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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2015-2016

1140487

City of Pike Road

v.

City of Montgomery and Dow Corning Alabama, Inc.

Appeal from Montgomery Circuit Court
(CV-14-901583)

STUART, Justice.

The City of Pike Road appeals the judgment entered by the Montgomery Circuit Court holding that a manufacturing facility

owned and operated by Dow Corning Alabama, Inc.,[1] located at 1940 Ohio Ferro Road in Mt. Meigs ("the Mt. Meigs facility"), an unincorporated part of Montgomery County, is within the police jurisdiction of the City of Montgomery as opposed to the police jurisdiction of Pike Road. We affirm.

I.

The boundaries of an Alabama municipality's police jurisdiction are set by § 11-40-10(a), Ala. Code 1975, which, at all times relevant to this action, provided:

> "The police jurisdiction in cities having 6,000 or more inhabitants shall cover all adjoining territory within three miles of the corporate limits, and in cities having less than 6,000 inhabitants and in towns, such police jurisdiction shall extend also to the adjoining territory within a mile and a half of the corporate limits of the such city or town."[2]

In approximately January 2012, following a change in the methodology Montgomery used to draw the boundaries of its police jurisdiction, Montgomery contacted Dow Corning Alabama

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[1]We note that, although Dow Corning Alabama was listed as an appellee on the notice of appeal and has filed an appellee's brief, its arguments on appeal are aligned with the arguments of the appellant, the City of Pike Road.

[2]The Alabama Legislature has since amended § 11-40-10, making minor changes to the language of subsection (a) that became effective September 1, 2015. See Act No. 2015-361, Ala. Acts 2015, enacted on June 5, 2015.

and advised it that its Mt. Meigs facility was now located within Montgomery's police jurisdiction; accordingly, Montgomery stated, the Mt. Meigs facility was subject to all applicable Montgomery taxes, rules, regulations, and ordinances. Dow Corning Alabama thereafter agreed that it would henceforth remit sales and use taxes to Montgomery as required by § 11-51-206, Ala. Code 1975.[3]

Dow Corning Alabama was also notified at that time that any capital improvements it subsequently planned for the Mt. Meigs facility would have to comply with all applicable Montgomery building and zoning regulations and requirements. In the spring of 2014, Dow Corning Alabama did in fact initiate several capital improvements at the Mt. Meigs

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[3]Section 11-51-206 at that time provided, in part:

> "The council or other governing body shall have the authority to levy and assess by ordinance within the police jurisdiction of any said city or town all taxes authorized by this article; provided, that said levy and assessment shall not exceed one-half the amount levied and assessed for like businesses, sales or uses conducted within the corporate limits, fees and penalties excluded."

The legislature amended the language of § 11-51-206 in Act No. 2015-361, Ala. Acts 2015. See note 2, supra.

facility, and it obtained the required permits and bonds from Montgomery at a cost of $3,942.

In association with those capital improvements, Dow Corning Alabama also retained a local engineering firm to assist it in seeking the rezoning of the property on which the Mt. Meigs facility was located to a less restrictive classification. On August 4, 2014, a representative of that engineering firm met with an official in Montgomery's planning department to discuss possible rezoning of the property and was told that the Mt. Meigs facility was now located within the police jurisdiction of Pike Road and was thus no longer subject to Montgomery's zoning regulations. In subsequent meetings with Pike Road officials later that week, those officials confirmed that the Mt. Meigs facility was now located in Pike Road's police jurisdiction and that Dow Corning Alabama would need to begin remitting all applicable sales and use taxes to Pike Road beginning in September 2014. Dow Corning Alabama accordingly purchased a building permit from Pike Road for $2,542 covering the same capital project for which it had already purchased a building permit from Montgomery.

The assertion that the Mt. Meigs facility was now located within the police jurisdiction of Pike Road was based on the fact that the United States Census Bureau's 2013 estimate of the population of Pike Road was 7,506; thus, Pike Road took the position that, as a city "having 6,000 or more inhabitants," its police jurisdiction automatically extended three miles from the Pike Road city limits pursuant to § 11-40-10(a). In fact, on February 10, 2014, the Pike Road city council had adopted Resolution No. 006-2014 declaring as much and stating that "[n]otice is hereby given that by operation of § 11-40-10, the police jurisdiction of Pike Road, Alabama now covers all territory within three miles of the corporate limits." Ten days after the adoption of Resolution No. 006-2014, planning officials from Montgomery and Pike Road met and produced a new map setting forth the respective police jurisdictions of the two cities. That map indicated that the Mt. Meigs facility was within three miles of the city limits of both Montgomery and Pike Road; however, because it was closer to the city limits of Pike Road, the Montgomery and Pike Road officials agreed that it was subject only to Pike Road's jurisdiction. See § 11-51-91(c), Ala. Code 1975 ("When

the place at which any business, trade, or profession is done or carried on is within the police jurisdiction of two or more municipalities which levy the licenses thereon authorized by this section, the licenses shall be paid to, issued, and collected by that municipality only whose boundary measured to the nearest point thereof is closest to the business, trade, or profession.").[4]

In late August 2014, Dow Corning Alabama contacted Kimberly Fehl, the city attorney for Montgomery, to confirm that the Mt. Meigs facility was no longer subject to regulation from Montgomery. In an August 28, 2014, letter, Fehl notified Dow Corning Alabama that Montgomery took the position that Resolution No. 006-2014 was of no effect and that the Mt. Meigs facility was still solely within the police jurisdiction of Montgomery:

[4]Although § 11-51-91(c) addresses only the payment of business license fees, the parties agree that the "rule of proximity" set forth in that statute determines which municipality should exercise jurisdiction for all purposes when police jurisdictions overlap. Advisory opinions issued by the Alabama Attorney General support this view. See 197 Ala. Op. Att'y Gen. 84-00025 (November 28, 1984), and Ala. Op. Att'y Gen. No. 2007-023 (December 14, 2006).

> "Resolution 006-2014 reflects the population of the Town of Pike Road,[5] according to the U.S. Census Bureau, has now exceeded 6,000. Although the U.S. Census Bureau 'estimates' increase and decrease in municipal population, it is [Montgomery's] position that an annual projected estimate by the U.S. Census Bureau is not valid authority to extend the police jurisdiction [to] three miles and collect license and taxes in that area. We are unaware of any census taken for the Town of Pike Road that qualifies under Alabama law. Resolution 006-2014 only references the U.S. Census as authority to expand the [police jurisdiction], and according to the last certified U.S. Census, the Town of Pike Road had a population of 5,406."[6]

On the advice of counsel, Dow Corning Alabama thereafter engaged with the planning departments of both Montgomery and Pike Road as it continued work on its ongoing capital improvements, even though this at times necessitated receiving simultaneous inspections and approvals from both cities and,

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[5]Pursuant to § 11-40-6, Ala. Code 1975, municipalities "containing 2,000 or more inhabitants shall be called cities" and "municipalities containing less than 2,000 inhabitants shall be called towns." It is undisputed that Pike Road has more than 2,000 inhabitants and is thus, legally, a "city." Pike Road acknowledges this fact but states in its reply brief that it nevertheless continues to refer to itself as the "Town of Pike Road," for most purposes, "to reflect [its] rural character." Pike Road's reply brief, p. 7, n. 2.

[6]The Montgomery official who initially worked with Pike Road officials to adjust the police-jurisdiction map after Resolution No. 006-2014 was adopted has since submitted a sworn affidavit indicating that, in developing that map, she had simply assumed that Pike Road would not have adopted a resolution without a valid legal basis.

at least one time, inspectors from Montgomery refused to provide a requested inspection and permit because they continued to believe that Pike Road had jurisdiction over the location.

Finally, on September 19, 2014, Dow Corning Alabama initiated an interpleader action in the Montgomery Circuit Court asking that court to resolve the dispute between Montgomery and Pike Road and authorizing Dow Corning Alabama to interplead all disputed sales- and use-tax payments pursuant to Rule 22, Ala. R. Civ. P., until the dispute was resolved.[7] Dow Corning Alabama also sought an injunction barring both cities from enforcing any building requirements or zoning regulations until the matter was resolved and requiring the ultimately prevailing city to recognize any capital improvements commenced during the course of litigation as being grandfathered once the dispute was resolved. Both Montgomery and Pike Road subsequently consented to an order of interpleader being entered, and, on October 16, 2014, the trial court entered the requested order.

[7]Dow Corning Alabama also requested the trial court to award it attorney fees and costs out of the interpleaded funds at the conclusion of the action, as allowed by Rule 22(c), Ala. R. Civ. P.

Montgomery and Pike Road thereafter both filed answers and moved the trial court to enter either a judgment on the pleadings or a summary judgment. On January 14, 2015, the trial court entered a judgment on the pleadings in favor of Montgomery. Both Pike Road and Dow Corning Alabama thereafter moved the trial court to alter, amend, or vacate its judgment, and, on February 11, 2015, the trial court entered an amended order again entering a judgment on the pleadings in favor of Montgomery and stating, in relevant part:

> "1. The court finds that [Pike Road] has two options available for establishing whether its number of inhabitants exceeds 6,000 for the purposes of extending its police jurisdiction from one and a half miles to three miles beyond its corporate limits pursuant to § 11-40-10(a).
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> > "a. Pike Road can wait for the next U.S. decennial census (since the 2010 census reports Pike Road as having less than 6,000 inhabitants); or
> >
> > "b. It can conduct its own municipal census in accordance with the requirements of §§ 11-47-90 through -95, Ala. Code 1975.
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> "Pike Road has produced no evidence ... indicating that a U.S. decennial census has found its population exceeds 6,000 and it has produced no evidence that it has conducted a statutory municipal census, pursuant to §§ 11-47-90 through -95, establishing it has more than 6,000 residents. ...;
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> "....

"4. The land on which [the Mt. Meigs facility] is located currently remains within the police jurisdiction of Montgomery;

"5. [Dow Corning Alabama] shall remit all municipally levied sales and use taxes which become due after the entry of this order directly to Montgomery;

"6. Any licenses, permits, inspections, and approvals necessary to be obtained by [Dow Corning Alabama] in connection with the capital improvements and projects being undertaken in respect of [the Mt. Meigs facility] shall henceforth be obtained from Montgomery only; provided, however, that any projects commenced by [Dow Corning Alabama] prior to the date of the entry of this order are grandfathered under the zoning regulations of Montgomery as a legal non-conforming use;

"7. The court hereby grants [Dow Corning Alabama's] motion for an award of counsel fees and disbursements incurred in the foregoing action pursuant to Rule 22(c), Ala. R. Civ. P. ...;

"8. The clerk of the court is hereby ordered to disburse the previously interpleaded funds by paying to [Dow Corning Alabama] the sum of $36,489.57, or so much of said sum as may be satisfied by such funds, as reimbursement for counsel fees and disbursements as ordered and awarded in the previous paragraph, with any balance of interpleaded funds being paid to Montgomery; and

"9. Except for the sales and use taxes previously interpleaded herein by [Dow Corning Alabama], [Dow Corning Alabama] is hereby fully released and discharged from any liability whatsoever, whether claimed by Montgomery, Pike Road, or otherwise, for any municipally levied sales or use taxes otherwise payable to any party or person during the pendency of this litigation."

Pike Road immediately filed a notice of appeal and moved the trial court to stay its judgment pending appeal; however, on February 25, 2015, the trial court denied Pike Road's request for a stay.

On March 13, 2015, Dow Corning Alabama timely moved the trial court to alter or amend its judgment.[8] In support of its motion, Dow Corning Alabama stated that it had learned, in the period after the trial court's February 11 judgment: (1) that a portion of the real property upon which the Mt. Meigs facility was located was situated within a mile and a half of Pike Road's city limits, and (2) that the Montgomery Circuit Court had, in an unrelated case decided August 27, 2013, made a finding of fact that "[t]he population of [Pike Road] exceeds 6,000 residents." Town of Pike Road v. Taxpayers & Citizens of Pike Road (case no. CV-2013-901203.00). Dow Corning Alabama submitted evidence substantiating its claims with its motion, and Pike Road thereafter submitted a response supporting Dow Corning Alabama's motion, while Montgomery

[8]This Court thereafter issued an order noting that Pike Road's notice of appeal would be held in abeyance pursuant to Rule 4(a)(5), Ala. R. App. P., until all postjudgment motions were resolved.

submitted a response opposing it.[9] On March 27, 2015, the trial court denied the motion to alter, amend, or vacate its judgment, and, upon receiving notice of the same, this Court returned Pike Road's appeal to the active docket and all applicable time requirements began to run.

On August 27, 2015 -- after briefing was completed in the case -- Pike Road submitted to this Court a new submission accompanied by documentary evidence indicating that new facts had arisen, which facts, Pike Road claimed, mooted some of the issues involved in this appeal. Specifically, Pike Road alleged that it had completed two annexations in July 2015 that resulted in Pike Road's city limits extending to the border of the property upon which the Mt. Meigs facility was located; accordingly, Pike Road argued, the Mt. Meigs facility was now undisputedly located in Pike Road's police jurisdiction, regardless of whether that police jurisdiction extends a mile and a half or three miles from Pike Road's city limits. Montgomery thereafter filed its response to Pike

[9]Dow Corning Alabama presumably would prefer to be subject to taxation by Pike Road rather than Montgomery because, as Dow Corning Alabama recognized in its initial complaint, "the sales and use tax rates levied by Montgomery ... are higher than the rates levied by Pike Road."

Road's submission, arguing that Pike Road's arguments came too late and that, in any event, it remained to be seen whether in fact the July 2015 annexations were legally valid. Accordingly, Montgomery urges this Court to decide this appeal based on the record as it existed at the time the appeal was filed.

II.

> "When a motion for judgment on the pleadings is made by a party, 'the trial court reviews the pleadings filed in the case and, if the pleadings show that no genuine issue of material fact is presented, the trial court will enter a judgment for the party entitled to a judgment according to the law.' B.K.W. Enters., Inc. v. Tractor & Equip. Co., 603 So. 2d 989, 991 (Ala. 1992). See also Deaton, Inc. v. Monroe, 762 So. 2d 840 (Ala. 2000). A judgment on the pleadings is subject to a de novo review. Harden v. Ritter, 710 So. 2d 1254, 1255 (Ala. Civ. App. 1997). A court reviewing a judgment on the pleadings accepts the facts stated in the complaint as true and views them in the light most favorable to the nonmoving party. Id. at 1255-56."

Universal Underwriters Ins. Co. v. Thompson, 776 So. 2d 81, 82 (Ala. 2000). We accordingly review de novo the judgment entered by the trial court.

III.

The trial court's judgment declaring that the Mt. Meigs facility is located within the police jurisdiction of

Montgomery rests on the premise that a municipality's police jurisdiction expands to the area within three miles of its city limits pursuant to § 11-40-10(a) only when a decennial census conducted by the United States Census Bureau or a municipal census conducted pursuant to § 11-47-90 et seq., Ala. Code 1975, establishes that the population of that municipality exceeds 6,000 inhabitants. Before considering the other arguments raised by the parties, we first consider the validity of that premise.

As this Court has stated several times:

> "The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Words used in a 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. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect. Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County, 589 So. 2d 687 (Ala. 1991)."

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992). In this case, however, § 11-40-10 is silent with regard to the issue now before the Court -- how a municipality's population should be determined for purposes of

determining its police jurisdiction. Because the plain language of § 11-40-10 does not give explicit guidance on this issue, we must ascertain the legislature's intent through other means. In James v. McKinney, 729 So. 2d 264, 267 (Ala. 1998), this Court was similarly called upon to construe a statute that failed to explain how to make a certain classification; after noting the ambiguity of the statute, the Court explained that "a court should examine related statutes" in order to determine legislative intent in such situations.[10] See also Dunn v. Alabama State Univ. Bd. of Trustees, 628 So. 2d 519, 523 (Ala. 1993) ("In construing a statute, we are permitted, indeed required, to compare statutes addressing 'related subject[s].' House v. Cullman County, 593 So. 2d 69, 75 (Ala. 1992) (quoting 2A Sutherland Stat. Const., § 51.02 (4th ed.))."). [11]

[10]The ambiguous statute in James was § 41-32-2, Ala. Code 1975, and the issue before the Court was whether certain State employees were subject to the merit system. 729 So. 2d at 266-67.

[11]In Watkins v. Board of Trustees of Alabama State University, 703 So. 2d 335, 341 (Ala. 1997), this Court identified a paragraph in Dunn as dictum and stated that, "[t]o the extent that this dictum relied on by the trial court and [the appellee] is contrary to our holding in the present case, it is disapproved." 703 So. 2d at 341. We subsequently stated in Underwood v. Alabama State University, 51 So. 3d

Although § 11-40-10 contains no provision for how a municipality's population should be determined, § 11-40-6, Ala. Code 1975, does, stating unequivocally that "[t]he last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or a town."[12] Pike Road argues that this directive should relate only to determining population for purposes of deciding

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1010, 1013 (Ala. 2010), that Watkins "overruled" Dunn. In fact, however, Watkins did not overrule the holding of Dunn, it merely "disapproved" of the identified dictum.

[12]Section 11-40-6 states in its entirety:

> "Municipal corporations now existing or hereafter organized under this title containing 2,000 or more inhabitants shall be called cities. All incorporated municipalities containing less than 2,000 inhabitants shall be called towns. The last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or town.
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> "At the next election more than four months after the one hundred twentieth day after the first day of the first regular business session of the Legislature held next after the publication by the federal government of the regular federal decennial population census for Alabama, if the municipality shows a population which authorizes a change in its government under this title, the proper officers for such a city shall be elected and perform the duties prescribed in this title."

(Emphasis added.)

whether a municipality is a city or a town; however, the clear language of the statute is not so limiting -- the relevant sentence in its entirety states only that "[t]he last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or a town." This Court cannot, as Pike Road effectively urges, modify the statute to read "the last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or a town for the purpose of determining whether said municipality is properly classified as a city or a town." See, e.g., Elmore County Comm'n v. Smith, 786 So. 2d 449, 455 (Ala. 2000) ("We will not read into a statute what the Legislature has not written.").

Pike Road, however, argues that § 11-40-6 and § 11-40-10 "don't even remotely deal with the same subject other than they both relate generally to municipalities," and it accordingly argues that § 11-40-6 is essentially irrelevant when construing § 11-40-10. Pike Road's brief, p. 27. However, Pike Road fails to recognize that the principle of in pari materia does not require that the statutes being analyzed share an identical subject matter. To the contrary, this

Court has indicated that the subject matter of the statutes being analyzed need only be "related," "similar," or the "same general[ly]." See James, 729 So. 2d at 267 ("In determining legislative intent, a court should examine related statutes."); Ex parte Johnson, 474 So. 2d 715, 717 (Ala. 1985) ("It is a fundamental principle of statutory construction that statutes covering the same or similar subject matter should be construed in pari materia."); and Willis v. Kincaid, 983 So. 2d 1100, 1103 (Ala. 2007) ("'[S]tatutes must be construed in pari materia in light of their application to the same general subject matter.'" (quoting Opinion of the Justices No. 334, 599 So. 2d 1166, 1168 (Ala. 1992))). Pike Road has conceded that § 11-40-6 and § 11-40-10 have, at least, the same general subject matter -- municipalities; it is accordingly altogether proper to construe the two statutes in pari materia.[13]

[13]We emphasize, however, that our analysis of § 11-40-6 and § 11-40-10 is based on the plain language of those two statutes and their similar subject matter and not, as Montgomery has urged us to consider, the proximity and organization of the statutes in the Alabama Code. See § 1-1-14(a), Ala. Code 1975 ("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.").

We further note that Pike Road has identified multiple classification statutes in the Alabama Code that tie the population of a municipality solely to the federal decennial census, see, e.g., §§ 11-40-14, 11-43-2, 11-43-7.1, 11-43-190, 11-48-30, and 11-51-128, Ala. Code 1975, as well as multiple other classification statutes like § 11-40-10 in which no specific method for determining a municipality's population is set forth, see, e.g., §§ 11-32-1, 11-40-23, 11-42-58, and 11-43-5.1, Ala. Code 1975, and it accordingly argues that, "[i]f ... the Alabama Legislature intended that the population of municipalities be governed by § 11-40-6 for all purposes, why would the Legislature then find it necessary to set forth a means of ascertainment in some statutes but not others?"[14]

[14]Justice Murdock, in his dissent, similarly asks the question, "[g]iven that so much variation exists in the Alabama Code as to how a municipality's population should be ascertained for various purposes, why is § 11-40-6 the one statute that must be read in pari materia with all the statutes that contain no specific method of determining a municipality's population to supply the 'default rule'?" ___ So. 3d at ___. The answer is simple: Of all the statutes cited in this case, only in § 11-40-6 did the legislature use broad language that is not limited in its scope. Compare § 11-40-6 ("The last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or a town.") with, e.g., § 11-43-2 ("In all cities and towns having a population of less than 12,000 inhabitants according to the last or any subsequent federal census, the legislative functions shall be exercised by the

Pike Road's reply brief, at p. 15. It seems apparent, however, that the legislature explicitly stated in some statutes that population should be determined solely by the federal decennial census because those statutes are exceptions to the default rule set forth in § 11-40-6 that a municipality's population may be determined either by federal decennial census or by a duly conducted municipal census, and no method of discerning population is set forth in the other cited statutes precisely because the default rule of § 11-40-6 applies.[15] This conclusion that § 11-40-6 supplies the default

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mayor and five aldermen.").

[15]In his dissent, Justice Murdock criticizes this opinion's interpretation of Title 11 of the Alabama Code so as to recognize a default rule in § 11-40-6, stating:

> "[I]f the legislature intended there to be a rule of general application for the determination of municipal populations, it easily could have enacted a general statute to that end, rather than leaving it to this Court to comb through other statutes in an effort to discover the existence of such a rule."

___ So. 3d at ___. We note only that the legislature likewise could have enacted a general stand-alone statute articulating the default rule Justice Murdock advocates -- that a municipality might endeavor to prove its population for a particular purpose by any available means unless the legislature has specifically restricted the means available as it relates to that particular purpose -- but the legislature has not elected to do so.

rule for the methods that a municipality might use to establish its population -- rooted in the plain-language declaration of that statute that "[t]he last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or a town" -- is not undermined by the fact that the legislature has in certain instances opted to further restrict the methods available; rather, it reflects the Court's duty to interpret statutes together so as "'to form one harmonious plan and give uniformity to the law'" while nevertheless recognizing the prerogative of the legislature to carve out exceptions to the general rules it creates. Ex parte Coffee Cnty. Comm'n, 583 So. 2d 985, 988 (Ala. 1991) (quoting League of Women Voters v. Renfro, 292 Ala. 128, 131, 290 So. 2d 167, 169 (1974)).[16]

[16]Giving universal effect to the legislature's plain directive in § 11-40-6 that "[t]he last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or a town" promotes uniformity in the law not only by providing a default rule that is simple for municipalities to apply, but also by reducing the possibility of contradictory rulings in different trial courts. For example, in this case Pike Road initially justified the extension of its police jurisdiction solely on the annual projected population estimate made by the United States Census Bureau. However, one trial court might consider such an estimate to be sufficient evidence of a municipality's population, while another trial court might deem it to be too speculative. This possibility further highlights an

Finally, our conclusion that the directive in § 11-40-6 providing that "[t]he last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or a town" applies to all other statutes requiring the determination of a municipality's population in the absence of a more specific directive in the subject statute also explains what might otherwise appear to be a contradiction in our caselaw. In support of its arguments, Montgomery has cited City of Bridgeport v. Citizens Action Committee, 571 So. 2d 1089 (Ala. 1990), in which we considered § 28-2A-1 et seq., Ala. Code 1975, which authorizes municipalities of a certain size to hold a municipal-option referendum on the question whether to change their classification from "dry" to "wet" or vice versa. The City of Bridgeport held such a referendum, and, after the fact, the question arose whether Bridgeport had properly established that it actually had the 4,000 inhabitants necessary to hold

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additional benefit to the default rule set out by the legislature in § 11-40-6 -- it promotes judicial economy inasmuch as it prevents a court from being called upon to weigh evidence regarding a municipality's population. The only relevant question is instead what the last decennial federal census or a duly performed municipal census has established the municipality's population to be.

such a referendum. 571 So. 2d at 1090. In concluding that it had not, this Court stated:

> "There is no provision in §§ 28-2A-1 through -4 for how population is to be determined for purposes of an election. However, this Court has stated that § 28-2A-1 does not require that only a decennial census conducted by the United States Department of Commerce, Bureau of the Census, be used to determine the population of a municipality. Dennis v. Pendley, 518 So. 2d 688, 690 (Ala. 1987). The Alabama Code recognizes two methods for determining the population of a municipality. Sections 11-47-90 and -91 authorize a municipality to conduct its own census and provide strict guidelines to ensure the integrity of the census."

571 So. 2d at 1091 (emphasis added). Thus, Montgomery argues, City of Bridgeport directly supports the trial court's conclusion that a municipality may establish its population only via a decennial census conducted by the United States Census Bureau or by a municipal census conducted pursuant to § 11-47-90 et seq.[17] See also Dennis v. Pendley, 518 So. 2d 688, 690 (Ala. 1987) (noting that "[§] 28-2A-1 does not say that only a decennial census can be used to determine population" and recognizing, consistent with § 11-40-6, that

[17]We further note that the City of Bridgeport specifically argued on appeal that it should be able to establish its population by any "means properly serviceable to that end"; this Court stated that there was "no merit to this argument." 571 So. 2d at 1091.

a municipality might also determine population via a municipal census).[18]

Pike Road, however, cites Ryan v. City of Tuscaloosa, 155 Ala. 479, 46 So. 638 (1908), in support of its position. In Ryan, this Court considered whether Tuscaloosa could issue certain bonds in light of Ala. Const. 1901, § 225, which generally bars municipalities "having a population of less than six thousand" from taking on debt exceeding a defined level. 155 Ala. at 485-88, 46 So. at 641. Certain citizens of Tuscaloosa sought to prevent a referendum to decide whether the bonds would issue based on the fact that the most recent federal decennial census indicated that Tuscaloosa's population was less than 6,000; however, this Court declined to intervene, reasoning:

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[18]Section 11-47-90 broadly authorizes a municipality to conduct a municipal census, and § 11-47-92, Ala. Code 1975, authorizes a city or town to elect to contract with the United States Census Bureau to perform such a census if the city or town desires. The municipal census in Dennis was apparently conducted by the United States Census Bureau pursuant to § 11-47-92. 518 So. 2d at 689. As Justice Lyons notes in his separate writing, the Dennis Court did not address the limiting language of § 11-47-93, Ala. Code 1975, in its opinion, and it is ultimately unnecessary for us to consider § 11-47-93 because there is no indication that Pike Road has even contemplated employing the United States Census Bureau to conduct a municipal census.

"[Section 225] predicates the limitation of indebtedness upon 'population.' That is the condition, the fact, upon which the limitation operates. The complainant's insistence, in legal effect, leads to the proposition -- to the construction -- that the ascertainment of the condition (population) must be by the last federal census. The most casual reading of the section of the organic law demonstrates that the instrument is wholly silent as to the means for the ascertainment of the population of the city or town; and a census, official though it is, is but a means for the ascertainment of the number of persons. Can we, by construction, supply this means? We think not. If so it was ruled, the result would be, not only an unwarranted interpolation of a most material provision into the section, but also to render the section utterly unavailable, possibly for near ten years between decennial federal censuses, to towns and cities having, at the time such census was taken, less than 6,000 population, notwithstanding within a month thereafter the population was greater than 6,000. In short, under the construction urged for complainant, it is easily conceivable that for nine years and more the privilege of the section would be denied to towns and cities having in fact the requisite population at the time the bonds were desired to be issued; but to such a result the makers of the Constitution have, under no interpretation, written.

"A conclusive reason, however, in support of the view expressed, is found in the fact that in other places in the instrument the decennial federal census is provided as the means for the ascertainment of the population for the purpose of apportionment of representation in the legislative branch of the government. From this it is evident that, in omitting mention of such census in the section under consideration, a clear intent is manifested to leave the ascertainment, upon

> occasion, of the population to means properly serviceable to that end."

155 Ala. at 487-88, 46 So. at 641. Thus, Pike Road argues that, because § 11-40-10 does not dictate what method should be used to determine a municipality's population, the legislature must have similarly intended "to leave the ascertainment ... of the population to means properly serviceable to that end." 155 Ala. at 488, 46 So. at 641. Pike Road further argues that it submitted ample evidence to the trial court conclusively demonstrating that its population is now well in excess of 6,000 inhabitants.

Montgomery argues that Ryan is irrelevant because it involved the interpretation of a provision of the Alabama Constitution, and, it argues, "[c]onstitutional provisions are subject to completely different construction rules than are statutes." Montgomery's brief, at p. 26. Although we disagree with the breadth of that assertion, the fact that Ryan involved the construction of a constitutional provision while City of Bridgeport involved the construction of a statute is the basis for the different results reached in

those cases.[19] Constitutional provisions stand on their own and are unaffected by statutes, even those dealing with the same subject matter. See, e.g., Ex parte Illinois Cent. Gulf R.R., 537 So. 2d 899, 903 (Ala. 1988) ("The Legislature is without power to alter a constitutional right through statutory change."), and Board of Revenue of Jefferson Cnty. v. State, 172 Ala. 138, 149, 54 So. 757, 761 (1910) ("Constitutional mandates and restrictions cannot be altered, contracted, or expanded, by [legislative declaration]."). Thus, in considering how to determine a municipality's population for purposes of § 225, this Court rightly did not look to the Alabama Code, but it did look to other

[19]This Court has recognized that there are some differences that must be considered when construing constitutional provisions as opposed to statutes, but it has also recognized that the same rules of construction generally apply. See, e.g., Clark v. Container Corp. of America, Inc., 589 So. 2d 184, 190 n. 4 (Ala. 1991) ("The Constitution is subject to the same general rules of construction as are other laws; Alabama State Docks Dep't v. Alabama Public Service Comm'n, 288 Ala. 716, 724, 265 So. 2d 135, 143 (1972), 'due regard being had to the broader objects and scope of the constitution as a charter of popular government.' 16 Am.Jur.2d Constitutional Law, § 91, at 417 (1979)."), and Summers v. State, 244 Ala. 672, 673, 15 So. 2d 502, 503 (1943) (noting that, "in the main, general principles governing the construction of statutes apply also to the construction of constitutions," but recognizing that "constitutions usually deal with larger topics and are couched in broader phrases than legislative acts").

constitutional provisions and, after noting that at least one other provision did tie a municipality's population to the federal decennial census, concluded that the drafters of § 225 manifested a clear intent to leave the ascertainment of a municipality's population for § 225 purposes "to means properly serviceable to that end" inasmuch as they omitted any mention of the federal decennial census. 155 Ala. at 488, 46 So. at 641.

In City of Bridgeport, however, this Court was tasked with deciding the proper way to determine a municipality's population with regard to certain specified statutes, specifically § 28-2A-1 et seq., Ala. Code 1975. Although the City of Bridgeport Court did not detail its analysis, it apparently considered those statutes in pari materia with other statutes dealing with municipal structure and powers and concluded that "[t]he Alabama Code recognizes two methods for determining the population of a municipality": the federal decennial census and a municipal census conducted pursuant to § 11-47-90 et seq. 571 So. 2d at 1091. Thus, although in Ryan the Court concluded that a municipality's population could be determined by any serviceable means and in City of

Bridgeport the Court concluded that a municipality's population could be determined only by federal decennial census or municipal census, both decisions were correct, inasmuch as the statutes being interpreted in City of Bridgeport had to be read in pari materia with § 11-40-6, but, as explained in Board of Revenue of Jefferson Cnty. and Ex parte Illinois Central Gulf R.R., in Ryan, § 11-40-6, as a mere statute, had no bearing on the interpretation of § 255, a constitutional provision.

IV.

Having concluded that the trial court correctly held that a municipality's police jurisdiction expands to include the area within three miles of the municipality's city limits pursuant to § 11-40-10(a) only after either a federal decennial census or a municipal census establishes that the population of that municipality exceeds 6,000 inhabitants, we now turn to the other issues raised by the parties. Pike Road has also argued that the trial court was required, but failed, to take judicial notice of the fact that it had, in the unrelated case of Town of Pike Road v. Taxpayers & Citizens of Pike Road, made a finding of fact that "[t]he population of

[Pike Road] exceeds 6,000 residents." Pike Road argues that it is well established both that a trial court "may take judicial notice of the population of municipalities within their jurisdiction," Meadows v. City of Birmingham, 582 So. 2d 603, 606 (Ala. Crim. App. 1991), and that "[e]ach court takes judicial knowledge of its own records," Evans v. State, 341 So. 2d 749, 750 (Ala. Crim. App. 1976); accordingly, Pike Road argues, the trial court exceeded its discretion by failing to take judicial notice of the fact that it had already found the population of Pike Road to exceed 6,000 residents in a previous proceeding before it inasmuch as Pike Road had specifically requested it to take such notice and had provided the court with all the information necessary to do so. See Rule 201(d), Ala. R. Evid. (stating that it is mandatory for a court to take judicial notice "if requested by a party and supplied with the necessary information").

However, Pike Road fails to recognize that Rule 201, Ala. R. Evid., applies only to the judicial notice of a fact that is "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination

by resort to sources whose accuracy cannot reasonably be questioned." Rule 201(b), Ala. R. Evid. In this case, the population of Pike Road is the subject of dispute; moreover, there is no unimpeachable source to which one can readily turn to determine that population. In other reported cases where an appellate court has taken judicial notice of the population of a municipality, that fact is generally not in dispute, and the population is easily determined by reference to a reliable source -- often a census. See, e.g., Lifestar Response of Alabama, Inc. v. Lemuel, 908 So. 2d 207, 219 (Ala. 2004) ("We take judicial notice of the fact that the population of the City of Montgomery as of the last federal decennial census, taken in the year 2000, was 201,568."), and Value Oil Co. v. City of Northport, 284 Ala. 103, 105, 222 So. 2d 358, 359-60 (1969) ("[W]e judicially know that the population of Northport, as contained in the last Federal census, is 5,245 ...."). See also Taxpayers & Citizens of Fort Payne v. City of Fort Payne, 252 Ala. 231, 234, 40 So. 2d 439, 441 (1949) ("The apparent purpose [of the municipal-census statutes] is to provide a procedure for obtaining an official census, with all the advantages of an official census, including a

permanent official record of which a court is required to take judicial notice."). We further note that, for all that appears, the only evidence presented in Town of Pike Road v. Taxpayers & Citizens of Pike Road indicating that the population of Pike Road exceeded 6,000 inhabitants was Pike Road's claim to that effect; the same judgment containing that finding of fact also states that no citizen appeared "in opposition" to Pike Road's bond-validation petition, and there is no indication that the issue of Pike Road's population was actually litigated. For all these reasons, we conclude that the trial court in this case did not exceed its discretion by declining to take judicial notice of the finding of fact made in unrelated litigation that Pike Road's population exceeded 6,000 inhabitants. See Henry v. Butts, 591 So. 2d 849, 852 (Ala. 1991) ("Whether to take judicial notice of a fact is in the discretion of the trial court.").

V.

Finally, we must consider the effect of Pike Road's submission to this Court of facts indicating that it has now annexed certain properties so that it is now without question that the Mt. Meigs facility is in its police jurisdiction.

Pike Road argues that it is proper for this Court to consider those facts even though they were never presented to the trial court because, Pike Road argues, these facts "moot" the issue whether Pike Road's police jurisdiction extends one and one-half miles from its city limits or three miles from its city limits; either way, Pike Road argues, the Mt. Meigs facility is now undisputedly in Pike Road's police jurisdiction. In support of this argument, Pike Road cites South Alabama Gas District v. Knight, 138 So. 3d 971, 975 (Ala. 2013), in which we stated that "[e]vents occurring subsequent to the entry or denial of an injunction in the trial court may properly be considered by this Court to determine whether a cause, justiciable at the time the injunction order is entered, has been rendered moot on appeal."

The principle explained in Knight, however, is not applicable in the present case. First, it is evident that Pike Road does not actually want this Court to hold that this appeal is moot because doing so would require us to dismiss the appeal; in fact, Pike Road seeks a reversal of the trial court's judgment. See Norrell v. Adams, 275 Ala. 382, 382, 155 So. 2d 338, 339 (1963) ("It seems clear that the case is

moot. Accordingly, we have no alternative but to dismiss the appeal. It has been held that if an event, pending appeal, makes determination of the appeal unnecessary, or renders it clearly impossible for the appellate court to grant effectual relief, the appeal will be dismissed."). Second, the July 2015 annexations identified by Pike Road would have no effect on the correctness of the trial court's February 11, 2015, judgment holding that Montgomery was entitled to the interpleaded funds and was the municipality authorized to exercise jurisdiction over the Mt. Meigs facility at that time. Those interpleaded funds properly belong to the municipality in whose police jurisdiction the Mt. Meigs facility was located at the time the funds were paid into the court, and, for the reasons explained supra, that municipality was Montgomery. Any changes to Montgomery's and Pike Road's police jurisdictions that have occurred after February 11, 2015, have no bearing on which municipality was entitled to those funds or in whose police jurisdiction the Mt. Meigs facility was located at the time of the trial court's February 11, 2015, judgment. If events have occurred subsequent to that judgment so that there is now a new dispute regarding

those police-jurisdiction boundaries and whether they have changed, Montgomery, Pike Road, Dow Corning Alabama, or any other affected party may initiate a new action seeking a judgment deciding that dispute; this Court will not endeavor to resolve that new dispute in the context of this appeal.

VI.

Pike Road appealed the judgment entered by the trial court declaring that, pursuant to § 11-40-10, Pike Road's police jurisdiction extended only a mile and a half from its city limits inasmuch as neither a federal decennial census nor a duly conducted municipal census had established that the population of Pike Road exceeds 6,000 inhabitants. Accordingly, the trial court held that the Mt. Meigs facility was located in the police jurisdiction of Montgomery as opposed to the police jurisdiction of Pike Road. Having found no error in the trial court's application of § 11-40-6 and § 11-40-10 or any other errors that would require a reversal, that judgment is now affirmed.

AFFIRMED.

Bolin, Parker, and Main, JJ., concur.

Lyons, Special Justice, concurs in the result.*

Moore, C.J., and Murdock, Shaw, and Wise, JJ., dissent.

Bryan, J., recuses himself.

*Retired Associate Justice Champ Lyons, Jr., was appointed on November 18, 2015, to serve as a Special Justice in regard to this appeal.

LYONS, Special Justice (concurring in the result).

This appeal presents the issue of how to apply a statute that makes municipal population determinative of the applicability of the statute when the statute is silent on how to compute that population. Specifically, § 11-40-10, Ala. Code 1975, establishes the police jurisdiction of a municipality with a population of 6,000 or more at three miles and of a municipality of lesser population at one and one-half miles. Dueling police jurisdictions between the City of Pike Road and the City of Montgomery are the result of a dispute over the appropriate population of Pike Road and therefore the mileage applicable to Pike Road's police jurisdiction.

Section 11-40-10 is silent on the method of computing the population of a municipality. Section 11-40-6, Ala. Code 1975, prescribes population brackets used to differentiate between a town and a city. Section 11-40-6 permits reliance for those population brackets on "the last census, whether federal or taken as authorized in this title." Section 11-47-90 et seq., Ala. Code 1975, authorizes a municipality to conduct a census or to obtain a special federal census. No other provision for census can be found in Title 11.

Pike Road relied upon a 2013 estimate by the United States Census Bureau to establish its population as sufficient to justify a three-mile police jurisdiction. The trial court found Pike Road's method of computing its population to be inconsistent with the requirements of §§ 11-47-90 through -95, Ala. Code 1975. The main opinion upholds the trial court's judgment because § 11-40-6 applies, and it mandates adherence to the last federal decennial census or to the procedures found in §§ 11-47-90 through -95. Three previous cases have addressed a similar issue in the context of § 28-2A-1, Ala. Code 1975, which authorizes a municipality to conduct a "wet-dry" referendum and limits its applicability to municipalities with a certain population. Section 28-2A-1 mirrors § 11-40-10 to the extent that it is also silent on the means of computing that population.

What is now codified as § 28-2A-1 was enacted in 1984 as Act No. 84-408. In Alabama Citizens Action Program v. Kennamer, 479 So. 2d 1237 (Ala. 1985), the issue presented was whether the 1970 federal decennial census or the more recent 1980 census governed in order to determine eligibility for a wet-dry referendum. The Court stated:

> "In the absence of any such designation [that would establish the 1970 census as the benchmark], we will not assume that the legislature in 1984 intended to refer to the 1970 census. Neither do we conclude that the statute is vague. Section 11-40-6 of Code of 1975, which sets forth the test for determining whether a municipal corporation should be called a city or town, states: 'The last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or town.' Furthermore, Act No. 84-408 has been codified in Chapter 2A of Title 28 of the Code. Another chapter of the same title defines 'population' as '[t]he population according to the last preceding or any subsequent decennial census of the United States.' Code of 1975, § 28-3A-2(21).
>
> "We conclude that in the absence of a designation to the contrary the population of cities for the purposes of Act No. 84-408 is determined by the last preceding federal decennial census."

Kennamer, 479 So. 2d at 1242. Kennamer addresses the issue without limiting the inquiry to the means afforded by § 11-40-6, citing it only as illustrative of other instances in the Code where the legislature embraced the last preceding federal census as a benchmark.

In Dennis v. Pendley, 518 So. 2d 688 (Ala. 1987), the municipality relied upon a special federal census, conducted after the most recent federal decennial census, to establish its eligibility to conduct a wet-dry referendum. The principal issue in Dennis was whether the municipality was

locked into the most recent federal decennial census or could rely upon a more recent special federal census. 518 So. 2d at 690. The Court, without referring to any other provision of the Alabama Code, accepted the municipality's special federal census and sustained its eligibility to conduct the wet-dry referendum. Id.

Section 11-47-92, Ala. Code 1975, authorizes a municipality to obtain a special federal census, and § 11-47-93, Ala. Code 1975, restricts the use of such a census to establishing population as the basis for determining the levy or collection of taxes or the distribution of revenues. The Court in Dennis did not discuss the compatibility of the special federal census with the purpose of determining population for ascertainment of eligibility to conduct a wet-dry referendum. However, an attorney general's opinion had previously concluded that there was a sufficient nexus between revenue and a determination that a municipality could be "wet" to trigger availability of a special federal census pursuant to §§ 11-47-92 and -93. Ala. Op. Att'y Gen. No. 85-00404 (June 26, 1985). Although Dennis does not refer to § 11-40-6, the Court's acceptance of a special federal census is

consistent with the reference in § 11-40-6 to a census "taken as authorized in [Title 11]," assuming the correctness of the aforementioned attorney general's opinion with respect to the limitations on the use of a special federal census in § 11-47-93.

In City of Bridgeport v. Citizens Action Committee, 571 So. 2d 1089 (Ala. 1990), the municipality attempted to establish population sufficient to allow a wet-dry referendum pursuant to § 28-2A-1. The City of Bridgeport did not rely on a recent special federal census as was the case in Dennis; instead, it conducted its own census, but its methodology did not satisfy the requirements of § 11-47-90 and § 11-47-91, Ala. Code 1975. This Court stated:

> "More specifically, the City of Bridgeport claims the trial court erred in holding it to the strict requirements of § 11-47-90, which governs the term 'census,' and further claims that a 'municipality has common law authority to conduct a population count by "means properly serviceable to that end,"' citing as authority for this proposition Ryan v. City of Tuscaloosa, 155 Ala. 479, 46 So. 638 (1908). However, we find no merit to this argument."

571 So. 2d at 1091. Bridgeport thus dismisses without analysis the contention that a municipality can resort to the

common law for standards for determining its population. Bridgeport also cites Dennis with approval:

> "There is no provision in §§ 28-2A-1 through -4 for how population is to be determined for purposes of an election. However, this Court has stated that § 28-2A-1 does not require that only a decennial census conducted by the United States Department of Commerce, Bureau of the Census, be used to determine the population of a municipality. Dennis v. Pendley, 518 So. 2d 688, 690 (Ala. 1987). The Alabama Code recognizes two methods for determining the population of a municipality. Sections 11-47-90 and -91 authorize a municipality to conduct its own census and provide strict guidelines to ensure the integrity of the census."

571 So. 2d at 1091 (emphasis added).

Sections 11-40-90 through -95 authorize a municipality to conduct its own census or to request a special federal census. The reference to "two methods" in the Alabama Code must be taken as referring to the two methods that a municipality can invoke independent of the decennial federal census, an activity for determining population authorized by the United States Code occurring every 10 years without any action by the municipality. Bridgeport then limits the criteria for determining population to §§ 11-47-90 and -91 without reference to § 11-40-6. The Court, in a footnote, observes that the City did not elect to conduct a special federal

census as provided in § 11-47-92. 571 So. 2d at 1090 n. 2. Based on Dennis, and, assuming the correctness of the attorney general's opinion, the City could have done so.

In summary, Kennamer holds that the statute establishing eligibility to conduct a wet-dry referendum based on population should be construed as subject to the most recent federal decennial census. Kennamer should be limited to the context of a proceeding where no contention is made as to the availability of a census more recent than the last decennial census. Dennis recognizes the availability of a special federal census to determine eligibility consistent with § 11-47-93 as interpreted in the attorney general's opinion and consistent with the methodology set forth in § 11-40-6, but without referring to that section. Bridgeport holds that a municipality electing to conduct its own census must strictly comply with §§ 11-47-91 and 11-47-92.

It is axiomatic that a municipality can rely on the most recent federal decennial census in computing its population. In §§ 11-40-90 through -95, the legislature has conferred authority on a municipality to compute its current population independent of the most recent federal decennial census. This

Court, without citing § 11-40-6, clearly held in Bridgeport that these sections displaced any common-law authority of a municipality to calculate its population.

Pike Road asserts that Bridgeport is "wrong," presumably asking the Court to overrule it. I am not inclined to do so, although I am not prepared to embrace § 11-40-6 as justification for adherence to Bridgeport. Although the Court in Bridgeport cites no authority for its refusal to embrace Ryan v. City of Tuscaloosa, 155 Ala. 479, 46 So. 638 (1908), this Court in Ex parte Jones, 212 Ala. 259, 102 So. 234 (1924), construing what is now §§ 11-47-90, 11-47-91, and 11-47-94,[20] known then as the "Municipal Census Act," supplies the rationale. The Court in Jones was asked to apply these statutes in the context of a municipality's eligibility to impose a tax pursuant to a general revenue statute. 212 Ala. at 160, 102 So. at 234. The Court noted the absence of any reference to the Municipal Census Act in the revenue statute

[20]Sections 11-47-93 and 11-47-94, providing for a special federal census, were added by Ala. Acts 1953, Act No. 845. Whether a special federal census is available to compute population as the basis for taxing within a police jurisdiction is a question not before this Court.

at issue. The Court then directed its attention to what is now § 11-47-94, which provides:

> "Where the census of any city or town in this state has been or may hereafter be taken as provided by this article and the report of the census thus taken has been or may hereafter be filed with the Secretary of State, the census, purporting to be a true and correct enumeration of the inhabitants residing in said cities and towns, is and shall be ratified, confirmed and validated and the report of said census which has been or may hereafter be filed shall for all purposes govern and be taken as the true and correct census for all such cities and towns in the state when so taken. The form of government of such cities and towns shall be governed and controlled by such census when the same is so taken and a report thereof is filed in accordance with the provisions of this section."

(Emphasis added.) The Court then limited the reach of the phrase "shall for all purposes govern" as follows:

> "The Municipal Census Act using the very general words 'shall for all purposes govern' should be construed in the light of the object and purpose of that enactment expressed in part, at least, in the concluding sentence of the first section thereof, to the effect that the form of government of such cities and towns shall be controlled by such census. This later act is properly to be construed as applicable for all purposes concerning municipal government and powers and liabilities and duties arising therefrom."

212 Ala. at 261, 102 So. at 235 (emphasis added). The issue in this proceeding is whether Pike Road is entitled to a three-mile police jurisdiction. This issue sufficiently

implicates "municipal government and powers and liabilities and duties arising therefrom" so as to trigger the limitations in § 11-47-94. Id. Consequently, the provisions in that chapter of the Code govern Pike Road's effort to create a census independent of the most recent federal decennial census.

Nor does Ryan support overruling Bridgeport. As the main opinion notes, Ryan operates in the realm of application of a constitutional provision. The parties in Ryan agreed that the then current population of the City of Tuscaloosa exceeded the population determined by the preceding federal decennial census. 155 Ala. at 486, 46 So. at 641. The Ryan Court upheld the City's computation of its population independent of the preceding federal decennial census. 155 Ala. at 488, 46 So. at 641. However, the opinion in two places indicates that no statute was available for this proceeding. The majority opinion concludes by stating: "To what extent the legislation may be constitutionally enacted toward the evidential ascertainment of population in such cases we do not decide." 155 Ala. at 489, 46 So. at 642. Furthermore, a note appended to the vote line states:

> "TYSON, C.J., concurs in the conclusions reached as to all the objections save the fifth [dealing with the availability of means other than a federal decennial census for computing population], as to which he entertains the opinion that the last decennial federal census is the criterion for the finding vel non of the condition (population) upon which the limitation is based, in the absence of state legislation authorizing the taking of a census."

Id. (emphasis added). In addition, a municipal-census statute, the precursor to § 11-47-90, was enacted by the legislature on August 13, 1907. Although Ryan was decided on May 12, 1908, the meeting of the Tuscaloosa city council where the City voted to hold an election on the bond issue took place in November 1906, several months before the enactment of the statute. 155 Ala. at 482, 46 So. at 640.

For the foregoing reasons, I do not consider Bridgeport to have been wrongly decided. However, because I conclude that the trial court's application of the requirements of §§ 11-47-90 and 11-47-91 is required by § 11-47-94, as construed in Ex parte Jones -- a case this Court has not been asked to overrule -- rather than § 11-40-6, I concur in the result.

MOORE, Chief Justice (dissenting).

I respectfully dissent. I agree with Justice Murdock that § 11-40-6, Ala. Code 1975, does not dictate the method by which the City of Pike Road must determine its population for purposes of determining its police jurisdiction under § 11-40-10(a), Ala. Code 1975. I also agree with Justice Murdock that, under the applicable precedents, we should find that the legislature simply did not specify the method by which a city must determine its population under § 11-40-10(a). I believe that Pike Road has demonstrated that it has more than 6,000 inhabitants. Therefore, I respectfully dissent.

MURDOCK, Justice (dissenting).

I respectfully must dissent. I am concerned that the main opinion supplies a rule for determining the population of municipalities that is not present in § 11-40-10(a), Ala. Code 1975, the statute actually at issue in this case. Further, I am concerned that it arrives at this result through a misapplication of the "plain meaning" and the in pari materia rules of statutory construction.

The main opinion agrees with the trial court's premise that

> "a municipality's police jurisdiction expands to the area within three miles of its city limits pursuant to § 11-40-10(a) only when a decennial census conducted by the United States Census Bureau or a municipal census conducted pursuant to § 11-47-90 et seq., Ala. Code 1975, establishes that the population of that municipality exceeds 6,000 inhabitants."

___ So. 3d at ___. The statute the main opinion discusses, however, is not § 11-40-10(a) -- the statute that defines the territorial extent of police jurisdictions for municipalities depending upon the populations of those municipalities -- but rather § 11-40-6, Ala. Code 1975, a statute that classifies a municipality as a city or a town based on population for purposes entirely unrelated to the police jurisdiction.

The main opinion is correct that § 11-40-6 states that "[t]he last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or town." Consequently, if we were being asked to interpret § 11-40-6, we would rightly conclude that "the language of the statute is unambiguous" and that there are only two ways to determine the population of a municipality for the purpose of designating it as either a city or a town. IMED Corp. v. Systems Eng'g Assocs., 602 So. 2d 344, 346 (Ala. 1992).

But the dispute in this case does not concern whether a municipality should be designated as a city or town; it is about the territorial extent of Pike Road's police jurisdiction. That issue is plainly the subject of § 11-40-10(a), not § 11-40-6. As the main opinion is forced to admit, however, "§ 11-40-10 is silent with regard to the issue now before the Court." ___ So. 3d at ___ (emphasis added).

Even if it is assumed that the language of § 11-40-6, and in particular its last sentence, is relevant to the issue in this case, the main opinion attributes much more to that sentence than it can support. The main opinion rejects Pike

Road's argument that the last sentence of the first paragraph of § 11-40-6 "should relate only to determining population for purposes of deciding whether a municipality is a city or a town" because, it says, "the clear language of the statute is not so limiting." ___ So. 3d at ___. It notes that the sentence in question, standing alone, does not expressly state, as Pike Road urges, that "'[t]he last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or a town for the purpose of determining whether said municipality is properly classified as a city or a town.'" Id. at ___. The main opinion therefore concludes that reading the last sentence in the way Pike Road advocates would require us to "modify" § 11-40-6 in a manner contrary to legislative intent. Id. at ___.

But meaning, plain or otherwise, cannot be ascertained in the absence of context. The main opinion acknowledges the axiom repeated in IMED Corp., 602 So. 2d at 346, that "[t]he fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute." This Court also has observed that, "[i]n

determining the intent of the legislature, we must examine the statute as a whole." Ex parte Exxon Mobil Corp., 926 So. 2d 303, 309 (Ala. 2005). The last sentence of the first paragraph of § 11-40-6 -- "[t]he last census, whether federal or taken as authorized in this title, shall be used in determining the population of a city or town" -- cannot be read outside the context of the first two sentences of the same paragraph, which state: "Municipal corporations now existing or hereafter organized under this title containing 2,000 or more inhabitants shall be called cities. All incorporated municipalities containing less than 2,000 inhabitants shall be called towns." Viewed in the context of those first two sentences, the last sentence of the first paragraph of § 11-40-6 clearly refers to how a municipality's population must be determined for the purpose of designating whether a municipality is a city or town. This is why the sentence ends with the phrase "determining the population of a city or town" rather than "determining the population of a municipality."

Still more contextual confirmation of this meaning is found in the second paragraph of § 11-40-6, which states:

> "At the next election more than four months after the one hundred twentieth day after the first

> day of the first regular business session of the Legislature held next after the publication by the federal government of the regular federal decennial population census for Alabama, if the municipality shows a population which authorizes a change in its government under this title, the proper officers for such a city shall be elected and perform the duties prescribed in this title."

(Emphasis added.) The second paragraph (which does not even mention the alternative of a census performed by a municipality) reinforces that the focus of § 11-40-6 is whether a municipality is to be considered a city or a town for purposes of its form of government.

In short, the purpose of § 11-40-6 is to establish the difference between cities and towns, and thus the appropriate form of government, by setting a population threshold. In that context, the purpose of the last sentence of the first paragraph of § 11-40-6 in particular is to state the methods by which population may be ascertained for the purpose of determining whether a municipality is to be designated as a city or a town. The "plain language" of § 11-40-6 certainly does not dictate that the purpose of the last sentence of its first paragraph is, as the main opinion claims, to set "the default rule" that "applies to all other statutes requiring

the determination of a municipality's population in the absence of a more specific directive." ___ So. 3d at ___.

The main opinion correctly observes that "'statutes covering the same or similar subject matter should be construed in pari materia.'" ___ So. 3d at ___ (quoting Ex parte Johnson, 474 So. 2d 715, 717 (Ala. 1985)). The main opinion reasons that the subject matter of § 11-40-6 is sufficiently related to the subject matter of § 11-40-10 such that the statutes should be read in pari materia.

"Statutes are in pari materia -- pertain to the same subject matter -- when they ... have the same purpose or object." 2B Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 51:3 (7th ed. 2012). Sections 11-40-6 and 11-40-10 deal with similar subject matters only in the broad sense that they both discuss municipalities and their populations. They do not, however, have the same purpose. As noted above, § 11-40-6 concerns whether, based on its population, a municipality is considered a city or a town (and therefore whether it is to be governed as a city or as a town); § 11-40-10, on the other hand, concerns the territorial extent of a municipality's police jurisdiction, regardless of

its designation as a city or a town (or its government as such). Indeed, under § 11-40-10 it is possible for one municipality designated as a city to have a police jurisdiction that extends only a mile and a half beyond its corporate limits while another municipality designated as a city could have a police jurisdiction that extends three miles beyond its corporate limits. The fact that the municipal designations provided in § 11-40-6 do not affect the territorial extent of the police jurisdictions of municipalities delineated in § 11-40-10 illustrates that the two statutes have different objects.

Another fact highlighted by Pike Road also demonstrates why the in pari materia principle should not be applied to these statutes. Pike Road observes that there are

> "multiple classification statutes in the Alabama Code that tie the population of a municipality solely to the federal decennial census, see, e.g., §§ 11-40-14, 11-43-2, 11-43-7.1, 11-43-190, 11-48-30, and 11-51-128, Ala. Code 1975, as well as multiple other classification statutes like § 11-40-10 in which no specific method for determining a municipality's population is set forth, see, e.g., §§ 11-32-1, 11-40-23, 11-42-58, and 11-43-5.1, Ala. Code 1975 ...."

___ So. 3d at ___. Given that so much variation exists in the Alabama Code as to how a municipality's population should be

ascertained for various purposes, why is § 11-40-6 the one statute that must be read in pari materia with all the statutes that contain no specific method of determining a municipality's population to supply "the default rule"?

The main opinion's answer apparently is that the last sentence of the first paragraph of § 11-40-6 contains no specific limitation on the rule stated therein, but, as already observed, this answer ignores the fact that we must read that sentence in the context of the statute in which it appears. It seems at least as plausible to conclude that the fact that the legislature has designated specific ways to determine municipal populations in so many statutes but has chosen not to designate a specific method in other statutes indicates that, for the purposes of those other statutes, the legislature simply did not intend to prescribe or limit the ways by which a municipality's population could be determined. In other words, we should take the statutes as they are, instead of reading into them a "default rule" that we pluck from a single statute that has its own specific, stated purpose. For that matter, if the legislature intended there to be a rule of general application for the determination of

municipal populations, it easily could have enacted a general statute to that end, rather than leaving it for this Court to comb through other statutes in an effort to discover the existence of such a rule.[21]

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[21]The main opinion responds to this criticism with the following argument: "[T]he legislature likewise could have enacted a general stand-alone statute articulating the default rule Justice Murdock advocates -- that a municipality might endeavor to prove its population for a particular purpose by any available means unless the legislature has specifically restricted the means available as it relates to that particular purpose -- but the legislature has not elected to do so." ___ So. 3d at ___n. 15. I do not advocate a default rule, however -- at least not some special default rule requiring some special legislative enactment as the main opinion suggests.

In a different sense, the fact is that Alabama law does indeed already embrace "the default rule," if one wants to call it that, attributed to me by the main opinion's response, i.e., that a party to an action may endeavor to prove a relevant fact by "any available means" unless the law specifically prescribes otherwise. By their terms, the Alabama Rules of Evidence (as tempered by constitutional constraints) are expressly applicable in the absence of a specific legislatively prescribed exception or override. As to a given statute or statutory scheme, it is not necessary for the legislature to reiterate expressly that the Alabama Rules of Evidence apply or to expressly negate the absence of any exception to the applicability of those Rules. The silence of a given statute as to how to prove a fact made relevant by that statute means that any means "available" to that end under the Rules of Evidence is in fact available. In other words, and viewed more generally, the analytical construct asserted by the main opinion essentially would mean that the legislature could never simply remain silent and thereby allow a generally applicable rule to govern in a matter; it would instead have to expressly and specifically

The main opinion cites City of Bridgeport v. Citizens Action Committee, 571 So. 2d 1089 (Ala. 1990), in support of its conclusion. In City of Bridgeport, some citizens brought an action to enjoin the City of Bridgeport ("Bridgeport") from holding a referendum scheduled to occur on June 5, 1990, to become a "wet" county as authorized by § 28-2A-1 et seq., Ala. Code 1975. The citizens contended that Bridgeport did not have a sufficient population to be permitted to hold a wet-dry referendum. Under § 28-2A-4, Bridgeport had to have a population of at least 4,000 citizens to hold a wet-dry referendum, but that statute did not specify how the municipality's population was to be determined.

The most recent federal decennial census -- 1980 -- determined Bridgeport's population to be 2,974. Bridgeport had increased its population between 1980 and 1990, however, through four separate annexations. Following the annexations, Bridgeport "attempted to authorize a special census, pursuant to § 11-47-90, to determine whether it had become large enough

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speak in every instance to announce that the general rule and no other does in fact govern, something already true of general rules by their nature. See Dennis v. Pendley, 518 So. 2d 688 (Ala. 1987), discussed infra; see also Ryan v. City of Tuscaloosa, 155 Ala. 479, 46 So. 638 (1908), also discussed infra.

to conduct a wet-dry referendum." 571 So. 2d at 1090. Following a hearing, the trial court concluded that Bridgeport had not established that it had the requisite population to hold the referendum, and it issued an injunction preventing it from holding the referendum.

On appeal, Bridgeport contended that

> "the language of § 28-2A-4 is ambiguous in regard to how a municipality is to determine its population and that it is the function of this Court to clarify the legislative intent pertaining to this statute. More specifically, the City of Bridgeport claims the trial court erred in holding it to the strict requirements of § 11-47-90, which governs the term 'census,' and further claims that a 'municipality has common law authority to conduct a population count by "means properly serviceable to that end,"' citing as authority for this proposition Ryan v. City of Tuscaloosa, 155 Ala. 479, 46 So. 638 (1908)."

571 So. 2d at 1091. Conversely, the citizens contended that "when a municipality conducts a census to determine its population count for the purpose of a wet-dry referendum, such a census must fully comply with the requirements set forth in §§ 28-2A-1 through -4 and §§ 11-47-90 through -95." Id.

This Court agreed with the citizens, stating:

> "There is no provision in §§ 28-2A-1 through -4 for how population is to be determined for purposes of an election. However, this Court has stated that § 28-2A-1 does not require that only a decennial

> census conducted by the United States Department of Commerce, Bureau of the Census, be used to determine the population of a municipality. Dennis v. Pendley, 518 So. 2d 688, 690 (Ala. 1987). The Alabama Code recognizes two methods for determining the population of a municipality. Sections 11-47-90 and -91 authorize a municipality to conduct its own census and provide strict guidelines to ensure the integrity of the census. ...
>
> "....
>
> "The record indicates that the City of Bridgeport failed to comply with these statutory guidelines. There is no evidence of record that the appointed enumerator, John Lewis, was ever confirmed by the city council. The record also reveals that the college students that assisted Lewis with the census were employed by him and were not appointed or confirmed by the mayor. In addition, there is no evidence of record to indicate that the students took the oath required of enumerators. The individual who conducted the actual count or tally of the census papers, Inda Galovich, also was not appointed or confirmed as a census enumerator. The final results of the census were never certified under seal nor filed with the Alabama Secretary of State. Clearly, the City of Bridgeport has failed to comply with the statutes governing the census-taking process."

571 So. 2d at 1091-92.

The main opinion focuses on the statement in City of Bridgeport that "[t]he Alabama Code recognizes two methods for determining the population of a municipality." 571 So. 2d at 1091. If the Bridgeport Court was attempting to state a "default rule" that there are only two ways for a municipality

to determine population for any given statutory end, the Court's failure to mention or even cite § 11-40-6 in support of that conclusion is inconsistent with the main opinion's confidence in the present case in the general applicability of the last sentence of the first paragraph of § 11-40-6. Further, the main opinion, I submit, ignores the context of the case. The essential holding of City of Bridgeport is that if a municipality wishes to conduct its own census, it must do so in compliance with the requirements prescribed for a municipal self-census in § 11-47-90 and § 11-47-91. Bridgeport could not prove such compliance and therefore lost the case.[22]

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[22]The main opinion notes that Bridgeport argued that "a 'municipality has common law authority to conduct a population count by "means properly serviceable to that end,"'" but that this Court summarily stated that "we find no merit to this argument." 571 So. 2d at 1091; see ___ So. 3d at ___ n.17. Again, the Bridgeport Court's statement must be considered in the context of the fact that the City was attempting to rely upon a self-census that did not meet requirements expressly imposed by the legislature in §§ 11-47-90 and 11-47-91 for such a census. It is axiomatic that where the legislature has expressly spoken to a particular issue the common law is displaced. Thus, there was no merit to Bridgeport's claiming "common law authority" to perform a municipal self-census. In contrast, Pike Road based its municipal population on the United States Census Bureau's 2013 estimate of the population of Pike Road, not on a self-census that failed to comply with the applicable statutes as Bridgeport attempted to do.

The main opinion overlooks an enlightening case cited by the Bridgeport Court, Dennis v. Pendley, 518 So. 2d 688 (Ala. 1987). Dennis involved the City of Clanton's attempt to hold a wet-dry referendum on November 4, 1986. The attempt was challenged, in part, on the basis that Clanton had not proved that it had the requisite population of 7,000 inhabitants for eligibility to hold such a referendum. The trial court enjoined Clanton from holding the referendum.

This Court reversed the judgment of the trial court. In doing so, the Dennis Court first turned aside the appellee's citation of a case that appeared to set a default rule for determining a municipality's population because, as with City of Bridgeport, the context of the Court's statement had to be kept in mind. The Dennis Court explained:

> "Appellee Pendley argues that, based on the authority of Alabama Citizens Action Program v. Kennamer, 479 So. 2d 1237 (Ala. 1985), only a preceding decennial census may be used to determine population for purposes of § 28-2A-1. We disagree. Kennamer's statement that '[i]n the absence of a designation to the contrary the population of cities for the purposes of Act No. 84-408 is determined by the last preceding federal decennial census,' 497 So. 2d at 1242, must be read in the context of the facts of that particular case. There, the question was which of two decennial censuses to use, not whether, if available, something other than a decennial census could be reasonably utilized to

> obtain a valid population count. We find that the interim census conducted by the United States Department of Commerce, Bureau of the Census, which determined Clanton's population to be 7,403 as of September 27, 1986, does serve just such a function."

518 So. 2d at 690 (emphasis omitted).

The Dennis Court then noted that the purpose behind the population threshold for holding a wet-dry referendum would not be thwarted by allowing a municipality's population to be determined more frequently than every 10 years.

> "Section 28-2A-1 makes no provision for how population is to be determined. It is the court's function to make clear the intent of the legislature when some degree of ambiguity is found in a statute. Sutherland Stat. Const., § 45.02 (4th ed. 1984). The primary rule of statutory construction is to ascertain and effectuate legislative intent. Alabama v. Tennessee Valley Authority, 467 F. Supp. 791 (N.D. Ala. 1979). See also State v. AAA Motor Lines, Inc., 275 Ala. 405, 155 So. 2d 509 (1963). In attempting to ascertain the legislative intent, we can turn to § 28-2A-3[,] part of the statute itself. There, it is stated that the purpose of requiring that a municipality have a population of at least 7,000 in order to have a municipal motion election pursuant to § 28-2A-1, is that it is 'the judgment of the legislature that municipalities with a lesser population would be unable to support and maintain such [necessary] protection [for public welfare, health, peace, and morals of the people].' This shows no basis for requiring ten-year gaps between the times that the population may be determined."

518 So. 2d at 690. Similarly, there is no reason to believe that the purposes behind the 6,000-inhabitant population threshold for increasing a municipality's police jurisdiction would be thwarted by allowing a municipality to establish its population in some way other than the federal decennial census or the municipal-census statutes.

Ultimately -- and importantly -- the Dennis Court simply relied upon the fact that the legislature had not specified the method that could be used to determine a municipality's population for purposes of conducting a wet-dry referendum.

> "Section 28-2A-1 does not say that only a decennial census can be used to determine population. We decline to reach such a conclusion in the absence of a clear legislative intent. Clanton has complied with the requirements of § 28-2A-1, and had a population in excess of 7,000 when it held its municipal option election."

518 So. 2d at 690 (emphasis added).

The same reasoning employed by this Court in Dennis was also employed in Ryan v. City of Tuscaloosa, 155 Ala. 479, 46 So. 638 (1908). As the portion of Ryan quoted in the main opinion indicates, ___ So. 3d at ___, the Ryan Court drew a negative inference from the fact that other provisions of the Alabama Constitution restricted population determinations to

the federal census results, but the provision at issue in the case did not. The Ryan Court concluded that, "in omitting mention of [the federal] census in the section under consideration, a clear intent is manifested to leave the ascertainment, upon occasion, of the population to means properly serviceable to that end." 155 Ala. at 488, 46 So. at 641. There is no reason the same inference should not be drawn as to the legislature's intent in not specifying a method in § 11-40-10 for determining a municipality's population.[23]

[23]The main opinion distinguishes Ryan on the basis of the fact that it concerned a provision of the Alabama Constitution rather than a statute, because the interpretation of a statute is at issue in this case. I see no reason why that distinction should make a difference for applying Ryan's rationale here. Indeed, the same rationale was applied in Dennis, which did involve the interpretation of a statute. In Ryan, the Court was ascertaining the intent of the drafters of the Alabama Constitution, while in this case we are charged with ascertaining the intent of the legislature in drafting § 11-40-10. But the legal principle employed in Ryan that the inclusion of a specific requirement in one provision and the omission of that requirement in another similar but more general provision indicates a purposeful intent not to limit the more general provision with the same specific requirement follows, regardless of whether the provision is a part of a constitution or a code. The legislature plainly could have specified in § 11-40-10 exactly how a municipality's population should be determined, and we know this precisely because of the existence of other statutes that turn on a municipality's population that do contain prescribed methods of determining population. In my view, to ignore this fact

turns a blind eye to one of the best clues for divining legislative intent in this case.

SHAW, Justice (dissenting).

I respectfully dissent. Justice Murdock's critique of the main opinion's statutory-construction analysis is, in my view, compelling, and, I believe, disproves a holding that Ala. Code 1975, § 11-40-10(a), allows a municipality to establish its population via only the federal decennial census or a municipal census conducted pursuant to Ala. Code 1975, § 11-47-90 et seq. Therefore, I would reverse the trial court's judgment and remand the case for further proceedings that include a determination of Pike Road's population for purposes of § 11-40-10(a).