Rel: November 18, 2022

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

1210309

Young Americans for Liberty at the University of Alabama in Huntsville and Joshua Greer

v.

Finis St. John IV, in his official capacity as Chancellor of the University of Alabama System; Charles L. Karr, in his official capacity as Interim President of the University of Alabama in Huntsville; Kristi Motter, in her official capacity as Vice President for Student Affairs at the University of Alabama in Huntsville; Ronnie Hebert, in his official capacity as Dean of Students at the University of Alabama in Huntsville; Will Hall, in his official capacity as Director of Charger Union and Conference Training Center at the University of Alabama in Huntsville; and Juanita Owens, in her official capacity as

Associate Director of Conferences and Events at the University of Alabama in Huntsville

Appeal from Madison Circuit Court
(CV-21-900878)

BRYAN, Justice.

Joshua Greer, a student at the University of Alabama in Huntsville ("the University"), and Young Americans for Liberty, a student organization at the University ("the plaintiffs"), appeal from a judgment dismissing their action challenging the legality of the University's policy regulating speech in outdoor areas of the University's campus ("the policy"). We reverse and remand.

In 2019, the Alabama Legislature passed what the parties refer to as the "Alabama Campus Free Speech Act" ("the Act"), § 16-68-1 et seq., Ala. Code 1975. The Act provides, in part:

> "(a) On or before January 1, 2021, the board of trustees of each public institution of higher education shall adopt a policy on free expression that is consistent with [the Act]. The policy, at a minimum, shall adhere to all of the following provisions:
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> > "(1) That the primary function of the public institution of higher education is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate, and that, to fulfill that function, the institution will strive to ensure the

fullest degree possible of intellectual freedom and free expression.

"(2) That it is not the proper role of the institution to shield individuals from speech protected by the First Amendment to the United States Constitution and Article I, Section 4 of the Constitution of Alabama of 1901, including without limitation, ideas and opinions they find unwelcome, disagreeable, or offensive.

"(3) That students, administrators, faculty, and staff are free to take positions on public controversies and to engage in protected expressive activity in outdoor areas of the campus, and to spontaneously and contemporaneously assemble, speak, and distribute literature.

"(4) That the outdoor areas of a campus of a public institution of higher education shall be deemed to be a forum for members of the campus community, and the institution shall not create free speech zones or other designated outdoor areas of the campus in order to limit or prohibit protected expressive activities.

"….

"(7) That the public institution of higher education may maintain and enforce constitutional time, place, and manner restrictions for outdoor areas of campus only when they are narrowly tailored to serve a significant institutional interest and when the restrictions employ clear, published, content-neutral, and viewpoint-neutral criteria, and provide for ample alternative means of expression. All restrictions shall allow for members of the university

> community to spontaneously and contemporaneously assemble and distribute literature."

§ 16-68-3(a)(1)-(4), (7), Ala. Code 1975 (emphasis added).

In June 2020, in response to the passage of the Act, the Board of Trustees of the University of Alabama ("the Board") adopted the policy, which regulates the use of outdoor areas on the University's campus. See the University's "Policies and Procedures," No. 03.01.06, "Use of Outdoor Areas of Campus." The policy allows University students and student organizations, among others, to reserve and use outdoor spaces on campus to engage in speech. Whether a reservation is required depends on the nature of the students' activities and expression. The general rule is that students must make reservations for activities that make use of the outdoor areas of campus. The Act defines "outdoor areas of campus" as "[t]he generally accessible outside areas of the campus of a public institution of higher education where members of the campus community are commonly allowed including, without limitation, grassy areas, walkways, and other similar common areas." § 16-68-2(6), Ala. Code 1975. Under the policy, students seeking to reserve space must apply for a reservation at least three business days before the planned event.

However, there are two exceptions to the general rule requiring reservations for the use of outdoor space on campus. No reservation is needed for "casual recreational or social activities," a term that the policy does not define. The policy, ¶ B. Similarly, no reservation is needed for "spontaneous activities of expression, which are generally prompted by news or affairs coming into public knowledge less than forty-eight (48) hours prior to the spontaneous expression." The policy, ¶ F(1)(6). The policy allows such spontaneous speech in certain designated areas without prior approval from the University. The policy then lists 20 designated areas on campus where spontaneous speech is allowed.

In July 2021, the plaintiffs sued the members of the Board and various officials associated with the University; the members of the Board were later dismissed by joint stipulation.[1] The plaintiffs alleged that the policy violates the Act insofar as the policy generally requires

[1]The remaining defendants are Finis St. John IV, in his official capacity as Chancellor of the University of Alabama System; Charles L. Karr, in his official capacity as Interim President of the University; Kristi Motter, in her official capacity as Vice President for Student Affairs at the University; Ronnie Hebert, in his official capacity as Dean of Students at the University; Will Hall, in his official capacity as Director of Charger Union and Conference Training Center at the University; and Juanita Owens, in her official capacity as Associate Director of Conferences and Events at the University.

reservations for speech, creates the exception for "spontaneous" speech, and creates designated areas on campus for that spontaneous speech. Alternatively, the plaintiffs alleged that the policy violates the right to free speech guaranteed by Article I, § 4, of the Alabama Constitution of 1901 (Off. Recomp.), insofar as the policy requires reservations for speech and has the exception for spontaneous speech. The plaintiffs attached the policy to their complaint, which made the policy part of the complaint. See Rule 10(c), Ala. R. Civ. P. ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."). The plaintiffs sought declaratory and injunctive relief.

The defendants filed a motion to dismiss under Rule 12(b)(6), Ala. R. Civ. P., arguing that the policy does not violate the Act or § 4 of the Alabama Constitution. The defendants also argued that the Act itself is unconstitutional because, they said, it violates Article XIV, § 264, of the Alabama Constitution of 1901 (Off. Recomp.). Section 264 gives the Board "management and control" over the University; the defendants argued that the Act impermissibly infringes on the Board's authority under that section. The circuit court granted the motion to dismiss without providing an explanation. The plaintiffs filed a postjudgment

motion, which the circuit court denied with a lengthy order explaining its rationale for having dismissed the case. The circuit court concluded that the policy does not violate the Act or § 4 of the Alabama Constitution. Given those conclusions, the circuit court declined to decide whether the Act violates § 264 of the Alabama Constitution. The plaintiffs appealed to this Court.

> "The appropriate standard of review under Rule 12(b)(6)[, Ala. R. Civ. P.,] is whether, when the allegations of the complaint are viewed most strongly in the pleader's favor, it appears that the pleader could prove any set of circumstances that would entitle [the pleader] to relief. In making this determination, this Court does not consider whether the plaintiff will ultimately prevail, but only whether [the plaintiff] may possibly prevail. We note that a Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief."

Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993) (citations omitted).

In determining the meaning of a statute, "our inquiry begins with the language of the statute, and if the meaning of the statutory language is plain, our analysis ends there." Ex parte McCormick, 932 So. 2d 124, 132 (Ala. 2005).

> "Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the

> statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992).

We first address the plaintiffs' argument that the policy violates the Act by creating "free speech zones," which the Act prohibits. The circuit court did not directly address this argument in its order explaining the rationale for dismissing the action. As noted, the general rule under the policy is that students must make reservations for activities that make use of the campus's outdoor areas. However, reservations are not required for "spontaneous activities of expression" that occur in outdoor areas. But the policy allows such spontaneous speech only in certain designated areas on campus. The policy lists 20 designated areas, spread out over campus, where spontaneous speech is allowed.

We agree with the plaintiffs that the designated areas for spontaneous speech are prohibited "free speech zones" under the Act. The Act provides that the "outdoor areas" of the University's campus "shall be deemed to be a forum for members of the campus community, and the institution shall not create free speech zones or other designated

outdoor areas of the campus in order to limit or prohibit protected expressive activities." § 16-68-3(a)(4). The Act broadly defines a "free speech zone" as "[a]n area on campus of a public institution of higher education that is designated for the purpose of engaging in a protected expressive activity." § 16-68-2(3). The designated areas for spontaneous speech fit squarely within this definition; those areas are "area[s] … that [are] designated for the purpose of engaging in protected expressive activity." Id. The Act establishes the outdoor areas of campus as an open forum for free speech and unambiguously prohibits the carving out of special free-speech areas on campus. The designated areas for spontaneous speech identified in the policy are plainly free-speech zones under the Act, and the Act prohibits such zones. Accordingly, the policy violates the Act insofar as it establishes designated areas for spontaneous speech, and the circuit court erred in dismissing the plaintiffs' action.

The plaintiffs make other arguments asserting that the circuit court erred by determining that the policy does not violate the Act. Those arguments present more complicated issues than the argument concerning free-speech zones. Initially, we consider the overall framework established by the Act in addressing speech on campus. The

Act broadly provides that "students, administrators, faculty, and staff are free to take positions on public controversies and to engage in protected expressive activity in outdoor areas of the campus, and to spontaneously and contemporaneously assemble, speak, and distribute literature." § 16-68-3(3). The Act does allow some restrictions on speech on campus, however. The Act provides that "the public institution of higher education may maintain and enforce constitutional time, place, and manner restrictions for outdoor areas of campus." § 16-68-3(7). Those time, place, and manner restrictions must be "narrowly tailored to serve a significant institutional interest" and must "employ clear, published, content-neutral, and viewpoint-neutral criteria, and provide for ample alternative means of expression." Id. By using the term "constitutional time, place, and manner restrictions," the Act draws on federal First Amendment caselaw. See, e.g., Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n, 460 U.S. 37, 45 (1983) (stating that the government may impose time, place, and manner restrictions on speech if the restrictions "are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication"). Thus, federal caselaw is persuasive in

evaluating the Act's provision regarding time, place, and manner restrictions, and we will draw on that caselaw here.

The defendants contend, as they successfully did below, that the policy adopts valid time, place, and manner restrictions regarding speech in outdoor areas of campus. In response, the plaintiffs take two approaches. They present several arguments attempting to establish that the challenged parts of the policy are not valid time, place, and manner restrictions as a matter of law. Alternatively, the plaintiffs argue that the circuit court's dismissal of their action was inappropriate given the fact-intensive analysis required to determine if time, place, and manner restrictions are valid; for the reasons explained below, we agree with that alternative argument. We reiterate that "a Rule 12(b)(6) dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." Nance, 622 So. 2d at 299. Thus, with respect to the challenged time, place, and manner restrictions in the policy, the dismissal was proper only if the defendants demonstrated that the plaintiffs can prove no set of facts supporting their claim that the policy

conflicts with the Act. That is a very favorable standard for the plaintiffs, and the defendants did not meet it in this case.

The analysis of time, place, and manner restrictions is "highly fact-bound." United Church of Christ v. Gateway Econ. Dev. Corp. of Greater Cleveland, 383 F.3d 449, 455 (6th Cir. 2004). "The nature of a place, 'the pattern of its normal activities, dictate the kinds of regulations of time, place, and manner that are reasonable.'" Grayned v. City of Rockford, 408 U.S. 104, 116 (1972) (quoting Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1042 (1969)).

> "[W]hether a restriction on the time, place, or manner of speech is reasonable presents a question of law. However, the reasonableness of a restriction involves an underlying factual inquiry. Under Ward[v. Rock Against Racism, 491 U.S. 781, 791 (1989)], the challenged restriction must be (1) content-neutral, (2) narrowly tailored to serve an important governmental interest, and (3) leave open ample alternatives for communication of information. These elements involve subsidiary fact questions …."

McTernan v. City of York, 564 F.3d 636, 646 (3d Cir. 2009). "A restriction cannot be 'narrowly tailored' in the abstract; it must be tailored to the particular government interest asserted." Id. at 656. "[B]y demanding a close fit between ends and means, the tailoring requirement prevents the government from too readily 'sacrific[ing] speech for

efficiency.'" McCullen v. Coakley, 573 U.S. 464, 486 (2014) (quoting Riley v. National Fed'n of Blind of N.C., Inc., 487 U.S. 781, 795 (1988)). "For a content-neutral time, place, and manner regulation to be narrowly tailored, it must not 'burden substantially more speech than is necessary to further the government's legitimate interests.'" Id. (quoting Ward v. Rock Against Racism, 491 U.S. 781, 799 (1989)). Once a plaintiff shows that the First Amendment applies to a challenged time, place, and manner restriction, the government then bears the burden of demonstrating that the restriction is constitutionally permissible. Clark v. Community for Creative Non-Violence, 468 U.S. 288, 294 n.5 (1984); 1 Rodney A. Smolla, Smolla and Nimmer on Freedom of Speech § 8:49 (3d ed.) (updated Sept. 2022). "The burden is on the government to show that its regulation is narrowly tailored." Doe v. City of Albuquerque, 667 F.3d 1111, 1133 (10th Cir. 2012).

Here, the defendants failed to establish that the plaintiffs could not possibly prove facts supporting their claim that the policy violates the Act's provision regarding time, place, and manner restrictions. Specifically, we note that, as a general rule, the policy requires students who want to use outdoor space to speak on campus to reserve the outdoor

space. Importantly, this requirement appears to apply to even a single student wishing to speak on campus. This point alone casts serious doubt on whether the requirement is narrowly tailored to serve a significant interest of the University. "Permit schemes and advance notice requirements that potentially apply to small groups are nearly always overly broad and lack narrow tailoring." American-Arab Anti-Discrimination Comm. v. City of Dearborn, 418 F.3d 600, 608 (6th Cir. 2005). See also Burk v. Augusta-Richmond Cnty., 365 F.3d 1247, 1255 n.13 (11th Cir. 2004) (noting that "several courts" have struck down "permitting requirements because their application to small groups rendered them insufficiently tailored" and citing supporting cases); and Marcavage v. City of Chicago, 659 F.3d 626, 634-35 (7th Cir. 2011) (noting "that many … circuits have looked unfavorably on permit requirements for groups as small as [a] group of five" and citing supporting cases).

Thus, it is doubtful that the reservation requirement is narrowly tailored, as the Act requires. However, in light of the procedural posture here and the fact-intensive nature of determining whether the reservation requirement is narrowly tailored, we decline to decide

whether the plaintiffs at this stage are entitled to prevail on the merits on this issue. Given that this appeal is taken from a judgment of dismissal, the key point is that the plaintiffs could possibly prevail on the merits on this issue. Crucially, there is no evidence in the record establishing that a reservation requirement for speech applying to even a single student is narrowly tailored to serve a significant interest of the University. The defendants, as government officials restricting speech, have the burden of showing that the restrictions are narrowly tailored. Doe, 667 F. 3d at 1133. In short, this is a factual issue that precludes the dismissal of the plaintiffs' action, and the circuit court erred by dismissing the action.

Thus, we are reversing the judgment dismissing the action on two grounds. First, the policy plainly violates the Act insofar as the policy creates designated areas for spontaneous speech; those areas are prohibited free-speech zones under the Act. Therefore, dismissal of the plaintiffs' action was improper for this reason alone. Second, regarding other challenged parts of the Act, there is at least one unresolved factual issue concerning the evaluation of the policy's time, place, and manner restrictions. Thus, because the defendants failed to demonstrate that the

plaintiffs could prove no set of facts supporting their action, dismissal was inappropriate for this reason also. On remand, the parties are free to submit evidence concerning whether the remaining challenged provisions in the policy are valid time, place, and manner restrictions under the Act.

Because there are various moving parts in this case, we take this opportunity to briefly provide some further direction to the circuit court going forward. In concluding that the policy violates the Act by creating free-speech zones, we have determined that the plaintiffs are due to at least partially prevail on their claim that the policy violates the Act. That conclusion implicates the defendants' alternative argument that the Act violates § 264 of the Alabama Constitution, which gives the Board "management and control" over the University. The defendants contend that the Act impermissibly interferes with the power of the Board to manage and control the University. Because the circuit court concluded that the policy did not violate the Act, the circuit court "decline[d] to reach [the § 264] issue pursuant to the doctrine of constitutional avoidance," see Chism v. Jefferson Cnty., 954 So. 2d 1058, 1063 (Ala. 2006) ("'"Generally courts are reluctant to reach constitutional

questions, and should not do so, if the merits of the case can be settled on non-constitutional grounds."'" (citations omitted)). However, on remand, the issue whether the Act violates § 264 is now ripe for the circuit court to consider in the first instance. We decline to decide the constitutionality of the Act at this point in the proceedings. In this appeal, we simply decide that dismissal of the plaintiffs' action was improper for the reasons discussed above. We pretermit the remaining arguments made by the plaintiffs.

REVERSED AND REMANDED.

Bolin, Wise, and Mendheim, JJ., concur.

Shaw, J., concurs specially, with opinion.

Parker, C.J., concurs in part and concurs in the result, with opinion.

Sellers, J., concurs in part and concurs in the result, with opinion, which Stewart, J., joins.

Mitchell, J., concurs in part and concurs in the result, with opinion.

SHAW, Justice (concurring specially).

I concur that the University of Alabama in Huntsville ("the University"), through its policy regulating speech in outdoor areas of the University's campus ("the policy"), has created "free speech zones or other designated outdoor areas of the campus in order to limit or prohibit protected expression activities" in violation of § 16-68-3(a)(4), Ala. Code 1975. I write specially to note the following.

With the policy's exception limiting spontaneous speech to certain areas held to be in violation of § 16-68-3, the remaining portion of the policy providing time, place, and manner restrictions on speech would appear to apply to the University's entire campus. However, spontaneous speech -- by its very nature often entirely unplanned -- is not always something for which a person could, in advance, reserve a time and place under the policy. Further, the time, place, and manner policy must "allow for members of the university community to spontaneously and contemporaneously assemble and distribute literature." § 16-68-3(a)(7). The policy thus cannot be deemed to apply to spontaneous speech. It can, however, apply to speech that is <u>not</u> spontaneous -- events, protests, assemblies, etc., that are planned in

advance. Factual issues preclude dismissal of the plaintiffs' claims regarding the viability of this portion of the policy.

PARKER, Chief Justice (concurring in part and concurring in result).

I concur in the main opinion except its analysis of the "free speech zones" aspect of the plaintiffs' claim. I believe that, at this motion-to-dismiss stage, it is beyond our review to determine the merits of this aspect of the claim. And I agree with the other Justices who point out that the Alabama Campus Free Speech Act ("the Act"), § 16-68-1 et seq., Ala. Code 1975, prohibits "free speech zones" only if they are created "in order to limit" protected speech. In addition, I write to emphasize that the Alabama Constitution's protection of free speech is incorporated into the Act and that Alabama courts should independently interpret this State constitutional protection. Because the latter point is fundamental, I address it first.

I. The Alabama Constitution's independent protection of free speech

The Act allows certain "constitutional time, place, and manner restrictions." § 16-68-3(a)(7), Ala. Code 1975 (emphasis added). The main opinion concludes that, by using this term, the Act "draws on federal First Amendment caselaw." ___ So. 3d at ___. I agree with that conclusion as far as it goes. As the Act itself emphasizes, however, freedom of speech is "protected by the First Amendment to the United States Constitution and

Article I, Section 4 of the Constitution of Alabama of 1901." § 16-68-3(a)(2) (emphasis added). Thus, the word "constitutional" in subsection (a)(7) necessarily incorporates the free-speech protections of both the federal and Alabama constitutions.

Moreover, Alabama courts have an obligation to independently interpret the Alabama Constitution. To protect individual rights, our country's unique system of federalism contains an important feature: governments are constrained by two sources of constitutional limitation -- state and federal. See Jeffrey S. Sutton, 51 Imperfect Solutions: States and the Making of American Constitutional Law 8 (2018). Indeed, for the first century and a half after America's founding, individual rights were protected primarily through state constitutions. Id. at 12-13. Treatises of that era, such as Thomas Cooley's General Principles of Constitutional Law, were concerned primarily with state constitutional law. Id. at 13. Indeed, until the 1920s, most federal constitutional protections, including the First Amendment's protection of freedom of speech, had not yet been applied against the states through selective incorporation under the Fourteenth Amendment. See, e.g., Stromberg v. California, 283 U.S. 359, 368 (1931) (declaring that freedom of speech

had been determined to be incorporated, citing 1920s cases). Hence, after the State of Alabama was founded in 1819, the primary document that Alabamians looked to for vindication of their fundamental rights was not the federal constitution, but the constitution that they had adopted for their own self-governance.

Further, our Alabama Constitution has a different text, history, and context from the federal constitution. It contains protections for life, liberty, and property that are not dependent on the meaning and scope of its federal counterpart. To name just a few, our State constitution protects religious freedom, Art. I, §§ 3-3.02, Ala. Const. 1901 (Off. Recomp.), the right to bear arms, § 26, the right to compensation for takings of private property, § 23, the right to trial by jury, § 11, the right to be free from unreasonable searches and seizures, § 5, and the right to due process in criminal cases, § 6. Our constitution also provides protections without any federal analog, such as for "the sanctity of unborn life and the rights of unborn children, including the right to life." § 36.06(a).

In addition, every Alabama state-court judge takes an oath to support not only the federal constitution but also the Alabama

Constitution. See Art. XVI, § 279. Consequently, "there is committed to [Alabama courts] ... the trust of guarding and protecting the life, liberty and property of the citizen, as guarantied by the [State] constitution," Sadler v. Langham, 34 Ala. 311, 322 (1859). That is our obligation to the constitutional text and to the people protected by it.

We cannot delegate that obligation to the United States Supreme Court. Regrettably, state courts, including Alabama's, have at times succumbed to blindly following federal constitutional interpretations in interpreting state constitutions. See generally Sutton, supra, at 174-78. There is a tendency among parties and courts to act as if there is only one source of constitutional law, and to treat the State constitution as at best an afterthought or footnote. Thus, whether the case is about a taking of property, a search or seizure, or assistance of counsel, parties often proceed as if the job of the court is solely to apply United States Supreme Court precedent. That should not be so. To the extent that federal decisions interpreting the federal constitution are illuminating, we should consider them. But they cannot bind our interpretation of the Alabama Constitution, nor ought parties to treat them as if they do. And this Court especially, as the final arbiter of cases arising under the State

constitution, has a duty to interpret it independently. "[W]e need not rest our conclusions on the federal constitution ...." Peddy v. Montgomery, 345 So. 2d 631, 633 (Ala. 1977).

To faithfully carry out this duty in deciding cases, Alabama courts should prioritize analyzing the meaning of our State constitution. See Sutton, supra, at 178-82. In practice, courts should consider addressing State constitutional issues before determining whether federal constitutional issues must be addressed. Id. at 178-79. See generally Hans A. Linde, First Things First: Rediscovering the States' Bills of Rights, 9 Balt. L. Rev. 379 (1980). If government conduct violates the Alabama Constitution, its legality under the federal constitution may be irrelevant. Cf., e.g., Peddy. See generally Mount Royal Towers, Inc. v. Alabama State Bd. of Health, 388 So. 2d 1209 (Ala. 1980). Similarly, citizens' conduct may be protected by the Alabama Constitution regardless of the federal constitution. See generally McKinney v. City of Birmingham, 292 Ala. 726, 727, 296 So. 2d 236, 237 (1974) (Jones, J., dissenting). At other times, we may determine that the Alabama Constitution does not protect a "right" protected by the Supreme Court's interpretation of the federal constitution. Cf., e.g., Hamilton v. Scott, 97

So. 3d 728, 742-47 (Ala. 2012) (Parker, J., concurring specially) (criticizing Roe v. Wade, 410 U.S. 113 (1973)); Hicks v. State, 153 So. 3d 53, 72-84 (Ala. 2014) (Parker, J., concurring specially) (same); Ex parte Phillips, 287 So. 3d 1179, 1244-53 (Ala. 2018) (Parker, J., concurring specially) (same); Magers v. Alabama Women's Ctr. Reprod. Alternatives, LLC, 325 So. 3d 788, 790-93 (Ala. 2020) (Mitchell, J., concurring specially) (same; urging Supreme Court to overrule Roe); Ex parte Church, [Ms. 1210187, Feb. 11, 2022] ___ So. 3d ___, ___ (Ala. 2022) (Parker, C.J., concurring specially) (same). That decision too is significant, because the Supreme Court's interpretation can change. See, e.g., Dobbs v. Jackson Women's Health Org., 597 U.S. ___, 142 S. Ct. 2228 (2022) (overruling Roe). To that end, we have a role in highlighting deeply erroneous Supreme Court decisions, recognizing that "[a]n illegitimate decision is due no allegiance," Ex parte State ex rel. Alabama Pol'y Inst., 200 So. 3d 495, 611 (Ala. 2015) (Parker, J., concurring).

In this case, the plaintiffs have recognized the independent significance of the Alabama Constitution's protection of free speech. In addition, amicus Alabama Center for Law and Liberty is to be commended for seeking to focus our attention on the Alabama

Constitution. I urge future parties and amici to continue doing so. I also encourage legal scholars to explore the original meaning of this free-speech provision as well as the many other protections of rights in the Alabama Constitution; at present, the literature is minimal. In the remainder of this section, I will outline potential avenues for that work.

Even if Alabama's free-speech provision were the same as the federal First Amendment, "[t]here is no reason to think, as an interpretative matter, that constitutional guarantees of independent sovereigns, even guarantees with the same or similar words, must be construed in the same way." Sutton, supra, at 174. But the two free-speech provisions are different. The federal First Amendment tersely declares: "Congress shall make no law ... abridging the freedom of speech, or of the press ...." U.S. Const. amend. I. Alabama's § 4 is more elaborate: "[N]o law shall ever be passed to curtail or restrain the liberty of speech or of the press; and any person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty." Art. I, § 4.

"An amended or revised State constitution should be interpreted in the light of its predecessors." Steele v. County Comm'rs of Madison Cnty.,

83 Ala. 304, 305, 3 So. 761, 762 (1888). The first clause of § 4 was original to our 1901 constitution. The second clause, however, originated in our 1819 constitution and was carried forward unchanged. See Art. I, § 8, Ala. Const. 1819; Art. I, § 8, Ala. Const. 1861; Art. I, § 5, Ala. Const. 1865; Art. I, § 6, Ala. Const. 1868; Art. I, § 5, Ala. Const. 1875. Thus, any court decisions applying the predecessors of the second clause could be illuminating. In addition, interpretation of § 4 should take into account contemporaneous dictionaries (published around the times when § 4 and its predecessors were adopted), the history and legal context of its adoption, contemporaneous lay-audience advocacy for (or against) its adoption, and any other evidence of its original public meaning. Particularly enlightening might be evidence of the contemporaneous general public understanding of free speech, especially as articulated in other states' free-speech provisions and court decisions interpreting them.

One source of evidence of § 4's original meaning that should not be neglected is the common-law history of the freedom of speech. In particular, Sir William Blackstone's Commentaries on the Laws of England are at the foundation of American jurisprudence. See Albert W.

Alschuler, Rediscovering Blackstone, 145 U. Pa. L. Rev. 1, 7 (1996); Ex parte H.H., 830 So. 2d 21, 31 (Ala. 2002) (Moore, C.J., concurring specially). Although Blackstone supported after-the-fact punishments for wrongful speech such as defamation, he advocated for a categorical prohibition of prior restraints. See 4 William Blackstone, Commentaries *151-53. For Blackstone, freedom of speech "consist[ed] in laying no previous restraints upon publications." Id. at *151. He deemed this prohibition "essential to the nature of a free state." Id. That was because prior-approval laws "subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government." Id. at *152. Thus, each person "ha[d] an undoubted right to lay what sentiments he please[d] before the public." Id. at *151.

Generations ago, a court in Alabama applied that Blackstonian approach to § 4:

> "[T]he Constitution ... declares that:
>
> > "'Any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.' Const. Ala. 1901, art. 1, Sec. 4.
> >
> > "Neither a court of equity, nor any other department of government, can set up a censorship in advance over such

> matters, and prevent a person from exercising this constitutional right. He has the right to publish, if he chooses to take the consequences. After he has spoken or written falsely, the criminal law can punish him, and the civil courts amerce him in damages. That such redress may not be adequate in all cases, and in some cannot be, is quite apparent; but the remedies named are all that the Constitution permits any court to employ .... The court cannot go outside of the Constitution, or hold that to be an inadequate remedy which the Constitution has declared to be the sole remedy. The wrongs and injury, which often occur from lack of preventive means to suppress slander, are parts of the price which the people, by their organic law, have declared it is better to pay, than to encounter the evils which might result if the courts were allowed to take the alleged slanderer or libeler by the throat, in advance."

Citizens' Light, Heat & Power Co. v. Montgomery Light & Water Power Co., 171 F. 553, 556 (C.C.M.D. Ala. 1909). This Court itself declared:

> "A free government has never tolerated the muzzling of the press or the stifling of free speech. At most, it has only held those who enjoy this freedom answerable for an abuse thereof. ...
>
> "....
>
> "Judge [Joseph] Story, in his treatise on the Constitution, ... says: '... It is plain ... that the language of this [First A]mendment imports no more than that every man shall have a right to speak, write, and print his opinions upon any subject whatsoever, without any prior restraint, so always that he does not injure any other person in his rights, person, property or reputation; and so always that he does not thereby disturb the public peace, or attempt to subvert the government.' ... 2 Story on the Constitution (5th Ed.) pp. 634, 635."

Barton v. City of Bessemer, 234 Ala. 20, 22, 173 So. 626, 628 (1937) (emphasis omitted).

If parties' counsel, amici, and scholars will carefully examine the evidence of the original public meaning of § 4's protection of free speech, their work will assist Alabama courts in independently interpreting this important constitutional protection. In addition, that work will help illuminate the meaning of the Act, which subjects its allowance of time, place, and manner restrictions to this constitutional protection. It is time for the Alabama bar and bench to dust off the Alabama Constitution and rediscover its independent protections of individual rights.

II. "Free speech zones"

I next explain my point of difference with the main opinion. The outdoor-speech policy of the University of Alabama in Huntsville ("the University") designated certain areas of campus for "[s]pontaneous activities of expression" without a prior reservation. (For ease of the reader, I will refer to "activities of expression" and similar terms as "speech.") The plaintiffs' complaint alleged that that designation of areas violated the following language of the Act: "[T]he institution shall not create free speech zones or other designated outdoor areas of the campus

in order to limit or prohibit protected expressive activities," § 16-68-3(a)(4), Ala. Code 1975. The defendants moved to dismiss, arguing that the designated areas did not limit speech. Rather, the defendants contended, the areas expanded the opportunity for speech because they allowed spontaneous speech without the prior reservations that were required for the rest of the outdoor part of campus. The circuit court granted the motion without directly addressing that argument. The main opinion concludes that the circuit court erred because, as a matter of law, the designated areas were prohibited "free speech zones."

However, in procedural terms, the defendants' argument was that the "free speech zones" aspect of the plaintiffs' claim failed to state a claim, under Rule 12(b)(6), Ala. R. Civ. P. Specifically, the motion attacked this aspect of the claim on the basis that it was foreclosed by a correct interpretation and characterization of the policy's designated-areas provision. The policy was an exhibit to the complaint. Thus, in essence, the defendants' argument was that the complaint's allegations were conclusively contradicted by the complaint's exhibit. See Twine v. Liberty Nat'l Life Ins. Co., 294 Ala. 43, 49, 311 So. 2d 299, 304 (1975) ("An exhibit made the basis of a cause of action ... and contradicting the

averments of the pleading of which it is a part will control such pleading.").

On a Rule 12(b)(6) motion to dismiss, the defendant bears the burden of showing that the claim, as pleaded, fails as a matter of law. 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1357 (3d ed. 2004) ("[T]he burden is on the moving party to prove that no legally cognizable claim for relief exists."). The plaintiff's responsive burden is then to show that the defendant has not met its burden. Cf. Black v. North Panola Sch. Dist., 461 F. 3d 584, 588 n.1 (5th Cir. 2006); Hooper v. City of Montgomery, 482 F. Supp. 2d 1330, 1334 (M.D. Ala. 2007); Neitzke v. Williams, 490 U.S. 319, 329-30 (1989). The plaintiff does not have to show that the claim will be ultimately meritorious. Cf. Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). If the trial court grants the motion, then this Court's review is similarly bounded by the posture of those burdens. We "'"do[] not consider whether the plaintiff will ultimately prevail, but only whether [the plaintiff] may possibly prevail."'" EB Invs., L.L.C. v. Atlantis Dev., Inc., 930 So. 2d 502, 507 (Ala. 2005) (citations omitted). In other words, we cannot decide whether the plaintiff's claim is ultimately meritorious in the abstract; we decide only

whether the defendant met its burden of showing that the claim was not meritorious as pleaded. Thus, here we cannot properly decide whether the "free speech zones" aspect of the plaintiffs' claim is ultimately meritorious, i.e., whether the policy's designation of areas violated the Act's prohibition of certain "free speech zones." We can decide only whether the defendants met their burden of showing that the terms of the policy, on their face (as an exhibit to the complaint), conclusively contradicted that aspect of the claim.

As part of this inquiry, I agree with the other Justices who point out that the Act does not categorically prohibit public institutions of higher education from creating "free speech zones." Rather, it prohibits them from "creat[ing] free speech zones or other designated outdoor areas of the campus in order to limit or prohibit protected expressive activities." § 16-68-3(a)(4) (emphasis added).

The phrase "in order to limit or prohibit protected expressive activities" qualifies the preclusion of "free speech zones." (Although the Act uses the language "limit or prohibit," within this discussion I will refer only to "limit[ing]" protected speech, because "prohibit[ion]" is merely the ultimate form of limitation.) The defendants posit that the

designated areas do not limit protected speech but instead expand or facilitate it. In the defendants' way of thinking, if it were not for the designated areas, all outdoor speech would require a prior reservation under the policy. Compared to that prior-reservation regime, the designated areas facilitate a greater amount of speech because they allow spontaneous speech without a reservation.

But that argument assumes that the designated areas' effect on speech is properly measured by comparison to that general prior-reservation regime. That view of the "baseline" level of speech for comparison does not square with the language of the Act. The Act prohibits areas that are created to limit "protected expressive activities." § 16-68-3(a)(4). Thus, the comparison baseline is the category of all speech that is constitutionally protected. In contrast, time-place-manner restrictions such as the policy's general prior-reservation regime do not define what speech is constitutionally protected; they define how constitutionally protected speech is (perhaps permissibly) restricted. Because the defendants' argument that the designated areas facilitate speech is premised on a wrong view of the baseline, they have not met

their burden of showing that the policy's designated areas were not created to "limit" protected speech.

Turning now to another aspect of the Act's "free speech zones" provision, I note that it prohibits creating designated areas "in order to" limit protected speech. § 16-68-3(a)(4). In context, "in order to" means "for the purpose of." Cf. Bryan A. Garner, Garner's Dictionary of Legal Usage 460 (3d ed. 2011) ("The phrase in order to is often wordy for the simple infinitive ['to'] ...."); Singletary v. McCormick, 36 N.C. App. 597, 244 S.E.2d 731 (1978) (applying statute that authorized grave removal "in order to" enlarge an existing church; interpreting "in order to" as meaning "as the means to"). The purpose of an actor's conduct can be determined based on evidence of the actor's subjective intent. Thus, Justice Sellers correctly implies that evidence of University officials' intent to limit protected speech could establish that the designated areas were created "in order to" limit protected speech. However, an actor's purpose can also be evidenced by the natural and ordinary results of the actor's conduct. See A. Magnano Co. v. Hamilton, 292 U.S. 40, 43 (1934) (holding that requirement that tax be raised for a public purpose "has regard to the use which is to be made of the revenue derived from the tax,

and not to any ulterior motive or purpose which may have influenced the Legislature in passing the act"); McCreary Cnty. v. American Civ. Liberties Union of Ky., 545 U.S. 844, 862 (2005) ("[S]crutinizing purpose [makes] practical sense … where an understanding of official objective emerges from readily discoverable fact, without any judicial psychoanalysis of a drafter's heart of hearts. The eyes that look to purpose belong to an '"objective observer,"' one who takes account of the traditional external signs that show up in the '"text, legislative history, and implementation of the ..."' ... official act." (citations omitted)); State Farm Fire & Cas. Co. v. Davis, 612 So. 2d 458, 464 (Ala. 1993) ("'[W]here intent to injure is inferred as a matter of law from the nature of the act committed, the insured's subjective intent does not matter.'" (citation omitted)); 21 Am. Jur. 2d Criminal Law § 114 (2016) ("Specific intent may be proved by direct evidence. However, ... it may be inferred from ... the actions of the defendant. ... [T]he fact finder may look to the act itself ...." (footnotes omitted)). Hence, the plaintiffs could establish that the designated areas were created "in order to" limit protected speech by showing that their primary function is to limit protected speech, regardless of evidence of the officials' subjective intent.

In the defendants' motion to dismiss and on appeal, they have not shown that, on the face of the policy, limiting protected speech is not the primary function of the designated areas. And they cannot show, on a Rule 12(b)(6) motion limited to the four corners of the complaint and its exhibits, that the officials' subjective intent was not to limit protected speech. Therefore, the defendants have not met their burden of showing that the designated areas were not created "in order to" limit protected speech.

To promote clarity and coherence in application of the Act, I note an additional point about "free speech zones." Within § 16-68-3, subsection (a)(4)'s prohibition of "free speech zones" appears to be an exception, a carve-out, from subsection (a)(7)'s allowance of time-place-manner restrictions. Under (a)(7), in general, time-place-manner restrictions are allowed if they are constitutional and meet (a)(7)'s criteria. But under (a)(4), one particular type of "place" restriction is never allowed: designation of a particular outdoor area for speech, for the purpose of limiting protected speech (either within or outside that area).[2]

[2]The Act appears to provide an exception to this prohibition. When a person or group has reserved an area for a particular speech event, subsection (a)(6) requires the institution not to allow others to disrupt

Finally, I agree with Justice Mitchell that we should not care about individual legislators' subjective motives when we interpret statutes. The law is what the law says, not what individual legislators wanted it to accomplish. As I have said before, "[extratextual legislative] 'intent' is not the law. The words of the constitution and statutes are the law." Ex parte Huntingdon Coll., 309 So. 3d 606, 624 (Ala. 2020) (Parker, C.J., dissenting). To that end, I suggest that we consider jettisoning confusing language about "intent of the law" and "objective intent." That kind of language tends to inadvertently perpetuate the myth that legislators' motives are what we are after. And there are much better ways to express the substance of statutory interpretation, including some employed by Justice Mitchell here.

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that event. As Justice Mitchell points out, that protection temporarily creates a geographic zone in which the reserving speaker's speech is facilitated beyond the baseline of simply being allowed to engage in protected speech, because others are prevented from disrupting it. However, would-be disrupters' speech is also constitutionally protected. See 1 Rodney A. Smolla, Smolla and Nimmer on Freedom of Speech § 10:39 (3d ed.) (updated Sept. 2022). Thus, an institution's prevention of disrupters' speech under (a)(6) functions as a time-place restriction on the disrupters' speech. Although such a restriction is "create[d] ... in order to limit" protected speech and thus would ordinarily be prohibited by (a)(4), it is nevertheless expressly allowed by (a)(6).

In my view, the present posture of this case does not allow us to rule on the ultimate merits of the "free speech zones" aspect of the plaintiffs' claim. We can properly hold only that, under a correct interpretation of the Act as prohibiting designated areas that are "create[d] ... in order to limit" protected speech, the defendants have not met their burden of showing that this aspect is not meritorious. In addition, the Act must be interpreted coherently, as a whole, and not according to the subjective motives of legislators, but according to its words.

SELLERS, Justice (concurring in part and concurring in the result).

I concur in all parts of the main opinion except to the extent that the opinion mandates a conclusion that, as a matter of statutory interpretation, the free-speech zones created by the policy regulating speech in outdoor areas of the campus of the University of Alabama in Huntsville ("the University") violate § 16-68-3(a)(4), Ala. Code 1975. Because I believe the issue whether the free-speech zones are permissible is a fact-intensive one, I concur in the result to reverse the trial court's judgment with respect to that issue. Section 16-68-3(a)(4) provides:

> "That the outdoor areas of a campus of a public institution of higher education shall be deemed to be a forum for members of the campus community, and the institution shall not create free speech zones or other designated outdoor areas of the campus in order to limit or prohibit protected expressive activities."

(Emphasis added.)

The majority holds that the trial court erred in dismissing the action filed by Joshua Greer, a student at the University, and Young Americans for Liberty, a student organization at the University ("the plaintiffs"), in part because the policy regulating speech in outdoor areas of the University's campus ("the policy") violates § 16-68-3(a)(4) as a matter of law by designating specific free-speech zones that can be used

for protected expression without a reservation. But free-speech zones are prohibited only if they are created "in order to limit or prohibit protected expressive activities." § 16-68-3(a)(4).

> "A dismissal [pursuant to Rule 12(b)(6), Ala. R. Civ. P.,] for failure to state a claim upon which relief can be granted is warranted only when the allegations of the complaint, viewed most strongly in favor of the pleader, demonstrate that the pleader can prove no set of facts that would entitle the pleader to relief."

Cathedral of Faith Baptist Church, Inc. v. Moulton, [Ms. SC-2022-0447, Sept. 23, 2022] ___ So. 3d ___, ___ (Ala. 2022). The allegations in the complaint, viewed in the light most favorable to the plaintiffs, do not conclusively establish that the free-speech zones were not created in order to limit or prohibit protected expressive activities. Thus, I agree that the trial court erred in dismissing the plaintiffs' action. But, consistent with our applicable standard of review for the dismissal of a complaint under Rule 12(b)(6), I would remand the case for further discovery so the parties can develop a factual record regarding whether the free-speech zones established by the policy were created for limiting or prohibiting protected speech.

Stewart, J., concurs.

MITCHELL, Justice (concurring in part and concurring in the result).

I concur in the main opinion with respect to its treatment of the plaintiffs' constitutional claims, but I concur only in the result as to its analysis of the plaintiffs' claims under the Alabama Campus Free Speech Act ("the Act"), § 16-68-1 et seq., Ala. Code 1975. I write separately to explain why I disagree with the main opinion's statutory analysis.

I also write to emphasize two additional points, which I encourage the trial court and the parties to consider on remand. First, it's important to clarify the role that "intent" plays in this Court's constitutional and statutory interpretation. As the briefing in this case illustrates, litigants often seem to assume that a law's meaning depends on what individual lawmakers subjectively intended the law to mean. That assumption is incorrect. Our federal and state constitutions authorize lawmakers to enact texts, not intentions. In accordance with that principle, the proper aim of judicial interpretation is to discern a law's objective semantic meaning (sometimes referred to as its manifest intention or as the intent manifested in the law's language); the subjective views, goals, or desires of individual lawmakers are irrelevant.

Second, I flag an open question related to the defendants' arguments about Art. XIV, § 264, Ala. Const. 1901 (Off. Recomp.). If the trial court decides to order supplemental briefing or oral argument on remand, the parties may wish to address this question. Doing so would likely aid the trial court's analysis, as well as this Court's eventual review if another appeal is filed.

I.

I begin with the main opinion's statutory analysis. The Act defines a "free speech zone" as "[a]n area on campus of a public institution of higher education that is designated for the purpose of engaging in a protected expressive activity." § 16-68-2(3), Ala. Code 1975. The Act prohibits the creation of "free speech zones or other designated outdoor areas of the campus in order to limit or prohibit protected expressive activities." § 16-68-3(a)(4). That is, the Act does not prohibit all "free speech zones," as the main opinion concludes, but rather only those zones created "in order to limit or prohibit protected expressive activities." Id. On my read of the Act, public universities retain the ability to create free-

speech zones in order to facilitate expressive activities.[3] For example, a university may reserve an outdoor venue to promote a particular expressive event, such as a debate or a lecture, and may prohibit others from substantially disrupting the event while it is taking place. § 16-68-3(a)(6).

Here, the University of Alabama in Huntsville's policy ("the Policy") plainly uses speech zones to limit expression rather than facilitate it. Specifically, it uses speech zones to funnel all non-preapproved "spontaneous activities of expression"[4] into a handful of scattered tracts. Outside of these scattered tracts, the Policy prohibits even a single student from "spontaneous[ly]" expressing himself at a normal volume, absent prior University approval. That prohibition applies at all hours of the day and night, and it applies even when there is no possibility that the student's speech could disrupt class or any other University function.

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[3]Indeed, the Act itself creates a free-speech zone on each campus by designating the campus's outdoor areas "to be a forum" for expressive activity "for members of the campus community." § 16-68-3(a)(4).

[4]The Policy makes an exception for spontaneous activities of expression that consist of "casual recreational or social activities," but the Policy never defines "casual recreational or social activities," nor does it explain what distinguishes those types of activities from other spontaneous activities of expression.

That the Policy uses speech zones to fence off such manifestly protected activity demonstrates that the Policy creates "free speech zones … in order to limit or prohibit protected expressive activities." Accordingly, I concur with the main opinion's holding that the trial court erred in granting the defendants' motion to dismiss the plaintiffs' claims under the Act, but -- unlike the main opinion -- I do not read the Act to prohibit all speech zones.

II.

As is probably clear by now, this case turns on the interpretation of both constitutional and statutory texts. When interpreting either type of text, this Court is guided by certain basic principles. We have held, for example, that in interpreting the Constitution

> "we look to the plain and commonly understood meaning of the terms used in [a constitutional] provision to discern its meaning. … 'The object of all construction is to ascertain and effectuate the intention of the people in the adoption of the constitution. The intention is collected from the words of the instrument, read and interpreted in the light of its history.'"

Barber v. Cornerstone Cmty. Outreach, Inc., 42 So. 3d 65, 79 (Ala. 2009) (quoting State v. Sayre, 118 Ala. 1, 28, 24 So. 89, 92 (1897)). The same principles govern our interpretation of statutes:

> "'"The cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature as manifested in the language of the statute. ... Words must be given their natural, ordinary, commonly understood meaning, and where plain language is used, the court is bound to interpret that language to mean exactly what it says."'"

Swindle v. Remington, 291 So. 3d 439, 457 (Ala. 2019) (citations omitted).

These and similar formulations permeate our jurisprudence. But many litigants -- even experienced ones -- sometimes misapprehend the role "intent" plays in those formulations. As the two quoted passages above illustrate, our opinions routinely describe the goal of legal interpretation as ascertainment of the law's intent, which sometimes leads litigants to assume that the true meaning of the law is what the enacting legislators (or, for constitutional provisions, the ratifiers) subjectively wanted the law to mean. For example, the defendants here say that the act of discerning "legislative intent" requires judges to examine individual legislator's "statements about the statutes they enacted" in order to understand those legislator's subjective goals or desires. Defendants' brief at 80; see also id. at 77-78 (making an argument regarding the personal views of the governor who signed a bill into law). Some of the amici seem to share this belief. For instance, several state legislators filed a brief explaining how they "intended" the

Act to operate and what types of behavior they "intended [it] to prevent." State legislators' brief at 3, 4.[5]

Those views are misguided. Under our federal and state constitutions, lawmakers cannot make law by forming intentions; rather, they make law only by fixing their intentions to written text and then subjecting that text to bicameralism and presentment (or, in the case of constitutional provisions, to the amendment process). See U.S. Const. Art. I § 7; Ala. Const. 1901 (Off. Recomp.), Art. V, § 125. In other words, the subjective intentions that animate a law are not the law; only the text of a law is the law.

That is why -- as the above quotes from Barber and Swindle go on to explain -- the "intent" courts are supposed to consider is the intent manifested in "the words of the [Constitution]," Barber, 42 So. 3d at 79, or in "the language of the statute," Swindle, 291 So. 3d at 457. Those quotes make clear that the process of ascertaining a law's "intent" is an objective exercise focused on understanding the statute's language, not a

[5]Despite that framing, most of the legislators' substantive arguments involve analysis of the Act's objective meaning rather than the legislators' subjective intentions. To that extent, the legislators' arguments are proper.

subjective one focused on ascertaining lawmakers' subjective goals or desires.

Our Court has spelled out that point many times over the centuries. As far back as 1890, this Court wrote:

> "The office of construction is to ascertain what the language of an act means, and not what the legislature may have intended. '… The court knows nothing of the intention of an act, except from the words in which it is expressed, applied to the facts existing at the time; the meaning of the law being the law itself.'"

Maxwell v. State, 89 Ala. 150, 161, 7 So. 824, 827 (1890) (citation omitted). And we made the same point again just two years ago:

> "'"'The intention of the Legislature, to which effect must be given, is that expressed in the [act], and the courts will not inquire into the motives which influenced the Legislature or individual members in voting for its passage, nor indeed as to the intention of the draftsman or of the Legislature so far as it has not been expressed in the act. So in ascertaining the meaning of a[n act] the court will not be governed or influenced by the views or opinions of any or all of the members of the Legislature, or its legislative committees or any other person.'"'"

State v. Epic Tech, LLC, 323 So. 3d 572, 596-97 (Ala. 2020) (citations omitted).

The key takeaway here is that when our opinions talk about the "intent" of a law, we are usually using "intent" in its objectified sense -- as shorthand for the manifest intent, i.e., the intent that a reasonable

reader would ascribe to a reasonable lawmaker based simply on reading the law's text in context. Our precedents do not hold that courts can or should subordinate the objective indication of a law's text to individual lawmakers' subjective desires.

Our Court is not alone in this practice. As Chief Judge Pryor of the Eleventh Circuit Court of Appeals recently observed, reliance on an objectified concept of intent "track[s] a long tradition of discerning intent 'solely on the basis of the words of the law,'" read in their textual and historical context, "'and not by investigating any other source of information about the lawgiver's purposes.'" William H. Pryor, Jr., Against Living Common Goodism, 23 Federalist Soc'y Rev. 24, 36 (2022) (quoting H. Jefferson Powell, The Original Understanding of Original Intent, 98 Harv. L. Rev. 885, 895 (1985)).

What does all this mean for the case on remand? It means that the parties and amici should think carefully about their continued reliance on the statements of individual lawmakers. Lawmakers' statements can sometimes be used to shed light on the social and linguistic conventions that prevailed at the time of a law's enactment (because those conventions inform the law's objective meaning), but they cannot be used

to prioritize a subjective "intention" over the law's language. See Bynum v. City of Oneonta, 175 So. 3d 63, 69 (Ala. 2015) ("'"[I]n ascertaining the meaning of a statute the court will not be governed or influenced by the views or opinions of any or all of the members of the Legislature …."'" (citations omitted; emphasis added)); State v. $223,405.86, 203 So. 3d at 848 (Shaw, J., concurring in the result) ("'"[T]o seek the intent of the provision's drafters or to attempt to aggregate the intentions of [the] voters into some abstract general purpose underlying the Amendment, contrary to the intent expressed by the provision's clear textual meaning, is not the proper way to perform constitutional interpretation." … The words of a law must speak for themselves.'" (citations omitted)); see also In re Sinclair, 870 F.2d 1340, 1342-44 (7th Cir. 1989) (Easterbrook, J.) (explaining that legislative history may be used to illuminate semantic meaning, including by shedding light on how words are typically used in a particular historical context, but that it cannot be used to prioritize legislators' subjective intentions over the enacted text).

Even when the statements of lawmakers are introduced for a proper purpose, courts must exercise caution in relying on those statements. Statements by individual legislators are often

unrepresentative[6] and can be easily cherry-picked.[7] Reliance on such statements can also encourage strategic behavior: a lawmaker who knows that courts will rely on his statements to extend (or limit) a law beyond its text can easily assert -- either in recorded statements or in testimony before the court -- that the law enacts his own preferred interpretation, even if he knows that his preferred interpretation is not shared by the public at large or by most of his colleagues. A healthy dose of skepticism is therefore often appropriate when considering the statements of individual lawmakers. That is just as true in this case on remand as it is in others.

III.

Another question we've asked the trial court to consider on remand is the whether the Act violates § 264 of the Alabama Constitution, which

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[6]See Frank H. Easterbrook, The Absence of a Method in Statutory Interpretation, 84 U. Chi. L. Rev. 81, 91 (2017) (explaining that the legislators most likely to comment on a law are usually those who are either strongly opposed to, or strongly in favor of, its enactment).

[7]Cf. Barnett v. Jones, 338 So. 3d 757, 767 (Ala. 2021) (Mitchell, J., concurring specially) ("Much like legislative history can be cherry-picked to find remarks favorable to a particular interpretation of a statute, records of constitutional conventions can be similarly abused.").

gives the Board of Trustees of the University of Alabama "management and control" over the University. In their brief before this Court, the defendants disclaim any suggestion that § 264 "exempts [the University] from generally applicable State law." Defendants' brief at 54. The defendants instead argue that the "management and control" language in § 264 prohibits the Legislature from passing laws that are "specifically directed" to the University. Id. The defendants then assert that "[i]t is beyond debate that the Act is not a generally applicable law." Id. at 55-56.

I do not understand why that proposition is "beyond debate." This Court has held that a law is "generally applicable" if it "'makes no reference to, or indeed functions irrespective of, the existence of'" the entity or category in question. Ingram v. American Chambers Life Ins. Co., 643 So. 2d 575, 577 (Ala. 1994) (citation omitted); see also defendants' brief at 54-55 (adopting this same definition). Here, the entity in question is the University, and the category in question (i.e., the category of things that the defendants argue is constitutionally protected) comprises universities governed by constitutionally created

boards of trustees.[8] But the Act, so far as I can tell, does not single out either the University, as an entity, or universities governed by constitutionally created boards of trustees, as a category, for special treatment. The Act instead applies to all "public institution[s] of higher education" in the State, §§ 16-68-3 and -6, of which there are many -- including those that do not have constitutionally created boards.

The defendants have not explained why this language, which is general on its face, should be understood as "specifically targeting" either the University itself or all universities with constitutionally created boards. No one would say that a law regulating the conduct of "all persons over the age of 18" specifically targets me, just because I happen to be one person among many over that age. For similar reasons, I don't understand how a law regulating the conduct of all public universities specifically targets the University, just because it happens to be one public university among many in the State.[9] Nor do I understand how a

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[8]There are two universities in the State that have constitutionally created boards of trustees -- the University of Alabama and Auburn University. See Art. XIV, § 264, Ala. Const. 1901 (Off. Recomp.); Art. XIV, § 266, Ala. Const. 1901 (Off. Recomp.).

[9]The defendants seem to concede that the Act would qualify as generally applicable if it "appl[ied] to all public land in Alabama," instead

law regulating the conduct of all public universities specifically targets universities with constitutionally created boards, simply because universities with constitutionally created boards are two among many public universities in Alabama. It's therefore not clear to me why -- under the defendants' own interpretation of § 264 -- the Act raises constitutional concerns. For the benefit of its own analysis and this Court's possible appellate review, the trial court may wish to ask the parties to address this question on remand.

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of applying to all public universities in Alabama, defendants' brief at 55, but they do not lay out why the general category of "all public lands" is permissible while the (also general) category of "all public universities" is not.