

IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

DEIDRE WHITE, RONNIE BLUE, JUDY KING,  
TANYA LEAKE, and ROBERT SWARTHOUT,  
Petitioners,

v.

THE CITY OF MABLETON, GEORGIA,  
Respondent.

Civil Action File Number  
**23103734 -71**

**Final Order Granting Respondent’s Motion to Dismiss**

This matter is before the Court on Respondent City of Mableton’s (“Mableton”) Motion to Dismiss, filed on September 8, 2023, in response to the Complaint for Declaratory Judgment filed by Petitioners Deidre White, Ronnie Blue, Judy King, Tanya Leake, and Robert Swarthout on May 15, 2023. After considering the Complaint, Respondent’s Motion to Dismiss, Petitioners’ Response filed on October 20, 2023, and Respondent’s Reply filed on November 20, 2023; and after hearing oral argument on March 6, 2024; for the reasons stated herein, the Court enters the following Order:

**I. FACTUAL AND PROCEDURAL BACKGROUND**

The material facts of this case are not in dispute. House Bill 839 (“HB 839”) incorporates the City of Mableton within unincorporated Cobb County and was signed into law by Governor Brian Kemp on May 9, 2022. As part of the bill, the General Assembly allowed for Community Improvement Districts (“CIDs”) within Mableton.<sup>1</sup> HB 839, as enacted, was then approved by referendum by the voters of the affected area on November 8, 2022.

On May 15, 2023, Petitioners filed their Complaint seeking a declaratory judgment ruling that HB 839 is “unconstitutional and void.”<sup>2</sup> Petitioners allege that “HB 839 is unconstitutional for two related and legally sufficient reasons.”<sup>3</sup> “First, by creating both a city and CIDs in the same bill, HB 839 unconstitutionally creates legally separate units of local government in one act,” allegedly in violation of Article III, Section V, paragraph III of the Georgia Constitution, known as Georgia’s “Single Subject

<sup>1</sup> See HB 839 at line 16; Article VIII.

<sup>2</sup> Compl. ¶ 28.

<sup>3</sup> Compl. ¶ 5.

CONNIE TAYLOR  
SUPERIOR COURT CLERK  
COBB COUNTY, GEORGIA

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Rule,”<sup>4</sup> which provides, “No bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof.”<sup>5</sup>

Petitioners further allege that the ballot question that was the subject of the November 8 referendum “subjects both the creation of the city and the creation of the CIDs to a single vote” rather than allowing voters to “address the propositions separately.”<sup>6</sup> Petitioners allege that this violates principles of law established in Rea v. City of La Fayette.<sup>7</sup> Finally, Petitioners allege that the offending portions of HB 839 cannot be severed from the rest of the bill, and therefore, the entirety of HB 839 must be deemed unconstitutional.<sup>8</sup>

In response, Respondent contends that HB 839 is constitutional as a matter of law because the power to create CIDs is germane to the incorporation of Mableton, such that their inclusion in both the Charter and the referendum ballot question is appropriate.<sup>9</sup> In other words, Respondent contends that the single subject matter of HB 839 is the creation of the City of Mableton,<sup>10</sup> and that the inclusion of and provision for CIDs in the bill creating the City of Mableton is “logically compelling” and constitutionally appropriate under Georgia’s Single Subject Rule.<sup>11</sup> Respondent also contends that the constitutionality of these provisions renders severance unnecessary, but that even if severed, the remainder of HB 839 can be upheld because the principal scheme of the Charter—the incorporation of the City of Mableton—remains intact.<sup>12</sup>

Petitioners filed their Brief in Response to Respondent’s Motion to Dismiss on October 20, 2023.<sup>13</sup> Citing Barlow,<sup>14</sup> Christie v. Miller,<sup>15</sup> and Schneider v. City of Folkston,<sup>16</sup> Petitioners reiterated their position that HB 839 violates the Single Subject Rule by “touching on” two units of government in the same bill.

Respondent then filed a Reply Brief in Support of its Motion to Dismiss on November 20, 2023, contending that the ultimate test for Single Subject Rule violations is not whether the legislation addresses two separate, distinct units of local governments, but rather whether the provisions combine “incongruous” or “unrelated” subject matters in a single legislative act, reiterating the position taken in its initial Motion

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<sup>4</sup> Compl. ¶ 5.

<sup>5</sup> GA. CONST. ART. III, § V, ¶ III.

<sup>6</sup> Compl. ¶ 5.

<sup>7</sup> Compl. ¶ 5.

<sup>8</sup> Compl. ¶ 6.

<sup>9</sup> Respondent’s Brief at 4.

<sup>10</sup> Respondents’ Brief at 3–12.

<sup>11</sup> Respondent’s Brief at 11.

<sup>12</sup> Respondent’s Brief at 13–14.

<sup>13</sup> Petitioners filed a Consent Motion for Extension of Time on October 3, 2023, which this Court granted on October 5, 2023.

<sup>14</sup> 49 Ga. 232 (1873).

<sup>15</sup> 128 Ga. 412, 57 S.E. 697 (1907).

<sup>16</sup> 207 Ga. 434, 62 S.E.2d 177 (1950).

to Dismiss.<sup>17</sup> Respondent contends that under that test, HB 839 does not violate the Single Subject Rule because CIDs are germane to how critical municipal services might be provided.<sup>18</sup>

Petitioners and Respondent presented oral argument on March 6, 2024. The case is now before this Court for a decision on Respondent’s Motion to Dismiss.

## II. STANDARD OF REVIEW

The standard used to evaluate the grant of a motion to dismiss when the sufficiency of the complaint is questioned is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff with all doubts resolved in the plaintiff’s favor, disclose with certainty that the plaintiff would not be entitled to relief under any state of provable facts.<sup>19</sup>

“A motion to dismiss may be granted where a complaint lacks any legal basis for recovery.”<sup>20</sup> “Duly enacted statutes enjoy a presumption of constitutionality, and the party challenging the statute bears the burden to show that the statute manifestly infringes upon a constitutional provision or violates the rights of the people.”<sup>21</sup>

## III. CONCLUSIONS OF LAW

### A. The Single Subject Rule is not violated.

#### 1. The relevant test for the Single Subject Rule is whether all the parts of a legislative act are germane to one overarching legislative objective.

Georgia’s Single Subject Rule<sup>22</sup> states, “No bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof.”<sup>23</sup> However, “it is permissible for the objective, or subject matter, of an act or constitutional amendment to be broad, and the General

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<sup>17</sup> Respondent’s Reply Brief at 2.

<sup>18</sup> Respondent’s Reply Brief at 6–8.

<sup>19</sup> *Cooper v. Unified Gov’t of Athens-Clarke County*, 275 Ga. 433, 434 (2002).

<sup>20</sup> *Seay v. Roberts*, 275 Ga. App. 295, 296 (2005).

<sup>21</sup> *Taylor v. Devereux Found., Inc.*, 316 Ga. 44, 52, (2023) (citation and punctuation omitted).

<sup>22</sup> Some Georgia cases also refer to the Single Subject Rule as the “multiple subject rule.” See, e.g., *Carter v. Burson*, 230 Ga. 511 (1973).

<sup>23</sup> GA. CONST. ART. III, § V, ¶ III.

Assembly may include in a single act or constitutional amendment all matters having a logical or natural connection.”<sup>24</sup>

Petitioners acknowledge that a single objective for legislation can be broad, but rightfully argue that “it is not infinite.”<sup>25</sup> However, Petitioners contend that one such limit is “when legislation acts on multiple units of government in one bill.”<sup>26</sup> Petitioners contend that any legislation that touches on more than one unit of government is, as a matter of law, a violation of the Single Subject Rule. They emphasize that CIDs have legal identities, governing bodies, and powers to tax or incur debt that are wholly separate from a city. This “separate nature,” according to Petitioners, “is what creates the Single Subject Rule violation” in this case.<sup>27</sup>

This is not the applicable rule. “The test of whether an Act or a constitutional amendment violates the multiple subject matter rule is whether all of the parts of the Act or of the constitutional amendment are germane to the accomplishment of a single objective.”<sup>28</sup>

The cases Petitioners rely upon – Board of Education v. Barlow,<sup>29</sup> Christie v. Miller,<sup>30</sup> Schneider v. City of Folkston,<sup>31</sup> and Black v. Jones<sup>32</sup> – do not support Petitioners’ contention that *any* legislation that touches on more than one unit of government is, as a matter of law, a violation of the Single Subject Rule. While each of these cases dealt with more than one unit of government, it was not this fact alone that rendered these cases violative of the Single Subject Rule – they all also involved legislation on unrelated matters on more than one subject.

At best, these cases demonstrate that, while the fact that legislation acts on two units of local government may be a relevant consideration when considering a Single Subject Rule violation, it is not a determinative one. The correct test to be applied to determine a violation of the Single Subject Rule is whether all of the parts of the Act or of the constitutional amendment are germane to the accomplishment of a single objective.<sup>33</sup>

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<sup>24</sup> Fulton County v. City of Atlanta, 305 Ga. 342, 346 (2019) (citation and punctuation omitted); see also Wall v. Bd. of Elections of Chatham County, 242 Ga. 566, 570 (1978) (“The word ‘subject matter’ as used in the Constitution is to be given a broad and extended meaning so as to allow the legislature authority to include in one act all matters having a logical or natural connection.”) (Citation and punctuation omitted).

<sup>25</sup> Pet. Brief in Response at 7.

<sup>26</sup> Id.

<sup>27</sup> Id. at 13.

<sup>28</sup> Wall, 242 Ga. at 570 (quoting Carter v. Burson, 230 Ga. 511, 519 (1973)).

<sup>29</sup> 49 Ga. 232 (1873).

<sup>30</sup> 128 Ga. 412 (1907).

<sup>31</sup> 207 Ga. 434 (1950).

<sup>32</sup> 190 Ga. 95 (1940).

<sup>33</sup> Fulton County v. City of Atlanta, 305 Ga. 342, 346 (2019) (applying germaneness test to Single Subject Rule); see also Wall, 242 Ga. at 570 (applying same to Constitution of 1976).

## 2. CIDs are germane to the creation of a city.

“[A]pplication of this ‘germaneness test’ requires identification of the subject-matter or objective of the [legislation], regardless of whether that objective be broad or narrow.”<sup>34</sup> Here, HB 839 aims to incorporate the City of Mableton and provide for its charter, its boundaries, its powers and authorities, its organization, and other necessary items related to the functioning of a city.<sup>35</sup> Thus, to determine whether including CID provisions violate the Single Subject Rule, the Court must determine whether CIDs are germane to the incorporation of Mableton.

Municipalities in Georgia are constitutionally permitted to exercise a variety of powers, including the following:

- (1) Police and fire protection.
- (2) Garbage and solid waste collection and disposal.
- (3) Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.
- (4) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.
- (5) Parks, recreational areas, programs, and facilities.
- (6) Storm water and sewage collection and disposal systems.
- (7) Development, storage, treatment, purification, and distribution of water.
- (8) Public housing.
- (9) Public transportation.
- (10) Libraries, archives, and arts and sciences programs and facilities.
- (11) Terminal and dock facilities and parking facilities.

[...] <sup>36</sup>

CIDs are constitutionally authorized to provide for many of the same powers:

- (1) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads.
- (2) Parks and recreational areas and facilities.
- (3) Storm water and sewage collection and disposal systems.
- (4) Development, storage, treatment, purification, and distribution of water.
- (5) Public transportation.

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<sup>34</sup> Fulton County, 305 Ga. at 346 (citation and punctuation omitted).

<sup>35</sup> See HB 839 at lines 1–18.

<sup>36</sup> GA. CONST. ART. IX, § II, ¶ III.

- (6) Terminal and dock facilities and parking facilities.
- (7) Such other services and facilities as may be provided for by general law.<sup>37</sup>

Notably, every purpose for which a CID may constitutionally be created is also covered under a municipality's powers. This high degree of overlap demonstrates that CIDs and municipalities are highly related, or germane, to each other. CIDs are a tool made available by the legislature to enable a city to carry out its essential, constitutional functions. A city might exercise such powers through a CID, or it might exercise such powers on its own. Given this overlap, CIDs and cities are not so "dissimilar and discordant" that they warrant consideration as two separate subject matters.<sup>38</sup> The incorporation of a city involves all things relevant to its necessary operation, including the power and authority to create and operate CIDs within its own borders.

HB 839 seeks to create one unit of local government—the city of Mableton—and simultaneously equip Mableton with a multitude of powers, authorities, and capabilities. These include, among others, the powers to levy taxes, to provide for infrastructure, to carry out elections for city officials, and to operate and regulate utilities. The authority to create and provide for CIDs is just one of these powers, authorities, and capabilities granted to Mableton. Article IX, Section VII, Paragraph I of the Georgia Constitution provides:

The General Assembly may by local law create one or more community improvement districts for any county or municipality or provide for the creation of one or more community improvement districts by any county or municipality.

HB 839 is an exercise of this constitutional power and provides the avenue by which Mableton can create one or multiple CIDs within its city limits. First, the governing authority of Mableton must adopt a resolution consenting to the creation of the CID.<sup>39</sup> Second, written consent must be obtained from two groups of real property owners: (1) a majority of those landowners within the proposed CID that will be subject to the proposed CID's taxes, and (2) landowners whose property constitutes 75% of the value of the real property within the district that will be subject to the CID's taxes.<sup>40</sup> Once these steps are fulfilled, HB 839 dictates the structure and operation of the CID, if so duly created. In short, HB 839 provides Mableton with the authority to create a CID, the roadmap it must follow to activate the CID in accordance with the

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<sup>37</sup> *Id.* at ART. IX, § VII, ¶ II.

<sup>38</sup> *See Crews v. Cook*, 220 Ga. 479, 481 (1964) ("To constitute plurality of subject-matter, an Act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any logical connection with or relation to each other.")

<sup>39</sup> *See* HB 839 at lines 1336–1339.

<sup>40</sup> *See* HB 839 at lines 1340–1346.

law, and the structure of the CID's operation once it is created. This is a valid exercise of the General Assembly's power to provide for CIDs in Mableton. Because the provision of CIDs is a relevant power and germane to the creation of the City of Mableton, HB 839's CID provision is not violative of the Single Subject Rule.

A ruling to the contrary would make little sense. Petitioners' position would require the General Assembly to first provide a charter for Mableton (effectuating its creation), and then provide for CIDs within Mableton in an entirely separate bill. Any construction of the Single Subject Rule

which would interfere with the very commendable policy or practice of incorporating the entire body of statutory law upon one general subject in a single Act, instead of dividing it into a number of separate Acts, would not only be contrary to its spirit, but also seriously embarrassing to honest legislation.<sup>41</sup>

Under Petitioner's rationale, many other provisions would need to be separated out for separate legislation if they involve an individual unit of government.

**B. HB 839's ballot question does not combine two separate, independent questions.**

Petitioners separately argue that the ballot question included in HB 839 improperly subjects the creation of the city and the creation of CIDs to a single vote, in violation of legal principles adopted in Rea v. City of La Fayette.<sup>42</sup> Rea indeed established a fundamental principle that "two or more separate and distinct propositions cannot be combined" into one ballot question.<sup>43</sup> But as discussed above, HB 839's provision for the creation of CIDs is germane to the objective of creating Mableton and authorizing it with powers relevant to its administration. Therefore, these are not two "separate and distinct propositions" that would invoke Rea's rule, let alone violate it. Accordingly, the ballot question seeking to approve CIDs as part of the incorporation of Mableton is not violative of Rea.

**C. The CID provisions are constitutional, so severance is unnecessary and irrelevant.**

Petitioners allege that the "fatal defects in [HB 839] cannot be severed from the bill so as to allow it to avoid being declared void."<sup>44</sup> For the reasons discussed above, HB 839's provision for the creation of

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<sup>41</sup> Crews, 220 Ga. at 481–82.

<sup>42</sup> 130 Ga. 771 (1908).

<sup>43</sup> Id. at 772.

<sup>44</sup> Compl. ¶ 6.

CIDs is germane to the creation of the City of Mableton, and therefore does not suffer from any of the constitutional defects alleged by Petitioners. Accordingly, the question of severance is moot.

#### IV. CONCLUSION

For the reasons stated above, the Respondent's Motion to Dismiss is **GRANTED**, and judgment shall be entered in favor of Respondent on all claims asserted. Petitioners' Complaint is **DISMISSED WITH PREJUDICE**.

SO ORDERED this 19<sup>th</sup> day of April 2024.



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**The Honorable Sonja N. Brown**

**Order Prepared and Submitted by:**

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# Certificate of Service

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