rule 12 (2023). In the Senate, every bill introduced is assigned to a committee by the Presiding Officer. Senate Rule 23 (2023). Subcommittees of standing committees may meet between sessions of the full committee solely for the purpose of researching and studying bills and other matters assigned to it. These subcommittees may make recommendations to the standing committee. House Rules 65 and 76 (2023), Senate Rule 48 (2023).

Each standing committee of each house, except committees on local legislation, is an interim committee between sessions. Joint Rule 20 (2023). Interim committees must post notice of meetings at least 3 calendar days ahead of a meeting. Joint Rule 20(c) (2023).

Interim committees or subcommittees of the interim committee may meet to consider pre-filed bills or matters assigned by the presiding officer of the respective house. Joint Rule 20(b) (2023).

No standing committee of the House may meet outside the

Capitol complex without approval of the Speaker. House Rule 68 (2023).[1]

No Senate committee except Rules and Assignments may meet on the floor of the Senate while the Senate is in session, nor may any committee meet while the Senate is in session unless the time and place is announced by the presiding officer of the Senate. Senate Rule 49(a) (2023). No House committee, except for the Committee on Rules, shall meet when the House is convened in session. House Rule 66 (2023).

Senate Committees have investigatory powers and require attendance. Senate Rule 49(b) (2023). Committees of both houses may take testimony research and study matters and formulate reports.

Committee agendas must be posted. The Senate requires 24 hours advance notice whenever possible, which may be suspended by a majority of members present and voting; the House of Representatives require at least 24 hours advance notice. Senate Rule 57, House Rule 73 (2023). No bill that has not been posted and proper notice given may receive a second reading. Senate Rule 57 (2023). No standing committee shall meet and take action on any bill assigned to it on the same calendar day of the assignment, except a committee that considers local legislation. House Rule 67 (2023).

In the House of Representatives, after the 20th legislative day of a regular session, notice may be posted six hours before the meeting; during special sessions, the posting period is reduced to four hours. House Rule 73(b) (2023).

Committee public hearings will be granted on a bill when a written request is received by the committee chair in the House prior to posting of the notice of the committee meeting at which

[1] Joint Rule 20(b) (2023) states no interim committee shall travel outside Montgomery unless the travel is approved in advance by the presiding officer of the House or the Lieutenant Governor, in the absence of a Lieutenant Governor, the presiding officer of the Senate.

the bill is to be considered; in the Senate, this is granted when requested 48 hours in advance of the hearing. House Rule 74 (2023), Senate Rule 61 (2023).

Ala. Const. Art. IV, § 62
Referral of bills to standing committees.

> No bill shall become a law until it shall have been referred to a standing committee of each house, acted upon by such committee in session, and returned therefrom, which facts shall affirmatively appear upon the journal of each house.

A bill must be reported from the same committee to which it was referred; otherwise the act is unconstitutional. *Crain v. State*, 166 Ala. 1, 52 So. 31 (Ala. 1910). This section, however, is not applicable to any act proposing an amendment to the constitution. *Opinion of the Justices No. 95*, 252 Ala. 205, 40 So. 2d 623 (Ala. 1949).

Ala. Code § 29-1-18
Maximum number of members on standing Committees of house of representatives.

> No standing committee of the House of Representatives, except a committee on local legislation, shall be composed of more than 15 members.

B. Joint Standing Committees

Joint standing committees are not required to be formally established by legislative act or house rule in Alabama. Corresponding standing committees in each house may meet jointly during the session or in the interim to consider items such as the budget, Medicare, or other pressing items that require intensive study.

C. Joint Permanent Committees

While each house establishes its own study committees by house rule, there are a number of permanent committees established by acts of the Legislature which are composed of

members of both houses. These committees generally operate as advisory bodies to recommend to the Legislature courses of action in specialized areas such as highway safety or criminal justice. They often serve as "watch dogs" to oversee the functioning of state agencies and to assure their fiscal responsibilities. Members generally are appointed by the Lt. Governor, President pro tempore and the Speaker of the House; however, certain committees' membership is required by statute to be elected by each house. Membership on joint permanent committees may extend to non-legislators. Joint Permanent Committees established by statute include:

Administrative Regulation Review, Joint Committee, Ala. Code § 41-22-22 (2000)

Agricultural and Conservation Development Commission, Ala. Code § 9-8A-3 (2001)

Agricultural Development Authority Legislative Oversight Committee, Ala. Code § 2-3A-6 (1999)

Alabama-Georgia Joint Interim Legislative Committee, SJR 35 (2014)

Children First Trust Fund, Joint Legislative Oversight Committee Ala. Code § 41-15B-2 (2000)

Community Services Grants, Joint Legislative Oversight Committee, Ala. Code § 29-2-121 (1998)

Compensation for Wrongful Incarceration Committee, Ala. Code § 29-2-151 (1998)

Contract Review Permanent Legislative Oversight Committee, Ala. Code § 29-2-40(1998)

Construction Recruitment Institute Board of Directors, Ala. Code § 41-10-724 (2009)

County Government, Joint Interim Committee on, Acts 84-775 and 85-458

Electronic Voting Committee, Ala. Code § 17-7-22 (2007)

Energy Policy, Joint Legislative Committee, Ala. Code § 29-2-270 (2009)

Finance and Budgets, Ala. Code § 29-2-80 (1998)

Historical Records Advisory Board Legislative Oversight Committee, Act 84-319

Homeland Security Oversight Committee, Ala. Code § 31-9A-15 (2003)

Interagency Autism Coordination Council, Ala. Code § 22-57-1 (2009)
Judicial Building Authority, Legislative Oversight Committee, Ala. Code § 41-10-260 (2000)
Judicial System Study Commission, Ala. Code § 12-9-1 (1995)
Legislative Council, Ala. Code § 29-6-1 (1998)
License Plates Legislative Oversight Committee, Ala. Code § 32-6-67 (1999)
Medal of Honor for Law Enforcement Officers Committee, Acts 94-294
Municipal Government Committee, Ala. Code § 29-2-60 (1998)
Nuclear Energy Activities & Hazardous Chemical, Act 84-329
Oil and Gas Study Committee, Alabama, Act 86-753
Prison Committee, Permanent Joint, Ala. Code § 29-2-20 (1998)
Reapportionment, Permanent Legislative Committee on, Ala. Code § 29-2-51 (1998)
Reduce Poverty Commission, Ala. Code § 29-2-250 (2009)
Rural Health Board, Ala. Code § 22-4A-2 (1997)
Sunset Committee, Ala. Code § 41-20-4 (2000)
Supercomputer Authority, Ala. Code § 41-10-391 (2000)
Total Quality Government, Legislative Commission, Ala. Code § 41-9-943 (2000)
Water Policy and Management, Permanent Joint, SJR 5 (2009)
Women's Commission, Ala. Code § 41-9-410 (2000)
Workforce Development Division, Legislative Oversight Commission of the, Ala. Code § 41-29-400 (1983)
Youth Services Board, Ala. Code § 44-1-2 (1991)

D. Interim Committees

An interim committee is a legislative committee specially created to investigate a problem of particular concern to the Legislature. The establishment of interim committees is a traditional means by which legislative assemblies seek to gain specialized knowledge as the basis for informed legislative action. These committees derive their name from the fact that they meet to perform their duties in the interim periods between regular legislative sessions. Generally, they report to the Legislature during the session following the one at which they were created. The generation of information and policy recommendations during

interim periods, when more time is available for study and reflection, is a useful legislative technique. In Alabama, the Legislature uses interim committees extensively as means to gain information about, and to make recommendations for, legislative action regarding various problems of legislative concern.

The membership of interim committees normally is composed only of legislators. However, in some cases the legislative measure establishing the committee may provide that the Governor may appoint additional non-legislative members, or perhaps the measure may designate certain ex officio members. The usual pattern for the selection of membership is for the Speaker to appoint the House members of the committee and for the Standing Committee on Assignments to appoint those from the Senate. In any event, the composition of the committee membership and the method of appointment are set forth in the measure establishing the committee. Also, the bill or resolution creating the committee usually specifies the method of selecting the chairman, whether the committee is authorized to employ technical personnel, and the amount of legislative funds that the committee is authorized to expend. Generally, legislator members of interim committees receive their usual legislative compensation for attendance at committee meetings. *See*, Ala. Code § 29-1-9. Committee responsibilities ordinarily are drawn in broad terms.

Ala. Code § 29-1-9
Compensation of legislative interim committees and their employees.

> The compensation of all members of the legislative interim committees provided for by joint resolution or by act of the two houses of the legislature shall be $10.00 per day for the entire time while engaged in its work, except in cases of adjournment exceeding three days. The members of such committees shall collect mileage in traveling to and from the residence of such members to the Capitol for not more than one round trip per week. The chair of each such committee shall certify to the comptroller what amount is

> due each member or employee and the comptroller shall draw his warrant therefor on the treasurer. No legislative interim committee or its employees shall receive compensation for more than 60 days.

The per diem rate is the same rate as for state employees (not less than $75.00 plus travel expenses at the mileage rate then set for one round trip per week.) *See* further discussion regarding monetary compensation and expense allowances for legislators in Chapter 4 "Legislative Sessions," Section 6 "Legislative Compensation." *See also* Ala. Code § 36-7-21.

Chapter 19
Legislative Oversight

A. Administrative Regulation Review

The Legislature, by act, grants an agency rule making authority. Each agency with rule making authority, unless specifically exempted, is subject to the "Alabama Administrative Procedure Act" ("APA"). § 41-22-2.

To promulgate a rule, an agency must comply with the notice provisions of the APA including giving the legislative oversight committee copies of the proposed rule. § 41-22-5. The committee shall review all agency rules prior to their adoption. § 41-22-22.

The Legislative Services Agency, Legal Division, shall review each rule certified to it by a state board or commission that regulates a profession to determine whether the rule may significantly lessen competition. § 41-22-22.1

The committee shall study all proposed rules and may hold public hearings for a review of proposed rules prior to approval or disapprove of them. § 41-22-23.

In the event rules are disapproved by the committee further implementation of the rules is suspended pending appeal to the Lieutenant Governor. If the Lieutenant Governor sustains the disapproval, the rule is permanently disapproved. However, if the Lieutenant Governor reverses, the rule shall become effective upon adjournment of the next regular session unless prior to that time the Legislature approves a joint resolution overruling the approval by the Lieutenant Governor and sustaining the action of the committee. § 41-22-23.

The objections to a legislative veto in *I.N.S. v. Chadha*, 462 U.S. 919 (1983) were cured by providing for a joint resolution of Congress. *See* Senate Report No. 252, 101 Cong. 1st Sess. at 5152 (1990). *See also* Jessica Korn, *Institutional Reforms that don't matter:*

Chadha and the Legislative Veto in Jackson-Vanik, 29 HARV. J. ON LEGIS. 455, 487 (1992).

B. Sunset Committee

Alabama's Sunset Law calls for the periodic review and evaluation of administrative agency operations, and for the continuance, modification, or termination of various agencies on the basis of recommendations made by a joint legislative committee called to conduct the review. The specific Code provisions concerning the functioning of the Sunset Committee are found in §§ 41-20-1 through 41-20-16.

The Code distinguishes between "enumerated" and "non-enumerated" agencies. "Enumerated" agencies include all departments, councils, boards, commissions, divisions, and bureaus or like governmental units or subunits of the state which are listed in Section 41-20-3. Such "enumerated" agencies automatically terminate on specified dates unless a bill is passed to continue, modify, or reestablish them. These agencies terminate every four years, allowing each legislature to evaluate their performance.

"Non-enumerated" agencies do not terminate automatically, but continue until an act is passed to terminate the agency. Either house of the legislature has the power to pass a resolution instructing the Sunset Committee to review an agency.

The membership of the Sunset Committee consists of a select joint committee that is chosen as follows: 3 members of the House and 3 members of the Senate are elected in the same manner as the elected members of the legislative council by the respective houses; 2 from the Senate and 2 from the House are appointed by the presiding officers in each house; and the president pro tempore of the Senate and the speaker pro tempore of the House. The chairman is elected from among the members of the committee, alternating annually between a House member and a Senate member. Any vacancy in the Sunset Committee is filled through appointment by the presiding officer of the body having the vacancy. § 41-20-4(a-b).

The Committee gives its report and any accompanying legislation to the offices of the Speaker and President for distribution to the legislators and the governor on or before the first legislative day of the ensuing legislative session. § 41-20-4(d). Members of the Committee receive their usual legislative per diem allowance and expenses for attending the Committee meetings, and there is no limit on the number of days any committee or sunset subcommittee is permitted to meet. § 41-20-4(e).

The Sunset Committee begins review of the agencies in question in the year prior to the next scheduled regular legislative session preceding the date upon which the enumerated agency is scheduled to terminate. The Committee meetings are required to conclude with a recommendation for continuation, modification or termination on or before the first legislative day following its review. § 41-20-5.

Each respective agency, whether "enumerated" or "non-enumerated," must shoulder the burden of proving that sufficient public need is present to justify its continuance, as specified in Section 41-20-6.

Section 41-20-7 details the various factors which are considered in determining public need for continuation of the agencies under evaluation. Section 41-20-8 provides that one criterion which may be used in determining public need is a "zero based review and evaluation." A "zero based review and evaluation" is a comprehensive review and evaluation to determine if the merits of the agency support continuation rather than termination.

Debate and voting recommendations as to the status of the agencies are dealt with extensively in § 41-20-10. Voting must commence on the tenth legislative day of the regular session, one hour after the convening of the house of which the chairman of the Sunset Committee is a member. Likewise, voting is to commence in the other house on the fifth legislative day following passage in the first house. Voting on the sunset bills is the first order of business, from day to day, until voting on them is completed.

However, either house may, by a three-fifths vote of those members present, consider other business before that house. § 41-20-10(a-b).

Debate is limited to one hour, and it must be continuous and uninterrupted. An additional hour of continuous and uninterrupted debate is permitted by a two-thirds vote of the house considering the bill. An additional hour of debate is granted only once per bill. § 41-20-10(c). In the event the bill is amended by the second house and returned to the originating house, the originating house is permitted one hour of debate upon return of the bill with an additional hour of debate if supported by a two-thirds vote of the members. § 41-20-10(f-g).

Any "enumerated" agency which is terminated must cease its affairs on the date specified in § 41-20-3. Any "non-enumerated" agency must cease its affairs on the date specified in the bill terminating the agency.

Ala. Code § 41-20-4
Creation of select joint committee for review and evaluation of agencies; composition; selection of members; chairman; duties generally; submission of data and report of recommendations as to continuation or termination of agencies; voting upon committee recommendations by legislature generally; compensation of members of committee.

(a) A select joint committee, known as the sunset committee, shall be constituted as follows:

(b) Three members of the house and three members of the senate shall be elected in the same manner as the elected members of the legislative council by the respective houses: two from the Alabama senate and two from the Alabama house of representatives shall be appointed by the presiding officer of said elected bodies; and the president pro tempore of the senate and the speaker pro tem of the house of representatives. The chairman shall be elected from among the members of the committee, alternating annually between a house member and a

senate member. Any vacancy in the sunset committee shall be filled through appointment by the presiding officer of the elected body having the vacancy.

(c) Said select joint committee shall be charged with the duty of assisting in the implementation of the procedures of this chapter and shall be charged with the duty of establishing administrative procedures which shall facilitate the review and the evaluation procedure as provided for in this chapter.

(d) The committee shall submit its report and any accompanying legislation to the offices of the speaker and the president for distribution to legislators and the governor on or before the first legislative day of the ensuing regular legislative session.

(e) The committee members shall be entitled to their usual legislative per diem and expenses for attending meetings of the committee, which shall be paid from funds appropriated for the payment of the expenses of the legislature. There shall be no limitation upon the number of days the committee or any subcommittee thereof shall meet; provided, however, the members shall be entitled to payment only for the days they are actually engaged in committee business.

C. Department of Economic and Community Affairs Legislative Oversight Commission

Ala. Code § 41-29-400
Legislative oversight commission.

(a) There is hereby created the Legislative Oversight Commission of the Workforce Development Division to consist of the Chairman and Deputy Chairman of the Senate Committee on Finance and Taxation, three members of the Senate to be appointed by the Lieutenant Governor, the Chairman and Vice-Chairman of the House Ways and Means Committee, and three members of the House of

Representatives to be appointed by the Speaker of the House.

(b) The commission shall hold an organizational meeting within 30 days after the date determined pursuant to Section 41-29-6, and shall elect a chairman and vice-chairman from among its members. Thereafter, the commission shall meet at least two times annually, and additional meetings shall be held at the call of the chairman or upon the request of six or more members. Such meetings shall be held with the Director of the Workforce Development Division in attendance.

(c) The commission shall adopt its own rules of procedure for the transaction of business, and a majority of the members present shall constitute a quorum for the purpose of transacting business or performing authorized duties.

(d) Each member of the commission shall be entitled to his or her regular legislative compensation and per diem and travel expenses for each day he or she attends a meeting or conducts business of the commission, and such compensation and expenses shall be paid from the funds appropriated for the use of the Legislature.

(e) The commission shall monitor and evaluate the management and operations of the Workforce Development Division, shall recommend to the Legislature the enactment of such laws respecting the Workforce Development Division as the commission shall deem desirable, and shall submit a written report on the operations, finances and grants made by the Workforce Development Division during each regular session of the Alabama Legislature.

D. Joint Transportation Council

The Legislature has a permanent Joint Transportation Committee consisting of 13 members of the House and 13

members of the Senate. There is to be one senator and one representative from each congressional district in the state, one senator and one representative from each Alabama Department of Transportation region, and one senator and one representative from the minority party to serve at large. The appointments are to be made within five days after the convening of the first regular session after the election of each legislature. § 29-2-2.

Their responsibility is to review and concur in the long range (five years) federal aid highway plan for proposed highway construction in Alabama. They further review the budget of the highway department for highway construction maintenance and operation and report each year to the Legislature. This Committee can hold public hearings to make inquiry, including the calling of witnesses. § 29-2-4. The committee reviews all bills originating in either house pertaining to transportation under the jurisdiction of the transportation department. § 29-2-8.

E. Prison System

A permanent legislative committee which shall be composed of eight members, two of whom shall be ex officio members and six of whom shall be appointed members, three each to be appointed by the President of the Senate and Speaker of the House, who shall both serve as the ex officio members, shall be formed to assist in realizing the recommendations of the legislative prison task force and examine all aspects of the operations of the Department of Corrections. The chairman of the committee shall be selected by and from among the membership. The committee shall examine Alabama's present and long term prison needs and they shall file reports of their findings and recommendations to the Alabama Legislature not later than the fifteenth legislative day of each regular session. § 29-2-20.

The committee shall also study and address mental health issues for prisoners reentering the community after a term of imprisonment, also reporting those findings by the fifteenth legislative day of each regular session. Capacity issues within the Department of Corrections are also in this committee's purview to study and address with an annual report to the Legislature by the

fifteenth legislative day of the regular session. § 29-2-20.

F. Contract Review

The Contract Review Permanent Legislative Oversight Committee has the responsibility of reviewing contracts for personal or professional services, with private entities for individuals, to be paid out of appropriated funds, federal or state, which are paid on a state warrant for the services. Any contract made by the state, or any of those agencies, without prior review by the committee is void ab initio. § 29-2-41. *See also State v. American Tobacco Co.*, 772 So 2d 417 (Ala. 2000). If the Committee fails to review a contract within 45 days from the time they receive it, the contracts are deemed to have been reviewed. § 29-2-41.

Each state agency that receives a direct appropriation from the State General Fund proposing to enter into any agreement obligation the agency or department to expend more than ten million dollars of the annual appropriation from the State General Fund to the agency or department in a future fiscal year or years shall submit the agreement or obligation to the committee for review no later than 10 days after the agreement is signed or otherwise authorized by the agency or department. §29-2-41.6.

The review committee has the power to issue subpoenas for any witnesses, and to require the production of documents or contracts it needs to examine. § 29-2-41.

Upon approval are emergency contracts that would adversely affect the economic welfare of the state. These may be entered into for not more than 60 days and must be reviewed if it extends beyond the 60 days. § 29-2-41.1. Further exclusions are contracts for insurance, those led by competitive bid, those entered into by public corporations and any contract which does not exceed $1,500. § 29-2-41.3.

Prior to each Legislative Regular Session, the permanent Joint Legislative Committee on Finances and Budgets meets to make investigation and study of the financial condition of the state whole budget hearings inquiring into ways and means of financing

state government. § 29-2-80.

This committee is composed of no more than 36 legislators who are members of each house budgeting committees. § 29-2-81. The Committee must then report its findings and recommendations to the Legislature no later than the seventh legislative day of each Regular Session. § 29-2-83.

G. Reapportionment

The Permanent Legislative Committee on Reapportionment is composed of 6 members, three from each house. During the quadrennial in which the decennial census is released, the committee expands to 22 members. § 29-2- 51.

(a) The committee shall make a continuous study of the reapportionment problems in Alabama seeking solutions thereto, and shall seek expertise, when deemed necessary, from among knowledgeable state officials and employees, academic personnel and others involved in demographic studies and other census matters. § 29-2-52.

(b) The committee shall make such reports of its investigations, findings and recommendations to the Legislature at any time, during any regular or special session of the Legislature, as it may deem necessary. *Id.*

(c) The committee shall engage in such activities as it deems necessary for the preparation and formulation of a reapportionment plan for the next ensuing reapportionment and each reapportionment thereafter, and readjustment or alteration of Senate and House districts and of congressional districts of the state. *Id.*

(d) The committee, subject to the approval of the Legislative Council, may employ consultants, technicians, attorneys and any other experts needed to prepare maps and make professional appearances to support any plan of reapportionment adopted by the Legislature. Such expenses of the committee shall

be paid out of any funds appropriated by the Legislature for the use of the committee. *Id.*

(e) The committee may make and sign any agreements and to do and perform any acts that may be necessary, desirable or proper to carry out the purposes and objectives of the provisions herein set forth. *Id.*

(f) The committee may complete any contract executed and conduct any business undertaken or commenced by the Legislature pertaining to or connected with the reapportionment and readjustment or alteration of Senate and House and congressional districts prior to the enactment of this article, and the same shall be completed and conducted in the same manner and under the same terms and conditions and with the same effect as if completed and conducted by the Legislature. *Id.*

(g) The committee may meet within and without the state, hold public hearings and otherwise have all of the powers of a legislative committee under the legislative law. *Id.*

(h) The committee may request and receive from any court, department, division, board or bureau, commission or agency of the state or any political subdivision thereof such assistance and data as will enable it to properly carry out its powers and duties hereunder. *Id.*

H. Municipal Government

§ 29-2-61. (a) It shall be the duty and function of the committee to analyze the status of municipal government in Alabama and to make recommendations for legislation and constitutional revision which it considers necessary or desirable to enable the municipal governments of this state to more adequately meet and furnish the services and requirements of their citizens.

(b) In reviewing the status and the laws of municipal governments in Alabama, the committee shall consider and make

studies of, but shall not limit its consideration, to the following items:

(1) An assessment and study of the impact of reduced federal funds and the problems to municipalities created thereby; the study to suggest methods whereby municipalities may continue furnishing services notwithstanding the reduction of federal assistance; the study also to include a review of the block grant delivery system of federal assistance.

(2) A study and assessment of the problems faced by municipalities because of the mounting problems connected with sanitary sewage (waste water) disposal and a suggested avenue of meeting the tremendous expenses connected with such disposal; and a suggested funding mechanism to cover the cost of disposal.

(3) A study of hazardous waste disposal and suggested solutions of the problems created by hazardous wastes.

(4) A study of the infrastructure needs of Alabama towns and cities with particular emphasis on the study of road and street systems and their maintenance and repair.

(5) A review with recommendations as to how municipalities can best improve the delivery of services of all types to their citizens. § 29-2-61(b).

(c) The committee shall submit its recommendations by the fifth legislative day of each regular session of the Legislature. The committee may make additional recommendations and submit studies and reports to the Legislature at any time. § 29-2-61(c).

I. Joint Legislative Committee on Finance and Budget

This Committee is composed of the Lieutenant Governor, member of the Senate Finance and Taxation Committee, and other members of the Senate as appointed by the Lt. Governor. The

committee is further composed of the Speaker of the House, members of the House Ways and Means Committee, and other members of the House of the House of Representatives appointed by the Speaker. The total membership does not exceed thirty-six members. § 29-2-81.

This Committee meets in between sessions for not more than thirty calendar days in any single year. *Id.*

It is the duty of the Committee to make careful investigation and study of the financial condition of the state, hold budget hearings, inquire into ways and means of financing state government and its programs and report its findings and recommendations to the Legislature. § 29-2-80.

J. Children in State Care

The committee consists of 6 members, 3 from each house, and shall meet at the call of the chair or any majority of members provided it is at least once every four months. § 29-2-101.

The committee shall also convene a council of state agencies that administer services to children, youth, and their families which shall meet each quarter. § 29-2-105.

It shall be the duty of the committee to study and review the criteria for placing and keeping children in state care, to review the criteria for selection of child care providers by state agencies, to review the minimum base pay and distribution of funds for providers, to identify an accountability process for providers, to review the quality of care provided to children by state agencies, to identify an accountability process for state agencies involved in children's services, to review the availability of special services to meet the individual needs of children in state care, to gather input from service providers, state agencies, and children receiving state services concerning their experiences, concerns, and recommendations, and to coordinate the activities of the council. § 29-2-103.

K. Community Service Grants

The Community Service Grants Committee, made up of legislators, meets to approve or reject grant applications. This committee is an advisory role to the Executive Commission on Community Service Grants.

It shall be the duty of the committee to review applications and recommend for approval any community services grants made from any funds appropriated to the State Executive Commission on Community Services Grants by the Legislature for the purpose of awarding community services grants. The committee shall evaluate grant proposals based on the relevance of such proposals to the purposes for which such grants shall be made; the extent to which such grant proposal advances the program objectives of the grant-making agency; the ability of the grant recipient to fulfill the objectives of the grant proposal; and the extent to which the grant proposal can benefit the greatest number of citizens, without excluding any geographic regions of the state. All of the above information may be ascertained by appropriate measures, which shall include interviews, audits, public hearings, and recommendations by members of the Legislature. The committee shall act in an advisory role only. All grants recommended for approval or rejection by the committee shall be forwarded to the State Executive Commission on Community Services Grants which shall review each grant for compliance with the criteria listed herein and shall approve or disapprove each grant. The commission shall have absolute discretion to award or reject any grant. The commission shall report to the committee, within 14 days after any meeting, all actions taken. It shall also be the duty of the commission to ensure that, of any appropriations awarded by the commission, a minimum of the equivalent of 0.4% of such appropriations shall be distributed to each House district and 1.2% of such appropriations shall be distributed to each Senate district. § 29-2-123.

There is hereby created the State Executive Commission on Community Services Grants, hereafter referred to as the commission, which shall be designated a grant-making agency to

receive and by majority vote to distribute any appropriations made by the Legislature to the commission for the community services grant program pursuant to Title 41, Chapter 24. The commission shall consist of the State Superintendent of Education, the Lieutenant Governor, the State Treasurer, and the Commissioner of Agriculture and Industries. The chairman of the commission shall be the Lieutenant Governor, who shall only vote in the case of a tie. The commission shall elect a secretary who shall be responsible for and maintain all documents related to the commission. The commission shall meet at least twice each quarter or until all grant funds have been awarded for each fiscal year. The commission members shall serve without compensation but the commission may receive funds and/or staffing for administrative support from the Legislature. § 41-24A-1.

L. Wrongful Incarceration

The legislature has provided a method for compensating innocent persons who have been wrongfully incarcerated by the state. § 29-2-150.

The legislative committee of 9 members certifies applicants who meet the eligibility criteria and recommends to the legislature the amount of compensation to be paid. § 29-2-151.

The amount to be paid is equal to $50,000 for each year of incarceration plus any additional amount the committee may recommend. § 29-2-159.

M. Civic Education

At the start of each quadrennium the Legislature shall provide by joint resolution for a Joint Legislative Committee on Civic Education in the following manner:

The Joint Legislative Committee on Civic Education, created pursuant to Act 2000-547, 2000 Regular Session, is hereby continued for the balance of the current quadrennium at which time it shall terminate. The purpose of the continuing joint

committee shall be to provide annual oversight and recommendations with respect to the civic education initiatives provided in Article 2 of Chapter 44A of Title 16. The continuing joint committee shall annually provide a report on the state of civic education not later than the 10th legislative day of each regular session. § 29-2-190.

N. Legislative Building Authority

The Legislative Building Authority acquired the State House building, parking deck and improvements, and has absolute control of the building. § 29-2-201. The Legislative Council succeeded to the powers and duties of the Legislative Building Authority in 2015. *See* § 29-2-200.

The Legislative Council has the power and duty to do the following:

(1) Accept title to the State House properly;
(2) Provide for the management and supervision of improvements, equipping, operation and maintenance, and
(3) Take other action necessary to ensure sufficient space and facilities of the Legislature Department.

Ala. Code § 29-2-200.

O. Reduce Poverty

There is created the Alabama Commission to Reduce Poverty. *See* § 29-2-250.

The commission shall study and evaluate the following policies and programs of the State of Alabama:

(1) State supported programs that serve those living in poverty.

(2) The economic impact of poverty.

(3) Current policies and services that affect those living in poverty.

(4) Recommendations and proposed legislation affecting individuals in poverty.

The commission shall make an annual report to members of the Legislature no later than the seventh legislative day of each regular session detailing any and all recommendations. *Id.*

P. Delegation of Legislative Powers[1]

Historically the Legislature has opposed delegating power. This opposition was based on two principles. First, the legislators must be accountable for setting public policy, and delegation interfered with their accountability. Second, the law must be accessible to citizens and not hidden in agency behavior.

Legislatures have delegated authority to administrative agencies and regulatory boards by granting them rule-making power. As a result, courts have modified the prohibition against the delegation of power to say that administrative functions may be delegated. Purely legislative powers, however, may be exercised by the Legislature only.

Parke v. Bradley, 204 Ala. 455, 86 So. 28 (Ala. 1920) was an early case which did much to pinpoint the court's position in Alabama on delegation of powers. In this case, the Board of Health passed regulations which were challenged on the basis of an unlawful delegation of legislative powers. In upholding the regulations, the Alabama Supreme Court stated that the Legislature could delegate to officers, boards, or commissions of its own creation various governmental powers in order to promote

[1]Johnson, Kevin, "Delegation of Legislative Powers" Student Paper (1982).

more efficient administration of the laws. However, such delegation was always subject to the implied limit of the Constitution that the lawmaking power vested solely in the legislature could not be delegated to any other department or agency. The court went on to say that this implied limitation was not intended to prevent legislatures from authorizing their own agencies to make such minor rules and regulations as would be necessary and appropriate for the administration and enforcement of the general laws of the state.

In *Porter Coal Co. v. Davis*, 231 Ala. 359, 165 So. 93 (Ala. 1936), the court held that the Legislature could delegate the power to determine the existence of some fact or state of things upon which the Legislature intended its law to depend. However, this decision does not authorize delegating the power to determine the operative law. Instead, it only gives the power to determine the facts upon which a particular law will act. *See also Monroe v. Harco, Inc.*, 762 So. 2d 828 (Ala. 2000)(affirming *Porter Coal*).

Porter Coal was clarified by a later case, *Patterson v. Jefferson County*, 238 Ala. 442, 191 So. 681 (Ala. 1939). In this case, the county attempted to issue hospital bonds to fund the building of a new hospital. Patterson asked for a court order to force the county to follow the provisions of the Carmichael Act of 1933 and the Lee Act of 1935 which directed the issuance of specific types of public bonds. The court stated that the Legislature would have to decide whether to include the hospital bonds in the acts. A court decision to place them under the acts would amount to making law, not interpreting the law as written. Therefore, it was a matter for the Legislature to decide. The court's decision was based on the principle that the Legislature cannot delegate to any person the right or power to determine what law shall be controlling in a particular transaction.

In 1971, the Legislature passed an act increasing the excise taxes on gasoline. This act was not to become effective unless an amendment authorizing the issuance of bonds against which the increased tax would be pledged was passed. In an *Opinion of the Justices No. 203*, 287 Ala. 326, 251 So. 2d 744 (Ala. 1971), the court advised that an act which was contingent on the adoption of an

amendment to the constitution did not violate the constitutional provision that the power to levy taxes is not delegable to individuals, private corporations, or associations.

Two years later, the court disallowed a delegation by the Legislature. The Legislature had given the governor the power to appropriate funds for the payment of attorney fees for appointed counsel. Subsequently, the governor began paying a lesser amount to attorneys representing indigent clients. A lawyer sued for full payment under the act. The Court of Civil Appeals stated that the Legislature could not delegate to the governor the power to appropriate funds for the payment of attorney fees, nor could it delegate its authority to amend or alter the fee schedule as set out by the Legislature since this would in effect be delegating the Legislature's power to make law. *Jetton v. Sanders*, 49 Ala. App. 669, 275 So. 2d 349 (Ala. Civ. App., 1973).

The issue of delegation of powers was also addressed by the Alabama Supreme Court in the case of *Alabama Power Co. v. Hamilton*, 342 So. 2d 8 (Ala. 1977). In this case, the power company's right to exercise the power of eminent domain was challenged. The court upheld the delegation, saying that granting public utilities the power to determine the necessity for exercising the power of eminent domain over particular property was not an unlawful delegation of legislative power.

The enactment of zoning ordinances is a legislative function. *Fleetwood Dev. Corp. v. City of Vestavia Hills*, 282 Ala. 439, 212 So. 2d 693 (Ala. 1968). Cities, for example do not have inherent power to enact zoning ordinances. *Roberson v. City of Montgomery*, 285 Ala. 421, 233 So. 2d 69 (Ala. 1970). Rather, the legislature delegates such authority to a municipal corporation. Ala. Code § 11-52-70 et seq.; *City of Mobile v. Karagan*, 476 So. 2d 60 (Ala. 1985). Zoning authority may even be delegated to a non-elected body that is an agency of a municipality. *Bailey v. Shelby Cnty.*, 507 So. 2d 438 (Ala. 1987).

Likewise, certain administrative agencies are given power to make rules and regulations which in effect are delegations of legislative power. The officers administering these powers are

generally appointed. *Franklin v. State ex rel. Ala. State Milk Control Board*, 232 Ala. 637, 169 So. 295 (Ala. 1936). Although the legislature cannot delegate its power to make a law, it can enact a law to determine a particular fact or circumstance upon which the law operates. *See Ala. Dairy Comm'n v. Food Giant, Inc.*, 357 So. 2d 139 (Ala. 1978).

Chapter 20
Governor's Action

A. Signing of Bills

During the session, the Governor must sign a bill within six calendar days, Sundays excepted (i.e. seven calendar days). Otherwise, the bill becomes law without the Governor's signature. This changes for bills "presented to the Governor within five days before final adjournment of the legislature." These bills must be signed by the Governor within 10 days after adjournment otherwise the bills become pocket vetoed.

Ala. Const. Art. V, § 125
Presentation of bills to governor for signature; veto power of governor; procedure for passage of bill after veto by governor; effect of failure of governor to sign bill.

> Every bill which shall have passed both houses of the legislature, except as otherwise provided in this Constitution, shall be presented to the governor; if he approves, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon the journal and proceed to reconsider it. If the governor's message proposes no amendment which would remove his objections to the bill, the house in which the bill originated may proceed to reconsider it, and if a majority of the whole number elected to that house vote for the passage of the bill, it shall be sent to the other house, which shall in like manner reconsider, and if a majority of the whole number elected to that house vote for the passage of the bill, the same shall become a law, notwithstanding the governor's veto. If the governor's message proposes amendment, which would remove his objections, the house to which it is sent may so amend the bill and send it with the governor's message to the other house, which may adopt, but cannot amend, said amendment; and both houses concurring in the amendment, the bill shall again be sent to the governor and acted on by

him as other bills. If the house to which the bill is returned refuses to make such amendment, it shall proceed to reconsider it; and if a majority of the whole number elected to that house shall vote for the passage of the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered, and if approved by a majority of the whole number elected to that house, it shall become a law. If the house to which the bill is returned makes the amendment, and the other house declines to pass the same, that house shall proceed to reconsider it, as though the bill had originated therein, and such proceedings shall be taken thereon as above provided. In every such case the vote of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered upon the journals of each house, respectively. If any bill shall not be returned by the governor within six days, Sunday excepted, after it shall have been presented, the same shall become a law in like manner as if he had signed it, unless the legislature, by its adjournment, prevent the return, in which case it shall not be a law; but when return is prevented by recess, such bill must be returned to the house in which it originated within two days after the reassembling, otherwise it shall become a law, but bills presented to the governor within five days before the final adjournment of the legislature may be approved by the governor at any time within ten days after such adjournment, and if approved and deposited with the secretary of state within that time shall become law. Every vote, order, or resolution to which concurrence of both houses may be necessary, except on questions of adjournment and the bringing on of elections by the two houses, and amending this Constitution, shall be presented to the governor, and, before the same shall take effect, be approved by him; or, being disapproved, shall be repassed by both houses according to the rules and limitations prescribed in the case of a bill.

B. Passage without Governor's Signature

During a session, whenever the Governor fails to return a bill

to the house in which it originated within six calendar days *after* it is presented to him/her, Sundays excepted, it becomes a law without his signature, unless the return was prevented by recess or adjournment. In that case, the bill must be returned within two days after the Legislature assembles, or the bill becomes law without the Governor's signature. But, when the Governor is unable to return a bill on the sixth calendar day after presentation because the originating body is not in session, he/she must return it on the next legislative day if it is the last day on which the legislature can meet. *In re Opinion of the Justices No. 104*, 52 Ala. 541, 42 So. 2d 27 (Ala. 1949).

C. Veto and Executive Amendment

If the Governor objects to a bill, he/she may veto it, in which case he/she must return it to the house in which it originated, with a message explaining his/her objections or, he/she may suggest amendments that will remove his/her objections, if such amendments are possible. The bill is then reconsidered, and, if a majority of the members elected to each house agree to the executive amendments, it is returned to the Governor for his/her signature.

Alabama Citizens Action Program
v.
Kennamer
479 So. 2d 1237 (Ala. 1985)

* * *

Plaintiffs claim that the senate prevented the return of the bill by its early adjournment on May 21, [1984].

The adjournment contemplated in [Ala. Const. of 1901 Art. V § 125] is a final adjournment. *Opinion of the Justices No. 104*, 252 Ala. 541, 542, 42 So. 2d 27, 29 (1949). The governor has six calendar days, excluding Sunday and the day on which the bill is presented to him, to return the bill. *Building Comm'n v. Jordan*, 254 Ala. 433, 437, 48 So. 2d 565, 569 (1950). If the house in which the bill originated is in recess on the sixth calendar day, the governor has the next two legislative days in which to return the bill. *Id*. However, if the next legislative day following the recess is the final day on which

the legislature can constitutionally meet, the bill must be returned on that day; in such a case there can be no second legislative day following the recess. 254 Ala. at 441, 48 So. 2d at 573. Moreover, if the house in which the bill originated is in session on the day on which the return must be made, an early adjournment on that day does not excuse the governor's failure to return the bill while the house is in session. *Opinion of the Justices No. 105*, 252 Ala. at 543, 42 So. 2d at 29 (Ala. 1949).

The senate journal shows that Senate Bill 76 was presented to the governor on the 29th legislative day, Thursday, May 10, 1984, at 9:05 p.m. Since the legislature was in recess on Thursday, May 17, the sixth calendar day after presentment, not including Sunday or the day of presentment, and the legislature is constitutionally limited to 30 legislative days, Alabama Constitution, Amendment 339, the governor's return of the bill had to be made on the 30th legislative day, Monday, May 21, before adjournment. The senate journal contains no entry of a return or attempted return of Senate Bill 76 on that day. As a matter of law, the adjournment of the Senate at 5:45 p.m. on May 21 was not improper and did not prevent the return of the bill within the meaning of Alabama Constitution, art. V, § 125.

Plaintiffs point to an affidavit indicating that the governor's veto message reached the senate during the vote on the motion for adjournment. In *Building Comm'n v. Jordan*, we held that a return of a bill was timely where the return occurred one minute after the motion to adjourn had been made but prior to actual adjournment. 254 Ala. at 441, 48 So. 2d at 572-73. In *Building Comm'n v. Jordan*, however, those facts appeared in the senate journal. In the present case, there is no indication in the journal of an attempted return, and we cannot go behind the journal to attack the proceedings of the legislature.

* * *

D. Pocket Veto

Bills that reach the Governor less than five days before the end of the session must be approved by him/her within ten days after adjournment. Bills that are not approved within that time do not become law and are said to be "pocket vetoed." Ala. Const. Art. V, § 125.

The Senate's attempt to present a bill to the governor constituted presentment of a bill despite the fact that the governor's offices were closed so that he/she did not actually receive the bill, and the governor was thus required to act within six days of such presentment, not within six days of actual reception. *Opinion of the Justices No. 295*, 412 So. 2d 279, (Ala. 1982)

Allowing the Governor time after adjournment to decide whether to approve a bill or let it die does not provide the Governor a post-adjournment item veto. Section 125 does not even allude to a veto of items within a bill. The only post-adjournment "veto" created by § 125 is the "pocket veto" — a veto of an entire bill achieved by the Governor's doing nothing to that bill. *Hunt v. Hubbert*, 588 So. 2d 848 (Ala. 1991).

E. Item Veto

In Alabama, the Governor has the power to approve or disapprove any item or items of an appropriation bill without vetoing the entire bill. Ala. Const. (2022) Art. V § 126. In the event of an item veto, only the parts of the bill approved become law; the item or items disapproved do not become law unless they are re-passed over the Governor's objection. A line item veto is effective so long as the legislature has an opportunity to override the veto. A line item veto of an appropriation bill made after the legislature adjourns is ineffective.

Ala. Const. Art. IV, § 126
Authority of governor to veto items in appropriation bills.

The governor shall have power to approve or

disapprove any item or items of any appropriation bill embracing distinct items, and the part or the parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of bills over the executive veto; and he/she shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such case the enrolled bill shall not be returned with the governor's objection.

Hunt
v.
Hubbert
588 So. 2d 848 (Ala. 1991)
* * *

The parties have stipulated all the facts necessary to decide this case. The legislature passed House Bill 203 on July 29, 1991, and it adjourned *sine die* that same day. On August 8, 1991, the Governor attempted to approve a portion of House Bill 203 and to disapprove a portion of it by marking through certain provisions in red ink and initialing those marked-out provisions. The Governor signed the end of House Bill 203 with the following language:

"Approved as to all items except those specifically disapproved and stricken out in red ink; where applicable, funds totals throughout this bill have been adjusted in the same manner to reflect the items so disapproved.

"Date: 8-8-91	/s/Guy Hunt
"Time: 7:20 p.m.	"GOVERNOR"

Also, on August 8, the Governor sent a letter to the clerk of the House of Representatives and to the secretary of state detailing the portions of House Bill 203 that he had disapproved.

Finally, the parties stipulated:

"Had the Governor not believed that he had the power under Section 126 of the Alabama Constitution to disapprove only a part or parts of House Bill 203 to eliminate the portions of the Bill he believed to be detrimental to the best interests of the State of Alabama, he would have approved and signed the Bill as presented to him without striking out any portions thereof and without the [language above his signature expressing his disapproval.] Accordingly, if, as a matter of law the Governor did not have the constitutional power to disapprove only certain portions of House Bill 203, the Governor's signature at the foot of the Bill indicates his approval of the entire Bill."

The issues presented

The Governor's power to veto legislation comes from §§ 125 and 126 of the 1901 Alabama Constitution.

* * *

Accordingly, the action the Governor took can be accurately described as a post-adjournment item veto.

* * *

A review of the debate on allowing executive amendments indicates that the drafters did not intend for § 125 to authorize the Governor to make post-adjournment executive amendments. *Official Proceedings, Constitutional Convention of 1901*, Vol. 1, pp. 618-82.

* * *

Allowing the Governor time after adjournment to decide whether to approve a bill or let it die does not provide the Governor a post-adjournment item veto. Section 125 does not even allude to a veto of *items* within a bill. Furthermore, the only post-adjournment "veto" created by § 125 is the "pocket veto" - a veto of an entire bill achieved by the Governor's *doing nothing* to that bill. The only power that § 125 provides the Governor after the legislature's final adjournment is to approve bills presented to him/her within five days of the legislature's final adjournment. Quite

simply, after the final adjournment of the legislature, § 125 does not provide the Governor an *affirmative* power to *disapprove* a bill or items of a bill. Accordingly, the Governor's arguments that § 125 provides him authority for a post-adjournment item veto fail.

* * *

... The plain language of § 126 contemplates that upon the legislature's receipt of the Governor's message disapproving an item or items of a bill and expressing his objections thereto, those items may be repassed by the legislature according to the rules prescribed in § 125 for the passage of bills over the Governor's veto. ... Accordingly, considering all the arguments, we hold that § 126 does not authorize an Alabama Governor to item-veto an appropriations bill after the legislature has adjourned *sine die*.

We expressly reject the argument that some combination of the provisions of §§ 125 and 126 can be construed to create authority for the Governor to exercise a post-adjournment item veto. At the same time § 125 was amended to provide the Governor 10 days after the legislature's final adjournment within which to approve legislation passed in the five days before the legislature's final adjournment, § 126 was amended to require expressly that the Governor's item veto be set out in a message. This combination of amendments indicates that the grant to the Governor of additional time to approve legislation did not authorize an extension of time beyond the legislature's final adjournment for him/her to exercise the item veto.

The trial court did not err in its judgment. That judgment is due to be affirmed.

Riley
v.
Joint Fiscal Comm. of the Alabama Legislature
26 So. 3d 1150 (Ala. 2009)

Governor Riley used a "line item" veto to Section 4 of

the HB 328, the general-fund appropriation of the fiscal year 2009.

The section was a conditional appropriation conditional upon the availability of funds and dictated 5 agencies receive all their conditional appropriation before any of the remaining agencies are funded.

The governor "line itemed" Section 4 and returned it to the Legislature on the last day of the session at 11:54 p.m. with the Legislature adjourning at 11:55 p.m. with no opportunity to address the veto. The veto message merely set out the items by line, section and page as opposed to setting items "out in full" as required in § 126 of the Constitution.

The governor further argued the Legislature's acts were unconstitutional.

In passing the constitutionality of an issue, the Court approached the question with every presumption and intention in favor of validity and seek to sustain rather than strike down the enactment. Concluded HB 328 does not offend § 213.

The court further affirmed the trial court that had granted a summary judgment in favor of legislators holding Governor Riley's veto of Section 4 as unconstitutional because it failed to comply with the procedural requirements of § 126 of the Constitution.

F. Overriding a Veto

If both houses cannot agree to the amendments proposed by the Governor, or if he proposes no amendments, the bill may be passed by a vote of a majority of the members elected to each house, notwithstanding the Governor's veto. Ala. Const. Art. V, § 125.

G. Assignment of Act Numbers

When the enrolled copy of a bill has been signed by the Governor or when it has been otherwise enacted into law, the measure is transmitted to the office of the Secretary of State, where an act number is assigned to it. Thereafter, the measure is no longer known by its House or Senate bill number, but by the act number. All act numbers include the last two digits of year of enactment and are numbered in sequence thereafter (e.g., 97-104). Since 1979, acts passed in regular sessions are not distinguished from those passed in special session as was previously the case.

PART IV

MECHANICS OF DRAFTING

Chapter 21
Resolutions

Resolutions, unlike bills, do not result in new law but can be used by the drafter as a vehicle to accomplish several functions.

(1) Express policy. The Legislature can use resolutions to express feelings on an issue of national or state importance to clarify legislative intent, to commemorate or memorialize. *See* Senate Rule 55 (2023). *See also* House Rule 12.1 (2023).

(2) Amend Alabama's Constitution. Any amendment to the Alabama Constitution must be proposed by joint resolution passed by a three-fifths vote in both the House and Senate in order to be put on the next general election ballot. *See Opinion of the Justices No. 177, 275* Ala. 372, 155 So. 2d 329 (Ala. 1963). *See* also *Opinion of the Justices No. 352,* 672 So. 2d 1290 (Ala. 1996). No action by the Governor is necessary. Ala. Const. Art. XVIII, § 284. A proposal to hold a convention for the purpose of alternating or amending the Alabama Constitution may be made by act or resolution passed by a majority of the members elected to each house and put on the next general election. Ala. Const. Art. XVIII, §286.

(3) Amend legislative rules. The House, Senate, or Joint rules can be amended only by resolution. House Rules 9, 10 (2023), Senate Rule 35 (2023).

(4) Take action on federal constitutional issues. Resolutions are used to ratify proposed federal constitutional amendments or to express policy on federal constitutional issues *See* Ala. Const. Art. XVIII, § 287; House Rule 15 (2023).

(5) Mandate study items. Resolutions can be used to mandate that a subject be studied by a legislative

committee during the interim period. *See* example provided below.

(6) Provide for administrative details of each house such as when to adjourn, to meet again, and to set a time of meetings.

(7) Express congratulations, commendation or sympathy. Joint Rule 11 (2023), House Rule 12.1 (2023), Senate Rule 78 (2023).

(8) Address budget isolation requirements. Senate Rule 75 (2023), House Rule 36 (2023), Joint Rule 15 (2023).

(9) From the Committee on Rules, proposals for a special order calendar and/or consent calendar of bills. House Rule 11 (2023), Senate Rule 9 (2023).

(10) File any articles of impeachment. House Rule 79.1 (2023).

(11) Declare a state of emergency. Ala. Code § 31-9-8(a).

There are two types of resolutions: simple and joint. Simple resolutions are resolutions of a single house, to express that house's opinion on a particular matter. Joint resolutions are passed by both houses of the Legislature and submitted to the Governor for his/her approval, except for constitutional amendments and declarations of emergency. Art. XVIII, § 284. Ala. Code § 31-9-8(a).

The form followed for resolutions is similar to that followed for bills. There are some exceptions that are discussed below. An example of a resolution can be found at the end of this section. No resolution, as provided for in Section (C) of Article IV, § 71.01 of the Constitution of Alabama of 2022, shall be introduced until the bill described in the resolution appears on the regular calendar of the house in which the resolution is offered. Such resolution shall not be introduced unless it has been prepared by the Legislative Services Agency, Legal Division or the office of the Clerk or the

Secretary. Joint Rule 15 (2023).

In *Reynolds, Auditor v. Blue*, 47 Ala. 711 (Ala. 1872), the Senate passed a resolution directing the State Auditor to pay per diem to legislators during a recess. The Auditor refused saying that a resolution - without other legislation - does not authorize him/her to make payment. Article IV, § 72 of the Ala. Const. says, "No money shall be paid out of the treasury except upon appropriations made by *law*." (emphasis added). A resolution is not a "law" within the meaning of this section.

In most jurisdictions, legislation cannot be enacted by joint resolution. However, joint resolutions may have the force and effect of law. 82 C.J.S. *Statutes* § 46.

The Alabama Supreme Court stated in *Laidlaw Transit, Inc. v. Ala. Education Ass'n*, 769 So. 2d 872, 883 (Ala. 2000), referring to another joint resolution:

> "A resolution such as this one is not a law; it is merely the form in which the Legislature expresses an opinion. The Legislature has no power to make or change law by resolution. Art. IV, §§ 61, Ala. Constitution ('No law shall be passed except by bill ....'); *Gunter v. Beasley*, 414 So. 2d 41 (Ala. 1982). [**3] Whatever the Legislature may have intended by [the joint resolution] is irrelevant to our resolution of the issues presented on this appeal. The controlling law here is that expressed in the applicable ... acts. *See Opinion of the Justices No. 275*, 396 So. 2d 81 (Ala. 1981); *Opinion of the Justices No. 265*, 381 So. 2d 183 (Ala. 1980) (a statute cannot be amended by a joint resolution of the Legislature)."

A. Designation

The designations for resolutions are similar to those used in bills. The designation refers to the house of origin.

EXAMPLE:
S.J.R. (or H.J.R.) No.____ By Senator Jones
(Senate Joint Resolution)

H.R. (or S.R.) No.___ By Representative Smith
(House Resolution)
(Senate Resolution)

B. Title

The title of a resolution is similar to that of a bill and consists of an opening boilerplate and a general subject. A resolution shall not be accepted for filing if its title exceeds two pages. House Rule 12 (2023).

EXAMPLE: "A Senate (House) Resolution Commending Williamson High School Basketball Team"

"A Senate Joint Resolution Creating an Interim Committee to Study Immigration"

"A Joint Resolution Proposed to Amend Article I, Section 11, of the Constitution of the State of Alabama"

C. Resolving Clause

A resolving clause rather than an enacting clause is used in resolutions.

EXAMPLE: Simple Resolution

"BE IT RESOLVED by the House of Representatives (Senate) of the State of Alabama:"

Joint Resolution

"BE IT RESOLVED by the Legislature of Alabama; both houses thereof concurring"

Joint Resolution Proposing Amendment to the Alabama

Constitution

"BE IT RESOLVED by the Legislature of Alabama, that the Constitution of 2022 be amended to repeal amendment Number 236 relating to the compensation of certain officers in Greene County."

D. Preamble, Statement of Purpose or Policy

A preamble, which effectively states the reason, purpose or policy of the resolution, is the one area of resolutions where the drafting is more elaborate and extensive than that of bills. Often the preamble of a resolution is longer than the body. Typically, a preamble will consist of any number of clauses separated into indented paragraphs. Each clause begins with the word "Whereas," ends with a semicolon and the word "and," except the last clause which ends with a period.

EXAMPLE: WHEREAS, residents of mobile home parks have expressed concern regarding what they perceive to be overly restrictive park leases; and
WHEREAS, the state recognizes the need for mobile home park leases and rules which promote harmony and fairness between park owners and residents.

A Joint Resolution proposing an amendment to Alabama's constitution does not include a preamble.

E. Basic Provisions

The basic provisions of the joint resolution are again separated into paragraphs with the first one beginning with the following capitalized words:

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING."

Subsequent paragraphs begin with the following capitalized phrase:

"BE IT FURTHER RESOLVED".

EXAMPLE: BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That members of Alabama A and M University Volleyball Team are congratulated....

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to the Alabama A and M University and Coach Betty K. Austin....

Again, the exception to the format is a joint resolution proposing an amendment to Alabama's constitution. The basic provisions of this type of resolution are similar to those in a bill. The body is divided into sections with the language to be changed set forth in its entirety, with language to be deleted crossed through, and the language to be added underlined.

HOUSE RESOLUTION

State of Alabama

House of Representatives

MONTGOMERY, ALABAMA

Resolution

HR 538

By Representative Frank McDaniel

URGING THE ALABAMA LAW INSTITUTE TO CONDUCT AN ANALYSIS OF THE AMENDMENTS TO THE CONSTITUTION OF ALABAMA OF 1901, FOR THE PURPOSE OF RECOMMENDING TO THE HOUSE OF REPRESENTATIVES OF THE LEGISLATURE A PROCEDURE FOR REVISING AND CONSOLIDATING THE CONSTITUTION

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE LEGISLATURE OF ALABAMA, That we hereby urge the Alabama Law Institute to thoroughly analyze the current 703 Amendments to the Constitution of Alabama of 1901, with a view towards revising and consolidating, where possible, the constitutional amendments. In analyzing the constitutional amendments, the institute is requested to categorize the amendments to identify those voided by the courts, those which are antiquated, and those which are unnecessary or duplicative of other provisions. The goals of such an analysis by the institute should include the following:

(1) Create public awareness of and educate the public on the problems currently existing in the Alabama Constitution.

(2) Provide the House of Representatives with specific guidance for constitutional revision.

(3) Identify the goals of a new constitution and identify methods and approaches for revising or rewriting the current constitution.

The institute is urged to complete its analysis and report its findings, conclusions, recommendations, and suggestions to the Alabama House of Representatives by the third legislative day of the 2002 Regular Session.

RESOLVED FURTHER, That a copy of this resolution be provided to the Director of the Alabama Law Institute as an expression of our deep sentiment and expectation on this vital issue.

I hereby certify that the above resolution was adopted by the House of Representatives of the State of Alabama on this the 8th day of May, 2001.

Greg Pappas

GREG PAPPAS, CLERK

JOINT COMMITTEE RESOLUTION

ESTABLISHING THE ALABAMA HUMAN TRAFFICKING TASK FORCE.

WHEREAS, human trafficking is the second largest criminal activity in the world, exceeded only by drug trafficking; and

WHEREAS, human trafficking enslaves hundreds of thousands of victims each year; and

WHEREAS, human trafficking involves the use of force, fraud, or coercion by traffickers to recruit or capture and also control their victims; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That the Alabama Human Trafficking Task Force is hereby established.

The purpose and agenda of the Task Force shall include all of the following:

(1) To combat all aspects of human trafficking, including sex trafficking and labor trafficking.
(2) To pursue a comprehensive response to crimes of human trafficking.
(3) To coordinate strategies to provide necessary services for victims of human trafficking.
(4) To focus prevention efforts to end the demand for human trafficking and create awareness through education and community initiatives.
(5) To develop legislation to prevent, intervene, and treat human trafficking.

The Alabama Human Trafficking Task Force shall be comprised of the following members:

1. One member of the House of Representatives appointed by the Speaker of the House of Representatives.
2. One member of the Senate appointed by the Senate President Pro Tempore.
3. One member of the Legal, Legislative, or Policy Office of the Alabama Governor appointed by the Governor.

4. One member of the Office of Victim Assistance of the Alabama Attorney General appointed by the Attorney General.
5. The Chair of the Huntsville/Madison County Human Trafficking Task Force, or his or her designee.
6. The Chair of the Central Alabama Human Trafficking Task Force, or his or her designee.
7. The Commissioner of the Alabama Department of Human Resources, or his or her designee.
8. The Commissioner of the Alabama Department of Agriculture and Industries, or his or her designee.
9. The Commissioner of the Alabama Department of Labor, or his or her designee.
10. The Chief of the Alabama Bureau of Investigation, or his or her designee.
11. The Director of the Alabama Office of Prosecution Services, or his or her designee.
12. The President of the Alabama District Attorney's Association, or his or her designee.
13. The Director of the Alabama Department of Child Abuse and Neglect Prevention, or his or her designee.
14. The Director of the Alabama Network of Children's Advocacy Centers, or his or her designee.
15. The Superintendent of the Alabama State Department of Education, or his or her designee.

The members of the Task Force shall elect a chair, vice chair, and other officers as deemed necessary for the efficient operation of the business of the Task Force. Each member shall serve at the pleasure of his or her appointing authority. A vacancy in the membership shall be filled in the same manner as the original appointment.

The members of the Task Force shall meet at least four times per calendar year and serve without compensation. The Task Force shall hold its initial meeting no later than June 1, 2014, and shall meet thereafter according to a schedule established by the members. Special meetings shall be held at the call of the chair or a quorum of the members of the Task Force. The chair or other members of the Task Force calling the meeting shall give at least seven days' notice of all regular or special meetings, which shall include the place and time of the meeting. A majority of the members of the Task Force shall constitute a quorum for the transaction of all business at a regular or special meeting.

The Task Force shall submit an annual report of its findings and recommendations to the Governor, the Lieutenant Governor, the

Attorney General, the Senate President Pro Tempore, and the Speaker of the House of Representatives on or before January 1 of each calendar year, and shall submit a copy of its report to all legislators and the Secretary of State. Each department, commission, board, agency, officer, and institution of the state and all subdivisions of the state shall cooperate with the Task Force in carrying out the purposes of this resolution.

JOINT CONDOLENCES RESOLUTION

MOURNING THE DEATH OF COLONEL OLA LEE MIZE.

WHEREAS, we note the death of Colonel Ola Lee Mize of Gadsden, Alabama, on March 12, 2014, with deep sadness and regret; his immeasurable life of 82 years is commended and celebrated with great thanksgiving; and

WHEREAS, the passing of Colonel Mize leaves a void in the lives of his loving family, many friends, and the entire community, where he was highly regarded; and

WHEREAS, born in Marshall County in 1931, he entered the Army as a "buck private" in 1948 and worked his way through the ranks; he served with much honor and distinction during three tours of duty in Vietnam, and he retired as a Full Colonel with the Special Forces; during the last five years of his distinguished military career, he was in charge of the Special Forces School; and

WHEREAS, a hero and a tremendous leader, he earned the Medal of Honor, the nation's highest military honor, for his meritorious service during the Korean War; he was known as a "warrior's warrior" among his comrades; "he was a soldier's leader," Etowah County's Veterans Affairs officer, Rick Vaughan described his friend; "if you had to pick a leader to go to war with, Lee Mize was the one you would want to pick; you would absolutely want to go with him because you knew he would take care of you, make sure you were prepared and had all the skill and knowledge you need to get there and get back safe;" and

WHEREAS, Colonel Mize desired for the men serving under him to be honored as well when he received the Medal of Honor; he attempted to turn down the prestigious award until his men were also recognized; in addition, Colonel Mize was nominated for a second Medal of Honor for his service in Vietnam; and WHEREAS, Colonel Mize was the most dedicated soldier you could find, but most of all, he loved the Lord with his heart, mind, and soul; If he could relay a message to the world, it would be as follows: "Give your heart to the Lord and live for Him;" he was a faithful and devoted member of Southside Baptist Church; and WHEREAS, through the years, Colonel Mize earned immense respect for his tireless dedication and exceptional abilities, and his unwavering commitment to the defense of freedom and democracy was a tremendous source of credit upon the United States; and

WHEREAS, survivors include his beloved and devoted wife, Betty Mize; daughter, Teresa Peterson (Rodney); grandchildren, Brandy Pearson, Jennifer Frachiseur, Katie Smith (Chris) and Joshua Haney; great-grandchildren, Sarah Haney, Luke Pearson, Drew Pearson, Landon Smith, Cason Smith, and Hunter Haney; brothers, Gary Mize, Donald Mize, and Johnny Mize; sisters, Judy Hienrich, Brenda Garza, and Della George; brothers-in-law, Lee Jackson and Jack W. Cooey; sisters-in-law, Denise Jackson Cooey and Kathy Shields Jackson; numerous nieces and nephews; his chosen family, Joel and Tammy Haney, Rick and Linda Vaughan, and many special friends; and

WHEREAS, Colonel Mize was a valued member of the community; although his presence is greatly missed; his memory is cherished in the hearts and minds of all those who were fortunate enough to know him; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That while grieving the death of Colonel Ola Lee Mize, we are highly grateful for his abundant life, and we offer this resolution in highest tribute to his inspiring legacy, as well as in heartfelt sympathy to his family, friends, and colleagues.

CONGRATULATORY RESOLUTION

COMMENDING CAROL HILL FOR OUTSTANDING ACHIEVEMENT AND LONGTIME SERVICE AS A MEMBER OF THE ALABAMA LEGISLATIVE CLUB.

WHEREAS, Carol Hill has been an active member of the Alabama Legislative Club (ALC) since 1986 and currently serves as Chaplain; and WHEREAS, the ALC is a fellowship and service club made up of spouses of current Alabama Legislators; and

WHEREAS, the wife of Representative Mike Hill, she served as the 11th President of the ALC from 2005 to 2007 and is credited with many achievements including raising funds needed to install the teakwood benches that grace the gardens at the Department of Archives Building, to build the rain shelter at the Montgomery Miracle Field for children with disabilities, and to buy crystal for the Governor's Mansion; and

WHEREAS, additionally, she produced a Club Directory, conducted meetings efficiently, and included in each luncheon some special treat she created; the annual spring trips also always included wonderful snacks and goodies from her kitchen; and

WHEREAS, among her further roles of leadership, she has served as Cookbook Chair and Editor of "A Capitol Celebration" Cookbook for the ALC; she also coordinated educational trips, highlighted by a day trip to Shelby County, where members visited the American Village, the George Washington Museum, and the Historical Shelby County Courthouse, followed by a reception at her home; and

WHEREAS, Carol Hill is admired and respected as one of the best Home Economics Teachers in the State of Alabama and is currently Chair of the Shelby County Board of Registrars; in her spare time, she enjoys being with her beloved grandchildren, learning new skills such as monogramming, and cheering for the Auburn Tigers; and

WHEREAS, Carol Hill has been and continues to be a valued member of the Alabama Legislative Club; through the years, her helpful and responsible attitude has endeared her to others; she builds relationships, inspires cooperation, serves as a role model for others, and is highly regarded by her peers; her tireless efforts and numerous accomplishments make her worthy of special recognition; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That Carol Hill is hereby most highly honored and commended, and it is directed that a copy of this resolution be provided to her with gratitude for significant contributions to the Alabama Legislative Club and to the entire State of Alabama, along with best wishes in all future endeavors.

HOUSEKEEPING RESOLUTION

SJR 1

COMMITTEE APPOINTED TO NOTIFY GOVERNOR THAT LEGISLATURE IS IN SESSION.

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That a committee of three members of the Senate, to be named by the Presiding Officer of the Senate, and three members of the House, to be named by the Speaker of the House, be appointed to notify the Governor that the Legislature is now in session and is ready for the transaction of business.

Chapter 22
Constitutional Amendments

A. By Legislative Action

The Legislature plays an important part in the amendment of the state Constitution. [1] Two methods of amendment are mentioned in the Constitution, and both require action by the Legislature. Under the first method, amendments may be proposed by the introduction in the Legislature of a bill or resolution setting forth the proposed amendment. The bill or resolution must be read in the house in which it originates on three separate days, and three-fifths of the members elected to that house must vote affirmatively to pass the proposal. The measure then goes forward to the second house, where it must also be read on three separate days and receive a three-fifths affirmative vote of the members elected to that house. (Note, however, that amendments to a bill proposing a constitutional amendment are not required to be read on "three separate days" in each house in order to comply with this section. *Opinion of the Justices No. 224*, 335 So. 2d 373 (Ala. 1976).) If the proposal is successful in both houses, it is submitted to the electorate for a vote and must receive a majority of the votes cast in the election to become a part of the state Constitution.

The Legislature has responsibility for fixing the time of the election on proposed amendments. Such a referendum may be held at either the next general election or a special election conducted not less than three months after the final adjournment of the session at which the amendments were proposed. Notice of the election and of the proposed constitutional amendments is given by proclamation of the Governor, which must be published in every county for four successive weeks before the date designated for the election. Ala. Const. Art. XVIII, § 284. It should be noted that the

[1] Partially based on Senate Manual; Legislative Reference Service, A Manual for Alabama Legislators, at 23-24 (1959); M. Lee, Alabama's Legislative Process and Legislative Glossary, at 8-9 (n.d.). *See also*, Ala. Const. Art. XVIII, §§ 284-287.

Governor plays little formal part in the amending process except for the proclamation of the popular election on the proposed amendment. No proposed constitutional amendment enacted by the Legislature needs to be submitted to the Governor, as it is valid without his approval. *Gafford v. Pemberton*, 409 So. 2d 1367 (Ala. 1982).

Alabama Constitutional Section 285 must be construed in pari materia with Ala. Const. of 2022 Art. XVII § 284. *Opinion of the Justices No. 185*, 179 So. 2d 155 (Ala. 1965). A constitutional amendment submitted at a general election which receives a majority of the votes cast on the question of its adoption is adopted, even though such majority did not constitute a majority of the votes cast at the general election. *Harris v. Walker*, 199 Ala. 51, 74 So. 40 (Ala. 1917). Furthermore, this section does not require that all provisions of a proposed amendment be fully set out on the ballot, nor that the language printed on the ballot be a compendium of all such provisions or the entire "substance or subject matter" of the proposed amendment. Rather, only so much of the amendment must be printed as may be necessary to indicate clearly the nature of the proposed amendment. *Swaim v. Tuscaloosa Cnty.*, 267 Ala. 509, 103 So. 2d 769 (Ala. 1958).

Gafford v. Pemberton
409 So. 2d 1367 (Ala. 1982)

> The approval of the governor is not required on a bill enacted by the legislature proposing constitutional amendments. Statutes are enacted by a majority vote, while bills proposing constitutional amendments require a three-fifths majority of all members elected to each house. Ala. Const. Section 61 does not apply to constitutional amendments.

B. By Constitutional Convention

A second method of amending the state Constitution is by convention, a process in which the Legislature is also involved. This method requires the Legislature, by a majority vote of the entire membership, to pass a bill or resolution that calls for a convention,

sets out the apportionment of the delegates to the convention, and provides for an election at which the question of whether the convention shall be held is voted upon. In order to call the convention, a majority of those voting in the election must cast a favorable vote on the proposal. Ala. Const. Art. XVIII, § 286.

It should be noted in passing that no constitutional convention has been held in Alabama since the adoption of the Constitution in 1901. In 1969 and 2011 however, the Legislature did create a constitutional commission to recommend revisions in the state Constitution. The 2011 Commission has made recommendations on a number of Articles including revisions to Articles XII and XIII which were ratified on November 6, 2012.[2]

Ala. Const. Art. XVIII, § 284
(Amend No. 24)
Manner of proposing amendments; submission of amendments to electors; election on amendments; proclamation of result of election; basis of representation in legislature not to be changed by amendment.

> Amendments may be proposed to this Constitution by the legislature in the manner following: The proposed amendments shall be read in the house in which they originate on three several days, and, if upon the third reading three-fifths of all the members elected to that house shall vote in favor thereof, the proposed amendments shall be sent to the other house, in which they shall likewise be read on three several days, and if upon the third reading three-fifths of all of the members elected to that house shall vote in favor of the proposed amendments, the legislature shall order an election by the qualified electors of the state upon such proposed amendments, to be held either at the general election next succeeding the session of the legislature at which the amendments are proposed or upon another day appointed

[2] A commission may make recommendations; however, any attempt at actual constitutional revision by commission was determined to be unauthorized method by which to propose to the people a comprehensive rewriting of the constitution. The Legislature has the power to amend the constitution, but not revise it. *Opinion of the Justices,* 148 So. 3d 58 (Ala. 2014).

by the legislature, not less than three months after the final adjournment of the session of the legislature at which the amendments were proposed. Notice of such election, together with the proposed amendments, shall be given by proclamation of the governor, which shall be published in every county in such manner as the legislature shall direct, for at least four successive weeks next preceding the day appointed for such election. On the day so appointed an election shall be held for the vote of the qualified electors of the state upon the proposed amendments. If such election be held on the day of the general election, the officers of such general election shall open a poll for the vote of the qualified electors upon the proposed amendments; if it be held on a day other than that of a general election, officers for such election shall be appointed; and the election shall be held in all things in accordance with the law governing general elections. In all elections upon such proposed amendments, the votes cast thereat shall be canvassed, tabulated and returns thereof be made to the secretary of state, and counted, in the same manner as in elections for representatives to the legislature; and if it shall thereupon appear that a majority of the qualified electors who voted at such election upon the proposed amendments voted in favor of the same, such amendments shall be valid to all intents and purposes as parts of this Constitution. The result of such election shall be made known by proclamation of the governor. Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.

Ala. Const. Art. XVIII, § 285
Election ballots; affirmative vote of majority of electors voting required for passage.

Upon the ballots used at all elections provided for in Section 284 of this Constitution the substance or subject matter of each proposed amendment shall be so printed that the nature thereof shall be clearly indicated. Following each proposed amendment on the ballot shall be printed the

word "Yes" and immediately under that shall be printed the word "No." The choice of the elector shall be indicated by a cross mark made by him or under his direction, opposite the word expressing his desire, and no amendment shall be adopted unless it receives the affirmative vote of a majority of all the qualified electors who vote at such election.

Ala. Const. Art. XVIII, § 286
Manner of calling convention for purpose of altering or amending Constitution; repeal of act or resolution calling convention; jurisdiction and power of convention not restricted.

No convention shall hereafter be held for the purpose of altering or amending the Constitution of this state, unless after the legislature by a vote of a majority of all the members elected to each house has passed an act or resolution calling a convention for such purpose the question of convention or no convention shall be first submitted to a vote of all the qualified electors of the state, and approved by a majority of those voting at such election. No act or resolution of the legislature calling a convention for the purpose of altering or amending the Constitution of this state, shall be repealed except upon the vote of a majority of all the members elected to each house at the same session at which such act or resolution was passed; provided, nothing herein contained shall be construed as restricting the jurisdiction and power of the convention, when duly assembled in pursuance of this section, to establish such ordinances and to do and perform such things as to the convention may seem necessary or proper for the purpose of altering, revising, or amending the existing Constitution.[3]

Ala. Const. Art. XVIII, § 287
Votes by legislature on proposed amendments or bills or resolutions calling conventions; acts or

[3] The prescribed procedures for amending State Constitution must be strictly followed, and any deviation from the procedure renders the proposed amendment a nullity. *Water Works and Sewer Bd. Of City of Prichard v. Board of Water and Sewer Comr's of City of Mobile,* 148 So. 3d 958 (Ala. 2013).

resolutions proposing amendments or calling conventions not to be submitted to governor for approval.

All votes of the legislature upon proposed amendments to this Constitution, and upon bills or resolutions calling a convention for the purpose of altering or amending the Constitution of this state, shall be taken by yeas and nays and entered on the journals. No act or resolution of the legislature passed in accordance with the provisions of this article, proposing amendments to this Constitution, or calling a convention for the purpose of altering or amending the Constitution of this state, shall be submitted for the approval of the governor, but shall be valid without his approval.

Opinion of the Justices No. 148
263 Ala. 158, 81 So. 2d 881 (Ala. 1955)

* * *

"Proposing amendments of the Constitution of Alabama (1901) relating to representation in the Legislature.

"Be It Enacted By The Legislature Of Alabama:

"Section 1. The following amendments of the Constitution of Alabama (1901) relating to the Legislature are proposed, ...:

"1. Every county in this State having a population of 650,000 or less shall have and elect one state senator, and every county having more than 650,000 shall have and elect two senators.

"2. The House of Representatives shall, until another reapportionment is made in accordance with Section 199 of this Constitution, consist of 109 members, distributed among the several counties on the basis of population, ..."

* * *

In connection with the bill The House of

Representatives has requested the opinion of the Justices of the Supreme Court on the following important constitutional [question]:

* * *

"Does the Legislature have the power to propose an amendment to the Constitution repealing the last sentence of Section 284, as amended?" That sentence reads: "Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by Constitutional amendments."

* * *

The majority opinion of the Justices states:

"Surely it is self evident that with the ultimate sovereignty residing in the people, they can legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they "shall forever remain inviolate."

* * *

We have already said that the people could amend Section 284 by repealing the last sentence thereof. Item 3 of HB 9 provides for the express repeal of Sections 50, 197, 200, 202, and 203 and the last sentence of Section 284 as amended. It is evident that this item was included merely to make certain the sections which were to be repealed, because the ratification of the proposed amendment would have the effect of repealing these sections, all of which deal with the single subject of representation in the legislature, because it would be in conflict with them. The bill properly provides for the calling of the election, proclamation and notice, and if ratified by the electorate would become a part of our Constitution. With the repeal of the last sentence of Section 284, there is nothing in the proposal which contravenes the provisions of said section. This last statement is of course based on the premise that the people would, at the election,

ratify the proposal containing the repeal of the last sentence of Section 284.

* * *

It is argued here that the only way the people of this State can remove the last sentence of Section 284 is by a constitutional convention. But the last sentence of Section 284 does not say that. No case in Alabama or the United States says that. The only indication that it was *intended* to say that is gathered from the Official Proceedings of the Constitutional Convention of 1901, Vol. 3, Official Proceedings, Constitutional Convention of 1901, pp. 3906-3924.

State
v.
Manley
441 So. 2d 864 (Ala. 1983)

On July 25, 1983, the Alabama Legislature passed Act 83-683, which proposed a new constitution for the State of Alabama. The Act provided that the new constitution would be submitted to the electorate for adoption in the same manner as an amendment under § 284, as amended, Alabama Constitution of 1901, at the next general election, to be held November 8, 1983. It also provided that the entire text of the proposed constitution would be published in each county, in a newspaper of general circulation, for four consecutive weeks prior to that election.

* * *

The State raises the following issues on appeal:

I. Do [§§] 284-287 of the Constitution of 1901 provide the exclusive means by which the constitution may be changed?

II. May the constitution proposed by Act 83-683 be submitted to the people as an amendment to the Constitution of Alabama of 1901?

III. May existing restrictions on the procedure for adopting a new constitution be removed and a different procedure authorized at the same time the new constitution is approved?

We answer the first question "yes." We answer questions two and three "no." The judgment of the trial court is affirmed.

I.

The State cites three cases from other jurisdictions in support of its argument that §§ 284-287 of Art. XVIII of the Constitution of 1901 do not provide the exclusive means by which the constitution may be changed. We shall consider each of these cases in chronological order, indicating our reasons for finding them wholly unpersuasive.

A

The first case is *Wheeler v. Board of Trustees of Fargo Consolidated School District*, 200 Ga. 323, 37 S.E.2d 322 (1946). In *Wheeler*, the Supreme Court of Georgia considered whether the Georgia Legislature's proposal to the electorate of a new constitution was a permissible manner of revising the constitution. The court concluded that it was.

The constitution in *Wheeler* had been ratified by the people of Georgia in a general election prior to the attack on its validity. The court indicated that "every reasonable presumption, both of law and fact, is to be indulged in favor of the validity of a constitution when it is attacked after its ratification by the people." 200 Ga. at 333, 37 S.E.2d at 329. In accordance with this rule, the court in *Wheeler* chose to presume that the people of Georgia had not intended to limit themselves to use of the convention method for providing a new constitution by any provisions in their 1877 constitution. 200 Ga. at 334, 37 S.E.2d at 329.

* * *

... The *Wheeler* court expressed a belief that if it voided the new constitution because of the legislature's failure to effect the proposal of change by one of the means delineated in the constitution, it would be limiting the sovereign power of the people. 200 Ga. at 331, 37 S.E.2d at 328. Such thinking is indisputably contrary to this court's holding in the case of *Collier v. Frierson*, 24 Ala. 100 (1854), that failure to comply strictly with the amendment procedure required by the constitution is "fatal" to a resolution of the legislature, a favorable vote of the people notwithstanding.

B

... In *Gatewood* [*v. Matthews*, 403 S.W.2d 716 (Ky. 1966)], the Kentucky Court of Appeals considered whether by provisions in their constitution the people had "imposed upon themselves exclusive modes of amending or of revising their Constitution." 403 S.W.2d at 718. The court concluded that they had not done so.

The majority of the court in *Gatewood* relied upon the opinions rendered in the case of *Wheeler v. Board of Trustees of Fargo Consolidated School District*, *supra*, and *In re Opinion to the Governor*, 55 R.I. 56, 178 A. 433 (1935), in deciding that the provisions in the Kentucky constitution, which are similar to those of the Constitution of 1901 here in question, were not the only methods available for altering the constitution. ...

* * *

C

The State also relies on the case of *Smith v. Cenarrusa*, 93 Idaho 818, 475 P.2d 11 (1970), as support for its argument that §§ 284-287 of the Constitution of 1901 do not define the exclusive means by which the constitution may be changed. In *Smith v. Cenarrusa*, the Supreme Court of Idaho considered whether the methods prescribed in the Idaho Constitution for its revision were the sole and exclusive methods. In reaching its conclusion that a legislative resolution, which the

court declared was not an amendment, was a permissible means for placing before the people a new or substantially revised constitution, the court relied heavily upon the *Wheeler* and *Gatewood* cases. Insofar as the facts of *Wheeler* are as unlike those in *Smith v. Cenarrusa* as they are those in this case (as discussed previously), and for the reasons that we found *Gatewood* ill-reasoned, we find the majority opinion in *Smith* unpersuasive.

D

We now turn to a consideration of this court's leading decisions on the permissible methods for the amendment, alteration, or revision of the constitution. In the case of *Collier v. Frierson*, 24 Ala. 100 (1854), this court considered whether any method of constitutional alteration other than legislative amendment, the procedure for which was specifically outlined in the Alabama Constitution of 1819, was proper. This question was raised by the fact that the legislature had failed to comply with all the requirements of the constitution for a legislative amendment, yet a favorable vote of the people had been secured for the amendment in question.

Holding that the amendment was not constitutionally ratified, and was therefore invalid, the court declared:

We entertain no doubt, that, to change the constitution in any other mode than by a convention, every requisition which is demanded by the instrument itself, must be observed, and the omission of any one is fatal to the amendment.

24 Ala. 109, *cited in Ellingham v. Dye*, 178 Ind. 336, 397, 99 N.E. 1, 23 (1912).

* * *

Each of Alabama's five constitutions after the Constitution of 1819, including our present constitution, has explicitly provided for the calling of a constitutional

convention. (For the texts of those provisions, *See* T. Skinner, *Alabama Constitution Annotated*, 934-35 (Constitutions of 1861, 1865, and 1868), 946 (Constitutions of 1875 and 1901).) In each of these constitutions, a procedure for calling a convention is specified in the instrument, making part of the fundamental law the process by which the people exercise their inalienable right to have a convention of their delegates convened for the purpose of altering or revising the constitution. The Constitution of 1861 only required a two-thirds vote of each branch of the general assembly for the calling of a convention. *Id*., at 934-35. In each of the later constitutions, a majority vote of the qualified electors is needed to call a convention.

* * *

Justice McClellan, writing for a majority of the court, stated that the Constitution of 1901, namely "the instrument itself[,] prescribes the exclusive *modes* by which it may be altered or amended, or its effect and operation changed." *Johnson v. Craft*, 205 Ala. at 393, 87 So. at 380 (emphasis added). He recognized that the convention mode of revising the constitution, having been specifically provided for in the Constitution of 1901, had ceased to be an extra-constitutional method, as it had been at the time of the decision in *Collier v. Frierson*. He continued:

> Otherwise than as these exclusive modes contemplate and authorize the Constitution's alteration, its character is permanent, its force and influence enduring. Both of these exclusive modes are plainly stated in sections 284-287 of the Constitution. Only through a constitutional convention, called and convened as provided in the existing organic law, or through amendment proposed and adopted as provided in the existing organic law, can the Constitution be altered or changed.

205 Ala. at 393, 87 So. at 380, cited in *Opinion of the Justices No. 95*, 252 Ala. 205, 207, 40 So. 2d 623, 625 (1949); *Downs v. City of Birmingham*, 240 Ala. 177, 182, 198 So. 231,

234 (1940). Finding that the proposal in question was not the product of a constitutional convention, nor an amendment properly adopted pursuant to the procedure specified by the constitution, the *Johnson* court invalidated it. Likewise, we are required to declare unconstitutional the actions of the Legislature in this case. Sections 284-287 of the Constitution of 1901 do provide the exclusive means by which the constitution may be changed, short of revolution.

II.

* * *

Alabama Act 83-683, in its title and first section, reads:

An Act [t]o propose a new constitution for the State of Alabama to replace the Constitution of 1901, as amended. ...

Section 1: The following constitution is proposed and shall replace the Constitution of 1901, as amended, when approved by the qualified electors and proclaimed by the Governor as prescribed by law.

In addition, Article XVIII of the proposed constitution distinguishes between the Constitution of 1901 and "this Constitution." Section 208, contained in that article, provides that the Constitution of 1901, as amended, "shall have no force or effect after the adoption of this Constitution, except as provided elsewhere in this Constitution."

Thus, it is clear that, if the constitution proposed by Act 83-683 went into effect, the Constitution of 1901 would be repealed. But that constitution, in § 284, provides that if proposed amendments receive a favorable vote from a majority of the electors voting, "such amendments shall be valid to all intents and purposes *as parts of this Constitution*." Would the instrument proposed, then, become a part of the "Constitution of 1901, as repealed"?

As this court has noted, "to destroy is not to amend. A thing amended survives." *City of Ensley v. Simpson*, 166

Ala. 366, 376, 52 So. 61, 65 (1909).

* * *

We have found no case, and the State has pointed out none, where such a major overhaul of a state constitution as the one before us has been declared to be an amendment. The reasoning of the above cited cases confirms our opinion that the instrument proposed in Act 83-683 is not an amendment for purposes of § 284.

III.

The State's final argument is that, if the legislature has acted beyond its authority in proposing a new constitution to the people, the electorate may grant such authority by ratification at the same time it passes the new constitution. It bases this argument on the fact that § 203 of the proposed constitution begins: "Amendments to this Constitution *or a new Constitution may be proposed by the Legislature* or by a constitutional convention as provided in this article." (Emphasis added.) From this the State concludes that if the people approve the new constitution they will at the same time be ratifying the means by which it was approved, and any such approval would be binding.

* * *

... If the proposed constitution were allowed to go before the electorate on this theory, there is a great danger that only a minority of the voters would be aware of the existence of this particular provision of § 203, let alone of the magnitude of its importance. If other portions of the document happened to find favor with the voters, the unauthorized method could be "validated" without the knowledge of the majority of voters that they had thereby greatly enlarged the power of the legislature.

We have no doubt that if the electorate voted in favor of an amendment to § 284, clearly giving the legislature the right to propose a new constitution under the procedure outlined in that section, such amendment would be effective

to allow the legislature to act in the manner in which it attempted to act in this case. But until such time as that amendment is passed, the legislature's power to initiate proceedings toward a new constitution is limited to the provisions of § 286.

* * *

... We hold that the right of the people, acting through their delegates elected for that single purpose, to propose their own organic law, cannot be altered in the manner here undertaken. Until the people decide, either by amendment or by a new constitution written by their delegates and approved by them, to delegate the power of complete revision to the legislature, the provisions of § 286, Constitution of 1901, must be observed in proposing a new constitution.

For all the foregoing reasons, the judgment of the trial court is affirmed, and this court's order staying enforcement of the injunction in this case is dissolved.

Chappell
v.
State
810 So. 2d 639 (Ala. 2001)

Michael Chappell appeals from the trial court's dismissal of his complaint. We affirm.

On September 29, 2000, Chappell filed a complaint, seeking a determination of whether Act No. 99-321, Ala. Acts 1999, which proposed an amendment to the Alabama Constitution of 1901, violated § 285 of the Constitution. The Act, which was passed in June 1999, proposed to amend the Constitution to abolish the "prohibition of interracial marriages" contained in Art. IV, § 102, of the Constitution. The amendment proposed by Act No. 99-321 appeared as Amendment Two on the November 7, 2000, General Election ballot. Chappell also sought to enjoin the State, Governor Don Siegelman, Secretary of State Jim Bennett, and Attorney

General Bill Pryor (hereinafter collectively referred to as "the State") from conducting an election on the proposed amendment. The state moved to dismiss the complaint. After a hearing, the trial court dismissed the complaint, based upon its conclusion that the Act did not violate § 285 of the Constitution.[4] This appeal followed.

Chappell contends that the trial court erred in dismissing his complaint because, he says, the amendment, which was approved by the voters and which repeals Art. IV, § 102, of the Constitution, is null and void because, he says, the State failed to follow the prescribed procedure for amending the Constitution. Chappell argues that § 285 of the Constitution was violated because the wording in the Act, improperly, he says, required that the election ballot describe the substance or subject of the proposed constitutional amendment in these words: "Proposing an amendment to the Constitution to abolish the prohibition of interracial marriages. Proposed by Act No. 1999-321." Chappell contends that the ballot should have described the proposed amendment by setting out the language of § 102 of the Constitution ("The legislature shall never pass any law to authorize or legalize any marriage between any white person and a negro, or descendent of a negro."); because the ballot did not contain that language, Chappell says, § 285 of the Constitution was violated.

Section 285 of the Constitution, provides, in pertinent part: "Upon the ballots used at all elections provided for in section 284 of this Constitution the substance or subject matter of each proposed amendment shall be so printed that the nature thereof shall be clearly indicated." (Emphasis added.) In *Swaim v. Tuscaloosa County*, 267 Ala. 509, 515, 103 So. 2d 769, 774 (1958), this Court stated:

"Section 285 of the Constitution ... does not

[4]At the November 17, 2000, hearing, Chappell withdrew his motion for a preliminary injunction because it was then moot. The election had been held on November 7, 2000.

> require that all provisions of a proposed amendment be set forth in extenso on the ballot. Those provisions do not require that the language printed on the ballot be a compendium of all such provisions. In fact, § 285 does not even require that the entire 'substance or subject matter' of the proposed amendment be printed on the ballot. It only requires that so much thereof as may be necessary to indicate clearly the nature of the proposed amendment be so printed. Such is the holding of this court in *Jones v. McDade*, 200 Ala. 230, 75 So. 988 (1917), wherein we construed the exact language of § 285 involved in the instant case."

The wording of proposed Amendment Two on the November 7, 2000, ballot indicated clearly the nature of the proposed amendment, which was to abolish the prohibition of interracial marriages. Chappell contends that *Swaim v. Tuscaloosa County*, supra, and *Jones v. McDade*, supra, are "sharply at odds" with *Johnson v. Craft*, 205 Ala. 386, 394, 87 So. 375, 381 (1921), in which this Court reaffirmed the principle that "'every requisition which is demanded by the instrument itself' in defining the mode of its amendment, is mandatory, and ... to omit the observance 'of any one of them is fatal to the amendment'"; and *Collier v. Frierson*, 24 Ala. 100, 109 (1854), in which this Court said:

"The constitution is the supreme and paramount law. The mode by which amendments are to be made under it is clearly defined. It has been said that certain acts are to be done--certain requisitions are to be observed, before a change can be effected. But to what purpose are these acts required, or these requisitions enjoined, if the Legislature or any other department of the government, can dispense with them." *(The Constitution of Alabama of 1819 was in effect at the time Collier v. Frierson was decided.)* The quoted portions of *Johnson v. Craft* and *Collier v. Frierson* require compliance with the mode of amending the Constitution established by the Constitution itself (specifically, §§ 284 through 287, and Amendment No. 24). We certainly adhere to the holdings of those cases. The holdings of *Swaim v. Tuscaloosa County* and

Jones v. McDade do not conflict with them. The ballot used in the November 7, 2000, election contained the substance and the subject matter of the proposed amendment. This is what the Constitution requires.

The judgment dismissing Chappell's complaint is affirmed. AFFIRMED.

C. Constitutional Amendment Affecting Only One County

Because Alabama does not have county home rule, a county desiring to increase taxes, change school districts or do any of the acts prohibited by § 104 of the Constitution or any other section historically was required to pass a statewide constitutional amendment which was voted on by the electors of the state at large even though it effects only one county.

On November 17, 1982, Alabama passed Amendment No. 425 (Ala. Const. Art. XVIII, § 284.01), which provides for a vote on constitutional amendments affecting only one county by the people of the county affected. Thus, it was intended that statewide voting on matters which affect or apply to only one county would no longer be necessary.

However, this amendment was called into question when one of the governmental parties failed to certify the act was local.

Opinion of the Justices No. 327
519 So. 2d 956 (Ala. 1988)

* * *

"I, Guy Hunt, Governor of Alabama, pursuant to Section 12-2-10, *Code of Alabama, 1975*, hereby request a written opinion of the Justices of the Supreme Court of Alabama on an important constitutional question arising under Act No. 87-363 relating to Houston County. ...

"Specifically I request your opinion as follows:

"1. If the Local Constitutional Amendment Commission does not unanimously approve the proposed amendment (Act No. 87-363), is it then submitted for approval by a majority vote of the qualified electors statewide or is the proposed amendment defeated for lack of unanimous approval by the Commission? *See* Amendment No. 425, Constitution of Alabama 1901, and Section 2 of Act No. 87-363.

"2. If the Local Constitutional Amendment Commission unanimously approves the proposed amendment, may the amendment become adopted as a valid part of the Constitution under the procedures set out in Amendment No. 425 even though it relates only to a part of Houston County which is not a political subdivision?"

* * *

We have no prior case law interpreting Amendment 425; moreover, this request for an advisory opinion has been presented to us without the well-developed briefs and trial record that would come from the adversarial testing of the significant constitutional issues presented. Accordingly, the interpretational difficulties presented by these two questions counsel against our answering them, lest we risk creating confusion of constitutional dimensions in our haste to resolve the undeveloped underlying issues. In *Opinion of the Justices No. 280*, 417 So. 2d 936 (Ala. 1981), involving a situation so reminiscent of the one now before us that it is controlling, we noted:

* * *

"Although pending legislation, involving important constitutional issues, falls within the purview of this statutory prerogative, expressions of opinions, hastily and abstractly considered, may well pose a greater danger of confusion and uncertainty than the exercise of judicial restraint in declining to respond to the questions submitted ....

> "... [W]e are compelled to decline to answer the questions here submitted. Because of the complexity of the constitutional issues, the absence of any clear apparent authority readily discernible from a plain reading of the pertinent language of the present State Constitution and statutes, and the serious legal and political implications here involved, our considered judgments constrain us to await the appropriate adversary context of a more deliberative litigated proceeding in which to address and postulate a definitive response to these issues."

417 So. 2d at 936-37. Likewise, we must decline to answer the questions now before us.

Opinion of the Justices No. 329
568 So. 2d 1216 (1989)

* * *

"BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE LEGISLATURE OF ALABAMA, That we respectfully request the Honorable Chief Justice and Associate Justices of the Supreme Court or a majority of them, to give this body their written opinions on the following important constitutional question which has arisen concerning the pending bill, H.B. 617, a copy of which is attached to this resolution and made a part hereof by reference:

"It is the intent to have the election on the Constitutional Amendment proposed by H.B. 617 at the same time as the Congressional election set for April 4, 1989. Section 284 of the Constitution of Alabama of 1901, as amended by Amendment No. 24, requires that an election on a proposed Constitutional Amendment on a date appointed by the Legislature be set not less than three months after the final adjournment of the session of the Legislature at which the amendment was proposed. Amendment No. 425 does not contain the three-months requirement, only notice of the

election by proclamation of the governor to be published once a week for four successive weeks. Do the provisions of Amendment No. 24 or Amendment No. 425 control?"

* * *

We respond to your question as follows:

Amendment No. 425 to the Alabama Constitution of 1901 controls the election where a proposed Constitutional amendment affects only one county. ...

Amendment No. 24 to the Constitution addresses the manner of proposing amendments to the Constitution generally and until the adoption of Amendment No. 425 the constitution did not provide a different procedure where only one county was affected by the proposed amendment. H.B. 617 proposed an amendment to the Constitution that will affect only Calhoun County.

Amendment No. 425 changed the method of approving or disapproving an amendment to the Constitution where only one county is affected by the amendment. It was proclaimed ratified by the Governor on November 17, 1982 (Proclamation Register No. 4, p. 94). After that date it provides the method for holding elections to approve or disapprove any proposed Constitutional amendment that affects or applies to only one county.

Amendment No. 425 was amended in 1996 to answer the objections raised. Amendment No. 555 provides that proposed local constitutional amendments that are not certified become general constitutional amendments.

Ala. Const. Art. XVIII, § 284.01
(Amend. No.'s 425 and 555)

(a) Any proposed constitutional amendment which affects or applies to only one county shall be adopted as a valid part of the constitution by a favorable vote of a majority of the qualified electors of the affected county who

vote on the amendment. Any proposed constitutional amendment which affects or applies to only one political subdivision within a county or counties shall be adopted as a valid part of the constitution by a favorable vote of a majority of the qualified electors of both the county and the political subdivision affected by the amendment who vote on the amendment. The proposed amendment may provide for a separate referendum in a political subdivision of less than a county if a simultaneous referendum is not possible because of conflicting voting precincts.

(b) The proposed amendment shall first be approved by at least a three-fifths vote of the elected members of each house of the Legislature with no dissenting vote cast and approved by a majority vote of the Local Constitutional Amendment Commission. The commission shall be composed of the Governor, Presiding Officer of the Senate, Attorney General, Secretary of State, and Speaker of the House of Representatives. The Legislature may by general act specify procedures for the Local Constitution Amendment Commission, but may not expand its role beyond deciding whether the amendment affects more than one county or more than one political subdivision in one or more counties.

(c) Notice of the election, together with the proposed amendment, shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in each newspaper qualified to run legal notices in the county or counties affected.

(d) In the event any constitutional amendment proposed for adoption pursuant to this amendment is approved by at least a three-fifths vote of the elected members of each house of the Legislature but with one or more dissenting votes cast, the amendment shall be treated as a statewide amendment as described in subsection (e).

(e) If after having been approved by at least a

three-fifths vote of the elected members of each house of the Legislature without a dissenting vote cast the proposed amendment is not approved by a majority vote the Local Constitutional Amendment Commission, it shall automatically be submitted in a statewide referendum in accordance with the procedures for proposed statewide constitutional amendments under Sections 284 and 285 of the Constitution of Alabama of 1901. If the proposed amendment is submitted in a statewide referendum, it shall not become effective unless approved at a referendum by a majority of the qualified voters of the affected county voting on the proposition and the affected political subdivision voting on the proposition, if it affects less than the whole county. The referendum in a political subdivision may be held at the same time as the election for the ratification of the proposed amendment, or at another time if provided by the proposed amendment.

(f) Notwithstanding any provision of the Constitution of Alabama of 1901, to the contrary, all constitutional amendments which have been adopted by a majority vote of the appropriate electorate pursuant to Amendment No. 425 to the Constitution of Alabama of 1901, are hereby ratified and confirmed.

D. Procedure for Ratification of Proposed Constitution

Ala. Const. Art. XVIII, § 286.01
(Amend. No. 714)
Procedure for Ratification and Adoption of Proposed Constitution of Alabama

Any proposed Constitution of Alabama adopted to replace the Constitution of Alabama of 1901, whether adopted by a constitutional convention pursuant to Section 286 or by any other constitutionally authorized method now in existence or subsequently adopted, shall become effective only if the proposed constitution is ratified by a majority of the qualified electors of the state voting on the question of

such ratification.

Prior to the ratification election, the text of the proposed constitution shall be published in the same manner as the proclamation of the election. The proposed constitution shall be published on a separate sheet or sheets and circulated with the newspapers in which the proclamation is published. The Legislature may also provide for other methods of publishing the text of the proposed constitution.

The result of the election shall be made known by proclamation of the Governor. If the proposed constitution is ratified as provided in this amendment, it shall become effective on the first day of January following ratification, unless otherwise provided in the ratified constitution. If the ratified constitution provides otherwise, the effective date shall be as provided in the ratified constitution.

The Legislature shall provide for the notice, and procedures related to the election, canvassing, proclamation, and costs which are in conformity with this amendment. If proposed by convention, the election shall be held at the next general election not less than 90 days following adjournment of the convention at which it was proposed.

E. Recompilation of Constitution of Alabama

Ala. Const. Art. XVIII § 286.02
(Amend. No. 951)

The Legislature, upon the recommendation of the Director of the Legislative Services Agency through a proposed draft, may arrange this constitution, as amended, in proper articles, parts, and sections removing all racist language, delete duplicative and repealed provisions, consolidate provisions regarding economic development, arrange all local amendments by county of application during the 2022 Regular Session of the Legislature, and make no other changes. The draft and arrangement, when

approved by a three-fifths vote of each house of the Legislature, through joint resolution, shall be submitted to the voters pursuant to Amendment 714 of the Constitution of Alabama of 1901, now appearing as Section 286.01 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, except that the text of the proposed constitution shall be published on the website of the Secretary of State and shall be made available, without cost, to any agency of the state or a municipality or county in the state that operates a public access website for publication on the website. The Constitution of Alabama, with the amendments made thereto, in accordance with this amendment, once again approved by the voters, shall be the supreme law of the state.[5]

F. Examples of Constitutional Amendments

1. General Constitutional Amendment

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 and in accordance with Sections 284, 285 and 287 of the Constitution of 1901, as amended:

* * * * * * * * * * *
* PROPOSED AMENDMENT *
* * * * * * * * * * *

Section 1. An election upon the proposed amendment is ordered to be held at the next general, special, primary or constitutional amendment election after the expiration of three months from final adjournment of the current session of the Legislature. The election shall be held in accordance with the

[5] Amendment 951 was proposed by Act 2019-271, submitted November 3, 2020, and proclaimed ratified November 24, 2020 (Proclamation Register No. 15, p. 1834).

provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and the general election laws of this state.

Section 2. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the state. In every county in which no newspaper is published, a copy of the notice shall be posed at each courthouse and post office.

Section 3. The provisions of this act shall be effective immediately upon ratification by the people and the Governor thereafter shall proclaim this amendment as required by law.

2. Local Constitutional Amendment

Be It Enacted by the Legislature of Alabama:

Section 1. The following amendment to the Constitution of Alabama of 1901 is proposed and shall become valid as a part of the Constitution when all requirements of Amendment 425 of the Constitution of Alabama of 1901 are fulfilled:

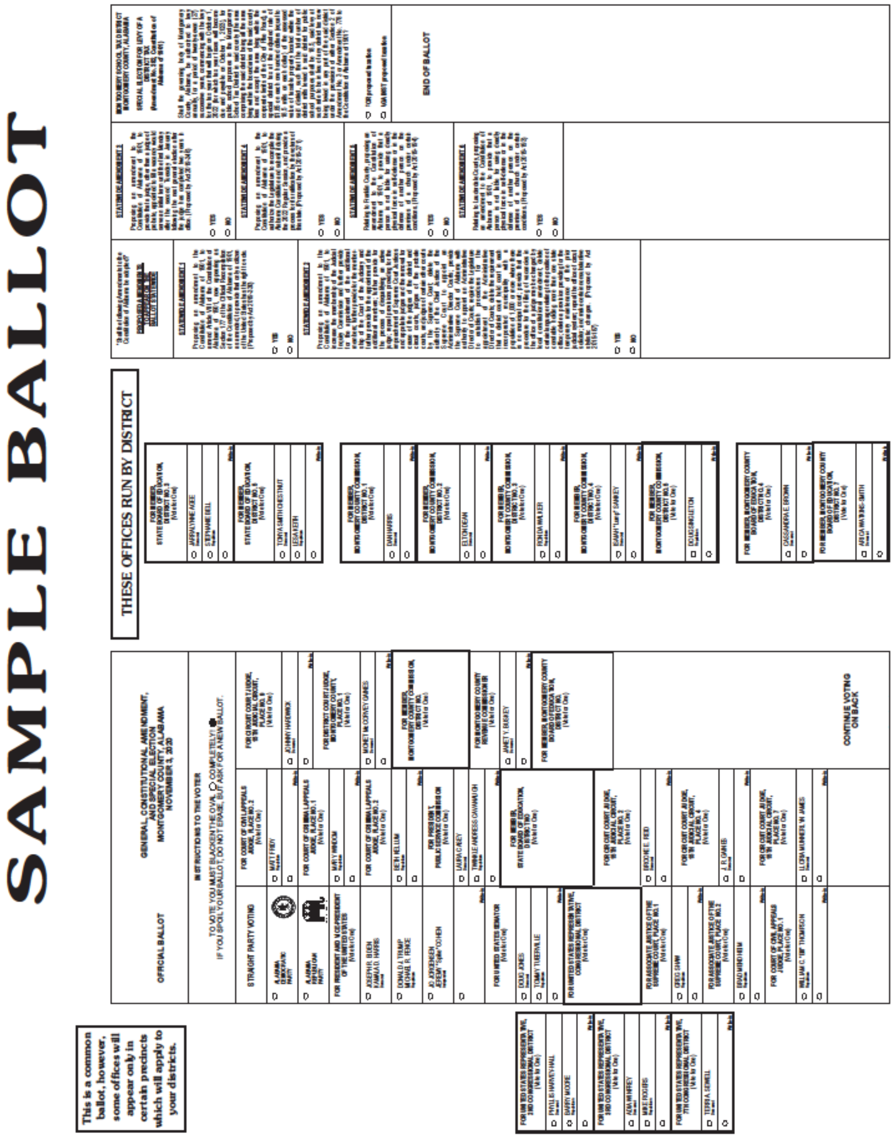
* * * * * * * * * * * *
* PROPOSED AMENDMENT *
* * * * * * * * * * * *

Section 1. The provisions of this amendment shall have no force and effect unless it shall first be unanimously approved by at least three-fifths vote of the elected members of each house and unanimously approved by the local constitutional amendment commission.

Section 2. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in each newspaper qualified to run legal notices in the county affected.

Section 3. An election upon the proposed amendment is ordered to be held at the next general, special, constitutional or county election in (blank) County after the expiration of three months from final adjournment of the current session of the legislature. The election shall be held in accordance with the provisions of Amendment 425 to the Constitution of 1901, and the general election laws of this state.

SAMPLE BALLOT



SAMPLE BALLOT

This is a common ballot, however, some offices will appear only in certain precincts which will apply to your districts.

OFFICIAL BALLOT

GENERAL, CONSTITUTIONAL AMENDMENT, AND SPECIAL ELECTION
MONTGOMERY COUNTY, ALABAMA
NOVEMBER 3, 2020

INSTRUCTIONS TO THE VOTER

TO VOTE YOU MUST BLACKEN THE OVAL COMPLETELY!
IF YOU SPOIL YOUR BALLOT, DO NOT ERASE, BUT ASK FOR A NEW BALLOT.

STRAIGHT PARTY VOTING
- ALABAMA DEMOCRATIC PARTY
- ALABAMA REPUBLICAN PARTY

FOR PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES (Vote for One)
- JOSEPH R. BIDEN / KAMALA D. HARRIS
- DONALD J. TRUMP / MICHAEL R. PENCE
- JO JORGENSEN / JEREMY "Spike" COHEN

FOR UNITED STATES SENATOR (Vote for One)
- DOUG JONES
- TOMMY TUBERVILLE

FOR UNITED STATES REPRESENTATIVE, 2ND CONGRESSIONAL DISTRICT (Vote for One)

FOR ASSOCIATE JUSTICE OF THE SUPREME COURT, PLACE NO. 1 (Vote for One)
- GREG SHAW

FOR ASSOCIATE JUSTICE OF THE SUPREME COURT, PLACE NO. 2 (Vote for One)
- BRAD MENDHEIM

FOR COURT OF CIVIL APPEALS JUDGE, PLACE NO. 1 (Vote for One)
- WILLIAM C. "BILL" THOMPSON

FOR COURT OF CIVIL APPEALS JUDGE, PLACE NO. 2 (Vote for One)
- MATT FRIDY

FOR COURT OF CRIMINAL APPEALS JUDGE, PLACE NO. 1 (Vote for One)
- MARY WINDOM

FOR COURT OF CRIMINAL APPEALS JUDGE, PLACE NO. 2 (Vote for One)
- BETH KELLUM

FOR PRESIDENT, PUBLIC SERVICE COMMISSION (Vote for One)
- LAURA CASEY
- TWINKLE ANDRESS CAVANAUGH

FOR MEMBER, STATE BOARD OF EDUCATION, DISTRICT NO. (Vote for One)

FOR CIRCUIT COURT JUDGE, 15TH JUDICIAL CIRCUIT, PLACE NO. 2 (Vote for One)
- BROOKE E. REID

FOR CIRCUIT COURT JUDGE, 15TH JUDICIAL CIRCUIT, PLACE NO. 4 (Vote for One)
- J. R. GAINES

FOR CIRCUIT COURT JUDGE, 15TH JUDICIAL CIRCUIT, PLACE NO. 7 (Vote for One)
- LLOYDA WILLIAMS "W" JAMES

FOR CIRCUIT COURT JUDGE, 15TH JUDICIAL CIRCUIT, PLACE NO. 8 (Vote for One)
- JOHNNY HARDWICK

FOR DISTRICT COURT JUDGE, MONTGOMERY COUNTY, PLACE NO. 1 (Vote for One)
- MONET McCORVEY GAINES

FOR MEMBER, MONTGOMERY COUNTY COMMISSION, DISTRICT NO. (Vote for One)

FOR MONTGOMERY COUNTY REVENUE COMMISSIONER (Vote for One)
- JANET Y. BUSKEY

FOR MEMBER, MONTGOMERY COUNTY BOARD OF EDUCATION, DISTRICT NO. (Vote for One)

CONTINUE VOTING ON BACK

FOR UNITED STATES REPRESENTATIVE, 2ND CONGRESSIONAL DISTRICT (Vote for One)
- PHYLLIS HARVEY-HALL
- BARRY MOORE

FOR UNITED STATES REPRESENTATIVE, 3RD CONGRESSIONAL DISTRICT (Vote for One)
- ADIA WINFREY
- MIKE ROGERS

FOR UNITED STATES REPRESENTATIVE, 7TH CONGRESSIONAL DISTRICT (Vote for One)
- TERRI A. SEWELL

THESE OFFICES RUN BY DISTRICT

FOR MEMBER, STATE BOARD OF EDUCATION, DISTRICT NO. 3 (Vote for One)
- JARRALYNNE AGEE
- STEPHANIE BELL

FOR MEMBER, STATE BOARD OF EDUCATION, DISTRICT NO. 5 (Vote for One)
- TONYA SMITH CHESTNUT
- LESA KEITH

FOR MEMBER, MONTGOMERY COUNTY COMMISSION, DISTRICT NO. 1 (Vote for One)
- DAN HARRIS

FOR MEMBER, MONTGOMERY COUNTY COMMISSION, DISTRICT NO. 2 (Vote for One)
- ELTON DEAN

FOR MEMBER, MONTGOMERY COUNTY COMMISSION, DISTRICT NO. 3 (Vote for One)
- RONDA WALKER

FOR MEMBER, MONTGOMERY COUNTY COMMISSION, DISTRICT NO. 4 (Vote for One)
- ISAIAH "Larry" SANKEY

FOR MEMBER, MONTGOMERY COUNTY COMMISSION, DISTRICT NO. 5 (Vote for One)
- DOUG SINGLETON

FOR MEMBER, MONTGOMERY COUNTY BOARD OF EDUCATION, DISTRICT NO. 4 (Vote for One)
- CASSANDRA E. BROWN

FOR MEMBER, MONTGOMERY COUNTY BOARD OF EDUCATION, DISTRICT NO. 7 (Vote for One)
- ARICA WATKINS-SMITH

STATEWIDE AMENDMENT 1
- YES
- NO

STATEWIDE AMENDMENT 2
- YES
- NO

STATEWIDE AMENDMENT 3
- YES
- NO

STATEWIDE AMENDMENT 4
- YES
- NO

STATEWIDE AMENDMENT 5
- YES
- NO

STATEWIDE AMENDMENT 6
- YES
- NO

MONTGOMERY SCHOOL TAX DISTRICT
MONTGOMERY COUNTY, ALABAMA
SPECIAL ELECTION FOR LEVY OF A DISTRICT TAX
- FOR proposed taxation
- AGAINST proposed taxation

END OF BALLOT

Chapter 23
Statutes

A bill is the most important and most common legislative vehicle. The drafting techniques for a bill vary according to its purpose.[1] The purpose may be any one or a combination of the following:

(1) to create a new law,
(2) to amend existing law,
(3) to repeal existing law,
(4) to appropriate money.

Each bill follows a standard framework. The framework, however, is only standard in its broadest sense. Each bill is a custom product, and the drafter may work within the technical rules to create an effective bill.

No bill shall be accepted by the secretary or the clerk unless it is a legible copy and is typed on 8-1/2" x 11" paper with numbered, double-spaced lines. Joint Rule 13 (2023).

No bill amending an existing statute will be accepted for introduction unless the language deleted is stricken through (Example: ~~stricken through~~); and the language to be added is underscored (Example: underscored). Joint Rule 12(a) (2023).

Alabama Constitution Art. IV, § 45 prescribes the basic requirements that a bill must meet as follows:

> The style of the laws of this state shall be: "Be it enacted by the Legislature of Alabama," which need not be repeated, but the act shall be divided into sections for convenience, according to substance, and the sections designated merely by figures. Each law shall contain but one subject, which

[1] *See* Basic Drafting Guide, Appendix I

shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be re-enacted and published at length.

The Alabama House and Senate use the following format for bills:

A. A Designation
B. A Synopsis
C. Title
D. An Enacting Clause
E. The Body
F. An Effective Date Clause, Repealer, Severability, Saving and Transitory clauses

SAMPLE BILL

S. 416 By: Senator Jones

SYNOPSIS: This bill further amends Section 31-1-51 of the Code of Alabama 1975, as amended, which pertains to local traffic control devices, so as to allow motor vehicles in certain circumstances to turn right or left on a red traffic signal.

A BILL

TO BE ENTITLED

AN ACT

To further amend Section 31-1-51 of the Code of Alabama 1975, as amended, which section relates to local traffic control devices, so as to allow motor vehicles in certain circumstances to turn right or left on a red traffic signal.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 31-1-51 of the Code of Alabama 1975, as amended, is hereby further amended to read as follows:

"§ 31-1-51. Local Traffic Control Devices. - Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. Provided, however, that motor vehicles may turn right on a red traffic signal or left ~~onto~~ from one way streets ~~in that direction~~ onto a one way street on a red traffic signal: at all intersections within this state after coming to a stop and seeing their way safe unless there is a sign erected at a certain intersection by the responsible municipal or county authority in the interest of public safety which prohibits said turn by motor vehicles."

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

The following discussion will treat each of the bill parts separately and provide examples. A complete bill can be found at the end of this section to illustrate the formal requirements.

A. Designation

The designation precedes the synopsis and use a specified format.

Example:

S. 416	By Senator Jones
(Bill Number)	(Author of Bill)

B. Synopsis

Except for local bills, all bills introduced in the House and Senate should have printed at the top of the bill a brief synopsis of their contents. Joint Rule 16 (2023). The synopsis does not become a part of the final act. The rules of the House and Senate are not a part of the constitution and thus are not a basis for challenging the constitutionality of an act. *See Ala. Educ. Ass'n v. Grayson*, 382 So. 2d 501 (Ala. 1980).

Example:

SYNOPSIS: This bill further amends Section 31-1-51 of the Code of Alabama 1975, as amended, which pertains to local traffic control devices, so as to allow motor vehicles in certain circumstances to turn right or left on a red traffic signal.

C. Title

The formal title is required to contain a general description of the subject matter of the bill which should be expressed in the fewest words possible.

It is not necessary that the title of the bill be an index of the

bill or express every alternative or nuance in the bill. To avoid difficulties, the drafter should insure that the title fairly indicates the subject and that nothing is being concealed. In order to accomplish this objective, it is best to draft the title after drafting the bill.

The title of any bill introduced in the Senate or House may not exceed two pages. Senate Rule 52(c) (2023), House Rule 12 (2023).

The opening words of the formal title are always:

A BILL
TO BE ENTITLED
AN ACT

Following the formal title, a bill should contain the subject of the bill, citing the sections of the statutes affected.

Because of the many references to a bill by title only, the title of a bill is an important part of it and may be difficult to draft when the provisions of the bill are complex. The title must be broad enough to embrace the bill's various provisions, yet restrictive enough to direct the attention of the legislator and the interested public to its "theme" or subject, so that a law will not be passed under a deceptive or misleading title. *See Gibson v. State*, 106 So. 231 (Ala. 1925). Frequently, when the general subject is expressed in the title, an index or abstract of the provisions of the proposed act may follow the general statement.

From the standpoint of legal technicalities, there are certain provisions that must be included in the title, *e.g.*, a provision making a law retroactive or imposing a penalty. Every bill making an appropriation, except the General Fund Appropriation Bill and the Education Trust Fund Appropriation Bill, must clearly stipulate in the bill's title the amount and source from which the appropriation is to be made. Joint Rule 17 (2023). On the other hand, there are some provisions that need not be mentioned, *e.g.*, the effective date section. No further generalization about the sufficiency of a bill's title is attempted here, for as a practical matter

each title must stand on its own merits.

The sections should be listed in the following order regardless of their numerical sequence:

(1) sections amended
(2) sections repealed

Example: This Act amends sections 23-10-1 and 23-10-3, Code of Alabama 1975, and repeals sections 23-10-4 and 23-10-15 through 23-10-20, Code of Alabama 1975....

Any bill that proposes an amendment to the Constitution of Alabama shall include in the text of the bill specific language that shall appear on the ballot if the bill is passed by the legislature. Joint Rule 18 (2023).

Any bill not prepared by the Legislative Services Agency or the Executive Budget Office must be presented to the Legislative Services Agency for review, preparation of a synopsis, and for entry into the Legislative Data System. Senate Rule 52(a)(2023). Joint Rule 7 (2023).

1. Amendment of Title Pending Enactment

Alabama Constitution Article IV, Section 61 requires that no bill may be amended on its passage so as to change its original purpose. This applies to the amendment of titles as well. *Fourmeit v. State*, 155 Ala. 109, 46 So. 266 (1908).

Opinion of Justices No. 69
247 Ala. 195, 23 So. 2d 505 (1945)

> The legislature requested an advisory opinion in which, "the title or preamble of said act provides that there shall be appropriated to Public Hunting & Forestry Association, Inc. from the general funds of the State the sum of $50,000 for the fiscal year beginning October 1, 1945, and a like sum for the fiscal year beginning October 1, 1946. In Section 13 of the act there is an appropriation of $300,000

conditioned upon the approval of the Governor. Does this variance between the title of the act and Section 13 of the body thereof violate Section 45 of the Constitution of 1901?]

* * *

...[T]he variance between the amount of the appropriation to the corporation as stated in the title of the Act and the amount of the appropriation to the corporation as stated in the body of the Act, ... does not violate § 45 of the Constitution of 1901, except as to the excess of the amount stated in the body of the Act over the total amount stated in the title; ... [the] Governor, may legally authorize the State Comptroller to draw his warrant in the sum of $50,000, payable to the said corporation. ...

* * *

...The variance is the result of an amendment of § 13 of the Act during passage of the Act, without corresponding change in the title of the Act. ...

The foregoing situation does not aid in meeting the requirements of § 45 of the Constitution because this section of the Constitution applies to the bill when it becomes enacted into law and not to "bills upon their passage and during the consideration of the same by the Legislature." *Jackson v. State*, 171 Ala. 38, 55 So. 118, 119 (1911).

In the case of *Fuqua v. City of Mobile*, 219 Ala. 1, 121 So. 696 (1928) in discussing § 45 of the Constitution, this court said: "One of the purposes of this constitutional provision was to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the title gives no intimation, and which might, therefore, be overlooked and carelessly and unintentionally adopted. *Lindsay v. United States Sav. & Loan Ass'n.*, 120 Ala. 156, 24 So. 171 (1898). ...

* * *

...It is a familiar principle that if the Act is broader than the title, that part which is within both the title and the

body of the Act can stand, while that part not indicated by the title will fall. This is on the idea that there remains a "law 'complete within itself, sensible, capable of being executed and wholly independent of that which is rejected.'" [citations omitted] ...

In re Opinion of the Justices No. 39
232 Ala. 98, 166 So. 794 (1936)

Does the changing of the caption of House Bill 180 as originally introduced which reads as follows: "To provide for the General Revenue of the State of Alabama[,"] to the caption in the substitute bill as passed by the House of Representatives which reads as follows: "To legalize and regulate the manufacture, sale and possession of alcohol, alcoholic and malt beverages in Alabama; to create the office of Alcoholic Beverage Commissioner, to fix his term of office, compensation, and powers, and provide for his appointment; to provide and levy a license upon the sale of alcohol and alcoholic and malt beverages, and to levy an excise tax thereon, and to regulate their manufacture, possession, sale and transportation, and to provide for the general revenue of the State of Alabama; and to repeal all laws in conflict with this Act," violate the provisions of Section 61 of the Constitution, where the original purpose of the bill remains substantially the same?

* * *

As we understand your present inquiry, the House amended the title of the act from one "to provide for the General Revenue of the State of Alabama" to its present form, without change of the purpose of the bill, which is more in keeping with our holding as above indicated. Or, as otherwise stated, the change of the title as made, conforms to the real substance and purpose of the bill, as we have heretofore stated, and was entirely proper.

The amendment of the title, therefore, as thus indicated, by the House in no manner ran counter to section 61 of the Constitution, and our answer is therefore in the

negative.

2. *Generality and Comprehensiveness*

The title of a statute may be general in nature and as broad as the legislature chooses to make it so long as it contains everything in the bill and contains but one subject. *State ex rel. Ham v. Brock*, 180 Ala. 505, 61 So. 646 (1913).

Should the title contain two subjects, but the entire act is referable to one of those subjects, the other will be treated as mere surplusage, and the act will be upheld. *Gibson v. State*, 214 Ala. 38, 106 So. 231 (1925). When a subject as expressed in the title of a statute is explained in general terms, everything which is necessary to make it a complete enactment, or which results as a thought or complement contained in the general expression, is included and authorized by it. *Opinion of the Justices No. 81*, 249 Ala. 511, 31 So. 2d 721 (1947). Thus, the title to a bill does not have to be a restatement of the body. If the subject of the law has been expressed in the title, the constitution has been satisfied. *State ex rel. Winter v. Sayre*, 118 Ala. 1, 24 So. 89 (1897).

Newton
v.
City of Tuscaloosa
251 Ala. 209, 36 So. 2d 487 (1948)
* * *

> The original bill ... shows that the two [instrumentalities], the City of Tuscaloosa and Tuscaloosa County, through their respective governing bodies, propose (a) to issue and sell interest-bearing warrants ... (b) to pledge for payment of said warrants so much of the per centum of the revenues derived from said tax, as permitted by the act, as will be necessary for said purpose; (c) to make said payment a first charge on that per centum of the revenues; and (d) to use the proceeds from the sale of said warrants for the purpose of acquiring a site and constructing and equipping the said hospital. ...

This court has consistently accorded a liberal interpretation to this constitutional mandate and "the subject may be expressed in general terms and when so everything subsumed under the general thought to make it a complete act, if cognate and germane thereto, is regarded as included in and authorized by it. *Dearborn v. Johnson, supra* 234 Ala. 84, 173 So. 864 (1937); *Allman v. City of Mobile*, 162 Ala. 226, 50 So. 238 (1909).

"But one subject is the requirement, and the form in which it is expressed is left to 'legislative discretion.'" *Norton v. Lusk*, 248 Ala. 110, 26 So. 2d 849 (1946) and cases cited.

We also said in *Harris v. State ex rel. Williams*, 228 Ala. 100, 151 So. 858 (1934): "The general rule is that generality or comprehensiveness of the subject is not a violation of section 45, and that a broad, comprehensive subject justifies the inclusion of any matter not incongruous or unconnected with the subject, provided the title is not uncertain or misleading."

* * *

Section 45 of the Constitution is to be liberally construed; and when the title of an act includes one comprehensive subject the act may include innumerable minor subjects, provided all are referable and cognate to the expressed subject. *In re Opinion of the Justices No. 33*, 230 Ala. 673, 163 So. 105 (1935).

3. Cataloging or Indexing

The title of an act need not be an index to the act, nor need it state a catalogue of all powers intended to be bestowed in order to comply with the constitution. *Alldredge v. Dunlap*, 240 Ala. 27, 197 So. 36 (1940). The title of an act containing a catalogue of various subheads does not endanger the act, if the subheads are germane and complementary to the general subject. *Gibson v. State*, 214 Ala. 38, 106 So. 231 (1925).

Salmon
v.
Birmingham Parking Authority
294 Ala. 226, 314 So. 2d 687 (1975)
* * *

Appellants have listed nine provisions of Act 2079 which they contend are not contained in the title of the Act. They have picked out provisions which require the proceedings of the Authority to be recorded in a well-bound book, that each director may receive $25.00 for attendance at each meeting, that the Authority may receive and accept grants, and other similar provisions. The necessary scope of the title of an Act, in order to meet the requirements of Section 45, is stated in *Opinion of the Justices No. 138*, 262 Ala. 345, 349, 81 So. 2d 277, 281 (1955).

> "... It is sufficient to say that the title of an act need not be an index to it nor need it catalogue all powers intended to be bestowed. When the subject is expressed in the title in general terms, everything which is necessary to make a complete enactment in regard to it, or which results as a complement of the thought contained in the general expression, is included in and authorized by it. *Kendrick v. Boyd*, 255 Ala. 53, 51 So. 2d 694 (1951); *Dearborn v. Johnson*, 234 Ala. 84, 173 So. 864 (1937)." [*See also Knight v. W. Alabama Envtl. Improvement Auth.*, 287 Ala. 15, 246 So. 2d 903 (1971).] ...

4. Construction of Title

The title of an act should receive a liberal construction and an act should be upheld if there is at least substantial compliance with Section 45 of the Alabama Constitution. The requirements expressed in Section 45 may be met even though the title does not express the subject as clearly and unequivocally as possible. *Heck v. Hall*, 238 Ala. 274, 190 So. 280 (1939). Thus, it is not essential that every subject be declared with precise accuracy. Instead, the title of a bill may be very general and need not specify every clause in the statute. *Dixon v. State*, 27 Ala. App. 64, 167 So. 340 (1936), *certiorari denied*, 232 Ala. 150, 167 So. 349.

For purposes of construction then, the title as well as the preamble of an act may be looked to in order to ascertain intent and to aid in removing ambiguity. *Entm't Ventures, Inc. v. Brewer*, 306 F. Supp. 802 (1969). But the title may not contradict the terms in the enacting clause. *Hamrick v. Thompson*, 276 Ala. 605, 165 So. 2d 386 (1964).

The title to an act may indicate to some extent an intention of the legislature. Clearly the title of an act may serve as an aid to statutory interpretation. *Jordan v. Reliable Life Ins. Co.*, 589 So. 2d 699 (Ala. 1991).

5. Matters Not Covered by the Title

When the subject is expressed in general terms in the title, everything which is necessary to make or complete enactment in regard to it, or which results as a complement of the thought contained in the title, is included and authorized by it. *Dearborn v. Johnson*, 234 Ala. 84, 173 So. 864 (1937). *Ballentyne v. Wickersham*, 75 Ala. 533 (1883)

The Supreme Court has "repeatedly held that this section [§ 45] must receive a reasonable construction so as not to cripple legislation by prohibiting the insertion of matters not included in the title but proper for the accomplishment of the object expressed. *Kendrick v. Boyd*, 255 Ala. 53, 51 So. 2d 694 (1951). Accordingly, this requirement of the Constitution has received a liberal interpretation. *Knight v. West Ala. Envtl. Imp. Auth.*, 287 Ala. 15, 246 So. 2d 903 (1971). Thus, when there is a fair expression of the general subject of the Act in its title, all matters reasonably connected with it properly may be incorporated in the Act and are germane to the title. *Norton v. Lusk*, 248 Ala. 110, 26 So. 2d 849 (1946); *Associated Indus. of Alabama v. Britton*, 371 So. 2d 904 (Ala. 1979).

Ex parte Boyd
796 So. 2d 1092 (Ala. 2001)

Lee Boyd was indicted for felony driving under the influence of alcohol in violation of § 32-5A-191(h), Ala. Code 1975. Two of the three prior convictions relied upon by the State to indict Boyd were more than five years old. Boyd filed a motion to dismiss the indictment, arguing that Act No. 97-556, 1997 Ala. Acts 985, unconstitutionally removed the phrase "within a five-year period" from § 32-5A-191(h). The circuit court found that Act No. 97-556 does not violate Ala. Const. 1901, § 45. Therefore, the court denied Boyd's motion to dismiss, and he pled guilty, reserving the right to appeal the denial of his motion.

Boyd argues that the title of Act No. 97-556 begins with a general statement that the proposed purpose of the act is to make certain amendments to § 32-5A-191. The Act then expressly indexes four particular amendments to the statute dealing with the collection and disbursement of fines. The title does not mention the elimination of the five-year limitation period contained within § 32-5A-191(g) and (h). Boyd argues that because the title does not state a general purpose of amending § 32-5A-191, but instead lists particular proposed amendments to § 35-5A-191, the inclusion, within the body of the act, of changes regarding the elimination of the five-year limitation period, violates § 45 of the Constitution.

* * *

In *Bagby Elevator & Electric Co. v. McBride*, 292 Ala. 191, 291 So. 2d 206 (Ala. 1974), this Court stated the purpose of the provision:

"'The object of the constitutional provision has been held to be three fold, first, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, and in order that they may have the opportunity of being heard thereon, by petition or

otherwise, if they shall so desire; second, truly to inform members of the legislature who are to vote upon the bill, what the subject of it is so that they may not perform that duty, deceived or ignorant of what they are doing; and third, to prevent the practice of embracing in one bill several distinct matters, none of which, perhaps could singly obtain the assent of the legislature, and then procuring its passage by a combination of the minorities in favor of each of the measures, into a majority that will adopt them all. *Lindsay v. United States Savings & Loan Ass'n*, 120 Ala. 156, 24 So. 171, 42 L.R.A. 783; *Walker v. Griffith*, 60 Ala. 361.'" 292 Ala. 191, 194, 291 So. 2d 306, 308 (1974) (quoting *State v. Hester*, 260 Ala. 566, 72 So. 2d 61 (1954)). *See also Knight v. West Alabama Envtl. Improvement Auth.*, 287 Ala. 15, 246 So. 2d 903 (1971); *Opinion of the Justices No. 215*, 294 Ala. 555, 319 So. 2d 682 (1975).

When deciding whether an act violates § 45, this Court "'is committed to the principle that this requirement as to clear expression of the subject of a bill in the title is not to be exactingly enforced in such a manner and to cripple legislation, or is it to be enforced with hypercritical exactness, but is to be accorded a liberal interpretation.'" *Knight*, 287 Ala. at 22, 246 So. 2d at 908, quoting *Opinion of the Justices* No. 174, 275 Ala. 254, 257, 154 So. 2d 12, 15 (1963). It is well established that this Court should be very reluctant to hold any act unconstitutional. "Another guiding principle of particular importance is that courts seek to sustain, not strike down, the enactments of a coordinate department of government. Every legislative act is presumed to be constitutional and every intendment is in favor of its validity." *Wilkins v. Woolf*, 281 Ala. 693, 697, 208 So. 2d 74, 78 (1968) (overruled on other grounds, *Tanner v. Tuscaloosa County Comm'n*, 594 So. 2d 1207 (Ala. 1992)).

Boyd argues that the broad pronouncement in the title that the Act seeks to amend § 32-5A-191 followed by the description of specific amendments is misleading, and that the title fails to apprise the average legislator of amendments to any subsection of § 32-5A-191 other

than the changes regarding the collection and distribution of fines. However, this Court has repeatedly held:

"All understand the principle that a Code section may be amended without violating section 45, by an act entitled 'An Act to Amend' that Code section, provided the amendatory matter is germane to the subject matter of that Code section or some part of it."

Dep't of Indus. Relations v. W. Boylston Mfg. Co., 253 Ala. 67, 75, 42 So. 2d 787, 793 (1949).

* * *

Also, this Court has held that such a title, followed by an act setting out the section amended, satisfies the purposes of § 45.

"Without question a Code Section may be amended under a title naming the Section amended, followed by an Act setting out the Section as amended." But the subject matter of such amendment must be germane or supplemental to that of the original section, so that the legislators and inquiring public may reasonably anticipate and look into the proposed change. Matter wholly foreign to the original section, is violative of Section 45, and to that extent the amended Section inoperative." *Davis v. City of Tuscumbia*, 236 Ala. at 555, 183 So. at 659.

The title to Act No. 97-556 clearly states an intent to amend § 32-5A-191. The text of the Act does not deviate from that intent, but simply sets out § 32-5A-191 as amended. The subject matter of the amendment is indisputably germane to the subject matter of that section. The use of the phrase "to further provide" does not limit the purpose of the act; instead, it alerts the reader of the title to additional changes in the provisions of the section. Therefore, we find that the title is not misleading, and that the portions of Act No. 97-556 that struck "within five years" from § 32-5A-191(g) and (h) are valid.

The trial court did not err in rejecting Boyd's constitutional argument and denying his motion to dismiss the indictment. Therefore, we affirm.

AFFIRMED.

White
v.
State
49 Ala. App. 5, 267 So. 2d 802 (Ala. Crim. App. 1972)

* * *

First, it is to be noted that the title of this statute [regarding a "stop and frisk" law] apprises the Legislature (and the public) that a lawful officer may temporarily question persons in public places. Second, that such an officer may search a person so questioned for weapons.

It is obvious that the title of Act No. 157 does not reveal or hint that the second sentence of § 2 thereof authorizes a general exploratory search without a warrant[,] other than the frisk for weapons...

* * *

Thus, we may subsume: (1) an overbroad title can be surplusage as to the enacting clause; (2) overbroad enactment cannot enlarge a narrower title; and (3) in the latter instance, if severability is feasible, the surplusage in the enacting clauses will be invalid, but the remainder -- if fairly embraced in the title -- will be upheld as constitutionally passed.

This results in our concluding that so much of § 2, second sentence, supra, as would authorize a search where no cause for arrest exists, e.g., in the absence of the possession of a dangerous weapon disclosed by patting or frisking, is necessarily beyond the title of said Act No. 157 and to that extent invalid under § 45 of the Constitution.

6. Retroactive Statute

Alabama Education Association
v.
Grayson
382 So. 2d 501 (Ala. 1980)

> Whether the Act is unconstitutional under § 45 of the Alabama Constitution of 1901 because the title to the Act is deceptive in that it fails to disclose the retroactive features of the Act. ...
>
> * * *
>
> This Court has interpreted § 45 as imposing the requirement that where an act is intended to have retroactive application, the title of the act must "fairly and reasonably indicat[e] that the act is retrospective." *Lindsay v. United States Sav. and Loan Ass'n*, 120 Ala. 156, 24 So. 171 (1897); *see Gayle v. Edwards*, 261 Ala. 84, 72 So. 2d 848 (1954). The purpose of § 45 is to prevent fraud upon the legislature and the people of this state, and the test for whether a statute violates § 45 gives effect to those purposes. The question to be addressed in determining the constitutionality of an act under § 45 is: Whether the title of the act "is so misleading and uncertain that the average legislator or person reading the same would not be informed of the purpose of the enactment." *Pillans v. Hancock*, 203 Ala. 570, 84 So. 757 (1919); *Opinion of the Justices No. 216*, 294 Ala. 571, 319 So. 2d 699 (1975).

D. Enacting Clause

An enacting clause follows the subject title of the bill and is required by Ala. Const. § 45 to be specified in the following form:

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA.

E. Body

This portion of the bill is divided into numbered sections. If the code sections are consecutive, they all may be listed under one section. Otherwise they should be assigned separate sections with all code sections to be repealed listed in the final section. The exception to this rule is that when an effective date clause is included, it is generally the final section of the bill.

Example: Section 1. Sections 10-4-104 and 10-4-105, Code of Alabama is further amended to read as follows: ...

Section 2. Sections 10-1-106 and 10-1-108, Code of Alabama as amended are repealed.

Section 3. This act shall take effect on approval of the Governor, or upon its otherwise becoming law.

Ala. Const. Art. IV, § 45 is very general in requiring that the body of a bill be disposed of in one or more sections. However, it is this part of the bill that becomes the law and the drafter must be careful to meet technical requirements and also accomplish the intent in the main body of the bill. All or some of the following sections may be used by the drafter to accomplish the purpose and intent of the bill. The drafter should evaluate which of the sections are needed to develop an effective bill.

1. Citation or Short Title

Occasionally a lengthy or comprehensive bill may require a short title to provide for easy identification. When used, the short title should be the first section of the bill.

Example: Section 1. This act shall be known and may be cited as the "Alabama Criminal Code."

2. Preamble

Although a statement of purpose is not required, some drafters will use such a statement at the beginning of a bill to

specify legislative intent. Statements of purpose or policy will not be necessary if the bill is otherwise clear, as should be the case. The use of these sections is left to the discretion of the drafter.

Example: Section 2. It is the purpose of this act to permit local governmental units to make the most effective use of their power by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord with geographic, economic, population and other factors influencing the needs and development of local communities.

General rules of construction are also helpful. In case of doubt or inconsistency between language in the enacting part of a statute and language in the preamble, the preamble controls because it expresses in the most satisfactory manner the reason and purpose of the act. *Ball v. Jones*, 272 Ala. 305, 132 So. 2d 120 (Ala. 1961). This interpretation is in keeping with early English cases. Many other states, however, have modified this rule so that the preamble does not control unless the intention of the legislature as expressed in the purview is consistent with the preamble or strong words in the preamble clearly indicate legislative intent. *Norman J. Singer, Sutherland Statutory Construction*, § 47.04 (5th ed. 1992).

***

City of Bessemer
v.
E.B. McClain, et. al.
957 So. 2d 1061 (Ala. 2006)

Under *Archer Daniels Midland Co.*[2], we can look to the circumstances as they existed at the time of enactment. We can also look at the title or preamble of the act. *Ball v. Jones*, 272 Ala. 305, 132 So. 2d 120 (1961), holds that in case of doubt or

[2] 746 So. 2d 966, 969 (Ala. 1999).

inconsistency between language in an enacting part of a statute and language in its title or preamble, the title or preamble controls. But *see* 2A Norman J. Singer, *Statutes and Statutory Construction* § 47:04 at 221-22 (6th ed. 2000) ("[T]he settled principle of law is that the preamble cannot control the enacting part of the statute in cases where the enacting part is expressed in clear, unambiguous terms.")

3. Definitions

A definition section is frequently used in drafting lengthy bills. It follows the preamble and the short title if these sections are used. The purpose of the definition section may be to define words requiring clarification or to reduce the length of a bill by eliminating repetition of a title or phrase.

A definition should be simply what it purports to be. The drafter should not write substantive law into a definition. Also, as a general rule, if a term defined is restrictive, use "means." If it is inclusive, use "includes."

Certain terms are defined by law throughout the Code of Alabama 1975. The terms should not be redefined, unless some variance in meaning is intended. If words or phrases are not defined specifically in the act or in the general definition section of the code, the drafter should be aware that they will be construed to have their general dictionary definition.

Example: § 34-7B-1 Section 3. Definitions: As used in this act:

(a) "Board" means the board of Cosmetology and Barbering.

(b) "Cosmetology means any of the practices generally recognized as beauty culture, hairdressing, or any other designation engaged in by any person who performs such on the general public for compensation *including*, but not limited to, cleansing, singeing, cutting, arranging, dressing, curling, braiding,

> waxing, bleaching, weaving, coloring the hair by hand or mechanical apparatus, the use of creams, lotions, or cosmetic preparations, with or without massage, on the scalp, face, arms, legs, feet, or hands, esthetics practices, nail technology, manicure, pedicure, or desairology. (emphasis added).

McWhorter
v.
Board of Registration for Professional Engineers and Land Surveyors
359 So. 2d 769 (Ala. 1978)

* * *

> Section 218(2)(b) defines "engineer" and "professional engineer" in the same terms. If different meanings had been intended, the Legislature would not have defined the two in identical phraseology. As commonly understood, the two certainly are not synonymous; as used in the statute, however, their meanings coalesce. It is well recognized that when the Legislature defines the language it uses, its definition is binding upon the courts, even though this definition does not coincide with the ordinary meaning of the words used. *See* generally Sutherland, Statutory Construction, §§ 20.08, 27.02. Therefore, the two words, as used in the statute, must be deemed synonymous.

4. Bills Must Contain But One Subject[3]

> . . . *Each law shall contain but one subject*, which shall be clearly expressed in its title, *except* general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes. . . . (emphasis added). Ala. Const. Art. IV, § 45.

Since 1865, the Constitutions of Alabama have restricted each law to one subject. *White v. State*, 49 Ala. App. 5, 267 So. 2d 802 (1972). The general purpose of this part of the state

[3]Taken in part from a student paper by Dennis Schilling.

constitution is to prevent fraud upon the legislature and the citizens of Alabama. *Alabama Educ. Ass'n v. Grayson*, 382 So. 2d 501 (Ala. 1980). This general purpose is further enunciated as a trifurcated pronouncement. First, to notify the public as to the nature of the legislation so they can comment thereon. Second, to inform the legislature of the nature of the bill, so they can adequately perform their duties. Last, the prevention of hodgepodge or logrolling legislation. That is, to prevent the practice of embracing in one bill several distinct matters, none of which, perhaps, could singly obtain the assent of the legislature, and then procuring its passage by a combination of the minorities in favor of each of the measures, into a majority that will adopt them all. *See*, *e.g.*, *Opinion of the Justices No. 215*, 294 Ala. 555, 319 So. 2d 682 (Ala. 1975); *Bagby Elevator & Elec. Co., v. McBride*, 292 Ala. 191, 291 So. 2d 306 (Ala. 1974); *Ex Parte Boyd*, 796 So. 2d 1092 (Ala. 2001).

There are, however, exceptions to Section 45. One such enumerated exception is "bills adopting a code, digest or revision of statutes." Ala. Const. Art. IV, § 45. It should be noted, however, that this enumerated exception does not include bills incorporating cumulative supplements into the Code. *Ex parte Coker*, 575 So. 2d 43 (Ala. 1990). The *Coker* court noted that the drafters of the Constitution considered that the intricate review process for bills adopting a code, digest or revision of statutes [namely, (i) the appointment of a code commissioner, (ii) extensive review by the legislature of the code "as a systematic revision of existing law: and (iii) subsequent enactment by the legislature of the commissioner's manuscript as revised by the legislature as "a new code governing the subjects included therein"]provided a rational basis for creating an exception to the single-subject requirement of Section 45. *Id*. at 51. In contrast, the adoption and incorporation of cumulative supplements into the Code does not undergo such extensive and systematic review. *Id*. Section 71 of the Alabama Constitution requires that all appropriations, other than the general appropriation bill, embrace but one subject. If a bill survives scrutinizing under § 45 on this point, § 71 will also be satisfied. *Opinion of the Justices No. 174*, 275 Ala. 254, 154 So. 2d 12 (Ala. 1963).

Opinion of the Justices No. 326
511 So. 2d 174 (Ala. 1987)

* * *

We are in receipt of Senate Resolution 165, by which you have requested our opinion on the constitutionality of S.B. 667, a bill now pending before the legislature. This bill would provide monies out of the Alabama Special Educational Trust Fund to fund numerous non-state agencies.

* * *

The first question asks whether the bill is a general appropriation bill and therefore exempt from the single subject requirement of § 45. This question must be answered in the negative, because § 71 of the Constitution of 1901 states that the "general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for interest on the public debt, and for the public schools." Appropriations for "non-state agencies" clearly do not fall within any of those categories. *See also Opinion of the Justices No. 323, supra*, [512 So. 2d 72 (Ala. 1987)].

We shall consider the second and third questions together, as we have recognized that if a bill meets the one-subject requirement of § 45, it also satisfies the one-subject requirement of § 71. *Opinion of the Justices No. 323, supra*; *Opinion of the Justices No. 174*, 275 Ala. 254, 154 So. 2d 12 (1963).

* * *

The precise question to be answered is whether appropriations for several non-state agencies can be considered one subject. We think not.

* * *

The Constitution is emphatic in its requirement that a statute shall not embrace more than one subject; a statute that violates the one-subject requirement is not saved by the

fact that the title of the statute accurately reflects the several subjects of the statute. *Ballentyne v. Wickersham*, 75 Ala. 533 (1883). ...

Childree
v.
Hubbert
524 So. 2d 336 (Ala. 1988)

These appeals arise from a judgment holding that the general appropriation act (1987 Ala. Acts No. 87-715) is unconstitutional insofar as that Act makes particular appropriations from the Alabama Special Education Trust Fund ("the ASETF") to various agencies of the state. The question presented is whether appropriations to state agencies can be made from the ASETF in a general appropriation bill.

* * *

The issues regarding whether educational appropriations can be made in a general appropriation bill arise because this Court has expressed the opinion and held on several occasions that the phrase "public schools" in § 71 allows appropriations only for grammar and high schools, i.e., not for colleges, universities, trade schools, and the like. *See Opinion of the Justices No. 323*, 512 So. 2d 72 (Ala. 1987); *Alabama Education Ass'n v. Board of Trustees of the Univ. of Alabama*, 374 So. 2d 258 (Ala. 1979); *State Tax Comm'n v. Board of Ed. of Jefferson County*, 235 Ala. 388, 179 So. 197 (1938); *Opinion of the Justices No. 31*, 229 Ala. 98, 155 So. 699 (1934); *Elsberry v. Seay*, 83 Ala. 614, 3 So. 804 (1888).

* * *

The point that earmarking cannot be repealed by an appropriation bill becomes even clearer when considered in light of the fact that the earmarking provisions are now substantive. e.g., § 40-1-31. ...

Thus, any appropriation bill appropriating ASETF funds other than as specified in the acts creating the ASETF

and in the Code would violate § 71 or § 45 of the Constitution.

* * *

The question, then, is whether such appropriations can be made in a general appropriation bill. We note that § 71 specifically states that appropriations for the public schools can be made in a general appropriation bill, and those appropriations, as limited by the decisions interpreting the term "public schools," can be made from the ASETF. Therefore, the only question is whether appropriations for the ordinary expenses of the executive, legislative, and judicial branches can be made from the ASETF.

* * *

Whether or not appropriations in the general appropriation bill can have an incidental educational purpose, they *must* be for ordinary expenses of the executive, legislative, and judicial branches. Conversely, appropriations from the ASETF *must* be for educational purposes. ...

... What we do hold is that appropriations from the ASETF cannot be made in a general appropriation bill unless they are for the "public schools." To hold otherwise would lead to interminable disputes with no fixed guidelines as to what "ordinary expenses" have a sufficient "educational purpose" to be funded from the ASETF in a general appropriation bill. ...

Proposed amendments to the state's constitution are not subject to review under Section 45 because they are not acts of the legislature. *See*, e.g., *Opinion of the Justices No. 224*, 335 So. 2d 373 (Ala. 1976).

Also, general revenue bills [*See* Ala. Const. art. IV, § 71.] are exempt by the language of Section 45. Revenue bills, however, refers to revenue bills as generally understood and do not extend to matters included therein

that are foreign to a general revenue bill. *Houston County Bd. of Revenue v. Poyner*, 236 Ala. 384, 182 So. 455 (Ala. 1938). Bills adopting a code are also exempt from the simple subject requirement. But, this exception is limited to codes as known through the constitutional and legislative history of this state. *Gibson v. State*, 214 Ala. 38, 106 So. 231 (1925). Since the Alabama legislature adopts the code as compiled by Michie Company annually, there is a relatively short time that the single subject challenge would be viable because the legislature validates any infirmities in the individual acts by adopting the code. *See generally* Act No. 81-653, Ala. Acts (1981 Regular Session). (Adopting the 1980 cumulative supplement, with certain corrections, except the Alabama Business Corporation Act.). Also, *see generally Fuller v. Associates Com. Corp.*, 389 So. 2d 506 (Ala. 1980).

Although the concept is difficult to apply and the dividing line between what is and is not violative of this part of Section 45, *See Bagby Elevator & Elec. Co. v. McBride*, 292 Ala. 191, 291 So. 2d 306 (1974) generally

> [i]f the subjects expressed in the bill are cognate, germane or complementary, the one to the other, they are properly legislated in a single act; if separate distinct, and have no common ingredient as known in proper legislation and existing judicial decisions, they cannot be united in a single act. *Houston County v. Covington*, 233 Ala. 606, 172 So. 882, 884 (1937).

But, the court must look to the title and the body of the act to determine if the single subject requirement has been met. *City of Birmingham v. Norton*, 255 Ala. 262, 50 So. 2d 754 (1950).

Each act must be examined individually to determine if it violates the one subject requirement. Adjudicated cases are helpful but not controlling unless closely analogous situations are presented. *See*, *e.g.*, *Bagby Elevator*

& Elec. Co. v. McBride, *supra*. This requirement of the constitution should not be rigidly enforced so as to cripple legislation, but should be liberally interpreted. *See generally Knight v. West Ala. Environmental Imp. Auth.*, 287 Ala. 15, 246 So. 2d 903 (1971). If an act is subject to two interpretations, one violative of this section of the constitution and another not violative, the court should construe it as the latter even though it is the less natural interpretation. *J. Blach & Sons v. Hawkins*, 238 Ala. 172, 189 So. 726 (1939).

In the event that one subject is expressed in the title and the body contains a matter not within the purview of the title, the courts will permit one part to stand and the other to fall as unconstitutional, provided that legislative intent can be given effect and the matters in the title and body are not dependent but are distinct and severable.

However, where both the title and the body of the bill embrace two subjects, the entire act must be declared void. *See*, *e.g.*, *Builders' & Painters' Supply Co. v. Lucas*, 119 Ala. 202, 24 So. 416 (1898).

In the numerous cases that have dealt with a violation of the one subject rule, the vast majority have been held constitutional.

F. Saving Clause

A saving clause is a section which is occasionally inserted in a bill to protect certain rights, privileges or remedies, such as pending litigation, which would otherwise be destroyed by the bill. Either the saving clause may be specific and protect a limited class of individuals or it may be general and apply to any action.

Example: Section 5. Savings Clause. This act does not affect rights and duties that mature, penalties that are incurred and proceedings that are begun, before its effective date.

G. Severability Clause

Sometimes the drafter is faced with part of a bill that may be subject to a constitutional challenge. If that part is determined to be unconstitutional, the court must decide whether the Legislature intended the balance of the law to remain in effect without that provision or whether the entire bill would be ineffective. Ala. Code § 1-1-16 contains a general severability clause for all provisions of the code. Additionally the drafter can specify that the Legislature intended to retain the balance of the law by using a severability clause. With the advent of Ala. Code § 1-1-16, however, the "absence of a severability clause does not necessarily require a holding of inseverability if a portion of a legislative enactment is determined to be unconstitutional." *Clay County Commission v. Clay County Animal Shelter, Inc.*, 283 So. 3d 1218 (Ala. 2019).

Example: Section 6. Severability Clause. If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall be given effect without the invalid provision or application.

Comer
v.
City of Mobile
337 So. 2d 742 (Ala. 1976)
* * *

The invalidity of § 16(h) [of the state ethics law] does not necessarily render the appointive section, § 16(a), invalid. Indeed, the Legislature has included within the terms of Act No. 130 a severability clause, § 30. Such a clause is persuasive authority that the Legislature intended the valid portion to survive. *Mitchell v. Mobile Cnty.*, 294 Ala. 130, 313 So. 2d 172 (1975). As stated in 82 C.J.S. *Statutes* § 93, pages 155, 156:

> ". . . A statute may be unconstitutional in part and yet be sustained with the offending part omitted, if the paramount intent or chief purpose will not be

> destroyed thereby, or the legislative purpose not substantially affected or impaired, if the statute is still capable of fulfilling the apparent legislative intent, or if the remaining portions are sufficient to accomplish the legislative purpose deducible from the entire act, construed in the light of contemporary events.
>
> [T]he invalidity of a part of a statute does not render the remainder invalid where enough remains, after discarding the valid part, to show the legislative intent and to furnish sufficient means to effectuate that intent. ..."

Conversely, the drafter may also include a provision that the entire act will fail if any part is held invalid. Not all statutes should contain severability clauses. The drafter should be aware that such a clause does not always guarantee that the court will not hold the entire act invalid. This type of clause should generally be limited to novel legislation that has not yet been subject to judicial review.

If a portion of a legislative enactment is determined to be unconstitutional but the remainder is found to be enforceable without it, a court may strike the offending portion and leave the remainder intact and in force. Courts will strive to uphold acts of the legislature. The inclusion of a severability clause is a clear statement of legislative intent to that effect, but the absence of such a clause does not necessarily indicate the lack of such an intent or require a holding of inseverability. *City of Birmingham v. Smith*, 507 So. 2d 1312 (Ala. 1987). *See, e.g.*, *Hamilton v. Autauga Cnty.*, 289 Ala. 419, 268 So. 2d 30 (1972); *Wilkins v. Woolf*, 281 Ala. 693, 208 So. 2d 74 (1968); Norman J. Singer, *Sutherland Statutory Constr.*, § 44.09 (5th ed. 1993).

Harrison
v.
Buckhalt
364 So. 2d 283 (Ala. 1978)

[A Dothan city ordinance prohibited issuing liquor licenses for liquor sales within 600 feet of a church but allowed existing establishments to continue indefinitely. This provision was held discriminatory and unconstitutional. The question now is raised as to the constitutionality of the entire ordinance when a part of it is unconstitutional.] ...

This is owing to the general rule that when an exception or exemption is held invalid, and there is no severability provision in the enactment (of the legislature or city governing body), then such enactment is void in its entirety. Were it otherwise the scope of the enactment would be widened beyond the intent of the enacting authority. *City of Mobile v. Salter*, 287 Ala. 660, 255 So. 2d 5 (1971); *Barron-Leggett Electric, Inc. v. Dep't of Revenue*, 336 So. 2d 1124 (Ala. Civ. App. 1976), *cert. den.* 336 So. 2d 1128 (Ala. 1976); *Sutherland Statutory Constr.*, § 44.13, Vol. 2, p. 523, 4th Ed. (1973). On the other hand, if the ordinance here under consideration contained a severability clause it would permit severance of the invalid grandfather clause and allow the valid prohibitory remainder to stand. *See Comer v. City of Mobile*, 337 So. 2d 742 (Ala. 1976).

Ala. Code § 1-1-16
Severability of provisions of Code and statutes

If any provision of this Code or any amendment hereto, or any other statute, or the application thereof to any person, thing or circumstances, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the provisions or application of this Code or such amendment or statute that can be given effect without the invalid provisions or application, and to this end, the provisions of this Code and such amendments and statutes

are declared to be severable.

The guiding star in severability cases is legislative intent. Another principle of paramount importance is that courts seek to sustain, and not strike down, the enactments of a coordinate department of government. If after deletion of the invalid part, the remaining portion of an Act are complete within themselves, sensible and capable of execution, the Act will stand notwithstanding its partial invalidity. *Town of Brilliant v. City of Winfield,* 752 So. 2d 1192 (1999).

H. Effective Date Clause

The last section of a bill may cite its effective date. If there is no effective date provided in the bill, it takes effect when the Governor signs the bill. As a general rule, the drafter should not include an effective date unless it is desirable to designate a date before or after the signing of the bill. When it is desirable or necessary for a bill to take effect prior to its signing, an effective date clause must be included.

Examples: Section 7. Effective Date. This act shall take effect immediately upon its passage and approval by the Governor, or upon its otherwise becoming law.
-Or-
This Act shall take effect on January 1, 2015.

The effective date of a bill that may become law by overriding of a veto is the time and date when the second of the two houses votes to override the Governor's veto.

Passage without the Governor's signature is midnight on the sixth day after it is presented to him/her, Sundays and legal holidays excepted, or on the date prescribed after the Legislature may be in recess. *See* Ala. Const. Art. V, § 5; Ala. Code § 1-1-4.

A bill becomes an act when signed by the Governor irrespective of the effective date. *See Jemison v. Town of Ft. Deposit*, 108 So. 396 (Ala. Ct. App. 1926).

Therefore, the enactment of a bill and its effective date are not necessarily simultaneous. However, a piece of legislation, to have a delayed effective date, must prescribe the date in the act.

In the Matter of R.W.
588 So. 2d 499 (Ala. Civ. App. 1991)

* * *

> No statute has any force until it becomes the law of the land and that is on the day fixed for it to go into effect. *Phillips v. D. & J. Enterprises*, 292 Ala. 31, 288 So. 2d 137 (Ala. 1973). The legislature has authority to defer operation of a statute until a future date, *Water Works and Sanitary Sewer Bd. v. Sullivan*, 260 Ala. 214, 69 So. 2d 709 (1954), and may make the statute contingent upon further legislative action. *Norton v. Lusk*, 248 Ala. 110, 26 So. 2d 849 (1946).

* * *

1. Funding Bills

General fund and Special Education Trust Fund Bills are effective October 1 of each year to coincide with the state fiscal year. *See* Ala. Code §§ 1-1-1(16) and 16-13-1 respectively.

2. Penal Laws

Ala. Code § 1-1-8
When penal acts take effect

> No penal act shall take effect until 60 days after the approval thereof, unless otherwise specially provided in the act.

3. Construction

Phillips
v.
D. & J. Enterprises, Inc.
292 Ala. 31, 288 So. 2d 137 (1973)

* * *

> Rule 86, ARCP, makes the effective date of the

Alabama Rules of Civil Procedure effective on July 3, 1973 (six months from their adoption by this court on January 3, 1973).

* * *

This court has held that no statute has any force until it becomes the law of the land, and that is on the day fixed for it to go into effect. *Lee v. City of Decatur*, 233 Ala. 411, 172 So. 284. The same rule would apply to a rule of court procedure.

* * *

National Security Insurance Company
v.
Freeman
281 Ala. 152, 199 So. 2d 851 (1967)

* * *

In Section 12 of Act 193, it is provided that "This act shall take effect on the ..... day of ..... 195...." Because of the omission to fill in these dates, this provision is a nullity, that is, the same as if no effective dates of the Act had been provided.

In this state the rule of the common law is recognized that statutes are in force from the date of their approval, when no time is fixed for them to take effect. *State ex rel. Jones v. Stearns*, 200 Ala. 405, 76 So. 321.

Act 193 therefore became effective on the date of its approval on 16 July 1953.

4. Retroactivity

The retroactive application of laws is generally disfavored for they take away or impair vested rights under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past. *Ex parte Buckley*, 53 Ala. 42 (1875). Therefore, the courts will

usually indulge every presumption in favor of prospective application unless the Legislature's intent to the contrary is clearly and explicitly expressed. *City of Brewton v. White's Auto Store, Inc.*, 362 So. 2d 226 (Ala. 1978). *See also Hamilton v. Barwick*, 579 So. 2d 626 (Ala. Civ. App. 1991). In deciding whether to give retroactive application to a holding that declares an act void or unconstitutional, the court must consider matters of public policy. *Ex parte Coker*, 575 So. 2d 43 (Ala. 1990).

Lee
v.
Lee
382 So. 2d 508 (Ala. 1980)

* * *

Issue

Whether repeal of the civil death statute in 1965 can be applied retroactively so as to divest an interest which vested in 1948 pursuant to law extant at that time?

* * *

Decision

It is an old and well established rule of law that rights and interests which accrued or vested under existing law will not be altered by the subsequent repeal or modification of that law. *See Snow v. Abernathy*, 331 So. 2d 626 (Ala. 1976); *Pickett v. Matthews*, 238 Ala. 542, 192 So. 261 (1939); *Grey's Ex'r v. Mobile Trade Co.*, 55 Ala. 387 (1876). ...

The judiciary generally disdains retroactive application of laws because such application usually injects undue disharmony and chaos in the application of law to a given fact situation; therefore, the courts will generally indulge every presumption in favor of prospective application unless the legislature's intent to the contrary is clearly and explicitly expressed. *City of Brewton v. White's Auto Store, Inc.*, 362 So. 2d 226 (Ala. 1978). Nowhere in Act 272, which repealed the civil death statute, is there any

expression of legislative intent for retroactive application of that Act. To allow this action to be maintained would give retroactive effect to repeal of the civil death statute contrary to the intent of the legislature.

* * *

Street
v.
City of Anniston
381 So. 2d 26 (Ala. 1980)

* * *

At the time of the original misdiagnosis, Title 7, § 25(1), Code of Alabama 1940 (Recompiled 1958), the predecessor statute to our current Medical Liability Act, was in effect. ...

... This, then, is our threshold question: Which statute of limitations applies, that in effect at the time the cause of action arose, or that in effect at the time the action was brought?

* * *

It is true as a general rule that statutes will not be construed to have retrospective effect unless the language of the statute expressly indicates the legislature so intended. *Baker v. Baxley*, 348 So. 2d 468 (Ala. 1977); *Mobile Housing Bd. v. Cross*, 285 Ala. 94, 229 So. 2d 485 (1969). "Remedial statutes," or those relating to remedies or modes of procedure, which do not create new rights or take away vested ones, are not within the legal conception of "retrospective laws," however, and do operate retrospectively, in the absence of language clearly showing a contrary intention. *Sills v. Sills*, 246 Ala. 165, 19 So. 2d 521 (1944); *Harlan v. State*, 31 Ala. App. 478, 18 So. 2d 744 (1947); A statute of limitations has generally been viewed as a remedial statute, *Henry and Wife v. Thorpe*, 14 Ala. 103, (1848), and the statute of limitations in effect at the time the suit is filed, as opposed to one in effect at the time of the accrual of the cause of action, has been held to apply unless the later statute clearly states the contrary. *Webster v. Talley*, 251 Ala. 336, 37 So. 2d 190 (1948); *Doe ex dem. Trotter*

v. Moog, 150 Ala. 460, 43 So. 710 (1907). This is true whether the later statute extends or limits the time within which a cause of action may be brought, for it has frequently been held that the legislature can establish a new limitation where none existed before and make it applicable to a cause of action against which there was no such statute when the right was created, and it may also so change an existing statute and shorten periods of limitation, provided a reasonable time is allowed for the action to be brought. *National Surety Co. v. Morgan*, 20 Ala. App. 42, 100 So. 460, judgment reversed; *Ex parte Morgan*, 211 Ala. 360, 100 So. 462, (1924); *Cronheim v. Loveman*, 225 Ala. 199, 142 So. 550 (1932).

* * *

5. Deposited with the Secretary of State

A bill approved by the Governor must be deposited with the Secretary of State within ten days after final adjournment of the legislature as required by Ala. Const. Art. V, § 125 to become a valid act.

State
v.
Eley
423 So. 2d 303 (Ala. Crim. App. 1982)
cert. denied, 423 So. 2d 305 (Ala. 1982)

[Upon defendant's motion to dismiss State's appeal from an order of the Circuit Court, Montgomery County, William R. Gordon, J., which granted defendant's motion to dismiss an assault charge on a plea of former jeopardy, the Court of Criminal Appeals, Barron, J., held that since Sundays were not excepted in computation of ten-day period, bill permitting appeals by State from certain pretrial criminal proceedings was not deposited with Secretary of State within mandatory ten-day period after final adjournment of legislature and therefore did not become a valid law.

* * *

The facts. S.B. 60, which was subsequently designated Act 82-860, was duly passed by both houses of the Alabama Legislature in the 1982 Third Special Session. It was presented to the Governor on August 13, 1982, the date on which both houses adjourned sine die. The Governor signed the bill on August 22, 1982, and deposited the bill with the Secretary of State on August 25, 1982. Between the date on which the bill was presented to the Governor and the date on which the bill was deposited with the Secretary of State, there were two intervening Sundays.

The issue. Was the bill approved by the Governor and deposited with the Secretary of State in accordance with the provisions of Article V, Section 125, Constitution of Alabama, 1901, so as to become a valid act?

The holding. The bill was not approved by the Governor and deposited with the Secretary of State within ten days after final adjournment of the legislature, as required by Section 125 of the Constitution, so as to become a valid act.

* * *

Sundays are not excepted in the computation of the ten-day period. The first portion of the sentence specifically excepts Sundays in the computation of the six-day period within which the Governor must return bills to the legislature to prevent their becoming law without his signature. That provision is separated from the remainder of the sentence by a semicolon. It logically follows that if the framers had also intended to exempt Sundays from the computation of the ten-day period, then they would have specifically so provided. Not having specifically so provided, the framers intended that Sundays would not be exempt in the computation of the ten-day period.

* * *

Ex Parte Coker
575 So. 2d 43 (Ala. 1990)

* * *

The record before us shows that H.B. 362 was presented to the Governor on April 26, 1982, the date of the adjournment of the 1982 Regular Session of the legislature; that the Governor approved the bill on May 4, 1982; and that the bill was received by the secretary of state on May 10, 1982.

* * *

Article V § 125 Constitution of Alabama 1901 provides for a 10-day period in which bills can become law after the legislature adjourns. Specifically, it provides that, "within that time" the bill must be approved and deposited with the secretary of state.

* * *

... Therefore, we hold, as the Court of Criminal Appeals has held, that bills presented to the Governor within five days of the adjournment of the legislature must be *both* approved by the Governor *and* deposited with the secretary of state within 10 days of the adjournment in order to "become law."

As an alternative argument, the State contends that, even if H.B. 362 was not deposited with the secretary of state within the time allowed by § 125, and, for that reason, did not become law, it nevertheless became law through its incorporation in the 1982 Cumulative Supplement to the Code, as part of the 1982 Replacement Volume 12.

* * *

... To extend this principle to the instant case would allow statutory codification to control over a pocket veto, thus overriding the pocket veto powers of the Governor. We cannot upset the balance and separation of powers among the independent branches of our government by allowing the legislature this power.

Based on the reasons set forth above, we hold that the

Pharmacy Robbery Act was pocket vetoed when it was not deposited with the secretary of state within the 10-day period as mandated by § 125. ...

* * *

ON APPLICATION FOR REHEARING

ALMON, Justice

... "Where a bill fails to become law because of procedural errors in the legislative process but the provisions of the bill are incorporated into a code which is subsequently enacted in accordance with the Constitution, do such provisions become law, like the other provisions of the code?" That issue, of course, was already before the Court on the original submission, so the motion was denied.

The motion to set aside submission did not list the 142 bills from the 1982 Regular Session or the other bills from 1969 and 1971, now appended to the State's rehearing brief. *See* Ala. Acts 1982, Acts No. 82-422 through -628; Ala. Acts 1971, Acts No. 1977 through 2488; Ala. Acts 1969, Acts No. 828 through 1255. ...

* * *

Thus, we must hold that the requirement of deposit with the secretary of state within 10 days after legislative adjournment is mandatory. Rather than hold that H.B. 362 was in fact pocket vetoed on March 6, 1982, however, we make our decision prospective from October 20, 1982, the date the Court of Criminal Appeals announced its decision in *State v. Eley,* [423 So. 2d 303 (Ala. Crim. App. 1982)]. We reserve the discussion of retroactive or prospective application for later in this opinion.

The State and the *amici* argue that, even if H.B. 362 and the other bills to which our attention is directed were pocket vetoed, the provisions of most of those bills became law by codification in acts passed subsequent to the 1975 codification. ...

... Can such an act to incorporate former enactments

into the Code give the force of law to prior bills that were improperly enacted, or is its effect merely to systematize into the structure of the 1975 Code laws that have already been properly enacted?

... If the subject of Act No. 83-131 is the incorporation of laws validly enacted in 1982 into the 1975 Code, it has but one subject. If the subject of Act No. 83-131 is the enactment into law of 142 bills that were pocket vetoed in 1982, it clearly has more than one subject.

The question, then, is whether Act No. 83-131 is a bill "adopting a code, digest, or revision of statutes" and is thereby excepted from the single-subject requirement of § 45. ...

* * *

In contrast to Act No. 83-131, the adoption of Code of 1975 came about through a much more careful, thorough, and closely scrutinized process. Acts 1969, No. 1160, authorized the appointment of a code commissioner to "revise, digest, and codify all the statutes of the State of a general and public nature," and to "prepare a systematic code of the whole body of the public statutes of the State." Cf. Const. 1901, § 85:

"It shall be the duty of the legislature, at its first session after the ratification of this Constitution, and within every subsequent period of twelve years, to make provision by law for revising, digesting, and promulgating the public statutes of this state, of a general nature, both civil and criminal."

* * *

... *Fuller v. Associates Commercial Corp.*, 389 So. 2d 506, 509 (Ala. 1980)(adoption of 1975 Code cured any single-subject violation in enactment of the Mini-Code, Ala. Acts 1971, No. 2052, codified at § 5-19-1 et seq.); Opinion of the Justices No. 63, 244 Ala. 384, 13 So. 2d 762 (1943)(regardless of their original status as local laws or as

general laws of local application, the laws codified in Title 62 of the 1940 Code were upon codification made local laws and could only be amended accordingly); *State ex rel. Sossaman v. Stone*, 235 Ala. 233, 178 So. 18 (1937)(defect in title of 1919 act cured by incorporation into 1923 Code); *Brandon v. State*, 233 Ala. 1, 173 So. 238 (1936)(1915 local act passed in violation of Const. § 106 was validated by incorporation into 1923 Code); *Dillon v. Hamilton*, 230 Ala. 310, 160 So. 708 (1935)(any § 106 defect in enactment of 1921 act was cured by enactment of 1923 Code); *Smith v. State*, 223 Ala. 346, 136 So. 270 (1931)(1927 act adopting code commissioner's manuscript of Agricultural Code validated commissioner's deletion of "knowingly" and thereby superseded original enactment); *Bluthenthal & Bickert v. Trager & Co.*, 131 Ala. 639, 31 So. 622 (1902) (commissioner's introduction of provisions of invalid 1897 act into 1896 Code, § 2158, was ineffective to change Code); *Builders' & Painters' Supply Co. v. Lucas & Co.*, 119 Ala. 202, 24 So. 416 (1898)(bill passed at same session as 1896 Code and subsequently included therein by commissioner derived its validity only from original enactment); *Bales v. State*, 63 Ala. 30 (1880)(whether constitutionally prescribed legislative procedure was followed in original enactment was unimportant because of incorporation of statute's provisions into 1876 Code); *Hoover v. State*, 59 Ala. 57 (1878) (penal code of 1866 was validly enacted, and furthermore, its provisions were validated by incorporation into the Codes of 1867 and 1876); *Dew v. Cunningham*, 28 Ala. 466 (1856)(enactment of Code of 1852 not unconstitutional for failure to give entire code three readings; only the enacting bill was required to be read at length). *See also State v. Golden*, 531 So. 2d 941 (Ala. Crim. App. 1988) (inclusion of 1915 act in every subsequent code, including the Code of 1975, cured any violation of Const. § 106 in original enactment).

Each of the above-cited cases involved the cure of defective enactment by adoption of a code "known as such in the constitutional and legislative history of the state," *Gibson, supra*, 214 Ala. at 43, 106 So. at 235. ...

In contrast, the legislature has, by acts equivalent to Act No. 83-131, regularly "adopted and incorporated into the Code of Alabama 1975" the successive cumulative supplements. Acts 1978, No. 674; Act No. 79-37; Act No. 80-753; Act No. 81-653; Act No. 82-567; Act No. 84-259; Act No. 85-45; Act No. 86-375; Act No. 87-805; Act No. 88-918; Act No. 89-525; Act No. 89-990. ...

Thus, we cannot say that the successive acts adopting the annual supplements as part of the 1975 Code are excepted from the single-subject requirement of § 45 of the Constitution, because they do not come within that section's exception for "bills adopting a code, digest, or revision of statutes."

... We now turn to the question of the prospective application of the former holding from the date the Court of Criminal Appeals first announced that rule in *State v. Eley*.

... In deciding whether to give retroactive application to a holding that declares an act void or unconstitutional, a court must consider matters of public policy. *Land v. Bowyer*, 437 So. 2d 524 (Ala. 1983); *Stallworth v. Hicks*, 434 So. 2d 229 (Ala. 1983).

* * *

A useful test for retroactive application in criminal cases was articulated by the Supreme Court as follows:

> "In deciding whether to apply newly adopted constitutional rulings retroactively, we have considered three criteria: (1) the purpose of the new rule; (2) the extent of reliance upon the old rule; and (3) the effect retroactive application would have upon the administration of justice."

Halliday v. United States, 394 U.S. 831, 832, 89 S. Ct. 1498, 1499, 23 L.Ed.2d 16 (1969); *Allen v. Hardy*, 478 U.S. 255, 106 S. Ct. 2878, 92 L.Ed.2d 199 (1986).

* * *

To apply retroactively the rule that deposit within 10 days is mandatory would drastically upset the administration of justice and unjustifiably interfere with the extensive reliance placed on hundreds of laws for many years. Hundreds of laws, many of them not brought forward into the 1975 Code or enacted since that time, would be considered pocket vetoed under a retroactive mandatory construction of the deposit requirement. ... Although the deposit requirement was violated in the case of H.B. 362 and other bills, those violations appear to have been due to a construction of the 10-day deposit requirement as ministerial and directory. ...

... Therefore, the holding that a bill presented to the Governor within 5 days before the end of a legislative session is vetoed under § 125 unless he both approves it and deposits it with the secretary of state within 10 days after the legislature adjourns, will be applied prospectively from the date that holding was first announced in *State v. Eley*, 423 So. 2d 303 (Ala. Crim. App. 1982). Any other holding could be disruptive of state, county, and municipal governments. We only regret that we were not apprised of this situation on our original consideration of this case.

The judgment of the Court of Criminal Appeals, affirming the denial of Coker's Rule 20 petition, is affirmed. We re-emphasize that the 10-day deposit requirement of § 125 of the Constitution is mandatory, so that, from the date of *Eley*, if a Governor failed or fails to make such a deposit with the secretary of state, any such bill was or will be pocket vetoed. A bill adopting a cumulative supplement cannot serve to enact the provisions of a pocket-vetoed bill; it can only serve to systematize validly enacted laws into the structure of the Code. To enact the provisions of such a vetoed bill, the legislature must follow the requirements of all applicable constitutional provisions, including § 45.

Application granted; Opinion Extended; Affirmed.

I. Transitory Clauses

Ex Parte Rheem Manufacturing
524 So. 2d 631 (Ala. 1988)

* * *

We hold that the failure of the publisher (the Michie Company) to incorporate § 14 into the Code did not affect its validity. The arguments of counsel for both the employer and the employee evidence a common misunderstanding of the codification process, which obviously misled the Court of Civil Appeals. Indeed, the general rule stated in *Bush* [*v. Greer*, 235 Ala. 56, 177 So. 341 (1937)] which is still good law, has no application to the issue here presented.

Section 14, dealing with the effective date of the Act, preserving already accrued causes of action, and restricting the Act's application to causes of action arising after the Act's effective date, belongs in that category of provisions that customarily are not codified but remain viable and applicable provisions of the legislative enactment. In such cases, it is customary for Michie (which, incidentally, is Alabama's designated "code commissioner") to include a code commissioner's note, referring to the omitted provision, which was done in this instance. (*See* annotation following § 25-5-80.) And this is true notwithstanding the fact that the legislature, by a subsequent act, may adopt the codification of its former enactment as the prevailing law. Other such omitted provisions, whose validity is unaffected, include local laws, severability clauses, and repealer clauses. The three material provisions of § 14 are commonly referred to as "transitory" clauses and are purposefully omitted from the Act's codification because of their temporary nature and relevance.

The judgment of the Court of Civil Appeals is reversed.

Example:

Ala. Code §§ 26-7A-1 through 26-7A-17. Repealed by Acts 1995, No. 95-751, p. 1750, § 1, effective August 7, 1995.

Code Commissioner's note. - Acts 1995, No. 95-751, which repealed this chapter, provides in § 2: "(a) A curator appointed pursuant to Chapter 7A of Title 26 prior to the effective date of this act [August 7, 1995] and continuing in effect on the date this act becomes effective, is not terminated, although the statute under which the appointment was made is repealed by this act. The curator shall continue in effect as the curator existed prior to this act, with all of the powers and duties of the curator on the effective date of this act.

"(b) If, on January 1, 1997, a curator is in existence pursuant to subsection (a), the curator on that date shall be considered a conservator as provided in Chapter 2A (commencing with Section 26-2A-1) of Title 26 of the Code of Alabama 1975, with all the power and duties of a conservator as provided in that chapter. If the powers of a curator are limited by a court, the powers granted in this subsection are limited to the same extent."

J. Repealer Clause

General statements such as "all laws and parts of laws inconsistent with this Act are hereby repealed" are frequently used, but should be avoided. Such language leaves to court interpretation which existing laws have been repealed. *See, e.g., Fletcher v. Tuscaloosa Fed. Sav. And Loan Ass'n*, 314 So. 2d 51 (Ala. 1975). A statement of intention to nullify specific inconsistent laws is included when applicable, such as: "To repeal Section 10-5-4 of the Code of Alabama 1975."

Jansen
v.
State ex rel. Downing
273 Ala. 166, 137 So. 2d 47 (1962)
* * *

What we have to decide is whether the Act is either violative of one of the following provisions of the Alabama Constitution, viz.: § 104, subdiv. 29, § 190, or Amendment 41, or is so incomplete, vague, uncertain and indefinite as to make it inoperative and void. ...

The trial court apparently entertained the view that any applicable election law which, in some respect, conflicts with some provision of Act No. 154 has been permanently repealed in its entirety, by reason of the provision in said Act that "all laws or parts of laws which conflict with this act are repealed." The provision does not have that effect. The controlling principle is thus stated in 50 Am. Jur., *Statutes*, § 520, p. 529:

> "* * * Where an act, which is not a complete law within itself covering the whole subject, contains a provision to the effect that all laws and parts of laws inconsistent or in conflict therewith are repealed, the repeal extends to conflicting statutes and provisions only; all laws and parts of laws not in conflict therewith are left in full force and effect. A statute which is not wholly inconsistent with the new act continues in force except in so far as it conflicts therewith. * * *"

From 82 C.J.S. *Statutes* § 291, p. 492, is the following:

> "Where there is sufficient repugnancy or inconsistency between two statutes, or parts of two statutes, to effect a repeal by implication, the earlier statute is impliedly repealed to, and only to, the extent of the conflict, repugnancy, or inconsistency. A total repugnance between two statutes is sufficient, and, according to some authorities, is necessary, to cause a repeal in toto of the earlier

statute by implication."

* * *

Merrell
v.
Huntsville
460 So. 2d 1248 (Ala. 1984)

* * *

[This case] involves a conflict between Act 75-380, 1975 Ala. Acts, a local Act applying only to Madison County and the City of Huntsville, and the subsequently enacted "Alcoholic Beverage Licensing Code," Act 80-529, 1980 Ala. Acts, codified as § 28-3A-1, *et seq.*, Code 1975, a general law of statewide application. The issue which arises in this appeal is whether the enactment of Act 80-529 repealed Act 75-380 by implication. We hold that Act 75-380 was in fact repealed.

Act 75-380 was enacted in 1975. Its general purpose was to regulate and control the sale of alcoholic beverages in Madison County. ...

Further, Act 75-380 gave the City of Huntsville the authority to promulgate ordinances and regulations in regard to the licensing and sale of alcoholic beverages, the power to require that licensees obtain separate licenses to sell alcoholic beverages from both the City and the State, and the power to suspend or revoke a license issued by the City.

In 1980, the legislature enacted Act 80-529, entitled "Alcoholic Beverage Licensing Code," and codified as § 28-3A-1, *et seq.*, Code 1975. This legislation was a general revision of the law regarding the licensing and regulation of the sale of alcoholic beverages in Alabama. ...

* * *

Act 80-529 contains a "repealer" clause (Section 27) expressly repealing certain enumerated sections of the

Alabama Code. There is no express mention of Act 75-380. The clause does state generally, however, that "[a]ll laws or parts of laws which conflict or are inconsistent with this Code are hereby repealed." This language comprises what is known as a general repealing clause, an insertion of dubious value. One authority describes this type of repealer in this way:

> An express general repealing clause to the effect that all inconsistent enactments are repealed, is in legal contemplation a nullity. Repeals must either be expressed or result by implications. ... [A] general repealing clause cannot be deemed an express repeal because it fails to identify or designate any act to be repealed. It cannot be determinative of an implied repeal for it does not declare any inconsistency but conversely, merely predicates a repeal upon the condition that a substantial conflict is found under application of the rules of implied repeals. [Footnotes omitted.]

1A *Sutherland, Statutes and Statutory Construction* § 23.08 (Sands, 4th ed. 1972). Thus, since the repealing clause in Act 80-529 does not expressly repeal Act 75-380, any repeal would arise only by necessary implication.

Repeal of a statute by implication is not favored, however, and a prior act is not repealed unless provisions of a subsequent act are directly repugnant to the former. *Ex parte Jones*, 212 Ala. 259, 102 So. 234 (1924). The provisions of Act 80-529 would have to be irreconcilable with the provisions of Act 75-380 for the earlier statute to be deemed repealed by implication.

* * *

Chapter 24
Amendments

A. Procedure

1. Amending Old Law

When amending an existing law, the drafter should first set forth the entire section of the part that is to be amended. All language to be omitted should be stricken through. All new language should be underlined. Joint Rule 12(a) (2023).

EXAMPLE: Section 28-1-1, Code of Alabama 1975 (1) There shall be a ~~department~~ division of the state government within the department of business regulations known as the "~~Department~~ division of ~~Registration~~ registration," which shall be charged with administering the laws regulating professions, trades and occupations as in this title provided. (2) "Department of registration" means division of registration.

2. Enacting New Law

If all of the language in a bill is new, it should not be underlined. A bill which both amends old law and enacts new law should have all new language underlined. Joint Rule 12(a) (2023).

EXAMPLE: Section 29-5-66, Code of Alabama 1975.
Section 1
(1) As used in this article;
(a) ~~The term person as used in this act,~~ "Person" includes any individual, partnership, company, ...
Section 2
(1) Any person who operates a ....

B. Motion to Amend

The motion to amend is the means by which a bill is altered by adding new provisions, by striking out existing provisions, or by substituting new provisions for existing language. Both House and Senate rules contain regulations relating to the motion to amend. *See e.g.*, House Rule 25 (2023), Senate Rule 18 (2023).

Both houses require that amendments to bills must strike through the existing language to be deleted and underscore the language to be inserted. Amendments to bills must also by number refer to the line or lines to be amended. Joint Rule 12(b) (2023).

The following simple examples show how amendments may be made to a pending bill.

> (1) "I move to amend Senate (or House) Bill No. ____, page 1, line 13, by striking out the words: 'and call' after the word 'submission.'"
>
> (2) "I move to amend Senate (or House) Bill No. ___, by striking out Section 2 in its entirety, as it appears on page 1, at lines 19 and 20, and renumbering the remaining sections of the bill."

If extensive amendments are to be made to a pending bill, a substitute should be offered for the original measure. The bill must be redrafted to incorporate the desired insertions and to delete the provisions to be stricken. The substitute is considered, for all practical purposes, as the original bill, but the substitute is an amendment. In amending bills, however, it must be remembered that no bill may be so altered during its passage through the Legislature as to change its original purpose.[1] Any amendments must be "germane to the general purpose" of the original bill. *Magee v. Boyd*, 175 So. 3d 79, 112 (Ala. 2019). Also,

[1] West, *Mason's Manual of Legislative Procedure* § 415 (2010 ed.).

amendments cannot materially change or contradict the substance of a proposed bill which has been published in a newspaper of general circulation. *Deputy Sheriffs Law Enforcement Ass'n of Mobile Cnty. v. Mobile Cnty.*, 590 So. 2d 239 (Ala. 1991) (interpreting Ala. Const. Art. IV, § 106). When a question under debate contains several points, a member may call for a division of the question. However, a motion to amend a bill or resolution by striking out words and inserting others is not a divisible question. *See* Senate Rule 25 (2023).

Ala. Const. Art. IV, § 61
Laws to be passed by bills; restrictions on amendments to bills.

No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

Ala. Const. Art. IV, § 64
Procedure for amendment of bills; adoption of reports of committees of conference.

No amendment to bills shall be adopted except by a majority of the house wherein the same is offered, nor unless the amendment with the names of those voting for and against the same shall be entered at length on the journal of the house in which the same is adopted, and no amendment to bills by one house shall be concurred in by the other, unless a vote be taken by yeas and nays, and the names of the members voting for and against the same be recorded at length on the journal; and no report of a committee of conference shall be adopted in either house, except upon a vote taken by yeas and nays, and entered on the journal, as herein provided for the adoption of amendments.

C. Pending Bills

Opinion of the Justices No. 272
383 So. 2d 527 (Ala. 1980)

[Bill originally removed sales tax exemptions from gasoline, motor fuel, and oil. The Senate committee instead substituted a bill imposing four cents per gallon tax on gasoline.] While the bill still produces revenue for the Highway Department, ... [d]oes the changing of the revenue producing device violate Section 61 of the Constitution as a bill so altered or amended as to change its original purpose?

* * *

Section 61 of the Constitution of Alabama of 1901, provides that "no bill shall be so altered or amended on its passage through either house as to change its original purpose." The "purpose" of a bill within this section has been held to mean its general purpose, not mere details through which its purpose is manifested and effectuated. *Opinion of the Justices No. 255*, 361 So. 2d 536 (Ala. 1978); *State Docks Comm'n v. State*, 227 Ala. 521, 150 So. 537 (Ala. 1933).

In *Opinion of the Justices, supra*, this Court held that the bill under scrutiny altered the original bill passed only in the method of effectuating its purpose, which remained unchanged from the original bill. The general purpose of the original bill was to provide monies for capital improvements for public educational purposes. The original bill employed a direct appropriation of $250,000,000 from the Alabama Special Educational Trust Fund, over a designated period. The substitute bill altered the financing method to provide instead for a bond issue of $220,325,000 by the Alabama Public School and College Authority. We held that since only the financing method had been altered, § 61 had not been violated, because the general purpose of each of the two bills -- to provide monies for capital improvements for public education purposes -- was

identical. *See also, Opinion of the Justices No. 154*, 264 Ala. 181, 86 So. 2d 1 (Ala. 1956); *Opinion of the Justices No. 103*, 252 Ala. 525, 41 So. 2d 758 (Ala. 1949).

The same rationale is applicable to the two proposals here under scrutiny. The general purpose of House Bill No. 287 is to raise revenue exclusively for highway purposes. The general purpose of the Senate Finance and Taxation Committee's substitute to House Bill No. 287 is identical. Only the method of financing is altered. House Bill No. 287 originally proposed to raise revenue by removing the sales tax exemptions from motor fuel, gasoline and lubricating oil. The Senate committee's substitute proposes to raise the revenue by imposing a four cents per gallon tax on gasoline. While the details through which the bill's purpose would be effectuated are different, the general purpose of each version of the bill-raising revenue for construction and maintenance of highways throughout the state -- is the same. Both versions levy a tax incident to the sale of gasoline, even though the tax is measured differently.

It is, therefore, our opinion that the constitutional prohibition of § 61 has not been violated in that the Bill in question has not been so altered or amended on its passage as to change its original purpose. *Opinion of the Justices No. 255*, 361 So. 2d 536 (Ala. 1978).

Opinion of the Justices No. 266
381 So. 2d 187 (Ala. 1980)

* * *

1. Does Section 1 of S.B. 320, as substituted and amended, contain more than one subject and as a result conflict with Article IV, Section 45 of the Constitution of Alabama of 1901?

2. Does the substitute change the original purpose of the original S.B. 320 and as a result conflict with Article IV, Section 61 of the Constitution of Alabama of 1901?

The title to S.B. 320, as originally introduced, reads as follows:

> "To transfer funds from the state insurance fund to the credit of the state general fund to be used only for medicaid purposes, and to further provide for the transfer back of said funds from the state general fund to the state insurance fund by the state finance director with approval of the Governor."

The title to the Finance and Taxation Committee Amendment to substitute for S.B. 320 reads as follows:

> "To transfer funds from the state insurance fund to the credit of the state general fund to be used only for medicaid and investigation of welfare fraud purposes; and to further provide for the transfer back of said funds from the state general fund to the state insurance fund and the attorney general's office by the state finance director with approval of the Governor."

The title to the Proctor substitute for S.B. 320 reads as follows:

> "To provide further for the funds to pay the cost- of-living increase for certain education personnel as authorized under Act No. 79-540, adopted at the 1979 Regular Session and for state employees and officials authorized under Act No. 79-724, adopted at the 1979 Regular Session, and for Medicaid emergency use and to appropriate the estimated ending balance in the Alabama Special Educational Trust Fund provided for in Section 1 of Act No. 79-540, adopted at the 1979 Regular Session."

The purpose of S.B. 320, as originally introduced, was to transfer funds from the state insurance fund to be earmarked for Medicaid purposes. As originally introduced, S.B. 320 was not an appropriation bill, but

merely earmarked money to be expended on due appropriation. *Nachman v. State Tax Commission*, 233 Ala. 628, 173 So. 25 (Ala. 1937).

The Finance and Taxation substitute for S.B. 320 did not, in our opinion, change the original purpose of S.B. 320. The Finance and Taxation Committee substitute for S.B. 320 did add an additional earmarking provision to provide that the transferred funds could be used for "... investigation of welfare fraud ...," but we think that the Finance and Taxation Committee substitute was sufficiently germane and cognate to the original purpose of S.B. 320 and that the Finance and Taxation Committee substitute does not violate § 61 of the Constitution. ...

The Proctor substitute for the Finance and Taxation Committee substitute for S.B. 320, however, presents a serious constitutional question. It not only changed the purpose of original S.B. 320, but also changed the nature of the bill from one earmarking funds to be expended on appropriation into one which actually makes an appropriation. In fact, the title to the Proctor substitute states that its purpose is to provide funds to pay cost-of-living increases, previously authorized by law, for certain education personnel and for state employees and officials. The Proctor substitute also would appropriate "from such reserves as may accrue from the General Fund of the state of Alabama and from such reserves as may exceed the amounts required by law for the state Insurance Fund, such amounts as are available and as may be determined by the Governor to be necessary for the operation of Medicaid through September 30, 1980 ...," and "... other state funds including any trust funds except those which had a zero balance on September 30, 1979 ...," yet, there is nothing in the title which suggests that the "insurance fund" and "other state funds including any trust funds" might be affected.

It is apparent that the Proctor substitute for S.B. 320 changed the general purpose of S.B. 320 from one which had as its general purpose the transfer of certain state funds

to the General Fund to meet specified needs to one which appropriated certain funds, without mentioning those funds in the title. Cf. *Alabama Educ. Ass'n v. Bd. of Trustees of Univ. of Alabama*, 374 So. 2d 258 (Ala. 1979). The Proctor substitute for S.B. 320, therefore, would violate both Sections 45 and 61 of the Constitution of Alabama.

* * *

D. Titles of Amendatory Acts

The constitutional requirements for an amendatory act are met if the title identifies the act or section to be amended, declares its purpose to amend, and the matter added by the amendment is genuinely related to the subject of the original act. *Harper v. State*, 109 Ala. 28, 19 So. 857 (1896).

Clutts
v.
Jefferson Co. Bd. of Zoning Adjustment
282 Ala. 204, 210 So. 2d 679 (Ala. 1968)

[Editor's note: The title of Act No. 599, 1967 Acts, Vol. II, page 1384 recites as follows]:

AN ACT

"To amend Sections 4 and 5 of Act No. 104, H.B. 148, First Special Session 1956 (Acts 1956, p. 148), an act authorizing and providing for the planning, designation, establishment, use, and regulation of controlled access highways."

Act No. 599 further amended Section 4 of Act No. 104 by adding to Section 4, as amended by Act No. 305 of 1961, the following sentence:

"And provided further, that notwithstanding any other laws to the contrary any owner or owners of lots, tracts, or parcels of land lying within 500 feet

> from any acquired right of way for such controlled access facility at any point of access to or exit from such facility may use, improve or develop such property for automotive service stations or other commercial establishments, including places for serving food and providing lodging, for serving motor vehicle users." ...
>
> * * *

Appellants contend that Act No. 599 does not meet the requirements of Section 45 of the Constitution of 1901 that: "..... Each law shall contain but one subject, which shall be clearly expressed in its title, except ...." certain enumerated classes of bills. Act No. 599 does not fall within the exception.

* * *

"The unity of subject is an indispensable element of legislative acts; but it is not the only element; the subject must be 'clearly expressed in its title. .... The title must be such, at least, as fairly to support or give a clew [*sic*] to the subject dealt with in the act, and, unless it comes up to this standard, it falls below the constitutional requirement.'" *Lindsay v. United States Sav. & Loan Ass'n*, 120 Ala. 156, 173, 24 So. 171, 176, 42 L.R.A. 783.

"Again it is said the test is: Is there anything in the bill which cannot by fair construction be referred to the title? Or (as stated in another form by this court): 'The question must be whether, taking from the title the subject, we can find anything in the bill which cannot be referred to that subject. If we do, the law embraces a subject not described in the title.'" *Ham v. State ex rel. Buck*, 156 Ala. 645, 655, 47 So. 126, 130.

The rule is that the title of an act, which purports merely to amend a certain section of the Code, cannot, conformably with Section 45, add a new and different subject. *Taylor v. Johnson*, 265 Ala. 541, 543, 93 So. 2d 143.

An amendment by reference to the number of a section in an act must be confined to matters which are germane to, *suggested by*, and supplemental to the subject of that section; otherwise it cannot be said that the subject of the amendatory act is expressed in its title as required by Section 45 of the Constitution. *Ex parte Cowert*, 92 Ala. 94, 100, 9 So. 225; *Ex parte Reynolds*, 87 Ala. 138, 6 So. 335.

* * *

The title of Act No. 104 gives notice that regulation and control of the limited access highway is provided for, but nothing in the title gives any notice or any clew [*sic*] that the act provides for regulation or control of the use of any land that is not part of the facility or of some street or highway.

If the title gives notice that the act will regulate or control the use of land adjacent to the limited access highway, then the title must be construed as giving notice that the act will prohibit the use of adjacent land for certain purposes. If the title gives notice that the act may confer on adjacent land the privilege of using that land for any purpose, then the title also gives notice that the act prohibits the use of adjacent land for any purpose. We do not think that one reading the title could reasonably infer that the act provides for either granting or taking away any right to use the adjacent land for any purpose.

The title of the act clearly provides for regulation and control of the use of the limited access facility, but the title is silent with respect to regulation or control of the use of adjacent land outside the facility.

We conclude that the amendment attempted by Act No. 599 contains a subject which is not clearly expressed in its title. For that reason, we hold that the amendment of Section 4 of Act No. 104, which is attempted by Act No. 599, does not conform to Section 45 of the Constitution and is, therefore, void.

* * *

E. Constitutional Requirements and Restrictions

An amendment to an existing statute must be passed in accordance with same constitutional requirements necessary to enact the original statute.

Opinion of the Justices No. 265
381 So. 2d 183 (Ala. 1980)

[The Legislature posed the following questions to the Justices:]

1. In view of the fact that Section 53 of the Constitution of Alabama specifically delegates to each House of the Legislature the power to prescribe the rules of its procedure, but does not stipulate the form in which such rules may be guised, does the latest expression of the Houses on the matter of rules procedure, though contained in resolution form, supersede earlier rules contained in statutory form?
2. In view of the fact that the legislative power of this state vested in the Legislature by Section 44, of the Alabama Constitution is plenary, except as limited by the state or federal constitution, and there is no limitation in Alabama's Constitution on the form or the manner in which rules governing legislative procedure must be expressed, would the latest rule of legislative procedure supersede any rules theretofore prescribed, regardless of the form of the prescription?

* * *

The Joint Resolution of the Senate and House of Representatives (S.J.R. 69), seeks to alter certain procedures in Section 41-20-10, Code of 1975. This section of the code is part of the Alabama Sunset Law of 1976.

* * *

Section 61, provides that, "No law shall be passed except by bill ...." If no law can be enacted except by the passage of a bill, then it is clear that no law may be amended by means other than the passage of a bill. Therefore, a joint resolution cannot be used to amend an existing statute.

We are of the opinion that for an amendment to an existing statute to be valid, it must be passed in accordance with the same constitutional requirements as were necessary to enact the original statute. *See* Sections 62 and 63 of the Constitution. In *Tayloe* [*v. Davis*, 212 Ala. 282, 102 So. 433 (1924)], the Court reasoned as follows:

The power of each house to determine its rules is the power in either house to adopt the same rules as the other, the power to make joint rules not inconsistent with the Constitution.

The point of concern in dealing with Section 6 of the Budget Act, above quoted, arises upon a consideration of the rules of procedure prescribed by the Constitution itself. Section 53 must be construed in connection with other provisions. The power to make rules cannot overturn those rules relating to the course of pending legislation imbedded in the Constitution.

What are these constitutional rules? No law shall be passed except by bill, and no bill amended so as to change its original purpose. Section 61. No bill shall become a law until it shall have been referred to and acted upon by a standing committee. Section 62. Every bill shall be read on three different days in each house, the final reading to be at length, and passed by a majority vote of yeas and nays entered on the journals.

There are rules for the style of laws, and the form of amendments to existing laws (Section 45); rules for the

passage of local laws (Section 106); and other rules will suggest themselves. No argument is needed to demonstrate that no rule of either house can evade or avoid the effect of these provisions. Precedents without number may be readily recalled.

Moreover, we note that Section 45 provides, among other things, that

> ... no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be re-enacted and published at length.

Thus, statutes which are amended must be re-enacted and published at length. Clearly, the phrase "published at length" was intended to require notice to the citizens of the state. We know of no provision in the Constitution requiring public notice of legislative rules.

If the Joint Resolution dealt only with an internal rule of the legislature, not set forth in a state law, it would be a valid exercise of power. However, the Joint Resolution does not merely change a rule of procedure. In actuality, it amends a state law. Thus, the amendment process must comply with the same constitutional formalities as were necessary for the original enactment.

Therefore, we respectfully answer the questions in the negative.

* * *

F. Existence and Validity of Act Amended

Opinion of the Justices No. 137
262 Ala. 180, 78 So. 2d 1 (Ala. 1955)

[The Alabama Legislature requested an advisory

opinion on the following question:]

"HB #38 proposes to amend Section 1 of Act No. 621, H. 906, approved September 15, 1953, entitled 'An Act To provide an expense allowance to members of the court of county commissioners, board of revenue or like governing body of all counties having a population of not less than 24,500 nor more than 25,725 according to the last or any subsequent federal decennial census' (1953 Acts, vol. II, p. 880). HB # 38 is applicable only to Franklin County, and proof of publication of notice of intention to apply for its enactment has not been made to the House pursuant to Section 106 of the Constitution. Can HB # 38 be validly enacted at this session of the Legislature?"

* * *

The fact that HB No. 38 proposes to amend a former act does not change the status, since the other act stands on the same footing and the Legislature cannot give life to a dead act by amending any of its provisions at a later session. If the original act is unconstitutional and void, the amending act is likewise void. *Cobbs v. Home Ins. Co. of New York*, 18 Ala. App. 206, 91 So. 627, *certiorari denied Ex parte Home Ins. Co. of New York*, 207 Ala. 712, 91 So. 922.

* * *

Ex parte Southern Railway Company
556 So. 2d 1082 (Ala. 1989)

PETITION FOR WRIT OF MANDAMUS
PER CURIAM.

* * *

Three companion bills were introduced in the 1987 session of the Alabama legislature by the identical 60 co-sponsors. House Bill No. 24 passed the House on April 28, 1987, and the Senate on May 14, 1987, and became Act No. 87-164, Ala. Acts 1987. It proposed an amendment to Article XII, § 232, of the Constitution of 1901. On March 8,

1988, the voters of the State of Alabama approved that amendment to Article XII, § 232, of the 1901 Constitution of Alabama (proclaimed ratified April 1, 1988). ...

House Bill No. 25 became Act No. 87-181, Ala. Acts 1987. It was approved on June 11, 1987 [.] ...

House Bill No. 26 became Act No. 87-182, Ala. Acts 1987; it became law on June 11, 1987. It amended Code 1975, § 6-5-430[.] ...

* * *

The question now becomes: Does the subsequent adoption of Amendment 473 to the constitution now permit Act No. 87-182 a field of operation in a case in which foreign corporations are sued in Alabama on a cause of action accruing elsewhere?

It is generally recognized that

"[a]n act of a legislature not authorized by the constitution at the time of its passage is absolutely void, and, if not reenacted, is not validated by a subsequent amendment to the constitution or by the adoption of a new constitution which merely permits the passage of such an act ... ."

Bucher v. Powell Cnty., 180 Mt. 145, 589 P.2d 660, 662 (1979), quoting C.J.S. *Constitutional Law* § 45 (1984) at 141[.][Additional cites omitted.]

* * *

Therefore, we must decide whether a subsequent constitutional amendment removing this constitutional restraint now permits application of this legislation to suits against foreign corporations, as well as domestic corporations, where the cause of action arose outside the State of Alabama.

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 Dept. of Revenue*, 254 Ala. 553, 49 So. 2d 280 (1950). The second applies where the statute by its very terms does not become effective until a proposed constitutional amendment is adopted. *Opinion of the Justices No. 28*, 227 Ala. 291, 149 So. 776 (1933); *Opinion of the Justices No. 29*, 227 Ala. 296, 149 So. 781 (1933).

We now recognize a third exception to the general rule: Where a statute is enacted in anticipation of a constitutional amendment offered simultaneously with it, and the statute and the proposed amendment are debated and considered together in the same session of the legislature, the subsequent adoption of the amendment by a vote of the people will serve to validate the statute. 16 C.J.S., *Constitutional Law*, § 45 (1984). Here the constitutional proscription that restricted the legislature's authority to make the doctrine of forum non conveniens applicable to foreign corporations has been eliminated by a vote of the people on a constitutional amendment that was introduced in and passed in the same session of the legislature as the act sought to be applied to these foreign corporate defendants. In enacting the proposed amendment, it was widely publicized and generally known that the legislature was addressing the problem that Act No. 87-182 sought to cure. Amendment 473 was initiated by a bill that became Act No. 87-164 in the same session of the legislature. Its sponsors were the same as the sponsors of the bill that became Act No. 87-182. There was implicit in the process a legislative intent to hinge operation of the amendment to § 6-5-430 upon the voters' approval of Amendment 473. Thus the amendment of § 232 removed the limitation on the legislature's authority, and it became free to direct the trial courts to apply the doctrine of forum non conveniens to suits against foreign corporations.

* * *

G. Identification of Act Amended

State ex rel. Bates
v.
Baumhauer
239 Ala. 476, 195 So. 869 (Ala. 1940)

* * *

In 1911 the Legislature enacted a number of statutes designed to enable cities to adopt a commission form of government, each suited to its class. Among these was the act approved April 8, 1911, General Acts of 1911, p. 330 et seq.

* * *

The title to Act No. 246 reads: "An Act to amend Section *four* of act entitled" then sets out in full the title of the Act of 1915, with its date of approval.

This is the approved title for acts amendatory of sections of the Code or of former acts. Followed by an enactment setting out the section as amended in full has the effect of writing the amended section in place of the preexisting section, which is no longer the law in so far as not carried into the amending section. But the Act of 1915 had no section *four*. It contained only three sections, numbered 1, 2 and 3. Appellee insists this, within itself, is fatal to Act No. 246. ...

A reading of Section 1 of No. 246, in connection with Section 1 of the Act of 1915, and Section 4 of the Act of 1911, discloses that the first part of all these sections is in the same language, thus indicating a purpose to amend Section one of the Act of 1915, which in turn amended Section *four* of the Act of 1911.

* * *

When dealing with amendments to sections of the Code or a Legislative Act, the amendments must be directed to that section which deals with the subject matter of the

amendment. Legislators are not called upon to anticipate amendments to a given section not named in the title, by incorporating other and different provisions in an act purporting to amend a section not dealing with the subject matter inserted by amendment. *Ex parte Reynolds*, 87 Ala. 138, 139, 6 So. 335; *Bd. of Revenue et al. v. Jansen*, 224 Ala. 240, 139 So. 358; *Kendrick v. State*, 218 Ala. 277, 120 So. 142; *State ex rel. Troy v. Smith, Auditor*, 187 Ala. 411, 65 So. 942.

* * *

State Farm Automobile Insurance
v.
Reaves
292 Ala. 218, 292 So. 2d 95 (Ala. 1974)
Other issues overruled *State Farm Mut. Auto. Ins. Co. v. Wallace*
743 So. 2d 448 (Ala. 1999)

* * *

... Act No. 866, 1965 Acts, pp. 1614-15, required uninsured motorist coverage in the amounts specified in Tit. 36, § 74(46), "Code of 1958" [sic]. Appellant argues that even though there is no official Code of 1958 (only the unofficial Michie Recompilation), Act No. 866 validly amended the law because the Act refers to § 5(c) of the Motor Vehicle Safety Responsibility Act which is readily identifiable as Act No. 704, 1951 Acts, p. 1224, whose title is "Alabama Motor Vehicle Responsibility Act." But, appellant then argues that Act No. 578, 1965 Acts, pp. 1074-76, which raises the minimum policy limits from $5,000 per person and $10,000 per accident to $10,000 per person and $20,000 per accident is void and ineffective because it purports to amend "[s]ection 74(46) Title 36 of the Code of Alabama, 1940." Appellant contends the Act is void because there is no such section in the 1940 Code, and the Act fails to state the 1940 Code of Alabama, as last amended. Such an argument is ingenuous.

We are not persuaded, however, that such a hyper-technical approach should be invoked by this court to

overturn an act of the legislature. As a matter of fact, appellant's argument rehabilitating the defects of Act No. 866 (1965) is equally applicable to Act No. 578 (1965). The latter act refers to the proper section numbers of the 1940 Code, as amended; it, too, states that it revises the Motor Vehicle Safety Responsibility Act, so that the specific portion of the Code is easily identifiable; and, finally, we note that Act 578 tracts [*sic*] the language of the designated sections of the 1940 Code, as amended.

* * *

And in *In re Opinion of the Justices No. 161*, 267 Ala. 114, 100 So. 2d 681 (1958), the justices opined, viz.:

"The cardinal rule in interpreting legislative enactments, to which all other rules are subordinate, is that the court must ascertain and give effect to the true legislative intent. This court has many times held obvious errors in the language of statutes to be self-correcting and has declined to follow the literal language of statutes when to do so would defeat the legislative purpose in enacting the statute or would produce absurd or unreasonable results. *Ex parte Rice*, 265 Ala. 454, 92 So. 2d 16 (Ala. 1957) (additional citations omitted).

We think the error in Act No. 578 is self-correcting. The intent of the legislature is clear. Act No. 578 amended Tit. 36, § 74(46) of the Code of Alabama of 1940, as last amended. To conclude otherwise would be to unnecessarily defeat the legislative intent in enacting the statute.

* * *

H. Sufficiency of Recital of Amendment

Opinion of the Justices No. 246
357 So. 2d 145 (Ala. 1978)

[A question was propounded by the members of the

House of Representatives to the Justices of the Supreme Court relating to the constitutionality of statute proposing to amend repealer section of new criminal code by deleting repealer of section relating to criminal penalties for failure to file individual taxpayer returns.]

We acknowledge receipt of H.R. 475, requesting our opinion as to the constitutionality of House Bill No. 645. H.B. 645 proposes to amend Section 9901 (the repealer section) of Act No. 607, Regular Session 1977 (the new Alabama Criminal Code), by deleting the repealer of Title 51, Section 394 (Act No. 75, Regular Session 1945; as amended), Code of Alabama 1940. To accomplish this objective, section 1 of H.B. 645 contains a restatement of all the provisions in section 9901 except for the reference to Title 51, Section 394, which is deleted by striking through the words and numbers. Noting that Act No. 607 has not yet become effective, and that Title 51, Section 394 has therefore not yet been repealed, you have asked whether H.B. 645 would violate the last clause of article IV, section 45 of the Constitution of Alabama of 1901:

> "[N]o law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be re-enacted and published at length."

* * *

The new Criminal Code (Act No. 607, Regular Session 1977) becomes effective in May 1978. Section 9901 of the new Code, which repeals specific statutes, will likewise become effective on that date. Since H.B. 645 would delete any reference in Section 9901 to Title 51, section 394, this bill would repeal one portion of a repealing statute. Accordingly, "where the repealing act is repealed before it takes effect, its repeal does not affect the original act in any way, it never having actually become inoperative." 73 Am.Jur.2d *Statutes* § 426 (1974). Thus, under this rule, an act which repeals a portion or all of a

repealing act before its effective date would not revive the original act because the original act had never ceased to exist. *Clark v. Reynolds*, 136 Ga. 817, 72 S.E. 254 (1911); *Adam v. Wright*, 84 Ga. 720, 11 S.E. 893 (1890). H.B. 645 does not revive Title 51, Section 394; it need not republish the provisions of that statute to comply with section 45 of the Alabama Constitution.

* * *

Section 45 does not necessarily require the legislature to re-enact an entire legislative act when only one section thereof is sought to be amended. Prior cases decided in this court have indicated that an amendatory act which publishes at length the section of the original act desired to be amended would satisfy Section 45. *Bates v. State*, 118 Ala. 102, 108, 24 So. 448, 450 (1898); *accord*, *Henry v. State ex rel. Welch*, 200 Ala. 475, 76 So. 417 (1917). This rule is in accord with cases decided in other states having constitutional provisions similar to section 45. *See In re Miller*, 29 Ariz. 582, 244 P. 376 (1926); *Edrington v. Payne*, 225 Ky. 86, 7 S.W.2d 827 (1928); *State v. Thruston*, 92 Mo. 325, 4 S.W. 930 (1887).

In *Bates v. State*, *supra*, this court stated that an amendatory act should be complete in form to satisfy Section 45; that is, one should not have to refer to the original act to comprehend the meaning of the amendment. *Bates v. State*, *supra*; *accord*, *Tyler v. State*, 207 Ala. 129, 92 So. 478 (1921); *State v. Bennett*, 102 Mo. 356, 14 S.W. 865 (1890). H.B. 645, directed only toward amending the repealer to Act No. 607, does not require one to refer to other provisions in Act No. 607 to understand the meaning of the amendment. The section sought to be amended, Section 9901, has been reproduced at length as amended, thus satisfying the requirement stated in the last clause of Section 45 of the Alabama Constitution.

* * *

I. Implied Amendments

Because implied amendments are not favored, *U.S. v. 24 Cans Containing Butter*, 148 F.2d 365 (5th Cir. 1945), *cert. denied Cloverleaf Butter Co. v. U.S.*, 326 U.S. 752; *City of Tuscaloosa v. Ala. Retail Assoc.*, 466 So. 2d 103 (Ala. 1985); *Bates v. State ex rel. Coniff*, 240 Ala. 609, 200 So. 779 (1941), two statutes must be so incongruous that the two cannot exist together. Otherwise, where possible, both will be given full effect. *Bates v. State ex rel. Coniff*, 240 Ala. 609, 200 So. 779 (1941). The latter statute must be complete and original in form. If it purports to amend or revise, it will be unconstitutional for failure to be in the proper form. *Ex parte Thomas*, 113 Ala. 1, 21 So. 369 (1897).

A general law will not usually amend a local law by implication unless the court finds legislative intent to dictate otherwise. *Pers. Bd. of Mobile Cnty. v. City of Mobile*, 264 Ala. 56, 84 So. 2d 365 (1955). The courts in this instance recognize that general and local laws often have different purposes in the legislative scheme.

Estate of Walton
v.
State Department of Revenue
579 So. 2d 643 (Ala. Civ. App. 1991)

* * *

The predecessor to § 40-18-25(c) was enacted in 1935 by Acts of Alabama 1935, No. 194, § 345.18. It was modeled after the then-analogous federal statute -- Revenue Act of 1932, § 162(b). The Alabama legislature has not yet amended § 40-18-25(c) to conform with the language of § 661. There is no Alabama case law construing § 40-18-25(c). It is generally the practice for Alabama tax statutes to, more or less, track similar federal tax statutes, but it is not a required practice. An amendment of a federal statute does not amend a similar state statute without action of the state legislature. Therefore, we find the pre-1954 federal statute and the case law interpreting it to be applicable here.

* * *

J. Construction

McWhorter
v.
State Board of Registration for Professional Engineers and Land Surveyors
359 So. 2d 769 (Ala. 1978).
***See* facts page 308**

When statutes are amended or replaced by succeeding legislation, the Legislature often seeks to clarify previously ambiguous provisions. These subsequent acts by the Legislature must be considered in trying to determine the intent of the legislation. 73 Am. Jur. 2d, *Statutes*, § 178.

K. Incorporation by Reference

A literal interpretation of Ala. Const. Art IV, § 45 appears to prohibit all statutes which incorporate the terms of other statutes by reference; however, the courts have construed this to apply only to statutes which are strictly amendatory in nature. If the act is original in form, a reference to an existing law for its formal execution and not varying its terms does not violate the Alabama Constitution. *Newton v. City of Tuscaloosa*, 251 Ala. 209, 36 So. 2d 487 (Ala. 1948).

The legislative intent behind Section 45 has been said to be an effort to prevent the practice of amending or revising laws by additions which are usually unintelligible and confusing without the presence of the original. *Ferguson v. Court of Cnty. Comm'rs*, 187 Ala. 645, 65 So. 1028 (1914). The purpose is to prevent the legislature from being misled and also to allow the governor to be fully informed by the act of just what it is he is to approve or veto. Furthermore, requiring the amended law and the amending law to be juxtaposed facilitates the comprehension and convenience of those who examine the law after its enactment. *Tuskaloosa Bridge Co. v. Olmstead*, 41 Ala. 9 (Ala. 1867).

Section 45, however, was never intended under the

Alabama Constitution to require that every law affecting some prior statute must set out the prior statute in full. If that were true, "... it would be impossible to legislate." *Ferguson v. Court of Cnty. Comm'rs*, 187 Ala. 645, 65 So. 1028, 1030 (1914). Where the statute "... is in itself complete, and original in form, it does not fall within the meaning and spirit of the Constitution." *Ferguson*, 187 Ala. at 653, 65 So. at 1030. Consequently a new law may specify the procedure to be followed by adopting by reference the regulations of an existing statute. *In re Opinion of the Justices No. 138*, 262 Ala. 345, 81 So. 2d 277 (Ala. 1955); *Hutto v. Walker Cnty.*, 185 Ala. 505, 64 So. 313 (Ala. 1913).

L. Organization

The key to drafting the main provisions of a bill effectively is to develop some logical order. Although it is a flexible rule, it is suggested that the substantive portions of the bill be arranged in the following manner.

1. Administrative Details

These are provisions establishing the necessary agency, department or board, the members, qualifications, compensation, tenure, power, duties, etc.

2. Main Provisions of General Application

The requirements and procedures that accomplish the main purpose of the bill are included here.

3. Subordinate Provisions and Special Rules

These sections further define the requirements and provide for exceptions or qualifications of the main rules.

4. Remedies

These provisions establish civil or criminal penalties for failure to comply with the law.

Chapter 25
Revisions, Codifications and Recompilations

A. Constitutional Provisions and Statutes

Ala. Const. Art. IV, § 45
Style of laws; division of laws; laws restricted to one subject; amendment or revival of laws by title only.

The style of the laws of this state shall be: "Be it enacted by the legislature of Alabama," which need not be repeated, but the act shall be divided into sections for convenience, according to substance, and the sections designated merely by figures. Each law shall contain but one subject, which shall be clearly expressed in its title[1], except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended; or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be re-enacted and published at length.

Ala. Const. Art. IV, § 85
Periodic revision and promulgation of laws.

It shall be the duty of the legislature, at its first session after

[1] e.g., *Clay County Animal Shelter, Inc., v. Clay County Commission*, 2021 WL 2173390 (Ala. 2021). A local act (2018-432) required county general fund revenue funds from Clay County's tobacco tax revenue to go to the Clay County Animal Shelter and increased the allotted share from 18% to 20%. The Court found no violation of the Art. IV § 45 one subject rule because the bill dealt with a singular revenue source and the bill's overall purpose was that particular revenue's distribution and level of deferral. Chief Justice Parker noted in his majority opinion that an analysis of a bill's subject should not be conflated with its title and emphasized "…this Court's commitment that the term 'subject' must be understood broadly and in a manner that does not unnecessarily hamstring or cripple the Legislature."

the ratification of this Constitution, and within every subsequent period of twelve years, to make provision by law for revising, digesting, and promulgating the public statutes of this state, of a general nature, both civil and criminal.

Ala. Code § 1-1-9.
Existing rights, remedies and defenses preserved.

This Code shall not affect any existing right, remedy or defense, nor shall it affect any prosecution now commenced, or which shall be hereafter commenced, for any offense already committed. As to all such cases, the laws in force at the adoption of this Code shall continue in force. But this section does not apply to changes in forms of remedy or defense, to rules of evidence, nor to provisions authorizing amendments of process, proceedings or pleadings in civil cases.

Ala. Code § 1-1-10.
Repeal of uncodified statutes of public, general and permanent nature; certain statutes saved from repeal.

Subject to the provisions of this section, or as may be otherwise provided in this Code, all statutes of a public, general and permanent nature, not included in this Code, are repealed. The foregoing provisions of this section shall not repeal, nor be construed to repeal, local, private or special statutes; nor statutes which relate to or apply to only one county, municipality, political subdivision, district or territory; nor statutes which apply to one or more counties, municipalities, political subdivisions, districts or territories on the basis of population; nor statutes in effect on the effective date of this Code which apply to one or more judicial circuits of the state, whether by specific reference thereto, or the basis of population or by some other method of identification or classification, nor statutes in effect on the effective date of this Code which establish the amount or rate of salary or compensation of any state officer or employee or any other person whose salary or

compensation is paid, in whole or in part, by the state, or which establish minimum or maximum amounts of salary or compensation, or which provide additional compensation for the performance of specified services or duties; nor statutes relating to the swamp and overflowed lands; nor statutes relating to the public debt or authorizing the issuance of bonds or other evidence of indebtedness by the state or any county, municipality, political subdivision or agency thereof; nor statutes appropriating funds; nor any act submitting an amendment to the Constitution or any act to be effective upon the adoption of such an amendment to the Constitution; nor statutes becoming effective after the effective date of this Code.

Ala. Code. § 1-1-11.
Repealed laws not revived.

All laws and all statutes or parts of statutes which are repealed or abrogated by this Code, or are repugnant to any law repealed by this Code and which have not been reenacted or consolidated, shall continue to be so repealed or abrogated.

Ala. Code § 1-1-13.
Previous validating acts not repealed.

The omission from this Code of any acts heretofore passed which validated any bonds, notes, warrants, certificates or other evidences of indebtedness issued by any city, town, county, county board of education, city board of education or other political subdivision of the state shall in no way operate or be construed to repeal or destroy the effect of any and all of such validating acts where said validating acts have been otherwise lawfully passed and are not in conflict with the Constitution of the United States or the state of Alabama.

Ala. Code § 1-1-14.
Classification and organization of Code; notes and catchlines of sections not part of law.

(a) The classification and organization of the titles, chapters, articles, divisions, subdivisions and sections of this Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference or presumption of a legislative construction shall be drawn therefrom.

(b) Unless otherwise provided in this Code, the descriptive headings or catchlines immediately preceding or within the text of the individual sections of this Code, except the section numbers included in the headings or catchlines immediately preceding the text of such sections, do not constitute part of the law, and shall in no manner limit or expand the construction of any such section. All historical citations and notes set out in this Code are given for the purpose of convenient reference, and do not constitute part of the law.

Ala. Code § 1-1-15.
References to sections, titles, etc.

(a) Unless otherwise indicated in the context, references in this Code to titles, subtitles, chapters, articles, divisions, subdivisions or sections shall mean titles, subtitles, chapters, articles, divisions, subdivisions or sections of this Code.

(b) Whenever any reference is made to any portion of this Code or any other law, the reference applies to all amendments thereto.

Ala. Code § 1-1-16.
Severability of provisions of Code and statutes.

If any provision of this Code or any amendment hereto, or any other statute, or the application thereof to any

person, thing or circumstances, is held invalid by a court of competent jurisdiction, such invalidity shall not affect the provisions or application of this Code or such amendment or statute that can be given effect without the invalid provisions or application, and to this end, the provisions of this Code and such amendments and statutes are declared to be severable.

B. Adoption of Acts into the Code

The Ala. Const. Art. IV, § 85 requires that the Legislature recodify its laws every 12 years. There are, however, no sanctions for the Legislature's failing to do so. The Legislature recodified its laws in 1940 which was the first time it had done so since 1923. It did not approve another code until 1977, known as Code of Alabama 1975. For 37 years, the Legislature passed acts which were not officially incorporated into the code. From the time an act is passed until it is placed in the code, it remains the law in its act form. Any amendments to uncodified acts must be to the act itself.

Each year since 1977, the legislature has in the succeeding year codified the acts passed during the preceding year. This continuous recodification is the responsibility of the Legislative Services Agency's Legal Division. *See* Ala. Code § 29-5A-21. All infirmities of legislative procedure in enacting an original act are cured when that act is incorporated into a code and the code adopted by the legislature. *Fuller v. Associates Commercial Corp.*, 389 So. 2d 506 (Ala. 1980); *In re Opinion of the Justices, No. 63*, 244 Ala. 384, 13 So. 2d 762 (Ala. 1943); *Bluthenthal v. I. Trager and Co.*, 131 Ala. 639, 31 So. 622 (Ala. 1901); *Bales v. State*, 63 Ala. 30 (Ala. 1879). *See also State v. Manley*, 441 So. 2d 864 (Ala. 1983).

Ray Densmore et al.
v.
Jefferson County et al.
813 So. 2d 844 (Ala. 2001)[2]

The trial court did not address the issue whether the Storm Water Act was a general law or a local law, but instead held that any constitutional infirmities in the adoption of the Act would have been cured by its codification as part of the Code of Alabama. We agree with the trial court's holding on that issue. This Court has stated that "all infirmities of legislative procedure in enacting an original act are cured when that act is incorporated into a code and the code adopted by the legislature." *Fuller v. Associates Commercial Corp.*, 389 So. 2d 506, 509 (Ala. 1980). *See*, also, *State v. Golden*, 531 So. 2d 941 (Ala.Crim.App. 1988), which cites and quotes *Fuller*.

* * *

The principle that all infirmities of legislative procedure in enacting an original act are cured when that act is incorporated into a code was explained in *Fuller v. Associates Commercial Corp.*, supra. That case involved a constitutional challenge based on a purported violation of § 45 of the Constitution of 1901, which requires that each act contain but one subject. In that case, this Court stated:

> "All infirmities of legislative procedure in enacting an original act are cured when that act is incorporated into a code adopted by the legislature. *Bluthenthal v. I. Trager and Company*, 131 Ala. 639, 31 So. 622 (1901); *Bales v. State*, 63 Ala. 30 (1879)." 389 So. 2d at 509. The plaintiffs are aware of this general principle of law, but they argue that the codification of the Storm Water Act in the Cumulative Supplement of the Code did not have the effect of making the act a general law. They rely on *Ex parte*

[2] Effectively overruled by *Magee v. Boyd,* 175 So. 3d 79 (Ala. 2015). *See infra.*

> *Coker*, 575 So. 2d 43 (Ala. 1990), in support of their argument that the codification of the Storm Water Act in the Cumulative Supplement of the Code of Alabama 1975 did not have the effect of making the act a general law. We believe the arguments of the plaintiffs are inapposite. This Court, in *Ex parte State Department of Revenue*, 683 So. 2d 980, 982 (Ala. 1996), discussed the decision of *Ex parte Coker* on the principle of law we are now discussing--the effect of codification of a prior act: "This Court has held that, by the process of adopting the entire Code, the legislature repeals any portion of the original legislation and prior codification not present in that adoption. *See Ex parte Coker*, 575 So. 2d 43 (Ala. 1990). In other words, the adoption of the entire Code supersedes the original enactments and any prior codification. After this Court decided Coker, the legislature refined the codification process and began the current practice of annually codifying legislation. Under this new procedure, the Code commissioner continually reviews the manuscript of the Code and directs the Code publisher to publish replacement volumes and an annual supplement that incorporates into the Code the most recent acts of a general and permanent nature. Once the annual supplement and the replacement volumes are published, they are reviewed by the Code commissioner, who prepares an annual codification however, has not considered the question whether this process has the same effect as a codification of the entire Code for the purpose of resolving conflicts between the Code and the original act. In other words, we have enactment."

Although this Court found it unnecessary to discuss the annual codification process in *Ex parte State Department of Revenue*, the Court did note that the annual codification process was begun after this Court had decided *Coker*.

In *Swift v. Gregory*, 786 So. 2d 1097 (Ala. 2000), this Court did consider the effect of codification on the validity

of an act. On appeal, Swift argued that the Legislature, in the original Act, had intended for the age restriction to apply only to subsection (5) of the act, dealing with retirement after 18 years of service, because, she said, it was illogical to deny supernumerary status on the basis of the age restriction when an applicant is determined to be disabled--an involuntary status. She contended that the codification of the Act resulted in an omission that the Legislature did not intend, an omission that left a disabled clerk or register with nothing until he or she reached the age of 55. This Court stated:

> "We cannot agree with Swift's contention that the Legislature did not intend for the changes made from the provisions of the original Act in § 7-112 to the codified statute (§ 12-17-140) to be effective. Once the Code Commission modifies an act and the Legislature thereafter adopts a Code containing the modification, the modification has the force of law.
>
> "'It is the settled law of this state that the Code of Alabama ... is not a mere compilation of the laws previously existing, but is a body of laws, duly enacted, so that laws, which previously existed, ceased to be law when omitted from [the] Code, and additions, which appear therein, become the law from the approval of the Act adopting the Code.'"
>
> *State v. Towery*, 143 Ala. 48, 49, 39 So. 309, 309 (1905)."

We do not believe, in view of what this Court said in *Swift* and *Ex parte Department of Revenue*, that *Ex parte Coker* is determinative on the effect of annual codification of previously adopted legislation; therefore, we cannot accept that what this Court said in *Ex parte Coker* is controlling, insofar as the facts of this case are concerned, facts that are substantially different from those in *Ex parte Coker*. In that case the Court held that the codification principle could not be applied to resurrect an act that had never actually

become law because it was pocket-vetoed by the Governor.

Based on the foregoing, and even assuming, arguendo, that the Storm Water Act was a local act when adopted, we hold that the trial court did not err in holding that it was unnecessary to determine whether the Storm Water Act was a general law or a local law, because any infirmities in the adoption of the Act were cured by its codification as part of the Code of Alabama 1975.

Magee
v.
Boyd[3]
175 So. 3d 79 (Ala. 2015)

To the extent judicial dicta in *Densmore* can be relied upon and conflicts with this opinion, we overrule it. The adoption of the annual cumulative-supplement bill did not cure any procedural defects in the enactment of the AAA. "[C]odification of an invalid statute cannot cure a constitutional defect." *Densmore,* 813 So. 2d at 859 (Moore, C.J. dissenting).

Ex parte State Department of Revenue
683 So. 2d 980 (Ala. 1996)
* * *

... Specifically, it concluded that the term "other liquid motor fuels" modifies and restricts the word "naphtha," and that because the naphtha at issue here was of a type not suitable for use as a motor fuel and not commonly used in internal combustion engines, it was not "gasoline" and therefore was not subject to the gasoline excise tax. ...

This Court has held that, by the process of adopting

[3] Distinguished by *Clay County Commission v. Clay County Animal Shelter, Inc.*, 283 So. 3d 1218, 1232 (Ala. 2019), wherein the court clarified that constraints because of the requirements of Ala. Const. Art. IV § 73 were not limited to State Treasury appropriations in that the State Treasury is not mentioned in § 73.

the entire Code, the legislature repeals any portion of the original legislation and prior codification not present in that adoption. *See Ex parte Coker*, 575 So. 2d 43 (Ala. 1990). In other words, the adoption of the entire Code supersedes the original enactments and any prior codification. After this Court decided *Coker*, the legislature refined the codification process and began the current practice of annually codifying legislation. Under this new procedure, the Code commissioner continually reviews the manuscript of the Code and directs the Code publisher to publish replacement volumes and an annual supplement that incorporates into the Code the most recent acts of a general and permanent nature. Once the annual supplement and the replacement volumes are published, they are reviewed by the Code commissioner, who prepares an annual codification bill to adopt the replacement volumes and annual supplement. This Court, however, has not considered the question whether this process had the same effect as a codification of the entire Code for the purpose of resolving conflicts between the Code and the original act. In other words, we have not determined if these cumulative supplements also supersede the original enactment. Nevertheless, because we find that the 1993 supplement is not applicable here, we need not address this issue now. Furthermore, we are not convinced that the placement of the comma after the word naphtha makes any difference in the interpretation of this provision.

Now that the legislature adopts replacement volumes and annual supplements the court has not considered the question whether the process has the same effect or codification of the entire code for the purpose of resolving conflicts between the Code and the original act.

Peddycoart
v.
City of Birmingham
354 So. 2d 808 (Ala. 1978)

* * *

... [Local laws were] a part of the entire *Code* of 1940 which was adopted by the legislature in a single act. In *Jenkins v. State*, 245 Ala. 159, 16 So. 2d 314 (1944) this Court held that "the Code as a whole provides a system of law applicable to the [whole] state," and in *Burns v. State*, 246 Ala. 135, 19 So. 2d 450, 453 (1944) this Court reiterated that conclusion by observing "that when the Act was passed by the legislature, adopting the Code of 1940 in its entirety, a general law was enacted." Under this blanket of general statewide application of what originally were local laws, of course, we would not presently declare that § 660, or any other acts existing at that time are deficient under § 105 of the Alabama Constitution of 1901, however questionable they now appear to be. Indeed, legislation of local application adopted after these decisions may have been in response, at least in part, to such court approval.

However, we must take particular note of the fact that the body of local acts present in the *Alabama Code* of 1940 (Recomp. 1958) and enacted since that Code's original enactment were not adopted by the legislature when it enacted the Code of Alabama 1975. *See* Tables, Vol. 2, *Code of Ala.* 1975. This action removed from the statewide influence of the Code of 1940 any legislation which may follow the enactment of the Code of 1975 and which is local legislation by constitutional definition.

* * *

... Henceforth when at its enactment legislation is local in its application it will be a local act and subject to all of the constitutional qualifications applicable to it. With regard to legislation heretofore enacted, the validity of which is challenged, this Court will apply the rules which it has heretofore applied in similar cases.

Freeman
v.
Purvis
400 So. 2d 389 (1981)
* * *

Following the *Peddycoart* decision, two amendments to the Alabama Constitution of 1901 were ratified. *See* Amendment 375 and 389 (recodified as Ala. Const. Art. IV, §§ 110 and 106.01, respectively).

The effect of Amendment 389 was to validate all "bracket bills" enacted without advertising before January 13, 1978, the date of the *Peddycoart* decision, and which were not otherwise unconstitutional. [*See* the entire Ala. Const. Art. IV, § 106.01 below.]

[The purpose of Amendment 375 was to define a general law. Furthermore, the Amendment states that "No general law which at the time of its enactment applies to only one municipality of the state shall be enacted after January 1, 1979, unless notice of the intention to apply therefor shall have been given and shown as provided in section 106 of this Constitution for special, private or local laws; provided, that such notice shall not be deemed to constitute such law a local law." Ala. Const. Art. IV §§ 110.]

Ala. Const. IV, § 106.01
Validation of certain population based acts and method for amendment thereof.

Any statute that was otherwise valid and constitutional that was enacted before January 13, 1978, by the legislature of this state and was a general act of local application on a population basis, that applied only to a certain county or counties or municipality or municipalities of this state, shall not be declared invalid or unconstitutional by any court of this state because it was not properly advertised in compliance with Section 106 of this Constitution.

All such population based acts shall forever apply only to the county or counties or municipality or municipalities to which they applied on January 13, 1978, and not other, despite changes in population.

The population based acts referred to above shall be amended by acts which are properly advertised and passed by the legislature in accordance with the provisions of this Constitution.

C. Systematic Paragraph Identification

A systematic paragraph identification system has been accepted to provide for consistent treatment of paragraphs, subparagraphs, etc. when acts are placed in the code. The following is an example:

Ala. Code § 25-4-10(a). Employment.

(a) Subject to other provisions of this chapter, "employment" means any of the following:

(1) Any service performed prior to January 1, 1978, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, or services performed for remuneration after December 31, 1977, including service in interstate commerce, by any of the following:

a. Any officer of a corporation.
b. Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.
c. Any individual other than an individual who is an employee under paragraphs a. or b. who performs services for remuneration for any person:

1. As an agent-driver or commission-driver engaged in distributing meat products, bakery products, beverages (other than milk), or laundry or dry cleaning services for a principal; or
2. As a traveling or city salesperson engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

   For purposes of this paragraph c., the term "employment" shall include services described in subparagraphs 1. and 2. performed after December 31, 1971, only if all of the following apply:

   (i) The contract of service contemplates that substantially all of the services are to be performed personally by such individual.
   (ii) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation).
   (iii) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are rendered.

D. Continuance or Alteration of Existing Law by Revision or Codification

Lewis
v.
Hitt
370 So. 2d 1369 (Ala. 1979)

* * *

Section Ala. Code [§ 12-15-108] appears in Code of Ala. 1975 in the following form:

> All expenses necessary or appropriate to the carrying out of the purposes and intent of this chapter and all expenses of maintenance and care of children that may be incurred by order of the court in carrying out the provisions and intent of this chapter, except costs paid by parents, guardians or trustees, court costs as provided by law and attorney fees shall be valid charges and preferred claims against the county and shall be paid by the county treasurer when itemized and sworn to by the creditor or other persons knowing the facts in the case and approved by the court.

However, the pertinent part of the legislative Act from which Ala. Code [§ 12-15-108] is derived provides:

> [A]ll expenses of maintenance and care of children that may be incurred by order of the court in carrying out the provisions and intent of this article (except costs paid by parents, guardian or trustee), *court costs as provided by law and attorney fees* shall be valid charges and preferred claims against the county and shall be paid by the county treasurer. . . . (emphasis added) Act No. 1205, Acts of Alabama 1975, § 5-139(a), p. 2440.

The primary question for our consideration is therefore the effect, if any, of the discrepancy between the statute as it was enacted and the present version as it

appears in the Code. Specifically, did the omission in the 1975 Code of the parentheses enclosing the exception to the general rule of county liability for certain expenses incurred by juveniles indicate a legislative intent that the separate counties should not be responsible for the payment of attorney fees in indigent juvenile cases? We hold that it did not.

The plaintiff contends in essence that, when the legislature adopted the 1975 Code, it *amended* Act No. 1205, § 5-139(a) in order to clarify the question of responsibility for compensating attorneys appointed to represent indigent juvenile defendants. Plaintiff does not, however, refer us to any specific Act amending § 5-139(a), nor has our own research disclosed any such legislation.

In interpreting the provisions of a statute, we are required to ascertain the intent of the legislature and to effectuate that intent. *E.g., Wright v. Turner*, Ala. 351 So. 2d 1 (1977). An existing statute which has been incorporated into a Code in a somewhat altered form is presumed to be incorporated without substantive change unless the legislature clearly intended to alter the statute's operation by means of the modifications made. *See* 2A *Sutherland Statutory Construction* § 28.10 (4th ed.). As this Court stated in *Smith v. Birmingham Realty Co.*, 208 Ala. 114, 94 So. 117 (1922): "the legislative intent to change its [an enacted statute's] operation and effect by Code revision must be made to appear clearly before a change can be adjudged by the court." ...

In this instance the 1975 codification of § 5-139(a) of Act No. 1205, 1975 Reg. Sess., obviously raises a question concerning the proper operation of the statute, and we have referred to the original Act and the Code sections proximate to it "in order to ascertain the legislative intent." *Ibid*. Section 5-139(a) as it was originally enacted is clear: in juvenile proceedings, the fees charged by court-appointed attorneys are expenses that are "valid charges and preferred claims against the county . . . ."

* * *

Rodgers
v.
Meredith
274 Ala. 179, 146 So. 2d 308 (Ala. 1962)

* * *

Section 1 of the 1881 Act was codified as § 4555 of the Code of 1886. The remaining sections of the act appear to have been omitted from the Code. The original purpose of Section 1 of the 1881 Act is clear....

* * *

When § 138, Title 45, was first enacted it was clearly mandatory because of the words employed and the facts existing at the time. It has been brought forward in five successive codes without material change. Our problem is to ascertain the intent of the lawmakers when they placed § 138, Title 45, in the presently effective Code of 1940. ...

* * *

We think the intent of the legislature with reference to the mandatory or directory character of § 138, Title 45, can best be ascertained by applying the rules of construction which have been stated as follows:

> "... It is our duty to carry into effect the intention of the legislature, to be gathered from their language. In *Thompson v. The State*, 20 Ala. 54, this court said, 'the inartificial manner in which many of our statutes are framed, the inaptness of expressions frequently used, and the want of perspicuity and precision not infrequently met with, often require the court to look less at the letter or words of the statute, than at the context, the subject-matter, the consequences and effects, and the reason and spirit of the law, in endeavoring to arrive at the will of the law-giver.' And in *Smith v. Smith*, 19 [Wis.] Wise, 522, and *Bishop v. Schneider*, 45 Mo. 472, the several courts considered the effect of abridging and embodying statutes in a code, and consulted the original statutes, their date,

and even their judicial interpretation, in arriving at a proper construction of the legislative intent....

"When the effect of condensing, embodying and arranging statutes in a Code, is to create ambiguity or doubt as to their proper construction, the court will refer to, and consult the original acts, in connection with their history, and also of the sections proximate in arrangement, with which they are supposed to be correlative, in order to ascertain the legislative intent. Although a difference in phraseology and arrangement may be made by the codifiers, this does not necessarily work a change of construction. Unless the alteration of the original act is of such character as to manifest a clear intent to make a change in the construction and operation, effect will be given to the statute as originally framed by the General Assembly. *Steele v. State*, 61 Ala. 213; *Landford v. Dunklin*, 71 Ala. 591." *East Tenn. V. & G.R.R. Co. v. Hughes*, 76 Ala. 590, 592.

"... And it has been said, that 'it has long been a cardinal and controlling maxim that, where a law antecedently to a revision of the statutes is settled, either by clear expressions in the statutes or adjudications on them, the mere change of phraseology shall not be deemed or construed a change of the law, unless such phraseology evidently purport an intention in the legislature to work a change.' *Sedg. St. & Const. Law* (2d Ed.) 365. The maxim has been applied in the construction of the Code. In *Landford v. Dunklin*, 71 Ala. [594] 609, it was said: 'The statute, as embodied in the Code, is changed in phraseology. Words are omitted which were found in the former statute, but there is not indication of a legislative intent to change or to modify the former statute; certainly not to vary the effect of the administration committed to the sheriff or coroner. No rule of statutory construction rests upon better reasoning than that in the revision of

statutes[,] alteration of phraseology, the omission or addition of words, will not necessarily change the operation or construction of former statutes. The language of the statute as revised, or the legislative intent to change the former statute, must be clear, before it can be pronounced that there is a change of such statute in construction and operation.' ...." *Jackson County v. Derrick et al.*, 117 Ala. 348, 360, 361, 23 So. 193, 196, 197.

E. Caption or Catchline

Hatas
v.
Partin et al.
278 Ala. 65, 175 So. 2d 759 (Ala. 1965)

* * *

What is now Tit. 61, § 151, § 43-2-211, was first enacted in 1821 and gave a personal representative, appointed outside this state, the right to maintain suits, and the title to the section in Toulmin's Digest was: "Executors appointed by other states may sue." In the 1852 Code the caption was: "Actions, how maintained, or property recovered by a foreign administrator." The 1876 Code added "or executor" to the caption and it so remained until the 1887 Code where the present caption was first used. During the time from 1821 to the present, the statute has been amended, but without effect on the provisions here pertinent. Prior to the change in the caption in 1887, the section itself gave to foreign personal representatives, or administrators or executors, the right to maintain suits in this state, and the wording of the section today gives that right subject to certain conditions to be met prior to judgment.

The caption or title at the beginning of a section of the Code is not a part of the section, and a change in the caption or title by the codifiers does not affect the body of the section where it has remained unchanged. *Ex parte Byrd*, 172 Ala. 179, 55 So. 203.

And although a difference in phraseology and arrangement may be made by the codifiers, this does not necessarily work a change of construction. Unless the alteration is of such character as to manifest a clear intent to make a change in the construction and operation, effect will be given to the statute as originally framed by the Legislature. *Rodgers v. Meredith*, 274 Ala. 179, 146 So. 2d 308; *Miller v. State ex rel. Peck*, 249 Ala. 14, 29 So. 2d 411, 172 A.L.R. 1356.

We, therefore, place no significance on the change of the title to the section, noting merely that the title earlier than 1887 was more nearly correct than the one used since then in the various Codes.

* * *

F. Adoption of a Code

Gibson
v.
State
214 Ala. 38, 106 So. 231 (Ala. 1925)

* * *

The state insists in argument that the act in question is a "bill adopting a Code, digest, or revision of statutes," excepted by Section 45 of the Constitution from the general rule therein declared. ...

Section 1 of the act declares it shall be known and cited as the "Agricultural Code of Alabama." The first clause of the title is:

> "To provide a general system of legislation pertaining to agriculture and industries, and related subjects."

* * *

A Code implies, first, a compilation of existing laws, their systematic arrangement into chapters or articles and

sections, with subheads, table of contents, and index for ready reference; second, a revision such as to harmonize conflicts, supply omissions, and generally clarify and make complete the body of laws "designed to regulate completely, so far as a statute may, the subjects to which they may relate." *Ex parte Thomas*, 113 Ala. 1, 4, 21 So. 369; *Hendon v. White*, 52 Ala. 597; *Central Georgia Ry. Co. v. State*, 104 Ga. 831, 31 S.E. 531, 42 L.R.A. 518.

The subject-matter constituting the basis of a Code as defined in our Constitution is the existing statutory law. In keeping with this intent, our acts for the preparation of a Code usually direct the commissioner to make report of all changes made in course of revision, and to prepare separate bills for any distinctly new legislation which he may recommend. For obvious reasons, this is the proper course. Any new matter, however, embodied in the Code, is, by the act adopting the Code, enacted into law. *Bluthenthal v. Trager*, 131 Ala. 639, 31 So. 622; *Bales v. State*, 63 Ala. 30; *Hoover v. State*, 59 Ala. 57. All these considerations strongly argue that the exception of "bills adopting a Code" from the safeguards so carefully framed for the passage of laws should not be extended so as to afford a ready means of evasion of their salutary provisions.

Our conclusion is that a bill adopting a Code, within the exception to Ala. Const. Art. IV, § 45, is one whose title in terms following the language of the exception, at least in substance, and which deals with a compilation or body of laws theretofore prepared, and not first set out and enacted in the bill itself.

A bill to "adopt" a Code directs the attention of the legislator elsewhere for the contents of the Code. A bill to enact into law the matter set forth therein must, by its title, direct the legislator's attention to the subject of legislation in the manner declared by Ala. Const. Art. IV, § 45. Any other rules would invite evasion of the Constitution by the expedient of naming the act a Code, or, if not so entitled, make its validity to depend upon whether it is such a

compilation and revision of laws as to come within the legal definition of a Code. This would lead to still greater uncertainty in framing valid enactments, and greater difficulties in passing upon their validity. One important end to be aimed at in construing constitutional provisions is certainty.

We are not holding the Legislature is without power to provide and enact a special Code embodied in the bill and so to style the act, but we are holding that in so doing the act must conform to the requirement of "one subject" "clearly expressed" in the title. To illustrate, if the Legislature should pass a bill entitled an "Act to provide a Code relating to game and fish," and incorporate therein provisions relating to fertilizers or standards of grain, no one could well contend such provisions would be valid.

* * *

G. Acts of Alabama

The original signed act is bound and kept in the Secretary of State's Office, Ala. Code § 36-14-1(9). Copies of the Acts are published each year in the "Acts of Alabama."

The Secretary of State's office distributes copies of the acts annually to governmental offices. *See* Ala. Code. § 36-14-11.

H. Code Commissioner

The placement of the acts into the Code historically has been a joint effort of the official code publisher, Legislative Reference Service, and the Alabama Law Institute. In 1993, the Legislature added to the duties of the Director of the Legislative Reference Service that he act as Code Commissioner in determining the content of the code and any supplements to it. This same section required the director acting as Code Commissioner, to prepare an annual codification bill to adopt any changes to the code enacted at prior sessions of the Legislature. Since 2017, the Director of the Legislative Services Agency, as Director of the Legal Division (successor to the Legislative Reference Service) also serves as the

Code Commissioner for the Code of Alabama. *See* Ala. Code § 29-5A-1.

Editorial responsibilities of the Code Commissioner and Legal Division are outlined in Ala. Code § 29-5A-22. This section sets out the editorial functions as follows:

(1) Change the wording of descriptive headings and catchlines.
(2) Change hierarchy units in an act to the appropriate code hierarchy units.
(3) Change reference numbers to conform with renumbered hierarchy units, or make corrections in reference numbers if the correction can be made without a substantive change in the law.
(4) Substitute the proper hierarchy unit for terms like "this act" and "the preceding section."
(5) Remove surplus language, such as "of the Code of Alabama 1975" and "of this section," when the language follows a designated hierarchy unit.
(6) Substitute "this title," "this chapter," or other hierarchy designation in place of reference to the specific unit, if the reference is within that unit.
(7) Translate dates to the appropriate month, day, and year.
(8) Change words when directed by law.
(9) Substitute the name of any agency, officer, or instrumentality of the state or a political subdivision whose name is changed by law or to which powers and responsibilities are transferred for the name previously used or the name of the entity which previously held the powers and responsibilities.
(10) Divide, consolidate, and rearrange hierarchy units and parts of hierarchy units.
(11) If a code section, or part of a section, is amended by more than one act during the same legislative session, incorporate all of the amendments into the section if the alterations are not in substantive conflict and can be given effect in a manner which will make the code section or sections intelligible.

(12) Resolve nonsubstantive conflicts between multiple acts.
(13) Change capitalization, spelling, and punctuation for the purpose of uniformity and consistency.
(14) Correct manifest grammatical, clerical, and typographical errors, including, but not limited to, by means of the addition or deletion of language.

"Code" Bill

Act 2014-346 HB 346
By Representative Gaston

ENROLLED, An Act,

To adopt and incorporate into the Code of Alabama 1975, those general and permanent laws of the state enacted during the 2013 Regular Session as contained in the 2013 Cumulative Supplement to certain volumes of the code and 2013 Replacement Volumes 16A, 19A, and 22; to initially adopt and incorporate into the Code of Alabama 1975, 2013 Volume 22H (Local Laws Greene - Jackson Counties) and to adopt and incorporate into the Code of Alabama 1975, 2013 Cumulative Supplements to local law volumes; to make certain corrections in the replacement volumes and certain volumes of the cumulative supplement; to specify that this adoption and incorporation constitute a continuous systematic codification of the entire Code of Alabama 1975, and that this act is a law that adopts a code; to declare that the Code Publisher has certified it has discharged its duties regarding the replacement volumes; to expressly provide that this act does not affect any other 2014 session statutes; and to specify the duties of the Secretary of State regarding the custody of these cumulative supplements, replacement volumes, and initial volume.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) Those general and permanent laws of the state enacted during the 2013 Regular Session as contained in the 2013 Cumulative Supplements to Volumes 3 to 16, inclusive, Volumes 17 to 19, inclusive, Volumes 20 to 21A, inclusive, and Volume 22A

and the 2013 Replacement Volumes 16A, 19A, and 22 and the additions and deletions made by the Code Commissioner for editorial purposes, as edited and published by West Group, as the Code Publisher, which volumes of the 2013 Cumulative Supplement and 2013 Replacement Volumes are identified and authenticated by the Great Seal of the State of Alabama placed upon the front and back of each of the volumes of the cumulative supplement and upon the first inside page and the last inside page of the replacement volume, are adopted and incorporated into the Code of Alabama 1975

(b) The following corrections are made to the 2013 Cumulative Supplements:

(1) Section 6-5-752, 2013 Cumulative Supplement to Volume 5, page 160. To correct a publishing misprint in subdivision (7), delete the words "RESPONSE PERIOD." in the definition and replace it with "REPOSE PERIOD."

(2) Section 12-19-91, 2012 Replacement Volume 11A, page 198, to correct a publishing error which resulted in the inadvertent deletion of language in subdivision (1) of subsection (c), at the end of the subdivision after "notice of appeal" restore the following:.....$100.00

(3) Section 12-25-32, 2012 Replacement Volume 11A, page 707, to correct an internal reference in subdivision (7), to reflect the renumbering of the subdivisions in this section in Act 2012-473, after the word "subdivision" delete "(12)" and insert the following: (13)

(4) Section 23-1-181, 2013 Cumulative Supplement to Volume 15, pages 19 and 20, to renumber various internal citations to code sections that have been renumbered and to delete references to sections that have been repealed to conform with the repeal and replacement of various sections in Title 40 of the code in Act 2011-565: In subdivision (4) of subsection (a), delete "Division 2 of Article 2 of Chapter 17 of Title 40" and replace it with "Section 40-17-359" In paragraph a. of subdivision (5) of subsection (a), delete "Section 40-17-31, as amended," and replace it with "subdivision (1) of subsection (a) of Section 40-17-325" In subdivision (6) of subsection (a) after "less any refunds of

proceeds pursuant to the provisions of" delete "Article 3 of" and after "Title 40" delete ", or pursuant to the provisions of either of Divisions 3 and 4 of Article 2 of Chapter 17" In subdivision (7) of subsection (a), delete "Section 40-17-72" and replace it with "subsection (c) of Section 40-17-359" In paragraph a. of subdivision (3) of subsection (b), delete "Article 1 of Chapter 17 of Title 40" and replace it with "subdivision (2) of subsection (a) of Section 40-17-325"

(5) In Section 27-4-2, 2013 Cumulative Supplement to Volume 16, page 17, to correct a publishing error which resulted in the inadvertent deletion of paragraph d. of subdivision (1) of subsection (a), on the line after paragraph c., restore the following language: d. Reinstatement fee.....500

(6) Section 27-44-13, 2007 Replacement Volume 16, page 896, to renumber an internal citation to reflect the relettering of Section 27-44-9 in Act 2012-319, in subsection (a) replace "Section 27-44-9(g)" with "Section 27-44-9(h)".

(7) In Chapter 9E of Title 38 comprised of Sections 38-9E-1 to 38-9E-12, inclusive, 2013 Cumulative Supplement, pages 13 to 18, inclusive, to redesignate Chapter 9E as Article 9 of Chapter 6 of Title 13A and to renumber Sections 38-9E-1 to 38-9E-12, inclusive, as follows: Section 38-9E-1 as 13A-6-190; Section 38-9E-2 as 13A-6-191; Section 38-9E-3, as 13A-6-192; Section 38-9E-4 as 13A-6-193; Section 38-9E-5 as 13A-6-194; Section 38-9E-6 as 13A-6-195; Section 38-9E-7 as 13A-6-196; Section 38-9E-8 as 13A-6-197; Section 38-9E-9 as 13A-6-198; Section 38-9E-10 as 13A-6-199; Section 38-9E-11 as 13A-6-200; and Section 38-9E-12 as 13A-6-201.

(8) Section 40-13-6, 2013 Cumulative Supplement to Volume 21, page 155, to correct a clerical error and reference the intended subsection and subdivision, in the first sentence of subdivision (2) of subsection (e), replace the language "subsection (c)(1)" with "subdivision (1)".

Section 2. Those local and permanent laws of the state previously enacted and contained in initial 2013 Volume 22H (Local Laws Greene - Jackson Counties) and the local and permanent laws pertaining to various counties enacted during the 2013 Regular

Session as contained in the 2013 Cumulative Supplement to Volumes 22B, 22C, 22D, 22E, 22F, and 22G and the additions and deletions made by the Code Commissioner for editorial purposes, as edited and published by West Group, as permanent laws pertaining to various counties enacted during 2013 Supplement to Volumes 22B, 22C, 22D, 22E, 22F, and 22G and the additions and deletions made by the Code Commissioner for editorial purposes, as edited and published by West Group, as the Code Publisher, which volumes of the 2013 Cumulative Supplement are identified and authenticated by the Great Seal of the State of Alabama placed upon the front and back of each of the volumes of the cumulative supplement, are adopted and incorporated into the Code of Alabama 1975.

Section 3. The adoption and incorporation of the supplements and replacement volumes specified in this act shall constitute a continuous systematic codification of the entire Code of Alabama 1975, for purposes of Section 85 of the Official Recompilation of the Constitution of Alabama of 1901, as amended. This act is a law that adopts a code for the purposes of Section 45 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

Section 4. It is declared that West Group, as the Code Publisher, has certified that it has discharged its duties and responsibilities to edit and publish 2013 Replacement Volumes 16A, 19A, and 22 of the Code of Alabama 1975, by combining the material in the previous bound volumes with the material contained in the cumulative supplement without making substantive changes, but making, under the supervision and pursuant to the direction of the Code Commissioner, nonsubstantive changes and corrections as may have resulted from changes in reference numbers, changes of names and titles of governmental departments, agencies, and officers, typographical errors, grammatical changes, and misspellings.

Section 5. The adoption of this act shall not repeal, supersede, amend, or in any other way affect any statute enacted into law during any 2014 session of the Legislature.

Section 6. Upon passage and approval of this act, the duly authenticated volumes of the 2013 Cumulative Supplements and the 2013 Replacement Volumes shall be transmitted to the Secretary of State, who shall file the volumes of the supplements and the replacement volumes in that office. The volumes of the supplements and replacement volumes shall not be removed from the office of the Secretary of State, but the Secretary of State, upon request, under proper certificate and seal of that office, shall certify any part or parts thereof upon payment of the fee specified by law for similar services.

Section 7. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

Speaker of the House of Representatives
President and Presiding Officer of the Senate
House of Representatives
I hereby certify that the within Act originated in
and was passed by the House 04-MAR-14.
Jeff Woodard
Clerk

Senate 03-APR-14 Passed

Chapter 26
Repeal, Suspension, Explanation and Revival

A. Express Repeal

Vaughn
v.
State
370 So. 2d 339 (Ala. Crim. App. 1979)

* * *

The Appellant in his brief contends that the trial court erred when it denied his challenge for cause of six prospective jurors who were over sixty-five years of age. The appellee contends in its brief that § 12-16-150(8), Code of Ala. 1975, was repealed by Act No. 594, enacted by the legislature of Alabama effective April 27, 1978. The trial of the appellant was held on December 4, 1978.

* * *

The question presented by this record for our decision is whether that part of § 12-16-150(8), Code of Ala. 1975, conferring the right of the appellant to challenge a juror over sixty-five years of age for cause was repealed by Act No. 594. The rule is well settled in this state that the repeal of a statute by implication is not favored by law.[1] The courts should interpret legislative acts so as to harmonize them. Repeal of statute is a legislative function and not a judicial function. A court could not declare a prior act to be repealed by a subsequent act in the absence of an express word of repeal or unless the provisions of the two statutes are irreconcilably inconsistent. Act No. 594 says nothing about a person being over sixty-five years of age, it says nothing about causes for challenge of jurors or selection, or striking jurors in a criminal case. Section 2 of

[1] Reiterated in *Burnett v. Chilton County Health Care Authority*, 278 So. 3d 1220, 1233 (Ala. 2018).

Act No. 594 prohibits discrimination by providing that a citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin or economic status. No mention of age is contained in Section 2.

We have searched Act No. 594 word by word, line by line, and section by section, from its beginning to its end, and nowhere in any part do we find a provision in conflict with any part of § 12-16-150(8), Code of Ala. 1975. There is, and cannot be, any conflict between the provisions of § 12-16-150(8), Code of Ala. 1975, and any section of Act No. 594. Act No. 594 may be found in 1978 pocket parts of §§ 12-16-55 through 63, Code of Ala. 1975. Section 12 of Act No. 594 repealed only all parts of law *in conflict* with the provisions of the Act and only to the extent of the conflict. Act No. 594, Acts of Alabama 1978, Vol. 1, p. 712; *Roberts v. Pippen*, 75 Ala. 103, *May v. Head*, 210 Ala. 112, 96 So. 869; *Williams v. State*, 28 Ala. App. 73, 179 So. 915, cert. denied, 235 Ala. 520, 179 So. 920; *Abernathy v. State*, 78 Ala. 411; *Jansen v. State*, 273 Ala. 166, 137 So. 2d 47; *Johnston v. State*, 54 Ala. App. 100, 304 So. 2d 918.

* * *

B. Implied Repeal

Implied amendments and implied repealers are spoken of almost interchangeably by the courts. The same case law and rules of construction should be applicable to both. If there is a distinction, it is that an implied amendment changes a part or adds to an earlier statute while an implied repeal removes all force from the earlier law.

Jansen
v.
State ex rel. Downing
273 Ala. 166, 137 So. 2d 47 (Ala. 1962)

This case involves the validity of Act No. 154, appvd.

Sept. 15, 1961, which was passed at the 1961 Special Session of the Legislature. The Act provides for the manner of nominating candidates for Congress in primary elections and electing congressmen in statewide general elections, subject to certain contingencies set forth in the Act. It has been referred to as the "9-8 Plan" and is a legislative design, in lieu of redistricting, for meeting the reduction in the number of Alabama congressmen from nine to eight.

The trial court declared the Act to be invalid and enjoined the probate judge of Mobile County, the respondent and cross-complainant in the proceedings below, "from obligating Mobile County for the expense of preparation for an election pursuant to the provisions of said Senate Bill 224 [Act No. 154]....

* * *

The trial court apparently entertained the view that any applicable election law which, in some respect, conflicts with some provision of Act No. 154 has been permanently repealed in its entirety, by reason of the provision in said Act that "all laws or parts of laws which conflict with this act are repealed." The provision does not have that effect. The controlling principle is thus stated in 50 Am. Jur., Statutes, § 520, p. 529:

> "... Where an act, which is not a complete law within itself covering the whole subject, contains a provision to the effect that all laws and parts of laws inconsistent or in conflict therewith are repealed, the repeal extends to conflicting statutes and provisions only; all laws and parts of laws not in conflict therewith are left in full force and effect. A statute which is not wholly inconsistent with the new act continues in force except in so far as it conflicts therewith. ..."

See also, 82 C.J.S. Statutes § 285, pp. 476-477.

From 82 C.J.S. Statutes § 291, p. 492, is the following:

"Where there is sufficient repugnancy or inconsistency between two statutes, or parts of two statutes, to effect a repeal by implication, the earlier statute is impliedly repealed to, and only to, the extent of the conflict, repugnancy, or inconsistency. A total repugnance between two statutes is sufficient, and, according to some authorities, is necessary, to cause a repeal in toto of the earlier statute by implication."[2]

* * *

Baxley
v.
Rutland
409 F. Supp. 1249 (M.D. Ala. 1976)

This case is submitted for decision on the motion to dismiss as amended. The complaint seeks declaratory and injunctive relief from the payment of school fees by students authorized to be determined by the defendants pursuant to Sections 142 and 437 of Tit. 52 of the Code of Alabama as recompiled in 1958.

* * *

... The Bill became Act No. 129, bearing the title: "To make annual appropriations for the support, maintenance and development of public education in Alabama for the fiscal year ending September 30, 1976."

The Act provides in Section 3(d):

"It is the intent of the legislature that no fees shall be collected in the future in courses required for graduation. In non-required courses local school boards may set reasonable fees for courses requiring laboratory and shop

[2] *See also Burnett v. Chilton County Health Care Authority,* 278 So. 3d 1220, 1234 (Ala. 2018) (citing *City of Birmingham v. Southern Express Co.,* 164 Ala. 529, 538, 51 So. 159, 162 (1909).

materials and equipment; provided, however, such fees shall be waived for students who cannot afford to pay the fees."

The long-standing rule of statutory construction in Alabama and elsewhere is that repeals by implication are not favored and the intent of the legislature to repeal must be clear and manifest. *Mills v. Court of Commissioners of Conecuh Cnty.*, 1929, 204 Ala. 40, 85 So. 564, and, cases cited; *Randle v. Payne*, 1958, 39 Ala. App. 652, 107 So. 2d 907, 910; *Reg'l Rail Reorganization Act Cases*, 1974, 419 U.S. 102, 133, 95 S.Ct. 335, 353, 42 L.Ed.2d 320, 347 and cases there cited; *Morton v. Mancari*, 1974, 417 U.S. 535, 551, 94 S.Ct. 2474, 2483, 41 L.Ed.2d 290, 301, quoting *United States v. Borden Co.*, 1939, 308 U.S. 188, 198, 60 S.Ct. 182, 188, 84 L.Ed. 181, 190.

Act No. 129 is merely an annual appropriations measure. It makes no reference to the statutes challenged here. The Act covers only a short period of time, while the statutes here involved operate permanently unless and until repealed or held unconstitutional. As to some of the fees permitted by the statutes here involved, the Act has no effect whatever. It is clear that the passage of Act No. 129 did not render this case moot.

* * *

C. Implied Repeal by Inconsistent Act

The court will not construe a prior act to be repealed by a subsequent one in the absence of express words of repeal unless the provisions of the subsequent act are directly repugnant to the former act. But, when such repugnancy exists, the latter statute must prevail. Consequently, the former statute is repealed only to the extent the two provisions are inconsistent with one another. *George v. Skeates*, 19 Ala. 738 (Ala. 1851). Degree of conflict required between two statutes in order to declare that one repeals the other by implication is that of irreconcilability. *Kirby v. Mobile County Comm'n.*, 564 So. 2d 447 (Ala. Civ. App. 1990). Where a new law, whether in the form of an amendment or otherwise, covers the whole subject matter of a former law and is inconsistent with it, and evidently intended to supersede and take the place of

it, it repeals the old law by implication. *Allgood v. Sloss-Sheffield Steel & Iron Co.*, 196 Ala. 500, 71 So. 724 (Ala. 1916). Where the provisions of a statute cover the entire subject-matter of a former statute and are clearly intended as a substitute for all of the provisions of the former statute, the former statute is repealed, regardless of the inconsistency or repugnancy of the statutes. *State v. Kirkpatrick*, 19 Ala. App. 50, 95 So. 490 (1927), certiorari denied, *Ex parte State*, 209 Ala. 16, 95 So. 494 (Ala. 1922).

If, under reasonable construction, it is possible to reconcile two statutes, both will be given effect. *Kirby v. Mobile Cnty. Comm'n.*, 564 So. 2d 447 (Ala. Civ. App. 1990).

Fletcher
v.
Tuscaloosa Federal Sav. & Loan Ass'n
294 Ala. 173, 314 So. 2d 51 (Ala. 1975)
* * *

At the outset it is clear to us that the express language of the Mini-Code manifests a clear legislative intent that it apply to real estate mortgage loans: (1) Tit. 5, § 340, expressly makes "any loan, forbearance, or credit sale involving an interest in real property or the sale, lease or *mortgage of an interest in real property*, ...(Emphasis ours), subject to the maximum "finance charge" provisions of Tit. 5, §§ 316(a), 317. (2) Tit. 5, § 317, in turn speaks of "[t]he maximum finance for *any* loan or forbearance and for *any* credit sale." (Emphasis ours). (3) Finally, Tit. 5, § 316(a) states that in determining the permissible finance charge "any discount or point paid by debtor in connection with a *mortgage loan on real estate*, even though paid at one time, shall be spread over the stated term of the loan or forbearance or credit sale." (Emphasis ours).

The intention of the legislature must primarily be determined from the language of the statute itself. Where, as here, that language unambiguously calls for inclusion of loans on real estate mortgages, other rules of statutory construction are thereby rendered subordinate in the

determination of legislative "intent." *In re Opinion of the Justices* [*No. 161*], 267 Ala. 114, 117, 100 So. 2d 681, (1958); *Alabama Industrial Bank v. State ex rel. Avinger*, 286 Ala. 59, 62, 237 So. 2d 108, (1970); *State ex rel. Moore v. Strickland*, 289 Ala. 488, 493, 268 So. 2d 766, (1962); *State v. Lamson & Sessions Co.*, 269 Ala. 610, 114 So. 2d 893, (1959). There is a strong presumption that the legislature did not do a futile thing when it expressly brought real estate mortgage loans within the regulatory purview of the Mini-Code. *In re Opinion of the Justices* [*No. 161*], *supra*.

Looking to the provisions of the Usury Law which are inharmonious with the finance charge provisions of the Mini-Code, Tit. 9, § 60, provides in pertinent part:

> ". . . [T]he rate of interest by written contract is not to exceed eight dollars upon one hundred dollars for one year; . . ."

By contrast, the Mini-Code's definition of "finance charge," Tit. 5, § 316(a), reads:

> "'Finance charge' shall include all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the creditor as an incident to the extension of credit, including interest, time price differential, points or discount paid directly by the debtor, service, carrying or other charge however denominated, loan fee, credit or investigation fee, ..."

In turn, Tit. 5, § 317, then sets as a maximum finance charge the following:

> "The maximum finance charge for any loan or forbearance and for any credit sale (except under open end credit plans) may equal but may not exceed the greater of the following:
>
> "(b) If the original principal amount of the loan or original amount financed exceeds $2,000, $8 per $100

per year of the original principal amount of the loan or amount financed.

"The maximum finance charge under paragraphs (a) and (b) shall be determined by computing the maximum rates authorized by paragraphs (a) and (b) on the original principal amount of the loan or original amount financed for the full term of the contract without regard to scheduled payments and the maximum finance charge so determined (or any lesser amount) may be added to the original principal amount of the loan or original amount financed."

The same subject matter, interest, is dealt with in an inconsistent manner in the foregoing provisions of the Usury Law and the Mini-Code. This Court in *Allgood v. Sloss-Sheffield Steel & Iron Co.*, 196 Ala. 500, 501, 71 So. 724, (1916) held:

"'Where an amendment is made that changes the old law in its substantial provisions, it must, by a necessary implication, repeal the old law so far as they are in conflict. And where a new law, whether it be in the form of an amendment or otherwise, covers the whole subject-matter of the former, and is inconsistent with it, and evidently intended to supersede and take the place of it, it repeals the old law by implication.'" (Citations omitted).

* * *

D. Reference To and Identification of Act Repealed

Southeastern Financial Corporation
v.
Smith
397 F. Supp. 649 (N.D. Ala. 1975),
reversed on different grounds, 542 F.2d 278 (5th Cir. 1976)

Plaintiff, Southeastern Financial Corporation

("Southeastern"), instituted this action against defendant, an Alabama resident, for recovery of $13,900.54, representing the total of three worthless checks ...

* * *

Plaintiff's recovery then must be under the language of the statute set out above, codified at Tit. 7, § 131(1), *Code of Alabama* 1940 (Recomp. 1958)(1973 Cumulative Supplement), and enacted as Act 567 by the Alabama Legislature in 1959. 1959 Acts 1426.

A preliminary problem is posed by the fact that this act was codified at Tit. 39, § 53(1), after its enactment. When the Alabama Legislature adopted the Uniform Commercial Code, it purported in § 10-102 to repeal, *inter* alia, "Title 39, §§ 1-12, inclusive, § 13, as amended, §§ 14-85, inclusive, … ." This would seem to include the above-quoted section, except that, officially, no act of the Alabama Legislature has been codified since the adoption of the 1940 Code. Thus, all references in subsequent acts to Code provisions must be construed as applying only to the Code as it was codified in 1940, not as it might have been recompiled or recodified by the Code publisher. Thus, an act passed subsequent to the adoption of the Code of 1940 could be repealed only by specific reference to the act by number and year of adoption. That this is the understanding of the Alabama Legislature may be inferred from the repealing provision cited above, since the provision specifically repeals, in addition to the recited Code sections, a number of acts adopted subsequently to the 1940 Code. These later acts are repealed by reference to the act number and year of enactment. Therefore, it would stretch the legislature's intent to view the repeal of "§§ 14-85, inclusive," as repealing Act 567.

Nor can it be inferred that this act was repealed by implication. This is a disfavored method of appeal, and "[i]t is only when two laws are so repugnant to or in conflict with each other that it must be presumed that the Legislature intended that the latter repealed the former." *City of Birmingham v. S. Express Co.*, 164 Ala. 529, 538, 51 So. 159, 162 (1909). Since the UCC provides contractual remedies while the statute here provides a tort remedy, there is no reason to assume that the legislature

intended to repeal the latter by adoption of the UCC.

* * *

E. Repeal of Special Act by General Act[3]

Alabama has consistently held that a general statute does not repeal a special one unless "such is the plain legislative intent." *Mobile & O. R. Co. v. State*, 29 Ala. 573 (1857); *State Ex rel Tubbs v. White*, 160 Ala. 168, 49 So. 78 (1909); *Hawkins v. City of Birmingham*, 239 Ala. 185, 194 So. 533 (1940).

In the presence of a conflict between the special and general provisions, the special or specific provision controls and prevails over the general or broad provision, which accordingly must yield to the special or specific provision and operate only upon such cases as are not included therein. "The special or specific act and the general or broad law stand together, the one as the law of a particular case, and the other is often referred to as an exception to the general or broad provision." [50 Am. Jur., *Statutes*, § 561 as quoted in *Connor v. State on Info. of Boutwell*, 275 Ala. 230, 153 So. 2d 787 (1963)].

First, it should be recognized that some "local laws" are somewhat disguised as general laws such that specific population designations must be considered. *See Connor v. State on Info. of Boutwell* discussed below. Secondly, "the question is always one of legislative intention, and the special or specific act must yield to the later general or broad act, where there is a manifest legislative intent that the general act shall be of universal application notwithstanding the prior special or specific act." [*Id. See also Vaughan v. Moore*, 379 So. 2d 1240 (Ala. 1979) (providing an example of the court's finding the requisite intent is demonstrated).

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[3]Taken in part from Fryer, Clara L., "Repeal of Special Act by General Act."

Connor v. State on Info. of Boutwell, *supra* was a controversial case involving the municipal government of Birmingham. (Companion cases suggest that the controversy stemmed from the actions of the newly elected council in removing many laws enforcing racial discrimination in the city.) The City of Birmingham had voted to switch to a Mayor-Council form of government, and the question before the court was when the newly elected officials would take office. The legislature had passed a general law that provided a time period of "October first of the general municipal election year next following the election at which such change is voted." *Id.* The new councilmen, however, relied on another act (Act No. 452) of the legislature that provided for their taking office "on the second Monday following the date the election of all nine councilmen is completed." *Id*. The court reasoned that Act No. 452 was, in fact, a general law of local application solely to the city of Birmingham. It appears that the population statistics incorporated in the original act and its amendment reflected that Birmingham was the only city coming within the classification prescribed by the Act thus the Act qualified as a special act. Therefore, the court held:

> Since Act No. 452 is to be treated as a local or special law, applicable only to Birmingham, there appears no reason why it cannot continue to be so applicable, with the provisions of Act No. 71, a general law, applying to other appropriate situations. We hold that Act No. 452 should "be construed as remaining in effect as a qualification of or exception to the general law" embraced in Act No. 71.

Id. at 236.

The case of *Vaughan v. Moore*, *supra* is an example of the court's ascertaining legislative intent to repeal a special act with a general act. This case involved a conflict between the Personnel Board of Mobile (created by Special Act) and the Board of Water and Sewer Commissioners (created subsequently by general act). An employee, Bolton, who failed the requirements of the Personnel Board, was hired anyway by the Water Board. The court decided that the Water Board's actions were authorized by statute:

Ala. Code § 11-50-344 (1975), of the general law authorizing water boards allows newly created water boards to retain employees of the former city waterworks without impairment of their civil service, seniority or retirement rights "insofar as practicable." This express reference to local merit systems and the specific provisions set out above, authorizing the Board to enter into employment contracts indicates the legislature's clear intent to allow the Water Board to employ Bolton outside of the merit system. *Vaughn v. Moore*, 379 So. 2d at 1241.

When provisions of a general law are repugnant to provisions of a previously enacted special law applicable to a particular locality only, passage of the general law does not operate to repeal the special law unless repeal is provided for by express words or arises by necessary implication. *Kirby v. Mobile County Comm'n*, 564 So. 2d 447 (Ala. Civ. App. 1990).

Buskey
v.
Mobile County Bd. of Registrars
501 So. 2d 447 (Ala. 1986)

* * *

The question of whether the enactment of a general law repeals a pre-existing local law is at bottom one which depends upon the legislature's intent, as determined from the language used in the general law. *Champion v. McLean*, 266 Ala. 103, 95 So. 2d 82 (1957). In a recent case dealing with this question, *Day v. Morgan County Commission*, 487 So. 2d 856 (Ala. 1986), this Court applied principles of earlier cases, *e.g.*, *Connor v. State on Info. of Boutwell*, 275 Ala. 230, 153 So. 2d 787 (1963), and expressed in Sutherland, *Statutes and Statutory Construction* (Sands 4th ed. 1985) § 23.15, at 245:

> "The enactment of a general law broad enough in its scope and application to cover the field of operation of a special or local statute will generally not repeal a statute which limits its operation to a particular phase of the subject covered

by the general law .... An implied repeal of prior statutes will be restricted to statutes of the same general nature, since the legislature is presumed to have known of the existence of prior special or particular legislation, and to have contemplated only a general treatment of the subject matter by the general enactment. Therefore, where the later general statute does not present an irreconcilable conflict the prior special statute will be construed as remaining in effect as a qualification of or exception to the general law.

"However, since there is no rule of law to prevent the repeal of a special by a later general statute, prior special or local statutes may be repealed by implication from the enactment of a later general statute where the legislative intent to effectuate a repeal is unequivocally expressed. A repeal will also result by implication when a comprehensive revision of a particular subject is promulgated, or upon the predication of a statewide system of administration to replace previous regulation by localities." (Footnotes omitted). ...

* * *

Applying these principles to the statutes before us, it is clear that Act No. 389 is directly repugnant to Act No. 36 and, therefore, that Act No. 36 was repealed by Act No. 389.

* * *

These differences in the two acts are substantial, and prevent reconciliation of their terms in the fields of purging of the voter lists and reidentification by purged voters. Accordingly, it must be presumed that the legislature intended by Act No. 389 to repeal Act No. 36, so as not to have a dual and conflicting system on the subject, and "the later statute prevails as the last expression of the legislative will." *Fletcher v. Tuscaloosa Fed. Sav. & Loan Ass'n.*, 294 Ala. 173, 177, 314 So. 2d 51 (1975).

F. Repeal of General Act by Special Act

Repeal of a general act by a special act works in much the same way as a repeal of a special act by a general act. A general statute cannot be repealed by implication unless the intent to effect such repeal is clearly manifested. *Norris v. Seibels*, see below.

Norris
v.
Seibels
353 So. 2d 1165 (Ala. 1977)

* * *

Section 450(4) was enacted in 1967 as a law applicable to all cities, regardless of population, and to all municipal firemen within the state. It provided that hypertension and heart disease were a "fire fighters occupational disease," and were to be compensable "as any service connected disability *under any law which provides benefits for fire fighters of such city injured in the line of duty*." (emphasis added) ...

* * *

Section 1567(a14) limits the application of § 450(4) by excluding cities with populations of 250,000 or more, *e.g.*, the City of Birmingham. If a fireman in any other city contracts heart disease and becomes disabled, his municipal pension system must treat him as having become disabled in line of duty, and must compensate him as though he had been *injured* in line of duty. In Birmingham, however, his heart disease is not to be considered as an accident sustained in the court of his duty. Section 1567(a14), then, creates a separate class of firemen, such as those employed by the City of Birmingham, from those referred to in § 450(4).

Considering the preamble to the bill which became § 450(4)(Act No. 570, Acts of Alabama, 1967, p. 1323), it is evident that its purpose was to mandate that a municipal firefighter's heart disease was to be considered as service connected. It dealt specifically with the effect of that

disability upon the application of municipal pension laws to firemen. When § 1567(a14) was enacted later, on the other hand, it dealt with the effect of heart disease upon the application of the municipal pension law to employees generally. In other words, § 1567(a14) is an enactment generally applicable to all employees, while § 450(4) applies only to firemen.

The Court of Civil Appeals has held that the general law (§ 450(4)) has been repealed by implication by the local law (§ 1567(a14)). In this we believe that the Court of Civil Appeals was incorrect. Section 450(4) is a general statute which concerns the subject of firemen's disability benefits as they are affected by heart disease. This general statute cannot be repealed by implication found in the local statute unless the legislative intent to effect such a repeal is clearly manifested. A perusal of Act No. 1272 (containing § 1567(a14) provides no express purpose to repeal § 450(4). The section which refers to retrospective operation refers only to statutes containing a population classification of 250,000 or more. Accordingly, there is no express repeal of the special statute which clearly was intended to establish a state-wide system of uniform application. However, it does contain language implying that § 450(4) shall not apply to Birmingham firemen. ... This limitation certainly manifests a legislative intention to withhold the application of § 450(4) to the firemen employed under the system created by Act No. 1272, even though the latter did not expressly repeal the former in so many words. Accordingly, the Court of Civil Appeals was correct when it held that the general provisions of § 450(4) were by implication repealed by the local law, § 1567(a14).

* * *

City of Tuscaloosa
v.
Alabama Retail Association
466 So. 2d 103 (Ala. 1985)
* * *

The Alabama Table Wine Act, now codified at Code, 1975, § 28-7-1, *et. seq.*, became effective on September 30, 1980. Section 2 of the Act sets out the legislative intent:

> "The public interest lying in the promotion of temperance by and through the proper regulation of alcoholic beverages, through the instrumentality of the Alabama alcoholic beverage control board and otherwise, it is the intent of the legislature and declared to be the purpose and intent of this Act to promote temperance and to further regulate the sale of alcoholic beverages in the state by distinguishing between fortified wine or vinous liquor having more than fourteen percent (14%) alcohol by volume and table wine having not more than fourteen percent (14%) alcohol by volume, which is hereby declared to be non-liquor and not vinous liquor, and specifically to authorize and regulate the sale and handling of table wine in Alabama by wine manufacturers, wholesalers and retailers licensed by the board."

The Alcoholic Beverage Licensing Code, also with an effective date of September 30, 1980, is found at Code 1975, § 28-3A-1, *et. seq.*

Section 13(a) of the Table Wine Act provides that *statewide* table wine license fees shall be $150 for a wine retailer's license, $550 for a wine wholesaler's license, $500 for a wine importer's license, and $500 for a wine manufacturer's license. That section goes on to provide, however, that "said county or municipality shall levy no license or privilege tax, or other charge for the privilege of doing business as a wine wholesaler, importer or retailer, which shall exceed one-half the amount of the state license fee levied under the provisions of this Section for like

privilege." (emphasis added).

Section 16(d) of the Table Wine Act requires that "[t]he tax herein levied is exclusive and shall be in lieu of all other and additional taxes and licenses of the state, county or municipality, imposed on or measured by the sale or volume of sale of table wine; provided, that nothing herein contained shall be construed to exempt the retail sale of table wine from the levy of tax on general retail sales ...."

The local ordinances of the named and class Defendants either levied license fees exceeding one-half of the state license fee in violation of Section 13(a), or imposed taxes based upon percentage of sales or purchases of table wine in violation of Section 16(d), or both.

We agree with Cities' argument that the passage of the Alcoholic Beverage Licensing Code "demonstrates a clear intention on the part of the legislature to revise the law as to the licensing and regulation of all alcoholic beverages." Indeed, such was the precise conclusion reached in *Merrell v. City of Huntsville*, 460 So. 2d 1248 (Ala. 1984):

> "The Alcoholic Beverage Licensing Code is an extensive and comprehensive revision of the law regarding the licensing of alcoholic beverages in Alabama. ... [W]e conclude that the legislature intended Act 80-529, the Alcoholic Beverage Licensing Code, to provide a uniform and comprehensive body of liquor licensing law." *Merrell* at 460 So. 2d 1248.

The Alcoholic Beverage Licensing Code, however, while specifically repealing particular sections of the then-existing alcoholic beverage statutes (*see* Section 27 of the Alcoholic Beverage Licensing Code), does not specifically repeal any provision of the Table Wine Act. Indeed, the exclusive tax on, or measured by the sale of, table wine levied by Section 16 of the Table Wine Act is in no way addressed or dealt with in the provisions of the

Alcoholic Beverage Licensing Code.

Further, the general repealing clause found at Section 27 of the Alcoholic Beverage Licensing Code cannot operate to repeal the Table Wine Act except to repeal by implication any conflicting portions of the Table Wine Act; and it has been consistently held in this State that repeal by implication is never favored by the courts. *Sand Mountain Bank v. Albertville Bank*, 442 So. 2d 13 (Ala. 1983); *Ex parte Jones*, 212 Ala. 259, 102 So. 234 (1924).

The degree of conflict required between two statutes in order to declare that one impliedly repeals the other is that of irreconcilability.

> "'We are not unmindful of the fact that repeal by implication is not favored in the law. It is only when two laws are so repugnant to or in conflict with each other that it must be presumed that the Legislature intended that the latter should repeal the former. If there is a reasonable field of operation, by a just construction, for both, they will both be given effect. This is said to be preferable to repeal by implication. [Citations omitted.]
>
> "'We are also not unmindful of the fact that bills pending at the same time, and enacted into laws at the same session of the Legislature, are to be construed in pari materia. They are presumed not to conflict, and a field of operation will be given each, if consistent with clear intent. [Citations omitted.]

Reid v. City of Birmingham, 274, Ala. 629, 635-36, 150 So. 2d 735, 741 (1963), quoting *Davis v. Browder*, 231 Ala. 332, 335, 165 So. 89, 91 (1935).

> "'The rule announced in *Hand v. Stapleton*, 135 Ala. 156, 33 So. 689 (1902), that when sections of a statute are in conflict the last in order of arrangement will control, is subject to the dominant rule that the

> statute should be construed as a whole to find the legislative intent. Indeed, separate acts relating to the same subject, pending for consideration at the same time, will be construed in pari materia, without undue regard to the dates of actual passage. Conflicting intentions in one and the same act are not to be supposed, and never so regarded, unless forced upon the courts by unambiguous language. The rule of construction is to harmonize seeming conflicts. To do so, the less certain must yield to its more certain terms. For this reason a description giving not only the course or direction of a line, but also giving its terminal point, must dominate over one giving course or direction only, unless other terms of the statute, in connection with the subject matter, makes clear a different intent.'"

Reid v. City of Birmingham, *supra*, quoting *Marengo Cnty. v. Wilcox County*, 215 Ala. 640, 642, 112 So. 243, 245 (1927).

Further, where, as here, "a special subject has been specially provided for by law, it will not be considered as repealed by a subsequent law which deals with a general subject in a general way, though the specific subject of a special provision may be included in the general subject and the general provision." *City of Mobile v. Mobile Electric Co.*, 203 Ala. 574, 578, 84 So. 816, 819 (1920).

We hold, then, that the Alcoholic Beverage Licensing Code is a comprehensive statute which deals with the licensing of those engaged in transactions involving alcoholic beverages; and, while it is comprehensive, it is, by the very nature of its own broad scope, a *general* statute. The Table Wine Act, however, is a statute enacted to further a specific legislative intent and deals exclusively with transactions involving table wine; thus, it is a *specific* statute.

Because the "conflict" between these two statutes does not rise to the degree of irreconcilability, we find that each statute may be given a reasonable field of operation,

which will, when they are construed together, give effect to the legislative intent and purpose of both enactments. Although, in this case, the specific will control the general, we do not find that the overall purpose of the general statute will be thwarted by giving effect to the specific statute. We find additional support for our decision in the legislature's further amending Section 16 of the Table Wine Act during its 1983 regular session (*see* Act No. 83-594, approved July 25, 1983).

Accordingly, we hold that the Table Wine Act, as amended, is neither repealed nor modified, either expressly or impliedly, by the provisions of the Alcoholic Beverage Licensing Code. The statutes should be construed *in pari materia*, and where there exists a conflict between the two, the more specific provisions of the Table Wine Act will control.

G. Repeal by Simultaneous Legislation

Two similar statutes passed during the same legislative session must be construed *in pari materia* and both given effect unless the language of the later statute clearly manifests the intent to repeal the earlier statute. *Lee v. City of Decatur*, 233 Ala. 411, 172 So. 284 (Ala. 1937).

H. Repeal by Reenactment

Pryor
v.
Heard
268 Ala. 310, 106 So. 2d 171 (Ala. 1958)

* * *

It will be observed that the decree of the lower court vested title absolutely in the widow. This is not correct. The petition on its face shows that there was an adult daughter of the deceased living at the time of his death. Arey Heard died in 1953 and this case is covered by the law in force at that time. *Craig v. Root*, 247 Ala. 479, 25 So. 2d 147; *Davis v. Reid*, 264 Ala. 560, 88 So. 2d 857.

Section 663, Title 7, Code of 1940 and also § 697, Title 7, Code of 1940, were both amended and reenacted by an act approved September 10, 1953, appearing in Acts of 1953, p. 1128. These statutes constitute the law in force and effect at the time of the death of Arey Heard. Under these statutes title to the homestead vests absolutely in the widow and children (minors and adults), subject to the exclusive possession of the widow, if there are not minor children. The court in its order, therefore, should have vested title absolutely in the widow, Maggie Heard, and the adult child, Irene Pryor, subject to the exclusive possession of the widow for her life.

* * *

It is further argued that because the 1953 amending act, cited above, does not contain a repealing clause that "where said act conflicts with said Section 663, said Section 663 remains in force." However, the amending act begins by stating, "Section 663 of Title 7 of the Code of Alabama (1940) is hereby amended and reenacted, and shall read as follows: ***." It is clear that this introductory statement does away with and repeals the previous Section 663. Hence it was unnecessary for the 1953 act to contain a clause repealing Section 663. *Levy, Aronson & White v. Jones*, 208 Ala. 104, 93 So. 733; *American Standard Life Ins. Co. v. State*, 226 Ala. 383, 147 So. 168.

* * *

I. Repeal by Revision

Security Trust and Savings Bank
v.
Marion County Banking Company
287 Ala. 507, 253 So. 2d 17 (Ala. 1971)

* * *

The appellee Bank was incorporated under the name, "Bank of Guin," on June 28, 1905, and in 1908, its name was changed to Marion County Banking Company. The third paragraph of its certificate of incorporation provides:

> "The location of the principal office of said corporation shall be in Guin, Alabama, but it may have branch offices authorized to transact business in any County in the State of Alabama."

Act No. 76, Acts of Alabama, Regular Session, 1955, p. 314, codified as Tit. 5, § 125(1), Code of Alabama, Recompiled 1958, (Act No. 76 or Tit. 5, § 125(1)) prohibits branch banking, notwithstanding the provisions of any general laws of local application which may become applicable to any county by any future decennial census, but provides:

> "The provisions of this Act shall not apply in any county in which branch banking has been authorized by law on or before the effective date of this Act."

* * *

We conclude that the legislature, by enacting this legislation, intended to and did draw a distinction between general or ordinary business corporations and those formed for the purpose of carrying on the business of banking, expressly limiting their powers to those set forth in § 16 of Act No. 395, and those which by implication are incidental thereto.

* * *

The appellee banking corporation was formed therefore under the general statute, Act No. 395, *Alabama City, G. & A. Ry. Co. v. Kyle*, 202 Ala. 552, 81 So. 54, which took the place of and repealed the provision of former Code § 1089(4), Code of 1896, expressly authorizing branch banking. Parts of an Act of the legislature which are omitted from that which is a complete revision of the law on the subject are annulled and repealed. *American Standard Life Ins. Co. v. State*, 226 Ala. 383, 147 So. 168; *Allgood, Auditor v. Sloss-Sheffield Steel and Iron Co.*, 196 Ala. 500, 71 So. 724.

There was therefore no express statutory law in

existence, when the appellee corporation was formed, authorizing the Bank to fix and locate offices, agents and agencies at pleasure in the state. That provision had been removed from the statutes of the state by Act No. 395. The status, in this respect, in which the law then existed, had reverted to that found in § 1525(4), Code of Alabama, 1887, which likewise gave no express statutory authorization or power to a banking corporation to establish branch banks or offices at places other than at the location of the principal place of business for transacting the banking business.

J. Repeal by Adoption of Code

The general rule is that if no contrary intention is expressed in the act adopting a code of laws, all general and public statutes in force when the code is adopted and not included therein are repealed by virtue of their omission and by the laws providing for the adoption of the code. *Theo. Poull & Co. v. Foy-Hays Const. Co.*, 159 Ala. 453, 48 So. 785 (Ala. 1909). *See* Chapter 25, "Revisions, Codification and Recompilations," *supra*.

K. Invalidity of Repealing Act

Weissinger
v.
Boswell
330 F. Supp. 615 (M.D. Ala. 1971)

This is a class action challenging the federal constitutional validity of Alabama's present ad valorem tax program....

* * *

Plaintiffs attack the validity of Title 51, Section 17(1) of the Code of Alabama on two separate grounds.

Their first contention is that Section 17(1) was not passed in accordance with state law and is therefore a void enactment. Section 70 of the Alabama Constitution provides that "[a]ll bills for raising revenue shall originate in

the house of representatives." The evidence reflects, and defendant concedes, that the bill from which Section 17(1) is derived originated in the Alabama Senate. The merit of plaintiffs' contention depends, therefore, on whether Section 17(1) is a revenue bill as defined in the first sentence of Section 70 of the Alabama Constitution.

In Alabama, any bill whose chief purpose is to create revenue or to increase or decrease revenue is one to "raise revenue" and must originate in the House of Representatives. *Opinion of the Justices No. 56*, 238 Ala. 289, 290, 190 So. 824 (1939). There can be no question that a bill which attempts to lower the ad valorem assessment rate from a fixed rate of 60 percent to a maximum rate of 30 percent is one "whose chief purpose is to *** decrease revenue." Section 17(1), being a revenue bill, should, therefore, have originated in the House of Representatives.

Plaintiffs' second contention is that Section 17(1) lacks the clarity and preciseness required of tax statutes by the Fourteenth Amendment.

* * *

Even if we were to disregard the "plain meaning" of the statute and instead were to construe Section 17(1) in *pari materia* with Sections 131 and 133 of the Code of Alabama, so that the Department of Revenue would have the duty to fix and equalize the ratio of assessment throughout the state at between 0 and 30 percent of fair market value, Section 17(1) still would not pass constitutional muster. The power of taxation is a peculiarly legislative function. Delegating to an administrative agency the power to fix the ratio of assessment, without formulating a definite and intelligible standard to guide the agency in making its determination, constitutes an unconstitutional delegation of legislative power.

Thus, even after cloaking Section 17(1) with a presumption of validity, *United States v. Vuitch*, 402 U.S. 62, 91 S. Ct. 1294, 28 L.Ed.2d 601 (1971), we find the statute to

be constitutionally infirm.

Since Section 17(1) is unconstitutional in violation of Section 70 of the Alabama Constitution, Title 51, Section 17, which purported to have been repealed by Section 17(1), remains in full force. "The elementary rule of statutory construction is without exception that a void act cannot operate to repeal a valid existing statute, and the law remains in full force and operation as if the repeal had never been attempted."

The Court is aware of the impact of the present decision upon the tax structure of the state and its subdivisions, since the type of discriminatory treatment here involved is deep-seated and of long standing. For these reasons, the Court will give defendant a reasonable period of time, up to one year from the date of this opinion and order, to bring assessments throughout the state into conformity with the mandate of this opinion. It is so ordered.

L. Repeal of Repealing Section by Amendatory Act

Opinion of the Justices No. 246
357 So. 2d 145 (Ala. 1978)

We acknowledge receipt of H.R. 475, requesting our opinion as to the constitutionality of House Bill No. 645. H.B. 645 proposes to amend Section 9901 (the repealer section) of Act No. 607, Regular Session 1977 (the new Alabama Criminal Code), by deleting the repealer of Title 51, Section 394 (Act No. 75, Regular Session 1945; as amended), Code of Alabama 1940. To accomplish this objective, Section 1 of H.B. 645 contains a restatement of all the provisions in Section 9901 except for the reference to Title 51, Section 394, which is deleted by striking through the words and numbers. Noting that Act No. 607 has not yet become effective, and that Title 51, Section 894 has therefore not yet been repealed, you have asked whether H.B. 645 would violate the last clause of article IV, Section

45 of the Constitution of Alabama of 1901:

> "[N]o law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be re-enacted and published at length."

A careful analysis of this problem reveals two possible instances in which the latter clause of Section 45 might apply. If H.B. 645 would operate to "revive" Title 51, Section 394, then Section 45 would require the legislature to re-enact and publish that statute at length. As explained herein, we do not believe that Section 394 will be effectively repealed until May; therefore, H.B. 645 would not revive this statute and Section 45 would not apply. However, Section 45 does apply to the amendments of Section 9901 of Act No. 607, but we feel that by re-enacting and publishing the amended Section 9901 at length, the constitutional requirements are satisfied.

The new Criminal Code (Act No. 607, Regular Session 1977) becomes effective in May 1978. Section 9901 of the new Code, which repeals specific statutes, will likewise become effective on that date. Since H.B. 645 would delete any reference in Section 9901 to Title 51, Section 394, this bill would repeal one portion of a repealing statute. Accordingly, "where the repealing act is repealed before it takes effect, its repeal does not affect the original act in any way, it never having actually become inoperative." 73 Am.Jur.2d *Statutes* § 426 (1974). Thus, under this rule, an act which repeals a portion or all of a repealing act before its effective date would not revive the original act because the original act had never ceased to exist. *Clark v. Reynolds*, 136 Ga. 817, 72 S.E. 254 (1911); *Adam v. Wright*, 84 Ga. 720, 11 S.E. 893 (1890). H.B. 645 does not revive Title 51, Section 394; it need not republish the provisions of that statute to comply with Section 45 of the Alabama Constitution.

Opinion of the Justices No. 321
496 So. 2d 6 (Ala. 1986)

... Specifically, H.B. 97 proposes to amend Section 3, subsection 3(e), and subsection 4(a) of Act No. 405.

The questions posed to us in H.R. 88 are as follows:

> 1. May an original act of the legislature be amended by enactment of an amendatory bill which publishes only a subsection of a section of the original act to be amended?
>
> 2. May an original act of the legislature be amended by enactment of an amendatory bill which publishes only a subsection of a subsection of a section of the original act to be amended?
>
> 3. May an original act of the legislature be amended by enactment of an amendatory bill which does not publish at length the section to be amended?

* * *

... In some instances, however, it is not necessary to set forth the entire original act. ... H.B. 97 does not even comply with this alternative to publishing the entire original act, as it merely sets forth portions of sections and subsections, and in no way publishes *at length the section* to be amended. In order to meet the requirements of Article IV, § 45, the Legislature must include in H.B. 97 such republication that the reader need not go to the original act to comprehend the meaning of the amendment. The amendatory act must be complete in form and not just parts of sections and subsections sought to be amended. *Opinion of the Justices No. 246*, 357 So. 2d 145 (Ala. 1978) (emphasis added).

* * *

M. Reenactment or Revival of Act Repealed

The attempt to revive a dead statute by mere reference without setting out the portion to be revived is a nullity. *State v. Kirkpatrick*, 19 Ala. App. 50, 95 So. 490 (1922), *cert. den.; Ex Parte State*, 209 Ala. 16, 95 So. 494 (1923). *But see Leonard v. Lyons*, 204 Ala. 615, 87 So. 99 (1920).

When the legislature adopts an act which purports to amend a repealed statute, the amendatory act is valid if it is self-contained and "set out at length, so that, when read, it may be comprehended by those called upon to vote for or against its passage." *Butler v. Guaranty Sav. & Loan Ass'n.*, 247 Ala. 4, 7, 22 So. 2d 328 (1945). If the legislature's passage of the amendatory act is not intended to revive the repealed statute "but creates a new one, complete and definite, in full compliance with the requirements of the Constitution" then the act is valid. *State v. Hester*, 260 Ala. 566, 571, 72 So. 2d 61 (1954). The Alabama Supreme Court has consistently held "that the legislature may amend and thereby re-enact that portion of another act which has been repealed ... [t]he reference to the original act as thereby amended is as effectual as though there had been no repealing act." *Harris v. State ex rel. Williams*, 228 Ala. 100, 151 So. 858 (1933). Any reference to the repealed statute contained in the amendatory act is treated as a mere identification and not as a wholesale reenactment of the repealed statute. "The fact that it has been repealed does not militate against it use for identification." *State ex rel. McIntyre v. McEachern*, 231 Ala. 609, 611, 166 So. 36 (1936).

N. Suspension of Act

Ala. Const. Art. I, § 21
Suspension of laws.

> That no power of suspending laws shall be exercised except by the legislature.[4]

[4] For a discussion, *see Breland v. City of Fairhope,* 337 So. 3d 741 (Ala. 2020) at n.6.

Burgess
v.
State
256 Ala. 5, 53 So. 2d 568 (1951)

The tragedy portrayed in the trial of the case in hand, resulting in the conviction of the appellant John Burgess of the offense of murder, occurred about midnight July 13, 1950, in a community in the southwestern section of Cullman County which its inhabitants have dubbed "Bug-Tussle". ...

* * *

We note that in the court's oral charge to the jury, the court stated: "The Grand Jury of this county returned this indictment against this defendant, charging him with first degree murder. First degree murder ordinarily carries with it one of two punishments: the death penalty, or life imprisonment. But in the beginning, it has been agreed between the State and the defendant that a special jury would be waived in this case, and that the death penalty would be waived in this case; so there has [sic] been arrangements made so that you do not have before you the death penalty in this case, in the event you find the defendant guilty. I will explain to you what your verdict will be with reference to punishment at a later time in this charge, but I will state at the outset that the death penalty has been taken out of the case by agreement between the State and the defendant."

We are of opinion that this sets a precedent which should not be followed. The effect of the charge was not to *nolle prosse* the indictment for murder in the first degree but to suspend the application of the statute by an agreement between the parties, contrary to the provisions of the statute that, "Any person who is guilty of murder in the first degree, shall, on conviction, suffer death, or imprisonment in the penitentiary for life, *at the discretion* of the jury[."] Code of 1940, Tit. 14, § 318. Such agreement is also in violation of the constitution which inhibits the suspension of laws except by the legislature. Constitution of 1901,

§ 21. The appellant however was not injured and has no grounds on which to complain.

* * *

Judgment of conviction is affirmed and the judgment of sentence set aside and the case is remanded for proper sentence.

O. Repeal by Non-Use or Lack of Enforcement

Dept. of Pub. Safety
v.
Freeman Ready-Mix Co.
292 Ala. 380, 295 So. 2d 242 (1974)

... All the complainants sought an injunction against the enforcement of Title 36, § 89, Code of Alabama 1940, as last amended, [*See* Tit. 36, § 89, Recompiled Code 1958, 1971 Cumulative Pocket Part], a criminal statute which specifies maximum weights for vehicles traveling the highways of the State of Alabama (hereinafter referred to as the "truck weight statute").

* * *

Complainants next argue that the failure of respondents to enforce the truck weight laws has repealed the statute through nonuse. Desuetude is a civil law doctrine rendering a statute abrogated solely by reason of its long and continued nonuse. This doctrine has never become an accepted part of the common law, and so this Court recognized in *First National Bank v. Nelson*, 105 Ala. 180, 196, 16 So. 707, 710 (1894), when it stated:

> "... It is not to be denied, that if the meaning of words of a statute be uncertain, usage may be resorted to for the purpose of interpreting them (Lawson, Usages & Cust. 462, § 223; South. St.Const. § 308); but popular disregard of a statute, or a custom opposed to it, will not repeal it; and a custom or usage which

> would contradict the commands of a statute ought not to be considered. Lawson, Usages & Cust. § 216; South. St.Const. § 137; [*Richmond & Danville] Railroad Co. v. Hissong* [97 Ala. 187] 13 South. 209; *Railroad Co. v. Johnston*, 75 Ala. 596; *Barlow v. Lambert*, 28 Ala. 704."

Thus, we must reject the notion that mere nonenforcement of the truck weight statute over a period of time repeals that statute.

* * *

PART V

INTERPRETATION OF STATUTES

Chapter 27
Interpretation

A. General

1. Rules of Construction

When statutes are placed in the code, creating a doubt as to their proper construction, the court will refer to the original acts for history and for proper arrangement of the section in order to ascertain the legislative intent. *See Rodgers v. Meredith,* 274 Ala. 179, 146 So. 2d 308 (1962).

The Legal Division and Code Commissioner in completing the contents of the code, may perform editorial functions as set forth in Ala. Code § 29-5A-22.

When interpreting a statute, a court must first give effect to the intent of the legislature. *BP Exploration & Oil, Inc. v. Hopkins,* 678 So. 2d 1052 (Ala. 1996). The entire act must be examined and construed as a whole and, if possible, every word in it given effect. *McWhorter v. Bd. of Registration for Prof'l Eng's and Land Surveyors*, 359 So. 2d 769 (Ala. 1978).

Glencoe Paving Company
v.
John Graves
266 Ala. 154, 94 So. 2d 872 (1957)

* * *

> The question posed by this appeal is whether asphalt plant mix, spread on the highways of the State by the vendor as a re-surface of said highways, must be purchased by competitive bidding dictated by the provisions of Title 50 of the Code, as amended, or may the State purchase the labor and materials through the Department of Finance, Division of Purchases and Stores under the provisions of Chapter 4 of Title 55, Alabama Code of 1940.
>
> * * *
>
> The legal maxim, *expressio unius est exclusio alterius*,

expresses a rule of construction and not one of substantive law; and, its only service is as an aid in discovering the legislative intent when such intent is not otherwise manifest. *United States v. Barnes*, 222 U.S. 513, 32 S. Ct. 117, 56 L. Ed. 291 [(1912)]; *Jordan v. City of Mobile*, 260 Ala. 393, 71 So. 2d 513 [(1954)]; *Austin v. State*, 36 Ala. App. 690, 63 So. 2d 283 [(Ala. Ct. App. 1953)].

In fact, all rules for construing statutes must be regarded as subservient to the end of determining the legislative intent; and such intent must be determined from the language of the statute itself if it is unambiguous. *State v. Thames, Jackson, Harris Co.*, 259 Ala. 471, 66 So. 2d 733 [(1953)]; *Dixie Coaches v. Ramsden*, 238 Ala. 285, 190 So. 92 [(1939)].

* * *

It is the view of this court, after much study and deliberation, therefore, that by expressly repealing the Code section which included repairs to roads in the definition of a 'public improvement' and substituting therefor a definition of 'public improvement' leaving out repairs to roads, the legislature clearly expressed its intention of excluding repairs to roads from the operation of the competitive bid law.

We are further reinforced in our conclusion by the legislative history of Act Number 492, *supra*, and of course for the purpose of ascertaining the legislative intent, we may look to the legislative history when interpreting a statute. *Haralson v. State ex rel. King*, 260 Ala. 473, 71 So. 2d 79, 43 A.L.R.2d 1343 [(1953)]; City of *Birmingham v. Hendrix*, 257 Ala. 300, 58 So. 2d 626 [(1952)]; *Blair v. Greene*, 246 Ala. 28, 18 So. 2d 688 [(1944)]. Looking to the legislative history of Act number 492, we find that the definition of a 'public improvement' in the act as originally passed by the House of Representatives was substantially the same as the definition of a 'public improvement' then appearing in the Code; i.e., it included roads to be constructed or maintained. House Journal, Alabama 1947, p. 1763. The Senate rejected the bill as passed by the House and then passed a substitute bill

which defined a 'public improvement' as here pertinent, as roads to be constructed. Senate Journal, Alabama 1947, p. 1838. This substituted bill passed the Senate with 28 yeas and no nays. Senate Journal, *supra*, p. 1839. The Act was then sent back to the House where it passed, without any further changes, by 57 yeas and no nays. House Journal, *supra*, p. 2313.

It seems clear to us from the above legislative history of said Act number 492, that the legislature intended to exclude repairs and maintenance of roads from the definition of a 'public improvement.' ...

* * *

2. Intention of Legislature

If possible, legislative intent must be gathered from the language of the statute itself, and only when the language of the statute is ambiguous or uncertain will the court resort to consideration of fairness, justice or policy to ascertain the legislature's intent. *Advertiser Co. v. Hobbie*, 474 So. 2d 93 (Ala. 1985); *Morgan County Bd. of Educ. v. Ala. Public School and College Auth.*, 362 So. 2d 850 (Ala. 1978).

The Town of Loxley
v.
The Rosinton Water, Sewer and Fire Protection Authority, Inc.
376 So. 2d 705 (Ala. 1979)

* * *

In interpreting statutes the underlying consideration, always, is to ascertain and effectuate the intent of the legislature as expressed in the statutes. *Employees' Ret. Sys. of Alabama v. Head*, 369 So. 2d 1227 (Ala. 1979). While specific language used by the legislature is subject to explanation, such language cannot be detracted from, or added to. *May v. Head*, 210 Ala. 112, 96 So. 869 (1923).

* * *

Employees' Ret. Sys. of Alabama v. Head, *supra*. It is clearly not this court's function to usurp the role of the

legislature and correct defective legislation or amend statutes under the guise of construction. *Id.* The purpose of interpretation is not to improve a statute but rather to explain the express language used in the statute. *Lewis v. Hitt*, 370 So. 2d 1369 (Ala. 1979).

See also, Parker v. Hilliard, 567 So. 2d 1343 (Ala. 1990) (holding that when construing a statute, it is the duty of the court to ascertain the legislative intent from the language used in the statute, and, thus, when the statutory pronouncement is clear and not susceptible to different interpretations, it is the paramount judicial duty of courts to abide by the clear pronouncement, not to amend or repeal statutes under the guise of judicial interpretation.

Druid City Hospital Board
v.
Epperson
378 So. 2d 696 (Ala. 1979)

This is a garnishment case. The sole issue before us is the construction and constitutionality of Code 1975, § 6-6-480 *et seq.*, which create the remedy of garnishment against the wages and salaries of state, county and municipal employees.

* * *

Appellee ... contends that garnishment of the salary of a state employee is, in effect, a suit against the state and that § 6-6-480 *et seq.* are unconstitutional and void under Art. I, § 14 of the Alabama Constitution....

* * *

Statutes passed by the legislature should be construed to effect the legislative intent where that intent can be discerned. Additionally, it is presumed that the legislature does not enact meaningless, vain or futile statutes. *Adams v. Mathis*, 350 So. 2d 381 (Ala. 1977). Here, it is clear that the legislature intended to create the remedy of garnishment against the salaries of state employees. To construe the phrase "assent and consent" to grant absolute discretion to the state official named as garnishee to withhold assent at

will would allow a single individual to nullify the legislative will. Where one interpretation of a statute would defeat its purpose that interpretation will be rejected if any other reasonable interpretation can be given it. *McDonald v. State*, 32 Ala. App. 606, 28 So. 2d 805 (1947). We cannot assume that the legislature intended that the language it used was intended to delegate to a single state official the decision to permit the garnishment of some state salaries and deny it to others with no basis for either decision. Nor do we believe it intended to permit a state official to withhold assent in all cases, as is the case here.

3. Effect and Consequences

Studdard
v.
South Central Bell Telephone Company
356 So. 2d 139 (Ala. 1978)

In 1969, J.C. Studdard and wife, Grace Studdard, conveyed by deed a "right-of-way" for a public road to Etowah County. The deed stated the right-of-way "shall be 25 feet in width on each side of the center line of said road, as it is now located and staked out by Etowah County or as much of our lands as is required to make a 50-foot right-of-way across our lands. ..." In 1973, the telephone company was granted permission by the Etowah County Engineer, pursuant to Tit. 23, § 48, Code of Alabama 1940, § 23-1-85 Code 1975 to install a buried telephone cable within the right of way of said road. ...

In June, 1976, J.C. Studdard's brother-in-law damaged plaintiff's underground cable while he was erecting a fence for the Studdards on their property. Plaintiff brought suit for negligence....

* * *

... [The] trial judge was faced exclusively with a question of law, the interpretation of the statutory phrase "along the margin of the right of way of public highways," contained in Tit. 23, § 48, *supra*.

* * *

... Defendant contends that the cables may only be placed along the exact outer limit of the right of way.

Defendant argues that the addition of the words, "of the right of way: to the 1907 Code dictates the conclusion that the cables were improperly placed. Defendant contends that the cables may only be placed along the exact outer limit of the right of way.

Plaintiff's counsel answers this argument as follows:

> "... When used as it is in this statute, 'margin' patently means an area. It is so understood in everyday usage. The rules of this Court require that a margin of 1.5 inches be left around the typescript of this page. ARAP 32. If one of the judges of this Court makes notes in the margin of this brief, he or she will write in the space between the typewriting and the edge. As the word is employed in the statute it can have no comprehensible meaning unless it refers to the space between the traveled part of the roadway and the edge of the right-of-way. It was so understood in Gilbert and the best that counsel for Mr. Studdard can do with that is to claim that adding "of the right-of-way" to the section turns Gilbert inside out.
>
> "To reason that the added words change both Gilbert and ordinary usage so completely is to wind up standing on thin air. The same Legislature that incorporated those words retained the requirement that the lines be constructed 'along' the margin and added also the provision that they be subject to removal or 'change' by county governing bodies.
> "'Along' recently has been construed by this Court:
>
> " 'The word "along" is not exact or specific.
>
> " 'If the barrier were on the highway right of way and extended in the direction of the property line, it could

> be said that the barrier was "along" the property line. If the barrier were on the land owned by the defendant railroad and extended in the direction of the property line, it could be said that the barrier was "along the property line." Whether on one side or the other, the barrier would be "along" the property line. *Holley v. Seaboard Air Line R. Co.*, 291 Ala. 510, 515, 283 So. 2d 168, 173 (1973).'"
>
> If 'margin' means an exact, fixed point, its use with 'along' is a contradiction. Furthermore, if the Legislature granted telephone and telegraph companies a franchise to construct their lines only upon definite, fixed points (joined together to make a line) there was no sense in simultaneously giving county governing bodies the power to require the location of the lines to be changed. If the lines could be in one place only, to what other location could they be changed?"

In order to agree with defendant's statutory interpretation, we would have to hold that telephone lines and cables may only be constructed along one line. Not only would this prove to be impracticable as plaintiff's counsel points out, but it would require an excessively strained reading of Tit. 23, § 48, Code, which we are unwilling to give it.

In ascertaining legislative intent, we are entitled to consider conditions which may arise under the provisions of statutes and to examine the results which will flow from giving the language in question a particular meaning over another. *Wright v. Turner*, 351 So. 2d 1 (Ala. 1977); *League of Women Voters v. Renfro*, 292 Ala. 128, 290 So. 2d 167 (Ala. 1974). We agree with plaintiff's interpretation of the meaning of "along the margin of the right of way."

4. Spirit and Intention of the Law

The courts are not controlled by the literal meaning or

language of a statute but by its spirit and intention. *Bell v. Pritchard*, 273 Ala. 289, 139 So. 2d 596 (Ala. 1962); *Hawkins, Judge, v. City of Birmingham*, 239 Ala. 185, 194 So. 533 (Ala. 1940); *Davis & Co. v. Thomas*, 154 Ala. 279, 45 So. 897 (Ala. 1908). "That which is within the letter, although not within the spirit, is not within the statute." *Hawkins v. City of Birmingham*, 239 Ala. 185, 194 So. 533 (Ala. 1940), citing 59 Corpus Juris 966. Or as said in *Davis & Co. v. Thomas*; *supra*, "It will not do to be governed uniformly by the literal expression of a statute; for by so doing we should many times wander entirely from the obvious intention of the Legislature." *See also, City of Birmingham v. Southern Express Co.*, 164 Ala. 529, 51 So. 159 (Ala. 1909).

This rule of construction does not imply that the letter shall control the spirit. A thing may be within the letter of a statute and not within the meaning or spirit, or it may be within the clear meaning or spirit and not within the letter. Courts, in construing statutes, often look less to the letter than to the context, the spirit, or to the meaning of the statutes to arrive at the true intent of the lawmaker. The Supreme Court, when it is called upon to construe a statute, has a duty to ascertain legislative intent expressed in the statute, which may be gleaned from the language used, reason and necessity for Act, and the purpose sought to be obtained. *Tin Man Roofing Co., Inc. v. Birmingham Bd. of Educ.*, 536 So. 2d 1383 (Ala. 1988). Statutes are often drawn inartificially. Apt words are not always used, and perspicuity and precision are not always observed by those who draft statutes. The whole statute under construction, as well as others, must sometimes be looked to, to ascertain the true meaning and intent. *City of Birmingham v. S. Express Co.*, 164 Ala. 529, 51 So. 159 (1909).

5. Statute as a Whole

Employees' Retirement System
of Alabama
v.
Head
369 So. 2d 1227 (Ala. 1979)

This appeal by the Employees' Retirement System of

Alabama, the members of its Board of Control, and its Board of Control, is from a judgment of the Circuit Court of Montgomery County holding that an optional retirement allowance elected by a member of the System was not abrogated by death of the member prior to the effective date of his retirement. ...

* * *

The decision in this case turns on the correct interpretation of § 36-27-16(d). When this court is called upon to interpret a statute, the underlying consideration, always, is to ascertain and effectuate the intent of the legislature as expressed in the statute. *Bagley v. City of Mobile*, 352 So. 2d 1115 (Ala. 1977); *Tillman v. Sibble*, 341 So. 2d 686 (Ala. 1977). When the language of a statute is clear and unambiguous, there is no room for construction and a clearly expressed intent must be given effect. *Boswell v. S. Cent. Bell Tel. Co.*, 293 Ala. 189, 301 So. 2d 65 (1974); *Alabama Indust. Bank v. State ex rel. Avinger*, 286 Ala. 59, 237 So. 2d 108 (1970).

* * *

When a statute is not ambiguous or unclear, courts are not authorized to indulge in conjecture as to intent of the legislature or to look to consequences of interpretation of law as written and a clearly expressed intent must be given effect. *Ex parte Presse*, 554 So. 2d 406 (Ala. 1989), remand *Presse v. Koenemann*, 554 So. 2d 432 (Ala. 1989). In arriving at a determination of the intent of the legislature, the whole statute under construction should be examined and, if possible, each section should be given effect, and reason and necessity for the statute as well as the public purpose sought to be obtained, must be considered by the reviewing court. *Kirkland v. State*, 529 So. 2d 1036 (Ala. Cr. App. 1988). *Tillman v. Sibble*, 341 So. 2d 686 (Ala. 1977); *State ex rel. Moore v. Strickland*, 289 Ala. 488, 268 So. 2d 766 (Ala. 1972); *City of Birmingham v. Hendrix*, 257 Ala. 300, 58 So. 2d 626 (Ala. 1952).

6. Motive and Opinion of Legislators

James
v.
Todd
267 Ala. 495, 103 So. 2d 19 (Ala. 1958)

[The trial court refused to permit the introduction of testimony of four members of the Legislature concerning the consideration and passage of Act No. 570 by that body.].

* * *

The questions to and the answers of the witnesses clearly show an attempt to have them express their conclusions as to the motive, purpose and intent of the Legislature in passing the Act, and to show that such were different from that expressed in Section 1 of the Act. In *Morgan County v. Edmonson*, 238 Ala. 522, 192 So. 274, 276 [(1939)], this court said:

> "It is of course a well settled rule that in determining the validity of an enactment, the judiciary will not inquire into the motives or reasons of the legislature or the members thereof. 16 C.J.S. Constitutional Law § 154, p. 487. 'The judicial department cannot control legislative discretion, nor inquire into the motives of legislators.' City of Birmingham v. Henry, 224 Ala. 239, 139 So. 283 [(1931)]. ..."

See also, May v. Head, 210 Ala. 112, 96 So. 869. The following from *Wiseman v. Madison Cadillac Co.*, 191 Ark. 1021, 88 S.W.2d 1007, 1009, 103 A.L.R. 1208 [(1935)], is applicable:

> "The appellee introduced Senator E. B. Dillon, a member of the Fiftieth General Assembly, who testified with reference to holding meetings and what the purpose of the amendment was, and testified at length about the passage of the bill through the Senate. He testified about his understanding of the intention of the Legislature and the intention of the committee in adopting section 15 as it now appears in

the act.

"The court held that the evidence offered was incompetent and therefore did not consider it. ...

The chancery court was correct in holding the evidence introduced by appellee incompetent.

"The intention of the Legislature, to which effect must be given, is that expressed in the statute, and the courts will not inquire into the motives which influenced the Legislature or individual members in voting for its passage, nor indeed as to the intention of the draftsman or of the Legislature so far as it has not been expressed in the act. So in ascertaining the meaning of a statute the court will not be governed or influenced by the views or opinions of any or all of the members of the Legislature, or its legislative committees or any other person."

See 2 Sutherland, *Statutory Construction*, § 5011, 3d Ed.; 82 C.J.S. Statutes § 354, p. 745.

The trial court correctly sustained the objections to the testimony of the members of the Legislature.

* * *

Wallace
v.
Jaffree
472 U.S. 38, 105 S. Ct. 2479, 86 L. Ed.2d 29 (1985)

[The U.S. Supreme Court held, in a decision by Justice Stevens, that Alabama's "moment of silence or voluntary prayer" statute was unconstitutional. The Court ruled that the First Amendment requires that a statute must be struck down if it is entirely motivated by a purpose to advance religion.

The record here not only establishes that § 16-1-20.1's

purpose was to endorse religion, it also reveals that the enactment of the statute was not motivated by any clearly secular purpose. In particular, the statements of § 16-1-20.1's sponsor in the legislative record and in his testimony before the District Court indicate that the legislation was solely an "effort to return voluntary prayer" to the public schools. From the syllabus by Reporter of Decisions and ed.]

* * *

On August 2, 1982, the District Court held an evidentiary hearing on appellees' motion for a preliminary injunction. At that hearing, State Senator Donald G. Holmes testified that he was the "prime sponsor" of the bill that was enacted in 1981 as § 16-1-20.1. He explained that the bill was an "effort to return voluntary prayer to our public schools ... it is a beginning and a step in the right direction." Apart from the purpose to return voluntary prayer to public school, Senator Holmes unequivocally testified that he had "no other purpose in mind."

* * *

IV

The sponsor of the bill that became § 16-1-20.1, Senator Donald Holmes, inserted into the legislative record--apparently without dissent -- a statement indicating that the legislation was an "effort to return voluntary prayer" to the public schools. ...

[The following is from Chief Justice Burger's dissent, 472 U.S. at 86, 105 S. Ct. at 2505, 86 L. Ed.2d at 63.]

Curiously, the opinions do not mention that all of the sponsor's statements relied upon -- including the statement "inserted" into the Senate Journal -- were made *after* the legislature had passed the statute; indeed, the testimony that the Court finds critical was given well over a year after the statute was enacted. As even the appellees concede, there is not a shred of evidence that the legislature as a whole shared the sponsor's motive or that a majority in either house was even aware of the sponsor's view of the bill when it was

passed. The sole relevance of the sponsor's statements, therefore, is that they reflect the personal, subjective motives of a single legislator. No case in the 195-year history of this Court supports the disconcerting idea that post-enactment statements by individual legislators are relevant in determining the constitutionality of legislation.

7. Motive and Intent of the Drafters

Pilgrim
v.
Gregory
594 So. 2d 114 (Ala. Civ. App. 1991)

* * *

The weight given to the administrative interpretation is increased when the legislature reenacts the law, yet fails to indicate its disapproval of the administrative construction. *State v. Reid*, 284 Ala. 191, 223 So. 2d 594 (1969). We find the record to be devoid of any indication of the legislature's disapproval of the administrative construction. Quite to the contrary. In tracking the legislative history of the 1982 Act No. 82-465, we consider the testimony of the head of the income tax division of the department and the chief draftsman of the legislation, and then the legislative history of the language change amendment of, or reenactments to, § 40-18-15(a)(3)(g) in 1982, and twice in 1985.

The testimony of the head of the income tax division of the department and the chief draftsman of the legislation indicated that neither the drafting committee nor the department of revenue ever intended to include future amendments or modifications to the federal statute. The draftsman stated that members of the bar drafting group were very concerned about adopting a statute that would change when federal law changed and that "we worried that it would be unconstitutional." Then when asked if subsection (g) included a date specific, *i.e.*, "as in effect January 1, 1982, "he admitted that "I messed up, in all honesty. It's a clerical error ... . We simply overlooked the date in paragraph (g)." Clearly, this testimony indicates

that there was an initial omission of crucial language which the drafters thought necessary to give different meaning to the clear meaning of subsection (g) as it is now before us for interpretation as it was enacted by the legislature.

We find that the testimony concerning the intentions of the department head and the draftsman should not govern the decision regarding the intent of the legislature. It is well settled that the intent of the legislature is that expressed in the statute, and the motives of individual members of the legislature or the intentions of the draftsman, or any other person, will not be looked into by the court if their motives or intentions are not expressed in the statute, and the court will not be influenced by their views or opinions. *James v. Todd*, 267 Ala. 495, 103 So. 2d 19 (1957).

* * *

Ex parte Richard Chambers
522 So. 2d 313 (Ala. 1987)[1]

* * *

The Habitual Felony Offender Act, with its punishment enhancement provisions, is a penal statute, and must be strictly construed, especially in regard to its applicability to felony offenses outside the Criminal Code. A careful reading of the pertinent provisions of Title 13A, Chapter 5, along with the commentary thereto, makes it quite obvious that the legislature did not intend the Habitual Felony Offender Act to apply to felony drug offenses. That legislative intent is made unequivocal by the inclusion of a recidivist statute in the Controlled Substances Act itself, the enhancement provisions of which are plainly applicable to the facts of the present case. ...

* * *

[1] The result in *Ex Parte Chambers* has been superseded by The Drug Crimes Amendments Act of 1987 (codified at §§ 13A-12-210-216), repealing § 20-2-70, the recidivist provision within the Controlled Substances Act, for conduct occurring after its effective date, making drug-related crimes subject to the Habitual Felony Offender Act. *Burton v. State,* 728 So.2d 1142 (Ala. Crim. App. 1998).

Tyrone Tinsley
v.
State
485 So. 2d 1249 (Ala. Crim. App. 1986)

* * *

... [t]he construction of the escape [from penal facility] statutes employed in the earlier cases sheds light on the legislature's intent in drafting the new escape statutes. The commentary to the current escape provisions states the following:

> "Whereas previous law provided a helter-skelter treatment of escape, the Criminal Code sections are based on two factors: (1) use of force, and (2) the seriousness of the crime that led to detention. Under this scheme, the lowest grade of escape is a simple escape from custody (§ 13A-10-33). The grade is raised (§ 13A-10-31) where at least one of the following elements is present: (a) the escapee used force or a deadly weapon, (b) the escapee was a convicted felon, or (c) the escapee was from a prison, jail, or like facility."

Ala. Code §§ 13A-10-31 through 33 (Commentary). (Emphasis added.)

The commentary to the escape statutes makes it clear that the legislature intended the fact of a prior conviction to be an essential element of escape in the first degree. Compare Model Penal Code and Commentaries § 242.6(4)(a) (1980)(providing for a higher grade of escape if the accused has been arrested, charged, or convicted of a felony); N.Y. Penal Law §§ 205.00, --.05, --.10, --.15 (McKinney 1984)(same).

* * *

Simmons
v.
Clemco Industries
368 So. 2d 509 (Ala. 1979)

* * *

Though the official comments are a valuable aid in construction, they have not been enacted by the legislature and are not necessarily representative of legislative intent. The legislature has manifested by amendments to the standard version of the Uniform Commercial Code an intent to expand the right of recovery for personal injury arising from breach of warranty. *Atkins v. American Motors Corp.*, 335 So. 2d 134, 141-42 (Ala. 1976). If the legislature intended to require warranty beneficiaries to give notice, then it is presumed the legislature would have included such a provision particularly in light of the other specific amendments. *Cf. Page v. Camper City & Mobile Home Sales*, 292 Ala. 562, 297 So. 2d 810 (1974).

* * *

IMED Corporation et al
v.
Systems Engineering Associates Corporation, et al
602 So. 2d 344 (Ala. 1992)

[Parties disagree as to the meaning of language in the trade secrets act in § 8-27-3. The Act was submitted to the legislature with comments following each section.]

* * *

... However, the comments that follow each section of the Act, which were prepared by the Alabama Law Institute's committee on trade secret law, although perhaps useful in construction, have not been enacted by the legislature and do not necessarily represent legislative intent. *See* 1987 Alabama Acts, No. 87-669. *See also*, *Simmons v. Clemco Industries*, 368 So. 2d 509 (Ala. 1979)(official comment to Ala. Code 1975, § 7-2-607, part of the Uniform Commercial Code, held not controlling in light of the clear language of the statute). Although the comment to § 8-27-3 suggests that the committee did not intend to codify § 758B of the Restatement, the clear language of § 8-

27-3 indicates that § 758B was, indeed, incorporated into the Act. The "Preface", as well as the comments to the Act, reveals that the committee, in drafting the Act, drew heavily from both the Restatement and the Uniform Trade Secrets Act. Although it appears at first blush that § 8-27-3 is merely a codification of § 757 of the Restatement, which, admittedly, could not form the basis for a claim against Lewis under the facts presented in this case, a close comparison of the Act with §§ 757 and 758B of the Restatement, and with the Uniform Trade Secrets Act, indicates that there is a substantial difference between the language of the Act and the language utilized in § 757. Section 757 states, in pertinent part, that "[o]ne who discloses or uses another's trade secret ... is liable to the other if ... *he learned* the secret from a third person *with notice* of the facts that it was a secret and that the third person discovered it by improper means or that the third person's disclosure of it was otherwise a breach of his duty to the other." (Emphasis added.) The Uniform Trade Secrets Act, in pertinent part, defines "misappropriation" as the "disclosure or use of a trade secret of another ... by a person who ... *at the time of disclosure or use, knew or had reason to know* that the trade secret had been misappropriated by the third person." (Emphasis added.) Thus, it appears that the Uniform Trade Secrets Act incorporated the principles of § 758B of the Restatement and that the language of the Uniform Trade Secrets Act was incorporated into the Act. Although the comment to § 8-27-3 is troubling and, given the underlying purpose of the Act, causes us to wonder what the committee had in mind, we are bound under well established rules of statutory construction to interpret the language of § 8-27-3 to mean exactly what it says and to give effect to the apparent intent of the legislature. *Tuscaloosa Co. Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa Co.*, [589 So. 2d 687 (Ala. 1991)].

8. Retrospective vs. Prospective Application

Jackson
v.
Fillmore
367 So. 2d 948 (Ala. 1979)

The sole issue in this case is whether the rule announced in *Nunn v. Keith*, 289 Ala. 518, 268 So. 2d (1972), should be applied retrospectively or prospectively to the facts of this case. ...

* * *

When a rule established by judicial decision has existed long enough to be relied upon by those acquiring rights to, or title in, certain property, courts should be loath to destroy such rights when overruling prior decisions. *See Majestic Coal Co. v. Anderson*, 203 Ala. 233, 82 So. 483 (1919) and *Bibb v. Bibb*, 79 Ala. 437 (1886). In *McVay's Adm'r v. Ijams*, 27 Ala. 238, 243 (1855), this Court held:

> ". . . When, however, a rule of property has been adopted by judicial decision, and may reasonably be supposed to have entered into the business transactions of the country, it is our duty to adhere to it, lest we should overturn titles founded upon it. . . ."

We believe this principle to be as equally applicable to those cases which overrule prior cases as to those cases which refuse to do so.

* * *

> "The case of *Bibb v. Bibb*, 79 Ala. 444 (1885), though limiting the principle in its application to the subject-matter of the particular litigation, clearly recognized the rights of parties acquired under decisions of the Supreme Court in the following pertinent language: 'The quieting of litigation; the public peace and repose, respect for judicial administration of the law, and confidence in its reasonable certainty, stability, and consistency, and all considerations of public policy -- call for

> permanently upholding acts done, contracts executed, rights vested, and titles to property acquired on the faith of decisions of the court of last resort.'
>
> "Persons contracting are presumed to know the existing law, but neither they nor their legal advisers are expected to know the law better than the courts, or *to know what the law will be* at some future day. Any principle or rule which deprives a person of property acquired by him, or the benefit of a contract entered into, in reliance upon and strict compliance with the law in all respects as interpreted and promulgated by the court of last resort at the time of the transaction, and no fault can be imputed to him in the matter of the contract, unless it be held a fault not to foresee and provide against future alterations in the construction of the law, must be radically wrong. Such a principle or rule of law would clog business transactions, unsettle titles, and destroy all confidence in the decisions of the Supreme Court of the State. We hold the doctrine to be sound and firmly established by the decisions of the Supreme Court of the United States, and enunciated by many eminent text-writers, that rights to property, and the benefits of investments acquired by contract, in reliance upon a statute as construed by the Supreme Court of the State, and which were valid contracts, under the statute as thus interpreted, when the contract or investments were made, cannot be annulled or divested by subsequent decisions of the same court overruling the former decisions." [Emphasis ours.]

See also, *Peddycoart v. City of Birmingham*, 354 So. 2d 808, 815 (Ala. 1978)(Torbert, C.J., concurring specially), where Chief Justice Torbert pointed out that "[t]he principle of prospective application is not of recent vintage, but was recognized by this court as early as 1890. *Farrior v. New England Mortg. Sec. Co.*, 92 Ala. 176, 9 So. 532 (1890)."

In light of the evidence in this case demonstrating reliance upon the rule of Bernhard, the decision of the trial court to apply *Nunn v. Keith* in this case prospectively, rather than retrospectively, is correct and is due to be affirmed.

9. Provisos

Pace
v.
Armstrong World Industries, Inc.
578 So. 2d 281 (Ala. 1991)

[The Alabama wrongful death statute says "provided the testator ... could have commenced an action ..., it does not require the plaintiff must have been able to commence such an action in Alabama."

The court was asked to interpret the scope of the proviso in § 6-5-410.]

The general effect of provisos is to restrict the operative effect of statutory language. *Sutherland [Stat. Const.*, § 47.08 (4th ed.)]. Absent the proviso, the language of § 6-5-410 provides that a personal representative may commence an action in a court of competent jurisdiction within the State of Alabama, and not elsewhere, against a person or corporation for the wrongful act or omission that caused the death of the decedent. The rule on interpretation of provisos provides that where the restrictive scope of the proviso is in doubt the proviso should be strictly construed, and that only those subjects expressly restricted should be freed from the operation of the statute. *Sutherland*, *supra*. The proviso requires that the decedent must have been able to commence a personal injury action had the wrongful act or omission not caused death.

* * *

B. Prior Administrative Interpretations

1. Failure to Enact Legislation

Freeman
v.
Jefferson County
334 So. 2d 902 (Ala. 1976)

* * *

The single legal question presented on this appeal is whether the first sentence of Section 5 of the resolution, quoted post, is effective. Section 5 provides:

> "Longevity time will be computed on total uninterrupted full-time employment service with Jefferson County, Alabama. Leaves of absence approved by the Personnel Director shall not be construed as an uninterruption of time. Absences without leave, layoffs and suspensions without pay will not be considered in computing total longevity time."

The trial court held, in part, that "In the computation of County longevity pay for the Plaintiff and other civil service County employees only uninterrupted full-time service with the County is considered." This was based on the fact (conceded by both sides) that neither the Homewood service nor the prior county service was uninterrupted county service. ...

* * *

Freeman concedes in brief that "At the time of passage of the 1972 Resolution a request was made by certain employees that the Commission include previous classified service with Jefferson County and municipalities subject to the Jefferson County Personnel Board Act."

Federal cases support the rule that the rejection of an Amendment by the Congress which would have made the statute applicable to a given situation furnishes a strong inference that the statute was not intended to be applicable

to that given situation. *United States v. Pfitsch*, 41 S. Ct. 569, 256 U.S. 547, 65 L. Ed. 1084 (1921); *United States v. Great N. R. Co.*, 287 U.S. 144, 53 S. Ct. 28, 77 L. Ed. 223 (1932); *Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 53 S. Ct. 350, 77 L. Ed. 796 (1933), and *Madden v. Brotherhood & Union of Transit Employees of Baltimore*, 147 F.2d 439 (4th Cir. 1945). The fact that the Commission was requested to amend the resolution to effect the same result as plaintiff has sought in this suit is very persuasive that the Commission did not choose to recognize interrupted service in the computation of longevity.

We have said that while a legislative construction of a constitutional provision cannot be accepted as final by the judiciary, yet it is justly influential when the provision is of doubtful meaning or effect, and this legislative interpretation of the provision has not been questioned, has been acquiesced in, and acted upon for a considerable period. *Bd. of Revenue of Jefferson Co. v. Huey*, 195 Ala. 83, 70 So. 744. This statement was followed in *Opinion of the Justices No.* 69, 247 Ala. 195, 23 So. 2d 505 [(1945)].

* * *

Pilgrim
v.
Gregory
594 So. 2d 114 (Ala. Civ. App. 1991)

* * *

The record reveals the following facts: A deduction against income taxes for taxes paid was enacted in 1935 and has remained as a law on the books since that time. From 1982 until 1990, and at the time that this action originated, § 40-18-15(a)(3)(e), Ala. Code 1975, contained language providing for a deduction to taxpayers for state and local general sales taxes; however, subsection (a)(3)(g) of this statute tied any such deduction to a federal tax statute.

...

"*g. The taxes described in paragraphs c, d, e and f shall be deductible only to the extent that such taxes are deductible for federal income tax purposes under 26 USCA 164 (relating to*

taxes)...."

(Emphasis supplied). In 1982, 26 U.S.C.A. § 164 (West 1978)(amended 1986), did not permit a federal income tax deduction for gasoline, tobacco, alcohol, utility, telephone and transportation taxes, but did provide for a federal deduction for state and local general sales taxes; however, this deduction was repealed by the Tax Reform Act of 1986. The enactment of Act No. 82-465, Ala. Acts 1982, which amended § 40-18-15 in 1982 and added subsection (g), enabled the state to repeal the deduction for the taxes enumerated above, which were not allowed as deductions by 26 U.S.C.A. § 164. ...

* * *

The legislature has amended, or reenacted, § 40-18-15 six times since the enactment of Act No. 82-465, three times prior to the department's interpretation in 1986 repealing the deductions for state and local general sales taxes, and three times afterward in 1987, 1988, and 1990. However, the language of the statute addressing the deductibility of sales taxes was not changed until 1990. At that time the legislature enacted Act No. 90-596, Ala. Acts 1990, which amended § 40-18-15(a)(3) by deleting subsection (e), thereby deleting the language that pertained to the state and local general sales tax deduction. The purpose of the deletion, noted in the title of the bill enacted, was "*to clarify* the elimination of the deduction for state and local sales and use taxes to conform to federal law." (Emphasis supplied.)

* * *

In the present case, as the above pertains to legislative intent as expressed by the words of the statute, we find that according to § 40-18-15, state and local general sales taxes were to be deductible to the extent that they were deductible under 26 U.S.C.A. § 164 for the stated purpose of "conform[ing] certain exclusions and deductions to federal law." This was not limited by the language "as in effect in January 1, 1982," used in other parts of the Act. Although Gregory argues that because the legislature did not use the language "as amended from time to time," it did not intend that the statute include future amendments to the federal

law. We find that the language used in subsection (g) of the statute has the same effect as the language "as amended from time to time." Therefore, we further find that the intent of the legislature regarding the deductions listed in § 40-18-15 was that the federal statute was to be referenced as it might exist at any time. This finding is substantially reinforced by the stated purpose of the Act, stated in its title; by the consistency of the department's interpretation in 1982 and 1986, the effect of which was to repeal certain deductions and produce revenue for state purposes; by the legislature's knowledge of the departmental interpretation and the amendment and reenactment of the Act five times without any indication by the legislature of its disapproval of the administrative construction; by the statutory clarification by Act of the Legislature in 1990; and finally, by the applicable rule that deductions must be strictly construed against the taxpayer and in favor of the taxing authority.

Gregory argues that because the subject statute refers specifically to another statute (26 U.S.C.A. § 164), this court must look to the rules of construction of "reference statutes" under Alabama law. The general rule, which is discussed at 2A Sutherland, *Statutory Construction* § 51.07 (4th ed. 1973), and which is followed in this state, is that a statute of specific reference only incorporates the provisions of the adopted statute in existence at the time of adoption without subsequent amendments. *See also*, *Shelby Cty. Comm'n v. Smith*, 372 So. 2d 1092 (Ala. 1979); *Carruba v. Meeks*, 274 Ala. 714, 150 So. 2d 195 (1963). However, as the Sutherland treatise explains at § 51.08, at 516, the general rule does not apply where "*the legislature has expressly or by strong implication shown its intention to incorporate subsequent amendments with the statute.*" (Emphasis supplied.) *See also*, 82 C.J.S. *Statutes* § 370 (1953), at 847-48. Because we have found that the legislature has clearly shown its intent that the federal statute be followed as it might exist at any given time, further discussion of the law pertaining to reference statutes is therefore unnecessary.

* * *

2. Last Enactment

Baldwin County
v.
Jenkins
494 So. 2d 584 (Ala. 1986)

* * *

... Where two statutes are related to the same subject and embrace the same matter, a specific or particular provision is controlling over a general provision. *Green v. Fairfield City Bd. of Educ.*, 365 So. 2d 1217 (Ala. Civ. App. 1978), *cert. denied*, 365 So. 2d 1220 (Ala. 1979). Special statutory provisions on specific subjects control general provisions on general subjects. *Cooper Transfer Co. v. Alabama Pub. Serv. Comm'n*, 271 Ala. 673, 127 So. 2d 632 (1961). Here, § 36-3-4 deals with county officers in general, whereas § 11-3-1 deals specifically with county commissioners' terms of office.

Moreover, in cases of conflicting statutes on the same subject, the latest expression of the legislature is the law. *Middleton v. Gen. Water Works & Electric Corp.*, 25 Ala. App. 455, 149 So. 351, *cert. denied*, 227 Ala. 219, 149 So. 352 (1933). Where a conflict exists between statutes, the last enactment must take precedence. *Laney v. Jefferson Co.*, 249 Ala. 612, 32 So. 2d 542 (1947). Clearly, § 11-3-1, as amended, is the latest legislative expression relating to terms of county commissioners, and the legislature has provided for such terms to be altered by local act.

Where a statute may be given two reasonable constructions, this court should apply the construction which will uphold, and not defeat, the legislative will. *Standard Oil Co. of Kentucky v. Limestone Cnty.*, 220 Ala. 231, 124 So. 523 (1929).

* * *

State
v.
Crenshaw
287 Ala. 139, 249 So. 2d 622 (1971)

* * *

> It is settled that if two provisions of a tax statute are in conflict, the legislative intent must be found, if possible, from the whole act, considering its history, nature, purpose, etc., having in mind that such statutes are construed in favor of the taxpayer. But if the conflict is irreconcilable and the statute cannot be determined by other rules, then the statutory rule as to the last legislative expression will control. *State v. Burchfield Bros.*, 211 Ala. 30, 99 So. 198 [(1924)]. Where two sections or provisions of an act are conflicting (as in the instant case), the last in order of arrangement controls. *Davis v. State, ex rel. Cherokee Cnty. Bd. of Equalization*, 16 Ala. App. 397, 78 So. 313 [(Ala. Ct. App. 1918)]; *Wilkins v. Woolf*, 281 Ala. 693, 208 So. 2d 74.

* * *

3. Statutes in Pari Materia

This term refers to a device by which the court, while construing one statute, will look to other statutes that have similar purposes. In *McDonalds Corp. v. DeVenney*, 415 So. 2d 1075 (Ala. 1982), the issue was a bond issued under a 1977 County Board Act to retail businesses such as McDonalds and K-Mart. The court looked at other such acts, such as the Cater Act, the Wallace Act, and 1961 County Board Act and concluded that these acts and the 1977 act should be read to mean an intention to bring into the state non-retail businesses. The Alabama Supreme Court held that these acts are in pari materia "and as a general rule, such statutes should be construed together to ascertain the meaning and intent of each." 415 So. 2d at 1078.

A long standing rule of statutory construction is that the court has the duty to construe each word of each section consistently with the other sections in pari materia. The entire statute should be considered and not just an isolated part, so that every clause is given effect in light of the subject matter and purpose of the law. *Norandal USA, Inc. v. State Dept. of Revenue*, 545

So. 2d 792 (Ala. Civ. App. 1989).

In *City of Birmingham v. Southern Express Co.*, 164 Ala. 529, 538, 51 So. 159 (1909) it was held that:

> "Two or more statutes or laws are often in pari materia, and where they are they should all be looked to, in order to ascertain the meaning and intent of each.... They were both enacted by the same Legislature, they both relate to the same subject of taxation, license or privilege taxes upon trades, businesses, etc., and neither expressly repeals the other. Both should therefore be given effect, if practicable and consistent with sound construction or good reason."

Repeal by implication is not favored. It is only when two laws are so repugnant to or in conflict with each other that it must be presumed that the Legislature intended that the latter should repeal the former. This is never the case if there is a reasonable field of operation, by a just construction, for both; then they will both be given effect.[2] This is preferable to repeal by implication. *Riggs v. Brewer*, 64 Ala. 282 (1879); *Herr v. Seymour*, 76 Ala. 270 (Ala. 1884); *Wyman v. Campbell*, 6 Port. 219, 31 Am. Dec. 677 (Ala. 1838). Each statute which constitutes a part of a system of laws should, if practicable, be so construed as to make the system consistent in all its parts; each is thus considered a part of the whole.

Likewise in *League of Women Voters of Alabama v. Renfro*, 292 Ala. 128, 290 So. 2d 167 (Ala. 1974), where the League brought action to compel the county board of registrars to remain open on four Saturdays while the board of registers sought to close on "legal holidays," the court held that "[s]tatutes are in pari materia where they deal with the same subject. *Kelly v. State*, 273 Ala. 240, 139 So. 2d 326 [(1962)]. Where statutes are in pari materia they should be construed together to ascertain the meaning and intent of each. *City of Birmingham v. S. Express Co.*, *supra*. Where possible, statutes should be resolved in favor of each other to form one harmonious

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[2] *See also Burnett v. Chilton County Health Care Authority*, 278 So.3d 1220 (Ala. 2019).

plan and give uniformity to the law. *Waters v. City of Birmingham*, 282 Ala. 104, 209 So. 2d 388 [(1968)]; *Walker Cnty. v. White*, 248 Ala. 53, 26 So. 2d 253 [(1946)]."

Yates
v.
Sears, Roebuck and Company
362 F. Supp. 520 (M.D. Ala. 1973)

[Civil rights action attacking validity of detinue statute.]

* * *

Alabama's Detinue Statute, Title 7, § 918, [§ 6-5-250], is virtually identical to the Florida Replevin Statute which was found unconstitutional in *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed.2d 556 (1972). Both statutes provide for seizure of property by state agents upon the ex parte application of a private party who claims a right to the property and is willing to post a security bond. Neither statute provides for notice or a prior hearing. In fact, Title 7, § 918 [§ 6-5-250] has already been ruled unconstitutional in *Anderson v. Barnett First Nat. Bank of Jacksonville*, 60 F.R.D. 104, M.D. of Ala. (1973). In light of *Fuentes v. Shevin*, *supra*, it is

Ordered, adjudged and decreed by this Court:

1. That Title 7, § 918 [§ 6-5-250], Code of Alabama be, and the same is hereby, declared unconstitutional in that it contravenes the Fourteenth Amendment to the Constitution of the United States by allowing Plaintiff to be deprived of her property without due process of law;

* * *

Nothing in this order shall be construed to indicate that said § 918 is unconstitutional or void when utilized pursuant to the provisions of Code of Alabama, Rules of Civil Procedure, Rule 64. Questions of the constitutionality of said rule or of Code of Alabama, Title 7, § 918, when

applied pursuant to said Rule 64, were not before this Court at the time of issuance of this order.

Ex Parte Ala. Mobile Homes, Inc.
468 So. 2d 156 (Ala. 1985)

* * *

Petitioner argues that Alabama's pre-judgment garnishment procedure violates the due process standards set out in *N. Georgia Finishing, Inc. v. DiChem, Inc.*, 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed.2d 751 (1975). The petition states that a "pre-judgment garnishment of a bank account is, on its face, unconstitutional."

* * *

We deem it unnecessary to elaborate on the procedure for a pre-judgment garnishment under Alabama law. It is sufficient to say that the provisions of Rule 64, Alabama Rules of Civil Procedure, coupled with the requirements of the garnishment statute, §§ 6-6-370 *et seq.*, Alabama Code 1975, appear to be adequate to protect the defendant's due process rights.[3] Rule 64 was drafted specifically to comply with the mandates of *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972), and its progeny, including North Georgia Finishing, *supra*.[4]

* * *

Locke
v.
Wheat
350 So. 2d 451 (Ala. 1977)

* * *

The issue presented for review is whether or not Commissioner Locke may order a transfer under Section 167 without first complying with the procedure set out in Section 166. In other words, this court must decide whether the trial court erred in granting an injunction because Commissioner Locke failed to demand in writing that Mobile County correct the overcrowded conditions within a reasonable time before ordering the transfer to Washington

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[3] But *see Green v. Harbin,* 615 F. Supp. 719 (1985).

[4] *See also* Rule 64A.

County jail.

* * *

Sections of the Code dealing with the same subject matter are in pari materia. *Kelly v. State*, 273 Ala. 240, 139 So. 2d 326 (1962). As a general rule, such statutes should be construed together to ascertain the meaning and intent of each. *League of Women Voters v. Renfro*, 292 Ala. 128, 290 So. 2d 167 (1974); *Union Central Life Ins. Co. v. State*, 226 Ala. 420, 147 So. 187 (1933); *City of Birmingham v. S. Express Co.*, 164 Ala. 529, 51 So. 159 (1909).

Applying these rules of construction to the statutes at issue in the present case, we conclude that Commissioner Locke must first comply with the provisions of Section 166 by ordering in writing that Mobile County correct the conditions in its jail before he orders a transfer under the authority given him by Section 167. We believe the intent of the legislature that the provisions of Section 166 must be carried out before Section 167 may be activated is clearly indicated by the first sentence of Section 167, which sentence specifically refers to the provisions of Section 166. Furthermore, these two Code sections are clearly in pari materia as they were both enacted by the same legislature and they both relate to the subject of the prisons. Therefore, Section 166 should be construed together with Section 167.

Although these statutes were passed many years ago and the legislature at that time could not have known of the current problem of overcrowding in the county jails due to the housing of state prisoners, we are still bound by the rules of statutory construction.

McDonald's Corp.
v.
DeVenney
415 So. 2d 1075 (Ala. 1982)

Appellees, a group of individuals who either are the owners of or have an ownership interest in existing retail businesses in Elmore County, filed a declaratory judgment

action against appellants, McDonald's Corporation, Aronov Realty Company, K-Mart Corporation, and the Industrial Development Board of Elmore County, regarding the validity of two proposed bond issues . . . . The two projects involve retail facilities. One project is a McDonald's Restaurant and the other is a retail shopping center comprised of various retail mercantile stores including a K-Mart Store.

* * *

... The position of the appellants is that the Legislature intended for retail businesses to make use of the 1977 County Board Act.

Appellees, on the other hand, contend that the Legislature did not intend for the 1977 Act to finance the construction of retail facilities. In addition, appellees submit that the 1977 Act must be interpreted along with the 1949 Cater Act (Code 1975, § 11-54-81(a)), the 1951 Wallace Act (Code 1975, §§ 11-54-20 to -32) and the 1961 County Act (Code 1975, §§ 11-20-1 to -13). ...

* * *

Appellants submit that this Court should examine the 1977 County Board Act separate from the other "projects for promotion of industry and trade acts," i.e., the Cater Act, the Wallace Act, and the 1961 County Act. We disagree, because all four acts have a common purpose and the means provided to effectuate this purpose are identical. These sections of the Code are in pari materia; and, as a general rule, such statutes should be construed together to ascertain the meaning and intent of each. *Locke v. Wheat*, 350 So. 2d 451 (Ala. 1977); *League of Women Voters v. Renfro*, 292 Ala. 128, 290 So. 2d 167 (1974).

The purpose of the 1977 County Board Act [§ 11-20-2], like that of the Wallace Act [§ 11-54-21], the Cater Act [§ 11-54-81], and the 1961 County Act, is to bring industry and thus jobs to Alabama. This legislative intent is expressed in the respective statutes....

All of these acts express a similar intent and purpose, that is, to give a municipality or county the power to offer

inducements to industrial, manufacturing, commercial, and research enterprises to either locate in Alabama or expand existing facilities in this state. These acts authorize municipalities and counties to acquire industrial, manufacturing, commercial, and research projects and to issue bonds to finance the cost of such acquisitions. Each of the four acts grants this authority to a different body. The Cater Act gave municipalities the authority to incorporate industrial development boards to carry out the goal of offering inducements. The Wallace Act gave municipalities the authority to carry out the goal of offering inducements as an entity without the establishment of a separate board. In order to give counties the same opportunities as municipalities, the legislature gave counties the same power of creating inducements for location or expansion of manufacturing, industrial, and commercial enterprises. The 1961 County Act gave counties the authority to offer inducements, while the County Board Act of 1977 gave the counties the same authority as municipalities, that is, the power to incorporate a separate industrial board to carry out the inducements to the specified groups. Therefore, the Cater Act, the Wallace Act, the 1961 County Act, and the County Board Act of 1977 are each a part of a legislative plan to give municipalities and counties the authority to offer inducements to industrial, manufacturing, commercial, and research enterprises either by way of industrial boards or as a governmental entity.

This Court is of the opinion that the intent of the Legislature in the passage of the 1977 County Board Act, as well as the Cater Act, the Wallace Act, and the 1961 County Act, was not to give retail business establishments desiring to expand their operations within the state such as McDonald's and K-Mart, ready access to lower cost financing than other retail businesses; the legislative intent was to induce, attract, and persuade businesses of a non-retail nature, particularly industrial, mining, manufacturing, and research enterprises, to locate here or to expand existing facilities in this state.

* * *

Opinion of the Justices No. 161
267 Ala. 114, 100 So. 2d 681 (Ala. 1958)

* * *

It is . . . a common practice for sponsors of legislation to cause it to be introduced in each House of the Legislature, and that course was followed in the case of the amendment bill and its companion enabling bill. On May 14, 1957, the legislative day next succeeding May 10, 1957, two bills identical with S.B. 118 and S.B. 119 were introduced in the House of Representatives, the bill that was identical with the amendment bill being H.B. 252 and the bill that was identical with S.B. 119 being H.B. 253.

The amendment bill was passed, as originally introduced, by the Senate on July 9, 1957, and by the House of Representatives on July 16, 1957. S.B. 119, introduced as the companion enabling bill to the amendment bill, was not enacted, but H.B. 253, the bill identical with S.B. 119 that was introduced in the House of Representatives, was, after amendments in both the House and Senate, passed by the House on July 12, 1957, and by the Senate on August 9, 1957. As so passed, it was approved by [the Governor] on August 20, 1957, and was designated Act No. 311. The changes in H.B. 253 that were made by the said amendments and that are now embodied in said Act No. 311 included certain administrative changes not here relevant and included also the substitution of the numerals "$3,000,000" at all places where the numerals "$10,000,000" had appeared in H.B. 253 as originally introduced.

* * *

The constitutional amendment authorizes the state to engage in works of internal improvement along navigable waterways and to become indebted for not exceeding $10,000,000 and to issue its bonds to carry out the purposes of said amendment *when authorized by appropriate laws passed by the Legislature*. The said Act No. 311, on the other hand, which authorizes the state to engage in the said works of internal improvement and to become indebted for not exceeding $3,000,000 and to issue its bonds for said purposes, contains a provision that Act No. 311 shall take

effect upon ratification of "a proposed Amendment to the Constitution of this State authorizing the State to engage in works of internal improvement along navigable waterways of the State by constructing docks and facilities and authorizing the State to become indebted for not exceeding $3,000,000 in aggregate principal amount to carry out the purposes of the Amendment, which proposed Amendment is submitted by the Legislature of Alabama at the General Session for 1957."

* * *

Is the said Act No. 311 effective as an appropriate law, within the meaning of the constitutional amendment, authorizing the State of Alabama to engage in works of internal improvements and to become indebted and to issue and sell bonds in an amount not exceeding in the aggregate $3,000,000?

* * *

Enactments dealing with the same subject matter and passed by the same session of the Legislature are construed in pari materia. *Coan v. State*, 224 Ala. 584, 141 So. 263; *City of Mobile v. Smith*, 223 Ala. 480, 136 So. 851; 50 Am.Jur., "Statutes," §§ 360-351; 82 C.J.S. "Statutes" §§ 366-367. This principle applies with particular force to the interpretation of a constitutional amendment and its enabling act. In re *Opinion of the Justices No.* 55, 237 Ala. 671, 188 So. 899; In re *Opinion of the Justices No.* 29, 227 Ala. 296, 149 So. 781.

The bill proposing the said constitutional amendment and the bill that was subsequently enacted as said Act No. 311 were originally introduced as companion bills and as mutually complementary legislation. As originally introduced, the enabling bill provided in unmistakable terms that it would become effective upon ratification of the constitutional amendment. During its course of passage, the enabling bill was amended in several respects, one of which was to reduce the aggregate principal amount of the bonds authorized therein from $10,000,000 to $3,000,000. This was a valid exercise of the discretion of the Legislature. But in effecting this change, the Legislature substituted the figures "3,000,000" for the figures "10,000,000" at every place

in which the latter figures appeared in the enabling bill. This substitution effected a result that the description of the constitutional amendment in both the title and Section 20 of Act 311 contains an inaccurate reference to the amendment. It describes the amendment as authorizing indebtedness "not exceeding $3,000,000 in aggregate principal amount" when the amendment actually authorizes indebtedness not exceeding $10,000,000 in aggregate principal amount. Except for that one inaccuracy, the enabling act correctly describes the constitutional amendment in all respects.

* * *

The inept use of the words "not exceeding" before the figure "$3,000,000" in the reference in the enabling act to the constitutional amendment was clearly inadvertent. In our opinion those words can and should be disregarded as being inept and as self-correcting, in the light of the whole legislation.

The cardinal rule in interpreting legislative enactments, to which all other rules are subordinate, is that the court must ascertain and give effect to the true legislative intent. This court has many times held obvious errors in the language of statutes to be self-correcting and has declined to follow the literal language of statutes when to do so would defeat the legislative purpose in enacting the statute or would produce absurd or unreasonable results. (citations omitted).

* * *

4. Administrative Construction

Britnell
v.
Bd. of Educ.
386 So. 2d 1148 (Ala. Civ. App. 1980)

* * *

... [T]he State Board of Education, subsequent to the passage of Act No. 637, adopted a resolution defining the term "full-time employees" as used in paragraph (ii) to mean those employees employed for six hours or more per day.

The administrative definition of "full-time employees" apparently resulted from the failure of Act No. 637 to define the term. The trial court found the administrative definition to be reasonable and adopted it.

While the administrative construction of a statute is not binding on a court, such construction is persuasive and is to be considered favorably. *Moody v. Ingram*, Ala. 361 So. 2d 513 (1978). We find no fault with the trial court's acceptance of the State Board of Education's definition of "full-time employees" as set out in paragraph (ii) of Act No. 637. Thus the four janitorial or custodial employees would not be entitled to the full $500 salary increase because they were not "full-time employees" within the meaning of said Act. However a different result obtains as to the one lunchroom worker.

* * *

It is to be noted, however, that the State Board of Education also resolved that lunchroom workers had to be "full-time employees" as provided in paragraph (ii) in order to be eligible to receive the full $500 salary increase authorized by paragraph (kk). And, we said above that the administrative construction accorded a statute is entitled to favorable consideration by a court. *Moody v. Ingram*, *supra*. However, such a rule of construction will be ignored where it seems reasonably certain that the administrative interpretation is erroneous and a different construction is required by the statute. *State v. Wertheimer Bag Co.*, 253 Ala. 124, 43 So. 2d 824 (1949). The specific language of paragraph (kk) requires a different construction than that placed on it by the State Board of Education and its interpretation of the statute will be laid aside.[5]

* * *

This is particularly true where interpretation of a

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[5] The provisions of a statute will prevail in any case of a conflict between a statute and an agency regulation. *Ex Parte Jones Mfg. Co.*, 589 So.2d 208, 210 (Ala. 1991). *See also* N. Singer, *Sutherland Statutory Construction* § 31.02 (4th ed. 1985) (It is axiomatic that administrative rules and regulations must be consistent with the constitutional or statutory authority by which their promulgation is authorized.)

statute concerns matters within agency expertise. *Kirkland v. State*, 529 So. 2d 1036 (Ala. 1989).

Pilgrim
v.
Gregory
594 So. 2d 114 (Ala. Civ. App. 1991)

* * *

... The interpretation of an act by an administrative agency charged with its enforcement agency is to be given great weight by the reviewing court. *Hulcher v. Taunton*, 388 So. 2d 1203 (Ala. 1980). *See also*, *State v. Birmingham Rail & Locomotive Co.*, 259 Ala. 443, 66 So. 2d 884 (1953).

* * *

... Also, when the statute has been reenacted or amended a number of times since the promulgation of the administrative interpretation, such may be considered legislative approval of the administrative construction. *State v. Tri-State Pharm.*, 371 So. 2d 910 (Ala. Civ. App. 1979).

* * *

State
v.
Helburn Co.
269 Ala. 164, 111 So. 2d 912 (1959)

* * *

... Under typical contracts with the United States and the State of Alabama Helburn furnished and installed air conditioning equipment in buildings belonging to those governments.

Helburn did not remit to the State Department of Revenue any sales tax on the air conditioning equipment so furnished on the theory that such equipment was sold by it to the governments involved and, hence, under the express terms of the Sales Tax Law, no such tax was due. Subsections (a) and (b) of § 755, Title 51, Code of 1940, as amended.

* * *

In determining and giving effect to legislative intent, courts may look to the history of a statute, conditions which

led to its enactment, ends to be accomplished and evils to be avoided or corrected. *S. Express Co. v. I. Brickman & Co.*, 187 Ala. 637, 65 So. 954 [(1914)]; *American Bakeries Co. v. City of Opelika*, 229 Ala. 388, 157 So. 206 [(1934)]; *Henry v. McCormack Bros. Motor Car Co.*, 232 Ala. 196, 167 So. 256 [(1936)].

The administrative construction given by the highest officials charged with the duty of administering tax laws, while not binding on the State, is to be considered in the interpretation of a statute which has not been interpreted by the courts. *State v. Advertiser Co.*, 257 Ala. 423, 59 So. 2d 576 [(1952)]; *Cole v. Gullatt*, 241 Ala. 669, 4 So. 2d 412 [(1941)]. *Cf. Merriwether v. State*, [252 Ala. 590, 42 So. 2d 465 (1949)].

Subdivision (j) deals with coverage, not with an exemption, and hence, it should be construed strictly against the taxing power and with favor indulged toward the taxpayer. *Doby v. State Tax Commission*, 234 Ala. 150, 174 So. 233 [(1937)]; *Jordan Undertaking Co. v. State*, 235 Ala. 516, 180 So. 99 [(1938)]. *See State v. Ben R. Goltsman & Co. (Use Tax)*, 261 Ala. 318, 74 So. 2d 414 [(1954)].

In view of the history of Subdivision (j), the construction placed on it for almost ten years by the State Department of Revenue and the rule that it must be strictly construed against the taxing power, we hold that it is not authority for the imposition of a sales tax on Helburn based on the equipment furnished by Helburn in performing the contracts here involved, and that the trial court correctly vacated and set aside the part of the assessment based thereon. So, the question which we posed above is answered in the negative.

* * *

5. Construction of Statutes Adopted From Other Jurisdictions

Where the legislature of one state enacts a provision from a statute of another jurisdiction in which the language of the act has

received a settled judicial construction, the legislature is presumed to have intended that the adopted provision should be understood and applied according to that construction. *Kennedy's Heirs v. Kennedy's Heirs*, 2 Ala. 571 (1841).

(a) Construction by courts of last resort

The general rule is that re-enactment of a statute approves and writes into the statute its settled construction by the court of last resort. *Ex parte Central of Georgia Ry. Co.*, 243 Ala. 508, 10 So. 2d 746 (1942).

Water Works, Gas & Sewer Board
of City of Oneonta, Inc.,
v.
P.A. Buchanan Contracting Co.
294 Ala. 402, 318 So. 2d 267 (Ala. 1975)

* * *

This statute, Alabama's public works bond statute, enacted in 1927 and amended in 1935, is patterned after the Miller Act, Tit. 40, §§ 270a § 270b, U.S.C.A. In *State v. S. Surety Co.*, 221 Ala. 113, 127 So. 805 (1930), this court, after comparing our statute with the federal statute in parallel columns, stated in part:

"The doctrine that a Legislature, in enacting a statute from another jurisdiction, enacts it with its authoritative interpretation, is universal and firmly established.

"... The rule is that the borrowed statute is presumed to come with its authoritative interpretation. We have cited our case to such effect."

That decision was followed in *Nat'l Sur. Corp. v. Wunderlich* (8th Cir.), 111 F.2d 622 (1940), where our public works statute was being construed and applied.

* * *

(b) Construction by intermediate courts

Re-enactment of a statute after construction by intermediate or inferior courts is not legislative adoption of such construction. *Rea v. Keller*, 215 Ala. 672, 112 So. 211 (1927).

6. Liberal vs. Strict Construction

A statute must be strictly construed if a liberal construction would be in derogation of a common-law right or would implicate or call into question a constitutional right. *Gun S., Inc. v. Brady*, 711 F. Supp. 1054 (N.D. Ala. 1989), rev'd on other grounds by *Gun South, Inc. v. Brady*, 877 F.2d 858 (11th Cir. 1989).

The common-law rule construed penal laws strictly. The rationale behind strict construction is that this approach would ensure proper notice of conduct subject to criminal punishment and civil fines and would impose that liability only upon those persons clearly violating the letter of the law. *See generally*, W. LaFave & A. Scott, *Handbook on Criminal Law* § 10, at 72 (1972). Statutes frequently afforded strict construction are those concerning eminent domain and mortgages. Courts have exhibited an understandable reluctance to take away private property and, thus, have consistently strictly construed eminent domain laws in favor of the owner of the property sought to be condemned. *See e.g.*, *Agricola v. Harbert Constr. Co.*, 294 Ala. 7, 310 So. 2d 472 (1975); *Blanton v. Fagerstrom*, 249 Ala. 485, 31 So. 2d 330 (1947); *Gerson v. Howard*, 246 Ala. 567, 21 So. 2d 693 (1945); *Denson v. Alabama Polytechnic Inst.*, 220 Ala. 433, 126 So. 133 (1930); *Ensign Yellow Pipe Co. v. Hohenberg*, 200 Ala. 149, 75 So. 897 (1917). The court in *Sloss-Sheffield Steel & Iron Co. v. O'Rear*, 200 Ala. 291, 76 So. 57 (1917), invoked the strict construction rule in its statutory examination.

Thus, strict construction may have loosened up as courts focus more on legislative intent. Many courts interpreting highly penal mortgage laws have strictly construed them. *See, e.g., Fallon v. Hackney*, 272 Ala. 17, 52, 130 So. 2d 52 (1961); *Brandon v. Garland*, 211 Ala. 150, 100 So. 132 (1924); *Bright v. Wynn*, 210 Ala. 194, 97 So. 689 (1923); *Wilkerson v. Sorsby*, 201 Ala. 182, 77 So. 708 (1918); *Bailey v. Butler*, 138 Ala. 153, 35 So. 111 (1908). Focusing similarly on the

penalties imposed, at least one Alabama decision found that anti-nepotism statutes require strict construction. *See Opinion of the Justices No.* 212, 291 Ala. 581, 285 So. 2d 87 (1973).

In strictly criminal contexts, Alabama's modern criminal codes have moved away from strict construction, adopting a "fair import" standard as follows: "All provisions of this title shall be construed according to the fair import of their terms to promote justice and to effect the objects of the law, including the purposes stated in 13A-1-3." Ala. Code § 13A-1-6.

Statutes which courts have found particularly amenable to liberal construction are those designed not to punish but to protect the public. In one case, *Employer's Ins. Co. of Ala. v. Johnston*, 238 Ala. 26, 189 So. 58 (Ala. 1939), the court liberally construed the Contract Motor Carrier Act of 1932 to allow an injured member of the public to sue the insurance company on a judgment rendered against the insured, even though the act did not expressly allow such action. *See also*, *Walker v. Birmingham Coal & Iron Co.*, 184 Ala. 425, 63 So. 1012 (Ala. 1913) Likewise, the court liberally construed a statute concerning proper ventilation of mines to correspond with legislative intent of protecting miners' lives. *See also*, *Gant v. Warr*, 286 Ala. 387, 240 So. 2d 353 (Ala. 1970); *Ex Parte Plowman*, 53 Ala. 440 (Ala. 1875). Also, statutes which secure valuable rights for citizens have enjoyed liberal construction. *County Bd. of Educ. v. State, ex. rel. Carmichael*, 237 Ala. 434, 187 So. 414 (Ala. 1939) (regarding the liberal construction of statutes protecting elemental rights such as education); *Kreutner v. State*, 202 Ala. 287, 80 So. 125 (Ala. 1918) (holding that statute regulating the method for securing jury trials should be liberally construed if legislative intent is in doubt).

In recent years, the Legislature has aided the judiciary in ascertaining legislative intent not only by delineating its purposes in the Code but also by expressing its desire for liberal construction of certain statutes to conform with that statute's express purposes. The Alabama statute providing for construction of Attachment Law, Ala. Code § 6-6-143, provides one example. *See Engram v. Thoma*, 212 Ala. 129, 101 So. 834 (Ala. 1924); *Sloan v. Hudson*, 119 Ala. 27, 24 So. 458 (Ala. 1898). Other examples include the civil defense chapter, Ala. Code § 31-9-23; development and

construction of condominiums, Ala. Code § 35-8-22; industrial development boards, Ala. Code § 11-20-31; education, Ala. Code § 16-16-2; and wills and decedents' estates, Ala. Code § 43-8-2. Other statutes do not expressly require "liberal" construction, but impliedly call for such interpretation by demanding that the section be construed to effectuate general purposes of the applicable chapters. *See, e.g.*, conveyances of estates, Ala. Code § 35-4-271; Uniform Transfers to Minors, Ala. Code § 35-5A-24; public works, Ala. Code § 39-5-6; restitution of victims to crime, Ala. Code § 15-18-65; and simultaneous death, Ala. Code § 43-7-8.

7. Construction: Nature and Subject of Legislative Act

Miglionico
v.
The Birmingham News Company
378 So. 2d 677 (Ala. 1979)

* * *

On March 20, 1978, two employees of *The Birmingham News (*News) were denied admission to a closed meeting of the Birmingham City Council (Council) held to consider an appointment to the city board of education. [The Birmingham News sought an injunction to enforce the "Sunshine laws" and gain admittance to the meeting.] ...

* * *

Some appellants question the propriety of the civil remedy of injunctive relief, contending that criminal statutes may not be enforced by injunction. It is true that § 13-5-1 is codified in Title 13, Crimes and Offenses, and prescribes punishment for a violation. However, the inclusion of criminal sanctions does not necessarily make the entire statute penal in nature. In *Laman v. McCord*, 245 Ark. 401, 432 S.W.2d 753 (1968), the Supreme Court of Arkansas, speaking through Justice George Rose Smith, held that the Arkansas Freedom of Information Act, although it did contain criminal statute, is not primarily a criminal statute. Rather, it "was [enacted] wholly in the public interest and is to be liberally interpreted" most favorably to the public. *Cf. Raton Pub. Serv. Co. v. Hobbes*, 76 N.M. 535, 417 P.2d 32 (1966).

* * *

8. Unconstitutional Statute[6]

(a) Effect. The effect of an unconstitutional statute depends on many things. Courts can render an unconstitutional statute either void or voidable, or can construct the statute to give it a presumption of validity. A declaration of unconstitutionality does not necessarily operate as an automatic repeal of a statute, for in some cases unconstitutional statutes may be validated with a saving construction. The approach that the court takes depends on whether the statute is on procedural or substantive grounds and whether persons, corporations or government entities have relied on the statute. Statutes that amend or repeal an unconstitutional statute are treated in a variety of ways, as are unconstitutional amendments of valid statutes.

(b) Three Interpretations on the Effect of Unconstitutional Statutes

(i) Void Ab Initio. At the core of the void ab initio theory is the idea of the supremacy of a written constitution over the legislative branch of government. Courts using the void ab initio theory treat an unconstitutional statute as it never existed. Under this theory the statute is not a law, it confers no rights, it imposes no duty, and it affords no protection. Void ab initio is the oldest theory of judicial review and is not suitable for resolving complex disputes involving reliance or estoppel. Rendering a statute void is most appropriate when dealing with criminal statutes involving substantive constitutional rights of individuals. Where a person is arrested, accused, tried, and convicted under a statute which is held to be unconstitutional on appeal, the defendant is usually released as a free person, even if he or she originally entered a guilty plea. In *Wallace v. Brewer*, 315 F. Supp. 431 (M.D. Ala. 1970), the court ruled that an unconstitutional statute which established the Alabama Legislative Commission to

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[6]Naton, Charles F., Effect of an Unconstitutional Statute, Student Paper (1982).

Preserve the Peace and authorized the Commission "to study, investigate, analyze and interrogate anyone who may be engaged in activities of an unlawful nature against the sovereignty of Alabama and which may be detrimental to peace and dignity of the state" was void and of no effect. In a civil case involving the right of contract where a town issued bonds in 1909 with the agreement to repay the debt with property tax revenues generated on the basis of 100 percent assessment as prescribed by the Alabama Constitution of 1901, the Alabama Supreme Court stated that a subsequent constitutional amendment in 1911 that reduced the assessment to 60 percent was void respecting prior contracts. "An act creating such an exemption is invalid under Section 10, Article 1 of the Constitution" forbidding state laws impairing the obligation of contracts." *See, e.g., Love v. First Nat'l Bank*, 228 Ala. 258, 153 So. 189 (1934).

(ii) Presumption of Validity Theory. The more realistic view to aid in the just settlement of disputes is to give even an unconstitutional statute some effect. The effect of a presumption of validity is to aid in giving some factual status to what under the void ab initio theory would be nonexistent legally and factually. A presumption of validity gives factual status to situations arising prior to the time of declaration of invalidity. The court will apply the rules of mistake or estoppel where parties were led to assume the validity of a statute and were warranted in their reliance. For instance, the general rule is to sustain the de facto existence of a corporation in order that the case may be disposed of in accordance with rules applicable to corporations, particularly where to do so protects rights acquired and asserted honestly and in good faith. On the other hand, shareholders may be estopped from asserting the invalidity of a corporation organized in an unconstitutional manner particularly if they benefitted from the corporation. "All stockholders, situated as are the defendants in this case, must be held estopped to deny the constitutionality of the law under which they organized, and for eighteen years uninterruptedly carried on their business"

as a de facto corporation. *McDonnell v. Alabama Gold Life Insurance Co.*, 85 Ala. 401, 5 So. 120 (Ala. 1888).

(iii) Case-to-Case Theory. Frequently, statutes are neither wholly valid nor wholly invalid, but are held to be voidable only by those who have a right to question the validity of the act. Courts use the issue of standing-to-sue to limit judicial review. "It is well-settled that the constitutionality of a statute will not be determined in any case, unless such determination is absolutely necessary in order to determine the merits of the suit in which the constitutionality of such statute has been drawn in question." *State ex rel. Bland v. St. John*, 244 Ala. 269, 13 So. 2d 269 (Ala. 1973).

When a statute is determined to be voidable, the parties to that suit are concluded by the judgment, but no one else is bound. A new litigant may bring a new suit, based upon the same statute, and the former decision cannot be pleaded as estoppel; it can be relied on only as a precedent.

9. Statutory Conflicts

(a) Consistency or Repugnancy of Statutes

Esco
v.
State
278 Ala. 641, 179 So. 2d 766 (Ala. 1965)

* * *

A jury found defendant "guilty of changing or concealing his name, as charged in the Solicitor's Complaint." The Court of Appeals affirmed and we granted certiorari.

The authority for convicting defendant is found in § 229, Title 14, Code 1940, which recites:

> "Any person who changes or alters his or her name with the intent to defraud or with the intent to avoid

payment or any debt, or to conceal his or her identity, shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine of not more than five hundred dollars."

Defendant contends that the offense of which he was convicted is the offense created by the third alternative of the statute and that the third alternative is void and unconstitutional because it is repugnant to the Fourteenth Amendment to the Constitution of the United States.

* * *

The legislature has provided that the court of probate shall have jurisdiction as to the change of name of a person upon his filing a declaration in writing stating the old and the new names. § 278, Title 13, Code 1940.

Thus, the state, in one statute, provides one of the methods of changing a name, which change, in some degree and in some places, must conceal identity, and, in the other statute, § 229, the state makes the change for such purpose a crime.

It may be said, of course, that the state may punish, as a crime, an act which uses the courts to perpetrate fraud, and that omission of the original exception, in cases of change as provided by law, is, therefore, justified. We consider under the third alternative, however, a change of name which is not intended to perpetrate fraud. There is an inconsistency between simultaneously effective statutes, where one authorizes an act and the other statute makes the act a crime.

The legislature has also gone to some lengths to conceal the former name and identity of an adopted child who takes the name of the adopting parents. Upon receipt of copy of final order of adoption, the registrar of vital statistics is enjoined to make a new record of birth in the new name, with the name or names of the adopting parents, and then to seal and file the original certificate of birth, and the sealed packages shall be opened only on demand of the child, his natural or adopting parents, or by order of a court

of record. § 4, Title 27, Code 1940.

The third alternative was undoubtedly intended to serve a useful purpose, but it sweeps within its influence conduct, neither evil in nature nor detrimental to the public interest, which could not be proscribed as criminal. *Kahalley v. State*, [254 Ala. 482, 48 So. 2d 794 (1950)]; *Connor v. City of Birmingham*, 36 Ala. App. 494, 60 So. 2d 474 [1952].

We are of opinion that the third alternative of § 229, Title 14, Code 1940, is unconstitutional because it is so vague and indefinite as to deny the requirements of due process under the doctrine of Kahalley and Connor, *supra*, and that a conviction under the third alternative should not stand.

The judgment of the Court of Appeals is reversed and the cause is remanded to that court.

(b) Existence of Ambiguity

Town of Loxley
v.
The Rosinton Water, Sewer and Fire Protection Authority, Inc.
376 So. 2d 705 (Ala. 1979)

This appeal is by the Town of Loxley, Alabama, defendant below, from a judgment granting a permanent injunction against Loxley extending its water system to serve residents within the service area of the Rosinton Water, Sewer and Fire Protection Authority. We reverse.

* * *

The facts in this case were stipulated. Loxley owns and operates a water distribution system which is the sole source of water for industrial and domestic use within its corporate limits.

* * *

...Rosinton asserts that the true intent of the legislature is to require a municipality to obtain permission of the county commission before being allowed to expand its water system into the designated service area of an authority

such as Rosinton.

Loxley asserts there is not statutory authority restricting the express statutory authority granted it to expand the water system outside its corporate limits. Because there is no statutory authority prohibiting it from expanding its water system into Rosinton's designated service area, Loxley contends that this court must not usurp the role of the legislature by creating such a restriction by judicial fiat. We agree with this contention.

* * *

In interpreting statutes the underlying consideration, always, is to ascertain and effectuate the intent of the legislature as expressed in the statutes. *Employees' Ret. Sys. of Alabama v. Head*, 369 So. 2d 1227 (Ala. 1979). While specific language used by the legislature is subject to explanation, such language cannot be detracted from, or added to. *May v. Head*, 210 Ala. 112, 96 So. 869 (1923). Furthermore, when the language of a statute is clear and unambiguous there is no room for judicial construction. *Employees' Ret. Sys. of Alabama v. Head*, *supra*. Rosinton asks us, in effect, to create a statute that would require Loxley to obtain the Baldwin County Commission's permission before expanding its water service into Rosinton's service area. Rosinton supports this request by arguing that a chaotic condition will develop if municipalities can expand their water systems into areas where other water systems exist, or are being built, and the legislature would have corrected this possible chaotic condition if such situation had been brought to its attention. This court, long ago, stated that we may not amend statutes so as to make them express what we may conceive the legislature would have done or should have done. *May v. Head*, *supra*. It is clearly not this court's function to usurp the role of the legislature and correct defective legislation or amend statutes under the guise of construction. *Employees' Ret. Sys. of Alabama v. Head*, *supra*. The purpose of interpretation is not to improve a statute but rather to explain the express language used in the statute. *Lewis v. Hitt*, 370 So. 2d 1369 (Ala. 1979).

* * *

May
v.
Head
210 Ala. 112, 96 So. 869 (Ala. 1923)

* * *

Prior to the Code of 1907, there was no provision by statute for contesting the elections of officers of cities and towns. *Ham v. State ex rel. Buck*, 156 Ala. 654, 47 South. 126. Of course, then, Section 476, when it was written, had nothing to do with cases in which the election to city or town offices were contested. The Code of 1907 undertook to correct the situation shown by the absence of any provision for the contest of election in the case of city or town officers by the introduction of Section 1168, as follows:

"The election of any person to a city or town office may be contested upon the same grounds and in the same manner provided for contesting elections for judge of probate, so far as applicable."

Appellant's contention is that by the last quoted section the Legislature disclosed its intent to provide for appeals in cases of contests of election of city and town officers....

...The court has no authority to look for the legislative intention in anything but the legislative language; that language may be explained; it cannot be detracted from or added to. The office of interpretation is not to improve the statute; it is to expound it; and the court knows nothing of the intention of an act, except from the words in which it is expressed, applied to the facts existing at the time. Endlich on Interp. of Stat. §§ 7, 8.

* * *

(c) Conflicting Provisions

Alabama State Board of Health ex rel Baxley
v.
Chambers County
335 So. 2d 653 (Ala. 1976)

The sole question for review concerns the construction of the Solid Wastes Disposal Act (Title 22, §§ 346-351, Code). More specifically, the issue is whether the provisions of § 347(a) (". . . may, and is hereby authorized to") are mandatory or permissive. ...

In support of the State's argument, five rules of statutory construction are stated:

> (1) Permissive words in a statute may be construed as being mandatory in those cases where the public interest and rights are concerned and where the public or third persons have a claim de jure. *Ex parte Simonton*, 9 Port. 390 (1839).

(2) A statute must be considered as a whole and every word in it made effective if possible. State By and Through State Board for Registration of Architects v. Jones, 289 Ala. 353, 267 So. 2d 427 (1972).

(3) Where a legislative provision is accompanied by a penalty for failure to comply with it the provision is mandatory. *Rodgers v. Meredith*, 274 Ala. 179, 146 So. 2d 308 (1962).

(4) Where two sections or provisions of an act are conflicting the last in order of arrangement controls. *State v. Crenshaw*, 287 Ala. 139, 249 So. 2d 622 (1971).

(5) The purpose of statutory construction is to ascertain, not only from the language used by the legislature, but also from the reason and necessity for the act, the evil

sought to be remedied, and the object and purpose sought to be obtained. *Rinehart v. Reliance Insurance Company*, 273 Ala. 535, 142 So. 2d 254 (1962).

* * *

The County has no dispute with the foregoing rules of statutory construction per se, but it feels that they are not applicable in the instant case.

The County maintains the polestar of statutory construction is that the intention of the legislature must be given effect. *Boswell v. S. Cent. Bell Tel. Co.*, 293 Ala. 189, 301 So. 2d 65 (1974); *State v. AAA Motor Lines, Inc.*, 275 Ala. 405, 155 So. 2d 509 (1963). In determining the intent of the legislature, the Court must look to the language of the statute. *State v. Zewen*, 270 Ala. 52, 116 So. 2d 373 (1969). Furthermore, the Court must look to the entire act and not merely to an isolated part in construing a statute. *Ex parte Wilson*, 269 Ala. 263, 112 So. 2d 443 (1959).

It is difficult to understand, says the County, why the legislature would place permissive words in one subsection and mandatory words in four subsections of the same section if the first subsection was intended to be mandatory as well, especially when the Court considers the rule that, in lieu of other factors, words in a statute will be given their ordinary meaning, citing *Morgan Cnty. Comm'n v. Powell*, 292 Ala. 300, 293 So. 2d 830 (1974). Certainly, the legislature could have made subsection (a) mandatory if that had been the true intention of the legislature. Therefore, to construe § 347(a) as being other than permissive would be contrary to the apparent intention of the legislature as expressed by the clear wording of subsection (a) and as evidenced by the balance of the Solid Wastes Disposal Act. Title 22, & 346 *et seq.*

* * *

Hand
v.
Stapleton
135 Ala. 156, 33 So. 689 (Ala. 1902)

[Under Section 10 of the act, Section 5 does not go into effect until the cost of building the new court house and jail is ascertained, and yet that cannot be ascertained except under Section 5, and until it does go into effect. In short, Section 5 does not go into effect until the provisions of Section 10 are complied with, and these provisions cannot be complied with until Section 5 goes into effect, and the act necessarily emasculates itself and become inoperative.]

The bill in this cause is filed by resident taxpayers of Baldwin county against the commissioners appointed by the act of the General Assembly approved February 5th, 1901, entitled "An act to provide for the removal of the county seat of Baldwin county, Alabama, from Daphne in said county to Bay Minette in said county" (Acts, 1900-1901, p. 754), the judge of probate and the treasurer of the county. The object sought to be accomplished is to have the acts above referred to declared invalid because unconstitutional and inoperative, and to restrain the payments of money out of the county treasury for the removal of the courthouse. ...

The next insistence going to an alleged infirmity of the act is that its provisions are irreconcilably conflicting, and for that reason it is inoperative. This insistence is based upon the theory that Sections 5 and 6 of the act impose certain mandatory duties upon the courthouse commissioners and the commissioners' court of the county, which must necessarily be performed before the court house commissioners could determine the contingency specified in the tenth section, upon which the act was to go into effect. This construction of the act may be conceded and yet, under the principles declared above - that "as between conflicting sections of the same act, the last in order of arrangement will control" - it would afford no ground for striking down and nullifying the entire enactment. Especially is this true, as

> here, where the intention of the Legislature and its real purposes can be effectuated by giving effect to the later section and others that are in harmony with it. We do not think it can be again be said that it was the general purpose of the Legislature to authorize the building of the court house and jail at Bay Minette, provided it could be done without increasing the tax rate of the county, and that a determination of that question was left to the courthouse commissioners. Leaving out of view Section 6, ample provision is made by Section 7, which is in perfect harmony with Section 10, to protect against any increase in the tax rate, and is a sufficient authorization to the board of county commissioners to allow, and order paid out of any money in the county treasury, the cost of building of the courthouse and jail, or any money that may go into the treasury by taxation, without increasing the tax rate.
>
> * * *

C. Attorney General's Opinions

Ala. Code § 36-15-1(1)a. provides that the Attorney General has a legal duty to give his opinion to the chairman of the judiciary committee of either house upon any matter under consideration by the committee when required [requested] to do so. This is a legal duty which the Alabama Constitution mandates him to perform. *See* Ala. Const. Art. V, § 137. The legislature may also require the Attorney General to defend all suits brought against the state. *Id.* However, if the Attorney General of Alabama is of the opinion that the matter or act is clearly violative of the United States Constitution, the Attorney General is under no duty to defend the legislative enactment. *Delchamps Inc. v. Ala. St. Milk Control Bd.*, 324 F. Supp. 117 (M.D. Ala. 1971).

Ala. Code §§ 36-15-15 and 36-15-1(1)b. impose this same duty to give opinions when requested by district attorneys and other county/municipal officials, respectively. The Code in § 36-15-19 protects these officials from liability to the state, county, or municipality for acts done in reliance on such opinions. This protection does not, however, extend to claims by individuals resulting from an erroneous construction of law (i.e., erroneous construction of law by the Attorney General) affecting the Attorney

General's duties. *Curry v. Woodstock Slag Corp.*, 242 Ala. 379, 6 So. 2d 479 (1942). A public official may act on an opinion only if the question of law involved has not been decided by the courts. *Gray v. Main*, 309 F. Supp. 207 (M.D. Ala. 1968). Although the opinions are persuasive, they are merely advisory in nature. *Ellis v. State Nat'l Bank of Ala.*, 434 F.2d 1182 (5th Cir. 1970).

The attorney general is not required to give opinions on private or personal questions. Ala. Code § 36-15-1(1)d.

Ala. Code § 36-15-1. Duties generally.

The Attorney General shall keep his or her office at the capital city and perform the following duties:

> (1)(a) He or she shall give his or her opinion in writing, or otherwise, on any question of law connected to the interests of the state or with the duties of any of the departments, when required by the Governor, Secretary of State, Auditor, Treasurer, Superintendent of Education, Commissioner of Agriculture and Industries, Director of the Department of Finance, Comptroller, State Health Officer, Public Service Commissioners, Commissioner of Conservation and Natural Resources, or the Director of the Department of Revenue or any other officer or department of the state when it is made, by law, his or her duty to do so, and he or she shall also give his or her opinion to the chairman of the judiciary committee of either house, when required, upon any matter under the consideration of the committee.
>
> (b) The Attorney General shall give his or her opinion, in writing or otherwise, as to any question of law connected with the duties of the following county or city officer when requested to do so in writing: judge of probate, clerk of the circuit court, sheriff, city and county boards of education, county commission, register of the circuit court, tax collector, tax assessor, mayor or chief executive officer of any incorporated municipality, city council or like governing body of any incorporated

municipality, or any other officer required to collect, disburse, handle, or account for public funds.

(c) Any officer or governing body of a municipality or county or officer or governing body of any other elected or appointed body shall submit with the request for an opinion a resolution adopted by the governing body setting forth the facts showing the nature and character of the question which makes the advice or opinion sought necessary to the present performance of some official act that the officer or governing body must immediately perform.

(d) An officer or governing body shall not submit moot, private, or personal questions in which the state, county, or public is not materially or primarily interested to the Attorney General, and any officer shall submit, with request for an opinion, a certificate setting forth the facts showing the nature and character of the question which makes the advice sought necessary to present performance of some official act that the officer must immediately perform.

Ala. Code § 36-15-19. Written opinion of attorney general protects officer, governing body, etc.

The written opinion of the attorney general, heretofore or hereafter secured by any officer, board, local governing body or agency legally entitled to secure such opinion, shall protect such officer and the members of such board, local governing body or agency to whom it is directed or for whom the same is secured from liability to either the state, county or other municipal subdivisions of the state because of any official act or acts heretofore or hereafter performed as directed or advised in such opinion.

D. Opinions of the Justices

Since advisory opinions do not relate to the "wisdom, desirability or policy" of prospective legislation or executive action,

the doctrine of separation of powers is not violated. *Opinion of the Justices No.* 188, 280 Ala. 692, 198 So. 2d 269 (1967). Likewise, such opinions are not to be considered judicial pronouncements, *In re Opinion of the Justices No.* 114, 254 Ala. 177, 47 So. 2d 655 (1950), and are only directed to the important and specific constitutional questions. *Opinion of the Justices No.* 199, 286 Ala. 156, 238 So. 2d 326 (1970). Moreover, only such questions as they relate to pending legislation are answered, *Opinion of the Justices No.* 275, 396 So. 2d 81 (1981), though a governor may seek an Opinion of the Justices concerning a statute requiring him to take some affirmative action. *Opinion of the Justices No.* 169, 270 Ala. 147, 116 So. 2d 588 (1959). The Justices' power to issue advisory opinions has been upheld by both the state court *Opinion of the Justices No.* 96, 252 Ala. 351, 40 So. 2d 849 (1949) and federal court. *Sims v. Baggett*, 247 F. Supp. 96, (M.D. Ala. 1965).

Ala. Code § 12-2-10. Advisory opinions on constitutional questions – How opinion obtained.

The governor, by a request in writing, or either house of the legislature, by a resolution of such house, may obtain a written opinion of the justices of the Supreme Court of Alabama or a majority thereof on important constitutional questions.

The court in *Opinion of the Justices No*. 311, 469 So. 2d 105 (Ala. 1985) stated the following:

> This Court will not give advisory opinions on the general constitutionality of a law, because "[t]o leave to the justices the search for all possible answers of constitutional tests, imposes a task accompanied with such doubt and uncertainty that even those gifted with unusual ingenuity, would retreat from it." *Opinion of the Justices No.* 199, 286 Ala. 156, 158, 238 So. 2d 326, 327 (1970).

Opinion of the Justices No. 393
260 So. 3d 17 (Ala. 2018)

Under the advisory-opinion act, responses to questions within the purview of the act are designed to be advisory,

consultive only, not concluding or binding the Governor or the House or Houses propounding inquiries or the Justices responding thereto.

Ala. Code § 12-2-12. Same - Effect of opinion.

The opinion of the justices of the supreme court or a majority of them shall be a protection to the officers and departments of the state acting in accordance therewith in the same manner and to the same extent as opinions of the Attorney General of the state; and, in the event of a conflict between the opinions of the Attorney General and the opinion of the justices of the Supreme Court rendered in accordance with this article, the opinion of the justices of the Supreme Court shall take precedence and prevail. All opinions of the justices of the Supreme Court heretofore rendered in accordance with this article shall have the protective force and effect provided for in this article.

1. In general

Opinion of Justices No. 1
209 Ala. 593, 96 So. 487 (Ala. 1923)
* * *

The specific questions, propounded by the Governor, reproduced in the foregoing responses made by a majority of the Justices, in their individual capacities, are the first to be propounded under the act (approved February 13, 1912) "to provide for obtaining the opinion of the Justices of the Supreme Court, or a majority thereof, by the Governor or either House of the Legislature, upon important constitutional questions."

* * *

Interpreting the act according to its manifest effects, these conclusions must, of necessity, prevail: (a) That the act does not at all contemplate the advice or the advisory opinions of the Justices upon any matter relating to the wisdom, desirability, or policy of prospective legislative or executive action; (b) that the merely advisory opinions contemplated are those of the individual Justices, not of the

Supreme Court of Alabama in its judicial capacity; (c) that specific inquiries, within the intent of the act, must involve or concern concrete, important constitutional questions upon matters or subjects of a general public nature, as distinguished from questions involved in the ascertainment or declaration of private right or interest; (d) and that responses to questions within the purview of the act are designed to be advisory, consultative only, not concluding or binding the Governor or the House or Houses propounding inquiries or the Justices responding thereto.

The act avows its own object and purpose to be "to give more confidence and assurance to the validity and constitutionality of important acts or contemplated acts of the Governor and the Legislature, and to declare the public policy of the state as to requesting and giving opinions of the Justices of the Supreme Court as" in the act provided. In aid of the public service contemplated, the Justices are authorized to request briefs from the Attorney General and to receive briefs from attorneys intervening amicus curiae.

Since the Legislature possesses the power to prescribe and to define the authority, duties and functions of the Governor and the Justices (except as restrained by the Constitution), the act invests the Governor and the Houses with the authority to obtain the advisory opinions of the Justices or a majority of them -- in respect of "important constitutional questions," propounded as the act contemplates -- and imposes upon the Justices an obligation to consider such questions as emanate from the sources the act defines; but the determination of the inquiry, whether the question or questions so propounded are within the stated purview of the act, is an inquiry addressed to and determinable alone by the Justices exercising, each for himself, his judgment upon the inquiry whether the question or questions properly propounded are within the purview of the act. Such questions as are thus determined to be within the purview of the act should and will be accorded appropriate response by the Justice or Justices so concluding.

The performance by the Justices of the function of the act contemplated is non judicial, this for the obvious reason that advisory opinions given do not conclude or vindicate any right or remedy, result in no judgments or decree, bind no one whatsoever. [Citations omitted]

The preservative and conservative practice of obtaining the merely "advisory opinions" of the Judges, as a precautionary measure against invalid executive or legislative action or inaction contemplated had its inception centuries ago in England (*see* 126 Mass. pp. 561 *et seq.* for satisfactory historical statement); and varying provisions therefor in the Constitutions of Massachusetts, Maine, New Hampshire, South Dakota, Colorado, Florida, and Rhode Island afford illustrations of the idea's appropriation to the methods of government prevailing in the states enumerated....

The purpose, design and effect of our Advisory Opinion Act being as stated, the inquiry is whether the act is offensive to the Constitution of Alabama? If the act is offensive to the Constitution of this state, then it is, of course, invalid, and the Governor is without authority to propound to the Justices any questions thereunder, and, in consequence, no degree of obligation rests upon the Justices to consider questions propounded by the Houses or the Governor.

Is the act constitutionally valid? As in all cases involving the constitutional validity of legislative enactments, they are regarded as presumptively valid, and the wisdom, policy, or propriety thereof are not factors for consideration in determining their freedom from offense to the organic law. *State ex rel. v. Greene*, 154 Ala. 249, 254, 46 South. 268 [1908]; *Fairhope Corporation v. Melville*, 193 Ala. 289, 305, 306, 69 South. 466 [(1915)], citing earlier pronouncements. The public policy and design manifested and adopted through this Advisory Opinion Act concludes every person and every department of the state with respect to the wisdom and propriety of the subject matter of the

act....

The only sections of the Constitution of 1901 that are thought to contain provisions the Advisory Opinion Act might offend are Sections 42 and 43. These sections read:

> "Sec. 42, The powers of the government of the state of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another."
>
> "Sec. 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men."

These sections distribute the powers of government to three distinct departments, and prohibit the exercise of one department of powers expressly or by necessary implication referred to another department, except in instances expressly directed or permitted....

* * *

The Constitution contains no reference, express or implied, to advisory, consultative opinions by the Justices. Since the giving of such opinions by the Justices is not "the exercise of a judicial function", it is manifest that an act establishing this preservative practice is not the imposition of a judicial duty, or any character of detraction or subtraction from the distinctiveness and immunity from encroachment our Constitution assures to the judicial department. It results, necessarily from the doctrine, established through *Fox v. McDonald*, [101 Ala. 51, 13 So. 416

(1892)] that the Legislature is not restrained from imposing or conferring upon a judicial officer, in his individual capacity as such, non judicial duties or functions.

If, however, (for the occasion only), the proposition is accepted that the practice of requiring merely advisory, consultative opinions of the Justices upon important constitutional questions is a function "judicial in nature" the provision to be quoted from Section 139 of the Constitution of 1901 effects to directly authorize the Legislature to impose the stated duty and to regulate its performance; the judicial power (otherwise than therein prescribed) of the state may be exercised "by such persons as may be by law invested with powers of a judicial nature"; of the Constitution being silent with respect to this particular function, viz: The giving of merely advisory opinions upon request of the Executive or the Houses of the Legislature. The effect of this provision was to clothe the Legislature with authority to invest persons --selected, without limitation in respect of personnel, as the Legislature in its discretion might conclude -- with power judicial in nature. ...

* * *

If the function prescribed in this act is nonjudicial in nature, the Constitution does not forbid its imposition upon or performance by individual officers who are "of the judicial department"; and, if, on the other hand, it is conceived that the function prescribed in this act is of a "judicial nature," then its imposition upon or performance by individual officers who are "of the judicial department" is not offensive to any provision of the Constitution. Const. § 139; *State ex rel. v. Burke*, 175 Ala. 561, 57 South. 870.

* * *

The sources seeking the advice the practice intends are those charged with governmental duty; and this with respect to the observance of the Constitutions, federal and state; to obey and observe which, as the highest laws, it is the oath-bound duty of all to do. The act does not intend that Justices volunteer their advice. The Justices can only respond when requested thereunto by one of the Houses or by the Governor. If a House or the Governor do not desire

the advice of the Justices, there is no obligation to propound a question to the Justices. If the response or responses, made as the act contemplates, do not commend themselves to the propounder of the question or questions, the House or the Governor is not required, in any degree, to accept or heed the advice thus elicited by them from the Justices. No legislative or executive function, power, or authority is or is sought to be by the act reposed in the Justices. Their function is "advisory merely"; inconclusive and in concluding upon the questioner, the responder, or any department, person, or officer. Obviously, in these circumstances, the act manifests no effort, establishes no effect to qualify, delegate or subordinate, or to detract from any power or function with which the Constitution has invested either the legislative or executive departments or any officer or body attached to those departments.

* * *

There are several reasons why the practice of invoking the merely advisory opinions of the Justices, in their individual capacities, cannot and will not operate to invite the Justices to prejudge concrete causes or proceedings that may later come to the Supreme Court for decision: First. Such merely advisory opinions must often pertain to important constitutional questions that never can or will come to the Supreme Court's consideration and decision; this, to illustrate in all cases where the Legislature or the Executive does no act projecting or raising the constitutional inquiry upon which an advisory opinion or opinions have been requested and given. Second. Since only one prejudiced by official act or action can invoke the courts to judicially determine a constitutional question, it cannot be at all certain that the subject of such advisory opinion will be presented for judicial determination in a cause or proceeding in the courts. Third. The decision by the Supreme Court upon the constitutional validity of a legislative enactment or of an act by the Executive always contains this important factor that is wholly absent in a response by the Justices to a request for a merely advisory opinion on the question, pending legislative or executive action, namely, that in judicially testing and determining the

constitutionality of legislative or executive action the Supreme Court -- in the discharge of its high and concluding judicial function -- always enters upon such an inquiry with the presumption suggested by the deference due from one department to another that the other department has not ignored or violated the Constitution; and this judicial presumption requires the sustaining of legislative or executive act, unless its invalidity appears beyond a reasonable doubt....

... The practice thus established evinces the highest permissible form of precautionary procedure to preserve constitutional government by invoking the advice of those thought to be peculiarly qualified to give, in advance of action, advice in respect of the Constitution's prescriptions, thereby manifesting a quickening sense of responsibility for submission and conformity to the Constitutions on the part of all who owe that supreme duty to the governments.

The undersigned Justices, in their individual capacities, therefore, conclude that the Advisory Opinion Act is not violative of the Constitution of Alabama. ...

2. In Matters of Great Public Concern

Opinion of the Justices No. 334
599 So. 2d 1166 (Ala. 1992)

* * *

As a general rule, the Justices do not issue advisory opinions unless requested to do so by the Governor or by the Legislature while in session and unless the request is related to a pending bill. However, where matters of great public concern are involved requiring immediate resolution, the Court sometimes makes exceptions. The issuing of Advisory Opinions is among the most difficult tasks the Justices are asked to perform, because, by their very nature, they present questions in the abstract, without the benefit of a factual context developed after a full adversary trial. Also, frequently, the Justices are not aided by briefs presenting the applicable law and argument on each side of

the issue. Such is not the case here. Able lawyers have briefed and argued the issue that is the subject of this Advisory Opinion resolution from the House of Representatives, and there is no dispute on the facts. All agree that the Alabama Department of Veterans' Affairs has obtained all Federal Government approval necessary to construct two new veterans' nursing homes in Alabama and that these nursing homes will be operated by the Alabama Department of Veterans' Affairs. If the Department of Veterans' Affairs is required to conduct a certificate of need process, then the projects will be lost, because that process cannot be completed before the expiration of the Federal Government's commitment to the project.

3. Opinions Not Issued in Purely Local Matters

Opinion of the Justices No. 333
598 So. 2d 1362 (Ala. 1992)

* * *

We note that for almost 30 years it has been the policy of this Court to decline to give advisory opinions on legislation involving purely local matters, and the House bills presented are purely local bills. We have made an exception when it was necessary to decide such matters in developing the rationale to answer other questions of an important constitutional nature that involved general laws. *Opinion of the Justices No.* 322, 507, So. 2d 927, 927 (Ala. 1987); *Opinion of the Justices No.* 164, 269 Ala. 127, 130, 111 So. 2d 605, 608 (1959). We now make another exception in choosing to answer the present query because the proposed legislation contains a constitutional amendment that must be ratified statewide; also, these bills affect the funding of the Mobile County School District, which, constitutionally, stands in a position somewhat different from that of Alabama's other county school systems, *see* Section 270, as amended by Amendment 111, Alabama Constitution of 1901. Therefore, we choose to answer this query.

However, we wish to make it clear that we remain committed to our general policy of not issuing an advisory

opinion on purely local matters. We know that the distinguished members of the House of Representatives understand that this policy was adopted in order that the members of this Court may devote themselves to preparing opinions in the ever-increasing number of cases that come here by appeal and to answering requests for advisory opinions concerning proposed legislation of statewide application.

We close with this caveat. We have rendered this advisory opinion as promptly as possible, believing that the House of Representatives is interested in receiving timely answers to its questions. We point out that time has not permitted a thorough study on our part, and we have not been favored with any amicus curiae briefs. Also, we have not had the advantage of an adversary proceeding, at which facts would have been developed and the issues more clearly defined. *See Opinion of the Justices No.* 212, 291 Ala. 581, 586, 285 So. 2d 87, 91-92 (1973).

* * *

Chapter 28
Legislative History

A. General

When faced with two possible interpretations of a statute, a court may rely on the legislative history of a statute. *U.S. v. Noe*, 634 F.2d 860 (5th Cir. 1981) Legislative history, however, cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms. *Alabama Exch. Bank v. U.S.*, 373 F. Supp. 1221 (M.D. Ala. 1974).

State
v.
Fuqua
258 Ala. 288, 61 So. 2d 810 (Ala. 1952)

[The question in this case is whether appellee who had been deprived of custody of his two minor children by a separation decree, but who supported his wife and children, furnished and maintained the home in which they lived, and exercised parental control and supervision over his children is entitled to the exemption from income tax allowed to "a head of a family" under § 388, Title 51, Code 1940, as amended.]

* * *

At the time our income tax law was adopted, there was in existence a federal treasury regulation which had the force and effect of law. *Wade v. Helvering*, 73 App. D.C. 96, 117 F.2d 21 [D.C. Cir. 1940)]. The regulation provided:

> "A head of a family is an individual who actually supports and maintains in one household one or more individuals who are closely connected with him by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for these dependent individuals

> is based upon some moral or legal obligation. In the absence of continuous actual residence together, whether or not a person with dependent relatives is a head of a family within the meaning of the Internal Revenue Code must depend on the character of the separation. If a father is absent on business, or a child or other dependent is away at school or on a visit, the common home being still maintained, the additional exemption applies. If, moreover, through force of circumstances a parent is obliged to maintain his dependent children with relatives or in a boarding house while he lives elsewhere, the additional exemption may still apply. If, however, without necessity the dependent continuously makes his home elsewhere, his benefactor is not the head of a family, irrespective of the question of support. A resident alien with children abroad is not thereby entitled to credit as the head of a family. As to the amount of the exemption, *see* Section 19.25-3."

In construing the provisions of Sec. 388, Title 51, quoted above, we may consider the history of the legislation, the fact that our income tax law was to a large measure taken from the federal law after the adoption and publication of the regulation. *Woods Bros. Constr. Co. v. Iowa Unemployment Comp. Comm'n*, 229 Iowa 1171, 296 N.W. 345 [Iowa 19410}; *Industrial Com. v. Woodlawn Cemetery Ass'n*, 232 Wis. 527, 287 N.W. 750 [(Wisc. 1939)]; *Equitable Life Ins. Co. of Iowa v. Iowa Employment Sec. Com.*, 231 Iowa 889, 2 N.W.2d 262, 139 A.L.R. 885 [(Iowa 1942)]. In our opinion, the regulation should be considered as a part of this statute, in view of our statute's history and the fact that the regulation was in effect at the time of the adoption of our law.

* * *

City of Montgomery
v.
Montgomery City Lines
254 Ala. 652, 49 So. 2d 199 (1949)

[Bill in Equity by Montgomery City Lines, Inc., was filed against the City of Montgomery for a declaratory judgment to determine the validity of a city ordinance imposing a license or privilege tax . . . which imposed a license tax in a sum equal to two per cent of the gross revenue derived by bus company from operations within police jurisdiction of city. (from case syllabus)]

* * *

In interpreting these statutes to determine the legislative intent, there are certain fundamental rules of construction which this Court has announced. The fundamental rule of construction is to ascertain and give effect to the intention of the legislature as expressed in the statute. *Street v. Cloe*, 207 Ala. 631, 93 So. 591 [(Ala. 1922)]; *State ex rel. Wilkinson v. Lane*, 181 Ala. 646, 62 So. 31 [(Ala. 1913)]. And in determining the intent, the rule as laid down by this Court in *Mooring v. State ex rel. Braswell*, 207 Ala. 34, 91 So. 869, 871 [Ala. (1921)], and followed in *Ex parte Miles*, 248 Ala. 386, 27 So. 2d 777 [(Ala. 1946)], is: "In construing laws it is the judicial disposition, as well as duty, to consider all related parts and provisions thereof that may contribute to disclose the legislative intent, and in so doing to give operation and effect to every provision, if fairly possible." *See also Leath v. Wilson*, 238 Ala. 577, 192 So. 417 [(Ala. 1939)].

The purpose of a statute will be illustrated by its origin, contemporaneous history, the prior condition of the law, as well as the general powers and course of legislation. *State ex rel. Fowler v. Stone*, 237 Ala. 78, 185 So. 404 [(Ala. 1938)].

* * *

Archer Daniels Midland Co.
v.
Seven Up Bottling Co. of Jasper, Inc.
746 So. 2d 966 (Ala. 1999)

"[W]hen circumstances surrounding the enactment of a statute cast doubt on the otherwise clear language of the statute, we must look to other factors in determining legislative intent….As the plaintiff correctly points out, § 6-5-60 is not, on its face, limited to transactions involving intrastate commerce. We hasten to add, however, that there is no language in § 6-5-60 that conclusively indicates an intent on the Legislature's part to regulate transactions involving the shipment of goods through interstate commerce. Because the language of §6-5-60, standing alone, is not conclusive on the question of legislative intent, and because of other factors, including the legislative history of Alabama's antitrust statutes, as well as the state of the law at the time of their enactment, cast doubt on the original intent of the Legislature, we find it necessary to look beyond the language of the statute."

***

City of Bessemer
v.
E.B. McClain, et al.
957 So. 2d 1061 (Ala. 2001)

Under *Archer Daniels Midland Co.,* we can look to the circumstances as they existed at the time of enactment. We can also look at the title or preamble of the act…[T]his Court's most recent pronouncement in *Archer Daniels Midland Co.* authorizes resort to the title or preamble in our pursuit of legislative intent.

***

B. Uniform and Model Acts

Council of State Governments (CSG), www.csg.org. One valuable national source of information for legislators is the

Council of State Governments. Its main office is located at 1776 Avenue of the States, Lexington, Kentucky 40511, and it has a southern regional office at 1946 Clairmont Road, Decatur, Georgia 30033. Among its many activities, the Council holds annual regional meetings to discuss current problems affecting the states; it proposes suggested legislation to the states; and it has a vast library of information on the various public policy areas of concern to state governments. An important element of its library holdings consists of reports and legislation that facilitates the sharing of state experiences relative to their common problems. In addition, the Council produces such publications as *State Government News*, which highlights current governmental developments in the various states; *State Government*, which provides more extensive analysis of various public policy issues; and *The Book of the States*, a comparative fact book containing a wealth of statistical and descriptive information about the American states. It also publishes monographs on specific topics of concern to legislators. All state legislators and legislative agencies have access to these various sources of information.

The Council of State Government's committee on suggested state legislation considers unique and innovative legislation for publication in its annual volume of *Suggested State Legislation*.

State officials serve on the Committee on Suggested State Legislation, representing all of the regions of the country and each of the major branches of state government. Committee members are selected by their respective states and include legislators, legislative staff, lieutenant governors, secretaries of state, comptrollers, interstate cooperation officials, and ex-officio representatives of various organizations serving governmental interests. The chairman and vice chairman of the SSL Committee are appointed by the chairman of the Governing Board of The Council of State Governments and serve two-year terms. The chairman of the SSL Committee is a legislator, while the vice chairman is chosen from the legislative staff members on the Committee. For more information, visit their homepage at www.csg.org.

National Conference of State Legislatures (NCSL),

www.ncsl.org. This organization, with a home office at 7700 East First Place, Denver, Colorado 80230, and a Washington office at 444 North Capitol St. N.W., Suite 515, Washington, D.C. 20001, is specifically oriented to the needs of legislators and legislative service agencies. It holds annual conferences for the discussion of present and anticipated problems before the states and the Nation and publishes studies on subjects of particular concern to the states, and their legislatures. Its bi-monthly magazine, *State Legislatures*, is sent to all legislators. In addition, this organization, too, offers advisory services to state legislatures. Through its homepage on the Internet (www.NCSL.org.) one can obtain pending legislation in most states and through its Legisnet obtain articles on many topics before state legislatures.

National Conference of Commissioners on Uniform State Laws (NCCUSL), www.nccusl.org. This national organization prepares suggested uniform and model acts for the states. Alabama's commission membership consists of three members of the bar appointed by the Governor for a term of four years or until their successors are appointed, a member of the Senate appointed by the President of the Senate, a member of the House or Representatives appointed by the Speaker of the House, the Director of Legislative Services Agency, and the Deputy Director of Legislative Services Agency, Legal Division. Ala. Code § 41-9-370. This conference, founded in 1892, promotes uniformity of state laws through voluntary action of each state government. Hundreds of uniform laws have been developed including the Uniform Commercial Code, Uniform Probate Code and others. Once a law is drafted by a committee of Commissioners, it must be approved by the Conference with each state having one vote. For additional information concerning uniform laws, the commission may be contacted at 111 N. Wabash Avenue, Suite 1010, Chicago, IL 60602 or at their homepage at www.nccusl.org. Uniform acts may be found on the internet at www.law.upenn.edu/library/ulc/ulc.htm.

American Law Institute (ALI), www.ali.org. As early as 1921 a need was expressed for establishing an agency designed solely for law revision and law improvement purposes. In 1923, a distinguished group of lawyers and judges formed the American

Law Institute. The American Law Institute is most famous for its restatements, although its Model statutes have also received considerable distinction, notably the Uniform Commercial Code which was written in consent with the NCCUSL. The American Law Institute has exercised immense influence over the course of American law through its writings and statements of the law.

The American Law Institute has developed a system of drafting and approving projects which has proved successful. Once a project has been identified by the Council, an expert, often a law professor, is appointed reporter. More than one reporter may be appointed on large projects. The reporter must have interests and a schedule which permit him to devote substantial time to the project. He/she will perform initial research and prepare an initial draft proposal. The reporter's draft is reviewed by an advisory committee composed of lawyers with extensive experience in the field explored. As the reporter is preparing the draft, he/she can convene the advisory committee to discuss major problems and the committee will continue to consult with the reporter until a complete draft is prepared. When a final draft is approved by the advisory committee, it is submitted to the Council. The Council may approve the draft, modify it, or send it back to the reporter and advisors for further work. Once the draft is approved by the Council, it is submitted to the membership at its annual meeting. The dangers of hastily and lightly considered projects are minimized by the rigorous process. For more information, visit their homepage at www.ali.org.

Alabama Law Institute[1]**, www.lsa.state.al.us.** In 1966 Howell Heflin and Hugh Merrill led a push to create the Alabama Law Institute, a permanent law improvement/law reform agency for the State of Alabama. Created by act of the Legislature in 1967, the Alabama Law Institute was funded and commenced operations in 1969. In 2017, the Institute was reorganized as the Law Revision Division of the newly created Legislative Services Agency.

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[1]Stabler, *The Alabama Law Institute - A Legal Adviser to the Legislature*, 30 Ala. Law. 134 (1969).

The Law Institute's primary purpose is to clarify and simplify the laws of Alabama, revise laws that are out-of-date, and fill gaps in the law where confusion exists. This work is accomplished by expert committees from the Institute's own membership, which review these issues and draft bills to address them. Such committees frequently draw on the ULC's work in order to keep Alabama at the forefront new developments in the law.

Ala. Code § 29-5A-61. Purposes and duties.

The general purposes of the Law Revision Division shall be to promote and encourage the clarification and simplification of the law of Alabama to secure the better administration of justice and to carry on scholarly legal research and scientific legal work. To that end it shall be the duty of the division to:

> (1) Consider needed improvements in both substantive and adjective law and to make recommendations concerning the same to the chairs and members of the House Judiciary Committee and the Senate Judiciary Committee.
>
> (2) Examine and study the law of Alabama and Alabama jurisprudence and statutes with a view of discovering defects and inequities and of recommending needed reforms.
>
> (3) Receive and consider suggestions from members of the Legislature and the public generally as to defects and anachronisms in the law.
>
> (4) Recommend such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of the state, both civil and criminal, into harmony with legal conditions and opinions.
>
> (5) Render annual reports to the Legislature through the president of the council and, if it deems so

advisable, accompany its reports with proposed bills to carry out any of its recommendations.

(6) Recommend the repeal of obsolete statutes and suggest needed amendments, additions, and repeals.

(7) Organize and conduct meetings as needed within the state for scholarly discussions of current problems in Alabama law, bringing together representatives of the Legislature, practicing attorneys, members of the bench and bar, and representatives of the law teaching profession and periodically conduct training and continuing education programs for public officials, including providing educational material.

(8) Advise the Code Commissioner on the performance of the duties imposed on the Code Commissioner by Article 2.

(9) In cooperation with the Legislative Council, establish and facilitate a legislative intern program.

In accordance with this enabling act, once a revision is completed, the Institute works with the Legal Division of the Legislative Reference Service to draft a bill for the Legislature. The Institute provides explanations and commentaries for its proposals through personal and written explanatory statements before Legislative committees. Institute projects are generally extensive revisions of the law that are the result of several years of study by experts in the field of law being revised. This meticulous study ensures the technical accuracy and legal proficiency of each of the Institute's proposed revisions. The Institute is dependent upon some person or group to promote the proposed legislation to the Alabama Legislature.

As an ongoing function, the Alabama Law Institute provides a lawyer for each judiciary committee in the House and some major committees in the Senate. The Alabama Law Institute and the Legal Division of the Legislative Services Agency work together to provide research and drafting for the Legislature. The

Legal Division handles the routine mass of the bill drafting, leaving to the Institute major revisions and those requiring intensive detailed study of a technical nature.

Additionally, the Institute provides legal education for a number of different groups including probate judges, sheriffs, and the Alabama Legislature. These educational programs include a variety of training conferences as well as published handbooks and legal guides such as *Alabama Legislation* and *The Legislative Process*.

The Institute further conducts the state's "Legislative Intern Program." This program places student interns in the offices of the Lt. Governor and Speaker of the House which allows them to observe and to participate in the processes of the legislative and executive branches of government. The Institute maintains an office in the State House for interns and committee lawyers. For more information, visit the Legislative Services Agency's website at www.lsa.state.al.us.

C. Senate and House Journals

Alabama's Constitution requires each house to keep a journal, or official record, of its proceedings, which is published after the adjournment of the session to which it relates. All action taken by either house must be recorded in its journal; and on demand of one-tenth of the members, the yeas and nays on any question must be entered. A member of either house may dissent from an action taken by the house and have the reason for his dissent entered in the journal. Ala. Const. Art. IV, § 55. Under the rules of both houses, one of the first businesses of the day is the approval/dispensing or reading of the journal of the preceding day. Senate Rule 8 (2023); House Rule 6 (2023).

The Journal made up, signed and filed in the office of the Secretary of State is the final evidence of proceedings of the respective houses. It cannot be corrected by either the clerk or the secretary of state once it is signed and filed. Consequently, if the Journal fails to show that a statute has been passed in accordance with constitutional provisions, the statute is invalid. *See Montgomery Beer-Bottling Works v. Gaston*, 126 Ala. 425, 28 So. 497

(Ala. 1900).

Ala. Const. Art. IV, § 55
Journal of proceedings of each house.

> Each house shall keep a journal of its proceedings and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house on any question shall, at the request of one-tenth of the members present, be entered on the journal. Any member of either house shall have liberty to dissent from or protest against any act or resolution which he may think injurious to the public, or to an individual, and have the reason for his dissent entered on the journal.

Ala. Code § 29-1-12. Journals of House and Senate -- Compiling and filing.

The Secretary of the Senate and the Clerk of the House shall be allowed 16 weeks within which to check, compare, and deliver the journals of the senate and the house of representatives of each session of the legislature to the Secretary of State and the state printer. The journals of the 10-day or organizational session of the legislature shall be compiled, combined, and filed with the journals of the next ensuing regular session. The time allowed after final adjournment of any session, other than the 10-day or organization sessions, for the filing of the journals in the office of the Secretary of State and completing the work specified by this section shall be 16 weeks. If there is a special session during, or within 16 weeks after the final adjournment of a regular session, or if there is a regular session within 16 weeks after the final adjournment of a special session, or if there is a special session within 16 weeks after the final adjournment of a special session, the time for comparing and filing the journals of such sessions, including the indices, shall be extended for each session for a period of time as the Speaker of the House and the President of the Senate may determine to be necessary for the clerk and the secretary to have sufficient time within which to transcribe and file

the journals of each house. The extended time shall not exceed a total of 16 weeks for each session. Notwithstanding the foregoing, the Speaker of the House and the President of the Senate may, in instances of extreme hardship, unforeseen circumstances, or uncontrollable circumstances, grant to the clerk and secretary an extra time extension that is in addition to any other extension permitted by law. If the time is extended, the Speaker of the House and the President of the Senate shall give written notice to the Secretary of State and to the state printer of the extension.

Ala. Code § 29-1-13. Journals of House and Senate -- Delivery to secretary of state; compensation.

The Secretary of the Senate and the Clerk of the House of Representatives shall be allowed 16 weeks from the date of the final adjournment of each session of the Legislature of Alabama, other than the 10-day or organization session, in which to check, compare, and deliver the journals of the house and senate to the Secretary of State in such form or state of completion, including camera ready drafts, the final form of printing, or other forms, as the clerk or secretary deem necessary and appropriate, and copy or deliver the journals of their respective houses to the public printer; or, alternatively, to prepare the final bound and printed journals, if the secretary or clerk in his or her discretion decides to do so, within his or her respective office. For these services, when performed, the secretary or clerk shall receive respectively the sum of $800, which shall be paid out of the appropriation made for the per diem and expenses of that session of the legislature upon presentation to the comptroller of proper certificates signed by the proper officers of their respective houses.

Ala. Code § 29-1-14. Papers and documents of Legislature -- Deposit with secretary of state.

At the close of each session of the Legislature, the Secretary of the Senate and the Clerk of the House of Representatives, and Secretary of State must select all the papers belonging to the Legislature, except such as relate to unfinished business, and deposit them in the office of the Secretary of State.

Ala. Code § 29-1-15. Papers and documents of Legislature -- Engrossed copies of laws, etc., to be preserved.

The engrossed copies of all laws and joint resolutions passed by the legislature must be preserved by the Secretary of the Senate and clerk of the house and deposited in the office of the Secretary of State.

Ala. Code § 29-1-16. Papers and documents of Legislature -- How filed and arranged.

(a) The Secretary of the Senate and the Clerk of the House of representatives must, within 10 days after the adjournment of each session, assort all papers and documents of their respective houses relating to the unfinished business of the session and arrange them in files, as follows:

(1) All petitions, with the accompanying documents, shall be arranged and filed in alphabetical order, tied up in convenient packages with a label on each showing the character of the documents and the session to which they relate.

(2) All bills rejected on the third reading must be arranged, filed and labeled in like order; also bills which were not reported favorably from a standing committee, the labels in each case showing the disposition of the bills.

(3) All communications from the Governor, Auditor, Director of the Department of Finance, Treasurer or other officer or person, which have been received during the session, and not entered at length on the journals, must be arranged, filed and labeled in separate packages, showing from what department, officer or person the same were received.

(4) Special reports from standing and select committees must be arranged, filed and labeled in like manner.

(b) Any other papers or documents, not included under any of the foregoing heads, must be arranged, filed and labeled as miscellaneous papers, the labels showing the session to which they belong and, as near as practicable, the character of the papers; and, in every instance, to which house of the Legislature they belong.

Ala. Code § 29-1-17. Papers and documents of Legislature -- Secretary of State to receipt for papers.

The records, papers and documents thus arranged, filed and labeled must be delivered to the Secretary of State, who, upon receipt of the same, must certify that such secretary and clerk have, respectively, complied with the requirements of Section 29-1-16. No warrant shall be drawn by the Comptroller, and no money paid by the Treasurer for such services, without the production of such certificate, which must be kept by the Treasurer as a voucher.

Mayor and Aldermen of West End
v.
Simmons
165 Ala. 359, 51 So. 638 (Ala. 1910)

> On September 29, 1903, the Governor signed what purported to be an enactment of the Legislature, entitled, "An act to alter and rearrange the boundaries of the city of West End, Jefferson county, Alabama," the effect of which was to bring certain territory within the limits of the city. Thereafter the appellee did business as a dealer in coal in the added territory without having paid a license tax therefor as was required by an ordinance of the city. Appellee being prosecuted therefor, the circuit court, on appeal, held the act to be void, because not passed in accordance with the Constitution. ...
>
> The act signed by the Governor contained three sections. If there were nothing else to be looked to, the presumption would be conclusive that the act as enrolled and signed by the Governor is the act passed by the Legislature. But an inspection of the journals of the two houses reveals the fact that they never intended to, nor did

in fact, vote for the enactment of the bill as approved by the Governor, but that by some inadvertence the enrolled copy of the act which reached his hands was rendered defective by the omission of four sections which had been put into the bill by amendment. The purpose and effect of the amendatory sections was to make the proposed addition of territory to the city dependent upon the approval of the people of the territory, to be expressed at an election for which provision was made. This was an amendment of utmost materiality; and, if it were less palpably material, it would not become our office to speculate upon the degree of importance attached to it in the legislative mind. The fact adverted to appears in the following manner: On October 3, 1903, the House and Senate concurred in a resolution which recited the fact that sections 4, 5, 6, and 7 had been by inadvertence omitted from the bill, setting out the language of the omitted sections, and provided that "the said bill be enrolled and signed by the Speaker of the House and the President of the Senate and be sent to the Governor with this resolution." On the same day the Legislature adjourned sine die. The amended act was not signed by the Governor.

The Houses of the Legislature have inherent power and right during the session to amend their journals so as to make them speak the truth, and the recitals of the journals, being consistent with each other, must be taken as indubitably true. It thus appears that there is no act approved concurrently by Senate, House, and Governor, nor any act which having been concurrently approved by House and Senate, went to the Governor under conditions which permitted it to become law without the Governor's signature. The necessary consequence is that the act in question failed to become law.

Affirmed.

D. Commentary

See Chapter 27(A)(7) *Motive and Intent of the Drafters*.

Chapter 29
Words

A. Statutory Meaning of Certain Words and Terms.

Ala. Code § 1-1-1.
Meaning of certain words and terms.

The following words, whenever they appear in this Code, shall have the signification attached to them in this section unless otherwise apparent from the context:

(1) PERSON. The word "person" includes a corporation as well as a natural person.

(2) WRITING. The word "writing" includes typewriting and printing on paper.

(3) OATH. The word "oath" includes affirmation.

(4) SIGNATURE OR SUBSCRIPTION. The words "signature" or "subscription" include a mark when the person cannot write, if his name is written near the mark, and witnessed by a person who writes his own name as a witness, and include with respect to corporate securities facsimile signature placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.

(5) LUNATIC, INSANE OR NON COMPOS MENTIS. The words "lunatic" or "insane" or the term "non compos mentis" include all persons of unsound mind.

(6) PROPERTY. The word "property" includes both real and personal property.

(7) REAL PROPERTY. The term "real property" includes lands, tenements and hereditaments.

(8) PERSONAL PROPERTY. The term "personal property" includes money, goods, chattels, things in action and evidence of debt, deeds and conveyances.

(9) CIRCUIT. The word "circuit" means judicial circuit.

(10) PRECEDING. The word "preceding" means next before.

(11) FOLLOWING. The word "following" means next after.

(12) STATE. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the several territories of the United States.

(13) UNITED STATES. The term "United States" includes the territories thereof and the District of Columbia.

(14) JURY OR JURIES. The words "jury" or "juries" include courts or judges in all cases when a jury trial is waived, or when the court or judge is authorized to ascertain and determine the facts as well as the law.

(15) MONTH. The word "month" means a calendar month.

(16) YEAR. The word "year" means a calendar year, but, whenever the word "year" is used in reference to any appropriations for the payment of

money out of the treasury, it shall mean fiscal year.

Ala. Code § 1-1-2.
Tenses; gender; singular and plural; joint authority.

Words used in this Code in the past or present tense include the future, as well as the past and present. Words used in the masculine gender include the feminine and neuter. The singular includes the plural, and the plural the singular. All words giving a joint authority to three or more persons or officers give such authority to a majority of such persons or officers, unless it is otherwise declared.

B. Technical or Plain Meaning

Words used in the statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa Cnty.*, 589 So. 2d 687 (Ala. 1991) (citing *Coastal States Gas Transmission Co., Inc. v. Alabama Public Serv. Comm'n*, 524 So. 2d 357 (Ala. 1988); *Alabama Farm Bureau Mutual Casualty Ins. Co. v. City of Hartselle*, 460 So. 2d 1219 (Ala. 1984)).

The words of a statute should be given their ordinary meaning unless it appears from the context or otherwise in the statute that a different meaning was intended. *See Ex Parte Pepper*, 185 Ala. 284, 64 So. 112 (1913) (reversing *American Cent. Ins. Co. v. Pepper*, 9 Ala. Ct. App. 191, 62 So. 397 (1913)).

Courts cannot ignore the plain meaning of a statute, *Ott v. Moody*, 283 Ala. 288, 216 So. 2d 177 (1968), and, absent any indication to the contrary, words in a statute will be given meaning generally accepted in popular, everyday usage. *State v. Int'l Paper Co.*, 276 Ala. 448, 163 So. 2d 607 (1964); *State v. Lamson & Sessions Co.*, 269 Ala. 610, 114 So. 2d 893 (1959).

Fuller
v.
Associates Commercial Corp.
389 So. 2d 506 (Ala. 1980)

[The issue in this case was whether the maximum finance charge section of the Mini Code, Code 1975, § 5-19-3(a), applies only to consumer loans.]

* * *

The intent of the Alabama Legislature must be determined primarily from the language of the statute. *Katz v. State Board of Medical Examiners*, 351 So. 2d 890 (Ala. 1977); *Tillman v. Sibbles*, 341 So. 2d 686 (Ala. 1977); *Fletcher v. Tuscaloosa Federal Sav. and Loan Ass'n*, 294 Ala. 173, 314 So. 2d 51 (1975). This rule of law is necessitated by the absence of any published transcripts of the proceedings of the Alabama House of Representatives or Senate. In determining legislative intent this Court will give words and phrases the same meaning they have in ordinary, everyday usage. *Adams v. Mathis*, 350 So. 2d 381 (Ala. 1977); *State v. Int'l Paper Co.*, 276 Ala. 448, 163 So. 2d 607 (1964). Code 1975, § 5-19-3(a), the primary section of the Mini-Code which is subject to interpretation in the instant appeal, provides:

> (a) The maximum finance charge for *any* loan or forbearance and for *any* credit sale, except under open-end credit plans, may equal but may not exceed the greater of the following: . . .

We hold that the legislature, by employing the adjective *any* to specify the loans to which § 5-19-3(a) applies, intended that the Mini-Code maximum rate section apply to non-consumer as well as consumer loans. (Emphasis original).

* * *

C. Literal and Reasonable Interpretation

The literal interpretation of a statute will not be adopted if it would defeat the purpose of the statute and another reasonable construction can be given. *Harrington v. State*, 200 Ala. 480, 76 So. 422 (1917).

Hamrick
v.
Thompson
276 Ala. 605, 165 So. 2d 386 (1964)[1]

* * *

The general rule that statutes in derogation of the common law must be strictly construed does not require a literal and blind adhesion to mere words. *Broaddus v. Johnson*, 235 Ala. 314, 179 So. 215 (1938). A literal interpretation will not be adopted when it would defeat the purpose of the statute, if any other reasonable construction can be given to the words. *Ray v. Richardson*, 250 Ala. 705, 36 So. 2d 89 (1948).

[The body of the act in the case commences:] "Should any resident . . . . who was the driver . . . . of a motor vehicle involved in . . . . collision while being operated on any public highway in this State, thereafter leave the State and remain away for a period of 60 days . . . . such absence from the State . . . . shall be deemed . . . . an appointment by such person of the secretary of state . . . . to be such person's . . . . true and lawful agent . . . . upon whom may be served the summons and complaint in any action against such absent . . . . resident . . . . growing out of such . . . . collision . . . ."

The defendant was a resident of this state; he was the driver of a motor vehicle involved in a collision while it was being operated on a public highway in this state; defendant thereafter left the state and had remained away for 60 days

[1] *See also City of Bessemer v. McClain*, 957 So. 2d 1061 (Ala. 2006).

when service was had on the secretary of state. The statute says when a resident has done these things, he has appointed an agent for service of process, namely, the secretary of state.

Defendant insists, however, that the statute refers only to a person who was resident at the time of service and that the instant defendant was not a resident at the time of service. The body of the act does not limit its operation to those who were residents at the time of service of process. Section 1 refers to "any resident . . . . who was the driver . . . . of a motor vehicle . . . . while being operated on any public highway in this State . . . ." If, as defendant contends, there be ambiguity in the reference to "any resident," there is a rule of construction which resolves the ambiguity.

* * *

D. General and Specific Words[2]

The ascertainment of the intent of the legislature is the primary objective of a court when it construes a statute. *See Champion v. McLean*, 266 Ala. 103, 109, 95 So. 2d 82, 88 (1957); *Bd. of Dental Examiners v. King*, 364 So. 2d 311, 314 (Ala. Civ. App. 1977), rev'd on other grounds 364 So. 2d 318 (Ala. 1978). When construing general and specific words in a statute, a court will principally use five rules of construction to assist it in determining the legislature's intent. The rules are as follows: 1) general words must be strictly construed so that their construction does not change general principles of the law; 2) *generalia specialibus non derogant*; 3) *generalibus specialia derogant*; 4) *ejusdem generis*; and 5) *expressio unius est exclusio alterius*.

1) **General words** must be strictly construed so as not to change general principles of law. *Cloverdale Homes v. Town of Cloverdale*, 182 Ala. 419, 431, 62 So. 712, 715 (1913),

[2]Philpot, Phil, Student paper [Ala. School of Law] (1982).

overruled on other grounds by *City of Orange Beach v. Benjamin*, 821 So. 2d 193 (Ala. 2001). The basis of this rule is the presumption that the legislature does not intend to change the law beyond what it explicitly declared in the statute by express words or clear implication. In *Cloverdale Homes* the court stated:

> It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law without expressing its intention with irresistible clearness; and to give any such effect to general words, simply because, in their widest and perhaps natural sense, they have that meaning, would be to give them a meaning in which they were not really used. *Cloverdale Homes*, 182 Ala. at 431, 62 So. at 715-16.

Consequently, general words, notwithstanding their broad literal meaning, must be strictly construed so their construction does not alter the general principles of the law. *Cloverdale Homes*, 182 Ala. at 431, 62 So. at 716. A specific or particular provision is controlling over a general provision. *Baldwin Cnty. v. Jenkins*, 494 So. 2d 584 (Ala. 1986).

2) ***Generalia specialibus non derogant***. This rule means that general provisions of statutes do not derogate from special provisions of statutes. *See* Black's Law Dictionary 616 (9th ed.). *City of Montgomery v. American Ry. Express Co.*, 219 Ala. 476, 122 So. 639 (1929) exemplifies how a court applies this rule of construction. In *City of Montgomery*, the court was confronted with two general provisions of the state code that conflicted with a special provision in the state code. Applying the rule of *generalia specialibus non derogant*, the court held that the general provisions were to be "given effect" except as they are limited or modified by the special provision. *City of Montgomery*, 19 Ala. at 478, 122 So. at 641.

3) *Generalibus specialia derogant*. This rule,

which is similar to *generalia specialibus non derogant*, means that "where there is a conflict in sections or provisions in *pari materia*, one dealing specially with a subject and the other doing so generally, the special section must prevail." Applying this rule, the Alabama Supreme Court has held that a section of the state code stating a special declaration was controlling over a general section of the code. Therefore, the application of either *generalia specialibus non derogant* or *generalia specialia derogant* will result in special words of statutes prevailing over general words. *Ivey v. Ry. Fuel Co.*, 218 Ala. 407, 118 So. 583 (1928).

4) ***Ejusdem generis***. *Ejusdem generis* means that when general words follow a designation of subjects and classes by words of particular and specific meaning, the general words will be construed to apply only to subjects and classes of the same general kind as those specifically enumerated. "[This] rule accords with the ordinary workings of the human mind. A writer who enumerates certain things, adding a general clause, mentions, as of course, the highest things, and some of each class, within those which he had in contemplation." *See Alabama Power Co. v. Gulf Power Co.*, 283 F. 606, 619 (M.D. Ala. 1922); *Foster v. Dickinson*, 293 Ala. 298, 300, 302 So. 2d 111, 112 (1974); *Goode v. Tyler*, 237 Ala. 106, 110, 186 So. 129, 132 (1939); *Henry v. McCormack Bros. Motor Car Co.*, 232 Ala. 196, 198, 167 So. 256, 257 (1936).

Special provisions relating to specific subjects control general provisions relating to general subjects. The things specially treated will be considered as exceptions to the general provisions. When a specific subject has been specially provided for by law, it will not be considered as repealed by a subsequent law which deals with a general subject in a general way, though the specific subject and the special provisions may be included in the general subject and general provisions. *Parker v. Hubbard*, 64 Ala. 203 (1879); *Montgomery v. Nat'l Bldg. & Loan Assoc.*, 108 Ala. 336, 18 So. 816 (1895); *City of Birmingham v. Southern Express Co.*, 164 Ala. 529, 51 So. 159 (1909).

Geter
v.
United States Steel Corp.
264 Ala. 94, 84 So. 2d 770 (1956)

* * *

The petitioner's action for workmen's compensation was brought under the 1951 amendment to the Workmen's Compensation Law of Alabama, Code 1940, Tit. 26, § 313(1) et seq., treating occupational pneumoconiosis as an accident. ...

* * *

Our cases, without conflict, give emphasis to the well defined rule that "special provisions relating to specific subjects control general provisions relating to general subjects"; and "when the law descends to particulars, such more special provisions must be understood as exceptions to any general rules laid down to the contrary." [citations omitted].

* * *

5) ***Expressio unius est exclusio alterius***, usually referred to as *expressio unius*. This rule means that when a statute specifically mentions certain things, it is construed as excluding those things not expressly enumerated. *E.g.*, *Geohagan v. General Motors Corp.*, 291 Ala. 167, 171, 279 So. 2d 436, 439 (1973)[3]; *Sanders v. Thigpen*, 277 Ala. 198, 200, 168 So. 2d 228, 230 (1964); *Champion v. McLean*, 266 Ala. 103, 112, 95 So. 2d 82, 91 (1957); *Davis v. Redstone Fed. Credit Union*, 401 So. 2d 49, 51 (Ala. Civ. App. 1979), reversed on other grounds, *Ex Parte Davis*, 401 So. 2d 52 (Ala. 1981). This doctrine is to be applied when, "in the natural association of ideas, that which is expressed is so set over by way of contrast to that which is omitted that the contrast enforces the affirmative inference that which is omitted must be intended to have opposite and contrary treatment." *Weill v.*

[3] But *see Industrial Chemical and Fiberglass Corporation v. Chandler*, 547 So. 2d 812 (Ala. 1988) at 821.

State ex rel. Gaillard, 250 Ala. 328, 34 So. 2d 132 (1948).

Ejusdem generis is a general principle of statutory construction that where general words follow the enumeration of particular classes of persons or things, the general words may be construed under the *ejusdem generis* rule as being applicable only to persons or things of the same general nature or class as those specifically enumerated. *Nathan Rodgers Constr. v. City of Saraland*, 670 F.2d 16 (5th Cir. 1982); *Ross Jewelers v. State*, 260 Ala. 682, 72 So. 2d 402, 43 A.L.R.2d 851 (1953); *Goode v. Tyler*, 237 Ala. 106, 186 So. 129 (1939).

Noscitur a sociis. This doctrine holds that where general and specific words which are capable of an analogous meaning are associated one with the other, they take color from each other, so that the general words are restricted to a sense analogous to that of the less general. *Ex parte Taylor*, 728 So. 2d 635, 1998 Ala. LEXIS 290, 33 Ala. B. Rep. 79 (Ala. 1998); *Winner v. Marion Cnty. Comm'n*, 415 So. 2d 1061 (Ala. 1982); *State v. Western Union Telegraph Co.*, 196 Ala. 570, 72 So. 99 (1916); N. Singer, *Sutherland Statutory Construction* § 47.16 (5th ed. 1992).

E. Application of the Rules of Construction

Foster
v.
Dickinson
293 Ala. 298, 302 So. 2d 111 (1974)
* * *

On January 26, 1974, the Alabama Republican Executive Committee adopted a resolution electing to accept and come under the primary election laws of the State of Alabama. The resolution set March 1, 1974, as the last day for persons to file declarations of candidacy in the primary. No person, including Foster, filed a declaration of candidacy in the Republican primary for the House of Representatives (House District 56) as required by § 348, Title 17, Code of Alabama, 1940, Recompiled 1958.

On September 5, 1974, the Republican Executive Committee filed Foster's name with the Secretary of State as the Republican nominee for the office of House District 56. ...

On September 12, 1974, Dickinson filed a complaint to enjoin the Probate Judge of St. Clair County from placing Foster's name on the ballot for the general election.

The only issue to be decided is whether the failure of any person to qualify by March 1, 1974, as a Republican primary candidate for House District 56, resulted in a vacancy in the Republican nomination for such office within the meaning of § 371, Title 17, Code of Alabama. Section 371, Title 17, provides in part as follows:

> "The state executive committee . . . where a vacancy may occur in any nomination, either by death, resignation, revocation, *or otherwise* . . . shall have the power and authority to fill such vacancy . . . by such . . . method as such committee may see fit to pursue." (Emphasis added.)

Foster relies on the cause of the vacancy contained in that part of the statute which says, "or otherwise." The words, "or otherwise" in law when used as a general phrase following an enumeration of particulars are commonly interpreted in a restricted sense as referring to such other matters as are kindred to the classes before mentioned, receiving *ejusdem generis* interpretation. *Cf. Goode v. Tyler*, 237 Ala. 106, 186 So. 129 (1939); *State v. Tyler*, 100 Fla. 1112, 130 So. 721 (1930). In *Goode* the court said the general words "or otherwise" will be construed as applicable only "to persons or things of the same general nature or class as those enumerated." Foster cites *Blackwell v. Hawkins*, 226 Ala. 149, 145 So. 477 (1932) as authority for his position that the Republican Executive Committee was correct when the Committee nominated him and certified his name to the Secretary of State. ...

* * *

Under the doctrine *ejusdem generis* the phrase "or otherwise" cannot be construed to include the failure to nominate in the primary election when it is evident there is no legal impediment present to preclude the party from offering a candidate in the primary.

The trial court was correct in enjoining the Probate Judge from including Foster's name on the ballot for the 1974 general election.

Affirmed.

Geohagan
v.
General Motors Corp.
291 Ala. 167, 279 So. 2d 436 (1973)

* * *

The basic issue here considered is whether an action for breach of implied warranty will legally sustain a claim for wrongful death. ...

* * *

Where a statute enumerates certain things on which it is to operate, the statute is to be construed as excluding from its effect all things not expressly mentioned. *Champion v. McLean*, 266 Ala. 103, 95 So. 2d 82.

We do not see how the legislature could have more clearly expressed the operative scope of the Alabama Uniform Commercial Code than it did in the Section 1-102(2), Subsections (a) and (b) of Title 7A, above mentioned, i.e., that the underlying purpose and policy of the act was "to simplify, clarify, and modernize the law governing *commercial transactions*," and "to permit the continued expansion of *commercial practices* through custom, usage and agreement of the parties." (Emphasis ours).[4]

[4] But *see Industrial Chemical and Fiberglass Corporation v. Chandler*, 547 So. 2d 812 (Ala. 1988) at 821.

So far as can be determined from a reading of our Uniform Commercial Code, there is not one word, sentence, paragraph, clause, or section which in anyway even suggests that for the breach of an express or implied warranty in a contract any person is given a right to maintain an action for a wrongful death. On the other hand, the precision with which the legislature has defined the purpose and policy of the act, limiting the same to commercial transactions, clearly demonstrates that it was not the intent of the legislature in enacting the Uniform Commercial Code to create a wrongful death action in case of a breach of warranty of the contract involved.

* * *

Champion
v.
McLean
266 Ala. 103, 95 So. 2d 82 (1957)

* * *

The appellants, as tax officials, contend that all cattle are subject to ad valorem tax by virtue of the provisions of Title 51, § 21(e), Code 1940, except as specifically exempt under Title 51, § 2(j), Code 1940.

Appellees contend that all cattle raised on the farm in the hands of the original producer are "products raised on the farm in the hands of the original producers" within the meaning of Title 51, § 21(d), Code 1940, and that cattle remaining in the hands of the original producer thereof are "agricultural products" within the meaning of Title 51, § 2(h), Code 1940. ...

* * *

According to this rule of construction, where a statute enumerates certain things on which it is to operate, the statute is to be construed as excluding from its effect all those things not expressly mentioned. 82 C.J.S. *Statutes* § 333, p. 666.

This rule of construction is not a technical or arbitrary rule. It is applied by people in all walks of life every day in their ordinary affairs. Perhaps the best illustration can be drawn from traffic signals.

At street intersections, motorists frequently encounter a traffic sign which recites: "NO LEFT TURN." Such a sign does not mention "RIGHT TURN," yet, the motorist immediately infers that right turns are permitted at such an intersection because they are not mentioned on the sign, and, therefore, are intended to be excluded from the prohibition expressly stated against left turns. If both right turns and left turns are prohibited, the sign recites "NO TURN."

Another common sign at intersections is "TURN RIGHT ON RED." LEFT TURNS are not mentioned, but the motorist does not infer that he is permitted to turn left on the red light. On the contrary, he infers that left turns, because they are not mentioned, receive opposite treatment, and are not permitted on the red light. ...

* * *

". . . Like terms in related statutes are presumed to have the same meaning, unless a different intent is manifest." *Kilgore v. Swindle*, 219 Ala. 378, 380, 122 So. 333, 335 [(1929)].

* * *

We are told that it is our duty to ascertain the meaning of the words at the time they were used by the legislature, and to give the words that same meaning now unless the meaning has changed since that time.

This rule has been pronounced by the court as follows:

> "In interpreting statutes, we must endeavor to arrive at the meaning and intention of the legislature, to be gathered from the words they have employed. Words are but the vehicle of thought; and if, since

> they were employed by the legislature, they have undergone change, or, if the subject they refer to has undergone modification since their employment, we must search for and enforce the sense they bore when the statute was enacted; for such, we must presume, was the intention of the law-making power. . . ." *Sikes v. The State*, 67 Ala. 77 [(1880)].

* * *

In re Sims
185 B.R. 853 (Bankr. N.D. Ala. 1995)

> This Court finds that the words "last payment" in the phrase "last payment on the original payment schedule" means exactly the same as the words "last payment" in (b)(5) as they are interpreted by Chief Judge Mitchell. This conclusion is supported by the general rule of statutory construction that where the "same words are used in different parts of an act, and where the meaning in one instance is clear, other uses of the word in the act have the same meaning as that where the definition is clear."

F. Last Antecedent

Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. The last antecedent is 'the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence.' Thus, a proviso usually is construed to apply to the provision or clause immediately preceding it. The rule is another aid to discovery of intent or meaning and is not inflexible and uniformly binding. Where the sense of the entire act requires that a qualifying word or phrase apply to several preceding or even succeeding sections, the word or phrase will not be restricted to its immediate antecedent.

Evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a

comma. N. Singer, *Sutherland Statutory Construction* § 47.33 (5th ed. 1992).

White
v.
Knight
424 So. 2d 566 (Ala. 1982)

* * *

The plaintiff, Lucile White, was the winner of the September 7, 1982, Democratic primary election for the nomination as state senator for Senate District 17. However, acting on contest of that election filed by Ida Mae Cowley, a subcommittee appointed by the State Democratic Executive Committee on September 30, 1982, declared that Lucile White did not meet the residency requirements of Section 47 because she had not been a *resident of the state* for the three-year period next preceding the date of the general election. [Plaintiff White was born in Jefferson County on January 13, 1945, and resided there until May 1969 when she moved to another state. She returned to Alabama in May 1980, resuming residence in Senate District 17. Her position is that her two and one-half years of residency next preceding the general election, coupled with her more than twenty years of residency before 1969, met the residency requirements of Section 47. (From Footnote 1 in the case.)] White's primary election was set aside, and the position was declared vacant to be filled by the State Democratic Executive Committee on October 9, 1982...

* * *

The plaintiff points to the phrasing of Section 47 which refers to state residency and then to district residency. The latter residency, she asserts, contains the qualification of residency "next before their election," while the former does not. Accordingly, she insists, the Constitution framers did not place the same qualifications on both with the result that an aggregate residence of three years would suffice. Moreover, plaintiff argues that the language of Section 47 is ambiguous, and being so dictates the use of the "doctrine of last antecedent" in discovering its meaning:

> "By what is known as the doctrine of the 'last antecedent,' relative and qualifying words, phrases, and clauses, are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to or including others more remote; . . ."

citing 82 C.J.S. *Statutes* § 334 (1953).

We appreciate the application of this general rule of statutory construction; however, we also note from the cited section that the doctrine is only an aid to construction and "will not be adhered to where extension to a more remote antecedent is clearly required by a consideration of the entire act . . . . Where several words are followed by a clause as much applicable to the first and other words as to the last, the clause should be read as applicable to all." *Ibid*. *See also* 2A Sutherland Statutory Construction, § 47.33 (Sands 4th ed. 1973).

The search for the meaning of this entire act is aided by the decision of *Butler v. Amos*, 292 Ala. 260, 292 So. 2d 645 (1974). That case held that a candidate for election to the state senate was required under Section 47 to have resided in his district for one year next preceding the election, Merrill, J., expressing the following reasoning:

> "'[T]he . . . object . . . intended . . .' was that a legislator must have lived at least one year in the same district with the people he sought to represent in the legislature so that they could know him and he could learn something of their needs."

G. Disjunctive and Conjunctive Words: "And" and "Or"

In interpretation of statutes, constitutional amendments, or other writings, the intent of the writing is the substance and verbiage that is mere form. Consequently, a court ascertaining intent is permitted to hold that "or" and "and" are interchangeable. *In re Opinion of Justices No. 93*, 252 Ala. 194, 41 So. 2d 559 (1949); *House v. Cullman Cnty.*, 593 So. 2d 69 (Ala. 1992).

"Problems of multiple modification or reference are perhaps best approached through the peculiar uncertainties involved in the use of "and" and "or." The difference between "and" and "or" is usually explained by saying that "and" stands for the conjunctive, connective, or additive and "or" for the disjunctive or alternative. The former connotes "togetherness" and the latter tells you to "take your pick." So much is clear. Beyond this point, difficulties arise.

"One problem is that each of these two words is semantically ambiguous. It is not always clear whether the writer intends the inclusive "or" (A or B, or both) or the exclusive "or" (A or B, but not both). This long-recognized uncertainty has given rise to the abortive attempt to make "and/or" a respectable English equivalent to the Latin "vel" (the inclusive "or").

"What has not been so well recognized is that there is a corresponding, though less frequent, uncertainty in the use of "and." Thus, it is not always clear whether the writer intends the several "and" (A and B, jointly or severally) or the joint "and" (A and B, jointly but not severally). This uncertainty will surprise some because "and" is normally used in the former sense. Even so, the authors of documents sometimes intend things to be done jointly or not at all. This idea inheres in the purchase of a pair of shoes (try to buy one shoe separately!) without, however, posing any grammatical problem. On the other hand, a reference to "husbands and wives" may create a grammatical uncertainty as to whether the right, privilege, or duty extends to husbands without wives, and vice versa, or whether it may be enjoyed or discharged only jointly. When such a doubt exists, it is desirable to recognize and deal with it.

"Observance of legal usage suggests that in most cases "or" is used in the inclusive rather than the exclusive sense, while "and" is used in the several rather than the joint sense. If true, this is significant for legal draftsmen and other writers, because it means that in the absence of special

circumstances they can rely on simple "or's" and "and's" to carry these respective meanings. This, incidentally, greatly reduces the number of occasions for using the undesirable expression "and/or" or one of its more respectable equivalents, such as "A or B, or both," or "either or both of the following." Dickerson, Reed, *The Fundamentals of Legal Drafting*, pp. 76-78.

State
v.
Steel City Crane Rental, Inc.
345 So. 2d 1371 (Ala. Civ. App. 1977)

* * *

... Here, the State contends, a lease or rental is statutorily defined as a transaction not only where the owner allows another to have "possession" of tangible personal property, but also where the owner permits another the "use" of tangible personal property for consideration. In other words, since the statute declares that a lease or rental is a transaction whereby the owner permits another to have "possession or use" of the property, either one -- "possession" or "use" -- is sufficient to bring the transaction within the statute. Both possession and use are not required. The term "use" is a broader term than possession and, in this instance, the State concludes the lease tax was properly applied. This contention is without merit.

A statute is to be construed so as to effectuate the intent of the legislature. *League of Women Voters v. Renfro*, 292 Ala. 128, 290 So. 2d 167 (1974). In ascertaining the legislative intent, courts may construe the disjunctive conjunction "or" and the conjunctive conjunction "and" interchangeably. *In re Opinion of the Justices No. 93*, 252 Ala. 194, 11 So. 2d 559 (1949). Additionally, taxing statutes are to be construed against the taxing power and in favor of the taxpayer. *State v. Int'l Paper Co.*, 276 Ala. 448, 163 So. 2d 607 (1964). Interpreting Tit. 51, § 629(21) *et seq.* with due regard to the above principles compels a conclusion by this court that the legislature did not seek to expand the meaning of lease or rental beyond that normally ascribed to such terms.

Hence, the transaction in question fails to fall within the levy of § 629(21) *et seq.*

* * *

H. Mandatory and Directory Words: "May" and "Shall"

Whether provisions of an act are directory or mandatory must be determined by consideration of the subject-matter and the relation of each provision to the general object in order to arrive at the legislative intent. *Citizens' Bank and Sec. Co. v. Commissioners' Court of DeKalb Cnty.*, 209 Ala. 646, 96 So. 778 (1923). A mandatory construction will be given the word "may" as used in a statute where public interests are concerned and the public or a third person make claim of law that conferred power should be exercised for the sake of justice or the public good. *Fuller v. State*, 31 Ala. App. 324, 16 So. 2d 428 (1944). Similarly, while the word "shall" is generally deemed mandatory, there is an exception when the circumstances indicate that the legislature intended otherwise and mandatory construction would place the statute in jeopardy of being unconstitutional. *Morgan v. State*, 280 Ala. 414, 194 So. 2d 820, appeal dismissed, *cert. denied*, 389 U.S. 7 (1967).

Prince
v.
Hunter
388 So. 2d 546 (Ala. 1980)

* * *

The sole issue is whether Code, § 35-6-100 (Cum. Supp. 1979), is applicable in this case. Section 35-6-100 provides as follows:

> Upon the filing of any petition for a sale for division of any property, real or personal, held by joint owners or tenants in common, the court shall provide for the purchase of the interests of the joint owners or tenants in common. ...

The statute ostensibly was drafted to protect joint

owners from being divested of their property in a forced sale by allowing them the option to purchase the filing joint owner's interest. The operative words are "the court *shall* provide for the purchase [of the petitioner's interest] by the other joint owners . . . ." *Ragland v. Walker*, 387 So. 2d 184 (Ala. 1980) (emphasis added). The statute in using the word "shall" makes it mandatory, upon the filing of a petition for sale for division, that the court provide for the purchase of the petitioner's interest by the joint owners if they notify the court of their interest in purchasing petitioner's interest at least ten days before the day set for trial. Thus, § 35-6-100 is applicable to the instant proceeding, and it was error for the court to order a public sale without consideration of § 35-6-100.

Appellee contends that the word "shall" should be construed as permissive so that § 35-6-100 is not mandatory in all cases. Appellee argues that the Legislature intended the purchase provision of § 35-6-100 to apply only to cases where an "outsider" would acquire "family" property by forcing a public sale and outbidding the "family" joint owners. According to appellee, construing the word "shall" as mandatory would potentially require purchases without public sale in all sale for division cases, even when the joint owners are all family members. This, appellee concludes, is not within the Legislature's intention so "shall," in this case, must be construed as permissive in order to effectuate legislative intent.

Although generally the word "shall" in a statute is used in a mandatory sense, it is true that "shall" may be construed as permissive where from the circumstances it is obvious that the Legislature intended it so or where the validity of the statute is placed in jeopardy. *Morgan v. State*, 280 Ala. 414, 417, 194 So. 2d 820 (Ala. 1967). Neither of these situations is present in the instant case: the statute is not constitutionally defective as written nor is it obvious from the statute that the Legislature intended it only to apply when the joint owner forcing the public sale is an "outsider" - the abuses to be prevented by the statute are

equally as likely when only "family" members are involved. Therefore, the word "shall" must be construed as mandatory.

For these reasons, this case is reversed and remanded.

* * *

The Mobile County Republican Executive Committee
v.
Mandeville
363 So. 2d 754 (Ala. 1978)

* * *

The Republican Executive Committee contends that it submitted a list of suggested election officers for the primary election as allowed by § 17-16-17, Code of Alabama 1975; and that the appointing board failed, neglected or refused to consider this list in the appointment of election officers. It contends that Alabama law requires the appointing board to name election officers for primary elections from lists provided by the respective political party executive committees and in equal proportion to the number of political parties participating in the primary election.

§ 17-16-17 controls this issue as it relates to the appointment of election officers in primary elections. This statute provides:

> "Each candidate for nomination may, at least 25 days before the primary, present to the county executive committee of his party a list of election officers desired by him for any one or more of the districts, wards or precincts, and his county committee shall, so far as practicable, make up, from the list so presented to it, a list of names of election officers, six in number, for each district, ward or precinct, which it will nominate to the appointing board of the county for appointment as officers to conduct the primary election. . . ."

The trial court held that § 17-16-17 was directory only and did not require the appointing board to appoint election officers in equal proportions from the lists submitted by the county executive committees. The trial court held, in part, that:

> ". . . the appointing board, and their successors in office, shall give due consideration to each such list so presented to it, and in choosing the election officials at any primary or general election, exercise its discretion as to the selection of such election officers . . . ."

* * *

The 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. *Rodgers v. Meredith*, 274 Ala. 179, 146 So. 2d 308 (1962); *Bd. of Educ. of Jefferson Cnty. v. State*, 222 Ala. 70, 131 So. 239 (1930). In making this determination, it is legislative intent, rather than supposed words, art such as "shall," "may" or "must," which ultimately controls. *Morgan v. State*, 280 Ala. 414, 194 So. 2d 820, appeal dismissed, *cert. denied*, 389 U.S. 7, 88 S. Ct. 47, 19 L. Ed. 2d 6 (1967). *See also Belcher Oil Co. v. Dade County*, 271 So. 2d 118 (Fla. 1972); *Barton v. Atkinson*, 228 Ga. 733, 187 S.E.2d 835 (1972); *Sho-me Power Co. v. City of Mountain Grove*, 467 S.W.2d 109 (Mo. App. 1971).

There is no requirement, stated or which may fairly be implied, from the language of the statute that the appointing board is required to select the election officers to serve in primary elections from the respective executive committees' lists in any particular ratio or proportion. The appointing board, of course, may not disregard such lists in making appointments; but, as long as it does not abuse its discretion in selecting the election officers from among the candidate's nominations, it is in compliance with § 17-16-17.

* * *

The result reached by the trial court is consistent with our interpretation of the applicable law. Its judgment is, therefore, affirmed.

* * *

Alabama State Board of Health ex rel Baxley
v.
Chambers County
335 So. 2d 653 (Ala. 1976)

* * *

In support of the State's argument, give rules of statutory construction are stated:

> (1) Permissive words in a statute may be construed as being mandatory in those cases where the public interest and rights are concerned and where the public or third persons have a claim de jure. *Ex parte Simonton*, 9 Port. 390 (1839).
>
> (2) A statute must be considered as a whole and every word in it made effective if possible. *State By and Through State Bd. for Registration of Architects v. Jones*, 289 Ala. 353, 267 So. 2d 427 (1972).
>
> (3) Where a legislative provision is accompanied by a penalty for failure to comply with it the provision is mandatory. *Rodgers v. Meredith*, 274 Ala. 179, 146 So. 2d 308 (1962).
>
> (4) Where two sections or provisions of an act are conflicting the last in order of arrangement controls. *State v. Crenshaw*, 287 Ala. 139, 249 So. 2d 622 (1971).
>
> (5) The purpose of statutory construction is to ascertain, not only from the language used by the legislature, but also from the reason and necessity for the act, the evil sought to be remedied, and the object and purpose sought to be obtained. *Rinehart v.*

Reliance Ins. Co., 273 Ala. 535, 142 So. 2d 254 (1962).

* * *

We acknowledge as correct each of the five rules of legislative construction set forth in the State's contentions; but basic to each of these rules, unless the challenged act is constitutionally offensive, is the intent of the legislature. As the Supreme Court of Alabama recognized in *Thompson v. State*, 20 Ala. 54 (1852):

> "The inartificial manner in which many of our statutes are framed, the inaptness of expressions frequently used, and the want of perspicuity and precision not unfrequently met with, often require the court to look less at the letter or words of the statute, than at the context, the subject-matter, the consequences and effects, and the reason and spirit of the law, in endeavoring to arrive at the will of the law giver."

* * *

Our most recent expression in this area is found in *Miles v. Bank of Heflin*, 295 Ala. 286, 328 So. 2d 281 (1976).

> "The interchangeability of 'may' and 'shall' to effect legislative intent is a sound rule; but it can be given a field of operation only where the overall expression of the legislative enactment evidences an intent and purpose contrary to the term employed. *See Morgan v. State*, 280 Ala. 414, 194 So. 2d 820 (1967). Here, no contrary intent which permits 'may' to be substituted for 'shall' is manifest."

* * *

Ex parte Brasher
555 So. 2d 192 (1989)

* * *

The trial judge allowed the district attorney to videotape the deposition of the five-year-old victim and to

play the videotape before the jury, pursuant to Code 1975, § 15-25-2. The issues are whether § 15-25-2 deprives a criminal defendant of his constitutional right to confront his accuser; and whether the trial judge must be the same judge who witnessed the deposition, as seems to be required by § 15-25-2(a).

* * *

Section 15-25-2 states that objections to the introduction of the videotape "shall be heard by the judge in whose presence the deposition was taken." The word "shall," when used in a statute, usually indicates that the requirement is mandatory. *Prince v. Hunter*, 388 So. 2d 546, 548 (Ala. 1980). However, "shall" may also be construed as being permissive where the intent of the legislature would be defeated by making the language mandatory. Id.

When determining whether "shall" is mandatory, "the prime object is to ascertain the legislative intent, as disclosed by all the terms and provisions of the act in relation to the subject of legislation and the general object intended to be accomplished." *Alabama Pine Co. v. Merchants & Farmers' Bank of Aliceville*, 215 Ala. 66, 67, 109 So. 358 (1926). Because the trial judge satisfied the legislature's intent, we hold that the word "shall" is directory and not mandatory. Therefore, the trial judge did not commit reversible error.

The judgment is affirmed.

AFFIRMED.

I. Mistakes in Grammar, Spelling, Punctuation or Writing

Guy H. James Const. Co.
v.
Boswell
366 So. 2d 271 (Ala. 1979)

* * *

The provision in question reads as follows, in pertinent part:

> "(d) The taxes levied herein shall not apply with respect to the sale, use, storage or consumption of tangible personal property taxes by the provisions of the sales tax law, or the provisions of [the use tax law] . . . ."

[The court will correct apparent mistakes in the wording of a statute when other provisions or the legislative journals furnish the means to correct the mistakes. *Henry v. McCormack Bros. Motor Car Co.*, 232 Ala. 96, 167 So. 256 (1936).]

The trial court disagreed with Contractor and found that subsection (d) provides for no such deduction for purchases on which sales or use taxes had been paid.

At the outset we note that the word "taxes" in the phrase "tangible personal property taxes by the provisions of the sales tax law" appears to be a typographical error. It is plain from the context in which it is used that "taxes" should be read "taxed." An obvious error in the language of a statute is self-correcting. *State Farm Auto. Ins. Co. v. Reaves*, 292 Ala. 218, 292 So. 2d 95 (1974). In such an instance, the Court may substitute the correct word when it can be ascertained from the context of the act. C. Sands, 2A Sutherland Statutes and Statutory Construction § 47.36 (1973). The trial court found the correct word to be "taxed." Both parties appear to agree it should be "taxed." We think so too.

* * *

* * *

"(a) Except as authorized by this Act, any person who possesses, sells, furnishes, gives away, obtains, or attempts to obtain by fraud, deceit, misrepresentation, or subterfuge, or by the forgery or alteration of a prescription or written order, or by the concealment of material fact, or by use of false name or giving a false address, controlled substances enumerated in Schedules I, II, III, IV, [and] V is guilty of a felony and upon conviction for first offense may be imprisoned not less than 2 nor more than 15 years and, in addition, may be fined not more than $25,000; except any person who possesses any marihuana for his personal use only is guilty of a misdemeanor and upon conviction for the offense shall be imprisoned in the county jail for not more than one (1) year, and in addition, shall be fined not more than $1,000.00; but the penalties for the subsequent offenses relating to possession of marihuana shall be the same as specified in the first sentence of this section 401(a).

"(b) Any person who violates this section with respect to a counterfeit substances enumerated in schedule I through V is guilty of a felony and upon conviction for the first offense may be imprisoned for not less than 2 nor more than 15 years and may be fined not more than $25,000."

* * *

The appellant first contends that because there is a colon immediately following the figures "$25,000," the section in question contains two sentences and provides two penalties for the same offense. This court has examined the original enrolled amendment to Senate Bill 414 (Act No. 1407), 1971 Regular Session, and finds that the colon appears outside the quote, "$25,000," and the word "Except," which commences the next clause, is capitalized. It is clear, therefore, that the punctuation shown in the pocket parts of Michie's Edition to our Code is in error, since the colon

appears to be directional only, and should not be construed as a part of the act itself. It therefore follows that the sentence in question is but one sentence, which provides an exception as to punishment for persons who possess marihuana for their personal use only on the first conviction.

In Volume 96, Quarterly Reports of the Attorney General, pages 39, 40, we find:

"The several chapters, titles and sections of the 1940 Code are *in pari materia*, each having a field of operation, and must be so construed. *Jenkins v. State*, 16 So. 2d 314, 245 Ala. 159 [(1944)]. Also *Jefferson Cnty. v. City of Birmingham*, 221 Ala. 476, 129 So. 48 [(1930)].

"Judicial interpretation of statutes brought forward in codes without change become part of statutes by legislative adoption. *Hurt v. Knox*, 126 So. 110, 220 Ala. 448 [(1930)]." *See also Johnson v. State*, 222 Ala. 90, 130 So. 777 [(1930)].

Moreover, as noted by Mr. Justice Simpson, in *Akers v. State ex rel. Witcher*, 283 Ala. 248, 215 So. 2d 578 [(1968)]:

> ". . ., [W]e should, in construing legislative enactments, look not only to the statute itself but to the purpose and object of the enactment as well, and its relation to other laws."

* * *

ON REHEARING

That the colon appears outside the numerals "$25,000" in the amendment, in Section 401(a), and therefore such colon is not to be considered as a part of the Act in question.

* * *

J. Omitted Words

Only when it appears from the context that certain words have been inadvertently omitted from the statute may the court supply such words as are necessary to complete the sense and express legislative intent. *State v. Calumet & Hecla Consol. Copper Co.*, 259 Ala. 225, 66 So. 2d 726 (1953).

It is a rule of statutory construction that where it appears from the context that certain words have been inadvertently omitted from a statute, the court may supply such words as are necessary to complete the sense, and to express the legislative intent. This rule is attended with the admonition to exercise extreme caution in adding words in the course of construction, and in the absence of clear necessity the Court should not do so. 82 C.J.S. *Statutes* § 344, pages 689-690; *State v. Calumet & Hecla Consol. Copper Co.*, 259 Ala. 225, 66 So. 2d 726 (1953).

"We would not consider supplying the omission in Act 40 if it were not palpably and clearly indicated by not only the context of the affected section, but by the context of the act as a whole. We therefore construe Section 22, when it refers therein to Article 6, Title 13, Code of 1940, as introduced, or to Chapter 6, Title 13, Code of 1940, as printed in the Acts of the legislature, to, in fact, refer to Article 6, Chapter 8, Title 13, Code of Alabama 1940. We deem such construction to be necessary to make the statute conform to the obvious intent of the legislature and prevent Section 22 thereof from being meaningless and a nullity." *Walker v. Kilborn*, 46 Ala. App. 695, 699, 248 So. 2d 736, 739 (1971).

Pace
v.
Armstrong World Industries, Inc.
578 So. 2d 281 (Ala. 1991)

* * *

The rule on omitted words states that generally courts may neither insert words in the statute nor apply the language in the statute to an event for which no provision was made, and which, to all appearances, was not in the minds of the legislature at the time of the enactment of the

law. 73 Am.Jur.2d, *Statutes* § 203 (1974). Words may, however, be inserted into a statute to prevent it from being absurd, to obviate inconsistency in the statute, and to effectuate the intent of the legislature manifested therein; this rule applies where words have been omitted from the statute by clerical error, accident, or inadvertence. 73 Am.Jur.2d, supra. In any event, courts must proceed with great caution in supplying alleged omissions, and should do so only where the omission is "palpable," i.e., manifest or easily perceptible. 73 Am.Jur.2d, supra.

* * *

K. Overbroad and Vague

Laws enacted by the Alabama Legislature are presumably constitutional. However, this presumption may be rebutted by a finding that the law is so vague or overbroad that it provides no notice to a reasonable citizen of common understanding and intelligence that the act is otherwise illegal. *Gasser v. Morgan, infra*. *See also State v. Ballard*, 341 So. 2d 957 (Ala. Crim. App. 1976), cert. quashed, 341 So. 2d 962 (Ala. 1977).

Gasser
v.
Morgan
498 F. Supp. 1154 (N.D. Ala. 1980)

* * *

The issue is the constitutionality of the Alabama drug paraphernalia statute, Section 20-2-75. The statute reads as follows:

> Section 1. Section 20-2-75 of the Code of Alabama 1975, is hereby amended to read as follows:
>
> "(1) 'Drug related object' means any instrument, device, or object which is designed, produced or marketed as useful primarily for one or more of the following purposes:

> "(A) To inject, ingest, inhale, or otherwise introduce into the human body marijuana or a controlled substance; ...
>
> * * *

Plaintiff contends that the Alabama drug paraphernalia statute is unconstitutional in that the language defining "drug related object" in Section 1 of the Alabama statute is overbroad and vague, and thus offends the due process clause of the fourteenth amendment. ...

* * *

... Courts may imply specific intent into a statute if such a construction is necessary to save it. Plaintiff's contentions will not stand, since this court does construe the statute as requiring specific intent.

This court will first discuss the vagueness issue. This is the contention argued the most forcefully.

Laws enacted by the legislature carry with them a presumption of constitutionality. Such a presumption may be rebutted by a finding that a law is so vague or overbroad that it provides no notice to reasonable citizens of common understanding and intelligence that an act is illegal. *United States v. Harriss*, 347 U.S. 612, 74 S. Ct. 808, 812, 98 L. Ed. 989 (1954). However, absolute precision in drafting laws is not demanded. Indeed, the Supreme Court has said:

> A criminal statute must be sufficiently definite to give notice of the required conduct to one who would avoid its penalties, and to guide the judge in its application and the lawyer in defending one charged with its violation. But few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently no more than a reasonable degree of certainty can be demanded.

> Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.

Boyce Motor Lines v. United States, 342 U.S. 337, 340, 72 S. Ct. 329, 330-31, 96 L. Ed. 367, 371 (1952) (citations omitted). The test of constitutionality is not precision in language but the existence of reasonable notice; that is, an "ascertainable standard of guilt." *Winters v. People of State of New York*, 333 U.S. 507, 68 S. Ct. 665, 92 L. Ed. 840 (1948). Furthermore, vagueness may be cured by an interpretation given to a statute by a court. *United States v. Cooper Corp.*, 312 U.S. 600, 61 S. Ct. 742, 85 L. Ed. 1071 (1941); *Screws v. United States*, 325 U.S. 91, 65 S. Ct. 1031, 89 L. Ed. 1495 (1945). In construing a statute, the courts consider the intent of the legislature in enacting the statute. *United States v. Balint*, 258 U.S. 250, 42 S. Ct. 301, 66 L. Ed. 604 (1922). Moreover, if a law can be interpreted in two ways and one interpretation renders the law constitutional while the other renders it unconstitutional, the court must give the law the interpretation that would render it constitutional. *Screws v. United States*, *supra*; *McCullough v. Commonwealth of Virginia*, 172 U.S. 102, 112, 19 S. Ct. 134, 138, 43 L. Ed. 382 (1898). *See United States v. Menasche*, 348 U.S. 528, 75 S. Ct. 513, 99 L. Ed. 615 (1955); *Sun Pub. Co. v. Walling*, 140 F.2d 445, *cert. denied* 322 U.S. 728, 64 S. Ct. 946, 88 L.Ed. 1564 (1944). Similarly, the Supreme Court has often held that a statute otherwise void for vagueness is saved by the inclusion of a specific mens rea as an element of the crime. *See United States v. Int'l Minerals and Chem. Corp.*, 402 U.S. 558, 91 S.Ct. 1697, 29 L.Ed.2d 178 (1971); *United States v. Nat'l Dairy Products Corp.*, 372 U.S. 29, 83 S. Ct. 594, 9 L.Ed.2d 561 (1963); *Boyce Motor Lines, Inc. v. United States*, *supra*; *Screws v. United States*, *supra*; *United States v. Ragen*, 314 U.S. 513, 62 S. Ct. 374, 86 L. Ed. 383 (1942); *Gorin v. United States*, 312 U.S. 19, 61 S.Ct. 429, 85 L. Ed. 488 (1941); *Omaechevarria v. Idaho*, 246 U.S. 343, 38 S.Ct. 323, 62 L. Ed. 763 (1918). Furthermore, such a specific mens rea may be implied by a court even in the absence of words like "intent." *Morissette v. United States*, 342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288 (1952).

* * *

The Alabama drug paraphernalia statute creates a statutory malum prohibitum crime. It is apparent from *Morissette* and *Balint* that, even as to an offense which was not a common-law crime, intent may be implied into the statute. It is also apparent from *Morissette* that specific intent may be implied. In order for this mental element to be implied into the Alabama statute, the court must determine whether the Alabama legislature intended specific intent to be an element of the crime created by the drug paraphernalia statute.

Although the above-cited Supreme Court cases did not deal with drug paraphernalia statutes per se, they serve to illustrate the fact that the highest court in our land has construed various criminal statutes by implying an element of intent.

* * *

Section 20-2-75 is not vague because it includes the specific mens rea of knowledge and because this court construes knowledge in Section 1(2) to mean intent and construes Section 1(1) as requiring a specific criminal intent. The court further construes the provision for "constructive knowledge" in the statute to be unconstitutional. However, the severability clause saves the remainder of the statute.

* * *

All statutes require some interpretation. *United States v. Hover*, 268 F.2d 657 (9th Cir. 1959). It is the duty of the court to construe a statute so as to preserve its constitutionality when such a construction is possible. Since there is abundant internal evidence that the Alabama legislature intended that the accused be required to have a specific criminal intent, the court so construes the statute. Since it is well settled that such an intent will uphold an otherwise vague statute, this court holds that Section 20-2-75 of the Code of Alabama 1975, as amended May 23, 1980, is constitutional, except that the court finds that the constructive knowledge provisions of Section 1(2) are unconstitutional.

The court further holds that the Alabama drug paraphernalia statute is constitutional as against the other attacks made upon it herein.

A separate judgment so ordering will be entered.

L. Possibility of Performance

Enactments must not be impossible of execution so as to be inoperative and void or so uncertain and indefinite as to be unenforceable and inoperative. *Opinion of the Justices No. 109*, 253 Ala. 111, 43 So. 2d 3 (Ala. 1949).

Dewrell
v.
Kearley
250 Ala. 18, 32 So. 2d 812 (Ala. 1947)
* * *

This latter mentioned 1945 act, in our opinion, is unworkable and for that reason we are remitted to no other alternative but to declare it void. The act allows ninety days after the taking of an appeal for the filing with the clerk of the reporter's transcript of the evidence, § 5, and at the same time provides that after the filing of the transcript either party may file objections thereto within ten days, after which an additional fifteen days is given for a hearing on the objections by the trial judge, and then an additional fifteen days is allowed for the trial judge to settle the objections. Thus a total of forty days is allowed for such procedure. But, the act stipulates that "such hearing and the order thereon shall be concluded within ninety days from the date of the trial or the date of the ruling on a motion for new trial." General Acts 1945, p. 568, § 1; Code Supplement, Title 7, § 827(1).

The inconsistencies are quite manifest. While this maximum of forty days is allowed for the filing and settling of the objections after the transcript has been filed, the reporter may file the transcript at any time within the ninety day period, yet the entire procedure must be completed

within the same ninety days. This under conditions would be impossible of execution.

The situation presented by the present record is illustrative. The transcript was filed on the ninetieth day after the ruling on the motion for a new trial and the trial judge very properly refused to hear and settle the appellee's objections to it (thereafter filed within the prescribed ten-day period) because he was without power to act after the ninety-day period by reason of the act's proviso quoted above stipulating that the entire matter shall be concluded within the ninety days. Hence the appellee lost the right to test the correctness of the transcript by his interposed objections, though the act gave him, and he should have had, that right.

Thus, by these several inharmonious provisions, the act is rendered impossible of execution, of consequence of which it becomes our duty, though we regret the necessity of so doing, to declare it inoperative and void. We had occasion recently to speak of this duty of the court in an *Opinion of the Justices No.72*, 249 Ala. 88, 30 So. 2d 14 (1947), where we said: "It is a well recognized rule of law that in the enactment of statutes reasonable precision is required. Indeed, one of the prime requisites of any statute is certainty, and legislative enactment may be declared by the courts to be inoperative and void for uncertainty in meaning. This power of the court may be exercised where the statute is so incomplete, so conflicting or so vague and indefinite, that the statute cannot be executed."

* * *

PART VI

OBLIGATION OF LEGISLATORS

Chapter 30
Privileges and Immunities[1]

A. Constitution and Statutes of Alabama

The immunities and privileges enjoyed by members of the Legislature of Alabama by virtue of their service in the Legislature are found both in the Constitution of Alabama and in Code of Alabama

Ala. Const. Art. IV, § 56
Immunity of Legislators

> Members of the legislature shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house shall not be questioned in any other place.

A similar protection is found in Code of Alabama. The provision states that:

Ala. Code § 29-1-7
Privilege of Members From Arrest and Civil Process.

> (a) Members of the legislature of Alabama shall in all cases, except treason, felony and breach of the peace, be privileged from arrest and shall not be subject to service of any summons, citation, or other civil process during their attendance at the session of their respective houses and in going to and returning from the same.

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[1] This section was originally written in part by Walter Turner Administrative Law Judge and revised by Laura Walker, both Assistant Attorney Generals, State of Alabama.

(b) Whoever knowingly and willingly denies to any member of the Legislature the privilege and immunity granted herein is guilty of a misdemeanor and, upon conviction, shall be punished by fine not exceeding one thousand dollars or by imprisonment for not more than one year, or by both.

The above provisions apparently have their origin in virtually identical provisions found in the federal Constitution relating to the privileges and immunities enjoyed by members of the United States Congress. *See* U.S. Const. Art. I, § 6.

Additionally, the Code of Alabama also establishes that communications between legislators and legislative staff are privileged and confidential.

Ala. Code § 29-6-7.1.
Legislative findings as to speech and debate; definitions; privileged and confidential communications; waiver of privilege.

(a) The Legislature hereby finds and declares the following:

(1) Section 56 of the Constitution of Alabama of 1901, now appearing as Section 56 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, contains a speech or debate clause virtually identical to Section 6 of Article I of the Constitution of the United States, the federal speech and debate clause.

(2) In the case of Gravel v. United States, 408 U.S. 606, the Supreme Court of the United States held the speech and debate clause in the Constitution of the United States makes the communications between members of the Congress and their staff privileged and confidential.

(3) The Supreme Court explained its reasoning as follows:

"[T]he day-to-day work of [legislative] aides is so critical to the Members' performance that they must be treated as the latter's alter ego; and that if they are not so recognized, the

central role of the Speech and Debate Clause -- to prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary -- will inevitably be diminished and frustrated."

(4) The Legislature intends by this section to apply the holding of the Gravel case to the Legislature of Alabama.

(b) For the purposes of this section, the following terms shall have the following meanings:

(1) CLIENT. A member of the Legislature, the Lieutenant Governor, Governor, and any individual to whom the Director of Legislative Services determines the provision of services by the agency is in the best interests of the state.

(2) CLIENT'S AGENT. An individual authorized by a client to act as an agent of the client with legislative staff.

(3) COMMUNICATION. The sharing of information, opinions, advice, or knowledge with another. The term includes a communication in any form and in any draft, memoranda, or other work product related to or resulting from the communication.

(4) LEGISLATIVE STAFF. An officer, employee, or contractor of the Alabama Senate, Alabama House of Representatives, Office the President Pro Tempore, Office of the Speaker of the House, Legislative Services Agency, and Examiners of Public Accounts.

(c) A communication regarding legislation, potential legislation, the legislative process, or legislative activity between legislative staff and a client or a client's agent is privileged and confidential.

(d) A legislative staff member may not disclose the content of a communication or the fact that a communication occurred unless the privilege under subsection (c) is waived expressly by the client to whom the communication was made or, with respect to a communication made to a client's agent, the client on whose behalf the communication

occurred.

(e) The introduction or public discussion of a bill by a client does not waive the privilege under subsection (c) with respect to any communication related to the bill.

(f) The advertising of a local bill by synopsis or in a form less than in its entirety is not, in and of itself, a waiver of the privilege under subsection (c).

B. Constitution of the United States

Article IV, § 56 of Alabama's Constitution is nearly identical to the federal immunity provision found in Article I, § 6 of the United States Constitution. The federal constitutional immunity provision has its roots in the English parliamentary system. Although the Alabama immunity provisions have been present in the Constitution of Alabama since statehood in 1819, there appear to be very few judicial decisions in this state which delineate the breadth and scope of the privileges and immunities provided to legislators by the provisions of Ala. Const. Art. IV, § 56, and Ala. Code § 29-1-7.2 The protection provided to members of the United States Congress has, however, been the subject of litigation in the past as have similar provisions in the constitutions of other states, and an examination of those decisions is helpful to determine the probable extent and limit of the immunities and privileges found in Alabama law.

C. Immunity from Arrest

The landmark case concerning the scope of the immunity

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[2] The existence and enforceability, in general, of legislative privileges and immunities under the Speech and Debate clause of Ala. Const. Art. IV, §56 for communications and acts made or occurring in the regular course of the legislative process have been confirmed by recent Alabama Supreme Court cases. *See e.g.*, *Marsh v. Pettway*, 109 So. 3d 1118, 1121 (Ala. 2013)(Moore, C.J., concurring specially); *Hillman v. Yarbrough*, 936 So. 2d 1056, 1062 (Ala. 2006); *Butler v. Town of Argo*, 871 So. 2d 1, 24 (Ala. 2003); and *Tonsmeire v. Tonsmeire,* 281 Ala. 102, 106, 199 So. 2d 645, 648 (1967).

from arrest provided to members of the United States Congress under Article I, Section 6 of the United States Constitution, is the case of *Williamson v. United States*, 207 U.S. 425, 28 S. Ct. 163, 52 L. Ed. 278 (1908). In that case the United States Supreme Court held that the immunity from arrest provided in Article I, Section 6, was not meant to provide Congressmen with immunity from criminal arrests but merely to provide immunity from civil arrests.[3] The Supreme Court held that when the Constitution said a Congressman could be arrested for a "breach of the peace" it was intended that a Congressman could be arrested for any criminal offense of whatever nature. The Supreme Court specifically rejected the argument that the words "breach of the peace" meant only those types of offenses which included violence or public disturbances.

The decision of the United States Supreme Court in *Williamson*, concerning the type of immunity provided by Article I, Section 6, was reaffirmed by the Supreme Court in the later case of *Long v. Answell*, 293 U.S. 76, 55 S. Ct. 21, 79 L. Ed. 208 (1934). This same conclusion has been almost uniformly reached in interpreting similar provisions found in state constitutions nationwide. The authorities hold that immunity from arrest provisions in state constitutions similar to those found in Article IV, Section 56, of the Alabama Constitution merely provide legislators with immunity from civil arrests and provide no immunity whatsoever for arrests on any criminal charge.[4]

Frequently, the question has arisen as to whether or not a legislator has immunity from arrest for speeding or other traffic

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[3]Freedom from "civil arrest" in England was a privilege of Parliament, prior to the American Revolution to prohibit the arrest of members. *See* Blackstone on subject of privilege of Parliament, Lewis e. 1765. For a historical discussion of freedom from "civil arrests" by state legislators, read *Rhodes v. Walsh*, 23 L.R.A. 632 (1893).

[4]*See Howard v. Webb*, 570 P.2d 42 (Okla. Sup. Ct. 1977); *Ex parte Emmett*, 120 Cal. App. 349, 7 P.2d 1096 (1932); *Swope v. Commonwealth*, 385 S.W. 2d 57 (Ky. 1964); *In re Wilkowski*, 270 Mich. 687, 259 N.W. 658 (1935); *Commonwealth ex rel. Bullard v. Keeper of Jail*, 4 W.N.C. 540 (Pa. 1877); *see also* 81 C.J.S. *States*, § 35.

violations while en route to or from Montgomery to attend a session of the Legislature. This identical question was considered by the Supreme Court of Oklahoma in construing its constitutional provision relating to the privilege of legislators from arrest. In *Howard v. Webb*, 570 P.2d 42 (Okla. Sup. Ct. 1977), the Oklahoma Supreme Court held that Article V, Section 22, of the Oklahoma Constitution (which is virtually identical to Article 56 of the Alabama Constitution) provides protection from arrest in only civil matters and does not exempt members of the Legislature from arrest when in violation of the criminal laws, including minor traffic violations.

D. Immunity from Service of Process

Alabama legislators, however, do enjoy one immunity and privilege, that from service of process, that is not shared by members of the United States Congress or most members of other state legislatures. The United States Supreme Court has held that immunity from civil arrests provided by Article I, Section 6, of the United States Constitution does not render a Congressman immune from services of civil process. *Long v. Ansell*, 293 U.S. 76, 55 S. Ct. 21, 79 L. Ed. 208 (1934). This rule is likewise followed in most states. *See* cases collected in 94 A.L.R. 1470 (1935).

In 1959, however, the Legislature of Alabama passed what is now § 29-1-7, quoted above. In it, the Legislature of Alabama provided that its members could not be subpoenaed, served with a civil lawsuit or otherwise subject to civil process while engaged in their duties or in going to or returning from a legislative session. Violation of this section by serving such civil process on legislators is made a criminal offense by Section 29-1-7. However, in *Jackson v. State*, 337 So. 2d 1281 (Ala. 1976), the defendant was cited for contempt of court for failure to appear at a number of hearings. On appeal, he asserted that he was both an attorney and a state legislator and the legislature was in session during the court proceedings. He argued that he was therefore immune from the contempt order. The Alabama Supreme Court, speaking through Justice Beatty, held that Jackson had failed to raise any claim of immunity either prior to or subsequent to the contempt citation. Therefore, he had waived any privilege he would have enjoyed

and could not invoke privilege for the first time on appeal.

E. Civil Immunity for Legislative Actions

Under Article IV, Section 56, of the Alabama Constitution, Alabama legislators not only enjoy an immunity from civil arrests but also, by virtue of the second clause of that provision—the Speech or Debate clause— enjoy immunity from any civil action growing out of any act done by them in connection with the legislative process.

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* * *

Because the Speech or Debate Clause in the Alabama Constitution is identical in substance, and virtually identical in wording, to the federal Speech or Debate Clause, federal decisions construing the federal clause should be "highly persuasive" in understanding the meaning of § 56. *See, e.g., City of Birmingham v. City of Fairfield,* 396 So. 2d 692, 696 (Ala.1981) ("We have said that since the Alabama Rules of Civil Procedure are modeled on the Federal Rules of Civil Procedure, federal decisions are highly persuasive when we are called upon to construe the Alabama Rules.")…

* * *

In *Hillman v. Yarbrough,* 936 So. 2d 1056, 1062 (Ala.2006), this Court adopted the reasoning of *Brewster,* stating: "The Alabama Constitution of 1901, § 56, affords absolute *legislative* immunity to members of the legislature...." *Id.* Actions in legislative committee meetings are also covered by the privilege. " 'To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive.' " *Marion,* 429 So. 2d at 945 (Torbert, C.J.,

concurring specially) (quoting *Tenney v. Brandhove,* 341 U.S. 367, 378, 71 S.Ct. 783, 95 L.Ed. 1019 (1951)).

The "highly persuasive" federal precedent set out by Chief Justice Torbert in his special writing in *Marion* and quoted approvingly by this Court in *Hillman* should inform our interpretation of § 56 of the Alabama Constitution. The "integrity of the legislative process," *Brewster,* 408 U.S. at 507, is as important to Alabama as it is to the nation. Accordingly, under the Speech or Debate Clause of the Alabama Constitution, our state legislators are immune from all judicial "inquiry into acts that occur in the regular course of the legislative process." *Brewster,* 408 U.S. at 525. This immunity extends to things "generally done in a session of the House by one of its members in relation to the business before it," *Kilbourn v. Thompson,* 103 U.S. 168, 204, 26 L.Ed. 377 (1881), and thus includes the actions of the conference committee in this case and the votes taken on House Bill 84 by the House and the Senate. Any provision of the Open Meetings Act incompatible with this constitutional immunity of the legislature is inoperable. *See Bassett v. Newton,* 658 So. 2d 398, 400 (Ala.1995) ("[T]he Alabama constitution has priority over the state Code."). A remedy, if needed, lies not in the courts, but in the political processes.

* * *

Though Alabama case law is thin in this area, U.S. Supreme Court precedent on the Speech or Debate clause of the U.S. Constitution is illustrative, given that *Marsh* indicates a willingness of the Alabama Supreme Court to cite and follow federal precedent in this area. The U.S. Supreme Court has held that the federal Speech and Debate clause is to be liberally construed, extending not only to words spoken on the floor of the Legislature, but also to such things as resolutions, the act of voting, committee reports, and generally all those actions taken by legislators in relation to the business before the Legislature. *Kilbourn v. Thompson*, 103 U.S. 168 (1880); *Powell v. McCormick*, 395 U.S. 486 (1969). It has also held that regardless of what remedy is sought, such as damages, injunctive relief, or declaratory relief, and regardless of

whether the action is for libel, slander, false imprisonment, or violation of civil rights, civil lawsuits cannot be maintained against legislators under the Speech or Debate Clause. For example, in *Kilbourn v. Thompson*, the Court held that a false imprisonment suit could not be brought against legislators for holding the plaintiff on contempt of Congress and ordering the sergeant-at-arms to place him in custody in jail. Likewise, in *Dombrowski v. Eastland*, 387 U.S. 82 (1967), the Court interpreted the Speech or Debate Clause to bar an action seeking damages on the ground that the chairman of a United States Senate subcommittee had conspired with state officials to seize property and records of the plaintiff unlawfully in violation of the plaintiff's Fourth Amendment rights.

In a subsequent case, *United States v. Brewster*, 408 U.S. 501, 92 S. Ct. 2531, 33 L.Ed.2d 507 (1972), the defendant, a former United States Senator, alleged that the Speech and Debate Clause barred the government from prosecuting him on a charge of bribery to perform a legislative act. The United States Supreme Court held that the prosecution of the former senator was not prohibited by the Speech or Debate Clause. The Court reasoned that this provision protects members of Congress from inquiry into legislative acts or the motivation for performance of such acts. It does not protect all conduct relating to the legislative process. In this case, prosecution of the bribery charges does not necessitate inquiry into legislative acts or motivation.

The United States Supreme Court has also addressed a situation where there were conflicting constitutional considerations. In *Tenney v. Brandhove*, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019 (1951), Brandhove sued Tenney (a California State Senator) and the Senate Committee on Un-American Activities (a committee of the California Legislature), among others, for an alleged violation of his civil rights. Brandhove had circulated a petition among members of the State Legislature to persuade them not to appropriate future funding for the Committee. The petition stated he had been used as a "tool" by the Committee to smear a Congressman who was running for mayor of San Francisco as a "Red". This charge was in conflict with evidence Brandhove had previously given before the Committee.

As a result, the Committee asked local prosecutors to pursue criminal charges and summoned Brandhove to appear before the Committee. He appeared, but refused to testify. After this refusal, the Chairman of the Committee quoted Brandhove's prior testimony, read into the record a statement concerning an alleged criminal record of Brandhove, a newspaper article denying the truth of his charges, and a denial by the Committee's counsel of Brandhove's charges. In the criminal case, the jury failed to return a verdict and the prosecution was dropped. Brandhove alleged the hearing before the Committee "was not held for a legislative purpose," but was "designed to intimidate and silence plaintiff and deter and prevent him from effectively exercising his constitutional rights of free speech and to petition the Legislature for redress of grievances, and also to deprive him of the equal protection of the laws, due process of law and of enjoyment of equal privileges and immunities as a citizen of the United States..." *Tenney v. Brandhove*, 341 U.S. at 371, 71 S. Ct. at 785.

The Supreme Court held that while legislatures may not acquire power by an unwarranted extension of the legislators' privilege, a claim of an unworthy purpose does not destroy the privilege. The immunity of legislators is not for their private indulgence, but for the public good. The Court further stated that a court, in determining the question of civil liability of members of a legislative committee for their actions, should not go beyond the "narrow confines of determining that a committee's inquiry may fairly be deemed within its province." *Tenney v. Brandhove*, 341 U.S. at 378, 71 S. Ct at 789. "To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or Executive." *Id.*

The Supreme Court of Colorado has addressed the question of the scope of the speech-or-debate clause when legislative acts are violative of state constitutional provisions. In *Colorado Common Cause v. Bledsoe*, 810 P.2d 201 (Colo. 1991), the court reviewed a district court order dismissing the complaint of petitioners which alleged that the respondent, caucus members of the majority party in the House of Representatives, violated Article V, § 22a of the Colorado Constitution (called the GAVEL Amendment). The

Amendment "prohibits members of the General Assembly from committing themselves, or requiring other members to commit themselves, through a vote in a party caucus or any other similar procedure[s] to vote in favor of any bill ... or other measure or issue pending or proposed to be introduced in the general assembly." *Id*. at 203. The district court had dismissed the complaint on the ground that the caucus-member legislators were absolutely immune from suit, under the state Constitution's speech-or-debate clause. The Supreme Court stated:

> Notwithstanding the broad scope of the speech-or debate clause, we cannot agree with the caucus members' 'absolute' interpretation of the speech-or-debate clause as prohibiting in all cases the naming of the legislature or legislators as defendants in a civil action. No court has ever held that under the speech-or-debate clause legislators may never be named as defendants, although in most cases legislators-defendants have been dismissed from the cases because the cases require inquiry into protected legislative activity; nor has any court ever held, as the caucus members suggest, that legislative conduct may never be subjected to judicial review. ... We decline to hold that the speech-or-debate clause automatically requires the dismissal of legislators from a lawsuit that does not impose upon the legislators the 'burden of defending themselves,' *Powell*, 395 U.S. at 505, or that does not challenge legislative acts performed in the 'sphere of legitimate legislative activity,' *Tenny*, 341 U.S. at 376. *Id*. at 209.

The Speech or Debate Clause has also been held to bar defamation actions against legislators for statements made either during speeches in the legislative chambers, *Cochran v. Couzens*, 42 F.2d 783, cert. den. 282 U.S. 874 (1930) or for allegedly defamatory statements made in printed matter issued by legislative committees. *Methodist Fed'n for Soc. Action v. Eastland*, 141 F. Supp. 729 (1956). In this vein it has been held that an allegedly libelous statement inserted by a member of the Congress in the Congressional Record was absolutely privileged under the Speech or Debate Clause. *McGovern v. Martz*, 182 F. Supp. 343 (1960).

However, this immunity has its limits. It has been held also that if a Senator or Representative is alleged to have committed libel by republishing and disseminating his remarks outside of the legislative process, the protection afforded by the Speech or Debate Clause does not extend to these actions. In *Long v. Ansell*, 69 F.2d 386 (D.C. Cir. 1934), *aff'd*, 293 U.S. 76, 55 S. Ct. 21, 79 L. Ed. 208 (1934) it was held that when Senator Huey Long caused portions of the Congressional Record containing an allegedly libelous speech to be reprinted and mailed out across the country, along with a letter inviting the recipient to read the enclosed speech, an action for libel could be maintained. The court held that the publication and distribution of the speech was an action apart from the making of the speech itself and was thus not covered by the privilege. In a very similar situation the court in *McGovern v. Martz,* 182 F. Supp. 343 (1960), held that the protection did not extend to a Congressman in a lawsuit for malicious defamation for the unofficial republication and dissemination of his remarks which had been previously published in the Congressional Record. In *Hutchinson v. Proxmire*, 443 U.S. 111, 99 S. Ct. 2675, 61 L. Ed. 2d 411 (1979), the Supreme Court held that the Speech or Debate clause does not protect the republication of libelous remarks made by a U.S. Senator. (Senator Proxmire gave government agencies a "Golden Fleece Award" for funding Hutchinson's research on monkeys and published this fact in his newsletter and press releases.)

In *Hillman v. Yarbrough*, 936 So. 2d 1056, 1062 (Ala. 2006), the Alabama Supreme Court clearly acknowledged that such cases also exist under Alabama law, as "[t]he fact that an action is undertaken in the course of a legislator's fulfilling his or her responsibilities does not necessarily indicate that the action was taken in the performance of a legislative duty to act." The Court went on to quote the U.S. Supreme Court in *United States v. Brewster*, 408 U.S. 501, 512-13 (1972), listing such activities as services for constituents, appointments with other government entities, and the preparation of news or campaign materials as examples of legitimate legislator activities that would not fall within the scope of Speech or Debate clause immunity.

It has been further held that the legislative immunity

contained in the Speech or Debate Clause for remarks made during the legislative process does not apply to statements made after adjournment sine die, when the legislators have returned to their homes. *State ex. rel. Oklahoma Bar Ass'n v. Nix*, 295 P.2d 286 (Okla. 1956).

In federal court, the speech and debate clause has also been extended to cases in which lawmakers are not parties, allowing legislators to assert privilege to bar discovery of materials related to the legislative process.

In re Hubbard
803 F.3d 1298 (11th Cir. 2015)

> The legislative privilege "protects against inquiry into acts that occur in the regular course of the legislative process and *into the motivation for those acts.*" *United States v. Brewster,* 408 U.S. 501, 525, 92 S.Ct. 2531, 2544, 33 L.Ed.2d 507 (1972) (emphasis added);[11] *see Tenney,* 341 U.S. at 377, 71 S.Ct. at 788 (declaring "that it [i]s not consonant with our scheme of government for a court to inquire into the motives of legislators"). One of the privilege's principle purposes is to ensure that lawmakers are allowed to "focus on their public duties." *Wash. Suburban Sanitary Comm'n,* 631 F.3d at 181; *cf. Eastland v. U.S. Servicemen's Fund,* 421 U.S. 491, 503, 95 S.Ct. 1813, 1821, 44 L.Ed.2d 324 (1975) (explaining that the Speech or Debate Clause ensures that civil litigation will not "create[ ] a distraction and force[ ] Members to divert their time, energy, and attention from their legislative tasks to defend the litigation"). That is why the privilege extends to discovery requests, even when the lawmaker is not a named party in the suit: complying with such requests detracts from the performance of official duties. *See Wash. Suburban Sanitary Comm'n,* 631 F.3d at 181; *MINPECO,* 844 F.2d at 859 ("A litigant does not have to name members or their staffs as parties to a suit in order to distract them from their legislative work. Discovery procedures can prove just as intrusive."). The privilege applies with full force against

requests for information about the motives for legislative votes and legislative enactments.[5]

* * *

…To be sure, a state lawmaker's legislative privilege must yield in some circumstances where necessary to vindicate important federal interests such as "the enforcement of federal criminal statutes." *Gillock,* 445 U.S. at 373, 100 S.Ct. at 1193. But the Supreme Court has explained that, for purposes of the legislative privilege, there is a fundamental difference between civil actions by private plaintiffs and criminal prosecutions by the federal government. *See id.* at 372–73, 100 S.Ct. at 1193 ("[I]n protecting the independence of state legislators, *Tenney* and subsequent cases on official immunity have drawn the line at civil actions."). This is not a federal criminal investigation or prosecution.

AEA's subpoenas do not serve an important federal interest. Don't misunderstand us. We are not saying that enforcing the First Amendment is not an important federal interest or that it does not protect important constitutional values. Obviously it is and does. What we are saying is that, as a matter of law, the First Amendment does not support the kind of claim AEA makes here: a challenge to an otherwise constitutional statute based on the subjective motivations of the lawmakers who passed it.[13] And because the specific claim asserted does not legitimately further an important federal interest in this context, the legislative privileges must be honored and the subpoenas quashed.

* * *

However as the court in *Hubbard* noted, in this area, the privilege has a number of important limitations. In addition to the "important federal interest" exception noted above, *United States v.*

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[5] A difference of opinion among the Circuits regarding discovery privilege procedure was noted by the 1st Circuit in *American Trucking Associations, Inc. v. Alviti*, 14 F. 4th 76 (1st Cir. 2021).

Reynolds, 345 U.S. 1 (1953)[6] requires that in order to invoke a government privilege "'[t]here must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration [by] that officer." *Hubbard*, 803 F.3d at 1309 (quoting *Reynolds*, 345 U.S. at 7–8). This requirement has been explained as an attempt "to insure that subordinate officials do not lightly or mistakenly invoke the government's privilege in circumstances not warranting its application." *Id.* (quoting *Branch v. Phillips Petroleum Co.,* 638 F.2d 873, at 882–883 (5th Cir. Unit A March 5, 1981). However, so long as the privilege is cited in writing, by one who actually holds the privilege, rather than a "subordinate official" the requirements of *Reynolds* are met. *Id.* (quoting *Branch*, 638 F.2d at 882). Additionally, as an easily made error rather than a true exception, it is important to note that in this realm the privilege only extends to requests for information related to the legislative process. To the extent that a request covers other information, beyond that related to the legislative process itself, the privilege would not apply. *Id.*, at 1310–1311.

F. Civil Immunity for Legislative Acts of an Aide

The Federal Courts have found that legislative immunity extends to the legislative acts of an aide. Aides working on behalf of a legislator to prepare for a committee meeting, *Gravel v. U.S.*, 408 U.S. 606, 92 S. Ct. 2614, 33 L. Ed. 2d 583 (1972), members of a legislator's personal staff, principal employees of a committee when working on committee business, *Eastland v. U.S. Serviceman's Fund*, 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324 (1975), subcommittee investigators, *Peroff v. Mane*, 421 F. Supp. 570 (D.D.C. 1976), the committee staff in general, *Doe v. McMillan*, 412 U.S. 306, 93 S. Ct. 2018, 36 L. Ed. 2d 912 (1973), the Sergeant at Arms, and other employees and agents who adopt and enforce rules on behalf of either or both houses, *Consumers Union of U.S., Inc. v. Periodical Correspondents' Ass'n.*, 515 F.2d 1341 (D.C. Cir.

[6] For a more recent treatment of the *Reynolds* factors, *see United States v. Zubayah*, 142 S.Ct. 959 (2022); *Fed. Bureau of Inv. V. Fazaga*, 142 S.Ct. 1051, 1060 (2022). *See also* for privilege generally, FRE 501.

1975), cert. den. 423 U.S. 1051, 96 S. Ct. 780, 46 L. Ed. 2d 640 (1976), are afforded protection.

The U.S. Supreme Court stated that "for the purpose of construing the privilege a Member and his aide are to be 'treated as one' . . . . [T]he 'Speech or Debate Clause prohibits inquiry into things done . . . as the Senator's agent or assistant which would have been legislative acts, and therefore, privileged, if performed by the Senator personally.'" *Gravel v. U.S.*, 408 U.S. 606, 616, 92 S. Ct. 2614, 2623, 33 L. Ed. 2d 583, 597 (1972).

However, the federal courts will not extend legislative immunity beyond the legislative acts of an aide to cover either political acts, or unconstitutional or illegal conduct of an aide.

The Alabama Supreme Court held that once public notice of a local act was published, confidentiality between a Legislator and bill drafter was waived. *Bassett v. Newton*, 658 So. 2d 398 (Ala. 1995)[7]. Subsequently, the confidentiality law has been amended to provide for continued confidentiality between legislators and legislative staff. *See* Ala. Code § 29-6-7.1.

[7] For an interesting analysis by the Northern District of Alabama of the *Bass* decision and it import prior to the clarifications in 2017 with the passage of Ala. Code § 29-6-7.1, *see Koch Foods of Ala., LLC v. General Elec. Capital Corp.*, 531 F.Supp. 1318 (N.D. Ala. 2008).

Chapter 31
Code of Ethics for Public Officials, Employees, etc.[1]

In 1973, the members of the Alabama Legislature passed "The Alabama Ethics Act."[2] Amendments were passed in 1975, 1976, 1979, 1982, 1986, 1992, 1995 (major revision), 1997 (transferred those parts dealing with campaign matters to The Fair Campaign Practices Act), 2010 (significant revision), 2011, 2012, 2014, 2015, 2016, 2018, and 2019. Although the present law refers to "public officials," the definition of these individuals includes "any person elected to office, whether or not that person has taken office, by the vote of the people at the state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations." Thus, legislators are required to comply with the provisions of this law.

Basically, the Ethics Act contains two broad categories of provisions. The first category relates to disclosure and the second is a set of ethical principles of conduct by which the legislator is to govern his or her conduct while holding public office. All members of the Alabama Legislature must file an annual "Statement of Economic Interests" with the Alabama Ethics Commission, Suite 104, RSA Union Building, 100 N. Union Street, Montgomery, Alabama 36104, by April 30 of each year. (Also, any candidate for a seat in the House of Representatives or Senate of Alabama must file a completed Statement of Economic Interests for the previous

[1]Revised 2018 and edited by Thomas B. Albritton, Executive Director, Alabama Ethics Commission.

[2]Ala. Code §§ 36-25-1 through 356-25-30.

calendar year with the Alabama Ethics Commission not more than five days after the date he or she files his or her qualifying papers with the appropriate election official. In the case of an independent candidate, then not more than five days after the date the person complies with the requirements of § 17-9-3 (persons entitled to have names printed on ballots). The election official shall within five days of the receipt of the declaration of candidacy or petition to appear on the ballot for election forward to the Commission the name of the candidate and the Commission shall within 5 business days thereafter confirm to the election official that the candidate has complied with the requirements of § 36-25-15. If a candidate is deemed not qualified based on their failure to timely file the Statement of Economic Interests or some other reason, the candidate shall be removed from the ballot. Based upon reforms made in 2019, notwithstanding the foregoing, the Commission for good cause shown may allow the candidate an additional five days to file the Statement of Economic Interests. *See* Ala. Code § 36-25-15.

The forms may now be submitted electronically on the Ethics Commission's website.

The information contained in a legislator's financial disclosure form becomes a public document once it is received in the Ethics Commission office and is therefore available for electronic review by the general public and the media.

General Principles

First, under the set of ethical principles of conduct contained in the law, a legislator may not use his official position in the House or Senate to obtain personal gain for himself, his family or any business with which they are associated. *See* Ala. Code § 36-25-5.

Second[3], the act prohibits a legislator from accepting any

[3] *See* Ala. Code § 36-25-1.

gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment or honoraria or other item of monetary value.

However, the following are specifically exempted, provided that no particular course of action is required as a condition to the receipt thereof:

1. A contribution reported under Chapter 5 of Title 17 or a contribution to an inaugural or transition committee.

2. Anything given by a family member of the recipient under circumstances which make it clear that it is motivated by a family relationship.

3. Anything given by a friend of the recipient under circumstances which make it clear that it is motivated by a friendship and not given because of the recipient's official position. Relevant factors include whether the friendship preexisted the recipient's status as a public employee, public official, or candidate and whether gifts have been previously exchanged between them.

4. Greeting cards, and other items, services with little intrinsic value which are intended solely for presentation (such as plaques, certificates, and trophies), promotional items commonly distributed to the general public, and items or services of de minimis value.

5. Loans from banks and other financial institutions on terms generally available to the public.

6. Opportunities and benefits, including favorable rates

and commercial discounts, available to the public or to a class consisting of all government employees.

7. Rewards and prizes given to competitors in contests or events, including random drawings, which are open to the public.

8. Anything that is paid for by a governmental entity or an entity created by a governmental entity to support the governmental entity or secured by a governmental entity under contract, except for tickets to a sporting event offered by an educational institution to anyone other than faculty, staff, or administration of the institution.

9. Anything for which the recipient pays full value.

10. Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee.

11. Any assistance provided or rendered in connection with a safety or a health emergency.

12. Payment of or reimbursement for actual and necessary transportation and lodging expenses, as well as waiver of registration fees and similar costs, to facilitate the attendance of a public official or public employee, and the spouse of the public official or public employee, at an educational function or widely attended event (*See* the Definitions Section of the Ethics Law, which follows, for the meaning of these terms.) of which the person is a primary sponsor. This exclusion applies only if the public

official or public employee meaningfully participates in the event as a speaker or a panel participant, by presenting information related to his or her agency or matters pending before his or her agency, or by performing a ceremonial function appropriate to his or her official position; or if the public official's or public employee's attendance at the event is appropriate to the performance of his or her official duties or representative function.

13. Payment of or reimbursement for actual and necessary transportation and lodging expenses to facilitate a public official's or public employee's participation in an economic development function. (*See* Definitions Section, infra)

14. Hospitality, meals, and other food and beverages provided to a public official or public employee, and the spouse of the public official or public employee, as an integral part of an educational function, economic development function, work session, or widely attended event (*See* Definitions Section, infra), such as a luncheon, banquet, or reception hosted by a civic club, chamber of commerce, charitable or educational organization, or trade or professional association.

15. Any function or activity pre-certified by the Director of the Ethics Commission as a function that meets any of the above criteria.

16. Meals and other food and beverages provided to a public official or public employee in a setting other than any of the above functions not to exceed for a lobbyist twenty-five dollars ($25) per meal with a limit of one hundred fifty dollars ($150) per year; and not to exceed for a principal fifty dollars ($50) per meal with a limit of two hundred fifty dollars ($250) per year. Notwithstanding the lobbyist's limits

herein shall not count against the principal's limits and likewise, the principal's limits shall not count against the lobbyist's limits.

17. Anything either (i) provided by an association or organization to which the state or, in the case of a local government official or employee, the local government pays annual dues as a membership requirement or (ii) provided by an association or organization to a public official who is a member of the association or organization and, as a result of his or her service to the association or organization, is deemed to be a public official. Further included in this exception is payment of reasonable compensation by a professional or local government association or corporation to a public official who is also an elected officer or director of the professional or local government association or corporation for services actually provided to the association or corporation in his or her capacity as an officer or director.

18. Any benefit received as a discount on accommodations, when the discount is given to the public official because the public official is a member of an organization or association whose entire membership receives the discount.

Third, a legislator is prohibited from soliciting or receiving any money in addition to that received in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which the legislator is a member. *See* Ala. Code § 36-25-7.

Fourth, if a legislator, a member of their family, or a business with which the person is associated acts in a representative capacity for a fee before any quasi-judicial board or commission, regulatory body, or executive department or agency,

notice of the representation shall be given to the Ethics Commission within 10 days after the first day of the appearance. No member of the Legislature shall for a fee, reward, or other compensation, represent any person, firm, or corporation before the Public Service Commission or the State Board of Adjustment. *See* Ala. Code § 36-25-10.

Fifth, a legislator may not use confidential information which was obtained as a result of his or her seat in either the House or Senate that could result in financial gain other than his or her regular salary as such public official for himself or herself, a family member, or for any other person or business. *See* Ala. Code § 36-25-8.

Sixth, legislators, or for that matter any other person, may not serve as a member of a regulatory agency which regulates any business with which they are associated unless otherwise expressly provided by law. *See* Ala. Code § 36-25-9.

Seventh, pursuant to Ala. Code § 3625-11, a legislator, member of their household, or any business with which they are associated who contracts with the State of Alabama or any instrumentality of government must do so only by a process of competitive bidding and if successful in the bidding process the legislator must provide a copy of the contract to the Alabama Ethics Commission within 10 days after the contract has been entered into. Likewise, a legislator, member of their household, or any business with which they are associated that enters a contract that is exempt from the Bid law but nonetheless is to be paid in whole or in part from state, county or municipal funds must be provided to the Commission within 10 days. Ala. Code § 36-25-11.

Eighth, under Ala. Code § 36-25-13, if a legislator leaves public office, he or she shall not serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the legislature for a period of two years after he or she leaves such membership irrespective of whether the member left office prior to the expiration of the term to which he or she was elected.

Ninth, no former member of the House of Representatives or the Senate of the State of Alabama shall be extended floor privileges of either body in a lobbying capacity. Ala. Code § 36-25-23.

Tenth, legislators are required to have mandatory ethics training at least once at the beginning of the quadrennium. Legislators elected in special elections must receive training within three months of assuming office. Ala. Code § 36-25-4.2.

Eleventh, lobbyists cannot offer or provide any thing of more than de minimis_value to a legislator or public official or employee or members of their family, nor may they be solicited. *See* Ala. Code § 36-25-7. *See also Hubbard v. State*, 2018 WL 4079590 (Ala. Crim. App. 2018, *aff'd in part, rev'd in part*, 2020 WL 1814587 (Ala. 2020).

Twelfth, every candidate, legislator, public official or their spouse who is employed by the state or federal government or who has a contract with the state or federal government, or works for a company that receives 50% or more of its revenue from the state, must notify the commission of such employment or contract within 30 days of beginning employment or the contract. Ala. Code § 36-25-5.2

Along with any other citizen, legislators may request an advisory opinion from the Alabama Ethics Commission on any real or hypothetical situation which may pertain to the Ethics Law. *See* Ala. Code § 36-25-4. *See also Fitch v. State*, 851 So 2d 103 (Ala. Crim. App. 2001), *cert. denied* 851 So. 2d 141 (Ala. 2001).

The purpose and major objectives of the Alabama Ethics Act, as written by the members of the Alabama Legislature, are to ensure that public officials are independent and impartial; that decisions and policies are made in the proper governmental channels; that public office is not used for private gain; and, most importantly, that there is public confidence in the integrity of government. *See* Ala. Code § 36-25-2.

The ethics law provides:

Section 36-25-4(c) states a complaint may be initiated by the unanimous vote of the commission; under certain circumstances.

All complaints not initiated by the Commission must be in writing, signed by the person making the complaint, stating specific charges, and factual allegations against the respondent public official. In other words, the person making the complaint must have credible and verifiable information supporting the allegations.

In the past, in the State of Alabama, there has been what has been referred to as "a revolving door", meaning that, when legislators and other public employees would cease to hold office, they would immediately turn around and become lobbyists in front of either the legislature or the agency that they once represented or worked for. That is no longer allowed.

Section 36-25-13(a). Actions of former public officials or public employees prohibited for two years after departure.

No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purpose of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity. This prohibition applies irrespective of whether or not the public official left office prior to the expiration of their term.

In addition, Section 36-25-18(a) requires all lobbyists to register with the Ethics Commission no later than January 31, of each year, or within ten days after first undertaking lobbying activities. The law further requires all lobbyists to pay a registration fee, and to file a quarterly report as to their lobbying

activities, with the Ethics Commission. Both registrations and quarterly reports can now be filed electronically.

Likewise, when a person ceases to act as a lobbyist, he or she must file with the Ethics Commission, stating that they no longer will be representing their principal as a lobbyist.

In the past, former members of the House of Representatives and Senate were extended floor privileges in a lobbying capacity. Now the Ethics Law, under § 36-25-23 in addition to what has previously been cited, strictly prohibits the granting of floor privileges to either body in a lobbying capacity.

Under the Ethics Law, all elected public officials and certain appointed public officials and public employees are required to file a statement of economic interests. Any public employee or appointed public official making $75,000 per year or more is required to file. Likewise, the penalties for violation and the respective statutes of limitation have been raised.

Section 36-25-26 states, in pertinent part, that if a person, for the purposes of influencing legislation, knowingly or willfully makes false statements or misrepresentations of facts to a member of either the legislative or executive branch, or provides a document containing a known false statement to a member of the legislative or executive branch, then that person shall be guilty of a Class B felony. The penalty for a Class B felony is a term of imprisonment of from two to twenty years, and/or a fine not to exceed $30,000 per violation. The statute of limitations for felony violations of the Ethics Law is four years.

Alabama Code § 36-25-27(3) states that a person who knowingly violates the disclosure requirements of the Ethics Law shall be guilty of a Class A misdemeanor. The penalty for a Class A misdemeanor is imprisonment for a period not to exceed one year, and/or a fine of $6,000 per violation. The misdemeanor statute of limitations is two years.

The changes in the Ethics Law beginning in 2010 (2010,

2011, 2012, 2014, 2015, 2017, and 2018 deal with further restrictions on hospitality, entertainment and gifts as well as providing greater disclosure requirements on public officials and employees and giving the Ethics Commission jurisdiction over Fair Campaign Practices Act issues. The legislature granted subpoena power to the Ethics Commission and guaranteed a base appropriation to the Ethics Commission to ensure its independence from political influence. In 2018, the Legislature increased the fining ability of the Commission to cover any violation committed by a public employee in the state and any violation that does not result in any gain or loss in excess of $1500 by a public official under certain conditions, and only upon approval by the Attorney General or the appropriate District Attorney. The Commission can now fine up to $6000 per violation and has the authority to enforce fines in court. Finally, all forms, Statements of Economic Interests and other documents, except Complaints, filed with the Ethics Commission are searchable and retrievable on a Public Official and Employee Transparency Database on the Commission's website.

If you have any specific questions that are not addressed by this article, please contact us at the Ethics Commission at the following address:

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§ 36-25-1. Definitions.

Whenever used in this chapter, the following words and terms shall have the following meanings:

(1) BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.

(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.

(3) CANDIDATE. This term as used in this chapter shall have the same meaning ascribed to it in Section 17-5-2.

(4) COMMISSION. The State Ethics Commission.

(5) COMPLAINT. Written allegation or allegations that a violation of this chapter has occurred.

(6) COMPLAINANT. A person who alleges a violation or violations of this chapter by filing a complaint against a respondent.

(7) CONFIDENTIAL INFORMATION. A complaint filed pursuant to this chapter, together with any statement, conversations, knowledge of evidence, or information received from the complainant, witness, or other person related to such complaint.

(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the

manner it affects the other members of the class to which he or she belongs. A conflict of interest shall not include any of the following:

a. A loan or financial transaction made or conducted in the ordinary course of business.

b. An occasional nonpecuniary award publicly presented by an organization for performance of public service.

c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee at a convention or other meeting at which he or she is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.

d. Any campaign contribution, including the purchase of tickets to, or advertisements in journals, for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

(9) DAY. Calendar day.

(10) DEPENDENT. Any person, regardless of his or her legal residence or domicile, who receives 50 percent or more of his or her support from the public official or public employee or his or her spouse or who resided with the public official or public employee for more than 180 days during the reporting period.

(11) DE MINIMIS. A value twenty-five dollars ($25) or less per occasion and an aggregate of fifty dollars ($50) or less in a calendar year from any single provider, or such other amounts as may be prescribed by the Ethics Commission from time to time by rule pursuant to the Administrative Procedure Act or adjusted each four years from August 1, 2012, to reflect any increase in the cost of

living as indicated by the United States Department of Labor Consumer Price Index or any succeeding equivalent index.

(12) ECONOMIC DEVELOPMENT FUNCTION. Any function reasonably and directly related to the advancement of a specific, good-faith economic development or trade promotion project or objective.

(13) EDUCATIONAL FUNCTION. A meeting, event, or activity held within the State of Alabama, or if the function is predominantly attended by participants from other states, held within the continental United States, which is organized around a formal program or agenda of educational or informational speeches, debates, panel discussions, or other presentations concerning matters within the scope of the participants' official duties or other matters of public policy, including social services and community development policies, economic development or trade, ethics, government services or programs, or government operations, and which, taking into account the totality of the program or agenda, could not reasonably be perceived as a subterfuge for a purely social, recreational, or entertainment function.

(14) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.

(15) FAMILY MEMBER OF THE PUBLIC OFFICIAL. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, a sibling and his or her spouse, of the public official.

(16) GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county, or municipal governments for the purpose of carrying out a specific governmental function. Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.

(17) HOUSEHOLD. The public official, public employee, and his or her spouse and dependents.

(18) LAW ENFORCEMENT OFFICER. A full-time employee of a governmental unit responsible for the prevention or investigation of crime who is authorized by law to carry firearms, execute search warrants, and make arrests.

(19) LEGISLATIVE BODY. The term "legislative body" includes the following:

a. The Legislature of Alabama, which includes both the Senate of Alabama and the House of Representatives of Alabama, unless specified otherwise by the express language of any provision herein, and any committee or subcommittee thereof.

b. A county commission, and any committee or subcommittee thereof.

c. A city council, city commission, town council, or other municipal council or commission, and any committee or subcommittee thereof.

(20) LOBBY or LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof.

(21) LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.

2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.

3. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.

4. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.

b. The term lobbyist does not include any of the following:

1. An elected official on a matter which involves that person's official duties.

2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.

3. Reporters and editors while pursuing normal reportorial and editorial duties.

4. Any citizen not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.

5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or

services.

6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

7. A person who is a member of a business, professional, or membership organization by virtue of the person's contribution to or payment of dues to the organization even though the organization engages in lobbying activities.

8. A state governmental agency head or his or her designee who provides or communicates, or both, information relating to policy or positions, or both, affecting the governmental agencies which he or she represents.

(22) MINOR VIOLATION.

a. Any violation of this chapter in which the public official receives an economic gain in an amount less than one thousand five hundred dollars ($1,500) or the governmental entity has an economic loss of less than one thousand five hundred dollars ($1,500).

b. Any violation of this chapter by a public employee as determined in the discretion of the commission and the Attorney General or the district attorney for the appropriate jurisdiction based upon consideration of the following factors:

1. The public employee has made substantial or full restitution to the victim or victims.

2. The violation did not involve multiple participants.

3. The violation did not involve great monetary gain to the public employee or great monetary loss to the victim or victims.

4. The violation did not involve a high degree of sophistication or planning, did not occur over a lengthy period of time, or did not involve multiple victims and did not involve a single victim that was victimized more than once.

5. The public employee has resigned or been terminated from the position occupied during which the violation occurred and is otherwise not a current public employee.

(23) PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, or other organization or group of persons.

(24) PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value.

(25) PROBABLE CAUSE. A finding that the allegations are more likely than not to have occurred.

(26) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county, or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

(27) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including

governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-13-40.

(28) REGULATORY BODY. A state agency which issues regulations in accordance with the Alabama Administrative Procedure Act or a state, county, or municipal department, agency, board, or commission which controls, according to rule or regulation, the activities, business licensure, or functions of any group, person, or persons.

(29) REPORTING PERIOD. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(30) REPORTING YEAR. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

(31) RESPONDENT. A person alleged to have violated a provision of this chapter and against whom a complaint has been filed with the commission.

(32) STATEMENT OF ECONOMIC INTERESTS. A financial disclosure form made available by the commission which shall be completed and filed with the commission prior to April 30 of each year covering the preceding calendar year by certain public officials and public employees.

(33) SUPERVISOR. Any person having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or discipline other public employees, or any person responsible to direct them, or to adjust their grievances, or to recommend personnel action, if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(34) THING OF VALUE.

a. Any gift, benefit, favor, service, gratuity, tickets or passes to an

entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value.

b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:

1. A contribution reported under Chapter 5 of Title 17 or a contribution to an inaugural or transition committee.

2. Anything given by a family member of the recipient under circumstances which make it clear that it is motivated by a family relationship.

3. Anything given by a friend of the recipient under circumstances which make it clear that it is motivated by a friendship and not given because of the recipient's official position. Relevant factors include whether the friendship preexisted the recipient's status as a public employee, public official, or candidate and whether gifts have been previously exchanged between them.

4. Greeting cards, and other items, services with little intrinsic value which are intended solely for presentation, such as plaques, certificates, and trophies, promotional items commonly distributed to the general public, and items or services of de minimis value.

5. Loans from banks and other financial institutions on terms generally available to the public.

6. Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all government employees.

7. Rewards and prizes given to competitors in contests or events, including random drawings, which are open to the public.

8. Anything that is paid for by a governmental entity or an entity created by a governmental entity to support the governmental

entity or secured by a governmental entity under contract, except for tickets to a sporting event offered by an educational institution to anyone other than faculty, staff, or administration of the institution.

9. Anything for which the recipient pays full value.

10. Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee.

11. Any assistance provided or rendered in connection with a safety or a health emergency.

12. Payment of or reimbursement for actual and necessary transportation and lodging expenses, as well as waiver of registration fees and similar costs, to facilitate the attendance of a public official or public employee, and the spouse of the public official or public employee, at an educational function or widely attended event of which the person is a primary sponsor. This exclusion applies only if the public official or public employee meaningfully participates in the event as a speaker or a panel participant, by presenting information related to his or her agency or matters pending before his or her agency, or by performing a ceremonial function appropriate to his or her official position; or if the public official's or public employee's attendance at the event is appropriate to the performance of his or her official duties or representative function.

13. Payment of or reimbursement for actual and necessary transportation and lodging expenses to facilitate a public official's or public employee's participation in an economic development function.

14. Hospitality, meals, and other food and beverages provided to a

public official or public employee, and the spouse of the public official or public employee, as an integral part of an educational function, economic development function, work session, or widely attended event, such as a luncheon, banquet, or reception hosted by a civic club, chamber of commerce, charitable or educational organization, or trade or professional association.

15. Any function or activity pre-certified by the Director of the Ethics Commission as a function that meets any of the above criteria.

16. Meals and other food and beverages provided to a public official or public employee in a setting other than any of the above functions not to exceed for a lobbyist twenty-five dollars ($25) per meal with a limit of one hundred fifty dollars ($150) per year; and not to exceed for a principal fifty dollars ($50) per meal with a limit of two hundred fifty dollars ($250) per year. Notwithstanding the foregoing, the lobbyist's limits herein shall not count against the principal's limits and likewise, the principal's limits shall not count against the lobbyist's limits.

17. Anything either (i) provided by an association or organization to which the state or, in the case of a local government official or employee, the local government pays annual dues as a membership requirement or (ii) provided by an association or organization to a public official who is a member of the association or organization and, as a result of his or her service to the association or organization, is deemed to be a public official. Further included in this exception is payment of reasonable compensation by a professional or local government association or corporation to a public official who is also an elected officer or director of the professional or local government association or corporation for services actually provided to the association or corporation in his or her capacity as an officer or director.

18. Any benefit received as a discount on accommodations, when the discount is given to the public official because the public official is a member of an organization or association whose entire membership receives the discount.

c. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of gifts through inheritance received by a public employee or public official.

(35) VALUE. The fair market price of a like item if purchased by a private citizen. In the case of tickets to social and sporting events and associated passes, the value is the face value printed on the ticket.

(36) WIDELY ATTENDED EVENT. A gathering, dinner, reception, or other event of mutual interest to a number of parties at which it is reasonably expected that more than 12 individuals will attend and that individuals with a diversity of views or interest will be present.

§ 36-25-1.1. Lobbying.

Lobbying includes promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative, or judicial branch of state government.

No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency.

§ 36-25-2. Legislative findings and declarations; purpose of chapter.

(a) The Legislature hereby finds and declares:

(1) It is essential to the proper operation of democratic government that public officials be independent and impartial.

(2) Governmental decisions and policy should be made in the proper channels of the governmental structure.

(3) No public office should be used for private gain other than the remuneration provided by law.

(4) It is important that there be public confidence in the integrity of government.

(5) The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.

(6) The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist.

(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.

(c) The Legislature declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to the legislative bodies and to officials of the Executive Branch, their opinions on legislation, on pending governmental actions, and on current issues. To preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to persuade members of the legislative bodies or members of the Executive Branch to take specific actions, either by direct communication to these officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed. This chapter shall be liberally construed to promote complete disclosure of all relevant

information and to insure that the public interest is fully protected.

(d) It is the policy and purpose of this chapter to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the service of qualified personnel by prescribing essential restrictions against conflicts of interest in public service without creating unnecessary barriers thereto.

§ 36-25-3. State Ethics Commission -- Creation, composition; annual reports; compensation; political activities; director; personnel.

(a) There is hereby created a State Ethics Commission composed of five members, each of whom shall be a fair, equitable citizen of this state and of high moral character and ability. The following persons shall not be eligible to be appointed as members: (1) a public official; (2) a candidate; (3) a registered lobbyist and his or her principal; or (4) a former employee of the commission. No member of the commission shall be eligible for reappointment to succeed himself or herself. The members of the commission shall be appointed by the following officers: The Governor, the Lieutenant Governor, or in the absence of a Lieutenant Governor, the Presiding Officer of the Senate, and the Speaker of the House of Representatives. Appointments shall be subject to Senate confirmation and persons appointed shall assume their duties upon confirmation by the Senate. The members of the first commission shall be appointed for terms of office expiring one, two, three, four, and five years, respectively, from September 1, 1975. Successors to the members of the first commission shall serve for a term of five years beginning service on September 1 of the year appointed and serving until their successors are appointed and confirmed. If at any time there should be a vacancy on the commission, a successor member to serve for the unexpired term applicable to such vacancy shall be appointed by the Governor. The commission shall elect one member to serve as chair of the commission and one member to serve as vice chair. The vice chair shall act as chair in the absence or disability of the chair or in the event of a vacancy in that office.

Beginning with the first vacancy on the Ethics Commission after October 1, 1995, if there is not a Black member serving on the commission, that vacancy shall be filled by a Black appointee. Any vacancy thereafter occurring on the commission shall also be filled by a Black appointee if there is no Black member serving on the commission at that time.

Beginning with the first vacancy on the State Ethics Commission after January 1, 2011, the commission shall always have as a member a State of Alabama-licensed attorney in good standing.

Beginning with the first vacancy on the State Ethics Commission after January 1, 2016, the commission shall always have as a member a former elected public official who served at least two terms of office.

(b) A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission, and three members thereof shall constitute a quorum.

(c) The commission shall at the close of each fiscal year, or as soon thereafter as practicable, report to the Legislature and the Governor concerning the actions it has taken, the name, salary, and duties of the director, the names and duties of all individuals in its employ, the money it has disbursed, other relevant matters within its jurisdiction, and such recommendations for legislation as the commission deems appropriate.

(d) Members of the commission, while serving on the business of the commission, shall be entitled to receive compensation at the rate of fifty dollars ($50) per day, and each member shall be paid his or her travel expenses incurred in the performance of his or her duties as a member of the commission as other state employees and officials are paid when approved by the chair. If for any reason a member of the commission wishes not to claim and accept the compensation or travel expenses, the member shall inform the director, in writing, of the refusal. The member may at any time during his or her term begin accepting compensation or travel expenses; however, the member's refusal for any covered period

shall act as an irrevocable waiver for that period.

(e) All members, officers, agents, attorneys, and employees of the commission shall be subject to this chapter. The director, members of the commission, and all employees of the commission may not engage in partisan political activity, including the making of campaign contributions, on the state, county, and local levels. The prohibition shall in no way act to limit or restrict such persons' ability to vote in any election.

(f) The commission shall appoint a full-time director. Appointment of the director shall be subject to Senate confirmation, and the person appointed shall assume his or her duties upon confirmation by the Senate. If the Senate fails to vote on an appointee's confirmation before adjourning sine die during the session in which the director is appointed, the appointee is deemed to be confirmed. No appointee whose confirmation is rejected by the Senate may be reappointed. The director shall serve at the pleasure of the commission and shall appoint such other employees as needed. All such employees, except the director, shall be employed subject to the state Merit System law, and their compensation shall be prescribed pursuant to that law. The employment of attorneys shall be subject to subsection (h). The compensation of the director shall be fixed by the commission, payable as the salaries of other state employees. The director shall be responsible for the administrative operations of the commission and shall administer this chapter in accordance with the commission's policies. No rule shall be implemented by the director until adopted by the commission in accordance with Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act.

(g) The director may appoint part-time stenographic reporters or certified court reporters, as needed, to take and transcribe the testimony in any formal or informal hearing or investigation before the commission or before any person authorized by the commission. The reporters are not full-time employees of the commission, are not subject to the Merit System law, and may not participate in the State Retirement System.

(h) The director, with the approval of the Attorney General, may appoint competent attorneys as legal counsel for the commission. Each attorney so appointed shall be of good moral and ethical character, licensed to practice law in this state, and be a member in good standing of the Alabama State Bar Association. Each attorney shall be commissioned as an assistant or deputy attorney general and, in addition to the powers and duties herein conferred, shall have the authority and duties of an assistant or deputy attorney general, except, that his or her entire time shall be devoted to the commission. Each attorney shall act on behalf of the commission in actions or proceedings brought by or against the commission pursuant to any law under the commission's jurisdiction or in which the commission joins or intervenes as to a matter within the commission's jurisdiction or as a friend of the court or otherwise.

(i) The director shall designate in writing the chief investigator, should there be one, and a maximum of eight full-time investigators who shall be and are hereby constituted law enforcement officers of the State of Alabama with full and unlimited police power and jurisdiction to enforce the laws of this state pertaining to the operation and administration of the commission and this chapter. Investigators shall meet the requirements of the Alabama Peace Officers' Standards and Training Act, Sections 36-21-40 to 36-21-51, inclusive, and shall in all ways and for all purposes be considered law enforcement officers entitled to all benefits provided in Section 36-15-6(f). Notwithstanding the foregoing, the investigators shall only exercise their power of arrest as granted under this chapter pursuant to an order issued by a court of competent jurisdiction.

§ 36-25-4. State Ethics Commission -- Duties; complaint; investigation; hearing; fees; finding of violation.

(a) The commission shall do all of the following:

(1) Prescribe forms for statements required to be filed by this chapter and make the forms available to persons required to file such statements.

(2) Prepare guidelines setting forth recommended uniform methods of reporting for use by persons required to file statements required by this chapter.

(3) Accept and file any written information voluntarily supplied that exceeds the requirements of this chapter.

(4) Develop, where practicable, a filing, coding, and cross-indexing system consistent with the purposes of this chapter.

(5) Make reports and statements filed with the commission available during regular business hours and online via the Internet to public inquiry subject to such regulations as the commission may prescribe.

(6) Preserve reports and statements for a period consistent with the statute of limitations as contained in this chapter. The reports and statements, when no longer required to be retained, shall be disposed of by shredding the reports and statements and disposing of or recycling them, or otherwise disposing of the reports and statements in any other manner prescribed by law. Nothing in this section shall in any manner limit the Department of Archives and History from receiving and retaining any documents pursuant to existing law.

(7) Make investigations with respect to statements filed pursuant to this chapter, and with respect to alleged failures to file, or omissions contained therein, any statement required pursuant to this chapter and, upon complaint by any individual, with respect to alleged violation of any part of this chapter to the extent authorized by law. When in its opinion a thorough audit of any person or any business should be made in order to determine whether this chapter has been violated, the commission shall direct the Examiner of Public Accounts to have an audit made and a report thereof filed with the commission. The Examiner of Public Accounts, upon receipt of the directive, shall comply therewith.

(8) Report suspected violations of law to the appropriate law-enforcement authorities.

(9) Issue and publish advisory opinions on the requirements of this chapter, based on a real or hypothetical set of circumstances. Such advisory opinions shall be adopted by a majority vote of the members of the commission present and shall be effective and deemed valid until expressly overruled or altered by the commission or a court of competent jurisdiction. The written advisory opinions of the commission shall protect the person at whose request the opinion was issued and any other person reasonably relying, in good faith, on the advisory opinion in a materially like circumstance from liability to the state, a county, or a municipal subdivision of the state because of any action performed or action refrained from in reliance of the advisory opinion. Nothing in this section shall be deemed to protect any person relying on the advisory opinion if the reliance is not in good faith, is not reasonable, or is not in a materially like circumstance. The commission may impose reasonable charges for publication of the advisory opinions and monies shall be collected, deposited, dispensed, or retained as provided herein. On October 1, 1995, all prior advisory opinions of the commission in conflict with this chapter, shall be ineffective and thereby deemed invalid and otherwise overruled unless there has been any action performed or action refrained from in reliance of a prior advisory opinion.

(10) Initiate and continue, where practicable, programs for the purpose of educating candidates, officials, employees, and citizens of Alabama on matters of ethics in government service.

(11) In accordance with Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act, prescribe, publish, and enforce rules to carry out this chapter.

(b) Additionally, the commission shall work with the Secretary of State to implement the reporting requirements of the Alabama Fair Campaign Practices Act and shall do all of the following:

(1) Approve all forms required by the Fair Campaign Practices Act.

(2) Suggest accounting methods for candidates, principal campaign

committees, and political action committees in connection with reports and filings required by the Fair Campaign Practices Act.

(3) Approve a retention policy for all reports, filings, and underlying documentation required by the Fair Campaign Practices Act.

(4) Approve a manual for all candidates, principal campaign committees, and political action committees, describing the requirements of the Fair Campaign Practices Act that shall be published by the Secretary of State.

(5) Investigate and hold hearings for receiving evidence regarding alleged violations of the Fair Campaign Practices Act as set forth in this chapter that demonstrates a likelihood that the Fair Campaign Practices Act has been violated.

(6) Conduct or authorize audits of any filings required under the Fair Campaign Practices Act if evidence exists that an audit is warranted because of the filing of a complaint in the form required by this chapter or if there exists a material discrepancy or conflict on the face of any filing required by the Fair Campaign Practices Act.

(7) Affirm, set aside, or reduce civil penalties as provided in Section 17-5-19.2.

(8) Refer all evidence and information necessary to the Attorney General or appropriate district attorney for prosecution of any criminal violation of the Fair Campaign Practices Act as set forth in this chapter.

(9) Make investigations with respect to statements filed pursuant to the Fair Campaign Practices Act, and with respect to alleged failures to file, or omissions contained therein, any statement required pursuant to the Fair Campaign Practices Act and, upon complaint by any individual, with respect to alleged violation of any part of that act to the extent authorized by law. When in its opinion a thorough audit of any person or any business should be

made in order to determine whether the Fair Campaign Practices Act has been violated, the commission shall direct the Examiner of Public Accounts to have an audit made and a report thereof filed with the commission. The Examiner of Public Accounts, upon receipt of the directive, shall comply therewith.

(10) Issue and publish advisory opinions on the requirements of the Fair Campaign Practices Act, based on a real or hypothetical set of circumstances. Such advisory opinions shall be adopted by a majority vote of the members of the commission present and shall be effective and deemed valid until expressly overruled or altered by the commission or a court of competent jurisdiction. The written advisory opinions of the commission shall protect the person at whose request the opinion was issued and any other person reasonably relying, in good faith, on the advisory opinion in a materially like circumstance from liability of any kind because of any action performed or action refrained from in reliance of the advisory opinion. Nothing in this section shall be deemed to protect any person relying on the advisory opinion if the reliance is not in good faith, is not reasonable, or is not in a materially like circumstance. The commission may impose reasonable charges for publication of the advisory opinions and monies shall be collected, deposited, dispensed, or retained as provided herein.

(11) In accordance with Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act, prescribe, publish, and enforce rules to carry out this section.

(c) Except as necessary to permit the sharing of information and evidence with the Attorney General or a district attorney, a complaint filed pursuant to this chapter or the Fair Campaign Practices Act, together with any statement, evidence, or information received from the complainant, witnesses, or other persons shall be protected by and subject to the same restrictions relating to secrecy and nondisclosure of information, conversation, knowledge, or evidence of Sections 12-16-214 to 12-16-216, inclusive, except that a violation of this section shall constitute a Class C felony. Such restrictions shall apply to all investigatory activities taken by the director, the commission, or a member

thereof, staff, employees, or any person engaged by the commission in response to a complaint filed with the commission and to all proceedings relating thereto before the commission. Such restrictions shall also apply to all information and evidence supplied to the Attorney General or district attorney.

(d) The commission shall not take any investigatory action on a telephonic or written complaint against a respondent so long as the complainant remains anonymous. Investigatory action on a complaint from an identifiable source shall not be initiated until the true identity of the source has been ascertained and written verification of such ascertainment is in the commission's files. The complaint may only be filed by a person who has or persons who have credible and verifiable information supporting the allegations contained in the complaint. A complainant may not file a complaint for another person or persons in order to circumvent this subsection. Prior to commencing any investigation, the commission shall: (1) receive a written and signed complaint which sets forth in detail the specific charges against a respondent, and the factual allegations which support such charges; and (2) the director shall conduct a preliminary inquiry in order to make an initial determination that the complaint, on its face alleges facts which if true, would constitute a violation of this chapter or the Fair Campaign Practices Act and that reasonable cause exists to conduct an investigation. If the director determines that the complaint does not allege a violation or that reasonable cause does not exist, the charges shall be dismissed, but such action must be reported to the commission. The commission shall be entitled to authorize an investigation upon written consent of four commission members, upon an express finding that probable cause exists that a violation or violations of this chapter or the Fair Campaign Practices Act have occurred. Upon the commencement of any investigation, the Alabama Rules of Criminal Procedure as applicable to the grand jury process promulgated by the Alabama Supreme Court shall apply and shall remain in effect until the complaint is dismissed or disposed of in some other manner. A complaint may be initiated by a vote of four members of the commission, provided, however, that the commission shall not conduct the hearing, but rather the hearing shall be conducted by

three active or retired judges, who shall be appointed by the Chief Justice of the Alabama Supreme Court, at least one of whom shall be Black. The three-judge panel shall conduct the hearing in accordance with the procedures contained in this chapter and in accordance with the rules of the commission. If the three-judge panel unanimously finds that a person covered by this chapter has violated it or that the person covered by the Fair Campaign Practices Act has violated that act, the three-judge panel shall forward the case to the district attorney for the jurisdiction in which the alleged acts occurred or to the Attorney General. In all matters that come before the commission concerning a complaint on an individual, the laws of due process shall apply.

(e) Not less than 45 days prior to any hearing before the commission, the respondent shall be given notice that a complaint has been filed against him or her and shall be given a summary of the charges contained therein. Upon the timely request of the respondent, a continuance of the hearing for not less than 30 days shall be granted for good cause shown. The respondent charged in the complaint shall have the right to be represented by retained legal counsel. The commission may not require the respondent to be a witness against himself or herself.

(f) The commission shall provide discovery to the respondent pursuant to the Alabama Rules of Criminal Procedure as promulgated by the Alabama Supreme Court.

(g)(1) All fees, penalties, and fines collected by the commission pursuant to this chapter shall be deposited into the State General Fund.

(2) All monies collected as reasonable payment of costs for copying, reproductions, publications, and lists shall be deemed a refund against disbursement and shall be deposited into the appropriate fund account for the use of the commission.

(h) In the course of an investigation, the commission may subpoena witnesses and compel their attendance and may also require the production of books, papers, documents, and other

evidence. If any person fails to comply with any subpoena lawfully issued, or if any witness refuses to produce evidence or to testify as to any matter relevant to the investigation, it shall be the duty of any court of competent jurisdiction or the judge thereof, upon the application of the director, to compel obedience upon penalty for contempt, as in the case of disobedience of a subpoena issued for such court or a refusal to testify therein. A subpoena may be issued only upon the vote of four members of the commission upon the express written request of the director. The subpoena shall be subject to Rules 17.1, 17.2, 17.3, and 17.4 of the Alabama Rules of Criminal Procedure. The commission upon seeking issuance of the subpoena shall serve a notice to the recipient of the intent to serve such subpoena. Upon the expiration of 10 days from the service of the notice and the proposed subpoena shall be attached to the notice. Any person or entity served with a subpoena may serve an objection to the issuance of the subpoena within 10 days after service of the notice on the grounds set forth under Rule 17.3(c) of the Alabama Rules of Criminal Procedure, and in such event the subpoena shall not issue until an order to dismiss, modify, or issue the subpoena is entered by a state court of proper jurisdiction, the order to be entered within 30 days after making of the objection. Any vote taken by the members of the commission relative to the issuance of a subpoena shall be protected by and subject to the restrictions relating to secrecy and nondisclosure of information, conversation, knowledge, or evidence of Sections 12-16-214 to 12-16-216, inclusive.

(i) After receiving or initiating a complaint, the commission has 180 days to determine whether probable cause exists. At the expiration of 180 days from the date of receipt or commencement of a complaint, if the commission does not find probable cause, the complaint shall be deemed dismissed and cannot be reinstated based on the same facts alleged in the complaint. Upon good cause shown from the general counsel and chief investigator, the director may request from the commission a one-time extension of 180 days. Upon the majority vote of the commission, the staff may be granted a one-time extension of 180 days in which to complete the investigation. If the commission finds probable cause that a person covered by this chapter has violated it or that the person covered

by the Fair Campaign Practices Act has violated that act, the case and the commission's findings shall be forwarded to the district attorney for the jurisdiction in which the alleged acts occurred or to the Attorney General. The case, along with the commission's findings, shall be referred for appropriate legal action. Nothing in this section shall be deemed to limit the commission's ability to take appropriate legal action when so requested by the district attorney for the appropriate jurisdiction or by the Attorney General.

(j) Within 180 days of receiving a case referred by the commission, the Attorney General or district attorney to whom the case was referred may, upon written request of the commission notify the commission, in writing, stating whether he or she intends to take action against the respondent, including an administrative disposition or settlement, conduct further investigation, or close the case without taking action. If the Attorney General or district attorney decides to pursue the case, he or she, upon written request of the commission, may inform the commission of the final disposition of the case. The written information pursuant to this section shall be maintained by the commission and made available upon request as a public record. The director may request an oral status update from the Attorney General or district attorney from time to time.

§ 36-25-4.1. State Ethics Commission -- Public access to complaint, investigation, and disposition.

Notwithstanding any other law, regulation, or rule, no complaints shall be made available to the public or available on the Internet until the disposition of the matter. In no event may a complaint be made public or available on the Internet if the complaint is dismissed or found not to have probable cause. In the matters where the complaint is dismissed or found not to have probable cause, only the disposition of the matter may be made available to the public or available on the Internet. Nothing in this section shall be deemed a direct grant of authority for the commission to publicize or make available on the Internet any complaint or investigation if not permitted by any other law, regulation, or rule.

§ 36-25-4.2. State Ethics Commission -- State Ethics Law training programs.

(a) At the beginning of each legislative quadrennium, the State Ethics Commission shall provide for and administer training programs on the State Ethics Law for members of the Legislature, state constitutional officers, cabinet officers, executive staff, municipal mayors, council members and commissioners, county commissioners, and lobbyists.

(1) The training program for legislators shall be held at least once at the beginning of each quadrennium for members of the Legislature. An additional training program shall be held if any changes are made to this chapter, and shall be held within three months of the effective date of the changes. The time and place of the training programs shall be determined by the Executive Director of the State Ethics Commission and the Legislative Council. Each legislator must attend the training programs. The State Ethics Commission shall also provide a mandatory program for any legislator elected in a special election within three months of the date that the legislator assumes office.

(2) The training program for the state constitutional officers, cabinet members, and executive staff, as determined by the Governor, shall be held within the first 30 days after the Governor has been sworn into office. An additional training program shall be held if any changes are made to this chapter, and shall be held within three months of the effective date of the changes. The specific date of the training program shall be established by the Executive Director of the State Ethics Commission with the advice of the Governor and other constitutional officers.

(3) The training program for lobbyists shall be held four times annually as designated by the Executive Director of the State Ethics Commission, the first of which shall be held within the first 30 days of the year. Each lobbyist must attend a training program within 90 days of registering as a lobbyist. A lobbyist who fails to attend a training program shall not be allowed to lobby the Legislature, Executive Branch, Judicial Branch, public officials, or

public employees. After attending one training program, a lobbyist shall not be required to attend an additional training program unless any changes are made to this chapter. Such additional mandatory training program shall be held within three months of the effective date of the changes.

(4) All municipal mayors, council members and commissioners, county commissioners, and members of any local board of education in office as of January 1, 2011, shall obtain training within 120 days of that date. Thereafter, all municipal mayors, council members and commissioners, and county commissioners shall obtain training within 120 days of being sworn into office. Training shall be available online and may be conducted either online or in person. Evidence of completion of the training shall be provided to the commission via an electronic reporting system provided on the official website. The scheduling of training opportunities for municipal mayors, council members and commissioners, and county commissioners shall be established by the Executive Director of the State Ethics Commission with the advice and assistance of the Alabama League of Municipalities and the Association of County Commissions of Alabama. Any provision of this section to the contrary notwithstanding, the training for county commissioners required by this subdivision shall be satisfied by the successful completion of the 10-hour course on ethical requirements of public officials provided by the Alabama Local Government Training Institute established pursuant to Article 2 of Chapter 3 of Title 11. The Alabama Local Government Training Institute shall quarterly provide written notice to the State Ethics Commission the names of those county commissioners completing the institute's program.

(b) The curriculum of each session and faculty for the training program shall be determined by the Executive Director of the State Ethics Commission. The curriculum shall include, but not be limited to, a review of the current law, a discussion of actual cases and advisory opinions on which the State Ethics Commission has ruled, and a question and answer period for attendees. The faculty for the training program may include the staff of the State Ethics Commission, members of the faculties of the various law schools in

the state, and other persons deemed appropriate by the Executive Director of the State Ethics Commission and shall include experts in the field of ethics law, persons affected by the ethics law, and members of the press and media.

(c) Except as provided herein, attendance at any session of the training program shall be mandatory, except in the event the person is suffering a catastrophic illness.

(d) This section shall not preclude the penalizing, prosecution, or conviction of any member of the Legislature, any public official, or public employee prior to such person attending a mandatory training program.

(e) All public employees required to file the Statement of Economic Interests required by Section 36-25-14, no later than May 1, 2011, shall participate in an online educational review of the Alabama Ethics Law provided on the official website of the commission. Employees hired after January 1, 2011, shall have 90 days to comply with this subsection. Evidence of completion of the educational review shall be provided to the commission via an electronic reporting system provided on the official website.

§ 36-25-4.3. Ethics Commission -- Electronic database filing and access.

(a) The commission, by April 1, 2012, shall implement and maintain each of the following:

(1) A system for electronic filing of all statements, reports, registrations, and notices required by this chapter.

(2) An electronic database accessible to the public through an Internet website which provides at least the following capabilities:

a. Search and retrieval of all statements, reports, and other filings required by this chapter, excluding complaints made confidential by Section 36-25-4(b), by the name of the public official or public employee to which they pertain.

b. Generation of an aggregate list of all things of value provided to each public official or public employee and family member of a public official or public employee as reported pursuant to Section 36-25-19, searchable and retrievable by the name of the public official or public employee.

(b) Notwithstanding subsection (a), the commission shall exclude from any electronic database accessible to the public, identifying information, as defined in Section 41-13-7, that is included in any statement of economic interest filed by any public official or public employee.

(c) The commission shall redact all identifying information on any electronic database accessible to the public, as defined in Section 41-13-7, that is included in any statement of economic interest filed by a public official or public employee and was in the database on August 1, 2013.

§ 36-25-5. Use of official position or office for personal gain.

(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

(b) Unless prohibited by the Constitution of Alabama of 2022, nothing herein shall be construed to prohibit a public official from introducing bills, ordinances, resolutions, or other legislative matters, serving on committees, or making statements or taking action in the exercise of his or her duties as a public official. A member of a legislative body may not vote for any legislation in which he or she knows or should have known that he or she has a conflict of interest.

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

(d) No person shall solicit a public official or public employee to use or cause to be used equipment, facilities, time, materials, human labor, or other public property for such person's private benefit or business benefit, which would materially affect his or her financial interest, except as otherwise provided by law.

(e) No public official or public employee shall, other than in the ordinary course of business, solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.

(f) A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation.

§ 36-25-5.1. Limitation on actions of lobbyists, subordinates of lobbyists, and principals.

(a) No lobbyist, subordinate of a lobbyist, or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal. Notwithstanding the foregoing, a lobbyist, or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.

(b) A lobbyist does not provide a thing of value, for purposes of this section, merely by arranging, facilitating, or coordinating with his or her principal that is providing and paying for those items.

§ 36-25-5.2. Public disclosure of information regarding officials, candidates, or spouses employed by or contracting with the state or federal government.

(a) For purposes of this section, the term state shall include the State of Alabama and any of its agencies, departments, political subdivisions, counties, colleges and universities and technical schools, the Legislature, the appellate courts, district courts, circuit courts and municipal courts, municipal corporations, and city and county school systems.

(b) Each public official and the spouse of each public official, as well as each candidate and the spouse of each candidate, who is employed by the state or the federal government or who has a contract with the state or the federal government, or who works for a company that receives 50% or more of its revenue from the state, shall notify the commission of such employment or contract within 30 days of beginning employment or within 30 days of the beginning of the contract. Additionally, each public official and the spouse of each public official, as well as each candidate and the spouse of each candidate, who is employed by the state or the

federal government or who has a contract with the state or the federal government on August 14, 2011, shall notify the commission of such employment or contract by September 13, 2011. Notification shall be in the form of a filing as described in subsection (c).

(c) The filing with the commission shall include all of the following:

(1) The name of the public official or, when applicable, the name of the candidate.

(2) The name of the spouse of the public official or, when applicable, the name of the spouse of the candidate.

(3) The department or agency or county or municipality with whom the public official, candidate, or spouse is employed or with whom the public official, candidate, or spouse has a contract.

(4) The exact job description or, if applicable, a description of the contract.

(5) The beginning and ending dates of employment or, if applicable, the beginning and ending dates of the contract.

(6) The compensation, including any and all salary, allowances, and fees, received by the public official or his or her spouse or the candidate or his or her spouse.

(d) If the terms of employment or of the contract change, the public official or his or her spouse or the candidate or his or her spouse shall promptly provide updated information concerning the change with the commission, which shall revise such information in its files.

(e) Filings collected by the commission pursuant to this section are public record and shall be made available on the commission's website.

§ 36-25-6. Use of contributions.

Contributions to an office holder, a candidate, or to a public official's inaugural or transitional fund shall not be converted to personal use.

§ 36-25-7. Offering, soliciting, or receiving anything for purpose of influencing official action; money solicited or received in addition to that received in official capacity.

(a) No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive anything for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(b) No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official action, regardless of whether or not the thing solicited or received is a thing of value.

(c) No person shall offer or give a family member of the public official or family member of the public employee anything for the purpose of corruptly influencing official action, regardless of whether or not the thing offered or given is a thing of value.

(d) No public official or public employee, shall solicit or receive any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department or any public regulatory board, commission or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.

(e) For purposes of this section, to act corruptly means to act voluntarily, deliberately, and dishonestly to either accomplish an

unlawful end or result or to use an unlawful method or means to accomplish an otherwise lawful end or result.

§ 36-25-8. Use or disclosure of confidential information for private financial gain.

No public official, public employee, former public official or former public employee, for a period consistent with the statute of limitations as contained in this chapter, shall use or disclose confidential information gained in the course of or by reason of his or her position or employment in any way that could result in financial gain other than his or her regular salary as such public official or public employee for himself or herself, a family member of the public employee or family member of the public official, or for any other person or business.

§ 36-25-9. Service on regulatory boards and commissions regulating business with which person associated; members who have financial interest in matter prohibited from voting.

(a) Unless expressly provided otherwise by law, no person shall serve as a member or employee of a state, county, or municipal regulatory board or commission or other body that regulates any business with which he is associated. Nothing herein shall prohibit real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate field, or other state-licensed professionals, from serving on any planning boards or commissions, housing authorities, zoning board, board of adjustment, code enforcement board, industrial board, utilities board, state board, or commission.

(b) All county or municipal regulatory boards, authorities, or commissions currently comprised of any real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate industry may allow these individuals to continue to serve out their current term if appointed before December 31, 1991, except that at the conclusion of such term subsequent appointments shall reflect that membership of real estate brokers and agents shall not exceed more than one less of a majority of any

county or municipal regulatory board or commission effective January 1, 1994.

(c) No member of any county or municipal agency, board, or commission shall vote or participate in any matter in which the member or family member of the member has any financial gain or interest.

(d) All acts, actions, and votes taken by such local boards and commissions between January 1, 1991 and December 31, 1993 are affirmed and ratified.

§ 36-25-10. Representation of client or constituent before board, regulatory body, department, etc.

If a public official or public employee, or family member of the public employee or family member of the public official, or a business with which the person is associated, represents a client or constituent for a fee before any quasi-judicial board or commission, regulatory body, or executive department or agency, notice of the representation shall be given within 10 days after the first day of the appearance. Notice shall be filed with the commission in the manner prescribed by it. No member of the Legislature shall for a fee, reward, or other compensation represent any person, firm, or corporation before the Public Service Commission or the State Board of Adjustment.

§ 36-25-11. Public officials or employees entering into contracts which are to be paid out of government funds.

Unless exempt pursuant to Alabama competitive bid laws or otherwise permitted by law, no public official or public employee, or a member of the household of the public employee or the public official, and no business with which the person is associated shall enter into any contract to provide goods or services which is to be paid in whole or in part out of state, county, or municipal funds unless the contract has been awarded through a process of competitive bidding and a copy of the contract is filed with the commission. All such contract awards shall be made as a result of original bid takings, and no awards from negotiations after

bidding shall be allowed. A copy of each contract, regardless of the amount, entered into by a public official, public employee, a member of the household of the public employee or the public official, and any business with which the person is associated shall be filed with the commission within 10 days after the contract has been entered into.

§ 36-25-12. Offering, soliciting, etc., thing of value to or by member of regulatory body.

No person shall offer or give to a member or employee of a governmental agency, board, or commission that regulates a business with which the person is associated, and no member or employee of a regulatory body, shall solicit or accept a thing of value while the member or employee is associated with the regulatory body other than in the ordinary course of business. In addition to the foregoing, the Commissioner of the Department of Agriculture and Industries and any candidate for the office of commissioner may not accept a campaign contribution from a person associated with a business regulated by the department.

§ 36-25-13. Actions of former public officials or public employees prohibited for two years after departure.

(a) No public official shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, department, or legislative body, of which he or she is a former member for a period of two years after he or she leaves such membership. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(b) Notwithstanding the provisions of subsection (a), no public official elected to a term of office shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer, before the board, agency, commission, department, or legislative body of which he or she is a former member for a period of two years following the term of office for which he or she was elected,

irrespective of whether the member left the office prior to the expiration of the term to which he or she was elected. For the purposes of this subsection, such prohibition shall not include a former member of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(c) No public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former employee or worked pursuant to an arrangement such as a consulting agreement, agency transfer, loan, or similar agreement for a period of two years after he or she leaves such employment or working arrangement. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(d) Except as specifically set out in this section, no public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency. Notwithstanding the prohibition in this subsection a person serving full-time as the director or a department or division chief who has retired from a governmental agency may enter into a contract with the governmental agency of which the person was an employee for the specific purpose of providing assistance to the governmental agency during the transitional period following retirement, but only if all of the following conditions are met:

(1) The contract does not extend for more than three months following the date of retirement.

(2) The retiree is at all times in compliance with Section 36-27-8.2.

(3) The compensation paid to the retiree through the contract, when combined with the monthly retirement compensation paid to the retiree, does not exceed the gross monthly compensation paid to the retiree on the date of retirement.

(4) The contract is submitted to and approved by the Director of the Ethics Commission as satisfying the above conditions prior to the date the retiree begins work under the contract.

(e) Notwithstanding subsection (d), a municipality may rehire a retired law enforcement officer or a retired firefighter formerly employed by the municipality at any time to provide public safety services if all of the following conditions are satisfied:

(1) A local law is enacted authorizing the rehire of retired law enforcement officers or firefighters formerly employed by the municipality.

(2) The municipality rehiring a retiree provides a copy of the local law referenced in subdivision (1) to the Director of the Ethics Commission.

(3) Upon a determination to rehire a retired law enforcement officer or firefighter, the municipality immediately provides notice to the Director of the Ethics Commission that the former employee is being rehired.

(f) No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.

(g) No former public official or public employee of the state may, within two years after termination of office or employment, act as attorney for any person other than himself or herself or the state, or aid, counsel, advise, consult or assist in representing any other person, in connection with any judicial proceeding or other matter

in which the state is a party or has a direct and substantial interest and in which the former public official or public employee participated personally and substantially as a public official or employee or which was within or under the public official or public employee's official responsibility as an official or employee. This prohibition shall extend to all judicial proceedings or other matters in which the state is a party or has a direct and substantial interest, whether arising during or subsequent to the public official or public employee's term of office or employment.

(h) Nothing in this chapter shall be deemed to limit the right of a public official or public employee to publicly or privately express his or her support for or to encourage others to support and contribute to any candidate, political committee as defined in Section 17-22A-2 [sic], referendum, ballot question, issue, or constitutional amendment.

§ 36-25-14. Filing of statement of economic interests.

(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

(1) All elected public officials at the state, county, or municipal level of government or their instrumentalities.

(2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is seventy-five thousand dollars ($75,000) or more annually, as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index.

(3) All candidates, provided the statement is filed on the date the candidate files his or her qualifying papers or, in the case of an independent candidate, on the date the candidate complies with the requirements of Section 17-9-3.

(4) Members of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction (but excluding members of solely advisory boards).

(5) All full-time nonmerit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.

(6) Chief clerks and chief managers.

(7) Chief county clerks and chief county managers.

(8) Chief administrators.

(9) Chief county administrators.

(10) Any public official or public employee whose primary duty is to invest public funds.

(11) Chief administrative officers of any political subdivision.

(12) Chief and assistant county building inspectors.

(13) Any county or municipal administrator with power to grant or deny land development permits.

(14) Chief municipal clerks.

(15) Chiefs of police.

(16) Fire chiefs.

(17) City and county school superintendents and school board members.

(18) City and county school principals or administrators.

(19) Purchasing or procurement agents having the authority to make any purchase.

(20) Directors and assistant directors of state agencies.

(21) Chief financial and accounting directors.

(22) Chief grant coordinators.

(23) Each employee of the Legislature or of agencies, including temporary committees and commissions established by the Legislature, other than those employed in maintenance, clerical, secretarial, or similar positions.

(24) Each employee of the Judicial Branch of government, including active supernumerary district attorneys and judges, other than those employed in maintenance, clerical, secretarial, or other similar positions.

(25) Every full-time public employee serving as a supervisor.

(b) Unless otherwise required by law, no public employee occupying a position earning less than seventy-five thousand dollars ($75,000) per year shall be required to file a statement of economic interests, as adjusted by the commission by January 31 of each year to reflect changes in the U.S. Department of Labor's Consumer Price Index, or a successor index. Notwithstanding the provisions of subsection (a) or any other provision of this chapter, no coach of an athletic team of any four-year institution of higher education which receives state funds shall be required to include any income, donations, gifts, or benefits, other than salary, on the statement of economic interests, if the income, donations, gifts, or benefits are a condition of the employment contract. Such statement shall be made on a form made available by the commission. The duty to file the statement of economic interests shall rest with the person covered by this chapter. Nothing in this chapter shall be construed to exclude any public employee or public official from this chapter regardless of whether they are required to file a statement of economic interests. The statement shall contain the following information on the person making the filing:

(1) Name, residential address, business; name, address, and business of living spouse and dependents; name of living adult

children; name of parents and siblings; name of living parents of spouse. Undercover law enforcement officers may have their residential addresses and the names of family members removed from public scrutiny by filing an affidavit stating that publicizing this information would potentially endanger their families.

(2) A list of occupations to which one third or more of working time was given during previous reporting year by the public official, public employee, or his or her spouse.

(3) A listing of total combined household income of the public official or public employee during the most recent reporting year as to income from salaries, fees, dividends, profits, commissions, and other compensation and listing the names of each business and the income derived from such business in the following categorical amounts: less than one thousand dollars ($1,000); at least one thousand dollars ($1,000) and less than ten thousand dollars ($10,000); at least ten thousand dollars ($10,000) and less than fifty thousand dollars ($50,000); at least fifty thousand dollars ($50,000) and less than one hundred fifty thousand dollars ($150,000); at least one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); or at least two hundred fifty thousand dollars ($250,000) or more. The person reporting shall also name any business or subsidiary thereof in which he or she or his or her spouse or dependents, jointly or severally, own five percent or more of the stock or in which he or she or his or her spouse or dependents serves as an officer, director, trustee, or consultant where the service provides income of at least one thousand dollars ($1,000) and less than five thousand dollars ($5,000); or at least five thousand dollars ($5,000) or more for the reporting period.

(4) If the filing public official or public employee, or his or her spouse, has engaged in a business during the last reporting year which provides legal, accounting, medical or health related, real estate, banking, insurance, educational, farming, engineering, architectural management, or other professional services or consultations, then the filing party shall report the number of clients of such business in each of the following categories and the

income in categorical amounts received during the reporting period from the combined number of clients in each category: Electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, intrastate transportation companies, pipeline companies, oil or gas exploration companies, or both, oil and gas retail companies, banks, savings and loan associations, loan or finance companies, or both, manufacturing firms, mining companies, life insurance companies, casualty insurance companies, other insurance companies, retail companies, beer, wine or liquor companies or distributors, or combination thereof, trade associations, professional associations, governmental associations, associations of public employees or public officials, counties, and any other businesses or associations that the commission may deem appropriate. Amounts received from combined clients in each category shall be reported in the following categorical amounts: Less than one thousand dollars ($1,000); more than one thousand dollars ($1,000) and less than ten thousand dollars ($10,000); at least ten thousand dollars ($10,000) and less than twenty-five thousand dollars ($25,000); at least twenty-five thousand dollars ($25,000) and less than fifty thousand dollars ($50,000); at least fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000); at least one hundred thousand dollars ($100,000) and less than one hundred fifty thousand dollars ($150,000); at least one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); or at least two hundred fifty thousand dollars ($250,000) or more.

(5) If retainers are in existence or contracted for in any of the above categories of clients, a listing of the categories along with the anticipated income to be expected annually from each category of clients shall be shown in the following categorical amounts: Less than one thousand dollars ($1,000); at least one thousand dollars ($1,000) and less than five thousand dollars ($5,000); or at least five thousand dollars ($5,000) or more.

(6) If real estate is held for investment or revenue production by a public official, his or her spouse or dependents, then a listing thereof in the following fair market value categorical amounts:

Under fifty thousand dollars ($50,000); at least fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000); at least one hundred thousand dollars ($100,000) and less than one hundred fifty thousand dollars ($150,000); at least one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); at least two hundred fifty thousand dollars ($250,000) or more. A listing of annual gross rent and lease income on real estate shall be made in the following categorical amounts: Less than ten thousand dollars ($10,000); at least ten thousand dollars ($10,000) and less than fifty thousand dollars ($50,000); fifty thousand dollars ($50,000) or more. If a public official or a business in which the person is associated received rent or lease income from any governmental agency in Alabama, specific details of the lease or rent agreement shall be filed with the commission.

(7) A listing of indebtedness to businesses operating in Alabama showing types and number of each as follows: Banks, savings and loan associations, insurance companies, mortgage firms, stockbrokers and brokerages or bond firms; and the indebtedness to combined organizations in the following categorical amounts: Less than twenty-five thousand dollars ($25,000); twenty-five thousand dollars ($25,000) and less than fifty thousand dollars ($50,000); fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000); one hundred thousand dollars ($100,000) and less than one hundred fifty thousand dollars ($150,000); one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); two hundred fifty thousand dollars ($250,000) or more. The commission may add additional business to this listing. Indebtedness associated with the homestead of the person filing is exempted from this disclosure requirement.

(c) Filing required by this section shall reflect information and facts in existence at the end of the reporting year.

(d) If the information required herein is not filed as required, the commission shall notify the public official or public employee concerned as to his or her failure to so file and the public official or

public employee shall have 10 days to file the report after receipt of the notification. The commission may, in its discretion, assess a fine of ten dollars ($10) a day, not to exceed one thousand dollars ($1,000), for failure to file timely.

(e) A person who intentionally violates any financial disclosure filing requirement of this chapter shall be subject to administrative fines imposed by the commission, or shall, upon conviction, be guilty of a Class A misdemeanor, or both.

Any person who unintentionally neglects to include any information relating to the financial disclosure filing requirements of this chapter shall have 90 days to file an amended statement of economic interests without penalty.

§ 36-25-15. Candidates required to file statements of economic interests; notification requirements; failure to submit statement.

(a) Candidates at every level of government shall file a completed statement of economic interests for the previous calendar year with the State Ethics Commission simultaneously with the date such candidate files his or her qualifying papers with the appropriate election official or in the case of an independent candidate, the date the person complies with the requirements of Section 17-9-3. Nothing in this section shall be deemed to require a second filing of the person's statement of economic interests if a current statement of economic interests is on file with the commission.

(b) Each election official who receives a declaration of candidacy or petition to appear on the ballot for election from a candidate shall, within five days of the receipt, notify the commission of the name of the candidate, as defined in this chapter, and the date on which the person became a candidate. The commission shall, within five business days of receipt of such notification, notify the election official whether the candidate has complied with the provisions of this section.

(c) Other provisions of the law notwithstanding, if a candidate does not submit a statement of economic interests or when

applicable, an amended statement of economic interests in accordance with the requirements of this chapter, the name of the person shall not appear on the ballot and the candidate shall be deemed not qualified as a candidate in that election. Notwithstanding the foregoing, the commission may, for good cause shown, allow the candidate an additional five days to file such statement of economic interests. If a candidate is deemed not qualified, the appropriate election official shall remove the name of the candidate from the ballot.

§ 36-25-16. Reports by persons who are related to public officials or public employees and who represent persons before regulatory body or contract with state.

(a) When any citizen of the state or business with which he or she is associated represents for a fee any person before a regulatory body of the Executive Branch, he or she shall report to the commission the name of any adult child, parent, spouse, brother, or sister who is a public official or a public employee of that regulatory body of the Executive Branch.

(b) When any citizen of the state or business with which the person is associated enters into a contract for the sale of goods or services to the State of Alabama or any of its agencies or any county or municipality and any of their respective agencies in amounts exceeding seven thousand five hundred dollars ($7,500), he or she shall report to the commission the names of any adult child, parent, spouse, brother, or sister who is a public official or public employee of the agency or department with whom the contract is made.

(c) This section shall not apply to any contract for the sale of goods or services awarded through a process of public notice and competitive bidding.

(d) Each regulatory body of the Executive Branch, or any agency of the State of Alabama shall be responsible for notifying citizens affected by this chapter of the requirements of this section.

§ 36-25-17. Reports of violations; cooperation of agency heads.

(a) Every governmental agency head shall within 10 days file reports with the commission on any matters that come to his or her attention in his or her official capacity which constitute a violation of this chapter.

(b) Governmental agency heads shall cooperate in every possible manner in connection with any investigation or hearing, public or private, which may be conducted by the commission.

§ 36-25-18. Registration of lobbyists required; filing of supplemental registration.

(a) Every lobbyist shall register by filing a form prescribed by the commission no later than January 31 of each year or within 10 days after the first undertaking requiring such registration. Each lobbyist, except public employees who are lobbyists, shall pay an annual fee of one hundred dollars ($100) on or before January 31 of each year or within 10 days of the first undertaking requiring such registration.

(b) The registration shall be in writing and shall contain the following information:

(1) The registrant's full name and business address.

(2) The registrant's normal business and address.

(3) The full name and address of the registrant's principal or principals.

(4) The listing of the categories of subject matters on which the registrant is to communicate directly with a member of the legislative body to influence legislation or legislative action.

(5) If a registrant's activity is done on behalf of the members of a group other than a corporation, a categorical disclosure of the number of persons of the group as follows: 1-5; 6-10; 11-25; over 25.

(6) A statement signed by each principal that he or she has read the registration, knows its contents and has authorized the registrant to be a lobbyist in his or her behalf as specified therein, and that no compensation will be paid to the registrant contingent upon passage or defeat of any legislative measure.

(c) A registrant shall file a supplemental registration indicating any substantial change or changes in the information contained in the prior registration within 10 days after the date of the change.

§ 36-25-19. Registered lobbyists and other persons required to file quarterly reports.

(a) Every person registered as a lobbyist pursuant to Section 36-25-18 and every principal employing any lobbyist shall file with the commission a report provided by the commission pertaining to the activities set out in that section. The report shall be filed with the commission no later than January 31, April 30, July 31, and October 31 for each preceding calendar quarter, and contain, but not be limited to, the following information:

(1) The cost of those items excluded from the definition of a thing of value which are described in Section 36-25-1(34)b. and which are expended within a 24-hour period on a public official, public employee, and members of his or her respective household in excess of two hundred fifty dollars ($250) with the name or names of the recipient or recipients and the date of the expenditure.

(2) The nature and date of any financial transaction between the public official, candidate, or member of the household of such public official or candidate and the lobbyist or principal of a value in excess of five hundred dollars ($500) in the prior quarter, excluding those financial transactions which are required to be reported by candidates under the Fair Campaign Practices Act as provided in Chapter 22A (commencing with Section 17-22A-1) of Title 17.

(3) A detailed statement showing the exact amount of any loan given or promised to a public official, candidate, public official or

candidate.

(4) A detailed statement showing any direct business association or partnership with any public official, candidate, or members of the household of such public official or candidate; provided, however, that campaign expenditures shall not be deemed a business association or partnership.

(b) Any person not otherwise deemed a lobbyist pursuant to this chapter who negotiates or attempts to negotiate a contract, sells or attempts to sell goods or services, engages or attempts to engage in a financial transaction with a public official or public employee in their official capacity and who within a calendar day expends in excess of two hundred fifty dollars ($250) on such public employee, public official, and his or her respective household shall file a detailed quarterly report of the expenditure with the commission.

(c) Any other provision of this chapter to the contrary notwithstanding, no organization whose officer or employee serves as a public official under this chapter shall be required to report expenditures or reimbursement paid to such officer or employee in the performance of the duties with the organization.

§ 36-25-20. Filing of notice of termination of lobbying activities; effect of notice as to requirement for filing of reports.

(a) A person who ceases to engage in activities requiring registration pursuant to Section 36-25-18 shall file a written, verified statement with the commission acknowledging the termination of activities. The notice shall be effective immediately.

(b) A person who files a notice of termination pursuant to this section shall file the reports required pursuant to Sections 36-25-18 and 36-25-19 for any reporting period during which he or she was registered pursuant to this chapter.

§ 36-25-21. Reports constitute public records; reports available for public inspection.

All reports filed pursuant to Sections 36-25-18 to 36-25-20, inclusive, are public records and shall be made available for public inspection during regular business hours.

§ 36-25-22. Sections 36-25-18 to 36-25-21 not to be construed as affecting certain professional services.

Sections 36-25-18 to 36-25-21, inclusive, shall not be construed as affecting professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, rules, or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.

§ 36-25-23. Lobbying activities prohibited during elected term of office; floor privileges of former members of Legislature; solicitation of lobbyists by public officials or employees; contracts to provide lobbying services contingent upon legislative action.

(a) No public official elected to a term of office shall serve for a fee as a lobbyist or otherwise represent a client, including his or her employer, before any legislative body or any branch of state or local government, including the executive and judicial branches of government, and including the Legislature of Alabama or any board, agency, commission, or department thereof, during the term or remainder of the term for which the official was elected. For purposes of this subsection, such prohibition shall not include a former member of the Alabama Judiciary who as an attorney represents a client in a legal, non-lobbying capacity.

(b) No former member of the House of Representatives or the Senate of the State of Alabama shall be extended floor privileges of either body in a lobbying capacity.

(c) No public official, public employee, or group of public officials or public employees shall solicit any lobbyist to give any thing

whether or not the thing solicited is a thing of value to any person or entity for any purpose other than a campaign contribution.

(d) No principal or lobbyist shall accept compensation for, or enter into a contract to provide lobbying services which is contingent upon the passage or defeat of any legislative action.

§ 36-25-24. Supervisor prohibited from discharging or discriminating against employee where employee reports violation.

(a) A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a public employee regarding such employee's compensation, terms, conditions, or privileges of employment based on the employee's reporting a violation, or what he or she believes in good faith to be a violation, of this chapter or giving truthful statements or truthful testimony concerning an alleged ethics violation.

(b) Nothing in this chapter shall be construed in any manner to prevent or prohibit or otherwise limit a supervisor from disciplining, discharging, transferring, or otherwise affecting the terms and conditions of a public employee's employment so long as the disciplinary action does not result from or is in no other manner connected with the public employee's filing a complaint with the commission, giving truthful statements, and truthfully testifying.

(c) No public employee shall file a complaint or otherwise initiate action against a public official or other public employee without a good faith basis for believing the complaint to be true and accurate.

(d) A supervisor who is alleged to have violated this section shall be subject to civil action in the circuit courts of this state pursuant to the Alabama Rules of Civil Procedure as promulgated by the Alabama Supreme Court.

(e) A public employee who without a good faith belief in the truthfulness and accuracy of a complaint filed against a supervisor,

shall be subject to a civil action in the circuit courts in the State of Alabama pursuant to the Alabama Rules of Civil Procedure as promulgated by the Supreme Court. Additionally, a public employee who without a good faith belief in the truthfulness and accuracy of a complaint as filed against a supervisor shall be subject to appropriate and applicable personnel action.

(f) Nothing in this section shall be construed to allow a public employee to file a complaint to prevent, mitigate, lessen, or otherwise to extinguish existing or anticipated personnel action by a supervisor. A public employee who willfully files such a complaint against a supervisor shall, upon conviction, be guilty of the crime of false reporting.

§ 36-25-26. False reporting for purpose of influencing legislation.

No person, for the purpose of influencing legislation, may do either of the following:

(1) Knowingly or willfully make any false statement or misrepresentation of the facts to a member of the Legislative or Executive Branch.

(2) Knowing a document to contain a false statement, cause a copy of the document to be received by a member of the Legislative or Executive Branch without notifying the member in writing of the truth.

§ 36-25-27. Penalties; enforcement; jurisdiction, venue, judicial review; limitations period.

(a)(1) Except as otherwise provided, any person subject to this chapter who intentionally violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a Class B felony.

(2) Any person subject to this chapter who violates any provision of this chapter other than those for which a separate penalty is provided for in this section shall, upon conviction, be guilty of a

Class A misdemeanor.

(3) Any person subject to this chapter who knowingly violates any disclosure requirement of this chapter shall, upon conviction, be guilty of a Class A misdemeanor.

(4) Any person who knowingly makes or transmits a false report or complaint pursuant to this chapter shall, upon conviction, be guilty of a Class A misdemeanor and shall be liable for the actual legal expenses incurred by the respondent against whom the false report or complaint was filed.

(5) Any person who makes false statements to an employee of the commission or to the commission itself pursuant to this chapter without reason to believe the accuracy of the statements shall, upon conviction, be guilty of a Class A misdemeanor.

(6) Any person subject to this chapter who intentionally violates this chapter relating to secrecy shall, upon conviction, be guilty of a Class C felony.

(7) Any person subject to this chapter who intentionally fails to disclose information required by this chapter shall, upon conviction, be guilty of a Class A misdemeanor.

(b) If a respondent petitions the commission or the respondent otherwise agrees to an administrative resolution of the complaint filed against him or her, the commission may administratively resolve a complaint filed pursuant to this chapter for minor violations upon a unanimous vote and subsequent approval by the appropriate district attorney or the Attorney General. The commission may impose an administrative penalty not to exceed six thousand dollars ($6,000) for any minor violation of this chapter. In addition to any administrative penalty, the commission shall order restitution in the amount of any economic loss to the state, county, municipality, or instrumentality of the state, county, or municipality, and when collected, the restitution shall be paid by the commission to the entity having the economic loss. The commission, through its attorney, shall institute proceedings to

recover any penalties or restitution or other such funds so ordered pursuant to this section which are not paid by, or on behalf of, the public official or public employee or other person who has violated this chapter. Nothing in this section shall be deemed in any manner to prohibit the commission and the respondent from entering into a consent decree settling a complaint which has previously been designated by the commission for administrative resolution, so long as the consent decree is approved by the commission. If the commission, the respondent, and the Attorney General or district attorney having jurisdiction, all concur that a complaint is deemed to be handled administratively, the action shall preclude any criminal prosecution pursuant to this chapter at the state, county, or municipal level.

(c) The enforcement of this chapter shall be vested in the commission; provided, however, nothing in this chapter shall be deemed to limit or otherwise prohibit the Attorney General or the district attorney for the appropriate jurisdiction from enforcing any provision of this chapter as they deem appropriate. In the event the commission, by majority vote, finds that any provision of this chapter has been violated, the alleged violation and any investigation conducted by the commission shall be referred to the district attorney of the appropriate jurisdiction or the Attorney General. The commission shall provide any and all appropriate assistance to such district attorney or Attorney General. Upon the request of such district attorney or the Attorney General, the commission may institute, prosecute, or take such other appropriate legal action regarding such violations, proceeding therein with all rights, privileges, and powers conferred by law upon assistant attorneys general.

(d) Nothing in this chapter limits the power of the state to punish any person for any conduct which otherwise constitutes a crime by statute or at common law.

(e) The penalties prescribed in this chapter do not in any manner limit the power of a legislative body to discipline its own members or to impeach public officials and do not limit the powers of agencies, departments, boards, or commissions to discipline their

respective officials, members, or employees.

(f) If a person fails to pay any penalty, fine, or restitution imposed by the commission pursuant to this chapter, the commission may file an action to collect the penalty, fine, or restitution in the District Court or Circuit Court of Montgomery County. The person shall be responsible for paying all costs associated with the collection of the penalty, fine, or restitution.

(g) Each district or circuit court of this state shall have jurisdiction in all cases and actions relating to the enforcement of this chapter, and the venue of any action pursuant to this chapter shall be in the county in which the alleged violation occurred, or in those cases where the alleged violation occurred outside the State of Alabama or for failure to properly or timely file any form required by the commission, in Montgomery County. In the case of judicial review of any administrative decision of the commission, the commission's order, rule, or decision shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact except where otherwise authorized by law.

(h) Any felony prosecution brought pursuant to this chapter shall be commenced within four years after the commission of the offense.

(i) Any misdemeanor prosecution brought pursuant to this chapter shall be commenced within two years after the commission of the offense.

(j) Nothing in this chapter is intended to nor is to be construed as repealing in any way the provisions of any of the criminal laws of this state.

§ 36-25-28. Chapter not to deprive citizens of constitutional right to communicate with members of Legislature.

Nothing in this chapter shall be construed as to deprive any citizen, not lobbying, of the citizen's constitutional right to communicate with members of the Legislature.

§ 36-25-29. Appropriations.

(a) The Legislature shall appropriate such sums as it deems necessary to implement the provisions of and administer this chapter.

(b) Notwithstanding any other provision of law to the contrary, and beginning with the fiscal year ending September 30, 2012, the annual appropriation to the State Ethics Commission in the State General Fund Appropriations Act shall not be less than one tenth of one percent of the total State General Fund amount appropriated in the State General Fund Appropriations Act unless a lower appropriation amount is expressly approved by two-thirds of the membership of the House of Representatives and two-thirds of the membership of the Senate.

§ 36-25-30. Construction of chapter.

This chapter shall be construed in pari materia with other laws dealing with the subject of ethics.

SENATE ETHICS AND CONDUCT COMMITTEE

By rule the Senate established a committee whose responsibility is to consider and act upon complaints of misconduct brought against an individual Senator during a session or in participation in a committee. The committee is comprised of five senators who are elected by the senate.

The misconduct under review of this committee includes:

(1) legal wrongs that materially impairs the member's ability to perform one's duties or substantially impairs public confidence;
(2) intentional violation of a senate rule which persists after instruction or warning in writing;
(3) sexual harassment as defined in Senate

Rule 48 (2023);

(4) violation of state ethics law, Ala. Code, Ch. 25 of Title 36;

(5) any conduct prohibited by the Alabama Constitution; and

(6) intentional filing of a false complaint with the committee or a filing in reckless disregard of the truth.

The Senate Rules further provides for a procedure to be followed in its deliberations and allows the committee to adopt further procedures. Senate Rule 48(b) (2023). *See also* the enabling authority at Ala. Const. Art. IV, § 53.

Chapter 32
Lobbying

To lobby is "to conduct activities aimed at influencing public officials and especially members of a legislative body on legislation and other policy decisions." Webster's *7th New Collegiate Dictionary* at 496. The right to lobby is based on the First Amendment to the United States Constitution, which expresses the right of the people to "petition the government for a redress of grievances." This language has been made applicable to the states through judicial interpretation of the Fourteenth Amendment; but it should be noted that Alabama's Constitution contains a similar provision, to the effect that "the citizens have a right, . . . to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance." Ala. Const. of 2022 Art. I, § 25.

In Alabama, there are constitutional and statutory provisions and legislative rules that regulate lobbying activities. These provisions do not prohibit lobbying, but they do attempt to prohibit unethical practices. Under Alabama's Constitution, for example, no member of the Legislature may directly or indirectly solicit, demand, receive, or consent to receive any advantage or thing of value for the legislator's vote or influence. On the other hand, no one should engage in such "corrupt solicitation" of members of the Legislature. No state or county official may accept any advantage or thing of value to lobby for or against any measure pending before the Legislature. Ala. Const. of 2022 Art. IV, §§ 79, 80, 81, and 101.

A. Lobbying Defined

§ 36-25-1. Definitions

(20) LOBBY or LOBBYING. The practice of promoting, opposing, or in any manner influencing or attempting to influence the introduction, defeat, or enactment of legislation before any legislative body; opposing or in any manner influencing the

executive approval, veto, or amendment of legislation; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the enactment, promulgation, modification, or deletion of regulations before any regulatory body. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof.

(21) LOBBYIST.

a. The term lobbyist includes any of the following:

1. A person who receives compensation or reimbursement from another person, group, or entity to lobby.

2. A person who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.

3. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to influence legislation or regulation, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.

4. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.

b. The term lobbyist does not include any of the following:

1. An elected official on a matter which involves that person's official duties.

2. A person or attorney rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.

3. Reporters and editors while pursuing normal reportorial and editorial duties.

4. Any citizen not lobbying for compensation who contacts a member of a legislative body, or gives public testimony on a particular issue or on particular legislation, or for the purpose of influencing legislation and who is merely exercising his or her constitutional right to communicate with members of a legislative body.

5. A person who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.

6. A person whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

7. A person who is a member of a business, professional, or membership organization by virtue of the person's contribution to or payment of dues to the organization even though the organization engages in lobbying activities.

8. A state governmental agency head or his or her designee who provides or communicates, or both, information relating to policy or positions, or both, affecting the governmental agencies which he or she represents.

(26) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county, or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose

employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.

(27) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-13-40.

Ala. Code § 36-25-1.1. Lobbying.

Lobbying includes promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative, or judicial branch of state government.

No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency.

B. Alabama Constitutional Provisions

Ala. Const. of 2022 Art. I § 25
Right to peaceably assemble and petition for redress of grievances, etc.

That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance.

Ala. Const. of 2022 Art. IV § 80
Bribery - Offer, gift, etc., of money, etc., to executive or judicial officers or members of legislature to influence official acts.

Any person who shall, directly or indirectly, offer, give, or promise any money, or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer or member of the legislature to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as may be provided by law.

Ala. Const. of 2022 Art. IV § 81
Offense of corrupt solicitation to be defined by law.

The offense of corrupt solicitation of members of the legislature or of public officers of this state or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment in the penitentiary; and the legislature shall provide for the trial and punishment of the offenses enumerated in the two preceding sections, and shall require the judges to give the same specially in charge to the grand juries in all the counties of this state.

Ala. Const. of 2022 Art. IV § 101
Lobbying in legislature by state or county officials.

No state or county official shall, at any time during his term of office, accept, either directly or indirectly, any fee, money, office, appointment, employment, reward, or thing of value, or of personal advantage, or the promise thereof, to lobby for or against any measure pending before the legislature, or to give or withhold his influence to secure the passage or defeat of any such measure.

C. Alabama Criminal Code

§ 13A-10-1. Definitions.

The following definitions apply in this article unless the context otherwise requires:

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(2) GOVERNMENT. The state, county, municipality or other political subdivision thereof, including public county and city boards of education, the youth services department district, the Alabama Institute for Deaf and Blind, and all educational institutions under the auspices of the State Board of Education.

(3) GOVERNMENTAL FUNCTION. Any activity which a public servant is legally authorized to undertake on behalf of a government.

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(7) PUBLIC SERVANT. Any officer or employee of government, including legislators and judges and any person or agency participating as an adviser, consultant or otherwise in performing a governmental function.[1]

§ 13A-10-2. Obstructing governmental operations.

(a) A person commits the crime of obstructing governmental operations if, by means of intimidation, physical force or interference or by any other independently unlawful act, he:

(1) Intentionally obstructs, impairs or hinders the administration of law or other governmental function; or

(2) Intentionally prevents a public servant from

[1]Note, "Public servant" includes a deputy sheriff. *Ringstaff v. State*, 480 So. 2d 50 (Ala. Crim. App. 1985).

performing a governmental function.

(b) This section does not apply to the obstruction, impairment or hindrance of the making of an arrest.

(c) Obstructing governmental operations is a Class A misdemeanor.

§ 13A-10-10. Impersonating public servant.

(a) A person commits the crime of impersonating a public servant if he falsely pretends to be a public servant and does any act in that capacity.

(b) It is no defense to a prosecution under this section that the office the actor pretended to hold did not in fact exist.

(c) Impersonating a public servant is a Class C misdemeanor.

§ 13A-10-60. Definitions.

(a) The definitions contained in section 13A-10-1 are applicable in this article unless the context otherwise requires.

(b) The following definitions also apply to this article:

(1) BENEFIT. Any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

(2) PECUNIARY BENEFIT. Benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants and party officers shall not be deemed a pecuniary benefit within the meaning of this article.

(3) PUBLIC SERVANT. As used in this article, such term includes persons who presently occupy the position of a

public servant, as defined in section 13A-10-1(7), or have been elected, appointed or designated to become a public servant although not yet occupying that position.

(4) PARTY OFFICER. A person who holds any position or office in a political party, whether by election, appointment or otherwise.

§ 13A-10-61. Bribery of public servants.

(a) A person commits the crime of bribery if:

(1) He offers, confers or agrees to confer any thing of value upon a public servant with the intent that the public servant's vote, opinion, judgment, exercise of discretion or other action in his official capacity will thereby be corruptly influenced; or

(2) While a public servant, he solicits, accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion or other action as a public servant will thereby be corruptly influenced.

(b) It is not a defense to a prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction or for any other reason.

(c) Bribery is a Class C felony.

§ 13A-10-62. Failure to disclose conflict of interest.

(a) A public servant commits the crime of failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment or other pecuniary transaction without advance public disclosure of a known potential conflicting interest in the transaction.

(b) A "potential conflicting interest" exists, but is not limited to, when the public servant is a director, president, general manager or similar executive officer, or owns directly or indirectly a substantial portion of any nongovernmental entity participating in the transaction.

(c) Public disclosure includes public announcement or notification to a superior officer or the attorney general.

(d) Failing to disclose a conflict of interest is a Class A misdemeanor.

§ 13A-10-63. Trading in public office.

(a) A person is guilty of trading in public office if:

(1) He offers, confers or agrees to confer any pecuniary benefit upon a public servant or party officer upon an agreement or understanding that he himself will or may be appointed to a public office or public employment or designated or nominated as a candidate for public office; or

(2) While a public servant or party officer, he solicits, accepts or agrees to accept any pecuniary benefit from another upon an agreement or understanding that that person will or may be appointed to a public office or public employment or designated or nominated as a candidate for public office.

(b) This section does not apply to contributions to political campaign funds or other political contributions.

(c) Trading in public office is a Class A misdemeanor.

§ 13A-10-82. Misuse of confidential information.

(a) A public servant commits the crime of misuse of confidential information if in contemplation of official action by

himself or by a governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, he:

(1) Acquires a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official action;

(2) Speculates or wagers on the basis of such information or action; or

(3) Aids another to do any of the foregoing.

(b) Misuse of confidential information is a Class B misdemeanor.

D. Ethics Act

An extensive discussion of the Ethics Act can be found in Chapter 31.

E. Registration as a Lobbyist

§ 36-25-18. Registration of lobbyists required; filing of supplemental registration.

(a) Every lobbyist shall register by filing a form prescribed by the commission no later than January 31 of each year or within 10 days after the first undertaking requiring such registration. Each lobbyist, except public employees who are lobbyists, shall pay an annual fee of one hundred dollars ($100) on or before January 31 of each year or within 10 days of the first undertaking requiring such registration.

(b) The registration shall be in writing and shall contain the following information:

(1) The registrant's full name and business address.

(2) The registrant's normal business and address.

(3) The full name and address of the registrant's principal or principals.

(4) The listing of the categories of subject matters on which the registrant is to communicate directly with a member of the legislative body to influence legislation or legislative action.

(5) If a registrant's activity is done on behalf of the members of a group other than a corporation, a categorical disclosure of the number of persons of the group as follows: 1-5; 6-10; 11-25; over 25.

(6) A statement signed by each principal that he or she has read the registration, knows its contents and has authorized the registrant to be a lobbyist in his or her behalf as specified therein, and that no compensation will be paid to the registrant contingent upon passage or defeat of any legislative measure.

(c) A registrant shall file a supplemental registration indicating any substantial change or changes in the information contained in the prior registration within 10 days after the date of the change.

§ 36-25-19. Registered lobbyists and other persons required to file quarterly reports.

(a) Every person registered as a lobbyist pursuant to Section 36-25-18 and every principal employing any lobbyist shall file with the commission a report provided by the commission pertaining to the activities set out in that section. The report shall be filed with the commission no later than January 31, April 30, July 31, and October 31 for each preceding calendar quarter, and contain, but not be limited to, the following information:

(1) The cost of those items excluded from the definition of a thing of value which are described in Section 36-25-1(34)b. and which are expended within a 24-hour

period on a public official, public employee, and members of his or her respective household in excess of two hundred fifty dollars ($250) with the name or names of the recipient or recipients and the date of the expenditure.

(2) The nature and date of any financial transaction between the public official, candidate, or member of the household of such public official or candidate and the lobbyist or principal of a value in excess of five hundred dollars ($500) in the prior quarter, excluding those financial transactions which are required to be reported by candidates under the Fair Campaign Practices Act as provided in Chapter 22A (commencing with Section 17-22A-1) of Title 17.

(3) A detailed statement showing the exact amount of any loan given or promised to a public official, candidate, public official or candidate.

(4) A detailed statement showing any direct business association or partnership with any public official, candidate, or members of the household of such public official or candidate; provided, however, that campaign expenditures shall not be deemed a business association or partnership.

(b) Any person not otherwise deemed a lobbyist pursuant to this chapter who negotiates or attempts to negotiate a contract, sells or attempts to sell goods or services, engages or attempts to engage in a financial transaction with a public official or public employee in their official capacity and who within a calendar day expends in excess of two hundred fifty dollars ($250) on such public employee, public official, and his or her respective household shall file a detailed quarterly report of the expenditure with the commission.

(c) Any other provision of this chapter to the contrary notwithstanding, no organization whose officer or employee serves as a public official under this chapter shall be required to report expenditures or reimbursement paid to such officer or

employee in the performance of the duties with the organization.

§ 36-25-20. Filing of notice of termination of lobbying activities; effect of notice as to requirement for filing of reports.

(a) A person who ceases to engage in activities requiring registration pursuant to Section 36-25-18 shall file a written, verified statement with the commission acknowledging the termination of activities. The notice shall be effective immediately.

(b) A person who files a notice of termination pursuant to this section shall file the reports required pursuant to Sections 36-25-18 and 36-25-19 for any reporting period during which he or she was registered pursuant to this chapter.

§ 36-25-21. Reports constitute public records; reports available for public inspection.

All reports filed pursuant to Sections 36-25-18 to 36-25-20, inclusive, are public records and shall be made available for public inspection during regular business hours.

The Joint Rules of the two Houses of the Legislature provided that, until 2003, all persons, except members of the Legislature, who seek to encourage the passage, defeat or modification of any legislation in either House of the Legislature or before its committees shall, before engaging in such activities, register with the Secretary of the Senate and the Clerk of the House respectively. Joint Rule 22 (1995). Beginning in 2003, lobbyists must only register with the Alabama Ethics Commission. Ala. Code §36-25-18.

F. Legislative Rules on Lobbyists

In addition to the statutory law, both the House of Representatives and the Senate have their own rules relating to lobbyists. Again, these rules are not designed to prohibit lobbying but rather to regulate lobbying activities in an effort to

protect the legislative decision-making process from improper influences. Basically, the rules seek to accomplish this goal through provisions requiring the registration of lobbyists and the policy areas in which they are interested. A lobbyist must register with both the Senate and House of Representatives. The joint rules relating to lobbyists are found in the official rules of the Senate and House of Representatives. The following rules relating to lobbying were adopted for use by the Legislature in 2007.

Senate Rule 4 (2023) allows former members of the Legislature to have floor privileges (except those who are now registered lobbyists). However, Senate Rule 6 (2023) prohibits anyone, registered or not, from lobbying in the Senate chamber while the Senate is in session.

Senate Rule 6 (2023). No person shall be allowed to lobby in the Senate Chamber while the Senate is in session. In the event a lobbied senator files a written complaint with the Secretary of the Senate stating that a former member has lobbied him/her while on the floor of the Senate, the Secretary shall notify the former member of the complaint. In the event a second written complaint is filed by a member against a former member, said former member's floor privileges shall be automatically suspended for 12 months, and the Secretary shall so notify the former member and the Senate.

Senate Rule 48 (2023). Also, the Committee on Rules shall render advisory opinions to any lobbyist who seeks advice about the rules relating to lobbying, and the committee shall make recommendations regarding the imposition of penalties prescribed for violations of the rules relating to lobbying.

House Rule 1(d) (2023). When former members are admitted to the floor, they shall not engage in any lobbying activities. Former members who are either registered lobbyists or who are employed by registered lobbyists shall not have privileges of the floor. Former members who lobby on the floor may be banned from the floor for the remainder of a session, subject to a recommendation from the Internal Affairs Committee.

House Rule 45 (2023). No lobbyist or lobbying group shall have food delivered to the House membership while the House is actually in session.

Joint Rules Relating to Lobbying:

Joint Rule 26 (2023). Prohibitions. No lobbyist shall be permitted upon the floor of either house while it is in session, except as otherwise provided. No lobbyist shall circulate a cloture petition.

Joint Rule 27 (2023). Obligations of Lobbyist. A lobbyist shall supply facts, information, and opinions of principals to legislators from the point of view from which he or she openly declares. A lobbyist shall not offer or propose anything to improperly influence the official act, decision, or vote of a legislator, including the gathering, dissemination and/or distribution of false, misleading, and/or malicious information by his or her employees, employers, or agents.

A lobbyist, by personal example and admonition to colleagues, shall uphold the honor of the legislative process by the integrity of his or her relationship with legislators.

A lobbyist shall not knowingly and willfully falsify a material fact or make any false, fictitious, or fraudulent statement or representation or make or use any writing or document knowing the same contains any false, fictitious, or fraudulent statements or entry.

Joint Rule 28 (2023). Rules Committee Advisory Opinions. A lobbyist, when in doubt about the applicability and interpretation of the rules relating to lobbying in a particular context, may submit in writing a statement of the fact involved to the Joint Committee on Rules, which consists of the House Rules Committee and the Senate Rules Committee, and may appear in person before said committee.

Joint Rule 29 (2023). Penalties for Violations. In addition to

any prosecutions or penalties otherwise provided by law, any person determined to have violated the rules relating to lobbying shall be censured, reprimanded, placed on probation, or prohibited from lobbying for the duration of the session and from appearing before any committee of the Legislature. The determination shall be made by a majority of the respective house upon recommendation of the Joint Committee on Rules. The Joint Committee on Rules, before making said recommendation, shall conduct a hearing, after notifying the person alleged to have violated this rule and granting such person an opportunity to appear at the hearing.

Joint Rule 30 (2023). Secretary or Clerk to Provide Forms. Upon the request of any member of the Legislature, the Secretary or the Clerk shall obtain and provide to the requesting member a copy of any lobbyist registration form filed with the State Ethics Commission.

Joint Rule 31 (2023). Committees to be Diligent. Committees shall be diligent to ascertain whether those who appear before them in other than an obviously individual capacity have conformed with the requirements of law relating to lobbying, and to report violations. No committee member knowingly shall permit a person required by law to be registered as a lobbyist who is not registered as a lobbyist to be heard.

Lewis
v.
Baxley
368 F.Supp. 768 (M.D. Ala. 1973)

* * *

On September 14, 1973, the Governor of Alabama signed into law a new statute governing the ethics of public officers in this state. In the course of the legislative debate over that bill, the following amendment, having been proposed from the floor, was passed and became law upon the signing of the Act:

> Section 14. Members of the press who cover the State Legislature or state government in any way,

> either as a member of an editorial staff or through direct reporting, prior to being admitted to galleries, press rooms, committee meetings, any space set aside for use of the press, the floor of the legislature, or press conferences by a member of the legislature or a government official, shall file a statement of economic interest in accordance with the provisions of this Act at the office of the State ethics commission and shall have been approved by the State ethics commission for a special press pass and shall be subject to the provisions of the Act. The statement of economic interest filed by members of the press shall further include the names of all newspapers or publications, radio stations, or news-gathering organizations by which they are employed, and what other occupations or employment they may have, if any; and they shall further declare that they are not employed in any legislative or executive department of government, and that they are not employed, directly or indirectly, by any person or corporation having legislation before the State Legislature, and that they will not become so engaged in any of these activities while covering the State Legislature or state government.
>
> * * *

In this case, the state is asserting the right to exclude certain members of the press from public sessions of the legislature, and from press conferences and press rooms from which other members of the press are not excluded. In this instance, the state must assert a compelling governmental interest and a substantial nexus between that interest and the action taken in furtherance thereof.

The State of Alabama, in the brief of defendant Baxley, asserts two interests, both of which it alleges are reasonably furthered by Section 14 of the ethics statute. "[T]hese purposes are protection of the public from interested and improperly influenced news coverage and protection of the legislature from surreptitious lobbying newsmen."

This Court is of the opinion that "protection of the public from interested and improperly influenced news coverage" is not a compelling governmental interest. That interest therefore, fails to meet the first criterion of the two-step test. Not only is that asserted interest less than paramount, it may in fact be an interest with which the government may not constitutionally concern itself at all. The very essence of a free press is that there is room in our country for publication by every segment of "interested" opinion, and that out of the free comparison of the opinions of different "interested" sides, citizens can make their own determination as to truth. As Judge Gesell noted,

> a free press is undermined if the access of certain reporters to facts relating to the public's business is limited merely because they advocate a particular viewpoint. This is a dangerous and self-defeating doctrine. …

Consumers Union v. Periodical Correspondents' Ass'n., 365 F.Supp. 18, 25 (D.D.C. 1973). If it is not unconstitutional for the government to assert that interest, at the very least that interest is less than compelling.

The second interest which the state asserts is its interest in "protection of the legislature from surreptitious lobbying newsmen." Whether there are in fact such "surreptitious lobbying newsmen" or not is a matter beyond the judicial knowledge of this Court and the proof adduced in this case. Assuming *arguendo* that such lobbying newsmen exist, it may readily be admitted that a state has a substantial interest in requiring the disclosure of the lobbyist status of any who act in that capacity. This Court by no means casts any aspersion upon that interest of the state or upon its importance.

However, it is not true that requiring detailed disclosures from the press has a substantial nexus with that valid governmental interest. A part of the requirement of a

substantial nexus, as noted above, is the requirement that the state pursue its governmental interest narrowly rather than broadly. In the context of this case, that requirement means that the state may regulate lobbying and lobbyists as such, but the state may not require disclosure from occupational groups virtually at random upon the theory that one or more members may be lobbyists. If this is the governmental interest to be protected, the state should make its attack upon lobbyists as such. In fact, the state does have comprehensive statutes not here under attack which deal with the narrow question of lobbying as a specific activity. If newsmen engage in lobbying, there appears to be nothing to suggest that they are immune from control under such lobbying statutes. The state has offered no evidence of inability under its general lobbying provisions to ferret out genuine lobbyists among newsmen, if such exist. It should be emphasized that this Court does not intend to wrap the lobbying activities of any *genuine* newsman-lobbyist in the protective cloak of the First Amendment. The Constitution does not grant to newsmen immunity from general laws. *Branzburg v. Hayes*, 408 U.S. 665, 702, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972)(duty to testify before grand jury); *Grosjean v. American Press Co.*, 297 U.S. 233, 250, 56 S.Ct. 444, 80 L.Ed. 660 (1936)(tax); *Associated Press v. United States*, 326 U.S. 1, 65 S.Ct. 1416, 89 L.Ed. 2013 (1945)(antitrust); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 192-193; 66 S.Ct. 494, 90 L.Ed. 614 (1946)(Labor-F.L.S.A.)

Thus, we conclude that requiring newsmen as a class to disclose the information required by Section 14 of this statute bears no substantial relation to the valid and admitted governmental interests in regulating lobbying.

After balancing the First Amendment rights of the newsmen against the asserted interests of the state, we hold that Section 14 of the Alabama Ethics Statute is unconstitutional on its face. An injunction will issue against its enforcement.

Myrick
v.
Barron
820 So. 2d 81 (Ala. Code 2001)

A jury found in favor of Lowell R. Barron on his invasion-of-privacy and conspiracy claims, awarding him compensatory damages of $ 200,000 and punitive damages of $ 15 million against the defendants Alfa Mutual Insurance Company, Alabama Farmers Federation, Goodwin L. Myrick, and John Dorrill, Jr. (collectively "Alfa"). Alfa filed post-judgment motions seeking, alternatively, a judgment as a matter of law, a new trial, or a remittitur. The trial court denied the motions, except to the extent that it ordered Barron to accept a remittitur of the punitive damages from $ 15 million to $5 million, or suffer the granting of a new trial. Barron accepted the remittitur, and the trial court then made final its order denying Alfa's post-judgment motions. Alfa appeals, contending that it was entitled to a judgment as a matter of law on Barron's invasion-of-privacy claim and his related conspiracy claim. We reverse and render a judgment for Alfa.

* * *

Alfa argues that the trial court erred in denying its motion for a judgment as a matter of law ("JML") on Barron's invasion-of-privacy and conspiracy claims. We have stated our standard of review of a motion for JML: "The Court uses the same standard the trial court used initially in granting or denying a JML. *Palm Harbor Homes, Inc. v. Crawford*, 689 So. 2d 3 (Ala. 1997).

* * *

Barron is a state senator and is President Pro Tem of the Alabama Senate. He has been a public official for more than twenty years, and has served in the legislature since 1983. By his own admission, Barron has "significant influence" in the Senate. Brief of Appellee, at 9. Alabama Farmers Federation is a non-profit membership

organization consisting of approximately 400,000 members throughout Alabama. At the time of the events at issue, John Dorrill, Jr., was the Federation's executive director. Alfa Mutual Insurance Company is a domestic insurance company, organized by the predecessor of Alabama Farmers Federation to provide property insurance coverage for Alabama farmers who could not obtain coverage from other insurers. Goodwin L. Myrick served as president and chief executive officer of the Federation and Alfa Mutual. In September 1995, Governor Fob James nominated Phil Richardson, Alfa Mutual's executive vice-president, for membership on the Board of Trustees of Auburn University, to fill the seat occupied by Bobby Lowder, whose term had expired in January 1995, and who was "holding over" in office. In February 1996, Richardson's nomination was submitted to the Senate for confirmation. Barron publicly committed to support Lowder, as did Senator Hinton Mitchem, the chairman of the committee which had to approve Richardson's nomination before the full Senate could vote on the matter. In July 1996, Alfa representatives met with Barron to attempt to persuade him to support Richardson's nomination. After Barron reiterated his support of Lowder, there was, according to Barron, a heated exchange between Dorrill and him. Barron testified that Dorrill threatened him by saying that "we will do everything we can to take you down. We will try to defeat you." Senator Mitchem testified that Dorrill told him that if Mitchem did not support Richardson, Alfa was going to "bury" Barron and Mitchem. Alfa then began an investigation of Barron and Mitchem. Kelli Van Landingham, an employee of the Federation, following Dorrill's directions, conducted a public records search on Barron and several other senators. "Admittedly, [Alfa] did check public records and could do so without violating Barron's privacy." Brief of Appellee, at 23. There is no claim that Van Landingham did anything other than review the public records of the Ethics Commission and the Secretary of State, and also review newspaper articles. Alfa next hired George Culver to investigate Barron, including Barron's relationship with Lowder. On August 30, 1996,

Alfa entered into a contract with Culver's company, ECAER, Inc., for the purpose of having Barron investigated. With Alfa's permission, Culver engaged Argus Protective Services to conduct the investigation. Argus, like Van Landingham, reviewed public records concerning Barron and his businesses. Additionally, Argus assigned to one of its investigators, Paul Harrington, the task of interviewing persons who knew Barron. Harrington died before trial, and he had not been deposed. While his reports indicate that Harrington interviewed numerous identified persons in DeKalb County, no interviewee testified at trial. The Argus reports following these voluntary interviews reflect allegations of various improprieties, none of which was supported by any evidence, and none of which merits any mention in our consideration of this matter. Barron learned of Alfa's investigation, and held a news conference on July 8, 1997, to condemn Alfa for conducting the investigation. Alfa initially denied that any investigation had been conducted. However, on July 2, 1999, Alfa admitted that a private investigation firm was hired to gather information pertaining to Barron and Mitchem.

* * *

Barron contends that there was substantial evidence that Alfa violated the wrongful-intrusion branch of the invasion- of-privacy tort. Barron argues that Alfa was "guilty of intrusion and prying into things which are 'entitled to be private,' when [its] investigation included Senator Barron's private life and private activities.... These private issues came from, or were to come from, interviews of private individuals, not a review of public records, in an attempt to bring about 'the demise' of Barron...." Brief of Appellee, at 23-24. Barron's argument fails, however, because interviews of other people about their knowledge of Barron could reveal only information already known (or allegedly known) by those people. This Court has defined the scope of the wrongful- intrusion branch of the invasion-of-privacy tort:

"The 'wrongful intrusion' prong of the tort of invasion of privacy has been defined as the 'intentional interference with another's interest in solitude or seclusion, either as to his person or to his private affairs or concerns.' W. Presser & W. Keeton, The Law of Torts, p. 851 (5th ed. 1984). 'There must be something in the nature of prying or intrusion' and 'the intrusion must be something which would be offensive or objectionable to a reasonable person. The thing into which there is intrusion or prying must be, and be entitled to be, private.' *Id.* at 855."

Hogin v. Cottingham, 533 So. 2d 525, 531 (Ala. 1988) (footnote deleted; emphasis supplied). Can information which other people claim to know about Barron be protected as "private" and, thereby, be shielded from inquiry by this branch of the invasion-of-privacy tort? Common sense and legal precedent dictate a negative response to this question.

* * *

"'We cannot find any basis for a claim of invasion-of-privacy [based on wrongful intrusion] ... in the allegations that the [defendant], through its agents or employees, interviewed many persons who knew the plaintiff, asking questions about him and casting aspersions on his character. Although those inquiries may have uncovered information of a personal nature, it is difficult to see how they may be said to have invaded the plaintiff's privacy. Information about the plaintiff which was already known to others could hardly be regarded as private to the plaintiff. Presumably, the plaintiff had previously revealed the information to such other persons, and he would necessarily assume the risk that a friend or acquaintance in whom he had confided might breach the confidence. If, as alleged, the questions tended to disparage the plaintiff's character, his remedy would seem to be by way of an action for defamation, not for breach of his right to privacy.' " *Nader,* 25 N.Y.2d at 568-69, 255 N.E.2d at 770, 307 N.Y.S.2d at 654. *Accord Nipper v. Variety Wholesalers, Inc.*, 638 So. 2d 778 (Ala. 1994) (interviewing co-employees about their

general knowledge of the plaintiff was not actionable). "Likewise, Johnston's allegations concern only voluntary interviews in which the defendants learned information already known to others. This information is not protected by the limited scope of the wrongful-intrusion branch of the invasion- of-privacy tort, and we reject Johnston's invitation to create a broad privacy action, with no metes and bounds, that would extend beyond his dwelling, papers, and private records, creating unknown dangers to unsuspecting routine inquirers." 706 So. 2d at 702-03 (footnote deleted). Barron's invasion-of- privacy claim suffers from the same fatal deficiencies as did Johnston's claim. Barron does not allege that Alfa or Argus entered his home, searched through his private papers, wiretapped his telephone, or eavesdropped on any of his conversations. Barron does not allege that Alfa obtained private records concerning his business or personal affairs. Barron has presented no evidence that Harrington's conduct in gathering the information was abrupt, offensive, or otherwise objectionable. Barron has presented no evidence that Alfa obtained any knowledge of him other than through the review of public records and through voluntary interviews with members of the community in which he lives. Indeed, his allegations concern only voluntary interviews in which Alfa only learned information already known (or allegedly known) by others. This Court remains unwilling "to create a broad privacy action, with no metes and bounds, that would extend beyond [one's] dwelling, papers, and private records, creating unknown dangers to unsuspecting routine inquirers." *Id.* at 703. n2 * * * The trial court erred in denying Alfa's motion for a JML on Barron's remaining invasion-of-privacy claim and his conspiracy claim. Therefore, the judgment of the trial court is reversed, and a judgment is rendered for Alfa Mutual Insurance Company, Alabama Farmers Federation, Goodwin L. Myrick, and John Dorrill, Jr. REVERSED AND JUDGMENT RENDERED.

Since at least 1994, interviewing others about their general knowledge of a plaintiff was not actionable as an invasion-of-privacy claim based on wrongful intrusion.

Nipper v. Variety Wholesalers, Inc., 638 So. 2d 778 (Ala. 1994).

In 1997, two years and seven months before the jury trial in this case, this Court in *Johnston v. Fuller*, 706 So. 2d 700, 702 (Ala. 1997)(with Justice See writing and Chief Justice Hooper and Justices Maddox, Almon, Houston, Kennedy, Cook, and Butts concurring; and Justice Shores concurring in the result without writing), quoted with approval the following from *Nader v. General Motors Corp.*, 25 N.Y.2d 560, 255 N.E.2d 765, 307 N.Y.S.2d 647 (1970): "'We cannot find any basis for a claim of invasion of privacy [based on wrongful intrusion] ... in the allegations that the [defendant], through its agents or employees, interviewed many persons who knew the plaintiff, asking questions about him and casting aspersions on his character. ... If as alleged, the questions tended to disparage the plaintiff's character, his remedy would seem to be by way of an action for defamation, not for breach of his right to privacy.'"

In Johnston, the plaintiff had unsuccessfully attempted to recover for an invasion of privacy as a result of interviews with people who knew of the animosity between Johnston and a game warden, who had allegedly threatened to kill Johnston. This Court held: "We reject Johnston's invitation to create a broad privacy action, with no metes and bounds, that would extend beyond his dwelling, papers, and private records, creating unknown dangers to unsuspecting routine inquirers." *Johnston*, 706 So. 2d at 703. Therefore, since at least 1997, the invasion-of-privacy claim based upon wrongful intrusion in Alabama has been limited to one's dwelling, papers, and private records. Senator Barron's claim exceeded these limits. Senator Barron alleged that the interviewer's questions "tended to disparage" his character. More than two and a half years before the present case was tried, this Court strongly indicated, if we did not hold, by quoting with approval *Nader v. General Motors*, supra, that in such a case the remedy, if any, would be for defamation, not for invasion of privacy. Senator Barron filed a claim alleging defamation; that claim was dismissed on a motion for a summary judgment. Senator Barron failed to cross-appeal or to make a cross-assignment of error on the dismissal of the

defamation claim. Therefore, this Court was barred from considering whether the trial court had erroneously dismissed the defamation claim. *Price v. South Cent. Bell*, 294 Ala. 144, 313 So. 2d 184 (1975). I regret that we cannot consider whether the defamation claim was erroneously dismissed; however, that cannot deter this Court from following precedent and holding that as a matter of law Senator Barron's invasion-of-privacy claim based upon wrongful intrusion was not a viable claim.

APPENDIX I

DRAFTING RULES USED BY LEGISLATIVE SERVICES AGENCY[1]

[1]*Jerry Bassett, Senior Counsel. This style manual can be found on the Legislative Services Agency website at: alison.legislature.state.al.us/legal-division-manual

This tool is the standard used by LRS staff in their daily activities.

Drafting Style Manual Introduction

The most important principle in drafting a bill is that the finished product accurately accomplish the intent of the author. The failure to accomplish the intent of the author is often the result of failing to follow the essentials of good bill drafting. Those principles are: Accuracy, brevity, clarity, and simplicity. The purpose and effect of a bill should be evident from its language. A bill should not be written in legalese, but should be drafted in terms a person without any special education or qualifications should be able to comprehend. Thus, a drafter should use words that are plain and commonly understood and convey the intended meaning to every reader.

The principal functions of a bill are (i) to create or establish, (ii) to impose a duty or obligation, (iii) to confer a power, create a right, or grant a privilege, and (iv) to prohibit. A bill is often subject to conditions, qualifications, limitations, or exceptions. The clarity and precision of the bill are enhanced by a plain and orderly expression of those functions.

The following drafting rules are intended as a guide to good bill drafting. Use of these rules will almost always result in a product that:

Facilitates the intent of the author, rather than hides it.
Makes statutory construction easier, rather than more difficult.
Most importantly, makes the law understandable to the persons whose lives are governed by it.

Drafting Rules

Rule 1. Sentence Structure

Use short, simple sentences. Avoid excessive use of dependent clauses, parallel clauses, compound sentences, or other complex sentence structures.

Comment

Second only to the principle that a bill should reflect the intent of its author is the principle that a bill should be understandable. Complex sentence structure often makes a statute ambiguous or its meaning obscure. A sentence that expresses a single thought is easier for the reader to understand.

Rule 2. Subject of Sentence

Unless it is clear from the context, use as the subject of each sentence the person or entity to whom a power, right, or privilege is granted or upon whom a duty, obligation, or prohibition is imposed.

Rule 3. Tense, Mood, Number, and Voice

a) Use the present tense and the indicative mood. Prefer the singular to the plural. Avoid use of the passive voice.(b) State a condition precedent in the perfect tense if its happening is required to be completed.

Comment

A statute is regarded as speaking in the present and constantly. The use of "shall" in imposing a duty does not indicate the future tense. Even if an action is required on a specified future date, the form of expression is in the present tense.

In speaking in the present, a circumstance putting a provision of a bill in operation, if continuing to exist, is in the present tense.

Example: "The applicant, if married, may bring an action." If the triggering circumstance is completed, it is expressed in the perfect tense, but is never in the future or future perfect.

Example: "If the issue has been litigated, the claimant may not recover."

The singular is simpler and clearer than the plural. For

example: "A possibility of reverter is subject to limitations in the document that creates it" is preferable to, "Possibilities of reverter are subject to limitations in the documents that create them." However, the plural may be used to comply with Rule 4 if its use is the least awkward solution.

The passive voice may be used to comply with Rule 4.

Rule 4. Gender

Avoid using gender-based personal pronouns whenever possible.

Comment

Attempt to draft the sentence so as to minimize the need for gender-based pronouns. Repeat the noun, use the plural form, or use the phrase "he [or she]," "his [or her]," or "himself [or herself]," selecting the least awkward solution. Passive voice may be used if the actor remains clear.

Rule 5. Consistency

(a) Be consistent in the use of language throughout the bill. Do not use the same word or phrase to convey different meanings. Do not use different language to convey the same meaning.

(b) Be consistent in the arrangement of comparable provisions. Arrange sections containing similar material in the same way.

Comment

Consistency helps prevent different interpretations of similar provisions.

Rule 6. Brevity

(a) Omit needless language.

(b) If a word has the same meaning as a phrase, use the word.

(c) Use the shortest sentence that conveys the intended meaning.

Comment

In construing legislative acts, courts consider each word and endeavor to give it meaning. Unnecessary language is more likely to mislead than to help.

Rule 7. Choice of Words and Phrases

(a) Select short familiar words and phrases that best express the intended meaning according to common and approved usage. Avoid "legalese."

Examples: Use "after" instead of "subsequent to"; use "before" instead of "prior to."

(b) Do not use both a word and its synonym.

(c) Use a pronoun only if its antecedent is unmistakable and its use is gender neutral. Repeat the noun rather than use a pronoun unless the antecedent is a series of nouns. If the sentence structure is so complex that a possessive pronoun seems necessary, consider redrafting the sentence rather than using a possessive pronoun.

(d) Make free but careful use of possessive nouns.

(e) Do not use "said," "aforesaid," "hereinabove," "beforementioned," "whatsoever," or similar words of reference or emphasis.

(f) Do not use "any," "each," "every," "all," or "some" if "a," "an," or "the" can be used with the same result.

(g) Do not use "and/or."

(h) Do not use "deem" for "consider." Use "deem" only to state that something is to be treated as true even if contrary to fact.

Rule 8. Use of "Shall," "May," and "Must"

(a) A duty, obligation, requirement, or condition precedent is best expressed by "shall" rather than "must." In no event should "shall" and "must" be used interchangeably in the same bill.

(b) Use "may" to confer a power, privilege, or right.

Examples: "The applicant 'may demand' (power) an extension of time." "The applicant 'may renew' (privilege) the application." "The applicant 'may appeal' (right) the decision." Do not use substitute phrases for "may" such as "is authorized and empowered to."

(c) Use "may not" to express a prohibition.

(d) Avoid using hortatory qualifiers, such as "will," "should," and "ought" in the text of a bill.

Rule 9. Use of "Which" and "That"

(a) Use "which" to introduce a nonrestrictive clause.

Example: "The application, 'which' need not be verified, shall be signed by the applicant."

(b) Use "that" to introduce a restrictive clause modifying the nearest antecedent.

Example: "An application to renew a license 'that' has been revoked. . ."

(c) Use "which" to modify a remote antecedent in a restrictive clause.

Example: "An 'application' to renew a license 'which' has been rejected. . ." Consider rewording the sentence to avoid the use of "which" to modify a remote antecedent in a restrictive clause if the reference is not clear: "If an application to renew a license has been

rejected, the application. . ."

Rule 10. Use of "Such"

Do not use "such" as a substitute for "the," "that," "it," "those," "them," or other similar words.

Example: "The (not 'such') application shall be in the form the court prescribes." Use "such" to express "for example" or "of that kind."

Rule 11. Punctuation

(a) Punctuate carefully. Consider recasting a sentence if a change in punctuation might change its meaning.

(b) Use a comma before "and" to separate the last of a conjunctive series of three or more words, phrases, or clauses in a sentence.

Example: "men, women, and children"; not "men, women and children."

(c) Use a comma before "or" to separate the last of a disjunctive series of three or more words, phrases, or clauses in a sentence.

(d) Use a colon to introduce a list of items. See Rule 15.

(e) Do not use brackets or parentheses as punctuation.

Comment

Some uniform laws use parentheses.

Rule 12. Definitions

(a) Use a definition only in one or more of the following circumstances:
(1) If a word has several different common usages.
(2) If a word is used in a sense broader or narrower than its

common usage.

(3) To avoid repetition of a phrase.

(b) Use "means" to express a comprehensive meaning of a word. Use "includes, but is not limited to," to express a meaning in addition to common usage.

(c) Avoid using the defined word in its definition.

(d) Do not write substantive provisions or artificial concepts into definitions.

Example: Do not impose the substantive requirement that an agreement be "in writing" by defining "agreement" to mean "a written agreement."

(e) Place general definitions at the beginning of the bill. Arrange them in alphabetical order.

(f) Use the defined word, not the definition.

(g) If a defined term is used only in a single section, chapter, or part, locate the definition at the beginning of that section, chapter, or part.

Comment

Definitions that are carefully written and properly located help to avoid unnecessary repetition and improve the clarity of a bill.

Rule 13. Capitalization

Generally, follow the Harvard Blue Book.

All proper names are capitalized.

The first word of an indented paragraph is capitalized.
The first word following a colon is capitalized.

In title, chapter, article, and other headings, capitalize the initial word, the word immediately following a colon (if any), and all other words except articles, conjunctions, and prepositions of four or fewer letters.

Capitalize nouns referring to people or groups only when they identify specific persons, officials, groups, government offices, or government bodies.

Examples:

The "Social Security Administrator," but not "the administrator"

The "NLRB," but not "the board"

The "FDA," but not "the agency"

The "Secretary of State," but not "the secretary"

The "Congress" and the "President," when referring to the Congress of the United States and the President of the United States, are always capitalized

The following table indicates capitalization for words commonly used in legal writing.

Act - only when referring to a specific act:

The National Labor Relations Act
Act 473 of the Regular Session of the Legislature Alabama of 1949

Acts 1965

Alabama Alcoholic Beverage Control Board
A.M. (no spaces)

Amendment 84

Article V of the United States Constitution

Article 7, Chapter 19, Title 52

associations - lower case unless referring to proper names:

Y.M.C.A

Attorney General

Auburn University

Battleship Fund

Bill of Rights

bonds

Bureau of Credit Unions

Capitol (building)

Chapter 19

Circuit - only when used with a circuit number:

the Fifth Circuit
circuit court
City of Montgomery
Class A and B
Code - only when referring to a specific code:
Code of Alabama 1975
Code of Alabama
Commonwealth - only if it is part of the full title of a state, if the word it modifies is capitalized, or when referring to a state as a governmental actor or party to litigation:
the Commonwealth of Massachusetts
the Commonwealth Commissioner
the Commonwealth relitigated the issue
Congress
consortium -unless as a proper name (Marine Environmental

Sciences Consortium)

Constitution - only when naming any constitution in full or when referring to the U.S. Constitution:

Fifth Amendment
Preamble
Supremacy Clause
Bill of Rights
Article I, Section 8, Clause 17 of the Constitution
see U.S. Const., Art. I, § 8, Cl. 17

Constitution of Alabama

County - only with a specific county: Monroe County

Court - only when naming any court in full or when referring to the United States Supreme Court:

the Alabama Supreme Court
the supreme court (referring to a state supreme court)
the Court (referring to the U.S. Supreme Court)
the court of appeals
the Court of Appeals for the Fifth Circuit

Department of Conservation

Director of Conservation

Federal - only when the word it modifies is capitalized:

the Federal Reserve
federal spending

Federal Reserve Act

Federal Social Security Act

Fourteenth Amendment

funds (when not a proper name of fund)

General Fund (when a proper name)

Governor

Great Seal (proper name)

House

Judge, Justice - only when giving the name of a specific judge or justice or when referring to a Justice of the United States Supreme Court:

Judge Cedarbaum
Justice Holmes

the Justice (referring to a Justice of the United States Supreme Court)

left hand

Legislature

Montgomery County
National College of State Trial Judges
National Formulary
1957 Docks Act
Office of State Planning
Partlow State School and Hospital
P.M. (no spaces)
President of the United States
Recompiled 1958
Rule 12
Section 9-7-15
Secretary of State
Senate
State - only if it is part of the full title of a state, if the word it modifies is capitalized, or when referring to a state as a governmental actor or party to litigation:
the State of Alabama
the state commissioner
the State relitigated the issue
state Merit System Act (name of an act)
Supreme Court of Alabama
Supreme Court of the United States
Supreme Court Rule 12
Term - only when referring to a Term of the United States Supreme Court:
1978 Term
this Term
But: Michalemas term
this rule
this title
Title 7
Tombigbee River
United States government
U.S. Code
U.S. Const., Art. I, § 2
U.S. Highway
university - unless as a proper name: Harvard University, University of West Alabama

Rule 14. Limitations, Exceptions, and Conditions

(a) Limitations or exceptions to the coverage of the bill or

conditions placed on its application should be described in the first part of the bill. If they are numerous, notice of their existence should be given in the first part of the bill and they should be stated separately later in the bill.

(b) If a provision is limited in its application or is subject to an exception or condition, it generally promotes clarity to begin the provision with a statement of the limitation, exception, or condition or with a notice of its existence.

Example: "(a) Except as provided in subsection (b). . ." Avoid using "notwithstanding" to express a limitation of a general provision of the same act.

Example: "(b) Notwithstanding subsection (a). . ."

(c) If the application of a provision of the bill is limited by the occurrence of a condition that may never occur, use "if" to introduce the condition, not "when" or "where." Use "when" to indicate a particular time. Use "where" to indicate a particular place or set of circumstances.

(d) Do not use "provided that" or "provided however that," or similar proviso language. Use "but" instead of "except that."

Comment

Limitations or exceptions to a bill should be placed where they are noticed. Consistent placement in the first part of a bill or provision serves to avoid surprises.

Rule 15. Lists and Tabulations

(a) Break a sentence into its parts and present them in tabular form only if this makes the meaning substantially clearer.

(b) It is the preferred style to use "any of the following," "one or more of the following," or "all of the following" in the introductory clause followed by separately stated complete sentences rather than set the series off by semicolons and an "or" or

"and" after the next to last item in the series.

Example: "No person may be licensed as an attorney under this chapter unless the person meets all of the following requirements:

(1) The person is a resident of the state. (2) The person has not been convicted of a crime involving moral turpitude. (3) The person is a graduate of a law school accredited by the American Association of Law Schools. (4) The person passes a proficiency examination administered by the State Bar Association."

(c) Do not include in the last item of a tabulation language that qualifies all of the items.

(d) Do not place a sentence or paragraph after a tabulation. If the sentence or paragraph is not a part of the tabulated series, draft it as a separate subsection, subdivision, or paragraph.

Comment

Use tabulation especially if the subject matter makes the use of short sentences impossible. Consider using tabular form where a number of rights, powers, privileges, duties, or liabilities are granted to or imposed upon a person and in other situations if the use of tabular form makes the provision substantially easier to understand. See Rule 16 concerning manner of designating items in a tabulation.

Rule 16. Sections

(a) Number sections by Arabic numerals consecutively or progressively throughout the bill.

(b) Normally, sections are not captioned in the drafting stage. Adding headings is something normally done in the codification stage.

(c) Use short sections. Use a separate section for each separate topic.

(d) Divide a section that covers a number of contingencies, alternatives, requirements, or conditions into subsections, subdivisions, and paragraphs, as necessary. A paragraph may be divided into subparagraphs, but avoid their use. Divide a section into several sections as an alternative to subparagraphs.

(e) Designate each subsection, subdivision, paragraph, or subparagraph by a letter or number:

(1) Designate subsections by lower case letters in parentheses.

(2) Designate subdivisions by Arabic numerals in parentheses.

(3) Designate paragraphs by lower case letters.

(4) Designate subparagraphs by Arabic numerals.

(5) Designate items by lower case Roman numerals in parentheses.

(a) subsection
(1) subdivision
a. paragraph
1. subparagraph
(i) item

(f) Use lower case Roman numerals for internally numbered clauses (where each clause is run in and not a separate paragraph or subparagraph) only if this makes the meaning substantially clearer.

Comment

Portions of a section that are not identified by a letter or number often cause confusion.

Rule 17. References to Other Provisions of the Act

Use an initial capital letter in referring to a specific article, chapter, part, or section number; use lower case in referring to a specific subsection, paragraph, or subparagraph.

Examples: "The application required by Section 27. . ."; "Except as provided in subsection (b),. . ."

Comment

Where reference to only one or a few sections is intended, a specific reference is useful because it avoids the need to search the entire act to determine the provisions to which reference is intended. Overuse of specific references to other provisions of a bill can make the bill difficult to read and understand. Moreover, section numbers and subsections are sometimes changed without changing references to them. Computer technology has reduced the difficulty of finding these references.

Rule 18. Procedural Provisions

Do not include procedural provisions to administrative procedure or review, court procedure, or appellate procedure in a substantive bill unless essential to change those procedures in order to effectuate its purposes.

Rule 19. Creation of Agency or Office

Use simple language in the present tense to create or establish an agency, commission, or office.

Example: "The Office of _____ is [created] [established] in the Department of ____."

Rule 20. Savings and Repeal Clauses and Transitional Provisions

Savings and repeal clauses or transitional provisions should not be included automatically in every draft. Savings and repeal clauses and transitional provisions should be specific and only used when necessary.

Comment

An essential step in the preparation of a bill is to determine the effect the enactment of the bill will have on existing rights, liabilities, and proceedings. Thus, savings clauses or repeal clauses should be specific and the result of thorough consideration of the

issue. It is not desirable to put in boilerplate savings or repeal clauses since the effect of those clauses is the same as the effect without those clauses. The need for transitional provisions should also be carefully considered since it is presumed that a bill will operate prospectively. If a prospective application is not desired, or if from the context it is not clear that a prospective application is intended, it may be appropriate to place a transitional provision in the bill.

Rule 21. Purpose Clauses

Language stating the purpose of a bill or recital of facts upon which a bill is predicated should not be included as a matter of course. In some circumstances, purpose language may be useful in upholding a bill against constitutional attack after enactment or to give meaning to a provision for liberal construction. In those circumstances, appropriate language may be included.

Comment

A well-drafted bill should require no extraneous statement within itself of what it seeks to accomplish or the reasons prompting its enactment.

Rule 22. Severability Clause

Use a severability clause only when there is a possibility of partial invalidity and it is not clear that the intention of the Legislature is that the bill be severed. If used, it should be in a section as follows:

"Section. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains."

Rule 23. Order of Arrangement of Provisions in Bill

(a) Organize the bill in the most useful and logical format for the reader. Avoid an organization that requires an understanding of a later section in order to understand an earlier section. Group all

sections dealing with a common subject.

(b) Normally, the division of a bill into chapters and articles is something that is done in the codification process after enactment. That does not mean that a bill cannot be divided into chapters and subdivided into articles and parts if appropriate.

(c) The following is suggested as the order of arrangement of provisions in a bill:

(1) Synopsis
(2) Title
(3) Enacting Clause
(4) Short title (if any)
(5) Statement of findings and intent (if necessary)
(6) Definitions
(7) Main legal principle or proposition
(8) Procedural and administrative provisions
(9) Penalties
(10) Severability clause (if necessary)
(11) Repeal clause (if necessary)
(12) Effective date

Comment

The suggested order of arrangement of provisions is subject to the general requirement that a bill be organized in the format most useful to the reader.

Rule 24. Revision

If time is available, after the draft of a bill has been completed, revise it carefully and critically. Lay the revision aside for a time. Then revise the revision. Review each use of a defined term to make sure it is used consistently in its defined sense.

Comment

There is no substitute for time and thoroughness.

APPENDIX II

(Sample Outline of Act)

Title if one is suggested

SECTION 1. DEFINITIONS.

SECTION 2. SCOPE, EXCEPTIONS, AND EXCLUSIONS.

[Refer to as "Section 2".]

SECTION 3. CREATION OF AGENCY OR OFFICE.

SECTION 4. ADMINISTRATIVE AND PROCEDURAL PROVISIONS.

SECTION 5. SUBSTANCE.

(a) [Refer to as "subsection (a)"]

[Return to margin]

(1) [Refer to as "paragraph (1)"]

[Return to margin]

(A) [Refer to as "subparagraph (A)"]

[Return to margin]

(i) [Refer to as "subsubparagraph (i)"]

[Return to margin]

SECTION 6. PROHIBITIONS AND PENALTIES.

SECTION 7. UNIFORMITY AND APPLICATION AND CONSTUCTION. [See Rule 25 for text.]

SECTION 8. SHORT TITLE. This [Act] may be cited as the Uniform…….

SECTION 9. SEVERABILITY CLAUSE. [See Rule 23 for

text.]

SECTION 10. EFFECTIVE DATE. This [Act] takes effect…..

SECTION 11. REPEALS. The following acts and parts of acts are repealed:

(1) ……

(2) ……

(3) ……

SECTION 12. SAVINGS AND TRANSITIONAL PROVISIONS.

SECTION 13. APPLICATION TO EXISTING RELATIONSHIPS.

APPENDIX III

WORDS AND PHRASES

AVOID USING REDUNDANT COUPLETS

alter and change
any and all
authorize and direct
authorize and empower
by and with
desire and require
each and all
each and every
final and conclusive
from and after
full and complete
full force and effect
made and entered into
means and includes
necessary or desirable
null and void
order and direct
over and above
power and authority
shall have and exercise
sole and exclusive
type and kind
unless and until

AVOID THE FOLLOWING INDEFINITE WORDS

aforementioned
aforesaid
and/or (say "A" or "B", or both)
before (as an adjective)
before-mentioned
hereafter
hereby
herein
hereinabove
hereinafter
heretofore
herewith
said (as a substitute for "it", "he", "she", etc.)
same (as a substitute for "it", "he", "she", etc.)
thereof
thereto
therewith
to wit
whatsoever
whensoever
wheresoever

IMPROPER PHRASE REPLACEMENT

DO NOT SAY:	SAY:
absolutely null and void and of no effect	void
accorded	given
adequate number of	enough
adjudged, ordered and decreed	adjudged
admit of	allow
afforded	given
among and between	among (if more than two things or persons are involved); between (if two or more things are involved but treated individually)
approximately	about
at the place	where
at the same time	when
at the time	when
attempt (as a verb)	try
calculate	compute
category	kind, class, group
cause it to be done	have it done
cease	stop
commence, institute	start, begin
complete (as a verb)	finish
conceal	hide
consequence	result
constitute and appoint	appoint
contiguous to	next to
corporation organized and existing under the laws of New Jersey	a New Jersey corporation
do and perform	do
does not operate to	does not
donate	give
during such time as	while
during the course of	during
endeavor (as a verb)	try
enter into a contract with	to contract with
evidence, documentary and otherwise	evidence
evince	show
except that	but
excessive number of	too many

IMPROPER PHRASE REPLACEMENT, cont.

DO NOT SAY:	**SAY:**
expiration	end
fail, refuse, and neglect	fail
feasible	possible
for the duration of	during or while
for the purpose of holding (or other gerund)	to hold (or comparable infinitive)
for the reason that	because
forthwith	immediately
frequently	often
from July 1, 1971	after July 1, 1971
full and adequate or full and complete	full
hereafter	after this ... takes effect
heretofore	before this ... takes effect
however or provided	if, unless, (or state the condition)
in a case in which	when, where
in case	if
indicate (in the sense of show)	show
inquire	ask
institute	begin, start
interrogate	question
in the case of	whenever (only when emphasizing the exhausting or recurring applicability to the proposition)
in the event that	if
in the interest of	for
is able to	can
is applicable (shall be)	applies
is authorized and directed	shall
is authorized to	may
is binding upon	binds
is directed	shall
is entitled (in the sense of has the name)	is called
is unable to	cannot
it is the duty	shall
it shall be lawful to	may
law passed	law enacted
manner	way
maximum	most, largest, greatest
minimum	least, smallest

IMPROPER PHRASE REPLACEMENT, cont.

DO NOT SAY:	**SAY:**
modify	change
negotiate (in the sense (to enter into a contract)	make
no later than June 30, 1971	before July 1, 1971
nor	or (do not misuse "nor", "for", "or", after a negative expression)
obtain	get
occasion (as a verb)	cause
of a technical nature	technical
on and after July 1, 1971	after June 30, 1971
on his or her own application	at his or her own request
on or before June 30, 1971	before July 1, 1971
on the part of	by
or, in the alternative	or
party of the first part	(the party's name)
per annum	per year
per centum	percent
period of time	period, time
portion	part
possessed	have or had
preserve	keep
prior or prior to	earlier or before
proceed	go, go ahead
procure	obtain, get
prosecute its business	carry on its business
provided that	if, unless, or but
provision of law	law
purchase (as a verb)	buy
remainder	rest
render (in the sense of give)	give
render (in the sense of cause to be)	make
require (in the sense of need)	need
retain	keep
specified (in the sense of expressly mentioned or listed)	named
State of Kansas	Kansas
subsequent	later
subsequent to	after
successfully completes or passes	completes or passes
suffer (in the sense of permit)	permit

IMPROPER PHRASE REPLACEMENT, cont.

DO NOT SAY:	**SAY:**
sufficient number of	enough
summon	send for, call
the Congress	Congress
the manner in which	how
to the effect that	that
under the provisions	under
until such time as	until
utilize, employ (in the sense of use)	use
when	if
where	in which
within or without the United States	inside or outside the United States
with reference to	for
with the object of changing (or other gerund)	to change (or comparative infinitive)

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