



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

**WILLIAM S. STIMPSON, in his official
capacity as Mayor of the City of Mobile,**

Plaintiff,

v.

**FREDRICK D. RICHARDSON, JR.,
LEVON C. MANZIE, C.J. SMALL,
JOHN C. WILLIAMS, JOEL DAVES,
BESS RICH and GINA GREGORY,**

Defendants.

CIVIL ACTION NO. CV-2018-903096

**AMENDED AND RESTATED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COMES NOW William S. Stimpson, in his official capacity as Mayor of the City of Mobile, Alabama (hereinafter, "Plaintiff" or "Mayor"), and files herewith his Amended and Restated Complaint for Declaratory Judgment and Injunctive Relief against Defendants, Members of the City Council for the City of Mobile ("Defendants" or "Council")("the Parties"), stating further in support of his claims as follows:

Parties

1. William S. Stimpson is the duly elected Mayor of the City of Mobile, Alabama. As Mayor he is vested with all executive and administrative powers of the City and is responsible for the proper administration of all affairs of the City.

2. Defendants Fredrick D. Richardson, Jr., Levon C. Manzie, C. J. Small, John C. Williams, Joel Daves, Bess Rich, and Gina Gregory are the current members of the City Council

for the City of Mobile Alabama. The City Council is vested with legislative powers delegated to the Council by the State Legislature.

Legal Framework

3. Section 11-44C-1, *et seq.*, of the Code of Alabama provides for the form of government regarding any Class 2 municipality in the State. §§ 11-44C-1, *et seq.*, Ala. Code 1975. The City of Mobile is a Class 2 municipality. *Id.* § 11-40-12(a). Chapter 44C is historically known as “The Zoghby Act,” and is referred to as the “Zoghby Act” throughout this Complaint. Pursuant to the Zoghby Act, the citizens of Mobile adopted via referendum the mayor-council form of government in 1985.

Powers and Duties of the Mayor

4. The Zoghby Act confers broad executive and administrative power upon the mayor in the mayor-council form of government. The general powers and duties of the mayor are set forth in section § 11-44C-37 of the Code of Alabama:

All executive powers of the city shall be vested in the mayor and the mayor shall be the head of the executive and administrative branches of the city government. He may attend council meetings but may not vote in its proceedings and he shall have the power and duties herein conferred. The mayor shall be responsible for the proper administration of all affairs of the city, and, except as otherwise provided herein, he shall have the power and shall be required to:

(1) Enforce all laws and ordinances,

(2) *Appoint and remove, when necessary for the good of the service, all officers and employees of the city except those appointed by the council.* Such appointment and removal of personnel are subject to any merit system provisions in effect at such time, except for those officers and employees who are exempted from the merit system by other sections of this chapter,

(3) Appoint the members of the Airport Authority and the Industrial Development Authority. The members of the Airport Authority and Industrial Development Authority shall be subject to confirmation by a vote of five members of the council, and the housing board. The members of the planning commission shall be appointed pursuant to Section 11-52-3.

(4) Exercise administrative supervision and control over all departments created by this chapter or by law or hereafter created by the council, except those otherwise given independent status under this chapter,

(5) Keep the council fully advised as to the financial conditions and needs of the city; prepare and submit the budget annually to the council and be responsible for its administration after its adoption; prepare and submit, as of the end of the fiscal year, a complete report on the financial and administrative activities of the city for such year,

(6) Recommend to the council such actions as he may deem desirable,

(7) Prepare and submit to the council such reports as may be required of him,

(8) Perform such other duties as may be prescribed by this chapter,

(9) Fix the salaries or compensation of all officers and employees of the city who are appointable by the mayor, subject, however, to the provisions of any merit law applicable to the city.

(Emphasis added).

5. Section 11-44C-38 of the Code of Alabama creates three divisions of city government and each are supervised by an executive director appointed by the mayor, with the approval of five members of the city council. Section 11-44C-40 of the Code also authorizes the mayor to hire additional personnel and states as follows:

The mayor is hereby authorized to employ additional personnel who shall serve at the pleasure of the mayor, and for such purposes an additional \$100,000 per annum shall be made available for the salaries of such personnel from the city treasury. Said personnel shall not be subject to the provisions of the merit system. This section shall not limit the authority of said mayor to appoint other employees

of said city under the provisions of the merit system or otherwise where authorized by any other law.

6. Section 66 of the Zoghby Act provides in pertinent part that “the director of finance shall have general management and control of the several divisions and units of the department of finance. He or she shall have charge, subject to the direction and control of the mayor, of the administration of the financial affairs of the city, and to that end shall have authority and be required to:

(5) **Examine all contracts**, purchase orders, and other documents, except bonds and notes which create financial obligations against the city, **and approve the same** only upon ascertaining that money has been appropriated therefor and that an unexpended and unencumbered balance is available in such appropriation to meet the same.

§ 11-44C-66, Ala. Code 1975 (emphasis added).

7. In addition to the specific provisions of the Zoghby Act, the Alabama Legislature has established general provisions relating to the operation of municipal government. General Alabama statutory law vests power in the mayor as chief executive officer to execute and administer municipal contracts. Section 11-43-83 of the Alabama Code provides:

The mayor shall see that all contracts with the town or city are faithfully kept or performed. He shall execute all deeds and contracts and bonds required in judicial proceedings for and on behalf of the city or town and no sureties shall be required on such bond. He shall perform such other executive duties, in addition to those prescribed in this article, as may be required of him by the council.

8. In *Dickinson v. City of Huntsville*, 822 So. 2d 411, 418 (Ala. 2001), the Alabama Supreme Court held that section 11-43-83 “reserve[s] certain general, executive powers to the mayor; those powers allow the mayor to conduct the business of the city. That is, these statutes broadly confer on the mayor the authority to make contracts, to hire employees, and to manage the city’s day-to-day operations.” *Dickinson v. City of Huntsville*, 822 So. 2d 411, 418 (Ala. 2001).

Powers and Duties of the City Council

9. The Zoghby Act also provides for the powers and duties of the City Council, which are set forth in § 11-44C-21, Ala. Code:

Powers of council; dealings with officers and employees in administrative service.

All legislative powers of the city, including all powers vested in it by this chapter, by the laws, general and local, of the state, and by the Code of Alabama 1975, as amended, and the determination of all matters of legislative policy, shall be vested in the council. Without limitation of the foregoing, the council shall have power to:

- (1) Upon recommendation of the mayor, establish administrative departments and distribute the work of divisions,
- (2) Adopt the budget of the city,
- (3) Authorize the issuance of bonds or warrants,
- (4) Inquire into the conduct of any office, department or agency of the city and make investigations as to municipal affairs,
- (5) *Appoint the members of all boards* except the planning commission and the housing board and the Airport Authority and the Industrial Development Authority,
- (6) Succeed to all the powers, rights and privileges conferred upon the former governing body of the city by statutes in effect at the time of adoption by the city of the mayor-council form of government and not in conflict with this chapter,
- (7) Levy property, sales and license taxes and local improvement assessments.

Neither the council nor any of its members shall direct or request the appointment of any person to, or his removal from office, or in any manner take part in the appointment or removal of officers and employees in the administrative service to the city. Except for the purpose of inquiry, the members of the council shall deal with the administrative service only through the mayor. Members of the council shall not give orders to any subordinates of the mayor, either publicly or privately. Any councilman violating the provisions of this section, or voting for a resolution or ordinance in violation of this section, shall be guilty of a misdemeanor and upon conviction thereof shall cease to be a councilman.

(Emphasis added). The Zoghby Act makes it clear that the authority of the City Council is limited to the exercise of legislative powers, which includes the power to enact ordinances, adopt

budgets, and determine policies. The authority of the City Council is constrained “to the provisions and limitations” of the Zoghby Act as well as additional limitations imposed by the Constitution and laws of the State.

10. The Zoghby Act specifically limits the authority of the City Council to make appointments. Section 24 provides that “the council shall be the appointing authority in filling any vacancy in the office of city clerk.” Section 21 provides that the council has the power to “appoint the members of all boards except the planning commission and the housing board and the Airport Authority and the Industrial Development Board.” The limitations on the Council’s appointive and hiring authority were then strongly emphasized in the concluding paragraph of section 28, which provides that “neither the council nor any of its members shall direct or request the appointment of any person to, or his removal from office, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the city.” Section 28 concludes with the cautionary provision that “any councilman violating the provisions of this section, or voting for a resolution or ordinance in violation of this section, shall be guilty of a misdemeanor and upon conviction thereof shall cease to be a councilman.”

11. The sole additional and limited statutory appointive and hiring authority provided to the Council is found under 11-44C-38(c), Ala. Code, providing for the Council’s engagement of outside legal counsel:

(c) Upon approval by a majority of those present and voting, the council, from time to time when it deems necessary and reasonable, is authorized to obtain legal counsel outside the city merit system to advise and defend them in their respective capacities as council members and in the pursuit of the operation of government.

Limitations On The Council’s Passage of Ordinances

12. The delegated legislative authority of a municipality does not allow passage of ordinances inconsistent with state statutes. An ordinance cannot amend or repeal a state statute. See, e.g., *Reed v. City of Montgomery*, 341 So. 2d 926, 933 (Ala. 1976) (discussing a Montgomery ordinance and holding that “a basic principle of our system is the superiority of state law”); *Hall v. City of Tuscaloosa*, 421 So. 2d 1244, 1249 (Ala. 1982) (“a municipal ordinance that contravenes state law, as here, is invalid for that reason alone”).

13. In 2009 the Fairfield City Council passed, over mayoral veto, an ordinance purporting to confer appointing authority on the city council. The Fairfield ordinance provided “[t]he appointing authority for the city shall be the city council.” *Scott v. Coachman*, 73 So. 3d 607, 608 (Ala. 2011). The Mayor of Fairfield sued the Fairfield City Council seeking a declaratory judgment that the ordinance was a nullity due to its inconsistency with Section 11-43-81 of the Alabama Code providing that the mayor is the city’s chief executive officer with authority to “appoint all officers whose appointment is not otherwise provided by law.”

14. The Jefferson Circuit Court declared the ordinance null and void. The Supreme Court affirmed with all justices concurring. The Court held:

[T]he city council’s authority to adopt ordinances and resolutions in a legislative fashion is limited to ordinances and resolutions that are not inconsistent with existing state law. See § 11-45-1, Ala. Code 1975. Thus, the council did not have the authority to override state law to take the general appointing authority from the mayor and assign that power to itself.

Id. at 610.

15. Likewise, the Mobile City Council lacks legislative authority to amend the Zoghby Act by removing from the Mayor’s Office the power and authority to execute contracts, administer the budget, and appoint employees and assigning those powers and authority to itself or other city officers.

Factual Background

A. Hiring of Non-Merit Personnel Pursuant To § 11-44C-40, Ala. Code 1975

16. On August 20, 2018, Mayor Stimpson delivered his 2019 budget message and placed before the City Council his proposed 2019 General Fund and Capital Improvement Fund Budget. A copy is attached as Exhibit A. The City Council approved the fiscal year 2019 budget on September 25, 2018.

17. On September 21, 2018, the City Council, acting through Levon C. Manzie, sent to Mayor Stimpson correspondence (attached as Exhibit B) which purported to ask whether Mayor Stimpson intended – as every mayor has done every year for the past several decades – to hire personnel outside the merit system with a cost in excess of \$100,000. **Attached to the Manzie September 21, 2018 letter, (i.e. Exhibit B) was a list of non-merit personnel setting forth the name, work position and pay for each. The City Council knew before this aforesaid correspondence the names of non-merit appointees, their job title or role and their rate of pay because this had already been disclosed by Mayor Stimpson’s office.**

18. Attached to the September 21, 2018 Manzie letter (Exhibit B) were legal opinions from Council Attorney Wanda Cochran which stated or implied that the Zoghby Act restricts the number of non-merit employees that Mayor Stimpson may employ (see Exhibit B).

19. On November 16, 2018, Manzie wrote to Mayor Stimpson and acknowledged that Mayor Stimpson had disclosed non-merit system employees and that total of the of these non-merit employees was in excess of \$100,000. Manzie requested copies of appointment letters for each of the non-merit employees. (Manzie’s November 16, 2018 correspondence is attached as Exhibit C).

20. On November 19, 2018, Mayor Stimpson replied by letter to Councilman Manzie's September 21, 2018 (Exhibit B) and November 16, 2018 (Exhibit C) letters:

Dear Councilman Manzie,

Your November 16 letter incorrectly assumes that section 40 of the Zoghby Act restricts the number of persons that the Mayor may employ. When asked the same question, the Alabama Attorney General determined that "[t]here are no statutory restrictions on the positions which may be created or the employees who may be hired to work at the pleasure of the mayor." AG Opinion 97-00150.

Asked again to describe the mayor's capacity to hire personnel under this same statute, the Attorney General decided that "the mayor has the discretion to determine the number of persons to be hired and to set the salary of each persons as long as the total salary established is within the amount budgeted for these additional personnel." The city council must budget a minimum of \$100,000 for the salaries of these additional personnel. If the council budgets more than \$100,000, the mayor has the discretion to determine how that money will be used, whether for additional personnel or for an increase in salaries. AG Opinion 2004-031. For the current fiscal year, the Council budgeted in excess of \$100,000 for salaries for additional personnel, and the mayor is properly exercising his discretion.

Another error in your letter is that the positions listed on the attachment to the Council attorney's opinion should have been filled through the merit system. The merit system applies to permanent positions from which an employee can be separated only for cause. A substantial number of the positions listed are funded through grants or other restricted sources. Employees in these positions cannot be promised permanent employment.

Other positions listed simply are not provided for in the merit system. The Personnel Board does not fill positions like the cyber intelligence officer, cruise terminal support staff or the grants coordinator, who brings millions of dollars into Public Safety.

Additionally, prior administrations also filled many positions outside the merit system. Attached is a list of the non-merit employees hired by the Jones administration. As you can see, the list is several pages long. [Emphasis Added]

I agree with your commitment to transparency in government. Transparency is measured by the disclosure of material facts, and the

material facts were known to the Council before the Council voted on the budget. In the interest of full transparency, the Council should acknowledge that it was aware of the non-merit positions addressed in your letter and the salaries for those positions before it voted on and approved this year's budget with that knowledge.

Your insinuations of malfeasance and lack of transparency are uncalled for and unproductive. Please lay to rest your concerns that millions of dollars in public funds are being misused. The information you requested is a matter of public record and will be provided. However, due to the Thanksgiving holiday, gathering the documents may take longer than 10 days.

Sincerely,

/s/ William S. Stimpson

21. Mayor Stimpson's November 19, 2018 letter to Manzie is attached as Exhibit D.

Attached to it is a multiple page list of non-merit employees appointed by former Mayor Sam Jones. (See Exhibit D).

22. In 2003, the Attorney General for the State of Alabama – Bill Pryor – issued Opinion 2004-031 authored by long-time Chief Deputy Attorney General Carol Jean Smith. The issue presented was whether under the Zoghby Act the mayor has authority to hire non-merit employees and administrative personnel for salaries that exceed \$100,000. Attorney General Pryor's opinion states:

The general powers and duties of the mayor are set forth in section 11-44C-37 of the Code of Alabama and include the authority to "fix the salaries or compensation of all officers and employees of the city who are appointable by the mayor, subject, however, to the provisions of any merit law applicable to the city." ALA. CODE § 11-44C-37(9) (1989). Section 11-44C-38 of the Code of Alabama creates three divisions of city government and each are supervised by an executive director appointed by the mayor with the approval of five members of the city council. ALA. CODE § 11-44C-38 (1989). Section 11-44C-40 of the Code of Alabama allows the mayor to hire additional personnel and states as follows:

The mayor is hereby authorized to employ additional personnel who shall serve at the pleasure of the mayor, and for such purposes an additional \$100,000 per annum shall be made available for the salaries of such personnel from the city treasury. Said personnel shall not be subject to the provisions of the merit system. This section shall not limit the authority of said mayor to appoint other employees of said city under the provisions of the merit system. This section shall not limit the authority of said mayor to appoint other employees of said city under the provisions of the merit system or otherwise where authorized by any other law.

ALA. CODE § 11-44C-40 (Supp. 2002).

This Office previously stated that section 11-44C-40 authorizes the mayor to hire administrative personnel, not subject to the merit system, in addition to the three executive directors authorized by section 11-44C-38. Opinion to Honorable Chris Pringle, Member, House of Representatives, dated March 27, 1997, A.G. No. 97-00150. Section 11-44C-40 does not directly limit the number of persons the mayor may hire.

*With respect to salaries for these additional personnel, section 11-44C-40 of the Code of Alabama provides that \$100,000 shall be made available for salaries for these additional personnel. Thus, the mayor has the discretion to determine the number of persons to be hired and to set the salary of each person as long as the total salary established is within the amount budgeted for these additional personnel. The city council must budget \$100,000 for these salaries. **If the city council budgets an amount greater than \$100,000 for the salaries of these additional personnel, the mayor has the discretion to determine how that money will be used, whether for additional personnel or for an increase in salaries.** [Emphasis Added].*

CONCLUSION

The mayor may hire additional administrative personnel under the authority of section 11-44C-40 of the Code of Alabama. The number of personnel and the amount of their salaries is within the discretion of the mayor as long as the total salary does not exceed \$100,000 or the amount budgeted for these salaries by the council, if more money is budgeted.

Attorney General Pryor's Opinion 2004-031 of November 26, 2003 is attached hereto as Exhibit E.

23. Former Attorney General Bill Pryor now serves as a Judge on the Eleventh Circuit Court of Appeals for the United States and is routinely and frequently identified as a potential nominee to the United States Supreme Court.

B. The Passage of Ordinance 14-034

24. In December 2018, the City Council proposed Ordinance 14-34 (Exhibit F hereto) entitled, **“An Ordinance to Amend and Restate Chapter 14 of the Code of Ordinances for the City of Mobile, Alabama entitled “Contracts” to Provide for Filing, Disclosure and Other Requirements for Certain City Contracts; and to Identify Officers Authorized to Execute Contracts on Behalf of the City.”** The City Council voted 6-1 to immediately consider the ordinance. Lacking unanimous consent, the ordinance was carried over to the next council meeting.

25. Among other things, proposed Ordinance 14-034 (Exhibit F) asserted that “the power to contract is specifically vested in the Council,” and further provided in contravention of applicable provisions of the Zoghby Act and Section 11-43-83 Ala. Code 1975 that: “. . . all contracts shall be in writing and signed by the President of the Council, or in his absence the Vice-President, unless the Council (by resolution or ordinance) authorize some other officer of the City to execute the contract.” (Exhibit F, pages 1 and 2)

26. The Council later amended Proposed Ordinance 14-034, and adopted it as amended on December 18, 2018. (Attached hereto as Exhibit G). Among other things, it states that

“All powers of the City are “vested in the [City] Council. . .” and that:

In addition to the powers enumerated in the Zoghby Act, the Council has all of the powers granted to municipal corporations by the

constitution and laws of the State of Alabama, together with “all the implied powers necessary to carry into execution all the powers granted.

(Exhibit G). (Emphasis Added).

The ordinance goes on to state:

- “The purpose of this ordinance is to promote transparency in the contracting process; to adopt reasonable regulations with respect thereto; to require full disclosure of the City’s contractual obligations; and to specify the officers that are authorized to contract on behalf of the City.”
- “Sec. 14-5 Contract Procedures: (a) Execution. All contracts shall be in writing, serve a public purpose, and be executed in the name of the City by the officers authorized by law or ordinance. **The mayor shall have no authority to execute any contract** that has not first been approved by the City Council, except for deeds and bonds required in judicial proceedings and as may be authorized by this Chapter.”

(Exhibit G). (Emphasis Added).

27. On December 27, 2018, Mayor Stimpson delivered to the Council his veto of Ordinance 14-034, along with the Mayor’s objections, a copy of which is attached hereto as Exhibit H. In pertinent part, it states:

I HEREBY disapprove the attached ordinance 314-034 and, pursuant to Alabama Code § 11-44C-28, return it to the clerk with the following objections:

1. *The City Clerk delivered two different Ordinances, both #14-034, and both stamped and signed by the City Clerk as "Adopted by the Council of the City of Mobile at its meeting held on December 18, 2018."*
2. *At its meeting on December 18, 2018, the Council voted on and approved only one Ordinance 14-034. The two Ordinances transmitted*

by the Clerk differ. For example, one repeals subsections (g), (i) and (l) of City Code section 2-66; the other repeals subsections (e), (f), (g), (h), (i), (j), (k), (l) and (m) of City Code section 2-66. Both cannot be correct. I disapprove both and return both versions of Ordinance#14-034 to the Clerk with this Disapproval, see attachments 1 and 2.

3. *Alternatively, and in addition thereto, with respect to the ordinance most similar to the ordinance attached to the City Council agenda for December 18 (Attachment 2), I disapprove that purported Ordinance and return the same to the Clerk with the following objections:*
4. *The contract approval process the city follows was adopted in 1994, by an agreement reached between the city council and the mayor. These two bodies, the legislative and administrative/ executive branches of city government, acting together, developed procedures for handling of payments by the City of Mobile. Over the decades that followed, these procedures have been accepted by the city and its contractors as valid on a legal, administrative and financial basis, and as promoting accountability and efficiency in city operations, see Employee Handbook, Contracts Chapter, Council Approval Requirements for Contracts. These procedures, deliberately adopted, should not be precipitously amended through the unilateral action of the council.*
5. *The Ordinance relies on the erroneous finding that, "[a]ll powers of the city are 'vested in the council...'" The municipal government of Mobile is known as a "mayor-council form of government," Section 11-44C-11. All executive and administrative powers of the city are vested in the mayor, who is responsible for the proper administration of all affairs of the city, Section 11-44C-37. Not all powers of the city, section 11-44C-12, are exercised by the council. That Mobile operates under a mayor-council form of government is fundamental, as it was approved by the State Legislature and adopted by popular vote.*
6. *The definition of "contract" at section 14-2(a) is overbroad. Among other things, it would improperly restrict the authority of the mayor to appoint and remove personnel, Section 11- 44C-37(2).*
7. *Section 14-2(b), Disclosure Requirements, is a request for the production of documents within 30 days following the effective date of the ordinance. A request for records is not a proper topic for an ordinance, which is a legislative enactment, a determination of the sovereign power of the state as delegated to the municipality.*

8. *Section 14-3(b), Bid Awards, for the first time requires all bids to be awarded by resolution adopted by the council. Under one version of ordinance #14-034, Attachment 2, a new section 14-8 authorizes the purchasing agent to execute contracts for routine purchases less than \$7,500. Whether the award of bids less than \$7,500 required approval by the Council is not clear.*

9. *Every item on the council agenda requires staff time from the department in which the requisition is made, the finance department, the legal department, the mayor's office and the city clerk's office. The number of items that would be added to the agenda under the new 14-3(b) is not known but clearly will be substantial. **Staff would be required to comply with 14-3(b), significantly adding to their workloads and detracting from their essential functions. The stated purpose for this new procedure is to promote transparency in the contracting process, Section 14-1(f). The existing contracting process is completely transparent. All bids are advertised and posted on the City website and, for public works bids, published in the newspaper, well in advance of the date bids are due. Vendors are notified of bids in which they may be interested. Bid awards are advertised on the city website. These are the communications on which vendors, bidders and the public rely. Adding a two (2) week delay to the award of bids by placing them on a council agenda would slow down and overburden city government, and would not result in greater transparency.***

10. *Section 14-3(b) is particularly burdensome and unnecessary in the context of public works contracts, ALA CODE Section 39-2-2, et seq. Public works contracts appear on the council agenda after the department selects the lowest responsive and responsible bidder, that bidder provides proof of insurance, performance and payment bonds, and executes a contract. Requiring the council to award the bid by resolution on one agenda and approve the execution of the contract on another serves no purpose and compromises the city's ability to meet the deadlines for executing public works contracts under ALA CODE Section 39-2-8, and Section 39-2-9.*

11. *Section 14-3(c), Settlements, for the first time prohibits any payment to settle, adjust, or compromise any litigation, claim, debt, account, dispute, demand for or against the city in excess of \$5,000 which is not reduced to writing, presented to and approved by the council. Like 14-3(b), this section does not promote the best interests of the city, yet imposes a significant increase in the workloads of the revenue department, the motor vehicle maintenance department, other city departments involved in claims, city legal and the mayor's office.*

12. *Section 14-3(e), Budgeted Performance Contracts, purports to direct the mayor to prepare and submit budgeted performance contracts to the council not later than 30 days after the effective date of the general fund budget. This provision is disapproved. Once funds have been appropriated legislatively by the adoption of the budget, the spending of appropriated money becomes a discretionary executive function. This section would usurp the mayor's discretionary administrative and executive authority delegated to the mayor by statute.*
13. *Section 14-8, Contracts for Routine Purchases, should apply, as it does now, to all competitively bid awards, not restricted to the award of bids less than \$7,500. This new procedure would slow down the award of bids and add to the workload of city staff for no purpose. Current procedures provide transparency.*
14. *Ordinance #14-034, adopted December 18, 2018, is disapproved in its entirety. The ordinance is not a valid exercise of the Council's delegated legislative authority because it infringes on the mayor's executive and administrative authority.*

28. On January 3, 2019 the City Council voted to override the Mayor's veto. (Exhibit I, Attached).

C. The Council's Threats Against Mayor Stimpson, City Attorney Ricardo Woods, and Finance Director Paul Wesch

29. On January 3, 2019 the Council delivered to Ricardo Woods, Counsel for the Mayor, a pleading (Exhibit J hereto) setting forth claims that the Council intends to file against Mayor Stimpson, City Attorney Ricardo Woods, and Finance Director Paul Wesch. These threatened claims seek, among other things, the following:

- To prohibit the Mayor from employing non-merit personnel alleging that Mayor Stimpson “has illegally employed no fewer than ninety-three (93) individuals to serve at his pleasure as employees outside the merit system at an aggregate annual salary cost in excess of Four Million Three Hundred Thousand Dollars (\$4,300,000).”
- That Finance Director Paul Wesch “. . . at the direction of, and with the knowing participation of Counterclaim Defendant [Mayor] Stimpson and upon the advice and with the knowing participation of Counterclaim Defendant [City Attorney] Woods in his purported capacity as City Attorney, has knowingly allowed illegal annual salary payment expenditures to be made

to individuals illegally employed by defendant [Mayor] Stimpson to serve at his pleasure as employees outside the merit system in violation of *Ala. Code* §11-44C-40 to the extent of at least Four Million Two Hundred Thousand Dollars (\$4,200,000) since October 1, 2017.”

- The City Council purports to seek an injunction prohibiting Mayor Stimpson, Finance Director Wesch, etc., from paying salaries to employees serving outside of the merit system and, further, seeks judgment against Mayor Stimpson, Finance Director Paul Wesch and City Attorney Ricardo Woods for repayment to the City of Mobile of salary payments made since October 1, 2017 to non-merit employees appointed by Mayor Stimpson.
- The City Council also threatens to sue Ricardo Woods, Mayor Stimpson and Finance Director Paul Wesch to disqualify attorney Woods from serving as counsel for the Mayor in this Civil Action No. CV-2018-903-096.
- The City Council alleges that the Mayor was required to submit for approval to the City Council a contract to hire attorney Woods and his law firm; and the Council alleges that Mayor Stimpson and Finance Director Wesch have “. . . knowingly allowed illegal payments to be made to [City Attorney] Woods or to a law firm or practice with which he is affiliated without benefit of any contract between the City of Mobile and Counterclaim Defendant Woods or with any law firm or practice with which he is affiliated.”
- The City Council also threatens to seek a court order prohibiting attorney Woods from acting as the City’s attorney and a court order prohibiting Finance Director Wesch from approving payment to City Attorney Woods and his law firm; and the City Council threatens to obtain a court judgment against City Attorney Woods, Mayor Stimpson and Finance Director Paul Wesch for all payments made to City Attorney Woods and his law firm since October 1, 2017 for legal services.

(Exhibit J, attached).

30. Under the Zoghby Act, the law is clear and unequivocal that the Mayor appoints the City Attorney and approves the rate of pay of the City Attorney at the Mayor’s sole discretion:

The mayor also is authorized to appoint a city attorney who shall serve at the pleasure of the mayor and shall be compensated in the manner and at a rate approved by the mayor. In addition to the city attorney, the mayor, from time to time in his sole discretion, is authorized to obtain additional legal counsel outside of the city merit system to advise and defend him in his capacity of mayor and in the pursuit of the operation of government.

Zoghby Act, ALA. CODE §11-44C-38 (B).

31. As a result of the actions and threats of the City Council and the lawyers for City Council, the Mayor has retained the law firm of Cunningham Bounds, LLC and, specifically, Cunningham Bounds partners -- attorneys George W. Finkbohner III, Steven L. Nicholas, and Joseph D. Steadman, of counsel attorney with Cunningham Bounds. In the spirit of full disclosure, the terms of the Mayor's engagement of Cunningham Bounds are as follows: George W. Finkbohner III and Steve Nicholas are working for the Mayor *pro bono* (meaning free of charge), and Cunningham Bounds will be compensated for the time attorney Joseph Steadman spends on this litigation at an hourly rate equal to the rate paid to the senior most lawyer(s) representing the City Council in this litigation.

D. The Council's Illegal Hiring Of Marion Steinfels As A Contract Employee

32. On March 15, 2016, the Council adopted Resolution 01-180 which authorized and directed the mayor to execute a certain Communications Consultant Agreement with Ms. Marion Steinfels for:

[t]he performance of certain tasks relating to the management of communication services and resources to connect citizens, community organizations, and businesses to local government by increasing public awareness of programs, services, and activities in timely, transparent, and professional manner.

33. In response, and in lieu of executing the contract, the Mayor instead properly exercised his hiring authority pursuant to section 11-44C-40 and appointed Ms. Steinfels as an at-will/non-merit employee to the position of Communications Coordinator. The appointment letter, dated April 1, 2016, stated, among other things, "your employment is authorized under the Code of Alabama, Section §11-44C-40. This means your employment is at will, and you serve at

the pleasure of the mayor;" and, "this is a temporary, non-merit Position . . . effective March 19, 2016, until September 30, 2016."

34. By letter dated September 27, 2016 the Mayor reappointed Ms. Steinfels as Communications Coordinator stating:

Your employment is authorized under Code of Alabama, Section 11-44C-40. This means your employment is at will, and you serve at the pleasure of the Mayor.

The letter further stated that the position was non-merit, meaning it was not a classified position within the meaning of the Mobile County Personnel Law, 1939 Alabama Acts 238 Act. No. 470, September 15, 1939 (hereafter referred to as "Act 470"), and stated:

[Y]ou will report to the President, Mobile City Council, take direction from all City Councilors and coordinate with the Senior Director, Communications and External Affairs to enhance communication: between the Mayor's Office and City Council, as well as outward communication to the citizens of Mobile.

35. On Wednesday, October 10, 2018, the Mayor terminated Ms. Steinfels's employment, effective as of said date.

36. On November 13, 2018, the Mobile City Council passed a Resolution (No. 21-792) approving a Professional Services Contract with the same individual (Ms. Marion Steinfels) whose employment was previously terminated by the Mayor "to Provide Certain Communications Services for the Mobile City Council." The Council's resolution directed the City Clerk to transmit the attached Communications Consultant Agreement to the Mayor within 48 hours after the passage of the Resolution, and, further directed that "[t]he mayor shall promptly execute the contract and return it to the city clerk. Should the Mayor fail to execute and return the agreement within 10 days from the date the resolution was passed by the Council, the contract shall then be executed in the name of the City of Mobile, Alabama by the president

of the Council. In the event of a vacancy in the office of president of the Council, the contract shall then be executed in the name of the City of Mobile, Alabama by the vice-president of the Council.” Resolution No. 21-792, at p. 2, section 2. The Resolution including the referenced Communications Consultant Agreement is attached as Exhibit K.

37. On November 20, 2018, the Mayor vetoed the Council’s resolution and disapproved of the Council’s purported hiring of Ms. Steinfels, pursuant to the authority of section 11-44C-28, Ala. Code. In his veto message (attached as Exhibit L), the Mayor stated as follows, in pertinent part:

[T]he Resolution approves the engagement of Ms. Steinfels, who, as the Council notes, was a city employee, hired under the authority of Alabama Code, section 11-44C-40 to serve at the pleasure of the mayor, see Findings paragraphs (b) and (c). That employment terminated October 10, 2018. This resolution, as described by the Council during its meeting of November 13, is an attempt to reemploy Ms. Steinfels in contravention of the Zoghby Act.

38. On November 27, the Council voted 6-1 to override the Mayor’s veto and proceed with the illegal hiring pursuant to its Resolution and Contract.

39. Historically, the established protocol for contract proposals and negotiations in Mobile municipal government starts within the Executive Branch--the Mayor’s office--where city contracts are proposed, negotiated, examined by the Finance Department and thereafter placed on the Council agenda for council approval as a mayoral recommendation, consistent with the statutory roles outlined in §§ 11-44C-21 and 11-44C-37. The 2016 contract with Ms. Steinfels was a notable attempted deviation from this protocol. The Mayor did not and would not sign that contract. Instead, the Mayor by letter appointed Ms. Steinfels as an at-will/non-merit employee in accordance with the statutory hiring authority, specifically under § 11-44C-

42. As the hiring authority the mayor's office customarily follows a standard protocol to hire non-merit employees. This practice begins with an interview process, the recommendation of the supervisor of the department to employ an individual and finally an appointment letter being issued by the mayor's office pursuant to § 11-44C-40. This practice has been followed by the Stimpson Administration for years and has been the consistent practice of prior administrations.

40. On December 4th, on information and belief, the Agreement was executed on behalf of the City Council and Ms. Steinfels. As stated above, Ms. Marion Steinfels was hired by the Mayor as an at-will City employee under § 11-44C-40.

41. As set forth above, the Alabama Attorney General has issued opinions stating that section 11-44C-40 authorizes the mayor to hire administrative personnel, not subject to the merit system, in addition to the three executive directors authorized by section 11-44C-38. Opinion, 2004-031 (attached as Exhibit E) and Opinion 97-00150 (attached as Exhibit M). Section 11-44C-40 does not limit the number of persons the mayor may hire pursuant to the authority of section 40. No similar statutory support provides hiring authority for the City Council.

42. The Alabama Attorney General has construed statutory limitations on council authority substantially similar to the Zoghby Act's limitations on the authority of the Mobile City Council. Interpreting essentially the same fundamental mayor-council government structure for the City of Montgomery, and based on facts materially the same as those before this Court in this action, the Attorney General opined in December 2001 that "the Montgomery City Council may create the office of 'Executive Aide to the Council' but is prohibited from appointing or contracting with a person to serve in such position." Opinion 02-100, attached as Exhibit N.

43. 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. *Gholston v. State*, 620 So.2d 719 (Ala. 1993). Absent a clearly expressed legislative intent to the contrary, the language of the statute is conclusive. Where, as here in the Zoghby Act, plain language is used, the court is bound to interpret that language to mean exactly what it says. Where the language of a statute is clear and there remains no room for judicial construction, the clearly expressed intent of the legislature must be given effect. *Ex parte Holladay*, 466 So.2d 956, 960 (Ala.1985) (citing *Dumas Bros. Mfg. Co. v. Southern Guar. Ins. Co.*, 431 So.2d 534 (Ala.1983)).

44. The legislative intent of the Zoghby Act is clear. The City Council is vested with legislative powers, which include the powers to determine all matters of legislative policy, pass ordinances, and adopt budgets. The Mayor is vested with all executive powers, which includes the power to appoint and remove all officers and employees of the City except for the few instances where the Act allows the City Council to appoint the city clerk, make appointments to boards, and hire legal counsel. Outside of limited enumerated exceptions, the Zoghby Act does not give the City Council the authority to appoint or hire an individual, and the Act does not give the Council the authority to do so through a contract it both authorizes and executes. Resolution 21-792 is an attempt by the Council to consolidate within itself the authority of both the legislative and executive branches of City government.

45. By passing Resolution 21-792 and in passing Ordinance 14-034, the City Council has exceeded legal limitations placed on its authority by Alabama law, including those in the Zoghby Act and Section 11-43-83. The Council's actions attempt to usurp the authority and powers vested in the Mayor by the Zoghby Act and Section 11-43-83 and are therefore void and of no effect.

CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

46. Plaintiff realleges and incorporates by reference the preceding paragraphs as if fully stated herein.

47. This Count is an action for Declaratory Judgment brought pursuant to the provisions of § 6-6-220, Ala. Code *et seq.*

48. An actual or justiciable controversy exists between the parties. Specifically, the Mayor contends that the execution of the subject employment contract with Ms. Steinfelds pursuant to the resolution in dispute is a violation of the Zoghby Act, and is an *ultra vires* act by the Council. The Mayor seeks a judicial declaration that (a) the Council's execution of the contract whereby the Council purports to unilaterally hire an employee in the name of the City of Mobile, over the objection of the Mayor, is violative of the provisions and limitations of the Act, and (b) that said contract is void and a nullity.

49. A justiciable controversy also exists as to whether Ordinance 14-034 is invalid due to conflict with Sections 11-44C-37, 38(b), and 40 of the Zoghby Act as well as section 11-43-83 Ala. Code 1975. To the extent the Council seeks to confer on itself a) the power to approve mayoral appointments under Sections 11-44C-38(b) or 11-44C-40 or b) the power to appoint a person to execute contracts in the name of the City, the Act is inconsistent with Sections 11-44C-37(5), 11-44C-66 and 11-43-83 conferring authority on Mayor Stimpson to administer the budget and execute and see to it that municipal contracts are faithfully kept or performed. A justiciable controversy also exists as to whether the Council's passage of Ordinance 14-034 violates the prohibition on the Council's involvement or interference with the

administrative service of the city set out in plain, unmistakable terms in Section 11-44C-21 of the Zoghby Act.

50. A justiciable controversy also exists as a result of the City Council's contention that it has authority to require approval by the council of the Mayor's appointment of non-merit employees under Section 11-44C-40 Ala. Code 1975.

WHEREFORE, PREMISES CONSIDERED, The Mayor requests that this Court enter a judgment in his favor, and order as follows:

(a) Declaring that the Council's execution of a contract whereby the Council purports to unilaterally hire an employee in the name of the City of Mobile, and direct the Mayor to execute the employment contract, or in the alternative and over the objection of the Mayor, direct the President and/or Vice-President of the City Council to do so is *ultra vires* and violative of the provisions and limitations of the Zoghby Act, and that said contract is void and a nullity,

(b) Preliminarily and permanently enjoining Defendants from unilaterally attempting to hire employees in the name of the City of Mobile over the objection of the Mayor, except where the City Council is expressly authorized by the Act to employ a city clerk and legal counsel,

(c) Confirming the legal authority of the Mayor of Mobile pursuant to Section 11-44C-40, as recognized decades ago in Judge Pryor's Attorney General Opinion 2004-031 to appoint and fire non-merit employees and to set the compensation of those employees without approval of the Council so long as the compensation paid is within the budget approved by the Council,

(d) Confirming the legal authority of the Mayor of Mobile pursuant to Section 11-44C-38(b) to hire the City Attorney and additional legal counsel at the Mayor's sole discretion,

(e) Declaring that Ordinance 14-034 is null and void, in whole or in part, on the ground it conflicts with several provisions of the Zoghby Act as well as other Alabama statutes, and

(f) Granting such other, further and different relief to which Plaintiff may be entitled.

Done this the 7th day of January, 2019.

Respectfully submitted,

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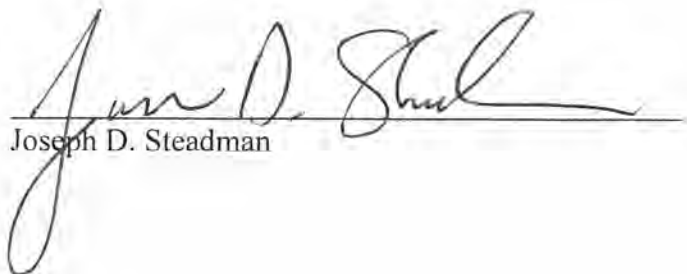
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2019, I filed the foregoing document with the Mobile County Circuit Court via AlaFile and copies were served upon as follows:

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