

Case No. SC-2025-0293

IN THE SUPREME COURT OF ALABAMA

CITY OF MOUNTAIN BROOK, ALABAMA,

Appellant/Defendant,

vs.

RODNEY E. MILLER and MARY LEAH MILLER,

Appellees/Plaintiffs.

On Appeal from the Circuit Court of Jefferson County, Alabama
Case No. CV-2024-901073

**MOTION FOR LEAVE TO APPEAR AS *AMICI CURIAE* AND
FILE THE ATTACHED *AMICUS* BRIEF BY THE
CITIES OF TUSCALOOSA, HOOVER, MOBILE, THORSBY,
CALERA, HARPERSVILLE, MONTEVALLO, COLUMBIANA,
VINCENT, MONTGOMERY, AND HUNTSVILLE, ALABAMA**

Wilson F. Green (GRE067)
WILSON F. GREEN LLC
301 19th Street N., Ste. 525
Birmingham, AL 35203
(205) 722-1018
wilson@wilsongreenlaw.com
*Attorney for the City of
Tuscaloosa, Alabama*

Cecil "Coy" Macoy, Jr. (MAC017)
Michael L. Jackson (JAC026)
Phillip D. Corley, Jr. (COR030)
WALLACE JORDAN RATLIFF
& BRANDT, LLC
800 Shades Creek Pkwy., Ste. 400
Birmingham, AL 35209
(205) 870-0555
cmacoy@wallacejordan.com
mjackson@wallacejordan.com
pcorley@wallacejordan.com
*Attorneys for the City of Hoover,
Alabama*

David J. Canupp (CAN014)
LANIER FORD SHAVER & PAYNE P.C.
Post Office Box 2087
Huntsville, AL 35804-2087
(256) 535-1100
djc@lanierford.com
***Attorney for the City of
Huntsville, Alabama***

J. Bentley Owens, III (OWE004)
ELLIS HEAD OWENS JUSTICE
P. O. Box 587
Columbiana, AL 35051
(205) 669-6783
bowens@wefhlaw.com
***Attorney for the Cities of
Thorsby, Calera, Harpersville,
Montevallo, Columbiana, and
Vincent, Alabama***

Michael W. Rich (RIC097)
Ricardo A. Woods (WOO109)
BURR & FORMAN LLP
11 North Water St., Ste. 22200
Mobile, AL 36602
(251) 345-5151
mrich@burr.com
rwoods@burr.com
***Attorneys for the City of
Mobile, Alabama***

Stacy Bellinger (REE050)
CITY OF MONTGOMERY
103 N. Perry Street, Suite 200
Montgomery, Alabama 36104
(334) 625-2050
sbellinger@montgomeryal.gov
***Attorney for the City of
Montgomery, Alabama***

MOTION FOR LEAVE TO FILE *AMICUS*
BRIEF IN SUPPORT OF APPELLANT

The Alabama cities of TUSCALOOSA, HOOVER, MOBILE, THORSBY, CALERA, HARPERSVILLE, MONTEVALLO, COLUMBIANA, VINCENT, MONTGOMERY, and HUNTSVILLE, pursuant to ALA. R. APP. P. 29, respectfully seek leave to appear in this matter as *amici curiae* and to file the attached *amicus* brief in support of the Appellant, The City of Mountain Brook. In support, these cities state as follows:

1. Each of these Alabama municipalities has a vested interest in the outcome of this appeal and, like all Alabama cities, will be directly affected by this Court's ruling. These cities believe it will be invaluable for this Court to consider the perspective and interests of various municipalities across the state of Alabama when weighing the merits of the asserted interests of the individual landowners who filed this action. All the undersigned cities are of the strong opinion that the trial court's Order at issue, were it to be affirmed by this Court, would drastically change the law of this State and would have a significant deleterious effect on cities (and consequently taxpayers) across Alabama.

2. The undersigned municipalities regularly contend with water management and complicated issues related to hydrology and varied topography, and each of them face periodic (and sometimes frequent) flooding due to weather events. Several of the undersigned are in regions in which these issues are particularly complex due to numerous factors (including proximity to the coast and/or large bodies of water) which can cause unavoidable flooding beyond their control. When it comes to water management issues and stormwater drainage, all cities are faced with the reality that perfection is not possible, flooding cannot always be prevented, and when planning for such events, they must focus on the interests of the public as a whole rather than the interests of individual landowners.

3. The impossible situation each city would face were this Court to affirm the strict liability for flooding standard utilized by the trial court here cannot be overstated. The same is true were this Court to condone the trial court's failure to recognize substantive immunity in the case at hand, including a city's obligation to consider the effect of the proposed drainage projects on all citizens, not just a few. Likewise, all the undersigned cities would be significantly harmed were this Court to

abandon current Alabama law and instead adopt the trial court's unprecedented expansion of "negligent maintenance" to basically subsume claims heretofore recognized as strictly ones for "negligent construction or design," thereby eviscerating the statute of limitations period applicable to those claims heretofore.

4. Several of the undersigned cities have been directly involved in the key litigation before this Court over the last few decades which forms the basis of our State's law governing the above-referenced issues and which the trial court here disregarded. These cities have a particularly strong interest in advocating that these well-established principles of law (and the reasoning behind them) be upheld and followed by trial courts across the state rather than misconstrued and abandoned, as occurred here.

For these reasons, these cities respectfully request that this Court grant them leave to appear as *amici curiae* in this matter and accept the attached simultaneously-filed *amicus* brief.

Respectfully submitted,

s/Wilson F. Green

Wilson F. Green (GRE067)
WILSON F. GREEN LLC
301 19th Street N., Ste. 525
Birmingham, AL 35203
(205) 722-1018
wilson@wilsongreenlaw.com
**Attorney for the City of
Tuscaloosa, Alabama**

s/Cecil Macoy, Jr.

Cecil "Coy" Macoy, Jr. (MAC017)
Michael L. Jackson (JAC026)
Phillip D. Corley, Jr. (COR030)
WALLACE JORDAN RATLIFF
& BRANDT, LLC
800 Shades Creek Pkwy., Ste. 400
Birmingham, AL 35209
(205) 870-0555
cmacoy@wallacejordan.com
mjackson@wallacejordan.com
pcorley@wallacejordan.com
**Attorneys for the City of
Hoover, Alabama**

s/Stacy Bellinger

Stacy Bellinger (REE050)
CITY OF MONTGOMERY
103 N. Perry Street, Suite 200
Montgomery, Alabama 36104
(334) 625-2050
sbellinger@montgomeryal.gov
**Attorney for the City of
Montgomery**

s/David J. Canupp

David J. Canupp (CAN014)
LANIER FORD SHAVER & PAYNE P.C.
Post Office Box 2087
Huntsville, AL 35804-2087
(256) 535-1100
djc@lanierford.com
**Attorney for the City of
Huntsville, Alabama**

s/J. Bentley Owens, III

J. Bentley Owens, III (OWE004)
ELLIS HEAD OWENS JUSTICE
P. O. Box 587
Columbiana, AL 35051
(205) 669-6783
bowens@wefhlaw.com
**Attorney for the Cities of
Thorsby, Calera, Harpersville,
Montevallo, Columbiana, and
Vincent, Alabama**

s/Michael W. Rich

Michael W. Rich (RIC097)
Ricardo A. Woods (WOO109)
BURR & FORMAN LLP
11 North Water St., Ste. 22200
Mobile, AL 36602
(251) 345-5151
mrich@burr.com
rwoods@burr.com
**Attorneys for the City of Mobile,
Alabama**

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of ALA. R. APP. P. 27(d) because it contains 535 words, as counted by the word count function of Microsoft Word processing software, excluding the parts exempted by ALA. R. APP. P. 32.

2. This motion also complies with the typeface and type style requirements of ALA. R. APP. P. 32(a)(7) because this it has been prepared in a proportionately spaced typeface using the Microsoft Word word-processing software in 14-point Century Schoolbook font.

s/Wilson F. Green

Wilson F. Green (GRE067)
WILSON F. GREEN LLC
301 19th Street N., Ste. 525
Birmingham, AL 35203
wilson@wilsongreenlaw.com
***Attorney for the City of
Tuscaloosa, Alabama***

s/Cecil Macoy, Jr.

Cecil “Coy” Macoy, Jr. (MAC017)
Michael L. Jackson (JAC026)
Phillip D. Corley, Jr. (COR030)
WALLACE JORDAN RATLIFF
& BRANDT, LLC
800 Shades Creek Pkwy., Ste. 400
Birmingham, AL 35209
cmacoy@wallacejordan.com
mjackson@wallacejordan.com
pcorley@wallacejordan.com
***Attorneys for the City of
Hoover, Alabama***

s/David J. Canupp

David J. Canupp (CAN014)
LANIER FORD SHAVER & PAYNE
P.C.
Post Office Box 2087
Huntsville, AL 35804-2087
djc@lanierford.com
***Attorney for the City of
Huntsville, Alabama***

s/J. Bentley Owens, III

J. Bentley Owens, III (OWE004)
ELLIS HEAD OWENS JUSTICE
P. O. Box 587
Columbiana, AL 35051
bowens@wefhlaw.com
***Attorney for the Cities of
Thorsby, Calera, Harpersville,
Montevallo, Columbiana, and
Vincent, Alabama***

s/Michael W. Rich

Michael W. Rich (RIC097)
Ricardo A. Woods (WOO109)
BURR & FORMAN LLP
11 North Water St., Ste. 22200
Mobile, AL 36602
mrich@burr.com;
rwoods@burr.com
***Attorneys for the City of Mobile,
Alabama***

s/Stacy Bellinger

Stacy Bellinger (REE050)
CITY OF MONTGOMERY
103 N. Perry Street, Suite 200
Montgomery, AL 36104
sbellinger@montgomeryal.gov
***Attorney for the City of
Montgomery, Alabama***

CERTIFICATE OF SERVICE

I do hereby certify that on **September 18, 2025**, I electronically filed the foregoing with the Alabama Supreme Court’s C-Track electronic filing system and I will serve a true and correct copy on the below-listed counsel of record via e-mail:

Rodney E. Miller
Courtney C. Gipson
Brooke B. Rebarchak
METHVIN, TERRELL, YANCEY,
STEPHENS & MILLER, P.C.
2201 Arlington Avenue South
Birmingham, AL 35205
(205) 939-0199 – Telephone
rem@mtattorneys.com
cgipson@mtattorneys.com
brebarchak@mtattorneys.com
***Attorneys for Appellees/
Plaintiffs***

William A. Davis, III
Sybil V. Newton
Benjamin T. Presley
STARNES DAVIS FLORIE LLP
100 Brookwood Place, 7th Floor
Birmingham, AL 35209
(205) 868-6000 – Telephone
wad@starneslaw.com
svn@starneslaw.com
btp@starneslaw.com
***Attorneys for Appellant/
Defendant the City of Mountain
Brook, Alabama***

s/Wilson F. Green
Wilson F. Green (GRE067)
WILSON F. GREEN LLC
301 19th Street N., Ste. 525
Birmingham, AL 35203
(205) 722-1018
wilson@wilsongreenlaw.com
***Attorney for the City of
Tuscaloosa, Alabama***

s/Cecil Macoy, Jr.
Cecil “Coy” Macoy, Jr. (MAC017)
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& BRANDT, LLC
800 Shades Creek Pkwy., Ste. 400
Birmingham, AL 35209
(205) 870-0555
cmacoy@wallacejordan.com
mjackson@wallacejordan.com
pcorley@wallacejordan.com
***Attorneys for the City of Hoover,
Alabama***

s/David J. Canupp

David J. Canupp (CAN014)
LANIER FORD SHAVER & PAYNE P.C.
Post Office Box 2087
Huntsville, AL 35804-2087
(256) 535-1100
djc@lanierford.com
***Attorney for the City of
Huntsville, Alabama***

s/J. Bentley Owens, III

J. Bentley Owens, III (OWE004)
ELLIS HEAD OWENS JUSTICE
P. O. Box 587
Columbiana, AL 35051
(205) 669-6783
bowens@wefhlaw.com
***Attorney for the Cities of
Thorsby, Calera, Harpersville,
Montevallo, Columbiana, and
Vincent, Alabama***

s/Michael W. Rich

Michael W. Rich (RIC097)
Ricardo A. Woods (WOO109)
BURR & FORMAN LLP
11 North Water St., Ste. 22200
Mobile, AL 36602
(251) 345-5151
mrich@burr.com
rwoods@burr.com
***Attorneys for the City of
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s/ Stacy Bellinger

Stacy Bellinger (REE050)
CITY OF MONTGOMERY
103 N. Perry Street, Suite 200
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sbellinger@montgomeryal.gov
***Attorney for the City of
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Wilson F. Green (GRE067)
WILSON F. GREEN LLC
301 19th Street N., Ste. 525
Birmingham, AL 35203
(205) 722-1018
wilson@wilsongreenlaw.com
*Attorney for the City of
Tuscaloosa, Alabama*

Cecil “Coy” Macoy, Jr. (MAC017)
Michael L. Jackson (JAC026)
Phillip D. Corley, Jr. (COR030)
WALLACE JORDAN RATLIFF
& BRANDT, LLC
800 Shades Creek Pkwy., Ste. 400
Birmingham, AL 35209
(205) 870-0555
cmacoy@wallacejordan.com
mjackson@wallacejordan.com
pcorley@wallacejordan.com
*Attorneys for the City of Hoover,
Alabama*

David J. Canupp (CAN014)
LANIER FORD SHAVER & PAYNE P.C.
Post Office Box 2087
Huntsville, AL 35804-2087
(256) 535-1100
djc@lanierford.com
***Attorney for the City of
Huntsville, Alabama***

J. Bentley Owens, III (OWE004)
ELLIS HEAD OWENS JUSTICE
P. O. Box 587
Columbiana, AL 35051
(205) 669-6783
bowens@wefhlaw.com
***Attorney for the Cities of
Thorsby, Calera, Harpersville,
Montevallo, Columbiana, and
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Michael W. Rich (RIC097)
Ricardo A. Woods (WOO109)
BURR & FORMAN LLP
11 North Water St., Ste. 22200
Mobile, AL 36602
(251) 345-5151
mrich@burr.com
rwoods@burr.com
***Attorneys for the City of
Mobile, Alabama***

Stacy Bellinger (REE050)
CITY OF MONTGOMERY
103 N. Perry Street, Suite 200
Montgomery, AL 36104
(334) 625-2050
sbellinger@montgomeryal.gov
***Attorney for the City of
Montgomery, Alabama***

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STATEMENT OF THE ISSUE

Whether the trial court's Order in this case is due to be reversed as completely at odds with long-standing Alabama law.

STATEMENT OF THE CASE/STATEMENT OF THE FACTS

The undersigned *amici* hereby adopt the Statement of the Case and Facts set out in the Brief of the Appellant, the City of Mountain Brook.

SUMMARY OF THE ARGUMENT

Stormwater management is well-recognized in Alabama as a public-service activity exercised for the collective benefit of all residents of a city, not just certain private landowners who may have purchased land in flood prone areas. This Court has regularly and very recently (*i.e.*, within the last year) dealt with similar litigation involving stormwater drainage systems and rejected claims that a city be forced to expand a drainage system and/or be held to a standard of preventing all possible flooding. This Court has also rejected the proposition that a property owner can force a municipality operating a stormwater drainage system *functioning exactly as it was designed* and capable of handling many weather events to expand the system to handle larger, less probable weather events, despite the fact that, as here, the existing system is not alleged to have been negligently designed or constructed. This Court has made clear that a city's decisions about the enactment of plans concerning replacement of existing drainage systems are public policy decisions made pursuant to a city's duty to the public as a whole, not to individual landowners, and are therefore subject to the substantive-

immunity rule – a reality which cities cannot ignore but which was wholly ignored by the trial court here.

Certainly this Court has *never* imposed a standard of liability like the trial court applied here. The trial court improperly: (1) deemed a city strictly liable for any stormwater overflow flooding occurring on private property, (2) disregarded undisputed evidence that the drainage system at issue was properly designed and functioning as designed with no evidence of any blockage or collapse, (3) ordered the city to prevent *all* future overflow or flooding on the landowner's property (to the detriment of adjoining landowners) without any acknowledgment of the city's duty to the public as a whole and right to substantive immunity on such planning decisions, and (4) required the city to prevent future flooding on property which has been studied repeatedly and shown, for topographical reasons, to have been subject to weather-related flooding for as long as the city system has existed.

Were this Order upheld, it would place a burden on Alabama cities which they could not bear – *i.e.* the burden to pay for damages from all flooding which occurs on private property on which there exists a city-owned easement for drainage *and* the burden of instituting immediate

efforts to replace any and all stormwater infrastructure at issue *and* then continually repeat both of those efforts every time another weather event causes flooding on private property, regardless of whether the infrastructure was properly designed and functioning as designed and regardless of the magnitude of the causative weather event. The financial and logistical burden of such a holding would be unprecedented and unsustainable. The undersigned municipalities strongly urge this Court to consider the reality that not only are cities unable to upgrade all infrastructure in a way that would guarantee no overflow or flooding would occur after every weather event, their liability would be never ending were this Order affirmed, as there would always be the specter of subsequent, larger weather events and flooding (regardless of the standard to which the infrastructure was built or re-built), continually giving rise to a requirement they repeat the process all over again.

ARGUMENT

I. THE TRIAL COURT’S ORDER MISINTERPRETS ALABAMA LAW AND IMPROPERLY IMPOSES STRICT LIABILITY ON CITIES FOR STORMWATER DRAINAGE/FLOODING ON PRIVATE PROPERTY.

The primary source of the trial court’s error is its mistaken, blanket holding that “[*Mountain Brook v. Beatty* [295 So. 2d 388 (Ala. 1974)] imposes a duty on Defendant ‘to maintain its drainage easement so as not to cause an overflow’ on Plaintiffs’ property.” (C. 1154) The trial court based its entire holding on this purported “duty,” finding that if there is a showing by a property owner of overflow from the drainpipes in the easement, that necessarily equates with a breach of this “duty” and amounts to not only strict liability for damages but also cause to permanently enjoin a city from permitting any further flooding on the property. (*Id.*) This presumption that a city has a duty to prevent all stormwater overflow on private property and is therefore strictly liable for damages resulting from any such overflow is a monumental divergence from the holdings of this Court in similar cases. If upheld, it would amount to a complete sea change in this area of the law.

The trial court misses that this Court’s holding in *Beatty* was a limited one, dealing only with the limits of a prescriptive easement. This

Court held that an open drainage ditch present for over 20 years *did* amount to a prescriptive easement but floodwater which exceeded the limits of that ditch which had *not* been occurring for over 20 years was not part of the prescriptive easement. The *Beatty* Court made clear that its holding was factually limited to the prescriptive easement setting. 295 So. 2d at 403. (“[T]he respondent does not argue the general water law in brief, **but argues only the claim of prescription.**” (emphasis added)).

And for good measure, this Court subsequently reiterated the limited nature of *Beatty* in the stormwater drainage case of *Birmingham v. Fairfield*, 375 So. 2d 438 (Ala. 1979), clarifying:

Should our decision in *Mountain Brook v. Beatty* be considered as conflicting with our decision here, we point out that the cases are distinguishable. In [*Beatty*], we held the City’s acquisition of a *prescriptive easement* for drainage over plaintiffs’ private property did not carry with it a right to flood the plaintiffs’ adjacent land; only if the flooding had continued over the prescriptive period could the City have acquired such a right by prescription...[*Beatty*] did not turn upon the liability of a municipality when it acts under statutory authority to create municipal drainage improvements. Indeed, the precedents on which this Court relied for that [*Beatty*] decision were not those relevant under the issues here. Thus, the [*Beatty*] decision is not apropos in this instance.

Id. at 443-44. The trial court’s Order states it nonetheless relied upon *Beatty* because it deals with an easement. (C. 1154-1155) The Order,

however, fails to appreciate the differences between, on the one hand, an analysis of the limits of prescriptive rights and, on the other hand as here, the imposition of liability based on a drainage system functioning exactly as it was designed after the City commissioned and considered considerable study by engineers, received recommendations against the changes sought, and with considered, undisputed evidence other landowners would be adversely affected by the proposed changes. When viewed in light of the facts before it and the holdings of this Court in the decades since *Beatty*, it is clear the trial court vastly oversimplified the issue by holding that *Beatty* creates a black-and-white duty on a city to prevent all overflow flooding, end of story. The undersigned cities strongly urge this Court to rectify this error.

II. THE TRIAL COURT’S ORDER IGNORES THIS COURT’S HOLDINGS ON SUBSTANTIVE IMMUNITY, THE UNDISPUTED EVIDENCE BEFORE IT THAT THE CHANGES SOUGHT WOULD ADVERSELY AFFECT OTHER LANDOWNERS, AND A CITY’S LARGER OBLIGATION TO THE PUBLIC AS A WHOLE.

This Court has issued two opinions just this year which dictate a reversal of its holding. First, in *Ex parte City of Muscle Shoals*, No. SC-2024-0524, 2025 WL 939487 (Ala. Mar. 28, 2025), Justice Bryan authored an opinion dealing directly with the issue of a city’s management of

stormwater drainage and claims (similar to the Millers' claims) that the City failed to plan for future, higher magnitude weather events and should therefore be liable for overflow flooding due to use of a less robust drainage system which lacked capacity to handle larger weather events. In *Muscle Shoals*, Justice Bryan's opinion (in which all members of this Court concurred or concurred in the result) clarified that, while not determinative of the issues in that case, an assertion that a city failed to plan for and install a drainage system equipped to handle higher magnitude rainfall events is a question "touch[ing] on issues of substantive immunity." *Id.* at *10. The Court then pointed to evidence demonstrating the City used standard practice to plan for a certain level of rainfall and was entitled to summary judgment in its favor. *Id.* at *11. There was no finding by this Court in this recent opinion which would suggest a city's failure to prevent all flooding from weather events of any magnitude renders the city strictly liable or does away with considerations of substantive immunity.

Likewise, in *Britt v. City of Hoover*, No. SC-2024-0530, 2025 Ala. LEXIS 54 (Ala. May 16, 2025), this Court affirmed summary judgment for the City of Hoover in a similar drainage/flooding case. Reiterating the

principles set out in *Rich v. City of Mobile*, 410 So. 2d 385 (Ala. 1982), Justice Mitchell authored a special concurrence emphasizing this Court’s responsibility to apply the substantive immunity doctrine to claims very similar to those made by the Millers in the case at hand. Specifically, Justice Mitchell explained that *a challenge to a city’s decision not to expand or replace drainage pipes* involved a municipality’s “policy decision regarding the provision of a public service.” *Britt*, 2025 Ala. LEXIS at *10. For this reason, he explained, the doctrine of substantive immunity prevents the imposition of a duty on the City owed to landowners individually, concluding the Plaintiff’s claims for injunctive relief were therefore “barred as a matter of law.” *Id.* The undersigned cities ask this Court to apply the same analysis articulated by members of this Court in both of these very recent cases to the case at hand.

The trial court’s Order failed to appreciate that the Millers’ challenge to what was shown to be a considered decision by the City of Mountain Brook not to expand the drainage system directly implicates the doctrine of substantive immunity. This in turn defeats any claim that the City owed a duty to the Millers individually and bars their claims as a matter of law. The trial court’s Order in the case at hand simply cannot

be squared with these recent holdings and the decades of case law upon which they rely, including *Cross v. City of Muscle Shoals*, 384 So. 3d 37, 44 (Ala. 2023) (explaining that “the City’s decisions about the enactment of a plan...concerning its drainage systems are public-policy decisions made in connection with the City’s responsibility to provide for the public’s safety, health, and general welfare and fall into the category of actions excepted from the general rule of liability”), and *Rich v. Mobile*, 410 So. 2d at 387 (emphasizing that a city’s “larger obligation to the whole of its resident population **is paramount**” (emphasis added)). Were this Court to uphold the trial court’s ruling in this case, which creates and imposes a duty to individual landowners and completely fails to address a city’s larger obligation to the general public, it would undo decades of holdings applying the doctrine of substantive immunity and would be extremely prejudicial to all cities in our state dealing with this difficult balance.

III. THE TRIAL COURT’S ORDER DRASTICALLY AND IMPROPERLY EXPANDS THE CAUSE OF ACTION FOR NEGLIGENT MAINTENANCE TO INCLUDE CLAIMS THAT ARE ACTUALLY NEGLIGENT DESIGN CLAIMS.

The trial court’s Order embodies a dangerous expansion of the cause of action for negligent maintenance. If allowed to stand, this would

work an additional significant change to the law of our state. It would also be directly prejudicial to cities across Alabama as it would allow a complete “work-around” to the statute of limitations heretofore applicable to negligent design claims. The Millers’ claim at its core, and regardless of how they attempted to label it, is that the City of Mountain Brook’s drainage pipes have become taxed by the growth of the city and are “no longer adequate due to development.” (C. 102) There was no proof, and no argument by the Millers, that the system was not operating as designed or not maintained *in its existing condition*. Their claim is instead only that the system’s design is now outdated. The trial court mistakenly allowed them to stretch this theory into a claim for negligent maintenance in contravention of Alabama law.

In Alabama, a cause of action for negligent maintenance has been specifically held *not* to include claims of “failing to update a drainage system” to accommodate increased water due to development as the Millers claim. Rather, to sustain a cause of action for negligent maintenance in our state requires “evidence from which a jury could reasonably conclude that the flooding of their property was proximately caused by the City’s failure to provide appropriate upkeep for a storm

drainage system **in its existing condition**, rather than by the City's failure to correct any alleged design or construction problems with... that system." *Long v. City of Athens*, 24 So. 3d 1110, 1115 (Ala. 2009), quoting *Reichert v. City of Mobile*, 776 So. 2d 761, 765-66 (Ala. 2000) (emphasis added). As the *Long* Court explained:

The Longs' theory of recovery for their claim of negligent maintenance is that, by **failing to update the drainage systems to accommodate an increased discharge of surface water from developments surrounding the property**, the City failed to maintain those systems. ... [R]ecommendations of the various studies conducted ... included enlarging the culverts ... **Those recommendations speak to matters of design, ... [and] the Longs did not present substantial evidence to avoid a summary judgment on their negligent-maintenance claim ...**

24 So. 3d at 1116 (emphasis added). The trial court here erred by improperly expanding a claim for negligent maintenance to include an alleged failure to update a drainage system following development within the city. The undersigned cities urge this Court to reverse that ruling and properly recognize that any such claim "speaks to matters of design," for which the statute of limitations had long since expired. *See also, Locke v. City of Mobile*, 851 So. 2d 446 (Ala. 2002); *Byrd v. City of Citronelle*, 937 So. 2d 515 (Ala. 2006).

An additional, intertwined error the trial court made related to this end-run around the statute of limitations was a misinterpretation of this Court's rulings on abatable versus permanent nuisance. Accrual of a nuisance claim depends on the nature of the nuisance. If a nuisance is abatable, the cause of action accrues when the plaintiff suffers harm. *City of Birmingham v. Leberte*, 773 So. 2d 440, 444 (Ala. 2000). But when a nuisance is permanent, the cause of action accrues at the first instance of harm. *Reichert v. City of Mobile*, 776 So. 2d 761, 765 (Ala. 2000).

A municipality's allegedly faulty design or construction of a storm drainage system is a permanent nuisance. *See id.* (“[W]hen a city in the exercise of its duty adopts a system of drainage to care for the rainwater and constructs storm sewers or ditches for that purpose. ... it would be treated as of such character as to be embraced in [Ala. Const. 1901 §] 235, and could not ordinarily be abated, ...”) (quoting *Harris v. Town of Tarrant City*, 130 So. 83, 85 (Ala. 1930)); *Byrd v. City of Citronelle*, 937 So. 2d 515, 519 (Ala. 2006) (“negligent design or construction of a drainage ditch is considered to be a permanent condition that is not abatable”). It's only when a plaintiff shows that the municipality negligently maintained a sewer system that the rule for abatable

nuisances comes into play. *Id*; *Reichert*, 776 So. 2d at 765. As discussed above, there was no such evidence before the trial court.

It would be impossible for any city to predict what demands will be placed on a drainage system ten, fifteen, twenty, or a hundred years from construction. To allow a claim implicating a system's design or construction to proceed under the guise of negligent maintenance every time a private landowner suffers damage would put Alabama's municipalities in an untenable position. Either municipalities will be forced to build drainage systems capable of handling any amount of growth (which is of course impossible), or they will have to fund improvements any time there's a hint that city growth and development might affect the capabilities of the current system, even slightly. Neither option is practical. And even were it fiscally responsible to build beyond a city's needs and/or bolster sewer systems immediately with every degree of city growth (which it is not), there is no reason to believe voters would ever approve such anticipatory improvements. In short, the policy ramifications which would result from an adoption of trial court's Order and reasoning in this case would be profound and inequitable to cities across the state.

CONCLUSION

The undersigned cities respectfully urge this Court to uphold existing Alabama law, reverse the trial Court's flawed Order in this case, and refuse the Plaintiffs' invitation to make Alabama's municipalities function as insurers of last resort for flood damage for private property owners while ignoring cities' paramount obligation to the general public as a whole.

Respectfully submitted,

s/Wilson F. Green

Wilson F. Green (GRE067)
WILSON F. GREEN LLC
301 19th Street N., Ste. 525
Birmingham, AL 35203
(205) 722-1018
wilson@wilsongreenlaw.com
***Attorney for the City of
Tuscaloosa, Alabama***

s/David J. Canupp

David J. Canupp (CAN014)
LANIER FORD SHAVER & PAYNE P.C.
Post Office Box 2087
Huntsville, AL 35804-2087
(256) 535-1100
djc@lanierford.com
***Attorney for the City of
Huntsville, Alabama***

s/Cecil Macoy, Jr.

Cecil "Coy" Macoy, Jr. (MAC017)
Michael L. Jackson (JAC026)
Phillip D. Corley, Jr. (COR030)
WALLACE JORDAN RATLIFF
& BRANDT, LLC
800 Shades Creek Pkwy., Ste. 400
Birmingham, AL 35209
(205) 870-0555
cmacoy@wallacejordan.com
mjackson@wallacejordan.com
pcorley@wallacejordan.com
***Attorneys for the City of
Hoover, Alabama***

s/J. Bentley Owens, III

J. Bentley Owens, III (OWE004)

ELLIS HEAD OWENS JUSTICE

P. O. Box 587

Columbiana, AL 35051

(205) 669-6783

bowens@wefhlaw.com

***Attorney for the Cities of
Thorsby, Calera,
Harpersville, Montevallo,
Columbiana, and Vincent,
Alabama***

s/Michael W. Rich

Michael W. Rich (RIC097)

Ricardo A. Woods (WOO109)

BURR & FORMAN LLP

11 North Water St., Ste. 22200

Mobile, AL 36602

(251) 345-5151

mrich@burr.com

rwoods@burr.com

***Attorneys for the City of Mobile,
Alabama***

s/ Stacy Bellinger

Stacy Bellinger (REE050)

CITY OF MONTGOMERY

103 N. Perry Street, Suite 200

Montgomery, AL 36104

(334) 625-2050

sbellinger@montgomeryal.gov

***Attorney for the City of
Montgomery, Alabama***

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of ALA. R. APP. P. 28(j)(1) because this brief contains 2,859 words, excluding the parts of the brief exempted by ALA. R. APP. P. 28(j)(1) and 32(c), as counted by the word count function of Microsoft Word processing software.

2. This brief complies with the typeface and type style requirements of ALA. R. APP. P. 32(a)(7) because this brief has been prepared in a proportionately spaced typeface using the Microsoft Word processing software in 14-point Century Schoolbook font.

s/Wilson F. Green

Wilson F. Green (GRE067)
WILSON F. GREEN LLC
301 19th Street N., Ste. 525
Birmingham, AL 35203
wilson@wilsongreenlaw.com
***Attorney for the City of
Tuscaloosa, Alabama***

s/David J. Canupp

David J. Canupp (CAN014)
LANIER FORD SHAVER & PAYNE P.C.
Post Office Box 2087
Huntsville, AL 35804-2087
djc@lanierford.com
***Attorney for the City of
Huntsville, Alabama***

s/Cecil Macoy, Jr.

Cecil "Coy" Macoy, Jr. (MAC017)
Michael L. Jackson (JAC026)
Phillip D. Corley, Jr. (COR030)
WALLACE JORDAN RATLIFF
& BRANDT, LLC
800 Shades Creek Pkwy., Ste. 400
Birmingham, AL 35209
cmacoy@wallacejordan.com
mjackson@wallacejordan.com
pcorley@wallacejordan.com
***Attorneys for the City of
Hoover, Alabama***

s/J. Bentley Owens

J. Bentley Owens, III (OWE004)
ELLIS HEAD OWENS JUSTICE
P. O. Box 587
Columbiana, AL 35051
bowens@wefhlaw.com
***Attorney for the Cities of
Thorsby, Calera, Harpersville,
Montevallo, Columbiana, and
Vincent, Alabama***

s/ Michael W. Rich

Michael W. Rich (RIC097)
Ricardo A. Woods (WOO109)
BURR & FORMAN LLP
11 North Water St., Ste. 22200
Mobile, AL 36602
mrich@burr.com
rwoods@burr.com
***Attorneys for the City of
Mobile, Alabama***

s/ Stacy Bellinger

Stacy Bellinger (REE050)
CITY OF MONTGOMERY
103 N. Perry Street, Suite 200
Montgomery, AL 36104
(334) 625-2050
sbellinger@montgomeryal.gov
***Attorney for the City of
Montgomery, Alabama***

CERTIFICATE OF SERVICE

I do hereby certify that on **September 18, 2025**, I electronically filed the foregoing with the Alabama Supreme Court’s C-Track electronic filing system and I will serve a true and correct copy on the below-listed counsel of record via e-mail:

Rodney E. Miller
Courtney C. Gipson
Brooke B. Rebarchak
METHVIN, TERRELL, YANCEY,
STEPHENS & MILLER, P.C.
2201 Arlington Avenue South
Birmingham, AL 35205
(205) 939-0199 – Telephone
rem@mtattorneys.com
cgipson@mtattorneys.com
brebarchak@mtattorneys.com
***Attorneys for Appellees/
Plaintiffs***

William A. Davis, III
Sybil V. Newton
Benjamin T. Presley
STARNES DAVIS FLORIE LLP
100 Brookwood Place, 7th Floor
Birmingham, AL 35209
(205) 868-6000 – Telephone
wad@starneslaw.com
svn@starneslaw.com
btp@starneslaw.com
***Attorneys for Appellant/
Defendant the City of Mountain
Brook, Alabama***

s/Wilson F. Green
Wilson F. Green (GRE067)
WILSON F. GREEN LLC
301 19th Street N., Ste. 525
Birmingham, AL 35203
(205) 722-1018
wilson@wilsongreenlaw.com
***Attorney for the City of
Tuscaloosa, Alabama***

s/Cecil Macoy, Jr.
Cecil “Coy” Macoy, Jr. (MAC017)
Michael L. Jackson (JAC026)
Phillip D. Corley, Jr. (COR030)
WALLACE JORDAN RATLIFF
& BRANDT, LLC
800 Shades Creek Pkwy., Ste. 400
Birmingham, AL 35209
(205) 870-0555
cmacoy@wallacejordan.com
mjackson@wallacejordan.com
pcorley@wallacejordan.com
***Attorneys for the City of Hoover,
Alabama***

s/David J. Canupp

David J. Canupp (CAN014)
LANIER FORD SHAVER & PAYNE P.C.
Post Office Box 2087
Huntsville, AL 35804-2087
(256) 535-1100
djc@lanierford.com
**Attorney for the City of
Huntsville, Alabama**

s/J. Bentley Owens, III

J. Bentley Owens, III (OWE004)
ELLIS HEAD OWENS JUSTICE
P. O. Box 587
Columbiana, AL 35051
(205) 669-6783
bowens@wefhlaw.com
**Attorney for the Cities of
Thorsby, Calera, Harpersville,
Montevallo, Columbiana, and
Vincent, Alabama**

s/Michael W. Rich

Michael W. Rich (RIC097)
Ricardo A. Woods (WOO109)
BURR & FORMAN LLP
11 North Water St., Ste. 22200
Mobile, AL 36602
(251) 345-5151
mrich@burr.com
rwoods@burr.com
**Attorneys for the City of
Mobile, Alabama**

s/ Stacy Bellinger

Stacy Bellinger (REE050)
CITY OF MONTGOMERY
103 N. Perry Street, Suite 200
Montgomery, AL 36104
(334) 625-2050
sbellinger@montgomeryal.gov
**Attorney for the City of
Montgomery, Alabama**