**rel: 03/17/2017**



# SUPREME COURT OF ALABAMA

**OCTOBER TERM, 2016-2017**

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**1150326**

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**Jefferson County and Jefferson County Commission**

**v.**

**Taxpayers and Citizens of Jefferson County**

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**1150327**

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**Andrew Bennett, Mary Moore, John Rogers, and William Muhammad**

**v.**

**Jefferson County and Jefferson County Commission**

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

PER CURIAM.

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

## I. Factual Background and Procedural History

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

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

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

> such county. ... All the proceeds from any tax levied pursuant to this section less the cost of collection thereof shall be used exclusively for public school purposes, including specifically and without limitation capital improvements and the payment of debt service on obligations issued therefor."

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

Jefferson County has experienced severe financial difficulties in recent years that eventually resulted in the County's filing a petition in bankruptcy. In 2009, this Court held that Jefferson County's occupational tax, imposed since 1987, was unconstitutional. Jefferson Cty. Comm'n v. Edwards, 32 So. 3d 572 (Ala. 2009). Even though the legislature

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

attempted to pass a new occupational tax, that effort did not survive judicial scrutiny. Jefferson Cty. v. Weissman, 69 So. 3d 827 (Ala. 2011). In 2015, Jefferson County and its legislative delegation proposed local legislation in an effort to bolster the County's finances without an occupational tax. Jefferson County proposed a new 1% sales tax and a 1% use tax to replace its existing 1% education sales and use taxes, the purpose of which was to fund new warrants at lower interest rate and a lower required debt service that would allow the County to retire its existing warrants. Jefferson County intended to use the replacement taxes to pay the reduced debt service on the new warrants and to use any excess for other purposes stated in the legislation, including additional school funding and its general fund. The replacement sales and use taxes for Jefferson County were proposed as House Bill 573 ("H.B. 573").

Section 71.01(C), Ala. Const. of 1901, prevents a house of the legislature from voting on a non-appropriations bill in a session until that house passes the basic annual appropriations bills. Section 71.01(C) also provides, however, that a house of the legislature may vote on a non-appropriations bill before the basic annual appropriations bills if that house takes an extra procedural step of passing

a budget isolation resolution ("BIR") by "three-fifths of a quorum present." Section 71.01(C) does not specify whether "present" means present and voting or only present -- whether voting or not. House Rule 36 interprets this constitutional provision to require three-fifths of the members "present and voting" to pass a BIR. Before voting on H.B. 573, the House of Representatives passed a BIR on May 21, 2015, with 13 yes votes and 3 no votes from the Jefferson County delegation. The remaining members of the House either abstained or did not vote. The House passed H.B. 573 on May 21. The Senate then passed the bill, the Governor signed it, and on May 27, 2015, H.B. 573 became Act No. 2015-226, levying the local sales and use taxes at issue in this case. Act No. 2015-226 provides:

> "ENROLLED, An Act,
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> > "Relating to Jefferson County; to authorize the Jefferson County Commission to levy and assess, subject to the limitations set forth herein, a privilege or license tax against retail sales of tangible personal property and amusements (a 'sales tax') and an excise tax on the storage, use, or consumption of tangible personal property (a 'use tax'); to make legislative findings; to provide for definitions; to provide that the rate of sales and use taxes authorized by this act shall not exceed one percent; to require the simultaneous cancellation of a certain existing sales and use tax levy in the county if the taxes authorized by this act are levied by the county; to provide additional restrictions; to provide that the provisions of the state sales and use tax laws and regulations which are not inconsistent with this act shall be

applicable with respect to the taxes authorized by this act; to provide for the continued levy of the taxes authorized herein following the repeal of either or both of the state sales tax or the state use tax; to provide for the collection and enforcement of the taxes authorized by this act; to require the sales taxes authorized by this act to be collected at the point of sale; to provide for the promulgation of rules and procedures; to provide for distribution of the proceeds of the taxes authorized herein first to debt service and other amounts due with respect to certain warrants issued for certain designated public school purposes, second to the general fund of the county, third to the Jefferson County 2015 Sales Tax Fund, fourth to the Jefferson County Community Service Fund, fifth to the Birmingham-Jefferson County Transit Authority, sixth to the Birmingham Zoo, Inc., and seventh to the general fund of the county; to create and provide for the Jefferson County 2015 Sales Tax Fund; to provide for distributions from the Jefferson County 2015 Sales Tax Fund to schools serving county residents; to create and provide for the Jefferson County Community Service Committee; to create and provide for the Jefferson County Community Service Fund; to provide for the expenditure of amounts deposited in the Jefferson County Community Service Fund by the Jefferson County Community Service Committee upon recommendations from members of the Jefferson County Legislative Delegation; to provide for the termination of the taxes authorized by this act upon the defeasance or other full payment of refunding school warrants provided for herein; to provide that the provisions of this act are severable; and to provide for an effective date.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"Section 2. (a) It is the intention of the Legislature by the passage of this act to authorize the county to levy and provide for the collection of, in addition to all other taxes authorized by

law, except as provided in Section 4, a sales tax and a use tax conforming with and parallel to the state sales tax and the state use tax at a rate not exceeding the maximum rates set forth herein.

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

"(c) In view of the county's recent financial difficulties, the invalidation of certain taxes that previously provided significant revenues to the county, and the conclusion of the county's Chapter 9 bankruptcy proceedings, the Legislature hereby finds and declares that it is necessary, desirable, and in the best interests of residents of the county that the Jefferson County Commission be provided additional flexibility with respect to its revenue sources and budget.

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

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

"Section 3. (a) As used in this act, the following words, terms, and phrases shall have the following respective meanings except where the context clearly indicates a different meaning:

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

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

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

"(4) COUNTY. Jefferson County, Alabama.

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

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

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

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

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

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

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

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

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

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

"Section 4. (a) Subject to subsection (d) of this section, the county commission is authorized,

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

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

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

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

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

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

"Section 6. Each person engaging or continuing in a business subject to the sales taxes authorized to be levied by this act shall add to the sales price or admission fee and collect from the purchaser or the person paying the admission fee the amount due by the taxpayer on account of the sale or admission. It shall be unlawful for any person subject to the sales taxes authorized to be levied by this act to fail or refuse to add to the sales price or admission fee and not collect from the purchaser or person paying the admission fee the amount required to be added to the sale or admission price. It shall be unlawful for any person subject to the sales taxes authorized to be levied by this act to refund or offer to refund all or any part of the amount collected or to absorb or advertise directly or indirectly the absorption or refund of any portion of such tax or taxes. The sales taxes authorized by this act shall conclusively be presumed to be a direct tax on the retail consumer, pre-collected for the purpose of convenience only.

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

"Section 8. All provisions of the state sales tax statutes and state use tax statutes with respect

to the payment, assessment, and collection of the state sales tax and state use tax, making of reports, keeping and preserving records, interest or penalties, or both, for failure to pay such taxes or late payment of such taxes, promulgating rules and regulations with respect to the state sales tax and state use tax, and the administration and enforcement of the state sales tax statutes and state use tax statutes shall apply to the taxes authorized to be levied by this act, except for the rate of tax and except where otherwise inapplicable or otherwise expressly provided for by this act. The county and any designee or agent shall have and exercise the same powers, duties, and obligations with respect to the taxes authorized to be levied under this act that are provided the Department of Revenue and the Revenue Commissioner by the state sales tax statutes or state use tax statutes or provided the county under Act 405. All provisions of the state sales tax statutes and state use tax statutes or of Act 405 that are made applicable by this act to the taxes authorized to be levied under this act, and the administration and enforcement of this act, are incorporated by reference and made a part of this act as if fully set forth herein.

"Section 9. (a) The proceeds of the taxes authorized herein collected each month by the county, after any deductions for cost of collection, shall be distributed at such times as shall be directed by the county commission in the priority and respective amounts set forth below:

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

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

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

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

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

Community Service Fund to be expended as provided in Section 11.

"(5) Fifth, to the extent that there remain additional proceeds of the taxes authorized to be levied herein following the applications authorized in subdivisions (1), (2), (3), and (4), such remaining additional proceeds, up to two million dollars ($2,000,000) per fiscal year of the county, shall be paid over to the Birmingham-Jefferson County Transit Authority for each of the first 10 fiscal years of the county following the adoption of this act, and thereafter up to one million dollars ($1,000,000) per fiscal year of the county.

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

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

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

"Section 10. (a) There is hereby created a governmental fund of the county to be designated the Jefferson County 2015 Sales Tax Fund. The county commission shall maintain the 2015 Sales Tax Fund and shall administer it according to its normal fund administration procedures.

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

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

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

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

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

"Section 11. (a) There is hereby created the Jefferson County Community Service Committee. The committee shall consist of four members, one of whom shall be elected by each of the Jefferson County

Democratic House Delegation, the Jefferson County Republican House Delegation, the Jefferson County Democratic Senate Delegation, and the Jefferson County Republican Senate Delegation. Members of the Jefferson County Legislative Delegation shall not be eligible for election to the committee. Members of the committee shall be elected at a meeting of the Jefferson County Legislative Delegation held in the first year of each quadrennium of the Legislature and shall be residents and qualified electors of the county. The committee shall establish rules and procedures for its proceedings and activities.

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

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

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

"(2) To support the performing arts;

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

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

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

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

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

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

"Section 12. The taxes authorized to be levied by this act shall be levied only for so long as any refunding school warrants are outstanding and are not defeased or otherwise fully paid, and when all refunding school warrants have been fully paid in accordance with the terms thereof, the levy of the taxes authorized by this act shall terminate unless extended by law.

"Section 13. The provisions of this act are severable. If a court of competent jurisdiction

> adjudges invalid or unconstitutional any clause, sentence, paragraph, section, or part of this act, the judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this act, but the effect of the decision shall be confined to the clause, sentence, paragraph, section, or part of this act adjudged to be invalid or unconstitutional.
>
> "Section 14. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law."

On July 20, 2015, Bennett, Moore, Rogers, and Muhammad (hereinafter "the class plaintiffs") filed in the Jefferson Circuit Court a class action against Jefferson County on behalf of a purported class composed of "persons or entities who pay or are otherwise subject to franchise, excise, and privilege license taxes ('sales and use taxes') on receipts from sales made within Jefferson County," challenging the constitutionality of Act No. 2015-226. On August 13, the County adopted a resolution levying sales and use taxes pursuant to Act No. 2015-226 authorizing the County to implement the taxes, to issue approximately $595 million in warrants, and to pledge a portion of the taxes to pay the cost of servicing the debt created by the issuance of the warrants. On the same day, pursuant to § 6-6-751, Ala. Code 1975, the County parties filed in the trial court a petition, seeking to validate the proposed issuance and sale by the County of its limited-obligation refunding warrants, the sales and use taxes

levied by the County pursuant to the resolution adopted by the Commission on August 13 and Act No. 2015-226, and the pledge of the proceeds of the sales and use taxes for the payment of the warrants.[3]

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

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

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

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

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

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

## II. Standard of Review

> "In Monroe v. Harco, Inc., 762 So. 2d 828, 831 (Ala. 2000), this Court restated the long-standing rules governing review of acts of the Legislature under constitutional attack:
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> > "'"In reviewing [a question regarding] the constitutionality of a statute, we 'approach the question with every presumption and intendment in favor of its

validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government.'" Moore v. Mobile Infirmary Ass'n, 592 So. 2d 156, 159 (Ala. 1991) (quoting Alabama State Fed'n of Labor v. McAdory, 246 Ala. 1, 9, 18 So. 2d 810, 815 (1944)). Moreover, "[w]here the validity of a statute is assailed and there are two possible interpretations, by one of which the statute would be unconstitutional and by the other would be valid, the courts should adopt the construction [that] would uphold it." McAdory, 246 Ala. at 10, 18 So. 2d at 815. In McAdory, this Court further stated:

> "'"[I]n passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a coordinate branch of the government. All these principles are embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond reasonable doubt that it is violative of the fundamental law."
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> "'246 Ala. at 9, 18 So. 2d at 815 (citation omitted). We must afford the Legislature the highest degree of deference, and construe its acts as constitutional if their language so permits. Id.'"

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

III. Retroactive Application of § 71.01(G)

In their initial brief on appeal, the County parties first argued that this Court should reverse the trial court's judgment either because the issue presented a nonjusticiable political question or, alternatively, because Act No. 2015-226 was not unconstitutional in that the BIR that enabled the House to consider H.B. 573 was passed in accordance with a long-standing internal rule of the House. The taxpayers urged this Court to decide the issue, i.e., it did not present a nonjusticiable political question, and argued that we should affirm the trial court's judgment because, they argued, Act No. 2015-226 was unconstitutional in that the BIR that allowed the House to consider H.B. 573 out of order was not passed in accordance with the quorum requirements of § 71.01(C). After amendment no. 14 passed in the November 8 general election, this Court requested briefs from the parties on the issue whether the passage of amendment no. 14 retroactively validated Act No. 2015-226 and therefore rendered the BIR issue moot.

The County parties argue that § 71.01(G) expressly applies retroactively and validates the BIR underlying Act No. 2015-226 because that BIR was passed in accordance with House Rule 36. Therefore, the County parties argue, the basis for

the trial court's judgment in this case is no longer valid and the judgment should be reversed.

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

> "It is in the general true that the province of an appellate court is only to enquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the

> law be constitutional, and of that no doubt in the present case has been expressed, I know of no court which can contest its obligation. ... In such a case the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside."

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

> "'[T]his Court has often noted that "retrospective application of a statute is generally not favored, absent an express statutory provision or clear legislative intent that the enactment apply retroactively as well as prospectively." This general rule is, however, subject to an equally well-established exception, namely, that "[r]emedial statutes ... are not within the legal [concept] of 'retrospective laws,' ... and do operate retroactively, in the absence of language clearly showing a contrary intention." In other words, "[r]emedial statutes--those which do not create, enlarge, diminish, or destroy vested rights -- are favored by the courts, and their retrospective operation is not obnoxious to the spirit and policy of the law." Remedial statutes are exemplified by those that "'impair no contract or vested right, ... but preserve and enforce the right and heal defects in existing laws prescribing remedies.'" Such a statute "may be applied on appeal, even if the effective date of that statute occurred while the appeal was pending, and even if the effective date of the statute was after the judgment in the trial court."'"

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

The County parties contend that § 71.01(G) is remedial in that it "heals defects in existing laws," if any, by providing

that BIRs authorizing the consideration of local laws passed before November 8, 2016, such as the one at issue here, are "ratified, approved, validated, and confirmed." Therefore, the County parties argue, Act No. 2015-226 was properly passed and "the newly ratified amendment, on its face, definitively disposes of the issues raised by the trial court's opinion in this case." County parties' supplemental brief, at 6.

The County parties next argue that retroactive application of § 71.01(G) to this case is appropriate because the trial court's judgment is not the Judicial Department's final word on the issue here--this Court has not spoken. Although future changes in the law cannot alter the outcome of a truly final judgment, the County parties argue, there is a difference between a final judgment for the purpose of applying a retroactive law and a final judgment for the purpose of being appealable. Retroactive laws, they contend, may be applied to judgments that are pending on appeal, but such laws cannot be applied to judgments that are final in the sense that all appellate rights have been exhausted. In Ex parte Jenkins, 723 So. 2d 649, 656 (Ala. 1998), this Court explained that "'"a judicial Power" is one to render dispositive judgments.'" (Quoting Plaut, 514 U.S. at 219 (quoting, in turn, Easterbrook, Presidential Review, 40 Case

W. Res. L. Rev. 905, 926 (1990)) (emphasis omitted).) This Court further stated in Jenkins that there are types of legislation that infringe upon judicial power:

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

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

> "'It is the obligation of the last court in the [Article III] hierarchy that rules on the case to give effect to Congress's latest enactment, even when that has the effect of overturning the judgment of an inferior court, since each court, at every level, must "decide according to existing laws." ... Having achieved finality, however, a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive

> legislation that the law applicable to that very case was something other than what the courts said it was.'
>
> "Plaut, 514 U.S. at 227 (emphasis in original) (citations omitted). Thus, the core judicial power is the power to declare finally the rights of the parties, in a particular case or controversy, based on the law at the time the judgment becomes final."

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

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

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

Jefferson Cty. v. Braswell, 407 So. 2d 115, 117 (Ala. 1981).

The taxpayers also argue that §§ 13 and 95, Ala. Const. of 1901, prohibit retroactive application of § 71.01(G) to their vested rights and the trial court's final judgment,

which, they argue, are afforded protection under the Alabama Constitution. McCullar v. Universal Underwriters Life Ins. Co., 687 So. 2d 156, 165 (Ala. 1996) ("A cause of action has vested if it has accrued at the time of the legislation or the judgment. It accrues 'when a person sustains a legal injury upon which an action can be maintained.'"); Mayo v. Rouselle Corp., 375 So. 2d 449, 451 (Ala. 1979) (holding that the right to bring an action can be modified, limited, or repealed as the legislature sees fit, except where such action has already accrued).

Section 13, Ala. Const. of 1901, guarantees "[t]hat all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay." The taxpayers argue that § 13 prohibits the retroactive application of § 71.01(G) because, they say, § 13 preserves a remedy for their cause of action, which they say as accrued and their right vested. Alabama courts must follow the mandate of § 13, they argue, regardless of the intent or motives of the legislature. Lankford v. Sullivan, Long & Hagerty, 416 So. 2d 996, 1000 (Ala. 1982) ("'Where legislation infringes upon a right protected by § 13, however, we are

dealing with a limitation on the power of the legislature. By determining the validity of such legislation, we do not pass judgment on its wisdom, but follow our own supreme mandate to uphold the constitution of this state.'"(quoting Fireman's Fund American Ins. Co. v. Coleman, 394 So. 2d 334, 353 (Ala. 1980)(Shores, J., concurring in the result))).

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

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

(Quoting Pickett v. Matthews, 238 Ala. 542, 545, 192 So. 261, 263 (1939)(emphasis added in Autrey).) The taxpayers then argue that § 13 prohibits taking away rights that vested before a lawsuit is filed. In this case, they say, the County parties sued seeking to validate Act No. 2015-226 and the new taxes levied therein. In defense of that action, the taxpayers state, the taxpayers argued that Act No. 2015-226

was unconstitutional because of the legislature's failure to pass a proper BIR. For purposes of § 13, the taxpayers argue, their defense accrued and right to a remedy vested as of the date of the enactment of Act No. 2015-226 and before the legislature exercised its power to propose amendment no. 14; therefore, they contend, applying § 71.01(G) retroactively would violate their rights under § 13.

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

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

The taxpayers, citing Jefferson County Commission v. Edwards, 49 So. 3d 685, 691 (Ala. 2010), maintain that this Court has held that § 95 prohibits "the legislature from acting on matters that are within the breast of the judicial system by taking away a cause of action" after a lawsuit has been filed. Section 95, the taxpayers argue, prohibits any legislative encroachment upon a right asserted in a pending case. Ex parte Alfa Fin. Corp., 762 So. 2d 850, 852 (Ala. 1999)(holding

that § 95 prevented the legislature from taking away existing claim where suit had been filed before enactment of statutory amendment); United Cos. Lending Corp. v. Autrey, 723 So. 2d at 622 (concluding, in considering whether amended Code section should be afforded retroactive effect to bar plaintiffs' claims and damages, that right to recovery had vested within the meaning of § 13 of the Constitution, and any attempt to reduce the damages recoverable in the action would violate the last sentence of § 95).

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

so."'" Brandy v. City of Birmingham, 73 So. 3d 1233, 1242 (Ala. 2011) (internal citations omitted), and (2) "[w]hen there is a conflict, or apparent conflict, between sections of the Constitution, the more specific will prevail as against a more general statement pertaining to the same subject matter." Jefferson Cty. v. Braswell, 407 So. 2d 115, 119 (Ala. 1981). The County parties insist that § 71.01(G) is the more specific provision when compared to the other constitutional sections argued by the taxpayers. By its very terms, they say, § 71.01(G) applies only to BIRs underlying local laws passed under the procedure stated in § 71.01(C) before November 8, 2016. Baldwin Cty. v. Jenkins, 494 So. 2d 584, 588 (Ala. 1986)("[I]n cases of conflicting statutes on the same subject, the latest expression of the legislature is the law.").

The County parties argue that retroactive application of § 71.01(G) does not violate § 13 because no one has a vested right in the House's voting procedure on BIRs. Section 71.01(G), they argue, applies retroactively to this case because, they say, no person has a "vested right" to sue based on the voting procedure used in the House to pass BIRs. "[N]o person has a vested right in a particular remedy ... or in particular modes of procedure." Perdue v. Green, 127 So. 3d 343, 390 (Ala. 2012) (internal quotation marks omitted).

Section 71.01(G) expressly applies retroactively to "any resolution authorizing the consideration of a bill proposing a local law adopted before November 8, 2016." The County parties maintain that the reach of § 71.01(G) includes BIRs underlying local acts involved in cases still pending before the State's trial courts and on appeal, as well as BIRs that have not been the subject of litigation. Those parties with actual vested rights, the County parties say, would be local governments like Jefferson County, hospital boards, and schools that constructed courthouses, hospitals, and school buildings in reliance on the local acts that were retroactively validated by § 71.01(G).

The County parties also argue that retroactive application of § 71.01(G) does not violate § 95 because, they argue, the constitutional amendment is an act of the people of Alabama, not an act of the legislature purporting to take away a cause of action; § 95, they argue, bars legislation, not constitutional amendments. The County parties note that this Court held in Jefferson County Commission v. Edwards, supra, that § 95 barred the retroactive application of a new statute that attempted to cure an old tax statute because the new statute took away a cause of action. "But a proposal to amend the Constitution is not an act of legislation." Bonds v.

State Dep't of Revenue, 254 Ala. 553, 554, 49 So. 2d 280, 281 (1950). Because § 95 does not apply to constitutional amendments, the County parties argue, § 71.01(G) applies retroactively to cure any defect in Act No. 2015-226.

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

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

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

their vested rights and defenses and violates their constitutional right to due-process protection.

Finally, the taxpayers argue that the constitutional right to have the annual budgets passed before other bills is a substantive, not a remedial, vested right of which citizens can be deprived only prospectively, citing Ex parte Bonner, 676 So. 2d 925, 926 (Ala. 1995), in which this Court stated:

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

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

This Court has previously held that "there is no reason why a constitutional amendment cannot by the use of express and clear terms validate and confirm an act of the legislature previously enacted but invalid on account of a failure to observe provisions of the State Constitution." Bonds, 254

Ala. at 555, 49 So. 2d at 282. See also Ex parte Southern Ry., 556 So. 2d 1082, 1090 (Ala. 1989) ("We have been cited to Alabama cases recognizing two exceptions to the general rule that subsequent amendments to a constitution cannot revive a statute that is ineffective because of constitutional deficiencies that existed when the statute was passed. The first exception is applicable where the subsequent constitutional amendment by clear and express terms validates and confirms the statute that had been invalid on account of its failure to comply with constitutional provisions that existed at the time of its passage. Bonds v. State Dep't of Revenue, 254 Ala. 553, 49 So. 2d 280 (1950)."). Because amendment no. 14, now § 71.01(G), Ala. Const. of 1901, used "clear and express terms" to validate and confirm the procedure used to pass BIRs underlying local bills before November 8, 2016, we agree with the County parties, and we hold that § 71.01(G) can properly be applied retroactively to cure the argued constitutional deficiency affecting Act No. 2015-226. Our holding that § 71.01(G) applies retroactively to Act No. 2015-226 does not, however, dispose of this case. We now must address the alternative arguments made by the taxpayers challenging the constitutionality of Act No. 2015-226.

IV. The Taxpayers' Alternative Constitutional Challenges

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

A. Section 105, Ala. Const. of 1901

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

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

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

The taxpayers first argue that § 105 voids Act No. 2015-226 because the matter of Act No. 2015-226 is subsumed by § 40-12-4, Ala. Code 1975. "A matter is 'provided for by a

general law' within the meaning of § 105 if the 'subject [of the local act] is already subsumed by [a] general statute." City of Homewood v. Bharat, LLC, 931 So. 2d 697, 701 (Ala. 2005)(quoting Peddycoart v. City of Birmingham, 354 So. 2d 808, 813 (Ala. 1978)). "'The subject of a local act is deemed to be "subsumed" in a general law if the effect of the local law is to create a variance from the provisions of the general law.'" Bharat, 931 So. 2d at 702 (quoting Opinion of the Justices No. 342, 630 So. 2d 444, 446 (Ala. 1994)(emphasis added in Bharat)).

The taxpayers argue that § 40-12-4 is the only general law that provides counties with the authority to impose sales and use taxes for educational-funding purposes. They state that counties have no general authority to levy, impose, or collect privilege taxes in the nature of sales taxes without express authority from the legislature. Jefferson Cty. v. Johnson, 333 So. 2d 143, 145 (Ala. 1976). However, they say, § 40-12-4 authorizes the levy of such privilege taxes in the nature of sales taxes but contains significant restrictions on the counties' use of educational-funding taxes, specifically, all the proceeds of such taxes must be used solely for educational purposes. Under § 40-12-4(a), for example, "[a]ll the proceeds from any tax levied pursuant to this section less

the cost of collection thereof shall be used exclusively for public school purposes, including specifically and without limitation capital improvements and the payment of debt service on obligations issued therefor." Similarly, the last sentence of § 40-12-4(b) dictates that moneys distributable to school systems operating within a county must be distributed according to the "Foundation Program" protocol for local boards of education within the county.

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

> "Both § 40-12-4 and H.B. 704 authorize the governing body of Madison County to levy sales or use taxes in order to generate revenue for the Madison County School System. They differ only in that § 40-12-4 authorizes a county-wide tax to generate revenue for all school systems within the county (including the Madison County School System), while H.B. 704 authorizes a tax only in those areas of the county served by the Madison County School System, with the revenues generated to be given only to the Madison County School System. The subject

> matter of H.B. 704 is already subsumed by § 40-12-4 and therefore § 105 prohibits its enactment."

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

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

The taxpayers maintain that a direct conflict is not required for a local law to violate § 105. If the local law

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

The taxpayers next argue that the County parties have not demonstrated any local need. The County parties, citing Miller v. Marshall County Board of Education, 652 So. 2d 759, 761-62 (Ala. 1995), argued that Act No. 2015-226 could be sustained based on the "demonstrated local need" exception to § 105. In Miller, this Court sustained a local act that authorized Marshall County to impose a sales tax in portions of the county not served by the municipal systems, with the proceeds to be provided solely to the county system. The

defenders of the local act developed an extensive evidentiary record demonstrating that over time, the three municipal school systems in Marshall County had siphoned off large numbers of students, leaving the Marshall County school system "having to operate a primarily rural school system with a greatly diminished tax base." Miller, 652 So. 2d at 761. In addition, a Public Affairs Research Council of Alabama report noted that, in the relevant time frame, the Marshall County School System was last in Alabama in local per child expenditures. Under those circumstances, the Court held that Marshall County "had a demonstrated local need that was not provided for by the general law." 652 So. 2d at 762. Miller does not apply to this case, the taxpayers argue, because the County parties did not demonstrate in the record a local need.

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

school warrants or that such refinancing is economically desirable.

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

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

> local act imposing a tax could ever be successfully challenged, because every county in the State could probably show it has a need for more funds."

775 So. 2d at 812-13.

The taxpayers maintain that there is a fundamental problem of constitutional misinterpretation with Miller's "demonstrated local need" exception to § 105: They allege that it is grounded in no constitutional language whatsoever. Decisions on constitutional law must be grounded in the constitutional text itself, and, the taxpayers argue, there is no textual basis within § 105 or any other provision of the Alabama Constitution that recognizes a "demonstrated-local-need" exception to a variance from the general law created by a local law. The taxpayers insist that § 105 establishes a bright-line rule: Local laws cannot create exceptions from general laws. They argue that Miller and the "demonstrated-local-need" exception are unsound and lack any basis in the context of § 105, and they ask this Court to overrule Miller and the demonstrated-local-need line of cases.

In response, the County parties first argue that Act No. 2015-226 is not subsumed by § 40-12-4 and does not violate § 105 because it is a nonexclusive act that meets specific local needs. The County parties state that the taxpayers argued in the trial court that Act No. 2015-226 violated § 105 on two

grounds. First, the County parties say, the taxpayers argued that § 40-12-4, a general law, is the exclusive authority under which a county may levy sales and use taxes. Second, the County parties say, the taxpayers argued that Act No. 2015-226 is subsumed by § 40-12-4.

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

Second, the County parties argue, this Court has held that "local legislation reflecting responses to local needs may be enacted. It is only when those local needs already have been responded to by general legislation that § 105 of our state Constitution prohibits special treatment by local

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

erroneous, the County parties argue, they could have presented evidence to the contrary in the trial court, but they did not. The County parties argue that Act No. 2015-226 does not violate § 105 because it represents the legislature's response to demonstrated local needs of Jefferson County that are not provided for by general law.

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

B. Section 104, Ala. Const. of 1901

Section 104 states, in pertinent part:

> "The legislature shall not pass a special, private, or local law in any of the following cases:
>
> "....
>
> "(15) Regulating either the assessment or collection of taxes, except in connection with the readjustment, renewal, or extension of existing municipal indebtedness created prior to the

> ratification of the Constitution of eighteen hundred and seventy-five;
>
> "....
>
> "(17) Authorizing any county, city, town, village, district, or other political subdivision of a county, to issue bonds or other securities unless the issuance of said bonds or other securities shall have been authorized before the enactment of such local or special law, by a vote of the duly qualified electors of such county, township, city, town, village, district, or other political subdivision of a county, at an election held for such purpose, in the manner that may be prescribed by law; provided, the legislature may, without such election, pass special laws to refund bonds issued before the date of the ratification of this Constitution;
>
> "....
>
> "(19) Creating, extending, or impairing any lien ...."

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

The taxpayers first argue that Act No. 2015-266 violates § 104(15). They state that § 4(e) of Act No. 2015-226 provides that if either or both of the State sales-tax statutes or State use-tax statutes are repealed, Jefferson County is nonetheless authorized to continue to levy, administer, collect, and enforce the sales and use taxes authorized by Act No. 2015-226. The taxpayers argue the

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

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

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

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

The taxpayers also argue that the purpose of § 104(17) is to prohibit local-law statutes authorizing refunding warrants because, they say, the general law in § 11-28-4, Ala. Code 1975, subsumes the field. The taxpayers contend that Act No. 2015-226 provides that there can be no tax levy without a prior or simultaneous issuance of refunding warrants to

refinance the existing warrants, but, they say, a local-law authorization to issue debt is prohibited by § 104(17). If Jefferson County were relying on general law as its sole authority to issue the refunding warrants, the taxpayers say, no detailed language would be necessary defining, discussing the terms and conditions of, and mandating how proceeds of refunding warrants would be used to defease the existing warrants.

Finally, the taxpayers argue that Act No. 2015-266 violates § 104(19). They argue that Act No. 2015-226 imposes a lien in connection with the authorized taxes. Section 7 of Act No. 2015-226 states that all taxes, interest, and penalties "shall constitute and be secured by a lien upon the property of any person from whom the tax or taxes are due or that is required to collect the tax or taxes." The taxpayers argue that Act No. 2015-226 is a "plain English violation" of § 104(19), which prohibits a local law "creating, extending or impairing any lien." Under § 104(19), the creation of a lien must be a general law, and, the taxpayers argue, it is impossible to say the language "creating a lien" is not violated by the clear language of Act No. 2015-226.

The County parties argue that Act No. 2015-226 does not violate any provisions of § 104. They first contend that §

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

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

Finally, the County parties argue that § 104(19) bars local laws that establish non-tax liens. The County parties state that Act No. 2015-226 authorizes only a tax lien. The County parties argue, however, that numerous local acts have authorized counties to levy sales and use taxes that expressly

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

The County parties contend that this Court has long held that "[e]ach section of the Constitution must necessarily be considered in pari materia with all other sections." Jefferson Cty. v. Braswell, 407 So. 2d 115, 119 (Ala. 1981). The County parties maintain that this Court's holding in Standard Oil Co. v. Limestone County, 220 Ala. 231, 124 So. 523 (1929), that the legislature has essentially unabridged power to provide for local levy of privilege taxes, clearly indicates that § 104 was not intended to hinder the

legislature's authority to provide for the levy and collection of privilege taxes by local law. Moreover, the County parties argue, the legislature has provided by general law broad powers to counties with regard to the administration and collection of sales and use taxes, powers that clearly include the authority to impose tax liens to enforce the collection of taxes levied. Ignoring those provisions of general law, the County parties argue, would retroactively invalidate numerous local acts.

Section 11-3-11.2(b) provides:

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

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

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

By the express terms of § 11-3-11.3(a), the County parties argue, the provisions for the enforcement and collection of the State sales and use taxes must be incorporated into the county tax levy in order for the Department of Revenue to be authorized to administer and collect the taxes. Because, they say, § 11-3-11.2(b) provides that the County "shall" have the same authority with regard to enforcement and collection as would the Department of Revenue, the provisions for the enforcement and collection of the State sales and use taxes must be incorporated into Act No. 2015-226. Those requirements, the County parties argue, are part of the general laws of the State.

Sections 40-1-2 and 40-29-20, Ala. Code 1975, provide that there shall be a lien to secure the payment of certain State taxes on all property of a person liable for such taxes. Under § 11-3-11.3(a), given that such a lien provision is applicable to the enforcement and collection of State sales and use taxes, such a provision must also apply to the levy of a local tax if the tax is to be eligible for collection by the Department of Revenue. For a county commission or any other administrator of the local tax to have the same powers as the Department of Revenue, it follows that a parallel provision establishing a lien must be incorporated into the levy of the

tax, regardless of who administers it. Therefore, the County parties conclude, the provision in Act No. 2015-226 providing for the establishment of a lien is either declarative of general law applicable to the County or is required by general law to be expressly incorporated into the Act. In either case, the County parties conclude, Act No. 2015-226 does not violate § 104(19).

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

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

The taxpayers argue that Act No. 2015-226 and the County's implementing resolutions violate §§ 45-37-162.02 and .03, Ala. Code 1975 (Local Laws, Jefferson County), which require that before the County issues new debt, it must provide notice concerning the terms of the debt and hold a public hearing. The taxpayers state that the County parties' answer to this argument is that, because the County has not yet entered into any "binding agreement" to issue debt, the time for notice or a hearing has not yet come. The problem with the County parties' position, the taxpayers argue, is

that a judgment in a validation proceeding under § 6-6-750 et seq., Ala. Code 1975, forecloses any right of a taxpayer to contest any aspect of the proposed indebtedness.

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

state that they are well aware of these requirements and will satisfy them at the appropriate time.

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

## V. The Cross-Appeal

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

> "'"[A]n appellee, though he files no cross-appeal or cross-petition, may offer in support of his judgment any argument that is supported by the record, whether it

> was ignored by the court below or flatly rejected. ..."
>
> "'....'
>
> "... Here, MAM and Morgan Keegan prevailed in the trial court and do not seek to have an 'alteration of the judgment to enlarge [their] rights.' [McMillan, Ltd. v. Warrior Drilling & Eng'g Co., 512 So. 2d 14, 25 (Ala. 1986)]. They simply argue for affirmance of the trial court's order on an alternative ground that was presented to the trial court but that was not relied upon by the trial court. Accordingly, MAM and Morgan Keegan were not required to file a cross-appeal in this case in order to challenge the denial of their motion to strike the Fund's evidentiary materials."

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

## VI. Conclusion

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

1150326 -- REVERSED.

1150327 -- APPEAL DISMISSED.

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

Shaw, J., concurs in the result.