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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2013

1120387

Ex parte Carolyn Sue Christopher

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS

(In re: Carolyn Sue Christopher

v.

Charles Phillip Christopher)

(Limestone Circuit Court, DR-10-279.02; Court of Civil Appeals, 2111039)

MOORE, Chief Justice.

Carolyn Sue Christopher ("Carolyn") petitioned this Court for a writ of certiorari to review the judgment of the Court of Civil Appeals affirming an order requiring her to pay postminority educational support on behalf of her child, C.C. See Christopher v. Christopher, [Ms. 2111039, Dec. 21, 2012] ___ So. 3d ___ (Ala. Civ. App. 2012). In Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989), this Court interpreted § 30-3-1, Ala. Code 1975, as authorizing a trial court in a divorce proceeding to require a noncustodial parent to pay college expenses for children past the age of majority. We granted Carolyn's petition to consider whether Bayliss was correctly decided, and we now reverse and remand.

I. Procedural History

Carolyn and her husband, Charles Phillip Christopher ("Phillip"), were divorced by a judgment of the trial court in 2010. At the time of the divorce they had one adult child and two children under the age of majority, a son C.C. and a daughter Ca.C. On April 18, 2011, four days before C.C.'s 19th birthday, Phillip petitioned the trial court to order Carolyn to pay a portion of C.C.'s college expenses. Carolyn answered that she was financially unable to contribute to C.C.'s

college education and that this Court's holding in Bayliss authorizing awards of postminority educational support was unconstitutional.

After a trial, the court entered a judgment requiring Carolyn to pay 25% of C.C.'s college expenses of $9,435 per semester. The Court of Civil Appeals affirmed the college-expense award as a proper exercise of the trial court's discretion under Bayliss. Finding that Bayliss, as Supreme Court precedent, was binding, the Court of Civil Appeals affirmed the trial court's judgment, denying Carolyn's constitutional challenge.[1]

II. Standard of Review

The issue in this appeal is whether the Bayliss Court correctly interpreted Alabama law to authorize a trial court to award postminority educational support when application is made before the child attains the age of majority. "[O]n appeal, the ruling on a question of law carries no presumption of correctness, and this Court's review is de novo." Ex parte

[1]Because we reverse the judgment on grounds of statutory interpretation, we do not reach the constitutional issues. See Moses v. Tarwater, 257 Ala. 361, 362, 58 So. 2d 757, 757-58 (1952) ("[T]he constitutionality of a law will not be considered on appeal unless essential to the decision of the actual case before the court.").

Graham, 702 So. 2d 1215, 1221 (Ala. 1997). "The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute." IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992).

III. Analysis

A. The meaning of the term "child" as a minor

The Alabama child-custody statute is functionally unchanged from its origin in 1852. "Upon granting a divorce, the court may give the custody and education of the children of the marriage to either father or mother, as may seem right and proper ...." § 30-3-1, Ala. Code 1975. The statute neither defines "children" nor designates when a child becomes an adult and thus ineligible for parental support.

> "When interpreting a statute, a court must first give effect to the intent of the legislature. ...
>
> "....
>
> "... To discern the legislative intent, the Court must first look to the language of the statute. If, giving the statutory language its plain and ordinary meaning, we conclude that the language is unambiguous, there is no room for judicial construction."

City of Bessemer v. McClain, 957 So. 2d 1061, 1074 (Ala. 2006).

The "plain and ordinary meaning" of statutory language may often be found in a dictionary. "What is a dictionary definition if not an assertion of that very meaning that an ordinary person would give a particular word?" Carpet Installation & Supplies of Glenco v. Alfa Mut. Ins. Co., 628 So. 2d 560, 562 (Ala. 1993). See 3A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction § 69:9 (7th ed. 2007) (hereinafter "Sutherland") ("When the legislature has chosen not to define a word, the 'plain and ordinary meaning' can be ascertained from a dictionary."). The term "children" in § 30-3-1, referring to giving "the custody and education of the children of the marriage to either father or mother" appears in the context of the parent-child relationship. The "parent-child relationship," according to a leading legal dictionary, is "[t]he association between an adult and a minor in the adult's care, esp. an offspring or an adoptee. The relationship imposes a high duty of care on the

adult, including the duties to support, to rescue, to supervise and control, and to educate." Black's Law Dictionary 1402 (9th ed. 2009). The dictionary not only defines "child" in the parent-child context as a minor, but also refers to the fact of custody ("in the adult's care") and to the responsibility of the parent to "educate," both of which § 30-3-1 expressly addresses. Therefore, the plain meaning of "children" as that term is used in § 30-3-1 unambiguously means "minors." See also Black's Law Dictionary, at 271 (primarily defining "child" as "[a] person under the age of majority").[2] Compare Smith v. Smith, 433 Mich. 606, 612, 447 N.W.2d 715, 716 (1989) (consulting Webster's Ninth New Collegiate Dictionary (1985) to shed light on the meaning of "child" in a child-custody statute).

[2]Reading the phrase "children of the marriage" in § 30-3-1 as not limited to minor children would produce the absurd and unjust result that a court could assign custody of the adult children of a marriage to one of the divorcing parties, thus stripping the children of their adult status and reducing them to the status of minors subject by law to the direction and control of their parents. See 3A Sutherland § 69:9 ("Courts avoid any construction of statutory language which leads to an absurd result.").

As further confirmation that the phrase "children of the marriage" refers to minors, we may look to the definition of "child" under the common law as applied in divorce proceedings. Customarily, "the [child-support] statute has been construed in aid of the common law and the original jurisdiction of equity for the protection, education, and well-being of the helpless infants that are drawn within the jurisdiction of the courts in such unfortunate controversies between parents ...." Ex parte State ex rel. Tissier, 214 Ala. 219, 220, 106 So. 866, 867 (1925) (construing § 7422, Ala. Code 1923 (emphasis added)). "These provisions of the statute in some respects are declaratory of the common law, and the original jurisdiction of the chancery court over infants has been held unimpaired thereby." Id.

"[S]tatutes [in derogation or modification of the common law] are presumed not to alter the common law in any way not expressly declared." Arnold v. State, 353 So. 2d 524, 526 (Ala. 1977). See also Dennis v. State, 40 Ala. App. 182, 185, 111 So. 2d 21, 24 (1959) (noting "a rule of statutory construction that statutes should be construed in reference to the principles of the common law"); Weaver v. Hollis, 247 Ala.

57, 60, 22 So. 2d 525, 528 (1945) (noting that statutes must be read "in the light of the common law"); Standard Oil Co. v. City of Birmingham, 202 Ala. 97, 98, 79 So. 489, 490 (1918) ("[C]ommon-law words [are to be construed] according to their common-law meaning."); Cook v. Meyer Bros., 73 Ala. 580, 583 (1883) ("[T]he common law prevails, save so far as it is expressly or by necessary implication changed by the statute."); 2B Sutherland § 50:3 (noting that statutes "should not be considered to make any innovation upon common law which the statute does not fairly express."); 3A Sutherland § 69:9 ("When a term is not statutorily defined, courts presume the legislature retained the common-law meaning."); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 320 (2012) ("The age-old principle is that words undefined in a statute are to be interpreted and applied according to their common-law meanings.").

At common law the parental-support obligation ceased at the age of majority. "A father is bound, by the common law, to support and educate his children during their minority ...." Beasley v. Watson, 41 Ala. 234, 240 (1867) (emphasis added). See also Coleman v. Coleman, 198 Ala. 225, 226, 73 So. 473,

474 (1916) ("A court of chancery has jurisdiction over the custody of infant children ...." (referring to § 3808, Ala. Code 1907, a predecessor to § 30-3-1 (emphasis added))); Alston v. Alston, 34 Ala. 15, 27 (1859) ("[T]he father is bound to support his minor children ...." (emphasis added)); Hansford v. Hansford, 10 Ala. 561, 563 (1846) ("[W]hen the jurisdiction of the chancellor was extended to divorce cases, the power to dispose of the minor children was a necessary incident of this jurisdiction." (emphasis added)); Godfrey v. Hays, 6 Ala. 501, 502 (1844) (noting "the obligation of the father to support his children during minority" (emphasis added)).

Before the 1980s, this Court uniformly defined "child" in the context of divorce as a minor. See, e.g., Hutton v. Hutton, 222 So. 2d 348, 350 (Ala. 1969) (noting that the obligation to make child-support payments ceases at the age of majority); Reynolds v. Reynolds, 274 Ala. 477, 479, 149 So. 2d 770, 771 (1961) ("The general rules of parent and child ... ordinarily apply only while the child is under the age of

majority."); Murrah v. Bailes, 255 Ala. 178, 180, 50 So. 2d 735, 736 (1951) (stating that child-support statutes relating to divorce or separation "clearly apply only to minor children").

B. Departing from the ordinary and common-law meaning of "child"

In 1983 this Court recognized an exception to the ordinary and common-law definition of "child" as a minor in favor of a "majority trend" in courts of other states to require a noncustodial parent to support a disabled child past the age of majority. Ex parte Brewington, 445 So. 2d 294, 296 (Ala. 1983) (affirming an order requiring support payments past the age of majority for a child suffering from a birth defect and permanently confined to a wheelchair). Finding the "narrow interpretation" of the term "children" as minors to be "unacceptable," the Court stated: "[W]e believe the legislature intended that support be provided for dependent children ...." Id. See Fincham v. Levin, 155 So. 2d 883, 884 (Fla. Dist. Ct. App. 1963) (finding that "most jurisdictions hold that where a child is of weak body or mind, unable to

care for itself after coming of age, the parental rights and duties remain practically unchanged").

Using as a springboard the substitution of "dependents" for "children" in Brewington, the Court in Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989), "expanded" the Brewington exception to require a noncustodial parent to pay college expenses for children who had passed the age of majority. 550 So. 2d at 989, 991-92. Regardless of whether the common law might have recognized an obligation to support disabled children past their majority, an issue not before us, it certainly never contemplated granting a divorce court the power to require payment for postminority educational expenses. The common law recognized no such obligation, nor does § 30-3-1. The Court candidly acknowledged that "[t]he Legislature of Alabama has not enacted a specific statutory change in its domestic relations laws to permit post-minority support for college education." 550 So. 2d at 989. Undeterred, the Court held that a divorce court may "derive such jurisdiction from the absence of restrictive language" in § 30-3-1. Id.

Courts, however, may not interpret statutes to compensate for omissions. "'[I]t is not the office of the court to insert in a statute that which has been omitted[;] ... what the legislature omits, the courts cannot supply.'" Pace v. Armstrong World Indus., Inc., 578 So. 2d 281, 284 (Ala. 1991) (quoting 73 Am. Jur. 2d Statutes § 203 (1974)). See also Elmore Cnty. Comm'n v. Smith, 786 So. 2d 449, 455 (Ala. 2000) ("We will not read into a statute what the Legislature has not written."); Ex parte Jackson, 614 So. 2d 405, 407 (Ala. 1993) ("The judiciary will not add that which the Legislature chose to omit."); Siegelman v. Chase Manhattan Bank (USA), Nat'l Ass'n, 575 So. 2d 1041, 1045 (Ala. 1991) ("[A] court may explain the language but it may not detract from or add to the statute."); Dale v. Birmingham News Co., 452 So. 2d 1321, 1323 (Ala. 1984) ("[W]e deem it inappropriate to engraft by judicial fiat a change the legislature has apparently not chosen to make."); and Ex parte Jones, 444 So. 2d 888, 890 (Ala. 1983) ("We cannot read into the statute a provision which the legislature did not include.").

Indeed, we have held that "to change the statute under guise of construction, [is] an infringement upon the

legislative prerogative." Holt v. Long, 234 Ala. 369, 372, 174 So. 759, 760 (1937). See also Alabama Indus. Bank v. State ex rel. Avinger, 286 Ala. 59, 62, 237 So. 2d 108, 110-11 (1970) ("The office of interpretation is not to improve the statute; it is to expound it ...."); Echols v. State, 24 Ala. App. 352, 353, 135 So. 410, 411 (1931) ("[C]ourts are without authority to add to or take from the written statutory law as passed by the Legislature and approved."). Federal courts follow the same principle. See Ali v. Federal Bureau of Prisons, 552 U.S. 214, 228 (2008); Badaracco v. Commissioner of Internal Revenue, 464 U.S. 386, 398 (1984) ("Courts are not authorized to rewrite a statute because they might deem its effects susceptible of improvement."); and Nguyen v. United States, 556 F.3d 1244, 1256 (11th Cir. 2009) ("We are not authorized to rewrite, revise, modify, or amend statutory language in the guise of interpreting it ....").

C. Departing from the statutory definition of age of majority

Although it is not "this Court's role to assume the legislative prerogative to correct defective legislation or amend statutes," Siegelman, 575 So. 2d at 1051, the Bayliss Court nonetheless interpreted the child-support statute to

authorize postminority support for college education. The age of majority, however, is controlled exclusively by statute. "'It is the business of the law-making body to determine the age of majority. The courts are without power either to raise or lower the age so fixed.'" Davenport v. Davenport, 356 So. 2d 205, 209 (Ala. 1978) (quoting Shoaf v. Shoaf, 282 N.C. 287, 291, 192 S.E.2d 299, 303 (1972)). See also Beavers v. Southern Ry., 212 Ala. 600, 602, 103 So. 887, 889 (1925) ("[I]n law a person is an infant until he arrives at his majority as fixed by law ...."); Hutchinson v. Till, 212 Ala. 64, 65, 101 So. 676, 676 (1924) (noting that "[t]he Legislature has full power to prescribe" the age of majority).

When the legislature reduced the age of majority from 21 to 19 in 1975,[3] this Court did not acquire the privilege to raise it back to 21 or higher to serve a "public policy" it thought desirable. By reducing the age of majority by two years, the legislature not only bestowed the burdens and privileges of adulthood upon persons not formerly entitled to

[3]"Any person in this state, at the arrival at the age of 19 years, shall be relieved of his or her disabilities of minority and thereafter shall have the same legal rights and abilities as persons over 21 years of age." § 26-1-1(a), Ala. Code 1975.

them, but also relieved their parents of responsibility for their support during the same period. By reweighing and altering that balance as it pertains to college education, the Bayliss Court improperly overrode the statutory designation of the age of majority.

IV. Stare Decisis

Stare decisis is the principle that, all things being equal, cases should be decided as they have been in the past. See Black's Law Dictionary 1537 (9th ed. 2009) (defining stare decisis as "[t]he doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation"). The Bayliss Court openly confessed its departure from this principle, stating:

> "The Latin phrase 'stare decisis et not quieta movere' (stare decisis) expresses the legal principle of certainty and predictability; for it is literally translated as 'to adhere to precedents, and not to unsettle things which are established.' Black's Law Dictionary (5th ed. 1979). By this opinion, we are unsettling things that have been established by the appellate court of this State (the Court of Civil Appeals) that has exclusive appellate jurisdiction of 'all appeals in domestic relations cases, including annulment, divorce, adoption and child custody cases.' Ala. Code 1975, § 12-3-10."

550 So. 2d at 993-94. By departing from settled precedent on the meaning of the term "children" in § 30-3-1 and expressly overturning eight cases that conformed to that precedent, 550 So. 2d at 994, the Bayliss Court indeed "unsettled" the law. The question arises whether we are bound by the principle of stare decisis to follow Bayliss, even though that opinion itself repudiated the principle. We are not so constrained.

> "'Although this Court strongly believes in the doctrine of stare decisis and makes every reasonable attempt to maintain the stability of the law, this Court has had to recognize on occasion that it is necessary and prudent to admit prior mistakes and to take the steps necessary to ensure that we foster a system of justice that is manageable and that is fair to all concerned.'"

Ex parte Capstone Bldg. Corp., 96 So. 3d 77, 88 (Ala. 2012) (quoting Foremost Ins. Co. v. Parham, 693 So. 2d 409, 421 (Ala. 1997)). See also Ex parte Capstone, 96 So. 3d at 89 n.9 ("What would be truly 'distressing' would be if, when this Court has made an error ... it would be unwilling to 'confess' that error and set the law right."); Jackson v. City of Florence, 294 Ala. 592, 598, 320 So. 2d 68, 73 (1975) ("As strongly as we believe in the stability of the law, we also

recognize that there is merit, if not honor, in admitting prior mistakes and correcting them.").

Federal law observes the same principle. "[S]tare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision." Helvering v. Hallock, 309 U.S. 106, 119 (1940).

> "Our problem then is not that of rejecting a settled statutory construction. The real problem is whether a principle shall prevail over its later misapplications. Surely we are not bound by reason or by the considerations that underlie stare decisis to persevere in distinctions taken in the application of a statute which, on further examination, appear consonant neither with the purposes of the statute nor with this Court's own conception of it."

309 U.S. at 122. The clear import of the Alabama child-support statute (§ 30-3-1), traceable to its origin in 1852, is that the term "children" does not describe adults, but only those under the age of majority. This principle, unchanged by statute, should "prevail over its later misapplication[]" in Bayliss. See Ex parte Capstone, 96 So. 3d at 89 ("'Abrogating the errant precedent, rather than reaffirming or extending it, might better preserve the law's coherence ....'" (quoting Citizens United v. Federal Election Comm'n, 558 U.S. 310, 378-79 (2010) (Roberts, C.J., concurring))); id. at 87

(reaffirming a rule that had been recognized as the law of Alabama for many years before the overruled decision); Foremost Ins. Co., 693 So. 2d at 417-21 (overruling cases that had wrongly overturned prior settled precedent).

Reversing Bayliss and returning to the legislature the power to decide if postminority educational support should be authorized in a divorce case does not make new law but, instead, "vindicate[s] the old one from misrepresentation." 1 Sir William Blackstone, Commentaries *70. Thus, our decision in this case is remedial, returning the stream of judicial power to its proper channel. "'Courts do not and cannot change the law by overruling or modifying former opinions. They only declare it by correcting an imperfect or erroneous view. The law itself remains the same ....'" G.P v. A.A.K., 841 So. 2d 1252, 1255 n.1 (Ala. Civ. App. 2002) (quoting Crigler v. Shepler, 79 Kan. 834, 842, 101 P. 619, 621 (1909)).

V. The Acquiescence Doctrine

When this case was before the Court of Civil Appeals, two judges expressly called for overruling Bayliss. See Christopher v. Christopher, [Ms. 2111039, Dec. 21, 2012] ___ So. 3d ___, ___ (Ala. Civ. App. 2012) (Thomas, J., concurring

specially, joined by Bryan, J.). Two others, addressing the suggestion that Bayliss "usurped the province of the legislature," expressed doubt about the original validity of Bayliss but felt that time and legislative silence had transformed the errors of Bayliss into accepted law.

> "Although [it] might have been true when Bayliss was decided almost 24 years ago [that the Court usurped the province of the legislature], had the legislature disagreed with our supreme court's interpretation of § 30-3-1, it could have enacted a law modifying or abrogating the holding in Bayliss. However, it has chosen not to do so. Because the legislature has not acted on the holding in Bayliss in more than two decades, I believe that it has acquiesced to that holding. See Hexcel Decatur, Inc. v. Vickers, 908 So. 2d 237, 240-41 (Ala. 2005), and the cases cited therein."

___ So. 3d at ___ (Thompson, P.J., concurring in the result, joined by Pittman, J.). Phillip argues in his appellate brief that the legislature has acquiesced to Bayliss by almost 24 years of silence and that any original error has been healed by the passage of time. See Phillip's brief, at 25-28 (citing Hexcel Decatur, Inc. v. Vickers, 908 So. 2d 237 (Ala. 2005)). For the reasons stated herein, we find Hexcel inapplicable.

The argument for ratification by silence, though logically dubious,[4] ultimately fails because of its unconstitutionality. The assertion that the legislature has adopted a judicial interpretation by failing explicitly to reject it creates a method of amending a statute the Alabama Constitution does not permit. In Alabama, legislation cannot originate with the judiciary. "[T]he judicial shall never exercise the legislative ... powers ...." Ala. Const. 1901, art. III, § 43. Instead, "[t]he legislative power shall be vested in a legislature, which shall consist of a senate and a house of representatives." Id., art. IV, § 44. "No law shall be passed except by bill ...." Id., art. IV, § 61. And no bill shall become a law unless first referred to and acted upon by a standing committee of each house. Id., art. IV, § 62. Additionally, no bill shall become a law unless approved by a

[4]The legislature, of course, is free to amend a statute to incorporate a judicial construction. But its failure to do so does not mean it has so acted and does not prohibit the Court from correcting its own error. See Helvering v. Hallock, 309 U.S. at 121 ("This court ... has from the beginning rejected a doctrine of disability at self-correction."). In short, legislative inaction does not estop this Court from reconsidering its own errors. "To explain the cause of nonaction by Congress when Congress itself sheds no light is to venture into speculative unrealities. ... [W]e walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle." Id. at 119-21.

recorded majority vote in each house. Id., art. IV, § 63. Adoption of amendments also requires a recorded majority vote. Id., art. IV, § 64. Finally, "[e]very bill which shall have passed both houses of the legislature ... shall be presented to the governor" for signature. Id., art. V, § 125.

Courts do not make law. No law can be enacted or amended apart from the constitutionally mandated procedure, known as bicameralism and presentment. See INS v. Chadha, 462 U.S. 919, 952 (1983) (noting the "bicameralism and presentment requirements of Art. I" of the United States Constitution). Nowhere in the Alabama Constitution is provision made for the judiciary to initiate legislation that then automatically becomes law when not affirmatively vetoed by the legislature within a prescribed period. This presumed lawmaking authority of the judiciary has some resemblance to the provision for a bill to become a law by gubernatorial silence.[5] But obviously the judiciary has no power to translate itself into the shoes of the legislature and then further to clothe the legislature with a veto authority over its unauthorized enactments.

[5]"If any bill shall not be returned by the governor within six days, Sunday excepted, after it shall have been presented, the same shall become a law in like manner as if he had signed it ...." Ala. Const. 1901, art. V, § 125.

Any act of the legislature that does not follow the procedures required by the Constitution is, "as a law, wholly void, a mere nullity, and imposes no legal obligation on any body." Moody v. State, 48 Ala. 115, 121 (1872). Accordingly, the legislature cannot acquiesce to a lawmaking process devised by the judiciary ex cathedra that has no authorization in the Constitution. "[T]he power to legislate rests exclusively with the legislature ... [which] cannot delegate that power." Opinion of the Justices No. 145, 263 Ala. 153, 155, 81 So. 2d 697, 698-99 (1955). The Court quoted with approval the following principle set out by Thomas M. Cooley:

> "'One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been intrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust.'"

263 Ala. at 155-56, 81 So. 2d at 699 (quoting 1 Cooley's Constitutional Limitations, p. 224 (emphasis added)).[6]

"It is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803). It is equally emphatically not the province of the judicial department to declare the law and then to assume that declaration automatically becomes a legislative pronouncement in the face of ensuing legislative silence. The alchemy of the acquiescence doctrine has no power to transmute the base metal of an unwarranted judicial construction into the pure gold of legislative enactment. "The verdict of quiescent years cannot be invoked to baptize a statutory gloss that is otherwise impermissible." Zuber v. Allen, 396 U.S. 168, 185-86 n.21 (1969). See also Patterson v. McLean Credit Union, 491 U.S. 164, 175 n.1 (1989) ("It is 'impossible to assert with any degree of assurance that

[6]The federal principle is the same. "Congress may legislate ... only through the passage of a bill which is approved by both Houses and signed by the President. See U.S. Const., Art. I, § 7, cl. 2. Congressional inaction cannot amend a duly enacted statute." Patterson v. McLean Credit Union, 491 U.S. 164, 175 n.1 (1989). See Daniel L. Rotenberg, Congressional Silence in the Supreme Court, 47 U. Miami L. Rev. 375, 378 (1992) (noting that "Congress cannot make laws by inaction, for inaction does not conform with constitutional lawmaking requirements").

congressional failure to act represents' affirmative congressional approval of the Court's statutory interpretation." (quoting Johnson v. Transportation Agency, Santa Clara Cnty., 480 U.S. 616, 671-72 (1987) (Scalia, J., dissenting))); Girouard v. United States, 328 U.S. 61, 70 (1946) (declining to "place on the shoulders of Congress the burden of the Court's own error"). The mere passage of time, therefore, has not diminished the power of this Court to reconsider Bayliss.

In Bayliss, this Court rejected its longstanding construction of § 30-3-1 that "children of the marriage" referred to minors only. See supra § III. If we are now to apply the acquiescence doctrine to preserve Bayliss, then the Bayliss Court should also have applied the doctrine to preserve the multiple cases construing § 30-3-1 that it overturned. If 24 years of silence since 1989 are construed to impress upon Bayliss a legislative imprimatur, what shall we say of the 137 years before Bayliss in which the legislature never spoke in opposition to this Court's then prevailing interpretation of "children" as minors? Invoking the

acquiescence doctrine to prevent this Court from correcting its errors in Bayliss is self-contradictory.

VI. Prospective Application

"The determination of the retroactive or prospective application of a decision overruling a prior decision is a matter of judicial discretion that must be exercised on a case-by-case basis." Ex parte Coker, 575 So. 2d 43, 51 (Ala. 1990). Because many litigants have relied upon the holding in Bayliss to sue for and to collect support from noncustodial parents for college expenses, our decision in the instant case will not disturb final postminority-educational-support orders entered before the date of this decision. "[W]here parties have acted upon the law as clearly declared by judicial decision, they will be protected, although such decisions are thereafter overruled." Cooper v. Hawkins, 234 Ala. 636, 638, 176 So. 329, 331 (1937). See also Ex parte Capstone, 96 So. 3d at 91 ("'A decision overruling a judicial precedent may be limited to prospective application where required by equity or in the interest of justice.'" (quoting 20 Am. Jur. 2d Courts § 151 (2005))); Jackson v. Fillmore, 367 So. 2d 948, 950 (Ala. 1979) ("When a rule established by judicial decision has

existed long enough to be relied upon by those acquiring rights to, or title in, certain property, courts should be loath to destroy such rights when overruling prior decisions."); and City of Birmingham v. Brasher, 359 So. 2d 1153, 1155 (Ala. 1978) ("[A] court of final decision may expressly define and declare the effect of a decision overruling a former decision, as to whether or not it shall be retroactive, or operate prospectively only, and may, by a saving clause in the overruling decision, preserve all rights accrued under the previous decision.'" (quoting 21 C.J.S. Courts § 194(a))). This principle has a long lineage. See Farrior v. New England Mortg. Sec. Co., 92 Ala. 176, 182, 9 So. 532, 534 (1891) ("[S]ubsequent decisions can not retroact so as to impair rights acquired in good faith under a statute as construed by the former decisions."); Bibb v. Bibb, 79 Ala. 437, 444 (1885) (noting that considerations of stare decisis "call for permanently upholding acts done ... on the faith of decisions of the court of last resort").

Although today's decision does not affect final orders of postminority educational support already entered, our overruling of Bayliss is applicable to all future cases.

Further, this decision also applies to current cases where no final postminority-support order has been entered or where an appeal from a postminority-support order is still pending. In this case Caroline may recover from Phillip postminority-support payments she has made under the trial court's order of January 18, 2012.[7] Phillip was on notice that Caroline was challenging the trial court's authority to order her to pay postminority educational support. Additionally, allowing Caroline to benefit from her success in this case provides "'an incentive for litigants to challenge existing rules of law that are in need of reform,'" Hosea O. Weaver & Sons, Inc. v. Towner, 663 So. 2d 892, 899 (Ala. 1995) (quoting Prospective Application of Judicial Decisions, 33 Ala. L. Rev. 463, 473 (1982)), and observes the "case or controversy" requirement that a court's holding affect the parties before the court. See James B. Beam Distilling Co. v. Georgia, 501

[7]"Quasi-prospective overruling ... protects reliance on prior rules by applying the overruling decision to acts done or transactions consummated after the effective date of the decision. Unlike prospective overruling, however, when a court overrules quasi-prospectively, it affords relief to the instant parties." Hosea O. Weaver & Sons, Inc. v. Towner, 663 So. 2d 892, 899 (Ala. 1995) (quoting Prospective Application of Judicial Decisions, 33 Ala. Law. Rev. 463, 473 (1982)).

U.S. 529, 547 (1991) (Blackmun, J., concurring in the judgment) ("[T]his Court's function in articulating new rules of decision must comport with its duty to decide only 'Cases' and 'Controversies.'").

VII. Conclusion

The Bayliss Court failed to recognize the ordinary and common-law definitions of "child" as a minor, did not defer to the legislature's designation of the age of majority, and failed to observe the canon of construction that courts cannot supply what a statute omits. Accordingly, we expressly overrule Bayliss. Because the child-custody statute does not authorize a court in a divorce action to require a noncustodial parent to pay educational support for children over the age of 19, we reverse the judgment of the Court of

Civil Appeals and remand the cause to that court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Parker and Wise, JJ., concur.

Moore, C.J., and Stuart and Bolin, JJ., concur specially.

Main, J., concurs in the result.

Murdock and Shaw, JJ., dissent.

Bryan, J., recuses himself.*

*Justice Bryan was a member of the Court of Civil Appeals when that court considered this case.

MOORE, Chief Justice (concurring specially).

I write specially to provide further support for the Court's reversal of Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989). Specifically, as I explained in my special writing in Ex parte Tabor, 840 So. 2d 115, 123-30 (Ala. 2002) (Moore, C.J., concurring in part and dissenting in part), Bayliss violated (1) the separation-of-powers doctrine and (2) the fundamental rights of parents.

I. Separation of Powers

A. Redefining the term "child" is a legislative, not a judicial, function.

"[W]e do not subscribe to the doctrine that the judiciary can or should usurp the legislative function in a republican form of government." Hamilton v. State, 264 Ala. 199, 201, 86 So. 2d 283, 285 (1956). The action of the Bayliss Court in changing the common-law rule that child-support obligations end at the age of majority was not a judicial act of applying existing law but was rather a legislative act of creating a new rule for future application. "'[T]o declare what the law is, or has been, is a judicial power; to declare what the law shall be, is legislative ....'" Sanders v. Cabaniss, 43 Ala.

173, 180 (1869) (quoting Thomas M. Cooley, Constitutional Limitations 91-95 (1868)). See also DeKalb Cnty. LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 276 (Ala. 1998) ("[I]t is our job to say what the law is, not to say what it should be."). The legislature, not the judiciary, has "special competency to make ... prospective general rules." Ex parte Key, 890 So. 2d 1056, 1063 (Ala. 2003).

By changing the common-law definition of "child," the Bayliss Court not only misread § 30-3-1, Ala. Code 1975, and ignored § 1-3-1, Ala. Code 1975, but also violated the separation-of-powers doctrine by usurping the legislative function of making law. As Judge Thomas of the Court of Civil Appeals wrote: "I am concerned that the decision in Ex parte Bayliss violates the doctrine of the separation of powers because the decision encroached on the core function of our legislature--the power to make laws." Christopher v. Christopher, [Ms. 2111039, Dec. 21, 2012] ___ So. 3d ___, ___ (Ala. Civ. App. 2012) (Thomas, J., concurring specially). See also Joseph D. Ficquette, Post-Minority Educational Support: Good Intentions Gone Terribly Awry, 4 Jones L. Rev. 73, 82 (2000) ("[T]he Supreme Court created new law to allow trial

courts the jurisdiction to award and enforce post-minority educational support. This is a clear usurpation of legislative power given to the legislature in the state Constitution."); TenEyck v. TenEyck, 885 So. 2d 146, 158 (Ala. Civ. App. 2003) (reversing a judgment denying an award of postminority educational support on the ground that Bayliss "overstepped the constitution[al] boundary between the legislature['s] duty to make laws and the court's duty to rule on those laws").

B. The "conscience and feeling of justice" test is essentially legislative.

The Bayliss Court created an entitlement to postminority educational support "because of what we perceive to be just and reasonable in 1989." 550 So. 2d at 993. Rejecting the common law and statutory law, the Court also explicitly reversed eight previous appellate cases because "the ground or reason of those prior decisions by the Court of Civil Appeals would not be consented to today by the conscience and feeling of justice of all those whose obedience is required by the rule on which the ratio decidendi of those prior decisions was logically based." Id. at 994.[8]

[8]As examples of the overturned cases, see Cain v. Cain, 452 So. 2d 874, 878 (Ala. Civ. App. 1984) ("Absent a contract or disability, husband is not legally responsible for the

This curious language asserting a generic right to assess the "conscience and feeling of justice" of unascertained persons as a basis for judicial policy-making originated in a 1938 law-review article. See Rudolph Laun, Stare Decisis, 25 Va. L. Rev. 12, 22 (1938) (stating that a court is more likely to follow a rule of law from a prior case if "it corresponds to the feeling of justice of the population or that part of the population whose obedience is required by the rule involved in this ratio decidendi"). In the months before Bayliss was decided, the Justice who authored that opinion had adopted in special writings Laun's "conscience and feeling of justice" test to decide whether to follow or to reject prior caselaw. See Lowman v. Piedmont Exec. Shirt Mfg. Co., 547 So. 2d 90, 96 (Ala. 1989) (Houston, J., concurring in part and dissenting in part and citing Laun); Central Alabama Elec. Coop. v. Tapley, 546 So. 2d 371, 385 (Ala. 1989) (Houston, J., dissenting); Southern States Ford, Inc. v. Proctor, 541 So. 2d 1081, 1093 (Ala. 1989) (Houston J., concurring specially and citing Laun).

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support of his adult son."); Godec v. Godec, 346 So. 2d 459, 461 (Ala. Civ. App. 1977) ("[A] father is not required to support children who are no longer minors.").

In Bayliss, the "conscience and feeling of justice" test found majority support. Employing its own subjective assessment of the state of public opinion as a basis for judicial policy-making, the Court launched deeply into the legislative realm. Determining the current "conscience and feeling of justice" of the governed that would justify departure from settled law, however, surely is a legislative and not a judicial task. See Benjamin Cardozo, The Nature of the Judicial Process 141 (1921) ("[The judge] is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness."). The Justice who authored Bayliss conceded that the Laun test was quite subjective:

> "If I determine that the ratio decidendi--the underlying reason--for the rule of law would not hypothetically be consented to today by the conscience and the feeling of justice of the majority of all those whose obedience is required by that rule of law, then I will vote to change the rule of law. This test, of course, is not completely objective. There is a great deal of subjectivity in it. However, it is a standard that I use."

Gorman Houston, Jr., Keynote Address to the Incoming Students at the University of Alabama School of Law, 18 J. Legal Prof. 5, 13 (1993).

Professor Laun justified his "feelings" test for judicial innovation on the ground that judges were better lawmakers than legislators. "In consideration of the arbitrariness of many legislators who believe themselves to be legally omnipotent, it may with reason be claimed that judge-made law can be a much more adequate and stable form of law than statutes." Laun, Stare Decisis, 25 Va. L. Rev. at 25. Laun's preference for judicial lawmaking formed the philosophical basis of Bayliss and its malleable "conscience and feeling of justice" test.[9] Although the Court, employing the Laun test, felt itself free to write its own policy preferences into § 30-3-1, or any other statute,[10] the Alabama Constitution does not permit such liberties. "Great care must be exercised by the courts not to usurp the functions of other departments of government." Finch v. State, 271 Ala. 499, 503, 124 So. 2d 825, 829 (1960) (citing Ala. Const. 1901, Art. III, § 43).

[9]Popular music has echoes of the Laun test. See Morris Albert, Feelings, on Feelings (RCA 1974) ("Feelings, nothing more than feelings ....").

[10]Post-Bayliss, the Laun test received favorable majority mention in other cases. See Prattville Mem'l Chapel v. Parker, 10 So. 3d 546, 557-58 (Ala. 2008); Ex parte First Alabama Bank, 883 So. 2d 1236, 1245-46 (Ala. 2003); McCorkle v. McElwey, 576 So. 2d 202, 206-07 (Ala. 1991); and Barnes v. Birmingham Int'l Raceway, 551 So. 2d 929, 932-33 (Ala. 1989).

Among the myriad of judicial tests that have been devised over the years, surely the "feelings" test adopted in Bayliss is one of the most unusual. Even if the feelings of Justices could form a basis for lawmaking, such a usurpation of the legislative function is undoubtedly unconstitutional. "In the government of this state ... the judicial [department] shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men." Ala. Const. 1901, Art. III, § 43.

C. Policy-making is a legislative function.

The "feeling of justice" test provided the Court a blank check to make or unmake law whenever it subjectively felt the public would approve of the change. Our system of constitutional government, however, expresses the popular will through electoral representation in the legislature, not through judicial assessment of the tide of public opinion. The determination of public policy as a basis for lawmaking is a legislative, not a judicial, function. Thus what this Court "perceive[d] to be just and reasonable in 1989," Bayliss, 550 So. 2d at 993, does not suffice to override or rewrite legislative policy to the contrary. "[T]he legislature, and

not this Court, has the exclusive domain to formulate public policy in this state." Boles v. Parris, 952 So. 2d 364, 367 (Ala. 2006). See also Cline v. Ashland, Inc., 970 So. 2d 755, 758 (2007) (See, J., concurring specially) ("The Legislature is entrusted with making the public policy of this State, whether or not it is public policy of which this Court would approve."); Beasley v. Bozeman, 294 Ala. 288, 290, 315 So. 2d 570, 571 (1975) ("The Legislature's power should not be interfered with unless it is exercised in a manner which plainly conflicts with some higher law."); and Warren v. Alabama Farm Bureau Cotton Ass'n, 213 Ala. 61, 64, 104 So. 264, 267 (1925) ("When the Legislature ... speaks [in conformity with the Constitution], whether it be governed by age-old principle or by merely ephemeral expediency, it eliminates the question of public policy from the cognizance of courts in their administration of the legislative act."). By forthrightly engaging in policy-making, the Bayliss Court exercised legislative power, an action expressly forbidden by Art. III, § 43, of the Alabama Constitution. See Finch v. State, 271 Ala. at 504, 124 So. 2d at 830 ("[The judicial branch of government] is under restraint (§ 43, Constitution

1901) from imposing its methods or substituting its judgment for that of the executive and legislative branches of the government.").[11]

D. The "Evening Dress" Metaphor.

After announcing the overruling of eight cases based on the "feelings" test, the Bayliss Court offered as further justification for its decision a sartorial metaphor:

> "In making this holding, we are not the first by whom this new [rule] is tried, for we have cases from other jurisdictions, referred to by Justice Holmes as 'the evening dress which the newcomer puts on to make itself presentable according to conventional requirements,' Book Notice, 14 Am. L. Rev. 233-34 (1880)."

550 So. 2d at 994. Holmes was not referring to cases from other jurisdictions but, instead, was referring to the realist philosophy that judges first decide the outcome of a case and then adorn it with legal reasoning ("the evening dress") suitable to the result. He prefaced his "evening dress" remark

[11]When the judiciary engages in policy-making, it not only violates the separation-of-powers doctrine, but also enfeebles the system of representative government. "[W]hen this Court rushes in to remedy what it perceives to be the failings of the political processes, it deprives those processes of an opportunity to function. When the political institutions are not forced to exercise constitutionally allocated powers and responsibilities, those powers, like muscles not used, tend to atrophy." Plyler v. Doe, 457 U.S. 202, 253 (Burger, C.J., dissenting).

with the statement: "The form of continuity [in the law] has been kept up by reasonings purporting to reduce everything to a logical sequence ...." Book Notice, 14 Am. L. Rev. at 234. Holmes also said, however, that he did "not expect or think it desirable that the judges should undertake to renovate the law. That is not their province." Oliver Wendell Holmes, "Law in Science and Science in Law," Collected Legal Papers 239 (1920). A former Alabama Supreme Court Justice offered a similar sentiment: "The temptation to weaken the separation of powers often comes in very appealing attire." Harold F. See, The Separation of Powers and the Public Policy Role of the State Court in a Routine Case, 8 Tex. Rev. L. & Pol. 345, 352 (2004). The dazzling evening dress of policy innovation rightly belongs in the legislative, not the judicial, closet.

E. Misconstruing precedent to serve policy-making goals.

A further rationale of the Bayliss Court for requiring a noncustodial parent to provide postminority educational support was that the State was a necessary party to every divorce proceeding and thus could independently assert its own interests in custody and support decisions.

> "While the rights of the parties to the divorce action must be fully respected, the public occupies

> the position of a third party in a divorce action; and the court is bound to act for the public. Flowers v. Flowers, 334 So. 2d 856 (Ala. 1976); Hartigan v. Hartigan, 272 Ala. 67, 128 So. 2d 725 (1961); Ex parte Weissinger, 247 Ala. 113, 22 So. 2d 510 (1945)."

550 So. 2d at 994 (emphasis added). Building on this premise, the Court argued that parents have an obligation to educate their children for the benefit of the State. "'"It is a duty which the parent not only owes to his child, but to the state as well, since the stability of our government must depend upon a well-equipped, a well-trained, and well-educated citizenship."'" Id. (quoting Ogle v. Ogle, 275 Ala. 483, 487, 156 So. 2d 345, 349 (1963), quoting in turn Pass v. Pass, 238 Miss. 449, 458, 118 So. 2d 769, 773 (1960)).

The cases cited for the proposition that noncustodial parents have a legal obligation to make educational support payments "for the stability of our government" are inapposite. Flowers v. Flowers, 334 So. 2d 856 (Ala. 1976), indeed noted that in a divorce action "the court is bound to act for the public which is, in effect, a third party," 334 So. 2d at 858, and cited Hartigan v. Hartigan, 272 Ala. 67, 128 So. 2d 725 (1961), as its source. Hartigan similarly stated: "[S]uits [for divorce] are of a tripartite character, wherein the

public occupies in effect the position of a third party, and the court is bound to act for the public ...." 272 Ala. at 71, 128 So. 2d at 728. Hartigan in turn relied on Ex parte Weissinger, 247 Ala. 113, 22 So. 2d 510 (1945), which repeats the same statement about the public being a third party to a divorce action. 247 Ala. at 119, 22 So. 2d at 515 (quoting Spafford v. Spafford, 199 Ala. 300, 308, 74 So. 354, 358 (1917)). None of these cases, however, identifies the nature of the public's interest.

Weissinger further quoted from Spafford "'that in cases of this character questions of mere legal niceties in regard to pleading should not interfere with the meritorious consideration of the cause,'" 247 Ala. at 119, 22 So. 2d at 515, thus indicating that the referenced public interest may not be the furthering of "the stability of our government," but instead a concern that the formalities of civil procedure not impede a just outcome of the proceeding. Spafford in turn cited two cases for the proposition that the public is a third party to a divorce proceeding. In Wilkinson v. Wilkinson, 133 Ala. 381, 383, 32 So. 124, 124 (1902), the Court stated that the trier of fact may ex mero motu "direct an inquiry to

ascertain the fact of the existence of a defense." Thus, like in Spafford, the interest of the public in the matter is to ascertain the truth, even if the parties' presentation of the facts is inadequate. In Wilkinson, the court on its own motion ordered a deposition of the wife. Again, "the stability of our government" does not seem to be the public interest at stake.

In Powell v. Powell, 80 Ala. 595, 1 So. 549 (1887), also cited in Spafford, we finally arrive at the source of the public-interest rule and its underlying rationale. The Powell Court quoted from a family-law treatise the familiar statement that we have now traced back through 100 years of caselaw: "'A divorce suit, while on its face a mere controversy between private parties of record, is, as truly viewed, a triangular proceeding, sui generis, wherein the public or government occupies in effect the position of a third party.'" 80 Ala. at 598, 1 So. at 550 (quoting 2 Joel Prentiss Bishop, Marriage and Divorce (1852)). After quoting Bishop, the Court quotes Ribet v. Ribet, 39 Ala. 348, 349 (1867), for the following statement: "'The court is bound to act for the public in such cases, and so has the right to hear proofs not strictly within the allegations of the bill and answer.'" 80 Ala. at 598, 1

So. at 550. Thus, as in Spafford, the Powell Court tied the public interest in a divorce case to the procedural discretion of the trial judge independently to develop the evidence. Such a rationale is a far cry from the stability-of-our-government logic of the Bayliss Court.

These 19th-century courts, reflective of the Christian culture that originally animated our institutions, placed these procedural considerations in the larger context of protecting the sanctity of the institution of marriage.

> "The institution of marriage, established by divine, and perpetuated and guarded by human, authority, constitutes the foundation of organized society, protects private and public morality and virtue, and moulds the character of the citizens of the commonwealth. While an agreement to marry is regarded generally as a civil contract, by its consummation contractual relations of a special kind are formed, and the status of the parties, and their duties to each other and to the public, are ascertained and fixed. Extraordinary and exclusive personal relations are created, to continue so long as both parties may live; and public interests are involved in the strict and complete observance of the marital vows and covenants. The marriage relation can not be rescinded or annulled by the mere volition of the contracting parties. Its preservation is deemed so essential to the public weal that it can not be dissolved except by the sovereign power, or by a court of competent jurisdiction for causes prescribed by law, on sufficient allegations and satisfactory proof.

> "The settled policy of the state, founded on these considerations, prohibits a divorce being granted by consent or collusion, or on the confessions of either or both of the parties, or for want of pleading or mispleading, or laches in making defense."

Powell v. Powell, 80 Ala. at 597, 1 So. at 550. The view of marriage as a divine institution that may not be sundered for light, transient, or insubstantial reasons required the careful scrutiny of divorce cases by a trial court, not to serve the independent interests of the State, but to preserve the stability of the institution that "constitutes the foundation of organized society."

The public interest in a divorce case was to preserve the institution of marriage by allowing its dissolution for only the weightiest reasons. Public policy in the 19th century prohibited divorce on the whim of the parties. Mutual consent was insufficient. The trial court scrutinized the evidence to ensure that the grounds alleged were genuine and not merely collusive. The courts respected marriage vows and, unless powerful reasons compelled a different result, required the parties to observe them. The Powell Court continued:

> "By the loose practice, too prevalent, and the facility with which divorces are sometimes obtained, the courts may be, in a measure, responsible for the

> extending want of a due appreciation of the sanctity of the marital relation. Whether or not defense be made, the court should feel bound by the highest considerations of duty and public policy to watch the interests of the community, otherwise undefended and unprotected. The appearance or indication of consent, express or implied, or of collusion, should stimulate the vigilance of the court, and a closer scrutiny of the evidence."

80 Ala. at 598, 1 So. at 550.

In Ribet v. Ribet, the Court further expounded on the community's interest in preserving the marriage covenant.

> "No one deserves to succeed in a suit to dissolve the bonds of marriage, that foundation upon which the whole framework of civilized society may be said to rest, who does not come into court without great blame; and it is the right and the duty of the court to be governed by the facts of the case going to establish its true character, no matter how they may be elicited. Bishop[12] says: 'A maxim in these suits, therefore, is, that a cause is never concluded as against the judge; and the court may, and, to satisfy its conscience, sometimes does, of its own motion go into inquiry of matters not involved in the pleadings.'"

39 Ala. at 349-50. Responding to its high calling to defend marriage, the Court in Ribet refused a divorce to a husband and wife who were mutually guilty of violating their vows. "If both are guilty of such want of fidelity to their matrimonial vows, whether in one way or another, as goes to show that

[12]Bishop on Marriage and Divorce § 314.

neither is strictly an 'aggrieved' party, the court will not disturb the binding force of that great bond of society, the marriage contract." 39 Ala. at 350.

The preceding case history of the origins of the legal principle of a public interest in divorce proceedings shows that the statist concept attached to this hallowed history by the Bayliss Court misrepresented these precedents. The public interest in a divorce proceeding is not to further the interests of the State per se, as Bayliss claimed, but rather to safeguard the institution of marriage by ensuring that the parties fulfill their vows. Ribet and Powell do not stand for the proposition that the State as a third party has a right to compel parents to educate their children to serve the State, but rather that the government has an obligation to defend the "sanctity of the marital relation" from "loose practice" and easy divorce. The role of the court in acting for the public as a third party in a divorce action is to act independently of the parties, their pleadings, and evidence and to develop the case as needed to protect the institution of marriage -- not to impose statist imperatives of higher education unrelated to preservation of the marital bond on families

already reeling from divorce. By wrongly summoning an inapplicable principle of family law, the Bayliss Court distorted this Court's precedents in service of its unwarranted excursion into legislative policy-making.

II. The Fundamental Rights of Parents

By mistakenly interpreting this Court's precedents to convert a principle intended to protect the sanctity of marriage into an instrument to serve State power, the Bayliss Court also failed to observe the God-ordained jurisdictional boundaries between the State and the family recognized in our law. See, e.g., Powell, 80 Ala. at 597, 1 So. at 550 (stating that marriage was established by divine authority). The health of civil society depends on an appropriate respect for those institutions that mediate between the individual and the State and provide the relational richness that gives life substance. Chief among these are the church and the family. Each has its own government and sphere of authority. See Ex parte G.C., 924 So. 2d 651, 674-77 (Ala. 2005) (Parker, J., dissenting). Compare Yates v. El Bethel Primitive Baptist Church, 847 So. 2d 331, 347-70 (2002) (Moore, C.J., dissenting) (examining respective jurisdictions of the church and the State).

Under Bayliss, the trial court, in deciding whether to order payment for postminority college expenses, assesses "the child's commitment to, and aptitude for, the requested education" and may also consider "the child's relationship with his parents and responsiveness to parental advice and guidance." 550 So. 2d at 987. These matters, which fall within the sphere of family government, are not suitable for judicial determination, despite the Bayliss Court's ascription to trial courts of "the wisdom of Solomon in these domestic matters." Id. at 995.

> "The State, by and through its elected judges, should not be the director of education for children. ... [T]he State is then put in the position of determining which child is entitled to receive support and which child is not. This, in essence, breaches a wall of separation between the State and the family that should be, and has been, ardently guarded throughout history."

Ex parte Tabor, 840 So. 2d at 126 (Moore, C.J., concurring in part and dissenting in part).

The Bayliss Court entered into a realm of internal family decision-making that has constitutionally been recognized as insulated from State intrusion. "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to

recognize and prepare him for additional obligations." Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925). See also Parham v. J.R., 442 U.S. 584, 603 (1979) ("Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state."); Quilloin v. Walcott, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."); Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977) (noting that "the Constitution protects the sanctity of the family"); Wisconsin v. Yoder, 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."); Ginsberg v. New York, 390 U.S. 629, 639 (1968) ("[C]onstitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our

society."); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."); and Meyer v. Nebraska, 262 U.S. 390, 401 (1923) (recognizing "the power of parents to control the education of their own").

"This Court has also recognized the fundamental nature of parental rights." Ex parte E.R.G., 73 So. 3d 634, 643 (Ala. 2011). See also Ex parte G.C., 924 So. 2d at 661 (Stuart, J., concurring specially) ("Children are a gift from God. ... Parents have God-given rights concerning their children, which are and should be protected by state government." (footnote omitted)); K.W. v. J.G., 856 So. 2d 859, 874 (Ala. Civ. App. 2003) ("The right to parent one's child is a fundamental right ...."). The Bayliss Court did not once refer to this line of precedent concerning "the private realm of family life which the state cannot enter." Prince, 312 U.S. at 166.

Although parents who resort to the divorce courts voluntarily surrender a portion of their decision-making autonomy, that curtailment should be no greater than necessary

to resolve the dispute at issue. Courts should be wary of further disturbing the residual affection and mutual sense of responsibility between parents that may yet survive the stress of divorce. Thus, arbitrarily intruding the State into parental decision-making, even after divorce, is unwarranted and is inconsistent with the recognition that "it is a natural parent, not the state, who has a fundamental right to the care, custody, and control of a child." Meadows v. Meadows, 3 So. 3d 221, 235 (Ala. Civ. App. 2008) (Moore, J., concurring in the result).

The Bayliss Court, intent on creating an entitlement to the payment of college expenses for adult children of divorced parents, did not pause to consider the weighty precedents that limit the power of government to supersede parental authority. "The metes and bounds that separate each branch of government is of great importance, but that barrier that separates government from family is of even greater importance and must be maintained if our rights are to remain secure." Ex parte Tabor, 840 So. 2d at 126-27 (Moore, C.J., concurring in part and dissenting in part).

III. Conclusion

The assumption of legislative power by the Bayliss Court, coupled with its overreaching intrusion into the realm of parental decision-making, raises constitutional questions that underscore and complement this Court's decision to overrule Bayliss and to reverse the decision of the Court of Civil Appeals.

STUART, Justice (concurring specially).

I concur in the main opinion, and I write specially to further state my reasons for concurring to overrule Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989). I disagreed with this Court's holding in Ex parte Bayliss when it was decided in 1989, while I was serving as a trial court judge. However, cognizant of my role at that time, I recognized Ex parte Bayliss as the law and followed it when called upon to do so. See Hardin v. Metlife Auto & Home Ins. Co., 982 So. 2d 522, 527 (Ala. Civ. App. 2007) ("This court and the trial court are bound by the precedent established by our supreme court."). Subsequently, I became a Justice on the Supreme Court, and I continued to apply Ex parte Bayliss based on the principle of stare decisis. See, e.g., Ex parte Tabor, 840 So. 2d 115 (Ala. 2002). See also Moore v. Prudential Residential Servs. Ltd. P'ship, 849 So. 2d 914, 926 (Ala. 2002) ("Stare decisis commands, at a minimum, a degree of respect from this Court that makes it disinclined to overrule controlling precedent when it is not invited to do so."). However, the petitioner in the instant case has specifically asked us to overrule Ex parte Bayliss, and, accordingly, I believe this is the proper

occasion to do so. See Jackson v. City of Florence, 294 Ala. 592, 598, 320 So. 2d 68, 73 (1975) ("As strongly as we believe in the stability of the law, we also recognize that there is merit, if not honor, in admitting prior mistakes and correcting them.").

Bolin, J., concurs.

BOLIN, Justice (concurring specially).

I concur with Justice Stuart's special writing, both as to my identical initial reaction to this Court's decision in Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989), described therein when Bayliss was released, as well as this being the time to "admit[] prior mistakes and correct[] them." Jackson v. City of Florence, 294 Ala. 592, 598, 320 So. 2d 68, 73 (1975).

MURDOCK, Justice (dissenting).

I find Justice Shaw's well written dissent highly instructive, and I agree with many aspects of it, both Parts I and II. I am more inclined, however, than is he to consider the term "children of the marriage" to be ambiguous and to use much of the authority and reasoning he employs in the service of construing that language.

That said, in the calculus I would employ, it would not be necessary to decide if those principles and authorities from Justice Shaw's writing, alone, are enough to justify the interpretation of § 30-3-1, Ala. Code 1975, to which both of us would adhere. At worst, the question is a close one, and, in the end, the acquiescence doctrine ought be the deciding factor. My employment of the acquiescence doctrine would not be the employment of an "unconstitutional" means of modifying the statute in the years since Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989), was decided -- as the doctrine is cast, and then rejected, in Part V of the main opinion -- but as a tool to take measure of the Bayliss holding regarding the legislative intent in enacting the statute. As Justice Shaw notes, in the intervening almost quarter century since Bayliss

was decided, "'[t]he Alabama legislature has not seen fit to replace or clarify that statute despite the thousands of child support cases decided each year in this state.'" ___ So. 3d at ___ n.17 (quoting 1 Judith S. Crittenden & Charles P. Kindregan, Jr., Alabama Family Law § 24:3 (2008)).[13] The main opinion, however, rejects the applicability of the acquiescence doctrine in this case.

Although the doctrine of legislative acquiescence is not always the most compelling of statutory-construction tenets available to us in a given case, we invariably have recognized this fact and have been cautious in applying that doctrine, rarely if ever turning to it as a primary tool and, instead, almost always using it as a tool of last resort. In this role, it has on occasion been a valuable tool. Recasting it in the light in which it is cast by the main opinion is, in my

[13]Bayliss confronted and overcame the stare decisis effect of those pre-Bayliss decisions stating the general rule that the duty of support was applicable to only minor children. In almost every one of the 24 years since that time, there probably have been hundreds of decisions applying the specific holding of Bayliss in this regard. In addition to an unknowable number of trial court decisions that undoubtedly now total in the thousands, the cases decided since Bayliss include dozens of decisions by this Court and hundreds of decisions decided by the Court of Civil Appeal applying or reiterating the holding in Bayliss.

opinion, at odds with an established use of this doctrine in our jurisprudence as a tool to measure the accuracy of some prior decision regarding legislative intent and will have unknowable consequences in future cases.

As significant as I believe are our decisions today regarding the Bayliss doctrine and the acquiescence doctrine, there are other aspects and/or consequences of today's decision that I find problematic, some on an even more fundamental level than the foregoing. These other aspects and consequences of today's decision include the following:

(1) Ex parte Brewington, 445 So. 2d 294 (Ala. 1983), is a case that for 30 years has stood for the proposition that a court may require divorcing parents to continue to provide support for a disabled child of their marriage, even after the child has reached the age of majority. Both Brewington and this case turn on the meaning of the same phrase -- "children of the marriage" -- in the same statute -- § 30-3-1. Consistent with the concerns expressed by Justice Shaw, I see no principled way of defining that phrase differently in cases involving postminority educational support and cases involving

disabled children. See ___ So. 3d at ___ n.21 and accompanying text (Shaw, J., dissenting).

(2) The main opinion states that "[t]he 'plain and ordinary meaning' of statutory language may often be found in a dictionary." ___ So. 3d at ___ (emphasis added). I certainly agree with this statement. Similarly, I agree with the suggestion that a dictionary definition can be used "to shed light on the meaning" of a term used in a statute. Id. (citing Smith v. Smith, 433 Mich. 606, 612, 447 N.W.2d 715, 716 (1989)). I see no need, however, to embrace the seemingly absolute statement quoted by the main opinion from one treatise, i.e., that "'[w]hen the legislature has chosen not to define a word, the "plain and ordinary meaning" can be ascertained from a dictionary.'" ___ So. 3d at ___ (quoting 3A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction § 69:9 (7th ed. 2007)).

(3) The main opinion states that, "[a]s further confirmation that the phrase 'children of the marriage' refers to minors, we may look to the definition of 'child' under the common law as applied in divorce proceedings." ___ So. 3d at ___. Again, I agree with the stated principle of statutory

construction (although of course not with the ultimate conclusion drawn from it). Again, however, the main opinion appears to go further. It appears to suggest a more unequivocal rule of primacy in statutory construction that looks to the common-law meanings of words. It cites with approval the following statement from Standard Oil Co. v. City of Birmingham, 202 Ala. 97, 98, 79 So. 489, 490 (1918): "[C]ommon-law words [are to be construed] according to their common-law meaning." Among other things, the main opinion also quotes with approval the following principle: "'[W]ords undefined in a statute are to be interpreted and applied according to their common-law meanings.'" ___ So. 3d at ___ (quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 320 (2012) (emphasis added)).[14]

I do not know exactly what the term "common-law words" means; however, respectfully, I cannot reconcile the foregoing and similar statements with the fact that in the almost 240-year history of this country, and the almost 200-year history of this State, many words that have come to be used from time

[14]See also ___ So. 3d at ___, citing Arnold v. State, 353 So. 2d 524, 526 (Ala. 1977), for the proposition that "statutes are presumed not to alter the common law in any way not expressly declared."

to time by our Congress and by our legislature have taken on some different meaning than the meaning they held in the common law. Moreover, I am concerned that the main opinion's emphasis on resort to the common-law meaning of terms is in conflict with, and essentially "overwrites," the myriad of tenets of statutory construction that have come to be employed by this Court (not unlike every other court in this nation). Resort to the common law has sometimes been helpful, especially when other more commonly employed tenets of statutory construction fail to offer a ready or persuasive answer, but it has never in my understanding been the first or exclusive rule of statutory construction.[15] I do not think the emphasis upon it stated in the main opinion is well considered

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[15]Section 1-3-1, Ala. Code 1975, is not at odds with our use of the plain-meaning doctrine (employed in light of contemporary word usage) and so many other longstanding and well established rules of construction other than resort to the English common law:

> "The common law of England, so far as it is not inconsistent with the Constitution, laws and institutions of this state, shall, together with such institutions and laws, be the rule of decisions, and shall continue in force, except as from time to time it may be altered or repealed by the Legislature."

or advised; I do think it could have fundamental ramifications for the construction of statutes in the future.

(4) The penultimate paragraph in Part V of the main opinion ends with this statement: "The mere passage of time, therefore, has not diminished the power of this Court to reconsider Bayliss." ___ So. 3d at ___. I agree with this statement, and nothing said above regarding the value of retaining the acquiescence doctrine as a tool to be used on rare occasions when it is appropriate to do so should be understood as saying otherwise.

I do, however, have a grave concern over the discussion beginning with the second paragraph of Part V (and parts of Part III) that precedes this statement and that indicates that adherence to the interpretation of § 30-3-1 in Bayliss would require acceptance of changes or additions made to the statute by the judicial branch in a manner that violates the separation-of-powers provisions of the Alabama Constitution that are cited in Part V. ___ So. 3d at ___.

Whether one considers Bayliss to have been rightly decided or wrongly decided, it was an examination of the meaning of statutory language and an exercise of the judicial

function. From this case forward, I fear any decision by a court interpreting an enactment of our legislature that is overruled years later by a subsequent court will now be vulnerable to criticism as a decision by which the original court violated the separation-of-powers doctrine embodied in the Alabama Constitution. Moreover, because a violation of the separation-of-powers doctrine implicates the subject-matter jurisdiction of our courts, that which heretofore has been considered mere judicial error, to be corrected by some subsequent overruling, now is susceptible not only to being viewed as a constitutional violation, but also to being reviewed as part of a void judgment. My concerns therefore extend to the impact of today's decision on the principle of finality of judgments.

SHAW, Justice (dissenting).

The issue in this case is whether Ala. Code 1975, § 30-3-1, properly provides the trial court with the power to order the parties to a divorce to pay the college expenses of the children of their marriage, even if those children are no longer minors. I believe that the language of § 30-3-1 provides the trial court with such power; therefore, I respectfully dissent.

The petitioner, Carolyn Sue Christopher ("the mother"), and Charles Phillip Christopher ("the father") were divorced in 2010. The father subsequently requested the trial court to order the mother to pay a portion of the college expenses of their child, C.C., who was reaching the age of 19 and enrolling in college.[16] The trial court ordered the mother to pay a portion of the expenses; on certiorari review, this Court addresses whether § 30-3-1 gives the trial court the power to do so.

I.

[16]The undisputed testimony at trial indicated that the mother and father had planned to pay for their children's college educations, had set up special savings accounts to do so, and had actually paid one older child's college expenses.

In determining the meaning of legislation, our inquiry first begins with its language, and, if the meaning of the language is plain, our analysis ends there. Ex parte McCormick, 932 So. 2d 124, 132 (Ala. 2005). "[W]e must look first to the plain meaning of the words the legislature used." DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 277 (Ala. 1998). This Court in DeKalb County LP Gas explained:

> "In determining the meaning of a statute, this Court looks to the plain meaning of the words as written by the legislature. As we have said:
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> > "'"Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."'"

729 So. 2d at 275-76 (quoting Blue Cross & Blue Shield v. Nielsen, 714 So. 2d 293, 296 (Ala. 1998), additional citations omitted). See also Ex parte Ankrom, [Ms. 1110176, January 11, 2013] ___ So. 3d ___, ___ (Ala. 2013) (applying the plain-meaning rule discussed in DeKalb County LP Gas to define the

phrase "a child" found in Ala. Code 1975, § 26-15-3.2).

Section § 30-3-1 states, in pertinent part: "Upon granting a divorce, the court may give the custody and education of the children of the marriage to either father or mother, as may seem right and proper ...." It is undisputed that this Code section allows courts to order custody and payment for the education and support of the children of divorcing parents;[17] the issue here, however, is whether such payment can be required when the "children of the marriage" are not minors.

The operable portion of the Code section, I believe, is the phrase "the children of the marriage." It does not refer to the custody or education of "a child" or of "minor

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[17] "In Alabama, a single (general and vague) statute[, § 30-3-1,] has been relied upon to empower the courts to award child support and custody while a divorce action is pending, upon a judgment of divorce, after a divorce, and to modify prior custody and child support awards. The Alabama Legislature has not seen fit to replace or clarify that statute despite the thousands of child support cases decided each year in this state."

1 Judith S. Crittenden & Charles P. Kindregan, Jr., Alabama Family Law § 24:3 (2008) (footnote omitted).

children"; instead, the plain language "the children of the marriage" refers to the offspring of the divorcing parents' marriage. Both adult children of married parents and minor children of married parents are "the children of the marriage." By the ordinary and plain usage of the phrase "children of the marriage," C.C. is the mother's and the father's child and one of the "children of the marriage" even though he is not a minor. See Ex parte Brewington, 445 So. 2d 294, 296 (Ala. 1983) (noting that, although this Court had previously "held that the term 'children' as used in § 30-3-1" applied only to minor children," "[t]he statute ... does not express such a limitation").

The phrase "children of the marriage" is sufficiently clear to apply to the facts of this case. I would not isolate the word "children" from the rest of the phrase--"of the marriage"--to draw a definition of that single word, because it is the phrase as a whole that is determinative of its meaning. The main opinion turns to dictionaries that define the word "child" (outside the context of the phrase "children of the marriage") but actually does not primarily focus on the definitions of that word. Instead, it draws its holding that

the word "child" "unambiguously means a 'minor'" from the definition of "parent-child relationship" found in Black's Law Dictionary. I see no need to turn to dictionaries, however: it is natural, plain, ordinary, and common for parents to refer to their adult sons or daughters as "the children of their marriage." Even the main opinion, in its first paragraph, refers to C.C., who is an adult, as the mother's "child," and the mother also does so in her certiorari petition. Petition, at 5. But if we were to engage in an analysis of the various definitions found in dictionaries, I note that the word "child" does not exclusively refer to minors. Merriam-Webster's Collegiate Dictionary includes in the definition of "child": "a son or daughter of human parents ... [a] DESCENDANT ...." Merriam-Webster's Collegiate Dictionary 214 (11th ed. 2003) (capitalization in original).[18] Black's Law Dictionary defines "child," among other

[18]The main opinion notes that the Michigan Supreme Court, in Smith v. Smith, 433 Mich. 606, 612, 447 N.W.2d 715, 716 (1989), consulted "Webster's Ninth New Collegiate Dictionary (1985)," "to shed light on the meaning of 'child' in a child-custody statute." ___ So. 3d at ___. That dictionary defines child, among other things, as "a son or daughter of human parents ... [a] DESCENDANT," and not exclusively as a minor. Webster's Ninth New Collegiate Dictionary 233 (1985).

definitions, as "a son or daughter." Black's Law Dictionary 271 (9th ed. 2009). A previous edition of Black's defined "child" primarily as "[p]rogeny; offspring of parentage." Black's Law Dictionary 239 (6th ed. 1990). These sources may define "child" as minors but also define "child" in a way not restricted to minors. Thus, the phrase "children of the marriage" does not refer to only "[minor] children of the marriage." Here, the main opinion's approach rewrites the Code section by inserting the word "minor" before the word "children" to alter the meaning of the entire phrase, despite quoting language stating that this Court may not "'"insert in a statute that which has been omitted."'" ___ So. 3d at ___ (quoting Pace v. Armstrong World Indus., Inc., 578 So. 2d 281, 284 (Ala. 1991), quoting in turn 73 Am. Jur. 2d Statutes § 203 (1974)). Using a dictionary, it would be just as appropriate to also insert "adult or minor"; I would insert nothing, as "children of the marriage" can refer to both adult and minor children of the marriage.[19]

[19]It is not absurd that the legislature would provide the power to place the custody of, or to order the payment of support for, some adult children of divorcing parties, such as disabled children. See Brewington. Nor is it objectively absurd for the legislature to provide that a trial court may

There is also no restriction on what type of "education" is contemplated by the Code section, whether it be primary or higher education, either of which may be applicable to both adult or minor "children of the marriage." Because § 30-3-1 refers to the unspecified education of offspring of the divorced couple with no limitation on age, I do not believe the trial court here acted outside its powers under that Code section in ordering the mother to pay a portion of her 19-year-old son's college tuition.[20]

It might seem odd that the legislature enacted a statute with language allowing a trial court to order divorcing spouses to pay for the educational expenses of an adult child

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order a divorcing spouse to pay the educational expenses of the divorcing parties' adult children. I express no opinion as to whether these are good policies or whether I agree with them, because "'[i]t is well established that the legislature, and not this Court, has the exclusive domain to formulate public policy in Alabama.'" Suttles v. Roy, 75 So. 3d 90, 104 (Ala. 2010) (Shaw, J., concurring specially, and quoting Boles v. Parris, 952 So. 2d 364, 367 (Ala. 2006)).

[20]Because the language of the Code section is clear, there is no need to resort to the "common law," which is superseded by § 30-3-1 or more recent Alabama caselaw, such as Brewington. See Ala. Code 1975, § 1-3-1 (providing that the common law of England, "together with" the "laws and institutions of this state," shall be "the rule of decisions," unless the common law of England is "inconsistent with the Constitution, laws and institutions of this state," or has been "altered or repealed by the Legislature").

of their marriage. Nevertheless, we must enforce the legislature's will as expressed in the plain language of the text it enacted, lest we violate the separation-of-powers doctrine:

> "It is true that when looking at a statute we might sometimes think that the ramifications of the words are inefficient or unusual. However, it is our job to say what the law is, not to say what it should be. Therefore, only if there is no rational way to interpret the words as stated will we look beyond those words to determine legislative intent. To apply a different policy would turn this Court into a legislative body, and doing that, of course, would be utterly inconsistent with the doctrine of separation of powers."

DeKalb County LP Gas, 729 So. 2d at 276.[21]

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[21]The main opinion explicitly overrules this Court's prior decision in Ex parte Bayliss, 550 So. 2d 986 (Ala. 1989), which held that the powers found in § 30-3-1 allowed the payment of educational support to "children of the marriage" who are not minors. This effectively overrules the decision in Brewington, supra, which held that § 30-3-1 allowed the trial court to order one of the divorcing parents to continue to pay support for his disabled child even after the child reached the age of majority. As noted above, Brewington held that the language of § 30-3-1 was not limited to minors. The main opinion is premised on the notion that "when a child becomes an adult" he or she is "ineligible for parental support" and that the plain meaning and "common-law" definition of the word "child" in this Code section refers only to minor children. ___ So. 3d at ___. The main opinion attempts to avoid its impact on the holding in Brewington, noting that it is "not before us"; nevertheless, the inconsistency of that decision with the holding of the main opinion is clear.

II.

Because I believe that the language of § 30-3-1 provides the trial court with the power to order postminority educational support, I must address the remaining issue raised by the mother, specifically whether the Court of Civil Appeals' decision conflicts with Ex parte E.R.G., 73 So. 3d 634, 643 (Ala. 2011), in which this Court, according to the mother, "recognized the fundamental right of fit parents to control and direct the upbringing of their children." Petition, at 5. The mother further argued that "she ha[d] a fundamental right to direct the education of her child." Id. (emphasis added.)

I believe that the Court of Civil Appeals thoroughly addressed that argument in its opinion. See Part II of Christopher v. Christopher, [Ms. 2111039, December 21, 2012] ___ So. 3d ___, ___ (Ala. Civ. App. 2012). Although the Supreme Court precedent cited by the mother in her brief on appeal speaks to the constitutional protections regarding a parent's fundamental right to direct the education of minor children, C.C. is not a minor. Further, this case does not involve a decision of a family or of parents in directing the

education of their child; instead, it involves a dispute between the parents as to how to pay for the education the parties apparently had already agreed would occur: the evidence at trial indicated that "both parents anticipated and agreed, while they were married, that their children would attend college." Christopher, ___ So. 3d at ___ n.1. The record indicates that, at trial, the nature of their dispute did not concern whether C.C. should attend college, but how his college-education expenses should be paid. As the Court of Civils Appeals noted:

> "[W]hen divorced parents with equal fundamental parental rights become embroiled in a dispute as to the funding for that education, a court may resolve that issue without implicating the Fourteenth Amendment substantive due-process rights of either parent. If not, one parent could successfully override the fundamental rights of the other parent."

Id. at ___ (footnote and emphasis omitted).

I have, in the past, expressed concern regarding the advisability of the government "operating in areas traditionally reserved to families or individuals." Perdue v. Green, [Ms. 1101337, April 19, 2013] ___ So. 3d ___, ___ (Ala. 2013) (Shaw, J., concurring specially). But the issue here is not whether I agree with the law: "The judicial branch of

state government does not have the authority to reject an act that is the duly enacted, constitutional exercise of the legislature's inherent power." Id. I see no argument before us indicating that § 30-3-1 is unconstitutional as applied in this case. Of course, in some other context not found here, it is possible for a court to apply § 30-3-1 erroneously or in a manner that is absurd or that might violate fundamental rights (all of which are subject to a reversal by an appellate court). Such abstract questions are not before us:

> "Some of the arguments made ... are premised on hypothetical situations, different from the facts before us, in which the Code section might be either unconstitutional as applied or seemingly unwise in its application. It goes without saying that we cannot strike down the application of the Code section ... merely because the Code section might be unconstitutionally applied in some other context."

Ex parte Ankrom, ___ So. 3d at ___ (Shaw, J., concurring in part and concurring in the result). Because the trial court's actions were in accord with § 30-3-1, I respectfully dissent from reversing the judgment of the Court of Civil Appeals.