



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
CRIMINAL DIVISION

STATE OF ALABAMA,
Plaintiff

v.

ONIS GLENN, III,
Defendant.

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CASE NUMBER: CC2018-4025

DEFENDANT’S MOTION TO DISMISS BASED ON VIOLATIONS OF STATUTORY
SAFEGUARDS IN THE ALABAMA ETHICS ACT

The Alabama Ethics Commission Staff (“the Commission Staff”), purportedly acting under the auspices of the Jefferson County District Attorney’s Office, procured an indictment against Onis “Trey” Glenn, III (“Mr. Glenn”). The indictment alleged multiple violations of Alabama’s Ethics Act. In obtaining the indictment, the Commission Staff failed to abide by the multi-layered process set forth in the Ethics Act, § 36-25-1 et seq. (“the Ethics Act”) and this case is therefore due to be dismissed.

Background

The Ethics Act explicitly guarantees due process to individuals, like Mr. Glenn, who come before the Ethics Commission based upon a complaint filed by a third party or initiated by the Commission pursuant to the Ethics Act. *See* Ala. Code §36-25-4(d) (“[i]n all matters that come before the commission concerning a complaint on an individual, the laws of due process shall apply”). The process due under the Act is specific and detailed, as the Act (1) sets out specific requirements that a complaint must meet before it can be investigated or considered by the Commission or Commission Staff, (2) includes mandatory timeframes for Commission investigation of properly filed complaints and requires Commission Staff to secure the votes of

four members of the Commission to issue any subpoenas for testimony or documents, (3) requires that individuals subject to a complaint be given notice of the complaint and a summary of its contents 45 days in advance of the Commission hearing the complaint, (4) guarantees the individual the right to be heard through counsel by the Commission and to not be forced to testify against himself, and (5) requires a majority of the Commission vote to find probable cause before a matter can be referred to a district attorney or the Attorney General for appropriate legal action. The Act's explicit guarantee of due process and its detailed statutory scheme detailing the multiple layers of process that are due illustrate the Legislature's deep commitment to guaranteeing a fair and just process to people alleged to have violated the Act's provisions.

The Commission Staff ignored the Legislature's clearly spelled out process and Mr. Glenn's due process rights when it obtained the indictment here. Mr. Glenn received no notice that a complaint had been filed against him, no summary of the nature of the complaint, no opportunity to argue his case to the Commission, and no finding of probable cause by the Commission as required by the Act. Instead, Commission Staff bypassed the Act and the Commission to take allegations that, upon information and belief, were contained in a complaint the Commission had received to a Jefferson County grand jury. Then, instead of following state law and serving Mr. Glenn with the indictment they had obtained, they leaked the fact of the indictment and issued a press release to the media in violation of the Grand Jury Secrecy Act and Alabama Rule of Professional Conduct 3.6(b)(6) that required them to include a notice regarding Mr. Glenn's constitutionally protected right to a presumption of innocence.¹ Accordingly, instead

¹ The Commission Staff's actions in leaking information to the media related to Mr. Glenn's indictment and its issuance of a related press release before Mr. Glenn was served with an indictment are detailed in Mr. Glenn's contemporaneously filed Motion to Dismiss for Selective and Vindictive Prosecution. Mr. Glenn adopts that portion of that Motion as if fully set forth herein.

of being able to argue his case to the Commission, he and his counsel were forced to divine the charges against him from press reports.

Once they were finally provided with a copy of the Indictment, Mr. Glenn and his counsel learned that it contained twenty counts, many of which appeared to attempt novel applications of the Ethics Act. Four counts in the Indictment charge Mr. Glenn with conspiring with Willie S. Phillips (“Mr. Phillips”) in Mr. Phillips’ efforts to violate certain provisions of the Ethics Act. The remaining sixteen counts alleged that Mr. Glenn somehow aided or abetted Mr. Phillips in those efforts. Mr. Glenn was not alleged to have taken any official act or received any improper financial benefit, nor was he alleged to have committed any substantive offense. Upon information and belief, no Ethics Act prosecution has ever been based on the theories of conspiracy and aiding and abetting that underlie this case given these facts and circumstances. Depriving the Commission of the opportunity to consider the Staff’s new and novel theories in the first instance compounded the procedural irregularities and violations that harmed Mr. Glenn and support the dismissal of the indictment against him.

DISCUSSION

The serious and serial violations of Mr. Glenn’s statutorily guaranteed rights by the Commission Staff mandate the dismissal of the indictment. By failing to follow the Legislature’s clear directives in the Ethics Act, the Staff acted without legal authority, and no source of legal authority inside or outside of the Act can cure that deficiency. Clear and binding legal precedent requires the dismissal of the indictment under these circumstances.

A. Commission Staff Deprived Mr. Glenn of Mandatory Statutory Safeguards Protections By Obtaining the Indictment Without Following the Ethics Act's Requirements.

1. The Ethics Act's Statutory Protections Are Multi-Layered and Comprehensive, Governing the Commission and Commission Staff's Actions from the Receipt of a Complaint Through a Final Vote.

As previously stated, the Ethics Act explicitly states that “[i]n all matters that come before the commission concerning a complaint on an individual, the laws of due process shall apply.” Ala. Code § 36-25-4(d). Further, the Ethics Act creates a comprehensive statutory scheme to govern the Ethics Commission and its Staff from receipt of a complaint through final disposition of the complaint. The requirements in the Ethics Act include the following:

- Forbidding the Commission from acting on anonymous complaints because of their inherently unreliability;
- Forbidding the Commission from evaluating a complaint unless it was filed by “an identifiable source” who, at the time of filing, possesses “credible and verifiable information supporting the allegations”;
- Forbidding complainants from attempting to file a complaint for another person or persons in order to evade these prohibitions;
- Assuming a complaint satisfies the just-listed prerequisites, forbidding any investigation by the Commission unless the complaint “sets forth in detail the specific charges against a respondent, and the factual allegations which support such charges,” and a preliminary inquiry confirms that the complaint “on its face alleges facts which if true, would constitute a violation” of the Ethics Act;
- Allowing the Commission itself to initiate a complaint only if four members vote to initiate it but only on the condition “that the Commission shall not conduct the hearing, but rather the hearing shall be conducted by three active or retired judges, who shall be appointed by the Chief Justice of the Alabama Supreme Court, at least one of whom shall be Black”;
- Allowing a matter to be forwarded “to the district attorney for the jurisdiction in which the alleged acts occurred or to the Attorney General” only if a three-judge panel so appointed “unanimously finds that a person covered by [the Ethics Act] has violated it” in the case of a Commission generated complaint, or the Commission acting on a properly filed complaint finds probable cause of a violation.

Ala. Code §36-25-4(d), (i).

The Ethics Act also sets the relevant standard of proof for referral of cases after the procedural safeguards contained in the statute are provided: “probable cause,” which the Ethics Act defines as “[a] finding that the allegations are more likely than not to have occurred.” Ala. Code § 36-25-1(25). As the Ethics Act makes clear, such a “finding” of probable cause may only be made by a vote of the Ethics Commission members, after providing the accused notice and an opportunity to be heard. *See* Ala. Code § 36-25-4(i). Importantly in relation to the present matter, the Commission Staff are not authorized, by the Ethics Act or otherwise, to make such a probable cause finding.

The requirement of a vote by the Commission to determine probable cause before referral aligns with the qualifications that the Ethics Act sets forth for members of the Commission. The Act specifically requires that each of the five Commission members:

- “must be a fair, equitable citizen of this state and of high moral character and ability”;
- cannot be “(1) a public official; (2) a candidate; (3) a registered lobbyist and his or her principal; or (4) a former employee of the commission;” and
- is not eligible for “reappointment to succeed himself or herself.”

Ala. Code § 36-25-3(a). Further, the Act requires that its membership must include at least one member who is “Black,” one member who is “a State of Alabama-licensed attorney in good standing,” and one member who is “a former elected public official who served at least two terms of office.” *Id.* Commission members are also required by the Act to be appointed by the “Governor, the Lieutenant Governor, or in the absence of a Lieutenant Governor, the Presiding Officer of the Senate, and the Speaker of the House of Representatives,” and to be confirmed by the Alabama Senate. *Id.*

The detailed qualifications set out in the Ethics Act for Commission members demonstrate the importance that the Legislature placed upon the Commission voting to make

probable cause determinations before a matter can be referred to a district attorney or the Attorney General. Individuals possessing the qualifications to serve on the Commission naturally bring a level of sophistication to their decision making. Indeed, the current Commission includes two retired judges, one of whom is also a retired lawmaker, one other retired lawmaker, and two licensed Alabama attorneys. The importance of the Legislature creating a Commission of these types of individuals, guaranteeing the right of an accused to be heard by them, and requiring the Commission to vote to find probable cause before a matter can even be referred to a district attorney or the Attorney General for potential presentation to a grand jury cannot be overstated. It also demonstrates why the Commission Staff cutting the Commission members completely out of the process in the present case so they could go directly to a grand jury is so egregious as to require dismissal.

Fortunately for Mr. Glenn and every other person against whom a complaint is filed with the Commission, the Act's directives to the Commission and its Staff are legislatively mandated requirements that neither the Commission nor its Staff have the ability to waive. Indeed, the Alabama Supreme Court has held that the failure to follow Ethics Act directives makes any subsequent investigation illegal. Specifically, in *Ex parte E.J.M.*, 829 So. 2d 105, 109 (Ala. 2001), the Court held the protections set forth in what is now Section 36-25-4(d), then-codified as Section 36-25-4(c), of the Ethics Act are mandatory, and the Commission's failure to follow them rendered a subsequent investigation by the Attorney General illegal. The issue in *E.J.M.* arose when the Ethics Commission voted to self-generate a complaint pursuant to the Ethics Act, but then failed to refer the investigation of that complaint to a three-judge panel as required by the Act, choosing instead to refer it to the Attorney General who convened a grand jury in response. *Id.* at 107. The Supreme Court held that the Commission had no legal authority to

provide information to the Attorney General since the Act required that self-generated complaints go to a three-judge panel and prevented the sharing of information with the Attorney General in those circumstances.² *Id.* at 109. Since the disclosure of the information to the Attorney General violated the Act, the Court held that the resulting investigation and grand jury activities were illegal “fruit of the poisonous tree.” *Id.* at 110 (“the investigation [begun by a Commission referral in violation of the statute] and this grand jury were and are illegal”).

The reasoning of *E.J.M.* governs the outcome of this case and warrants the dismissal of the indictment. As in *E.J.M.*, the Commission Staff here circumvented the clear requirements of the Ethics Act when they took the allegations against Mr. Glenn to a grand jury instead of to the Commission for a hearing and vote. That circumvention, like the Commission’s circumvention of the three-judge panel in *E.J.M.*, makes the indictment here illegal and subject to dismissal.

2. Commission Staff Failed to Properly Refer Mr. Glenn’s Matter to a District Attorney or the Attorney General.

The Commission Staff’s press release issued before Mr. Glenn was served with the indictment stated that “the Jefferson County DA’s office ... requested our assistance” on the Glenn matter. Based on this statement, it seems likely the Commission Staff will argue they acted properly because the Jefferson County District Attorney referred the Glenn matter to them. Those arguments fail because, upon information and belief, the genesis for Mr. Glenn’s indictment was a complaint filed with the Ethics Commission and, as set forth above, the Ethics Act requires that the Commission must vote to find probable cause after a hearing before a matter that is the subject of a filed complaint can be referred to a district attorney who has the

² In 2016, the Ethics Act was amended to permit such disclosures. *See* Act No. 2016-128. The defense does not contend that the Ethics Commission’s conduct in disclosing the complaint it received to the district attorney violates the Ethics Act or any other statute. The foundational ruling of *E.J.M.* - that the Ethics Act’s directives are mandatory and must be followed for Commission actions to be authorized - remains viable and supports the relief sought herein.

discretion to request that Commission staff assist him or her with the matter. Ala. Code § 36-25-4(i). No hearing or vote occurred here meaning there was no proper referral under the Ethics Act. As *E.J.M.* demonstrates, in the absence of a proper referral, the indictment is illegal and subject to dismissal.

To be sure, the Ethics Act does allow district attorneys and the Attorney General to initiate investigations and prosecutions into alleged violations of the Ethics Act. *See* Ala. Code § 36-25-27(c) (“The enforcement of this chapter shall be vested in the commission; provided, however, nothing in this chapter shall be deemed to limit or otherwise prohibit the Attorney General or the district attorney for the appropriate jurisdiction from enforcing any provision of this chapter as they deem appropriate.”). The problem here is that it was Commission Staff who initiated the investigation and pursued enforcement, not the district attorney or Attorney General. Indeed, as set forth in the Declaration of Thomas Michael Anderton attached as Exhibit A, this case originated when Commission Staff requested time before the Jefferson County grand jury from then-district attorney Anderton so that Commission Staff could present a case. Exh. A, ¶ 4. In response to this request, Anderton facilitated Commission Staff getting time to present their case to the grand jury, but told the Staff that his office did not have the resources to support the case and that the Staff would have to prosecute it themselves. *Id.* at ¶ 6. He also instructed the Commission Staff to prepare the necessary paperwork to authorize their appearance before the grand jury since he was unfamiliar with the requirements and procedures under the Alabama Ethics Act that would give the Staff authority to prosecute in his circuit. *Id.* at ¶ 7. At the time of the Commission Staff’s request, Anderton had not received a complaint related to the case the Commission wished to present and had no plans to present any related matter to the grand jury. *Id.* at ¶ 8.

When, as here, the Staff initiates the investigation and prosecution, the just-quoted portion of Section 36-25-27(c) does not come into play because there is a specific requirement in the statute governing the Staff's referral of a matter. Indeed, to hold otherwise and validate the Staff's actions here would render the protections of the Ethics Act meaningless since Staff could always avoid them by investigating a matter, unilaterally deciding to bring a prosecution, then "requesting" that a district attorney refer the matter to them instead of taking the matter to the Commission for a hearing and vote as the Legislature intended and explicitly required.

B. The Commission Staff's Actions Cannot be Validated by Other Statutory Provisions.

To avoid dismissal of the indictment due to their clear disregard for the detailed statutory scheme in the Ethics Act governing the referral of matters, Commission Staff will likely appeal to general statutory provisions. Those arguments fail because neither the Commission nor its Staff has the power to obtain indictments outside the strictures of the Ethics Act and *E.J.M.* clearly established that the specific provisions of the Ethics Act cannot be overridden by general statutory provisions when it comes to the Commission and its Staff's actions.

1. The Ethics Commission's Enumerated Powers Do Not Include Obtaining Indictments

In the Ethics Act, the Legislature tasked the Commission with eleven enumerated functions:

- (1) Prescribe forms for statements required to be filed by this chapter and make the forms available to persons required to file such statements.
- (2) Prepare guidelines setting forth recommended uniform methods of reporting for use by persons required to file statements required by this chapter.
- (3) Accept and file any written information voluntarily supplied that exceeds the requirements of this chapter.

(4) Develop, where practicable, a filing, coding, and cross-indexing system consistent with the purposes of this chapter.

(5) Make reports and statements filed with the commission available during regular business hours and online via the Internet to public inquiry subject to such regulations as the commission may prescribe.

(6) Preserve reports and statements for a period consistent with the statute of limitations as contained in this chapter. The reports and statements, when no longer required to be retained, shall be disposed of by shredding the reports and statements and disposing of or recycling them, or otherwise disposing of the reports and statements in any other manner prescribed by law. Nothing in this section shall in any manner limit the Department of Archives and History from receiving and retaining any documents pursuant to existing law.

(7) Make investigations with respect to statements filed pursuant to this chapter, and with respect to alleged failures to file, or omissions contained therein, any statement required pursuant to this chapter and, upon complaint by any individual, with respect to alleged violation of any part of this chapter to the extent authorized by law. When in its opinion a thorough audit of any person or any business should be made in order to determine whether this chapter has been violated, the commission shall direct the Examiner of Public Accounts to have an audit made and a report thereof filed with the commission. The Examiner of Public Accounts, upon receipt of the directive, shall comply therewith.

(8) Report suspected violations of law to the appropriate law-enforcement authorities.

(9) Issue and publish advisory opinions on the requirements of this chapter, based on a real or hypothetical set of circumstances. Such advisory opinions shall be adopted by a majority vote of the members of the commission present and shall be effective and deemed valid until expressly overruled or altered by the commission or a court of competent jurisdiction. The written advisory opinions of the commission shall protect the person at whose request the opinion was issued and any other person reasonably relying, in good faith, on the advisory opinion in a materially like circumstance from liability to the state, a county, or a municipal subdivision of the state because of any action performed or action refrained from in reliance of the advisory opinion. Nothing in this section shall be deemed to protect any person relying on the advisory opinion if the reliance is not in good faith, is not reasonable, or is not in a materially like circumstance. The commission may impose reasonable charges for publication of the advisory opinions and monies shall be collected, deposited, dispensed, or retained as provided herein. On October 1, 1995, all prior advisory opinions of the commission in conflict with this chapter, shall be ineffective and thereby deemed invalid and otherwise overruled unless there has been any action performed or action refrained from in reliance of a prior advisory opinion.

(10) Initiate and continue, where practicable, programs for the purpose of educating candidates, officials, employees, and citizens of Alabama on matters of ethics in government service.

(11) In accordance with Sections 41-22-1 to 41-22-27³, inclusive, the Alabama Administrative Procedure Act, prescribe, publish, and enforce rules to carry out this chapter.

Ala. Code § 36-25-4(a).

No provision in this enumerated list authorizes the Commission to avoid the requirements set forth in Section 36-25-27(c) or prosecute cases on its own. In fact, the closest the statute comes is to permit the Commission to investigate complaints and then “[to] [r]eport suspected violations of law to the appropriate law-enforcement authorities,” (Ala. Code § 36-25-4(a)(8)), but as covered above the Act later specifically sets out the requirements for Commission investigations and referrals. Further, *E.J.M.* held that that this general authorization to report suspected violations to appropriate authorities is subject to the more specific provisions of the Ethics Act that set forth the procedures for making such referrals. *See Ex parte E.J.M.*, 829 So. 2d at 109 (stating with respect to Commission generated complaints that “§ 36–25–4(c) provides the procedure for the Ethics Commission to follow in order to report suspected violations of law pursuant to § 36–25–4(a)(8),” and that Section 36–25–27(c) which requires a vote of the Commission “authorizes the Ethics Commission to refer directly to the Attorney General ... complaints filed by others than the Ethics Commission itself.”).⁴ *E.J.M.* thus forecloses the

³ Section 36-25-4(b) contains a similar list of functions the Ethics Commission is charged with undertaking in relation to the Alabama Fair Campaigns Practices Act (“FCPA”). Those are omitted here because no charge in the indictment is based upon the FCPA.

⁴ As set forth in note 2 above, the Legislature amended the Ethics Act to allow for the disclosures at issue in *E.J.M.* The amendment of the Act to allow the disclosures does not undermine Mr. Glenn’s argument here, and, in fact, strengthens it because the amendment demonstrates that the Commission and its Staff’s ability to Act are contingent upon and circumscribed by the

argument Section 36-25-4(a)(8) provides a stand-alone referral authority apart from the specific procedures for referral spelled out elsewhere in the Ethics Act. *Cf. Gibbons v. State Ethics Commission*, 827 So. 2d 801, 802 (Ala. Ct. Civ. App. 2001) (citing *Allen v. State*, 380 So. 2d 313, 326 (Ala. Crim. App. 1979)) (recognizing that, while the Commission could investigate complaints and refer suspected violations to appropriate law enforcement authorities, it “has no independent authority to prosecute or adjudicate.”).

2. Neither the General Grant of Authority to District Attorneys to Appoint Assistant District Attorneys, Nor General Provisions in the Ethics Act Plucked Out of Context, Validate the Conduct of the Commission Staff in this Matter.

Faced with insurmountable specific statutory commands that they ignored and which require dismissal, Commission Staff may appeal to more general grants of authority to justify their avoidance of the Ethics Act’s requirements. Specifically, they may appeal to the general statutory authority given to district attorneys to appoint assistants and to certain general statements in the Ethics Act that, when read out of context and inconsistently with Alabama Supreme Court precedent, might arguably justify their conduct in this case. Such arguments would be consistent with arguments made by the State – and rejected by the Alabama Supreme Court – in *E.J.M.* Consistent with the Supreme Court’s opinion in that case, the Commission Staff’s likely arguments in this case are also due to be rejected.

As an initial matter, Commission Staff may seek to justify their actions in going around the Ethics Act’s requirements by reference to Alabama law authorizing district attorneys to appoint assistants to perform prosecutorial duties. Alabama Code § 12-17-198(a) provides:

provisions of the Ethics Act as passed by the Legislature. The primacy of the Act’s provisions demonstrated by the necessity for that amendment to make Commission action lawful is the core of both *E.J.M.* and Mr. Glenn’s argument.

The district attorney may appoint full-time or part-time assistant district attorneys to perform prosecutorial duties in the district or circuit courts within the circuit for which the district attorney shall have administrative responsibility. The number and compensation of such assistant district attorneys shall be as otherwise authorized or provided by law.

Id. Based on this provision, Commission Staff may assert that then-District Attorney Anderton acted pursuant to this provision and allegedly appointed them to investigate and prosecute this matter. This contention is directly contrary to controlling authority.

As the *E.J.M.* Court summarized,

Our cases, without conflict give emphasis to the well-defined rule that ‘special provisions relating to specific subjects control general provisions relating to general subjects’; and ‘when the law descends to particulars, such more special provisions must be understood as exceptions to any general rules laid down to the contrary.

Ex parte E.J.M., 829 So. 2d at 108-09 (quoting *Geter v. United States Steel Corp.*, 84 So. 2d 770, 773 (Ala. 1956)); *see Riley v. Cornerstone Community Outreach*, 57 So. 3d 704, 732-33 (Ala. 2010) (citing *E.J.M.* for that proposition); *Crawford v. Springle*, 631 So. 2d 880, 882 (Ala. 1993) (“Where statutes *in pari materia* are general and specific, the more specific statute controls the more general statute.”). This is particularly true where, as here, the specific statute establishes safeguards. *E.J.M.*, 829 So. 2d at 109 (citing *State v. Bragg*, 710 So. 2d 417 (Ala. 1998)), *Starlite Lanes, Inc. v. State*, 214 So. 2d 324 (Ala. 1968) (“a conflict in statutory provisions should not be resolved in a way that nullifies safeguards”).

Under these principles, the general language of Section 12-17-198 (empowering district attorneys to hire full and part-time assistants) cannot be read to override the specific language of Section 36-25-4(c) (which provides safeguards for the referral of cases from the Ethics Commission to a district attorney or the Attorney General). As observed above, the Alabama

Supreme Court rejected the Commission's attempt to thwart this principle when it advanced a similar argument in *E.J.M.* The *E.J.M.* Court recounted the State's argument as follows:

The Attorney General and the Ethics Commission first argue that § 36-25-4(a)(8), which provides that the Ethics Commission shall '[r]eport suspected violations of law to the appropriate law-enforcement authorities,' authorized the disclosure by the Ethics Commission directly to the Attorney General rather than only to the three-judge panel required by § 36-25-4(c). Likewise, the Attorney General and the Ethics Commission argue that § 36-25-27(c) authorized the disclosure by the Ethics Commission directly to the Attorney General rather than only to the three-judge panel.

E.J.M., 829 So. 2d at 108. The court rejected this contention, holding that "the specific strictures of § 36-25-4(c), however, control the effect of both § 36-25-4(a)(8) and § 36-25-27(c)." *Id.* The Court's holding in *E.J.M.* disposes of any possible argument by the Commission Staff here based upon the general grant of authority to district attorneys in Section 12-17-198, since a specific provision in the Ethics Act governs when the Commission and its Staff can refer cases to and assist district attorneys.

Similarly, Commission Staff may attempt to pluck general statements from the Ethics Act out of context to justify their avoidance of the specific requirements of that Act in obtaining the indictment here. Two potential statements are contained in Sections 36-25-4(i) and 36-25-27(c) of the Act. Those two sections with the general statements contained in them bolded read as follows:

36-25-4(i): After receiving or initiating a complaint, the commission has 180 days to determine whether probable cause exists. At the expiration of 180 days from the date of receipt or commencement of a complaint, if the commission does not find probable cause, the complaint shall be deemed dismissed and cannot be reinstated based on the same facts alleged in the complaint. Upon good cause shown from the general counsel and chief investigator, the director may request from the commission a one-time extension of 180 days. Upon the majority vote of the commission, the staff may be granted a one-time extension of 180 days in which to complete the investigation. If the commission finds probable cause that a person covered by this chapter has violated it or that the person covered by the Fair Campaign Practices Act has violated that act, the case and the commission's

findings shall be forwarded to the district attorney for the jurisdiction in which the alleged acts occurred or to the Attorney General. The case, along with the commission's findings, shall be referred for appropriate legal action. **Nothing in this section shall be deemed to limit the commission's ability to take appropriate legal action when so requested by the district attorney for the appropriate jurisdiction or by the Attorney General.**

36-25-27(c): The enforcement of this chapter shall be vested in the commission; provided, however, nothing in this chapter shall be deemed to limit or otherwise prohibit the Attorney General or the district attorney for the appropriate jurisdiction from enforcing any provision of this chapter as they deem appropriate. In the event the commission, by majority vote, finds that any provision of this chapter has been violated, the alleged violation and any investigation conducted by the commission shall be referred to the district attorney of the appropriate jurisdiction or the Attorney General. **The commission shall provide any and all appropriate assistance to such district attorney or Attorney General. Upon the request of such district attorney or the Attorney General, the commission may institute, prosecute, or take such other appropriate legal action regarding such violations, proceeding therein with all rights, privileges, and powers conferred by law upon assistant attorneys general.**

The principles from *E.J.M.* and like cases that specific statutes control over general ones, that statutes should be read *in pari materia*, and that statutory safeguards should not be nullified by conflicts in statutes foreclose any arguments that the bolded language overrides the specific statutory framework set forth in each of these sections.

Further, there is no need to read the bolded provisions as overriding any specific provisions of the Ethics Act because they have a clear sphere of operation inapplicable to this case. The bolded portion of Section 36-25-4(i) allows for the possibility that a district attorney or the Attorney General independently investigates or prosecutes a matter and then requests that the Commission takes appropriate legal action to assist those investigatory or prosecutorial efforts. Its effect and purpose, therefore, is to clarify that under those particular circumstances – unlike in this case as detailed above and in the attached Anderton Declaration – the Commission is not required to independently

investigate the matter and vote to find probable cause as it is required to do when a potential Ethics Act violation is brought to its attention through a filed complaint, as occurred here. This reading gives effect to all parts of Section 36-25-4(i), preserves the rights of district attorneys and the Attorney General to procure the assistance of the Commission in matters involving the Ethics Act, and also secures the due process rights the Legislature mandated in the Ethics Act for people accused of violating the Act. *See Ex parte Aldridge*, No. 2171145, 2018 WL 6259313, at *4 (Ala. Civ. App. Nov. 30, 2018) (quoting *Ex parte Jones Mfg. Co.*, 589 So.2d 208, 211 (Ala. 1991) (“[s]tatutes should be construed together so as to harmonize the provisions as far as practical.”); *id.* (quoting *Alabama Bd. of Pardons & Paroles v. Brooks*, 802 So. 2d 242, 247 (Ala. Civ. App. 2001)) (“[a]ll words of a statute are to be given effect, where possible.”).

Similarly, the bolded portion of Section 36-25-27(c) has a clear sphere of operation with no need to read it to override or conflict with the specific provisions contained in the remainder of that Section. The focus of Section 36-25-27(c) is on requiring that all matters on which the Commission votes to find probable cause must be referred to a district attorney or the Attorney General. The bolded part of this Section then speaks to what occurs after such a referral – which did not happen in this case – the Commission shall provide appropriate assistance and, if requested by the district attorney or Attorney General, may take appropriate legal action. Again, such a reading gives meaning to all parts of Section 36-25-27(c), enables district attorneys and the Attorney General to request the Commission’s assistance on matters the Commission refers to them, and ensures that people who are the subject of complaints before the Commission receive the benefit of the procedural safeguards set out in the Act.

This reading is also supported by the canon of statutory construction known as the last antecedent rule that holds “relative and qualifying words, phrases, and clauses, are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to or including others more remote.” *White v. Knight*, 424 So. 2d 566, 567 (Ala. 1982) (citing 82 C.J.S. Statutes § 334 (1953)); see *City of Brundidge v. Alabama Department of Environmental Management*, 218 So. 3d 798, 812 (Ala. Ct. Civ. App. 2016) (“by commencing the third sentence of [the statute] with the term ‘such,’ the legislature intended that sentence to refer to the previous two sentences of the statute”). The application of that rule here confirms the interpretation of Section 36-25-27(c) set forth above - Commission Staff may only provide assistance to those district attorneys or the Attorney General to whom the alleged violation was referred *after* providing the due process protections required by Ethics Act and may only “institute, prosecute, or take such other appropriate legal action regarding” those alleged violations which the Ethics Commission found supported by probable cause *after* providing the required due process rights.

CONCLUSION

The Ethics Act contains statutory safeguards for a reason: to ensure that criminal prosecutions against individuals accused of violating it are the product of thorough and principled investigations which produce indictments only after the accused has been afforded the due process protections set out in the Act. None of those things happened here. Instead, the Commission Staff sought and obtained the Indictment in direct contravention of the Ethics Act’s multi-layered requirements that Mr. Glenn receive notice and an opportunity to be heard, and that the Ethics Commission vote on whether there was probable cause in his case before the

matter could be brought before a grand jury. These failings are fundamental and incurable. To put it simply, the rogue actions of the Commission Staff in this case mandate dismissal of the illegally obtained indictment.

Respectfully submitted,

/s/ William C. Athanas

WilliamC.Athanas (ATH002)

Waller Lansden Dortch & Davis, LLP
1901 Sixth Avenue North, Suite 1400
Birmingham, Alabama 35203
205/226-5703

/s/ Miles M. Hart

Miles M. Hart (HAR205)

Jess R. Nix (NIX014)

Spotswood Sansom & Sansbury LLC
1819 Fifth Avenue North, Suite 1050
Birmingham, Alabama 35203
205/386-3620

/s/ John A. Lentine

John A. Lentine (LEN003)

Christopher H. Daniel (DAN049)

Sheffield & Lentine, P.C.

600 North 20th Street, Suite 301

Birmingham, Alabama 35203

205/328-1365

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing Motion on counsel of record for the State by electronic filing with Alafile on this the 11th day of February, 2019.

/s/ John A. Lentine_____