Rel: May 28, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190947

Clay County Animal Shelter, Inc.

v.

Clay County Commission et al.

Appeal from Clay Circuit Court
(CV-18-900023)

STEWART, Justice.[1]

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[1]This case was originally assigned to another Justice on this Court; it was reassigned to Justice Stewart on February 19, 2020.

Clay County Animal Shelter, Inc. ("the animal shelter"), appeals from a judgment entered by the Clay Circuit Court ("the trial court") declaring Act No. 2018-432, Ala. Acts 2018, to be unconstitutional. The parties to this appeal have previously been before this Court in a related appeal. See Clay Cnty. Comm'n v. Clay Cnty. Animal Shelter, Inc., 283 So. 3d 1218 (Ala. 2019) ("Clay County").

Facts and Procedural History

The animal shelter is a nonprofit organization that provides food, water, medical care, spay and neutering services, and adoption services for stray and abandoned animals in Clay County. The animal shelter is a "no-kill" shelter where the animals are humanely cared for until adopted or transferred to other shelters for eventual adoption. Most of the people working at the animal shelter are unpaid volunteers. The animal shelter incurs numerous expenses associated with operating the shelter and caring for the animals. The legislature has sought to provide funding to the animal shelter with proceeds from the tobacco tax authorized in Clay County pursuant to § 45-14-244, Ala. Code 1975 (Local Laws, Clay County).

This Court set forth the following in Clay County:

"In March 2017, the legislature enacted Act No. 2017-65, Ala. Acts 2017, which provides, in pertinent part:

> " 'Section 1. This act shall apply only in Clay County.
>
> " 'Section 2. (a) The proceeds from the tobacco tax authorized in Clay County pursuant to Section 45-14-244 of the Code of Alabama 1975, and as further provided for in Sections 45-14-244.01 to 45-14-244.03, inclusive, and Section 45-14-244.06 of the Code of Alabama 1975, less two percent of the actual cost of collection, which shall be retained by the Department of Revenue, shall be distributed to the Clay County General Fund to be expended as follows:
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> " '....
>
> " '(3) Eighteen percent to the Clay County Animal Shelter. The Clay County Animal Shelter shall annually report to the county commission regarding the expenditure of the funds in the preceding year.
>
> " '....
>
> " 'Section 4. This act shall become effective on October 1, 2017.'

"In July 2017, the [Clay] [C]ounty [C]ommission and three individuals (hereinafter referred to collectively as 'the plaintiffs') initiated an action in the trial court against the

animal shelter and certain state officials. In their complaint, the plaintiffs sought injunctive relief and a judgment, pursuant to § 6-6-220 et seq., Ala. Code 1975, declaring that part of Act No. 2017-65 directing an expenditure of a portion of Clay County's tobacco-tax proceeds to the animal shelter to be unconstitutional.

"The plaintiffs asserted that Act No. 2017-65 was improperly enacted without a sufficient number of legislative votes in violation of Article IV, § 73, Ala. Const. 1901, which provides:

> " 'No appropriation shall be made to any charitable or educational institution not under the absolute control of the state, other than normal schools established by law for the professional training of teachers for the public schools of the state, except by a vote of two-thirds of all the members elected to each house.'

"The plaintiffs also filed a motion seeking a preliminary injunction to temporarily restrain distribution of Clay County's tobacco-tax receipts to the animal shelter. The animal shelter moved to dismiss the plaintiffs' complaint.

"The trial court conducted a hearing regarding the county commission's motion for a preliminary injunction. On October 26, 2017, the trial court entered an order requiring the portion of Clay County's tobacco-tax receipts that would be distributed to the Clay County General Fund to be disbursed as an expenditure to the animal shelter under Act No. 2017-65 to be paid into the trial-court clerk's office and held in an escrow account pending the entry of a final judgment. On January 16, 2018, the trial court conducted a bench trial, at which only documentary evidence was admitted.

> "At the trial, the county commission argued that Act No. 2017-65 appropriated public funds to the animal shelter and that, because the animal shelter is a charitable organization not under the absolute control of the state, the appropriation was subject to the requirements of § 73, instead of the ordinary requirements for the passage of bills by the legislature. As noted above, § 73 requires that applicable appropriations be approved 'by a vote of two-thirds of all the members elected to each house.' It was undisputed that Act No. 2017-65 did not receive the vote of two-thirds of all the members elected to each house. The county commission argued that that portion of Act No. 2017-65 purporting to distribute funds to the Clay County General Fund to be disbursed to the animal shelter is, therefore, unconstitutional.
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> "In March 2018, the legislature enacted Act No. 2018-432, Ala. Acts 2018, 'to amend Section 2 of Act 2017-65 of the 2017 Regular Session, now appearing as Section 45-14-244.07 of the Code of Alabama 1975, to further provide for the distribution of the local tobacco tax; and to provide for retroactive effect.'[2] In relevant part, Act No. 2018-432 purports to amend § 45-14-244.07 to increase the share of Clay County's tobacco-tax revenue to be distributed to the Clay County General Fund to be disbursed to the animal shelter from 18% to 20%.
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> "On April 13, 2018, the trial court entered a final judgment declaring that the county commission had failed to meet its burden of proving that the challenged portion of Act No. 2017-65 is unconstitutional. The trial court also ordered 'that the distribution of the proceeds from the tobacco tax

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[2]It is undisputed that the enactment of Act No. 2018-432 satisfied the requirements of Article IV, § 73, Ala. Const. 1901 (Off. Recomp.).

authorized in Clay County be immediately distributed in accordance with Act [No.] 2017-65, or any law superseding or replacing said Act.' The plaintiffs filed a motion to stay execution of the trial court's judgment, asserting, among other things:

> " '[The p]laintiffs note [that] the Court's judgment directs the county to "immediately distribute [the tobacco-tax proceeds] in accordance with Act [No.] 2017-65, or any law super[s]eding or replacing said Act." (emphasis added). Although not expressly stated, the Court's inclusion of "any law super[s]eding or replacing said Act" appears to refer to ... Act [No.] 2018-432 ... which purports to provide retroactive appropriations to the [a]nimal [s]helter from the County's tobacco tax receipts.
>
> " '....
>
> " '11. [The county commission] will seek a declaratory judgment that [Act No. 2018-432] is void, invalid, and unconstitutional ... and therefore, [the county commission's] appeal of the judgment in the instant case will be determinative of whether the funds held in escrow are due to be released to the [a]nimal [s]helter.'

"The trial court conducted a hearing regarding the plaintiffs' motion and entered an order providing as follows:

> " '[The p]laintiffs' motion to stay the implementation of Act [No.] 2018-432, pending a hearing on the merits of [the county commission's] challenge to said Act is GRANTED.

> " '[The p]laintiffs' request to stay the implementation of Act [No.] 2017-65 is DENIED.' "

283 So. 3d at 1220-22 (footnotes omitted).

On appeal in Clay County, the Clay County Commission ("the county commission") argued that the trial court had erred in determining that it had failed to meet its burden of proving that the provision of Act No. 2017-65 directing that a portion of Clay County's tobacco-tax proceeds be distributed to the Clay County General Fund to be disbursed to the animal shelter had received a sufficient number of legislative votes to become law. Specifically, the county commission argued that the portion of Act No. 2017-65 directing that a portion of Clay County's tobacco-tax proceeds be disbursed to the animal shelter was an appropriation of funds by the legislature without a two-thirds vote of all the members elected to each house and, therefore, violated Article IV, § 73, Ala. Const. 1901 (Off. Recomp.). This Court agreed, holding:

> "Legislative appropriations must comply with the requirements of the Alabama Constitution, including § 73. The plain meaning of the language in Act No. 2017-65 provides for an appropriation to the animal shelter of 18% of Clay County's tobacco-tax proceeds. The animal shelter does not dispute that it is a 'charitable or educational institution not under the

> absolute control of the state' within the meaning of § 73, nor does it argue that an appropriation to it would be exempt from the voting requirements of § 73. Thus, the legislature's appropriation to the animal shelter had to receive 'a vote of two-thirds of all the members elected to each house' to comply with § 73. It did not. That part of Act No. 2017-65 appropriating 18% of Clay County's tobacco-tax proceeds, i.e., Section 2(a)(3), is, therefore, unconstitutional."

Clay County, 283 So. 3d at 1234-35. This Court reversed the trial court's judgment and remanded the cause for further proceedings.

As mentioned in Clay County, in March 2018 the legislature enacted Act No. 2018-432, Ala. Acts 2018, to amend Section 2 of Act No. 2017-65. Act No. 2018-432 provides:

> "ENROLLED, An Act,
>
> "Relating to Clay County; to amend Section 2 of Act 2017-65 of the 2017 Regular Session, now appearing as Section 45-14-244.07 of the Code of Alabama 1975, to further provide for the distribution of the local tobacco tax; and to provide for retroactive effect.
>
> "BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
>
> "Section 1. Section 2 of Act 2017-65 of the 2017 Regular Session, now appearing as Section 45-14-244.07 of the Code of Alabama 1975, is amended to read as follows:
>
> " '§ 45-14-244.07.

"'(a) The proceeds from the tobacco tax authorized in Clay County pursuant to Section 45-14-244, and as further provided for in Sections 45-14-244.01 to 45-14-244.03, inclusive, and Section 45-14-244.06, less two percent of the actual cost of collection, which shall be retained by the Department of Revenue, shall be distributed to the Clay County General Fund to be expended as follows:

"'(1) Thirty-two percent to the Alabama Forestry Commission to be utilized for fire protection in the county, as provided in subsection (b).

"'(2) Twenty percent to the Clay County Industrial Development Council.

"'(3) Twenty percent to the Clay County Animal Shelter. The Clay County Animal Shelter shall annually report to the county commission regarding the expenditure of the funds in the preceding year.

"'(4) Thirteen percent to the Clay County Commission to be deposited into a special fund in the county treasury and, subject to an application process developed by the county commission, disbursed to water districts in the county for the purpose of installing feeder lines. The county commission shall have the authority to develop guidelines, promulgate rules, and institute an application process to provide for the disbursement of the funds.

> " '(5) Fifteen percent shall be retained in the Clay County General Fund to be utilized as are other county funds.
>
> " '(b) The funds distributed to the Alabama Forestry Commission shall be payable on a quarterly or monthly basis and will be expended solely for purposes of fire protection, prevention, and fire safety education in order to encourage a strong volunteer firefighters' network in Clay County. The proceeds shall be distributed to volunteer fire departments in the county as determined by rules and regulations set up by the Alabama Forestry Commission and the Clay County Volunteer Firefighters Association on an equal basis, share and share alike. None of the proceeds shall be used for salaries nor to pay members for any performance of duties associated with the department. Any member fire department which fails to meet the standards and criteria shall be denied its share of the funding. The association shall give noncomplying member fire departments proper notice of all deficiencies and a reasonable time period to correct the deficiencies before any funds are denied.'
>
> "Section 2. This act shall become effective on October 1, 2017."

Act No. 2018-432, in part, amended § 45-14-244.07, Ala. Code 1975 (Local Laws, Clay County), to increase the share of Clay County's tobacco-tax proceeds to be distributed to the Clay County General Fund to be

disbursed to the animal shelter from 18% to 20%. Act No. 2018-432 also amended § 45-14-244.07 to decrease from 15% to 13% the share of Clay County's tobacco-tax proceeds to be disbursed to the county commission for deposit into a special fund for further disbursement to water districts in Clay County for the purpose of installing feeder lines.

While Clay County was still pending on appeal, the county commission, Donald M. Harris, and Mary M. Wood ("the plaintiffs") sued the animal shelter seeking a judgment declaring that Act No. 2018-432 violates of Article IV, § 111.03 and § 95, Ala. Const. of 1901 (Off. Recomp.). The animal shelter answered the plaintiffs' complaint, and moved the trial court to lift the stay implementing Act No. 2018-432 and to release the funds previously ordered by the trial court to be held in escrow.

The plaintiffs amended their complaint for declaratory relief to seek a judgment declaring that Act No. 2018-432 also violates "the single-subject rule" set forth in Article IV, § 45, Ala. Code 1975 (Off. Recomp.). The plaintiffs alleged that Act No. 2018-432 contains more than one subject because it both alters an existing earmark and simultaneously appropriates funds to the animal shelter; because it provides for

appropriations for multiple purposes and to multiple non-State agencies, i.e., volunteer fire departments and the animal shelter; because the appropriation to the animal shelter is an additional and distinctive subject that was not a subject of any prior local acts concerning Clay County's tobacco tax; and because its title is devoid of any reference to the fact that it provides an appropriation to the animal shelter.

On October 7, 2019, the animal shelter filed a counterclaim seeking declaratory and injunctive relief. The animal shelter sought, among other things, a judgment declaring that Act No. 2018-432, insofar as it appropriates a portion of Clay County's tobacco-tax proceeds to the animal shelter, is constitutional. The animal shelter also sought an order releasing to it the funds previously ordered by the trial court to be held in escrow by the trial-court clerk.

The animal shelter moved the trial court for a judgment on the pleadings, contending that Act No. 2018-432 is constitutional and requesting that it be allowed to access the funds held in escrow by the trial-court clerk. The animal shelter argued, among other things, that Act No. 2018-432 does not violate § 45 because, it asserted, the language in

the title to the act providing "for the distribution of the local tobacco tax" is the single subject of Act No. 2018-432 and, it asserted, the additional language contained in the act that describes how and to whom the tax proceeds shall be disbursed is related to the subject and necessary to make the act complete. The plaintiffs also filed a motion for a judgment on the pleadings, contending that they were entitled to a judgment as a matter of law declaring Act No. 2018-432 to be null, void, and unenforceable because it violated § 45.

The trial court entered a judgment finding that Act No. 2018-432 violates § 45 and is "unconstitutional, void and invalid." The trial court entered a subsequent order denying the animal shelter's motions to lift the stay and to order the release of the funds held in escrow by the trial-court clerk. The animal shelter appealed. This Court granted motions filed by the State of Alabama and Senator Jimmy Holley, Chair of the Legislative Council of the Alabama Legislature, to file amicus curiae briefs in support of the animal shelter. The county commission is the only plaintiff that filed an appellee's brief with this court.

Standard of Review

An appellate court reviews constitutional challenges to legislative enactments applying the de novo standard. Northington v. Alabama Dep't of Conservation & Nat. Res., 33 So. 3d 560, 564 (Ala. 2009). Acts of the legislature are presumed to be constitutional. State v. Alabama Mun. Ins. Corp., 730 So. 2d 107, 110 (Ala. 1998). Accordingly, we approach the question of the constitutionality of a legislative act "'"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."'" Monroe v. Harco, Inc., 762 So. 2d 828, 831 (Ala. 2000) (quoting Moore v. Mobile Infirmary Ass'n, 592 So. 2d 156, 159 (Ala. 1991), quoting in turn Alabama State Fed'n of Labor v. McAdory, 246 Ala. 1, 9, 18 So. 2d 810, 815 (1944)). This is so, because "it is the recognized duty of the court to sustain the act unless it is clear beyond a reasonable doubt that it is violative of the fundamental law." McAdory, 246 Ala. at 9, 18 So. 2d at 815. The party challenging the constitutionality of an act bears the

burden of overcoming the presumption of constitutionality. Thorn v. Jefferson Cnty., 375 So. 2d 780, 787 (Ala. 1979).

Discussion

The animal shelter contends that Act No. 2018-432 does not violate the "single-subject rule" applicable to legislation as mandated by § 45. Section 45 provides in relevant part that "[e]ach law shall contain but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes." The general aim of the single-subject rule is to promote transparency, clarity, and accountability in the legislative process by limiting legislation to one objective. As this Court has stated, the rule serves three primary purposes. See Bagby Elevator & Elec. Co. v. McBride, 292 Ala. 191, 194, 291 So. 2d 306, 308 (1974). See also Opinion of the Justices No. 215, 294 Ala. 555, 564, 319 So. 2d 682, 691 (1975). First, it affords the public of reasonable notice of the subject and the contents of the legislation that is being considered. Second, the rule simplifies the legislative process by providing legislators a means to better

understand the objectives and ramifications of proposed legislation, while deterring surprise and fraud by the inadvertent passage of provisions unrelated to the title of the legislation. Third, the rule prevents "logrolling," which is "[t]he legislative practice of including several propositions in one measure or proposed constitutional amendment so that the legislature or voters will pass all of them, even though these propositions might not have passed if they had been submitted separately." Black's Law Dictionary 1129 (11th ed. 2019).

Consistent with the presumption favoring the validity and constitutionality of legislation, in reviewing whether legislation violates the single-subject rule, this Court will accord the legislation a liberal interpretation without requiring hypercritical exactness or strict enforcement " 'in such manner as to cripple legislation.' " Knight v. West Alabama Env't. Improvement Auth., 287 Ala. 15, 22, 246 So. 2d 903, 908 (1971)(quoting Opinion of the Justices No. 174, 275 Ala. 254, 257, 154 So. 2d 12, 15 (1963)). See also Smith v. Industrial Dev. Bd. of Andalusia, 455 So. 2d 839, 841 (Ala. 1984) ("This Court has always given a liberal

construction to the provisions of § 45 ...."). Applying a liberal construction to § 45, this Court has established that "[t]he title of a bill need not specify every provision contained. The 'one subject' test of [§ 45] is satisfied when the bill's provisions are all referable to and cognate of the subject of the bill," Opinion of the Justices No. 215, 294 Ala. 555, 564, 319 So. 2d 682, 692 (1975)(citing Boswell v. State, 290 Ala. 349, 276 So. 2d 592 (1973), and Opinion of the Justices No. 174, supra). This Court has stated that "[t]he general rule is that generality or comprehensiveness of the subject is not a violation of section 45, and that a broad, comprehensive subject justifies the inclusion of any matter not incongruous or unconnected with the subject, provided the title is not uncertain or misleading." Harris v. State ex rel. Williams, 228 Ala. 100, 103, 151 So. 858, 860 (1933).

The single-subject rule encompasses two primary requirements of legislation. Specifically, the legislation must be limited to a single subject and the single subject must be clearly expressed in the title of the legislation. See Bagby Elevator & Elec., 292 Ala. at 194, 291 So. 2d at 308. The animal shelter contends that Act No. 2018-432 is an act that amends

an existing revenue statute that applies specifically to taxes levied in Clay County. The animal shelter argues that, under this Court's precedent, Act No. 2018-432 contains a single subject pertaining to the earmarking of the tax revenue and that the title of the act properly expresses that subject. In support of its proposition that Act No. 2018-432 satisfies both prongs of the single-subject rule, the animal shelter cites Harris, supra, Lane v. Gurley Oil Co., 341 So. 2d 712 (Ala. 1977), and Nachman v. State Tax Commission, 233 Ala. 628, 173 So. 25 (1937).

In Harris, the Court assessed the constitutionality of a 1923 act of the legislature that amended an existing revenue law. The amendatory act included provisions to address the escape of taxation by motor-vehicle owners, and it created the position of deputy tax assessor, whose duty would be to assess all personal property that was subject to, but had escaped, taxation. The title of the amendatory act stated that the subject of the act included " 'to further provide for the revenue of the State of Alabama.' " 228 Ala. at 102, 151 So. at 860. The Court held that "further provision for or an amendment of the state's revenue in its various

aspects, whether to provide for it or to regulate matters pertaining to it, or to amend it generally, is one subject and may be so expressed in the title of an act." 228 Ala. at 104, 151 So. at 861. Accordingly, the Court concluded:

> "One feature of the act of 1923 here in question provides the machinery for collecting the ad valorem tax on motor vehicles, and to prevent them from escaping such tax, and another creates a deputy tax assessor to assess and collect escapes of other personal property in aid of other existing machinery to that end. But they are both for the purpose of further providing for the revenue of the state as described in the title, or to amend the state's revenue law, which is the essence of the title. The act does not therefore violate section 45 of the Constitution by containing two subjects."

Id. The animal shelter contends that, like the amendatory act in Harris, Act No. 2018-432 amends a revenue statute and, thus, pertains to that single subject, which was stated in the title of the act.

The animal shelter also contends that Act No. 2018-432 does not contain more than one subject merely because it provides for more than one use of the revenue collected. It argues that because the tobacco-tax revenue is earmarked for several recipients on a percentage basis, when the legislature enacted Act No. 2018-432 to amend the revenue statute to

disburse 20%, rather than 18%, of the tobacco tax proceeds to the animal shelter, the legislature necessarily had to adjust another share and did so by decreasing from 15% to 13% the share of tobacco-tax proceeds to be disbursed to the county commission for further disbursement to the water districts in Clay County for the purpose of installing feeder lines. In Lane, 341 So. 2d 712, this Court considered the constitutionality of Act No. 1971-1403, Ala. Acts 1971. The title of that act provided as follows:

> " 'To provide for inspection of certain petroleum products, including those commonly known as gasoline, naphtha, diesel fuel, kerosene and lubricating oil, that are sold, offered for sale, used or stored in the State of Alabama; to provide for the issuance by the Commissioner of Agriculture and Industries of permits for selling, offering for sale, storing, or using such petroleum products and to require the making of applications for such permits and payment of a permit fee; to authorize the Board of Agriculture and Industries to establish minimum standards for such petroleum products; to require compliance with such standards; to provide for enforcement of this act, including provisions for maintenance of records and for labeling, sampling and testing such products, provisions prohibiting adulteration thereof, and provisions for penalties for violation of this act; to prohibit the sale, offering for sale, storage or use in this State of petroleum products not meeting the said standards; to impose an inspection fee in respect of each such petroleum product; to provide for the disposition of such inspection fees and any penalties collected under this act; to provide that violation of this act constitutes a misdemeanor;

> and to repeal Article 21 of Chapter 1 of Title 2 of the Code of Alabama of 1940 and subdivision 2 of Article 26 of the said Chapter 1.' "

Lane, 341 So. 2d 714 (emphasis omitted). The act also provided that the first $55,000 of the monthly proceeds from the inspection fee would be disbursed to an agricultural fund and that the remainder would be disbursed to a road and bridge fund. Certain oil companies sued the Commissioner of Agriculture and Industries, seeking a judgment declaring that the act violated the single-subject rule of § 45. The trial court in Lane entered a judgment in favor of the oil companies, declaring that the act violated § 45 because, the court determined,

> "while [the act] described in its title as providing for 'inspection fees,' [it] is in fact a revenue-producing tax measure because the revenue generated far exceeds what is necessary to administer the inspection program and the excess revenue was, by a subsequent act, pledged for payment of bonds issued by the intervenor, Alabama Highway Authority, to provide funds for highway construction."

Lane, 341 So. 2d at 714-15. In reversing the trial court's judgment declaring that the act violated § 45, this Court explained:

> "We hold that the act does not contain more than one subject. The one subject is the inspection program. The levying

> and disposition of inspection fees is part and parcel of the inspection program. ...
>
> > "Furthermore, an act does not contain more than one subject merely because it provides for more than one use of the revenue collected under the act. Opinion of the Justices [No. 167], 270 Ala. 38, 42, 115 So. 2d 464 (1959). To uphold the trial court's judgment would unduly handicap the legislature in the exercise of its legitimate prerogatives and would not serve the purposes of § 45 in our judgment. Opinion of the Justices [No. 174], 275 Ala. 254, 154 So. 2d 12 (1963)."

341 So. 2d at 715.

Relying on Nachman, the animal shelter contends that the disbursements of the tobacco-tax proceeds set out in Act No. 2018-432 constitute earmarking of funds for specific purposes to be expended or appropriated by the county commission. The animal shelter and amici curiae contend that this Court in Clay County, discussed infra, incorrectly determined that disbursements set out in Act No. 2017-65 were appropriations for purposes of § 73 of the Constitution, and they invite this Court to reconsider and overrule that decision. In Nachman, a 1935 act was challenged as violating the single-subject rule. The title of the act provided that the legislation was " '[a]n Act to amend an Act entitled "An

Act to provide for the general revenue of the State of Alabama, approved July 10, 1935," ...' " Nachman, 233 Ala. at 631, 173 So. at 27. The original act imposed a license or privilege tax on certain commercial operators, and the amendatory act provided that the revenue collected would be " 'covered into the State Treasury and become a part of the Alabama Special Educational Trust Fund.' " 233 Ala. at 635, 173 So. at 31. The appellants in Nachman argued that the amendatory act violated the single-subject rule of § 45 because it contained two distinct objectives consisting of a revenue measure and an appropriation for a special purpose. The Court first concluded that the challenged provisions of the amendatory act did not constitute an appropriation for purposes of § 71 of the constitution and that the disbursement set out in the act, instead, constituted earmarking. The Court stated:

> "[T]he act does not undertake to make any appropriation within the meaning of section 71 of the Constitution. It is undoubtedly within the competence of the Legislature in levying a tax to provide, in the same bill, into what fund of the State the tax money when collected shall be paid, whether into the general fund, or into any special fund. It is but earmarking (Webster's New International Dictionary, p. 808; 19 Corpus Juris, p. 852, note 68; 14 Cyc. p. 1131, note 72; 3 Words and

> Phrases, Third Series, p. 113; 17 Am. Digest [Cent. Ed.] page 1704; Bouv. Law Dict. [Rawle's Third Rev.] p. 964) the fund, thereafter to be expended, on due appropriation, for the purposes for which the tax was levied and collected. To provide that certain funds derived from particular sources shall be paid and used for designated purposes of government is in no sense an appropriation as contemplated by section 71 of the Constitution. We do not think there is any merit in either of these two insistences of the appellants. It is our opinion that the bill deals with but one subject."

233 Ala. at 634, 173 So. at 30. The Court further noted that, in Harris, supra, it had committed to the rule that legislation providing for or regulating revenue laws, or amendments thereto, encompass a single subject that may be so expressed in the title of the legislation. Id. The Court in Nachman, thus, concluded that the amendatory act contained one subject and did not violate the single-subject rule.

The county commission contends that Act No. 2018-432 violates the single-subject rule because it reduces the amount of preexisting earmarks disbursed to a special fund managed by the county commission relating to water feeder lines and then appropriates the corresponding amount to the animal shelter. It contends that, because Act No. 2018-432 repeals an earmark and also makes an appropriation of the previously earmarked

funds, it contains more than one subject and violates § 45. The county commission relies on this Court's decision in Childree v. Hubbert, 524 So. 2d 336 (Ala. 1988), in support of this proposition. Before enacting the legislation at issue in Childree, the legislature had considered proposed legislation pertaining to appropriations for education, including for elementary and secondary schools; for junior and technical colleges; for colleges and universities; for various other state agencies; and for entities that were not state agencies but some of which, at least arguably, served educational purposes. The legislature sought an advisory opinion from the members of this Court as to whether the proposed education-appropriation bill satisfied the § 45 single-subject rule. All nine Justices opined that the proposed education-appropriation bill satisfied the single-subject rule because the subject of public education had historically been treated comprehensively in such appropriation bills. Opinion of the Justices No. 323, 512 So. 2d 72 (Ala. 1987). The Opinion of the Justices No. 323 stated that no appropriations could be made in the bill to institutions not controlled by the State. The Justices also expressed

reservations as to appropriations to State agencies that were not obviously educational in nature. After this Court issued Opinion of the Justices No. 323, the legislature removed a number of appropriations from the education-appropriation bill and added them to the general appropriation bill, which eventually became Act No. 87-715, Ala. Acts 1987. Act No. 87-715 directed that appropriations be made from the Alabama Special Education Trust Fund ("ASETF") to various State entities. An action was brought challenging the constitutionality of Act No. 87-715. The trial court in Childree entered a judgment declaring Act No. 87-715 unconstitutional insofar as the act appropriated funds from the ASETF to various State agencies. In holding that any act appropriating ASETF funds other than as specified in the legislation creating the ASETF would violate the single-subject rule of § 45, this Court stated:

> "[T]he removal or disregard of earmarking is not a matter properly to be included in an appropriation bill. Presumably, the earmarking could be removed in a proper single-subject bill or in a properly constituted revenue bill, but until such an action is taken, no appropriation bill can appropriate such funds other than as they were earmarked.

> "The point that earmarking cannot be repealed by an appropriation bill becomes even clearer when considered in light of the fact that the earmarking provisions are now substantive parts of the Code. See, e.g., § 40-1-31[, Ala. Code 1975]. Therefore, disregard of earmarking would violate the Code, and repeal of earmarking would amend the Code. For the legislature to either disregard or repeal earmarking in an appropriation bill would violate § 71 or § 45, for the same reasons as discussed above regarding revenue bills."

Childree, 524 So. 2d at 341.

The county commission also contends that, in violation of the single-subject rule, Act No. 2018-432 purports to be amendatory legislation but, in effect, constitutes an appropriation to the animal shelter and that the act simultaneously repeals earmarks of funds to be disbursed to the county commission for further disbursement to water districts in Clay County. The county commission further contends that Act No. 2018-432 appropriates funds to multiple non-State entities, including the animal shelter, and that the appropriations to those entities are made for different purposes. The county commission asserts that Clay County controls and that, pursuant to that decision, this Court should conclude that the disbursement to the animal shelter ordered in Act No. 2018-432

constitutes an appropriation. As noted above, in analyzing whether Act No. 2017-65, the predecessor to Act No. 2018-432, violated § 73 of the constitution, this Court in Clay County concluded that the Act No. 2017-65 included an appropriation to the animal shelter. This Court stated as follows concerning the term "appropriation":

> "At the time § 73 was adopted as part of the Alabama Constitution in 1901, Black's Law Dictionary defined 'appropriation' as:
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> > " 'The act of appropriating or setting apart; prescribing the destination of a thing; designating the use or application of a fund.
> >
> > > " 'In public law. The act by which the legislative department of government designates a particular fund, or sets apart a specified portion of the public revenue or the money in the public treasury, to be applied to some general object of governmental expenditure, (as the civil service list, etc.,) or to some individual purchase or expense.'
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> Black's Law Dictionary 82 (1st ed. 1891)(emphasis added).
>
> "The relevant language of Act No. 2017-65 provides that Clay County's tobacco-tax proceeds 'shall be distributed to the Clay County General Fund to be expended as follows' and directs that 18% of the proceeds be paid to the animal shelter. ' "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." ' Blue Cross & Blue Shield of Alabama, Inc. v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998)(quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)).
>
> " 'Distribute' is defined as: '1. To apportion; to divide among several. 2. To arrange by class or order. 3. To deliver. 4. To spread out, to disburse.' Black's Law Dictionary 576 (10th ed. 2014). 'Expenditure' is defined as: 'The act or process of spending or using money, time, energy, etc.; esp. the disbursement of funds.' Black's Law Dictionary 698 (10th ed. 2014). The plain meaning of the relevant language used in Act No. 2017-65 reflects the legislature's intent to distribute, or deliver, 98% of Clay County's tobacco-tax proceeds from the State Department of Revenue to the Clay County General Fund. Act No. 2017-65 then sets apart a specified portion of the public revenue or the money in the public treasury, specifically 18%, to be applied to a particular expenditure or disbursement, i.e., a payment to the animal shelter. Thus, the plain meaning of the relevant language in Act No. 2017-65 reflects an appropriation to the animal shelter."

Clay County, 283 So. 3d at 1230-31. This Court concluded that "the requirement in Act No. 2017-65 that 18% of Clay County's tobacco-tax proceeds be disbursed to the animal shelter constitutes an appropriation within the meaning of § 73. Because Act No. 2017-65 was not approved by a vote of two-thirds of all the members elected to each house, that portion is, therefore, void." 283 So. 3d at 1234.

Act No. 2018-432 makes two changes to § 45-14-244.07 regarding the percentage of tobacco-tax proceeds to be disbursed to the animal shelter and to a special fund of the county commission. Specifically, Act No. 2018-432 increases the amount of tobacco-tax proceeds to be disbursed to the animal shelter from 18% to 20% of tobacco-tax proceeds and decreases the amount of tobacco-tax proceeds to be disbursed to the county commission for water feeder lines from 15% to 13% of the tobacco-tax proceeds. Act No. 2018-432 modifies only the disbursement of tobacco-tax proceeds applicable to Clay County, but, unlike the general appropriation bill at issue in Childree, which affected numerous existing statutes and placed limitations on the use of revenue streams for educational objectives, Act No. 2018-432 does not impact any other earmarks set forth in other state laws. Moreover, the present case is distinguishable from Clay County, in which this Court concluded that the pertinent language of Act No. 2017-65 expending funds to a non-State entity constituted an "appropriation" within the meaning of § 73. Clay County did not involve application of the single-subject rule under § 45. We, therefore, decline to

apply the reasoning from Clay County to the present case, and we also decline the invitation of the animal shelter and amici curiae to overrule that decision.

Rather, Act No. 2018-432 is akin to the amendatory acts at issue in Harris and Nachman, because it amends a revenue law, i.e., Act No. 2017-65, to adjust the amount of specific disbursements. Consistent with this Court's stated commitment in those cases that the amendment of a revenue law is a single subject, we conclude that Act No. 2018-432 contains a single subject, i.e. the disbursement of tobacco-tax proceeds in Clay County, and that all the provisions of the act are "part and parcel" of that one subject. Lane, 341 So. 2d at 715.

In addition, Act No. 2018-432 unequivocally states within its title that its purpose is: "Relating to Clay County ... to further provide for the distribution of the local tobacco tax." This title is similar to the titles in the amendatory acts that this Court determined to be valid under § 45 in Nachman and Harris. See Harris, 228 Ala. at 102, 151 So. at 860 (concluding that the title including the words " 'to further provide for the

revenue of the State of Alabama' " clearly expressed the subject of the amendatory act) and Nachman, 233 Ala. at 631, 173 So. at 27(concluding that the title of the amendatory act indicating that the act " 'provide[d] for the general revenue of the State' " was sufficient for purposes of § 45). As this Court has stated, "[t]he title need not be an index or catalog of every power bestowed in the act, nor of every effect of the act." Lane, 341 So. 2d at 715 (citing Opinion of the Justices No. 138, 262 Ala. 345, 81 So. 2d 277 (1955)). Thus, Act No. 2018-432 satisfies the two-part test for establishing whether legislation complies with § 45, see Bagby Elevator & Elec., supra, and the act fulfills the above-stated objectives of the single-subject rule.

The animal shelter also contends that the retroactivity clause of Act No. 2018-432 is also valid. In declaring the act to be unconstitutional, however, the trial court rendered no decision on the issue of retroactivity. As this Court has stated, "it is familiar law that an adverse ruling below is a prerequisite to appellate review." CSX Transp., Inc. v. Day, 613 So. 2d

883, 884 (Ala. 1993). Because the trial court has not decided that issue, this Court will not address it.

Conclusion

We reverse the trial court's judgment declaring Act No. 2018-432 to be unconstitutional on the basis that it violates § 45, and we remand the cause.

REVERSED AND REMANDED.

Wise and Mitchell, JJ., concur.

Parker, C.J., concurs specially.

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

Bolin, Sellers, and Mendheim, JJ., dissent.

PARKER, Chief Justice (concurring specially).

While concurring in the main opinion, I write separately in the hope of shedding light on this Court's cases applying the single-subject rule to fiscal legislation. By surveying the history of our precedent in this area, I believe that the analytical quandary that is manifest in today's case will become more obvious, and the path forward clearer.

The single-subject rule is contained in §§ 45 and 71 of our State constitution. Section 45 expresses the rule in its application to legislation in general: "Each law shall contain but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes ...." Art. IV, § 45, Ala. Const. 1901 (Off. Recomp.). Section 71 articulates the rule in its specific application to appropriation bills: "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for interest on the public debt, and for the public schools. ... All other appropriations shall be made by separate bills, each embracing but one subject." Art. IV,

§ 71, Ala. Const. 1901 (Off. Recomp.). These provisions in the 1901 Constitution were carried forward substantially verbatim from the 1875 Constitution. See Art. IV, §§ 2, 32, Ala. Const. 1875; Opinion of Justices No. 323, 512 So. 2d 72, 75 (Ala. 1987). The substance of the single-subject rule traces back to the 1865 Constitution. See Art. IV, § 2, Ala. Const. 1865.

For the first few decades of the rule's existence, this Court seems to have understood its purpose and application with relative consistency. In 1883, Justice George Washington Stone explained "[t]he abuses which called the [single-subject] provision into existence." Ballentyne v. Wickersham, 75 Ala. 533, 535 (1883). Writing for the Court, he described how the rule was designed to correct the abuse of "logrolling":

> "Each subject introduced before the legislative department shall be considered and voted on singly, without associating with it any other measure to give it strength. Experience had shown that measures, having no common purpose, and each wanting sufficient support on its own merits to secure its enactment, have been carried successfully through legislative bodies, and become laws, when neither measure could command the approval of a majority of that body."

Id. at 535-36. Justice Stone cautioned, however, that the rule's "requirements are not to be exactingly enforced, or in such manner as to cripple legislation." Id. at 536. Rather, the concept of a single "subject" must be understood broadly:

> "[W]hen the subject is expressed in general terms, every thing which is necessary to make a complete enactment in regard to it, or which results as a complement of the thought contained in the general expression, is included in, and authorized by it. ... 'The "subject" ... may be as broad and comprehensive as the legislature may choose to make it. It may include innumerable minor subjects, provided all these minor subjects are capable of being so combined as to form only one grand and comprehensive subject ....' "

Id. at 536-37 (quoting Division of Howard Co., 15 Kan. 194, 214-15 (1875)).

In 1898, this Court expanded its discussion to recognize three manifest purposes of the single-subject rule: (1) to prevent logrolling and "hodgepodge" bills, (2) to prevent surprise to the Legislature caused by hiding provisions in bills without fair notice in the bills' titles, and (3) to apprise citizens of the subjects of legislation being considered. Lindsay v. United States Sav. & Loan Ass'n, 120 Ala. 156, 172, 24 So. 171, 176 (1898). The Court described "hodgepodge" as "the inclusion in one act of

matters or subjects 'of a very heterogeneous nature,' ... which may mislead and surprise the good faith of the law-making body." 120 Ala. at 173, 24 So. at 176. And the Court reiterated the concern about logrolling -- "legislation ... intended to enlist varied, and, it may be, hostile, interests, in support of the proposed act." Id.

Importantly, in Lindsay the Court distinguished between the two prongs of the single-subject rule that are recognized in today's main opinion: first, a bill must contain only one "subject"; second, that subject must be "clearly expressed in [the] title" of the bill. Id. ("The unity of subject is an indispensable element of legislative acts; but it is not the only element; the subject must be 'clearly expressed in its title.' "). The Court expressly connected the "subject" prong to the first purpose of the rule, preventing logrolling and hodgepodge. In contrast, the Court connected the "title" prong to the second and third purposes, providing notice to the Legislature and citizens. Id. This bifurcation of the purposes makes sense, because the requirement of a single subject is not primarily designed to provide notice, whereas the requirement that the title clearly

express the bill's subject is not primarily designed to thwart the ills of logrolling and hodgepodge. (Here, because I am concerned only with the subject prong, I will focus on this prong's purpose of preventing those two ills.)

In 1909, the Court reiterated its concern to avoid overly restrictive application of the single-subject rule and the competing concern about logrolling:

> "There was no design in this clause to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, and thus multiplying their number; but the framers of the Constitution meant to put an end to a species of vicious legislation commonly termed 'logrolling,' and to require, in every case, that the proposed measure shall stand upon its own merits ...."

State ex rel. City of Birmingham v. Miller, 158 Ala. 59, 62, 48 So. 496, 497 (1909).

In 1933, this Court had an opportunity to apply the single-subject rule to fiscal legislation. See Harris v. State ex rel. Williams, 228 Ala. 100, 151 So. 858 (1933). As alluded to by today's main opinion, the bill in Harris primarily attempted to raise revenue and to prevent motor vehicles

from escaping taxation, but it also created a position of deputy tax assessor to assess all personal property that had escaped taxation. 228 Ala. at 102, 104, 151 So. at 860-61. The Court again emphasized the breadth allowed in a single subject: "The general rule is that generality or comprehensiveness of the subject is not a violation of section 45, and that a broad, comprehensive subject justifies the inclusion of any matter not incongruous or unconnected with the subject ...." 228 Ala. at 103, 151 So. at 860. Because both parts of the bill were "for the purpose of further providing for the revenue of the state ... or to amend the state's revenue law," the Court held that they were part of a single subject. 228 Ala. at 104, 15 So. at 861. Thus, up through the early 1930s, this Court seems to have taken a fairly straightforward course in its application of the single-subject rule.

Then came Nachman v. State Tax Commission, 233 Ala. 628, 173 So. 25 (1937). As noted by today's main opinion, the bill in Nachman provided for a new revenue source -- a business-license tax -- and also provided for distribution of that revenue partly to the Alabama Special Education

Trust Fund and partly to the State General Fund to replace certain other revenues. 233 Ala. at 628-29, 631, 633, 173 So. at 27, 29. The plaintiffs argued that the bill violated the single-subject rule because it both raised revenue and appropriated that revenue to specific purposes. In particular, the plaintiffs contended that § 45's creation of separate exceptions from the single-subject rule for "general revenue bills" and "general appropriation bills" meant that revenue and appropriation were separate subjects for purposes of the rule. The plaintiffs reasoned that revenue was a burden, whereas appropriation was a benefit. 233 Ala. at 634, 173 So. at 30.

I pause here to interject what I believe should have been this Court's response to that argument. Consistent with the principles outlined in the Court's previous cases, it would have been easy to simply hold that the revenue-raising and revenue-spending parts of the bill came within the broadly defined single subject of business-license-tax revenue. See Lane v. Gurley Oil Co., 341 So. 2d 712 (1977) (illustrating this line of reasoning; discussed below). Moreover, the plaintiffs' reasoning based on § 45's

separate exceptions for general revenue bills and general appropriation bills was clearly fallacious. The fact that § 45 lists those types of bills as separate exceptions to the single-subject rule has no logical bearing on whether revenue and appropriation are different subjects for purposes of bills to which the rule does apply. Further, nothing about the single-subject rule forbids including "burdens" and "benefits" in the same bill, if they are germane to the same subject. Had the Court stayed the course and stuck with its previous approach of focusing on the purposes underlying the single-subject rule and the principles of its application, the current quandaries within our jurisprudence applying the rule to fiscal legislation would have been avoided.

Instead, the Nachman Court evaded the plaintiffs' argument with a convoluted distinction that has haunted our single-subject jurisprudence ever since: "appropriations" versus "earmarks." The Court explained the distinction thus:

> "[T]he [bill] does not undertake to make any appropriation within the meaning of section 71 of the Constitution. It is undoubtedly within the competence of the Legislature in levying a tax to provide, in the same bill, into what fund of the

> State the tax money when collected shall be paid, whether into the general fund, or into any special fund. It is but earmarking the fund, thereafter to be expended, on due appropriation, for the purposes for which the tax was levied and collected. To provide that certain funds derived from particular sources shall be paid and used for designated purposes of government is in no sense an appropriation as contemplated by section 71 of the Constitution."

233 Ala. at 634, 173 So. at 30 (internal citations omitted). As I will show, that seemingly simple distinction was not so simple, and it eventually has led to much head-scratching by the bench and bar.

Twenty-five years after Nachman, the Court had its next major opportunity to apply the single-subject rule to fiscal legislation. The Governor requested the opinion of the Justices on the constitutionality of a bill that created a beer tax and designated the proceeds to pay principal and interest on certain public bonds that were issued for building and equipping educational institutions. Opinion of Justices No. 174, 275 Ala. 254, 255, 154 So. 2d 12, 13-14 (1963). The title of the bill described its purpose as including " '[t]o raise revenue by levying a privilege or excise tax [on beer] ...; to provide for the collection and distribution of the proceeds of said tax.' " 275 Ala. at 256, 154 So. 2d at 15. The Justices

opined that the bill did not violate the subject prong of the rule, relying on the Court's prior broad understanding of "subject":

> "The inhibitions of Sections 45 and 71 ... that an act shall have but one subject are met if the act has but one general subject which is contained in its title. ...
>
> > " 'A statute has but one subject, no matter how many different matters it relates to, if they are all cognate, and but different branches of the same subject.'
>
> "A reading of the title of [the bill], and of the [bill] itself discloses that the grand and comprehensive pattern of the [bill] relates to but a single matter, and that all its provisions are germane and cognate, or complementary to the idea expressed in the title."

275 Ala. at 257, 154 So. 2d at 15-16 (quoting Yielding v. State ex rel. Wilkinson, 232 Ala. 292, 296, 167 So. 580, 583 (1936)).

The Justices then made this curious statement:

> "As stated in Nachman ...:
>
> > " 'To provide that certain funds derived from particular sources shall be paid and used for designated purposes of government is in no sense an appropriation as contemplated by section 71 of the Constitution.'

> "That is, merely because an act appropriates funds, it is not thereby a general appropriation bill."

275 Ala. at 257, 154 So. 2d at 16. That is clearly not what the Nachman Court meant by the quoted statement. Under Nachman's distinction, a purely revenue/earmarking bill did not "appropriate funds"; and under §§ 45 and 71, a "general appropriation bill" was a different creature altogether, not subject to the single-subject rule at all. Already, Nachman's language and logic were proving hard to follow.

In 1977, a similar combination revenue/spending bill was examined by this Court in Lane v. Gurley Oil Co., 341 So. 2d 712 (1977), discussed in today's main opinion. The bill in Lane provided for a program of government inspection of petroleum products, including inspection fees, but the revenue generated far exceeded the cost of the program. Id. at 714-15. A later act allocated the excess revenue to pay on highway-construction bonds. Id. The plaintiffs argued that the bill in question contained two subjects: the inspection program and funding of highways. Id. at 715. The Court rejected that argument, reasoning that the bill's single subject was the inspection program, that the fees were part of that

program, and that the bill properly provided for multiple uses of the resulting revenue. Id.[3] Notably, the Court echoed its earlier emphasis on the legislative leeway inherent in the subject prong: to hold that the bill violated the single-subject rule "would unduly handicap the legislature in the exercise of its legitimate prerogatives and would not serve the purposes of § 45." Id. at 715.

Ten years later, this Court employed what I view as a correct method of analysis of a fiscal bill under the single-subject rule. The State Senate had asked the Justices' opinion on an education appropriations bill. Opinion of Justices No. 323, 512 So. 2d 72, 73 (Ala. 1987). The bill provided money for various public educational institutions, other State agencies, and non-State entities. Id. at 73, 75. Before determining whether all those provisions came within a single subject, the Justices surveyed the history of education-funding bills in Alabama since the Constitution of 1875. Id. at 75-77. From that survey, the Justices determined that

[3]It is not clear why the Court treated the separate inspection-program and revenue-spending bills as one bill.

public-education appropriations had been treated as a single subject for about 80 years. Id. at 77. However, the Justices opined that appropriations to non-State entities had not historically been understood as coming within that subject, so they could not be included in the bill. Id. at 77-78. I believe that Opinion No. 323's focus on the history of the particular type of bill illustrates one aspect of how a court ought to analyze whether a bill violates the single-subject rule. The fact that a type of bill has or has not historically included the challenged content is relevant to whether the bill meets or thwarts the subject prong's concerns about logrolling and hodgepodge.

Nevertheless, after that five-decade interlude of generally well-reasoned decisions, the seed planted in Nachman finally bore its odious fruit in Childree v. Hubbert, 524 So. 2d 336 (Ala. 1988). There, the Legislature passed a general appropriation bill that included appropriations from the Alabama Special Education Trust Fund to various State agencies. Id. at 337-38. This Court held that statutes had designated the money in the Trust Fund as exclusively for educational purposes. Id.

at 339-41. And, the Court noted, that restriction had been generally imposed by revenue bills. Id. at 340. Enter Nachman. After recounting Nachman's appropriations-versus-earmarks distinction, the Court proceeded to extend Nachman's suspect logic even further:

> "If earmarking is not appropriating, but rather a matter properly included in a revenue bill, the converse is also true: the removal or disregard of earmarking is not a matter properly to be included in an appropriation bill. ...
>
> "... For the legislature to either disregard or repeal earmarking in an appropriation bill would violate § 71 or § 45, for the same reasons as discussed above regarding revenue bills.
>
> "Thus, any appropriation bill appropriating [Trust Fund] funds other than as specified in the acts creating the [Trust Fund] and in the Code would violate § 71 or § 45 of the Constitution."

Id. at 341. With this language, the implications of Nachman became evident. Revenue and appropriation were separate subjects, and earmarking was a subset of revenue. Thus, earmarking (or un-earmarking) and appropriation (or un-appropriation) could not be combined in one bill, whether a revenue bill or an appropriation bill.

Hence the problem in today's case, which is aptly highlighted by the dissent: If the allocation to Clay County Animal Shelter, Inc., is an "appropriation," as we held in an earlier related case, how can that allocation be included in a bill that partly un-earmarks money that was designated for a special fund overseen by the County Commission, without violating the single-subject rule? The main opinion resolves the problem for the moment by leaving open the possibility that the allocation to the animal shelter is actually an earmark for purposes of the single-subject rule. In other words, maybe "appropriation" means something different under § 73 from what it means under §§ 45 and 71. But the underlying quandary remains as long as the single-subject rule is seen as hermetically sealing "appropriations" apart from "earmarks."

Respectfully, the problem is with Nachman and Childree. Specifically, Nachman set us on the wrong path, fashioning its unnecessary appropriations/earmarks distinction solely in response to a party's illogical contention. Then, Childree took our jurisprudence even further afield from the purpose of the subject prong of the single-subject

rule. As I have explained above, that purpose is to avoid logrolling and hodgepodge legislation. And nothing about combining revenue and appropriations in a bill -- or "earmarks" and appropriations, or "un-earmarks" and un-appropriations -- necessarily contravenes that purpose. For example, a bill could provide for a tax on sales of audiobooks while also providing that the first $10 million in revenue collected will be paid to the public-library systems of each county in proportion to population. The single subject could properly be characterized as simply an audiobook sales tax and the allocation of the resulting revenue. Cf. Lane, supra. The technicality that the revenue would be designated for particular recipients, rather than deposited in a particular "fund," would in no way implicate the subject prong's concern about logrolling and hodgepodge.

Furthermore, although Nachman's appropriations/earmarks distinction might have seemed straightforward to apply in 1937, the complexities of modern fiscal legislation have rendered it anything but. Today, after tax revenue is collected, it often flows through multiple steps of distribution, and it is difficult to say at what point in that flow

"earmarking" ends and "appropriation" begins. For example, one approach is to distribute part of a particular tax's revenue first to the Alabama Department of Revenue, after which part of the revenue is distributed to counties or municipalities, after which those local governments distribute part of it to particular governmental or nongovernmental purposes and recipients. Some of those distributions may be on a percentage basis or in a particular dollar amount, and some of them may be conditioned on availability of funds or tied to other factors outside the text of the bill. See, e.g., Ala. Code 1975, § 45-6-242.20 (Bullock County sales tax), § 45-10-244.37 (Cherokee County sales tax), § 45-44-244.40 (Macon County occupational tax), § 45-3-244.06 (similar Barbour County tobacco tax); cf. § 45-32-242.01 (allocating percentages of Greene County ad valorem tax directly to governmental agencies and nongovernmental entities); § 45-35-243 (allocating Houston County lodging tax similarly); § 45-6-241.40 (Bullock County tobacco tax); § 45-30-243 (Franklin County proceeds of oil-and-gas-severance tax).

Indeed, the bill in this case is a prime example. See § 45-14-244.07 (allocating Clay County tobacco tax first to Department of Revenue, then to county general fund, then to certain governmental and nongovernmental entities, with some of those ultimate distributions being conditional). Nachman's simplistic definitions of "earmarking" -- "provid[ing] ... into what fund of the State the tax money when collected shall be paid" and "provid[ing] that certain funds derived from particular sources shall be paid and used for designated purposes of government," 233 Ala. at 634, 173 So. at 30 -- do not tell us where to draw the line in the flow of distribution.

The amicus brief of Senator Jimmy Holley, as Chair of the Legislature's Legislative Council, perhaps comes closest to providing a workable dividing line: an "appropriation" is a distribution "from the State [t]reasury ... in a specific sum certain amount." Holley amicus brief, at p. 24. Presumably everything before that in the flow of distribution would be an earmark. Yet even that definition falters under close scrutiny, if one assumes that a correct definition must square with not only

Nachman and Childree but also the rest of our precedent. For example, Lane held that a revenue bill that distributed the first $55,000 in monthly proceeds to an agricultural fund did not violate the single-subject rule, implicitly indicating that that sum-certain amount was an earmark rather than an appropriation. 341 So. 2d at 715. Admittedly, it could be argued that that monthly distribution was not a sum certain because it was conditional on $55,000 being collected. But many of the distributions in the Legislature's annual general appropriation bill are conditional. See Albert P. Brewer, Alabama State Budgets and Appropriations, 55 Ala. Law. 344, 346 & n.47 (1994). So the conditional nature of a distribution does not prevent it from being a sum certain and thus an appropriation under the amicus brief's definition. Similarly, in Opinion No. 174, the Justices indicated that a revenue bill that distributed money "not exceeding $15,000,000" to pay principal and interest on bonds did not violate the single-subject rule under Nachman, implying that the distribution was an earmark. 275 Ala. at 255, 257, 154 So. 2d at 13-16. That distribution could likewise be reasonably seen as a sum certain of

$15 million, conditional on the principal and interest equaling that amount. I point out these problems not to denigrate the amicus brief's valiant effort to distill a definition, but to emphasize my doubt that a workable definition can be achieved.

But I believe that a more fundamental solution to the current quandary under the single-subject rule is quite achievable. It simply requires us to return to this Court's first principles in this area. First, we should be careful not to conflate the subject prong and the title prong in our analysis; this Court has at times seemed to lose sight of this distinction, see, e.g., Harris, supra; Opinion No. 174, supra; Opinion No. 323, supra. Second, we should discard Nachman/Childree's distinction between appropriations and earmarks, for the reasons I have explained above. Third, we should refocus on the purpose of the subject prong -- preventing logrolling and hodgepodge legislation. Fourth, we should constantly bear in mind this Court's commitment that the term "subject" must be understood broadly and in a manner that does not unnecessarily hamstring or cripple the Legislature. Fifth, we should take full advantage

of factually similar precedents in the many other states that have single-subject rules.[4] Although this Court consulted other states' jurisprudence in some of our early cases, see, e.g., Ballentyne, supra; Miller, supra, we have seemingly omitted to do so in the more recent cases, see, e.g., Nachman, supra; Opinion No. 174, supra; Lane, supra; Childree, supra.

Finally, we should approach single-subject analysis with a healthy dose of realism, recognizing that the rule is a blunt instrument. The problems of logrolling and hodgepodge are generalized ones, not limited to any particular type or topic of legislation. Thus, the constitution's solution -- the subject prong -- is necessarily also generalized. But that means that, unlike other restrictions on legislation such as § 73's two-thirds-vote requirement, the subject prong is incapable of laserlike surgical precision. Our early, pre-Nachman cases reflected an understanding of this inherent limitation of the single-subject rule and a realistic appraisal of the power of the rule to curb legislative abuse. In

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[4]See generally 1A Norman J. Singer & Shambie Singer, Statutes and Statutory Construction § 17:1 (7th ed. 2009); 73 Am. Jur. 2d Statutes § 53 (2012); 82 C.J.S. Statutes § 248 (2009).

essence, the rule is capable of invalidating only obvious departures. That clear-headed outlook, stripped of artificial distinctions, is the one to which we should return.

BOLIN, Justice (dissenting).

In my opinion, Act No. 2018-432, Ala. Acts 2018, violates Article IV, § 45, Ala. Const. 1901 (Off. Recomp.), because it repeals the dedication of funds to a special fund overseen by the Clay County Commission ("the county commission") for disbursement to the local water districts while simultaneously appropriating those funds to the Clay County Animal Shelter, Inc. ("the animal shelter"). Therefore, I respectfully dissent from the main opinion.

Section 45 provides in relevant part that "[e]ach law shall contain but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes." See also Art. IV, § 71, Ala. Const. 1901 (Off. Recomp.), which provides in relevant part that "[a]ll ... appropriations [other than general appropriations] shall be made by separate bills, each embracing but one subject." The pertinent part of § 45 contains two components: (1) it limits legislation to a single subject and (2) it requires that this single subject be clearly expressed in the title of the legislation.

Bagby Elevator & Elec. Co. v. McBride, 292 Ala. 191, 291 So. 2d 306 (1974). The county commission alleges that Act No. 2018-432 violates § 45, in part, because it amends preexisting earmarks of the county's tobacco-tax proceeds and then appropriates the funds removed from one of the earmarks to the animal shelter, which, it says, constitutes two separate subjects.

The animal shelter, which I am sure is a very worthwhile charitable organization, "urges" this Court to reconsider its holding in Clay County Commission v. Clay County Animal Shelter, Inc., 283 So. 3d 1218 (Ala. 2019) ("Clay County"), that Act No. 2017-65, Ala. Acts 2017, the predecessor act amended by Act No. 2018-432, was an appropriations act. In Clay County, the plaintiffs contended that certain provisions of Act No. 2017-65 amounted to an appropriation of funds to a charitable organization by the legislature, without a two-thirds vote of all the members elected to each house approving it, and that, therefore, the enactment of Act No. 2017-65 violated Article IV, § 73, Ala. Const. 1901 (Off. Recomp.). This Court agreed, holding that "[t]he plain meaning of

the language in Act No. 2017-65 provides for an appropriation to the animal shelter of 18% of Clay County's tobacco-tax proceeds" and that the legislature's appropriation to the animal shelter had to receive " 'a vote of two-thirds of all the members elected to each house' " to comply with § 73. 283 So. 3d at 1235.

Relying upon Nachman v. State Tax Commission, 233 Ala. 628, 173 So. 25 (1937), the animal shelter now argues, for the first time, that Act No. 2018-432, which directs the distribution of the county tobacco-tax proceeds to the county general fund for disbursement to more than one entity, constitutes "earmarking" rather than appropriation. The animal shelter contends that because Act No. 2018-432 provides for only earmarks and does not contain any appropriations, it does not violate the single-subject requirement of § 45. Not only is this argument being raised for the first time on appeal, the animal shelter has heretofore contended that Act No. 2018-432 provides an appropriation.[5] " 'This Court cannot

[5]The plaintiffs below -- the county commission and several individuals -- alleged in paragraph 39 of their amended complaint that "[Act No. 2018-432] attempts to appropriate to the Animal Shelter twenty

consider arguments raised for the first time on appeal; rather, our review is restricted to the evidence and arguments considered by the trial court.' " America's Home Place, Inc. v. Rampey, 166 So. 3d 655, 661 n.2 (Ala. 2014) (quoting Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992)). Accordingly, this Court cannot consider the animal shelter's argument that Act No. 2018-432 provides for only earmarks and does not contain any appropriations and, therefore does not violate the single-subject requirement of § 45.

The animal shelter also argues that Act No. 2018-432 does not violate § 45 because it has a single subject that is clearly expressed in its title.

This Court has stated the following:

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percent (20%) of the County's tobacco tax revenue." The animal shelter answered paragraph 39 of the amended complaint by stating: "Admitted. However, [Act No. 2018-432] speaks for itself." Further, the animal shelter filed a supplemental memorandum in support of its Rule 12(c), Ala. R. Civ. P., motion for a judgment on the pleadings in which it argued that Act No. 2018-432 "does not contain any earmarks, only makes a single new appropriations," that the act "makes a single new appropriation, to the Shelter," and that "[t]he other appropriations contained in [the act] are part of pre-existing law."

> "As the Court explained in Opinion of Justices No. 174, 275 Ala. 254, 154 So. 2d 12 (1963), an appropriations bill that is not a general appropriations bill must meet the single-subject requirement of § 71. If an appropriations bill complies with § 71 in having a single subject, then it necessarily complies with that portion of § 45 mandating that each law contain but one subject. Section 45 contains the additional requirement that the subject of each law 'shall be clearly expressed in its title.' "

Magee v. Boyd, 175 So. 3d 79, 115-16 (Ala. 2015)(footnote omitted). See also Bagby Elevator, supra, stating that the pertinent part of § 45 has two components: (1) it limits legislation to a single subject and (2) it requires that this single subject be clearly expressed in the title of the legislation. The purpose of the single-subject requirement has been explained in detail:

> " ' "First, to prevent 'hodgepodge' or 'logrolling' legislation; second, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles give no intimation, and which might, therefore, be overlooked, and carelessly and unintentionally adopted; and, third, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have the opportunity of being heard thereon, by petition or otherwise, if they shall so desire." Cooley, Const. Lim. 172. No one of these purposes is of more or less importance than the other. The mischief of hodgepodge legislation, -- the inclusion in one act of matters or subjects "of a very heterogeneous nature,"

> which may mislead, and surprise the good faith of the law-making body; or logrolling legislation, intended to enlist varied, and, it may be, hostile, interests, in support of the proposed act, -- would have been avoided if the constitutional limitation had gone no further than the requisition that "each law shall contain but one subject." The unity of subject is an indispensable element of legislative acts; but it is not the only element; the subject must be "clearly expressed in its title." The purpose of this requisition is, as expressed in the second proposition of the exposition of Judge Cooley, "to prevent surprise or fraud upon the legislature by means of provisions in bills of which the title gives no intimation, and which might therefore be overlooked, and carelessly and unintentionally adopted." The third proposition must be deemed, and by all authority is deemed, of equal importance, -- "to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon, by petition or otherwise, if they so desire." When there is a fair expression of the subject in the title, all matters reasonably connected with it, and all proper agencies or instrumentalities, or measures, which will or may facilitate its accomplishment, are proper to be incorporated in the act, and, as usually said, are cognate or germane to the title.' "

Magee, 175 So. 3d at 116 (quoting Lindsay v. United States Sav. & Loan Ass'n, 120 Ala. 156, 172, 24 So. 171, 176 (1898)). " '[A] statute has but one subject, no matter to how many different matters it relates if they are all cognate, and but different branches of the same subject.' " Ex parte Hilsabeck, 477 So. 2d 472, 475 (Ala. 1985) (quoting Knight v. West

Alabama Env't. Improvement Auth., 287 Ala. 15, 22, 246 So. 2d 903, 908 (1971)). Further,

> " '[i]t is settled under our decisions that however numerous the subjects stated in the title, and however numerous the provisions in the body of the act may be, if they can be by fair intendment considered as falling within the subject-matter legislated upon in the act, or necessary as ends and means to the attainment of such subject, the act does not offend our constitutional provision that no law shall embrace more than one subject, which must be expressed in its title.' "

Alabama State Fed'n of Labor v. McAdory, 246 Ala. 1, 10, 18 So. 2d 810, 816 (1944)(quoting State v. Henry, 224 Ala. 224, 227, 139 So. 278, 281 (1931)).

Relying upon Lane v, Gurley Oil Co., 341 So. 2d 712 (Ala. 1977), the animal shelter argues that Act No. 2018-432 does not contain more than one subject merely because it provides for more than one use of the revenue collected. The animal shelter contends that, because the tobacco-tax proceeds are earmarked for several recipients on a percentage basis, when the legislature enacted Act No. 2018-432 to amend Act No. 2017-65 to disburse 20% of the tobacco-tax proceeds, rather than 18%, to the animal shelter, the legislature necessarily had to adjust another share and

did so by decreasing from 15% to 13% the share of tobacco-tax proceeds to be disbursed to the county commission for further disbursement to the water districts in Clay County for the purpose of installing feeder lines. In Lane, this Court considered the constitutionality of Act No. 1971-1403, Ala. Acts 1971. The title of Act No. 1971-1403 provided:

> " 'To provide for inspection of certain petroleum products, including those commonly known as gasoline, naphtha, diesel fuel, kerosene and lubricating oil, that are sold, offered for sale, used or stored in the State of Alabama; to provide for the issuance by the Commissioner of Agriculture and Industries of permits for selling, offering for sale, storing, or using such petroleum products and to require the making of applications for such permits and payment of a permit fee; to authorize the Board of Agriculture and Industries to establish minimum standards for such petroleum products; to require compliance with such standards; to provide for enforcement of this act, including provisions for maintenance of records and for labeling, sampling and testing such products, provisions prohibiting adulteration thereof, and provisions for penalties for violation of this act; to prohibit the sale, offering for sale, storage or use in this State of petroleum products not meeting the said standards; to impose an inspection fee in respect of each such petroleum product; to provide for the disposition of such inspection fees and any penalties collected under this act; to provide that violation of this act constitutes a misdemeanor; and to repeal Article 21 of Chapter 1 of Title 2 of the Code of Alabama of 1940 and subdivision 2 of Article 26 of the said Chapter 1.' "

341 So. 2d at 714 (emphasis omitted). The act also provided that the first $55,000 of the monthly proceeds from the inspection fee would be disbursed to an agricultural fund and that the remainder would be disbursed to a road and bridge fund.

Gurley Oil Company and Gurley Refining Company ("the oil companies") sued the Commissioner of Agriculture and Industries, seeking a judgment declaring that the act violated the single-subject requirement of § 45. The trial court entered a judgment in favor of the oil companies, declaring that the act violated § 45 because, the court determined,

> "while [the act] described in its title as providing for 'inspection fees,' [it] is in fact a revenue-producing tax measure because the revenue generated far exceeds what is necessary to administer the inspection program and the excess revenue was, by a subsequent act, pledged for payment of bonds issued by the intervenor, Alabama Highway Authority, to provide funds for highway construction."

Lane, 341 So. 2d at 714-15.

The oil companies argued on appeal in support of the trial court's judgment that the title of the act did not clearly express the subject of the

act and that the act actually contained two subjects, one relating to an inspection program for petroleum products and the other relating to funding of the state's highway-construction program. In reversing the trial court's judgment, this Court explained:

> "We hold that the act does not contain more than one subject. The one subject is the inspection program. The levying and disposition of inspection fees is part and parcel of the inspection program. ...
>
> "Furthermore, an act does not contain more than one subject merely because it provides for more than one use of the revenue collected under the act. Opinion of the Justices [No. 167], 270 Ala. 38, 42, 115 So.2d 464 (1959). To uphold the trial court's judgment would unduly handicap the legislature in the exercise of its legitimate prerogatives and would not serve the purposes of § 45 in our judgment. Opinion of the Justices [No. 174], 275 Ala. 254, 154 So. 2d 12 (1963)."

341 So. 2d at 715.

The facts of Lane are clearly distinguishable from the facts of this case, because the act at issue in Lane did not amend an existing earmark of the revenue collected pursuant to the act that resulted in one entity receiving less funding while simultaneously appropriating the funds removed from that earmark to another entity, resulting in the latter

entity's receiving an increase in funding. Here, Act No. 2018-432 amended the earmark of a portion of the county tobacco-tax proceeds to a special fund overseen by the county commission by decreasing from 15% to 13% the share of tobacco-tax proceeds to be disbursed to that special fund while simultaneously increasing from 18% to 20% the share of the tobacco-tax proceeds to be disbursed to the animal shelter.

The county commission cites Childree v. Hubbert, 524 So. 2d 336 (Ala. 1988), in support of its contention that an act that repeals an earmark and also makes an appropriation of the previously earmarked funds contains more than one subject and violates § 45. Before enacting the legislation at issue in Childree, the legislature had considered an education appropriations bill that provided appropriations for elementary and secondary schools; for junior and technical colleges; for colleges and universities; for various other state agencies; and for entities that were not state agencies but some of which, at least arguably, served educational purposes. While the legislature was in session, it sought an advisory opinion from the members of this Court as to whether the education-

appropriations bill satisfied the § 45 single-subject requirement. All nine Justices opined that the education appropriations bill satisfied the single-subject requirement of § 45 because the subject of public education had historically been treated comprehensively in such appropriation bills. Opinion of the Justices No. 323, 512 So. 2d 72 (Ala. 1987). Opinion of the Justices No. 323 stated that no appropriations could be made in the bill to institutions not controlled by the State. The opinion also expressed reservations as to appropriations to State agencies not obviously educational in nature.

After that opinion issued, the legislature removed a number of appropriations from the education appropriations bill and added them to the general appropriations bill that eventually became Act No. 87-715. Act No. 87-715 directed that appropriations be made from the Alabama Special Education Trust Fund ("ASETF") to various State entities. An action was brought challenging the constitutionality of Act No. 87-715. The trial court in Childree entered a judgment declaring Act No. 87-715

unconstitutional insofar as the act appropriated funds from the ASETF to various State agencies.

In holding that any appropriations bill appropriating ASETF funds other than as specified in the legislation creating the ASETF would violate the single subject requirement of § 45, this Court stated:

> "[T]he removal or disregard of earmarking is not a matter properly to be included in an appropriation bill. Presumably, the earmarking could be removed in a proper single-subject bill or in a properly constituted revenue bill, but until such an action is taken, no appropriation bill can appropriate such funds other than as they were earmarked.
>
> "The point that earmarking cannot be repealed by an appropriation bill becomes even clearer when considered in light of the fact that the earmarking provisions are now substantive parts of the Code. See, e.g., § 40-1-31[, Ala. Code 1975]. Therefore, disregard of earmarking would violate the Code, and repeal of earmarking would amend the Code. For the legislature to either disregard or repeal earmarking in an appropriation bill would violate § 71 or § 45, for the same reasons as discussed above regarding revenue bills."

Childree, 524 So. 2d at 341. Based on this Court's reasoning in Childree, because Act No. 2018-432, in part, repeals the dedication of funds to a special fund overseen by the county commission for disbursement to the local water districts while simultaneously appropriating those funds to the

animal shelter, I conclude that Act No. 2018-432 impermissibly contains multiple subjects and violates the single-subject requirement of § 45.

Because I believe that Act No. 2018-432 violates § 45 for the reasons expressed above, I respectfully dissent from the main opinion.

Mendheim, J., concurs.