



AlaFile E-Notice

01-CV-2026-904054.00

To: KENNETH MARK PARNELL
parnell@ptlawllc.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

TERRI MICHAL V. THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF BIRMIN
01-CV-2026-904054.00

The following complaint was FILED on 9/10/2026 2:42:57 PM

Notice Date: 9/10/2026 2:42:57 PM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
716 RICHARD ARRINGTON, JR BLVD
BIRMINGHAM, AL, 35203

205-325-5355
jackie.smith@alacourt.gov



ELECTRONICALLY FILED

9/10/2026 2:42 PM

01-CV-2026-904054.00

CIRCUIT COURT OF

JEFFERSON COUNTY, ALABAMA

JACQUELINE ANDERSON SMITH, CLERK

Case:

01

Date of Filing:

09/10/2026

Judge Code:

State of Alabama Unified Judicial System Form ARCiv-93 Rev. 9/25	COVER SHEET CIRCUIT COURT - CIVIL CASE (Not For Domestic Relations Cases)	Case: 01 Date of Filing: 09/10/2026 Judge Code:
GENERAL INFORMATION		
IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA TERRI MICHAL v. THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF BIRMINGHAM C/O CITY CLERK E		
First Plaintiff: ☐ Business ☒ Individual First Defendant: ☐ Business ☐ Individual ☐ Government ☐ Other ☒ Government ☐ Other		
NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:		
TORTS: PERSONAL INJURY ☐ WDEA - Wrongful Death ☐ TONG - Negligence: General ☐ TOMV - Negligence: Motor Vehicle ☐ TOWA - Wantonness ☐ TOPL - Product Liability/AEMLD ☐ TOMM - Malpractice-Medical ☐ TOLM - Malpractice-Legal ☐ TOOM - Malpractice-Other ☐ TBFM - Fraud/Bad Faith/Misrepresentation ☐ TOXX - Other: _____ TORTS: PERSONAL INJURY ☐ TOPE - Personal Property ☐ TORE - Real Property OTHER CIVIL FILINGS ☐ ABAN - Abandoned Automobile ☐ ACCT - Account & Nonmortgage ☐ APAA - Administrative Agency Appeal ☐ ADPA - Administrative Procedure Act ☐ ANPS - Adults in Need of Protective Service	OTHER CIVIL FILINGS (cont'd) ☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve ☐ CVRT - Civil Rights ☐ COND - Condemnation/Eminent Domain/Right-of-Way ☐ CTMP - Contempt of Court ☐ CONT - Contract/Ejectment/Writ of Seizure ☐ TOCN - Conversion ☐ EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division ☐ CVUD - Eviction Appeal/Unlawful Detainer ☐ FORJ - Foreign Judgment ☐ FORF - Fruits of Crime Forfeiture ☐ MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition ☐ PFAB - Protection From Abuse ☐ EPFA - Elder Protection From Abuse ☐ QTLB - Quiet Title Land Bank ☐ FELA - Railroad/Seaman (FELA) ☐ RPRO - Real Property ☐ WTEG - Will/Trust/Estate/Guardianship/Conservatorship ☐ COMP - Workers' Compensation ☒ CVXX - Miscellaneous Circuit Civil Case	
ORIGIN: F ☒ INITIAL FILING P ☐ APPEAL FROM PROBATE COURT A ☐ APPEAL FROM DISTRICT COURT O ☐ OTHER		
HAS JURY TRIAL BEEN DEMANDED? ☐ YES ☒ NO Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)		
RELIEF REQUESTED: ☐ MONETARY AWARD REQUESTED ☒ NO MONETARY AWARD REQUESTED		
ATTORNEY CODE: PAR039 9/10/2026 2:42:56 PM /s/ KENNETH MARK PARNEILL Date Signature of Attorney/Party filing this form		
MEDIATION REQUESTED: ☐ YES ☒ NO ☐ UNDECIDED		
Election to Proceed under the Alabama Rules for Expedited Civil Actions: ☐ YES ☐ NO		

BIRMINGHAM DIVISION

)
)
)
) **CIVIL ACTION**
) **NO.** _____
)
)
)
)
)
)
)
)
)
)

1

estimated **\$3.234 billion** in public tax revenue over the next thirty years to a foreign-controlled artificial-intelligence data center developer.

2. The public did not learn of that vote for four weeks. It did not learn of it from a posted notice, an agenda, a set of minutes, a published resolution, or any other act of the Board. It learned of it on June 26, 2026, when a news organization published a story sourced to an anonymous tipster.

3. The instrument by which this occurred, is a Resolution of The Industrial Development Board of the City of Birmingham dated May 29, 2026 (the "Resolution"). It is three pages long. It recites that the Board "has found the information contained in the Qualifying Companies' applications to be sufficient to permit the Board to make a reasonable cost/benefit analysis." It does not disclose that analysis. It grants abatements "to fullest extent permitted by the Act" and declares that the abatements "include all abatements authorized by Section 40-9B-4 of the Act for data processing centers, and this resolution shall be construed accordingly." It then hands the Chairman of the Board sole authority to settle the terms of the binding abatement agreement "in such form the Chairman shall deem appropriate" and to take any action he deems necessary "in his sole discretion." No director other than the Chairman is named anywhere in it. It is signed by a single person, "Tatianna Turrentine-Long, Secretary", who is not a director of the Board, is not a public official, is not an employee of the Board or of the City of Birmingham, and is an employee of the Birmingham Business Alliance, the private membership corporation in whose downtown offices this public body meets and whose business is recruiting to Birmingham the very enterprises that come before this Board seeking abatements.

4. This action does not ask the Court to second-guess whether an artificial-intelligence data center is good for Birmingham. That is a policy question, and it belongs to the officials the Legislature entrusted with it. This action asks something narrower and more fundamental, whether those officials actually made the decision the Legislature entrusted to them, in the manner the Legislature required, within the powers the Legislature gave them, and in the open.

5. On the face of the Board's own documents, they did not. Plaintiff seeks a judgment declaring the Resolution and the abatement agreement executed under it void and of no effect, and enjoining their further implementation.

PARTIES

6. Plaintiff Terri Michal is over the age of nineteen years and is a citizen and resident of the City of Birmingham, Jefferson County, Alabama. She is a taxpayer of the City of Birmingham, of Jefferson County, and of the State of Alabama, and she pays *ad valorem*, sales, and use taxes that are levied by, or for the benefit of, each of those taxing jurisdictions. She has for months been among the most persistent members of the public seeking to participate in the City of Birmingham's public proceedings concerning data center development in Birmingham's Oxmoor Valley, including the public hearing on the City's data center ordinance in May 2026.

7. Defendant The Industrial Development Board of the City of Birmingham (the "Board" or the "IDB") is a public corporation organized under Ala. Code §§ 11-54-80 through 11-54-101 (the "Cater Act"). Its Certificate of Incorporation was approved by resolution of the governing body of the City of Birmingham on April 14, 1964, was executed by its incorporators on April 16, 1964, and was approved and ordered recorded by the Judge of Probate of Jefferson County on April 16, 1964. Paragraph (d) of that Certificate provides: "The location of the principal office of the corporation shall be in the City Hall in the City of Birmingham, in the State of Alabama, and the post office address of the corporation shall be Birmingham, Alabama." Paragraph (f) provides: "The number of directors of the corporation shall be seven." Upon the filing and approval of that Certificate the incorporators "constitute[d] a public corporation." Ala. Code § 11-54-84 (1975). The Board is a "governmental body" within the meaning of Ala. Code § 36-25A-2(4) (1975).

8. Defendant David A. Perry is, on information and belief and according to the Board's own published statements, a director of the Board, and he is and was at all material times the Chairman of the Board. He is named in his official capacity as Chairman only. He is named because Section 4 of the Resolution purports to authorize the Chairman alone to enter into and deliver the abatement agreement "in such form the Chairman shall deem appropriate"; because Section 5 of the Resolution purports to authorize the Chairman alone to take any and all actions necessary or, "in his sole discretion," appropriate to accomplish the purpose of the Resolution; because, on information and belief, he exercised that purported authority; because the declaratory and injunctive relief Plaintiff seeks would govern his conduct in that capacity; and because Ala.

Code § 6-6-227 (1975) requires that "all persons shall be made parties who have or claim any interest which would be affected by the declaration."

9. Defendant Nebius Inc. is a corporation organized under the laws of a state other than Alabama and a subsidiary of Nebius Group N.V., a public company organized under the laws of the Netherlands and listed on the Nasdaq Stock Market under the symbol NBIS. Nebius Inc. is one of the two purported "Qualifying Companies" identified in the Resolution and is a direct beneficiary of the abatements granted by it.

10. Defendant Alabama ADC Holdings, LLC is, on information and belief, a limited liability company organized under the laws of a state other than Alabama and a wholly owned subsidiary of Nebius Inc. It is the second purported "Qualifying Company" identified in the Resolution, is a direct beneficiary of the abatements granted by it, and is the record purchaser of the project site, having acquired approximately 79.33 acres at 201, 250, and 260 Milan Parkway and 2500 Venice Road on or about September 30, 2025.

11. Nebius Inc. and Alabama ADC Holdings, LLC (together, the "Company Defendants") are named as necessary parties under Rule 19, Ala. R. Civ. P., and under Ala. Code § 6-6-227 (1975), which provides that in a declaratory judgment proceeding "all persons shall be made parties who have or claim any interest which would be affected by the declaration." No declaration respecting the validity of the Resolution or the abatement agreement can be made without them.

12. Fictitious Defendants A, B, and C are, respectively: (A) that person or entity, whose identity is presently unknown to Plaintiff, who prepared, scheduled, noticed, or posted notice of the May 29, 2026 meeting; (B) that person or entity, whose identity is presently unknown to Plaintiff, who serves as the Board's custodian of records and keeper of its minutes; and (C) any additional director of the Board in attendance at the May 29, 2026 meeting whose identity is presently unknown to Plaintiff. Their true names will be substituted by amendment when ascertained. Rule 9(h), Ala. R. Civ. P.

JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction under Ala. Code § 12-11-30 (1975) and under the Alabama Declaratory Judgment Act, Ala. Code §§ 6-6-220 through 6-6-232 (1975), which empowers this Court "to declare rights, status, and other legal relations whether or not further relief is or could be claimed," Ala. Code § 6-6-221 (1975), and to grant "further relief based on a declaratory judgment," Ala. Code § 6-6-229 (1975). Every count of this Complaint arises under that Act and under the common law of *ultra vires*.

14. Venue is proper in this Court under Ala. Code §§ 6-3-2 and 6-3-7 (1975). The Board is a public corporation. Its principal office of record, fixed by its Certificate of Incorporation, is "in the City Hall in the City of Birmingham," located at 710 North 20th Street, Birmingham, Jefferson County, Alabama. It does business by agent in Jefferson County and the acts complained of occurred in Jefferson County.

STANDING

15. Taxpayer standing. A taxpayer has standing in Alabama to challenge the unlawful disposition of public funds without alleging any injury particular to himself, because the taxpayer holds an equitable ownership in those funds and bears the liability to replenish the treasury when they are misapplied. The Resolution purports to relinquish, prospectively and for thirty years, approximately **\$3.234 billion** in *ad valorem*, sales, and use tax revenue otherwise payable to the State of Alabama, Jefferson County, and the City of Birmingham. Plaintiff pays taxes to each of those jurisdictions and bears the liability to replenish each of those treasuries. The revenue at issue is prospective, not historical. The overwhelming majority of it will be forgiven in tax years that have not yet begun.

16. Standing to be heard on the Board's failure to give notice. Independently of her standing as a taxpayer, Plaintiff was injured by the Board's failure to give notice of the May 29, 2026 meeting to an extent greater than the injury to the public at large, and she states specifically how:

- a. Plaintiff is not a member of the general public who learned of this project after the fact. For months before May 29, 2026, she was among a small number of Birmingham residents who appeared repeatedly at public proceedings of the City of Birmingham to be heard on data center development in Oxmoor Valley, including at the public

hearing on the City's data center ordinance in May 2026, at which she spoke on the subjects of transparency and setbacks.

- b. Plaintiff would have attended the May 29, 2026 meeting of the Board and would have sought to be heard at it had she been given the notice the law required. She was deprived of that opportunity, an opportunity she had demonstrably and repeatedly sought to exercise as to this very project, by the Board's failure to give notice.
- c. Plaintiff is a taxpayer of each of the three taxing jurisdictions whose revenue the Resolution purports to abate.

17. Justiciable controversy. An actual, present, and justiciable controversy exists between Plaintiff and Defendants concerning the validity of the Resolution and of the abatement agreement executed under it. Ala. Code § 6-6-222.

FACTUAL ALLEGATIONS

A. The Board is a public corporation whose powers are wholly statutory.

18. The Board exists only because the Legislature permitted it to exist, and it possesses only the powers the Legislature gave it. Under Ala. Code § 11-54-86, (1975) "[t]he industrial development board shall have a board of directors **in which all powers of the board shall be vested**" (emphasis added); the board "shall consist of any number of directors, not less than seven"; "[t]he directors shall serve without compensation"; "[n]o director shall be an officer or employee of the municipality"; and "[t]he directors shall be elected by the governing body of the municipality" for staggered six-year terms.

19. Under Ala. Code § 11-54-87(c) (1975), "**Any meeting held by the board of directors for any purpose whatsoever shall be open to the public.**" That command is unqualified. It contains no quorum threshold, no definitional carve-outs, and no exceptions.

20. The Board's authority to abate taxes comes not from the Cater Act but from the Tax Incentive Reform Act of 1992, Ala. Code §§ 40-9B-1 through 40-9B-13 (1975) ("TIRA"). That authority is a delegated power to relieve private parties of tax obligations that the law otherwise imposes. Under settled Alabama law, exemptions from taxation, whether statutory or constitutional, are to be strictly construed, against the exemption and in favor of the right to tax,

and no person or property is to be exempted unless the intention to exempt such person or property clearly appears in some statute or constitutional provision, and in all cases of doubt as to legislative intention, the presumption is in favor of the taxing power. One who seeks an exemption bears the burden of clearly establishing the right to it.

B. The Board has no office, no staff, and no independent institutional existence.

21. The Board's Certificate of Incorporation fixes its principal office at Birmingham City Hall. The Board does not maintain an office at City Hall. On information and belief, it does not maintain an office anywhere.

22. Instead, the Board meets at 2117 2nd Avenue North, Birmingham, Alabama. Suite 100 of that building is the headquarters of the Birmingham Business Alliance ("BBA"), a private, non-governmental membership corporation formed in 2009 by the merger of the Birmingham Regional Chamber of Commerce, the Metropolitan Development Board, and Region 2020. The BBA is the regional business-recruitment organization for a seven-county area. Its members and constituents include the very enterprises that apply to the Board for tax abatements. Defendant Perry stated publicly on July 1, 2026 that the Board meets "the first and third Tuesdays of every month at 9 a.m. at 2117 Second Avenue North."

23. On information and belief, the Board occupied space at the BBA's prior headquarters as well, and relocated with the BBA when the BBA moved to 2117 2nd Avenue North.

24. The Resolution, the operative instrument by which **\$3.234 billion** in public revenue was surrendered, is certified by, and signed by, "Tatianna Turrentine-Long, Secretary." Two separate certificates bear her signature. The Certificate of the Secretary appearing at the head of the Resolution, which recites that the Resolution was adopted "at a public meeting of the Board which was legally noticed and at which a quorum was present," and the certificate appearing at the foot of the Resolution, which recites that it was adopted "at a special meeting duly called, noticed, and held." Ms. Turrentine-Long is not a director of the Board. She is not identified as an officer, employee, or agent of the Board in any public record of the Board. The Board has never published any resolution, minute, or other record electing or appointing her to any office of the Board.

25. Ms. Turrentine-Long is an employee of the Birmingham Business Alliance. She is identified as an employee of the BBA in the BBA's own published staff directory. Her title is

Market Intelligence Manager. She works in the BBA's Business Intelligence department. She holds an electronic-mail address at the BBA's internet domain. She is identified as an employee of the BBA in the BBA's own 2024 public announcement of its award from the International Economic Development Council. She is not an employee of the Board. She is not an employee of the City of Birmingham. She is not an elected or appointed public official of any kind.

26. The Birmingham Business Alliance is a private corporation. It is not answerable to the electorate. It is not subject to the Alabama Open Meetings Act. It is not subject to the Alabama Ethics Act. Its members and constituents include the enterprises that apply to this Board for abatements, and its stated business is recruiting those enterprises to Birmingham. It is the entity that owns or occupies the premises at which this public body meets.

27. The consequence is that the only signature the public has ever seen on the instrument surrendering **\$3.234 billion** in public revenue, and the only signature by which any person has ever certified that the May 29, 2026 meeting was "legally noticed," belongs to a private employee of that private corporation, a person whom the Board does not employ, whom the Board has never by any published act elected or appointed to any office, whom the Board does not pay, and over whom the Board exercises no disclosed control. No director of the Board signed the Resolution. No director of the Board has certified that notice of the meeting was given.

28. The Board has no executive director, no administrator, and no paid staff. It has never published the identity of its records custodian. It has never published the identity of its counsel. Section 4 of the Resolution refers to "the legal counsel to the Board," but no such counsel is identified in any public record.

29. Until on or about June 30, 2026, thirty-two days after the vote at issue, and four days after the vote became publicly known, the Board had no website. On June 30, 2026 at 19:26:21 UTC, the internet domain birminghamidb.com was created through the registrar Squarespace Domains LLC. The Internet Archive holds no capture of that domain from any date before its creation.

30. The site erected at that domain is four screens long. It names the seven directors. It states that meetings are "typically" held on the first and third Tuesdays at 2117 2nd Ave N, that "[i]f there is no business to conduct in a given week, the meeting may be canceled," and that

"[i]nterested parties should check this website the afternoon before a regularly scheduled meeting to confirm that the meeting has not been canceled." It states that meeting notices are available by electronic-mail distribution list, but only to "credentialed members of a media outlet" who request to be added. It states that "[m]inutes and Agendas for prior meetings are available upon written request." It publishes no notice, no agenda, and no minutes. It publishes no mailing address, no telephone number, no officer other than the Chairman, no staff, and no counsel. It gives a single point of contact for all three purposes, meeting notices, minutes and agendas, and public comment, the address ldb@birminghamldb.com.

31. On information and belief, electronic mail sent to that address is routed to and received at an account controlled by Defendant Perry at the domain of his private business, perrycg.com. The sole published channel for a citizen to obtain notice of a meeting of this public body, to obtain its minutes, and to submit public comment is therefore the personal business electronic mail of its Chairman.

32. The Board did not meet on August 4, 2026. The Board did not meet on August 18, 2026. Both regularly scheduled meetings in the month following the filing of the first citizen suits over this project were canceled.

C. The application, the special meeting, and the eve of two effective dates.

33. On a date not disclosed in any public record, Nebius Inc. and Alabama ADC Holdings, LLC applied to the Board for abatements under TIRA.

34. On April 28, 2026, while that application was or shortly would be pending, the Mayor of Birmingham publicly stated that Nebius "hasn't asked the city for any incentives, and the city hasn't provided any."

35. HB399 was introduced in the Alabama House of Representatives on February 5, 2026. The enrolled Act certifies that the bill originated in and was passed by the House on March 10, 2026, as amended; that the Senate amended and passed it on April 9, 2026; and that the House concurred in the Senate amendment on April 9, 2026. It passed both houses without a recorded negative vote. It was approved by the Governor in April 2026 and became Act 2026-573. The title of the enrolled Act states its purpose to include "to limit the maximum exemption period for abatements available to data processing centers to 20 years beginning January 1, 2027" and "to

provide for the collection of the state noneducational ad valorem taxes and sales and use tax levied pursuant to Chapter 23 of this title on purchases of building materials, building fixtures, structural components, real property improvements, power infrastructure for transformation, distribution, or management of electricity, backup power generation systems, and battery systems made by certain large data processing centers beginning January 1, 2027." Section 3 of the Act provides: "This act shall become effective on June 1, 2026."

a. What Act 2026-573 did not change for an abatement granted in May 2026. Section

1 of the Act amended Ala. Code § 40-9B-3(a)(12)a.2.(iii) (1975) to provide a thirty-year maximum exemption period "[f]or any abatement granted until January 1, 2027," and added: "This item (iii) shall not apply to any abatement granted after January 1, 2027." The Alabama Department of Revenue publishes the same construction. Its current guidance on Chapter 9B abatements states that the thirty-year data processing center tier "[a]pplies to data centers granted an abatement before January 1, 2027," and that "Act 2026-573 makes updates to the requirements for data processing centers granted an abatement under Chapter 9B on or after January 1, 2027." Plaintiff therefore does not allege that the thirty-year term recited in the Resolution had been withdrawn by operation of Act 2026-573. Plaintiff alleges that the Board never determined that this Project qualified for it. *See* Count I, Part C.

b. What Act 2026-573 did change as of June 1, 2026. Section 2 of the Act provides in

full: "Nothing in this act amending Sections 40-9B-3, 40-9B-4, and 40-9B-4.1 Code of Alabama 1975, shall apply to any incentive that is part of a project executed before the effective date of this act or expansions of that project after the effective date of this act for a 10-year period after the effective date of this act." A project executed before June 1, 2026 is thereby exempted from every amendment the Act made, and so are expansions of that project undertaken during the ten years following June 1, 2026. A project executed on or after June 1, 2026 receives no such exemption. The Resolution recites that this Project "is projected to involve a total investment over 30 years of approximately \$35,890,000,000." The value of a

ten-year shield against amendment, to a project of that stated size and duration, is substantial.

36. Whether the transaction at issue was "executed before" June 1, 2026 within the meaning of Section 2 of Act 2026-573 is not known to Plaintiff and is knowable only to Defendants. The Board adopted the Resolution on May 29, 2026. On information and belief, the abatement agreement, the instrument Ala. Code § 40-9B-6(b) (1975) requires, and the only instrument that binds the Board and the Qualifying Companies to anything, was executed on or about June 9, 2026, eleven days after the vote and eight days after the effective date. The Board has never published that agreement and has never disclosed the date on which it was executed.

37. A second act of the Legislature took effect on the same day. Act 2025-84 added Chapter 9I to Title 40 of the Code of Alabama. Ala. Code § 40-9I-1(1975) provides that upon the granting of an abatement pursuant to Section 40-9B-4, one mill of the state's abated noneducational *ad valorem* taxes and three-quarters of one percent of the state construction related transaction taxes on private use industrial property shall be unabated, shall be collected, and shall be deposited into the Alabama Development Fund. Ala. Code § 40-9I-2 (1975) provides in full: "Nothing in this chapter shall impair, restrict, or alter any abatement agreement granted prior to June 1, 2026. The provisions of this chapter shall apply prospectively to new abatements granted on or after June 1, 2026." Every section of Chapter 9I took effect on June 1, 2026.

38. The Resolution abates "65% of all state and local Noneducational Ad Valorem Taxes" and "80% of all Construction Related Transaction Taxes." It makes no reference to Chapter 9I. It makes no provision for the unabated one mill or the unabated three-quarters of one percent that Ala. Code § 40-9I-1 (1975) requires, or for their remittance to the Alabama Development Fund.

39. The Board's regular meetings are held on the first and third Tuesdays of the month. May 29, 2026 was a Friday. It was neither the first nor the third Tuesday of May 2026. It was the last business day before both Act 2026-573 and Act 2025-84 took effect.

40. The Board called a special meeting for Friday, May 29, 2026.

41. Under Ala. Code § 36-25A-3(b) (1975), notice of such a meeting "shall be posted as soon as practicable after the meeting is called and in no event less than 24 hours before the meeting

is scheduled to begin." Under § 36-25A-3(c), "[p]osted notice pursuant to this section shall include the time, date, and place of meeting," and "[i]f a preliminary agenda is not available, the posted notice shall include a general description of the nature and purpose of the meeting."

42. Under Ala. Code § 36-25A-3(a)(3) (1975), "[a] municipal governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall, provided, however, that a corporation a majority of whose governing board is appointed or elected by a municipality and that has a principal office separate from the city hall may, in lieu of posting notice in the city hall, post notice of each meeting on a bulletin board at a place convenient to the public in the principal office of the corporation or other instrumentality".

43. The Board's principal office is not separate from City Hall. Its Certificate of Incorporation places its principal office in City Hall. The alternative posting location permitted by the proviso was therefore unavailable to the Board as a matter of law, and notice of the May 29, 2026 meeting was required to be posted on a bulletin board at a place convenient to the public in Birmingham City Hall.

44. On information and belief, no notice of the May 29, 2026 meeting was posted on any bulletin board in Birmingham City Hall.

45. On information and belief, no notice of the May 29, 2026 meeting was posted on a bulletin board at 2117 2nd Avenue North either.

46. On information and belief, no preliminary agenda for the May 29, 2026 meeting was created or posted, and no posted notice contained "a general description of the nature and purpose of the meeting" as § 36-25A-3(c) requires in that circumstance.

47. On information and belief, the Board maintains no registration list for direct notice under § 36-25A-3(a)(6), and gave no direct notice under § 36-25A-3(b) to any person.

48. The Board did not publish, and has not to this day published, any notice, agenda, minutes, resolution, or abatement agreement relating to the May 29, 2026 meeting.

D. The Resolution.

49. At the May 29, 2026 special meeting, the Board voted 6–0 to adopt the Resolution.

50. The certificate of the Secretary appearing at the head of the Resolution recites that the Board "adopted the following resolutions on the 29th day of May, 2026, at a public meeting of the Board which was legally noticed and at which a quorum was present". The certificate appearing at the foot of the Resolution recites that it "was duly adopted . . . at a special meeting duly called, noticed, and held on the 29th day of May 2026, with a quorum present". Both certificates are signed by Ms. Turrentine-Long. Neither identifies the directors present. Neither identifies the notice given, where it was posted, when it was posted, or by whom.

51. The Resolution grants two abatements:

- a. "65% of all state and local Noneducational Ad Valorem Taxes, as provided in Sections 40-9B-3(a)(15) and 40-9B-4 of the Act for a data processing center, for a maximum period of thirty years"; and
- b. "80% of all Construction Related Transaction Taxes, as provided in Sections 40-9B-3(a)(3) and 40-9B-4 of the Act for a data processing center, except those local Construction Related Transaction Taxes levied for educational purposes or for capital improvements for education, for a maximum period of thirty years."

52. Section 2 of the Resolution grants those abatements "to fullest extent permitted by the Act," and then adds: "The Board intends that the Abatements granted herein include all abatements authorized by Section 40-9B-4 of the Act for data processing centers, and this resolution shall be construed accordingly."

53. Section 4 of the Resolution provides: "The Chairman of the Board is authorized to enter into and deliver an Agreement which grants the Abatements to the Qualifying Companies in such form the Chairman shall deem appropriate to effectuate this resolution, based on the advice of the legal counsel to the Board" (emphasis added).

54. Section 5 provides: "The Chairman of the Board is authorized and directed to take any and all actions necessary or, in his sole discretion, appropriate to accomplish the purpose of this resolution" (emphasis added).

55. The Resolution contains no finding that the aggregate capital investment conditions of Ala. Code § 40-9B-3(a)(12)a.2.(iii) (1975) are or will be satisfied. It recites only that "the Project is projected to involve a total investment over 30 years of approximately \$35,890,000,000."

56. The Resolution contains no cost/benefit analysis, no economic model, no employment or payroll figure, no estimate of the amount of any abatement, and no reference to any independent study, review, or analysis obtained or performed by the Board. It recites that the Board "has found the information contained in the Qualifying Companies' applications to be sufficient to permit the Board to make a reasonable cost/benefit analysis"; that is, a finding that the applicants' own submission was sufficient, without stating that the Board ever made one.

57. The Resolution recites that "the completed applications (copies attached)" and "a tax abatement agreement (the 'Agreement') (copy attached)" accompany it. No such attachment has ever been made public.

58. On information and belief, the abatement agreement referenced in the Resolution is a sixteen-page instrument. It has never been published. Its execution date has never been disclosed. Whether it was executed before or after June 1, 2026, the effective date of Act 2026-573, is not known to Plaintiff and is knowable only to Defendants.

59. On information and belief, the Board obtained no cost/benefit analysis, economic impact study, fiscal analysis, revenue projection, or valuation from any source independent of the applicants. On information and belief, every figure the Board relied upon and every figure its Chairman has since repeated publicly, the \$35.89 billion investment projection, the \$2.6 billion in projected new revenue, the \$87 million in projected annual revenue, the 78 jobs, originated with the applicants.

60. Defendant Perry stated publicly on July 1, 2026 that as to this project the Board "reach[ed] out to the city's Department of Innovation and Economic Opportunity," and that "we did not get back a letter of support or a letter of opposition." He stated that "[t]he Jefferson County Commission did submit a letter in support of this project." He stated that the City of Birmingham "did not submit a letter of support, but they also did not submit a letter of opposition," and that the Board "used all the other factors and set that one aside."

61. A letter of support is not a resolution. On information and belief, the Jefferson County Commission has never adopted, by resolution of a majority of its members, any authorization for the Board to abate any county tax for this project.

62. On information and belief, the Board did not physically deliver, and did not mail by certified mail, a copy of the Resolution to the Jefferson County Commission, and no affidavit of service or certified mail receipt evidencing such delivery has ever been furnished to the Alabama Department of Revenue.

63. On information and belief, the Governor of the State of Alabama has never approved, and was never asked to approve, any abatement of state ad valorem taxes for this project.

E. Concealment and discovery.

64. The Board's action remained unknown to the public for four weeks.

65. On June 26, 2026, 1819 News published the first account of the abatement, reporting that it had learned of the arrangement from "a source with knowledge of the arrangement." The Board did not disclose it. No posting, filing, publication, or record of the Board disclosed it.

66. On June 26, 2026 at 21:12:28 UTC, a three-page Portable Document Format file titled "Bhm IDB Nebius resolution 5.29.26," authored by "David Perry" was created. It is the only version of the Resolution that has ever reached the public, and it was generated on the day the story broke, twenty-eight days after the vote.

67. On June 27, 2026, the Mayor of Birmingham stated that "[t]he city of Birmingham has not given any tax incentives to Nebius," and, on social media, that "[a]s Mayor, there are many things I have direct control and authority over. The Industrial Development Board is not one of them."

68. On July 1, 2026, Defendant Perry stated publicly: "All of our meetings are open to the public. We comply with the Open Meetings Act." In the same interview he stated: "I think we can do a better job of advertising where and when we meet." In the same interview he stated: "I can count on one hand the number of times in the last 10 years that members of the public have actually chosen to show up to any of our meetings."

69. To this day the Board has published no notice, no agenda, no minute, no roll of the directors present or absent, and no executed abatement agreement respecting the May 29, 2026 meeting. Every fact concerning what notice was given of that meeting, where it was posted, when it was posted, and by whom remains within the exclusive knowledge and control of Defendants.

COUNT I

STATUTORY ULTRA VIRES AND PROCEDURAL NONCOMPLIANCE UNDER THE TAX INCENTIVE REFORM ACT OF 1992

(Declaratory Judgment and Injunctive Relief — All Defendants)

70. Plaintiff adopts and realleges paragraphs 1 through 69 as if fully set forth herein.

71. A public corporation has only those powers the Legislature has conferred. An act beyond the scope of that authority is void, confers no rights, and cannot be validated by ratification, acquiescence, or estoppel. A contract which is outside the pale of the corporate authority confers no right, and neither the making of the ultra vires contract nor the receiving of benefits under it estops the corporation from setting up its invalidity. A municipality cannot be estopped from questioning the legality of a contract into which it had no authority to enter, and estoppel may not authorize a city to do that which it has no authority to do.

A. The Board had no power to abate state taxes for thirty years.

72. Ala. Code § 40-9B-5(b)(2) (1975) governs abatements of *ad valorem* taxes "for a period longer than 10 years." It allocates that power among three grantors and no others. Subparagraph a. to the governing body of a municipality, "but only as to municipal noneducational taxes"; subparagraph b. to the governing body of a county, "but only as to county noneducational taxes"; and subparagraph c. **"By the Governor, with respect to private use industrial property located in the state, but only as to state taxes."**

73. The Alabama Department of Revenue's own rule says the same thing. Ala. Admin. Code r. 810-4-3-.05(5)(c) provides that an abatement of noneducational ad valorem tax for a period longer than ten years may be granted "[b]y the Governor, with respect to private use industrial property located in the state but only as to state noneducational taxes." The Department has published the same construction since Act 2026-573 took effect. Its current guidance on Chapter 9B abatements provides, under the heading "Governing Body for Chapter 9B Property Tax

Abatements Granted for any or all Years 11-20," that "[t]he governor may grant property tax abatements for any or all years 11-20 to qualifying projects located in the state but only as to the state non-educational property taxes." The Department states that construction on the same page, and in the same document, in which it acknowledges that a data processing center granted an abatement before January 1, 2027 may receive an abatement of property taxes for thirty years. The agency charged with administering Chapter 9B has thus never read § 40-9B-5(b)(3) to transfer to a municipal public industrial authority the power that § 40-9B-5(b)(2)c. reserves to the Governor.

74. Section 40-9B-5(b)(3) provides that "abatements authorized to be granted pursuant to subsection (a) for data processing centers may be granted in accordance with subdivision (1) without regard to the time limitation stated in subdivision (1)." By its terms, subdivision (b)(3) lifts a time limitation and routes data center abatements through subdivision (b)(1). It does not confer on a municipal public industrial authority the power that subdivision (b)(2)c. reserves to the Governor. It does not mention the Governor. It does not mention state taxes.

75. The Resolution nonetheless grants an abatement of "65% of all state and local Noneducational Ad Valorem Taxes . . . for a maximum period of thirty years."

76. The Board is not the Governor. No approval of the Governor was sought, and none was given. To the extent the Resolution purports to abate state noneducational *ad valorem* taxes for any period longer than ten years, it exceeds the Board's statutory authority and is void.

77. Because tax exemptions are strictly construed against the exemption and in favor of the taxing power, and because the burden of establishing the right to an exemption rests on the party claiming it, any doubt as to the interaction of § 40-9B-5(b)(2)c. and (b)(3) must be resolved against Defendants.

B. The Board had no power to abate Jefferson County taxes on this record, and any such abatement never became valid.

78. Ala. Code § 40-9B-5(b)(1)c. (1975) permits a municipal public industrial authority to grant an abatement of a county tax only if (i) the municipal authority has also abated the corresponding municipal tax, or, if the municipality has no corresponding municipal tax, (ii) "the governing body of a county, by resolution adopted by a majority of its members, has authorized

the public industrial authority of the municipality to abate any eligible county tax described in the resolution."

79. No resolution of the Jefferson County Commission authorizing this abatement exists. The Board's Chairman has said publicly that what the County provided was "a letter in support of this project." A letter of support is not a resolution adopted by a majority of the members of the county commission, and it does not satisfy § 40-9B-5(b)(1)c.

80. Independently, Ala. Code § 40-9B-5(d) (1975) provides that "[a]ny abatement of county taxes granted by a municipality or municipal industrial authority shall not be valid until the expiration of (1) 10 days following the date of physical delivery to the county commission or (2) 13 days following the date of mailing by certified mail to the county commission of a copy of the resolution granting such abatement," and that proof of that delivery "shall be furnished to the Department of Revenue at the same time as the filing of the abatement agreement under Section 40-9B-6" (emphasis added).

81. This is a condition of validity, not a formality. On information and belief, no such delivery was made and no such proof exists. To the extent the Resolution purports to abate Jefferson County taxes, it never became valid. The Department of Revenue enforces that condition as a mandatory element of the abatement package the private user must file, and it names this kind of granting authority specifically. Its published Chapter 9B procedures provide that "[p]roof that a copy of the resolution was submitted to the county commission must be sent to ALDOR if the abatement is granted by a municipality or a municipal industrial development board," that "[t]he resolution must be either mailed by certified mail or by physical delivery to the county commission," and that proof of delivery "by affidavit or service (in the case of physical delivery), or by copy of certified mail receipt (in the case of mailing by certified mail), is required to be sent to ALDOR."

C. The Board never made the determination TIRA required it to make.

82. Ala. Code § 40-9B-6(a) (1975) requires that the application to the granting authority "contain information that will permit the governing body to which it is submitted to make a reasonable cost/benefit analysis as to the proposed industrial development property and to

determine the maximum exemption period for the abatement of noneducational *ad valorem* taxes". The determination is the Board's to make.

83. The "maximum exemption period" is a defined term. Ala. Code § 40-9B-3(a)(12)a.2. (1975) sets three tiers for a data processing center, ten years, twenty years, and thirty years, and makes the thirty-year tier available only where "the aggregate capital investment in the data processing center by such private user or users exceeds \$200,000,000 within 10 years from the date on which a private user commences the physical work of constructing and equipping the data processing center and exceeds \$400,000,000 within 20 years from the date on which a private user commences the acquisition, construction, and equipping of the data processing center." § 40-9B-3(a)(12)a.2.(iii).

84. Ala. Code § 40-9B-4(b) (1975) provides that "[n]o abatement of noneducational *ad valorem* taxes, other *ad valorem* taxes, or payments required to be made in lieu of the foregoing, may exceed the maximum exemption period."

85. The Resolution makes no determination that the conditions of § 40-9B-3(a)(12)a.2.(iii) are or will be met. It recites a thirty-year period, and it recites a projection supplied by the applicants, but a projection is not a determination and a recital is not a finding. The Board granted the longest abatement the statute allows without ever determining that this project qualified for it.

86. Worse, the Resolution does not confine itself to what it describes. It grants abatements "to fullest extent permitted by the Act," declares that the abatements "include all abatements authorized by Section 40-9B-4 of the Act for data processing centers," and instructs that "this resolution shall be construed accordingly." That is not the grant of a determined abatement. It is a standing instruction to construe the grant as broadly as any future reader may find the statute to allow. A granting authority that does not know the scope of what it has given has not made the determination the statute assigns to it.

D. The Board delegated to one man the agreement the statute required the Board to make.

87. Ala. Code § 40-9B-6(b) (1975) provides: "The abatements granted by the governing body shall be embodied in an agreement . . . between the governing body and the private user, setting forth: (1) The estimated amount of each abatement and the maximum exemption period. (2) Good faith projections by the private user of: The amount to be invested; the number of

individuals to be employed, initially and in the succeeding three years; and the payroll" (emphasis added).

88. Under Ala. Code § 11-54-86 (1975), "all powers of the board shall be vested" in the board of directors, not in its Chairman.

89. Section 4 of the Resolution delegates to the Chairman alone the authority to enter into and deliver the abatement agreement "in such form the Chairman shall deem appropriate." Section 5 authorizes him to take any action "in his sole discretion." The Board thereby transferred to a single director the two determinations § 40-9B-6(b) commits to the governing body, the estimated amount of each abatement and the maximum exemption period.

90. No director other than the Chairman has ever seen, approved, or voted upon the sixteen-page abatement agreement that binds this public corporation for thirty years. On information and belief, no director other than the Chairman knows its terms.

91. The abatement agreement is therefore not "an agreement . . . between the governing body and the private user" within the meaning of § 40-9B-6(b). It is an agreement between the Chairman and the private user. It is void.

E. Relief.

92. Each of the foregoing defects is independent. Any one of them renders the corresponding portion of the Resolution void. Together they render the Resolution void in its entirety, because the Board did not sever the state, county, and municipal components, did not determine the exemption period, and did not itself make the agreement.

93. Plaintiff is entitled to a judgment declaring the Resolution and the abatement agreement executed pursuant to it void and of no force or effect, to an injunction restraining Defendants from further implementing, performing under, or claiming any benefit under them and to such further relief as this Court deems equitable.

COUNT II

THE MAY 29, 2026 GATHERING WAS NOT AN OPEN MEETING, AND THE BOARD HAD NO POWER TO ACT AT IT

(Ala. Code § 11-54-87(c) and Statutory Ultra Vires — Declaratory Judgment and Injunctive Relief— Against the Board and the Chairman in His Official Capacity)

94. Plaintiff adopts and realleges paragraphs 1 through 93 as if fully set forth herein.

95. Plaintiff alleges in this Count that the Board failed to give the notice the law required for the gathering of May 29, 2026, that in consequence the gathering was not a meeting open to the public within the meaning of Ala. Code § 11-54-87(c) (1975) and that the Board therefore had no power to grant a tax abatement at it.

96. Ala. Code § 11-54-87(c) (1975) provides, without qualification, condition, or exception, that "[a]ny meeting held by the board of directors for any purpose whatsoever shall be open to the public." That command contains no quorum threshold, no definitional carve-out, and no exception. It is a limitation on the manner in which the Board may exercise every power it possesses, including the power to abate taxes. It is older and broader than Chapter 25A of Title 36, it is independent of that chapter, it prescribes no remedy of its own, and it is therefore enforceable by declaratory judgment.

97. A meeting is not "open to the public" because the door happens to be unlocked. It is open to the public when the public is able to be there. A member of the public who is never told that a meeting will occur, where it will occur, or when it will occur has no more access to it than one who is turned away at the door. The Legislature said as much in a related context when it defined an open or public portion of a meeting to require both that "prior notice was given" and that the proceeding be "conducted so that constituents of the governmental body, members of the media, persons interested in the activities of the governmental body, and citizens of this state could, if they desired, attend and observe." Ala. Code § 36-25A-2(7) (1975).

98. The Board is a "governmental body" within the meaning of Ala. Code § 36-25A-2(4) (1975), which reaches "all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties, or municipalities." Every director of the Board is elected by the Birmingham City Council. Ala. Code § 11-54-86 (1975). The Board is a "public corporation." Ala.

Code § 11-54-84. Section 36-25A-3(a)(3) (1975) expressly contemplates "a corporation a majority of whose governing board is appointed or elected by a municipality" as a notice-giving body. No exclusion in § 36-25A-2(4)a.-c. applies. Ala. Code § 36-25A-3 (1975) therefore fixed the notice this Board was required to give for the gathering of May 29, 2026, and supplies the measure of what "open to the public" required of it.

99. Under Ala. Code § 36-25A-3(a)(3) (1975), a municipal governmental body "shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall," and a corporation a majority of whose governing board is appointed or elected by a municipality may post at its own principal office in lieu of the city hall only if it "has a principal office separate from the city hall." The Board's principal office of record is not separate from City Hall. Its Certificate of Incorporation places that office in City Hall. The alternative posting location was therefore unavailable to the Board as a matter of law, and notice was required to be posted on a bulletin board at a place convenient to the public in Birmingham City Hall. On information and belief, no such notice was posted. On information and belief, no notice was posted at 2117 2nd Avenue North either.

100. Notice was not given in the form the law required. Under Ala. Code § 36-25A-3(c) (1975), "[p]osted notice pursuant to this section shall include the time, date, and place of meeting," and "[i]f a preliminary agenda is not available, the posted notice shall include a general description of the nature and purpose of the meeting." On information and belief, no posted notice stated the time, date, and place of the meeting; no preliminary agenda was created or posted; and no posted notice contained a general description of the nature and purpose of the meeting.

101. Under Ala. Code § 36-25A-3(b) (1975), notice of a meeting other than a regular meeting "shall be posted as soon as practicable after the meeting is called and in no event less than 24 hours before the meeting is scheduled to begin." On information and belief, no notice was posted as soon as practicable after the meeting was called, and none was posted at any time before the meeting began. On information and belief, the Board maintains no registration list under Ala. Code § 36-25A-3(a)(6) (1975) and gave no direct notice to any person.

102. No notice of the May 29, 2026 gathering was posted where the law directed, in the form the law directed, or within the time the law directed. The gathering was held on a Friday that

was neither the first nor the third Tuesday of the month, in leased or borrowed rooms at the private headquarters of the Birmingham Business Alliance rather than at the Board's principal office of record, and the public did not learn that it had occurred for four weeks and then only from a news organization acting on an anonymous source. A gathering so conducted was not a meeting "open to the public" within the meaning of Ala. Code § 11-54-87(c) (1975), and the Board violated that section.

103. The Board is a creature of statute and possesses only those powers the Legislature conferred upon it. The Legislature conferred the abatement power on the Board's board of directors, Ala. Code §§ 11-54-86, 40-9B-5(b)(1)c. (1975), and conditioned the exercise of every power of that board of directors on its exercise at a meeting open to the public, Ala. Code § 11-54-87(c) (1975). The Legislature separately provided that "all votes on matters before a governmental body, including . . . to grant tax abatements, shall be made during the open or public portion of a meeting for which notice has been provided," Ala. Code § 36-25A-5(b) (1975), naming this very transaction, and defined the "open or public portion of a meeting" to require that "prior notice was given in compliance with this chapter," Ala. Code § 36-25A-2(7) (1975). The condition is a limitation on the power itself, not a procedural formality collateral to it.

104. An act purporting to exercise a delegated power in a manner the Legislature forbade is beyond the power delegated. It is void, it confers no right, and neither its making nor the receipt of benefits under it estops anyone from asserting its invalidity. A contract which is outside the pale of the corporate authority confers no right, and neither the making of the ultra vires contract nor the receiving of benefits under it estops the corporation from setting up its invalidity.

105. The Resolution adopted on May 29, 2026, and the abatement agreement executed pursuant to it, are therefore void.

106. The Board's notice practice has not changed. It maintains no bulletin-board posting at Birmingham City Hall. It offers electronic notice of its meetings only to "credentialed members of a media outlet." It directs every other citizen to "check this website the afternoon before a regularly scheduled meeting to confirm that the meeting has not been canceled," on a website that did not exist until June 30, 2026. Each meeting the Board holds on that practice is a fresh violation of Ala. Code § 11-54-87(c) (1975), and Plaintiff seeks prospective relief accordingly.

107. Plaintiff is entitled to a judgment declaring that the Board failed to give the notice the law required for the gathering of May 29, 2026, that the gathering was not a meeting open to the public within the meaning of Ala. Code § 11-54-87(c) (1975), that the Board had no power to grant a tax abatement at it and that the Resolution and the abatement agreement executed pursuant to it are void. Plaintiff is further entitled to an injunction restraining the further implementation of those instruments, and to prospective injunctive relief requiring the Board to give notice of each of its future meetings in the manner the law requires and to conduct each meeting of its directors open to the public.

COUNT III

ARBITRARY AND CAPRICIOUS ACTION AND ABUSE OF DISCRETION

(Declaratory Judgment and Injunctive Relief — Against the Board and the Chairman in His Official Capacity)

108. Plaintiff adopts and realleges paragraphs 1 through 107 as if fully set forth herein.

109. Plaintiff does not ask this Court to substitute its judgment for the Board's on any question committed to the Board's discretion. Where the wisdom of a discretionary decision is fairly debatable, the courts will not interfere.

110. But discretion is not immunity. Alabama courts will set aside the action of a public body where the discretion is exercised arbitrarily or capriciously, or is based upon a misconception of the law or upon ignorance through lack of inquiry or in violation of law. A bad motive, fraud or a gross abuse of discretion will vitiate the act. Relief lies on a showing that the commission acted in an arbitrary, capricious or corrupt manner, and the absence of any evidentiary basis for the action will support that showing.

111. And where the question is whether a grant of public value serves a public purpose, the determination of the granting body is entitled to deference but is conclusive when it does not clearly appear to be wrong. Deference has limits, and a determination whose benefit runs principally to a private interest will not stand.

112. The Board's action on May 29, 2026 was arbitrary and capricious, and an abuse of discretion, in each of the following independent respects.

113. It rested on no independent inquiry. On information and belief, the Board obtained no cost/benefit analysis, fiscal study, economic model, revenue projection, valuation, or opinion from any source independent of the applicants. Every quantitative premise of the decision, the \$35.89 billion investment figure, the \$2.6 billion revenue figure, the \$87 million annual figure, the 78 jobs, was supplied by the parties who stood to receive \$3.234 billion if the Board believed them. A decision of this magnitude taken entirely on the applicant's own numbers is a decision taken upon ignorance through lack of inquiry.

114. Its stated ground is a finding the Board did not make. The Resolution recites that the Board "has found the information contained in the Qualifying Companies' applications to be sufficient to permit the Board to make a reasonable cost/benefit analysis." That is a finding that the applicants' paperwork was adequate. It is not a finding that the Board performed the analysis, and the Resolution nowhere says that it did. Section 40-9B-6(a) does not require a complete application for its own sake; it requires one so that the granting authority can analyze it.

115. It granted relief of undetermined scope. As alleged in Count I, the Board granted abatement "to fullest extent permitted by the Act" and directed that the Resolution "be construed accordingly." A body that does not know the value of what it is giving away cannot have weighed that value against anything.

116. It disposed of the only contrary institutional signal by setting it aside. The Board solicited the position of the City of Birmingham's Department of Innovation and Economic Opportunity, the City agency charged with economic development. That agency returned neither support nor opposition. The Chairman's public account of what the Board did with that silence is that "[w]e used all the other factors and set that one aside." The one signal the Board sought from the municipality whose taxes it was abating, and whose council appointed every one of its members, was set aside rather than pursued.

117. It abated county taxes without the county's authorization. The Board proceeded on a letter of support where the statute required a resolution. § 40-9B-5(b)(1)c.

118. It was timed to the eve of two effective dates. The Board does not ordinarily meet on Fridays. It meets on the first and third Tuesdays. It called a special meeting for Friday, May 29, 2026, the last business day before June 1, 2026, the date on which both Act 2026-573 and Act

2025-84 took effect. Act 2026-573 had passed both houses of the Legislature without a recorded negative vote. Each act would have reduced the value of the benefit the Board conferred that morning, and the amounts at stake are measured in hundreds of millions of dollars. Plaintiff does not allege that acting before an effective date is unlawful. Plaintiff alleges that when a body departs from its own meeting calendar, gives no notice, keeps no public record, and acts on the last business day before two statutes would have reduced the benefit it was conferring, those facts together bear directly on whether the decision was the product of reasoned judgment or of something else, and that the Board's own concealment of the record is what makes them impossible to explain away on the face of the documents.

119. The public-purpose determination is unsupported. To the extent the Board's action rests on an implicit determination that surrendering **\$3.234 billion** in public revenue over thirty years serves a public purpose, that determination rests entirely on the beneficiaries' unexamined projections, is not documented anywhere in the Board's record, and clearly appears to be wrong on the record the Board itself made.

120. Plaintiff is entitled to: a judgment declaring the Resolution and the abatement agreement arbitrary, capricious, and an abuse of the Board's discretion, and void; and to an injunction against their further implementation.

COUNT IV

STRUCTURAL CAPTURE AND FAILURE OF INSTITUTIONAL INDEPENDENCE — UNLAWFUL ABDICATION AND SUBDELEGATION OF STATUTORY DUTY

(Declaratory Judgment and Injunctive Relief — Against the Board and the Chairman in His Official Capacity)

121. Plaintiff adopts and realleges paragraphs 1 through 120 as if fully set forth herein.

122. The Legislature vested "all powers of the board" in a board of directors of not fewer than seven, elected by the municipal governing body, serving without compensation, and barred from being officers or employees of the municipality. Ala. Code § 11-54-86 (1975). It required that the board have a principal office in the municipality, stated in a certificate of incorporation filed of record with the probate judge. Ala. Code §§ 11-54-83(4), 11-54-84 (1975). It required that every meeting of the directors, "for any purpose whatsoever," be open to the public. Ala. Code §

11-54-87(c) (1975). It empowered the board "[t]o employ and pay compensation to such employees and agents, including attorneys, as the board of directors shall deem necessary for the business of the board." Ala. Code § 11-54-87(a)(9) (1975).

123. Taken together, these provisions describe a public body, publicly seated, publicly housed, publicly accountable, and staffed by persons it employs and controls. That institution is the entity to which TIRA entrusted the power to forgive taxes.

124. The entity that acted on May 29, 2026 was not that institution.

125. It has no office. Its principal office of record is City Hall, where it does not sit. In fact it meets in Suite 100 at 2117 2nd Avenue North, the headquarters of the Birmingham Business Alliance, a private membership corporation whose business is recruiting to Birmingham the very enterprises that come before the Board seeking abatements. It has occupied space provided by the BBA for years and, on information and belief, moved when the BBA moved.

126. It has no staff of its own. It employs no one. It has no executive director, no administrator, no clerk. On information and belief, the administrative functions of this public body, scheduling its meetings, preparing its documents, keeping its minutes, and posting or failing to post its notices, are performed by employees of the BBA.

127. Its corporate secretary is, on information and belief, a private employee of that private corporation. The person who certified to the world that this meeting "was legally noticed," and who signed the instrument surrendering **\$3.234 billion** in public revenue, is not a director, is not identified anywhere in the Board's public record as its officer, and is, on information and belief, the Birmingham Business Alliance's Market Intelligence Manager.

128. It has no identified counsel. Section 4 of the Resolution conditions the Chairman's authority on "the advice of the legal counsel to the Board." The Board has never disclosed who that counsel is. No public record identifies counsel to this Board.

129. It had no public presence at all until after it was caught. The Board operated for years without a website. It registered birminghamidb.com on June 30, 2026, thirty-two days after this vote and four days after the vote became public. The site it built discloses no notice, no agenda, no minutes, no address, no telephone number, no staff, and no counsel, and routes every category

of public contact, meeting notices, records requests, and public comment alike, to a single electronic mail address which, on information and belief, is received at the Chairman's private business domain.

130. The Board's published policy is that meeting notices by electronic mail are available only to "credentialed members of a media outlet." An ordinary citizen who wishes to know when this body meets has no published means of finding out other than to check a website that was created in June 2026 "the afternoon before a regularly scheduled meeting."

131. Having taken a single 6–0 vote on a three-page instrument, the Board handed its Chairman the authority to settle the binding thirty-year agreement in whatever form he "deem[ed] appropriate" and to do whatever he thought best "in his sole discretion." Ala. Code § 11-54-86 (1975) vests "all powers of the board" in the board of directors. Ala. Code § 40-9B-6(b) (1975) requires the agreement to be "between the governing body and the private user." The Board could not lawfully transfer to one director the determinations the Legislature assigned to the body, and its attempt to do so was void.

132. The cumulative effect is a public corporation that exists on paper and in the register of the Probate Court, and that in operation is an instrument administered by, housed by, and staffed by a private economic-development organization, with its substantive decisions delegated to its Chairman and its record keeping in private hands. A body so constituted did not, and structurally could not, bring to bear the independent judgment that Ala. Code §§ 11-54-86, 11-54-87 and 40-9B-6 (1975) require of it.

133. The Mayor of Birmingham has publicly disclaimed all authority over the Board. The Board's Chairman has publicly agreed that the Mayor "was exactly right when he said he has no authority over our board." The City Council appoints its members and does nothing else. The Board has no staff of its own. The result is a body accountable to no one, exercising the taxing power's mirror image, the power to forgive taxes, in amounts measured in billions, in a room lent to it by a private trade organization, with its minutes kept by that organization's employee.

134. Plaintiff is entitled to a judgment declaring that the Board failed to exercise the independent judgment its enabling statutes require. That its subdelegation of the abatement agreement to its Chairman was beyond its power and void; that the Resolution and the abatement

agreement executed under it are void; and to an injunction restraining their further implementation. Plaintiff further seeks a declaration of the Board's continuing obligation under Ala. Code § 11-54-87(c) (1975) to conduct every meeting of its directors open to the public, and such prospective injunctive relief as will secure compliance with it.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Terri Michal respectfully prays that this Court:

A. Declare that the Resolution of The Industrial Development Board of the City of Birmingham adopted May 29, 2026, and the abatement agreement executed pursuant to it, are void and of no force or effect, in whole or, in the alternative, as to each of the following components separately: (i) all state noneducational *ad valorem* taxes; (ii) all Jefferson County taxes; (iii) any abatement period exceeding the maximum exemption period the Board lawfully determined;

B. Declare that the Board failed to give the notice the law required for the gathering of May 29, 2026, that the gathering was accordingly not a meeting open to the public within the meaning of Ala. Code § 11-54-87(c) (1975) and that the Board had no power to grant a tax abatement at it;

C. Declare that the Board's delegation to its Chairman of the authority to settle and execute the abatement agreement exceeded its powers under Ala. Code §§ 11-54-86 and 40-9B-6(b) (1975) and is void;

D. Declare that the Board's action of May 29, 2026 was arbitrary, capricious, and an abuse of discretion;

E. Enjoin Defendants, their officers, agents, employees, successors, and all persons in active concert with them, from implementing, performing under, claiming, receiving, or asserting any benefit under the Resolution or the abatement agreement, and from filing, maintaining, or relying upon either instrument with the Alabama Department of Revenue, the Alabama Department of Commerce, the Jefferson County assessing officials, or any other taxing authority;

F. Enjoin the Board prospectively to conduct every meeting of its directors open to the public as required by Ala. Code § 11-54-87(c) (1975), and, to that end, to give notice of each of

its meetings in the manner prescribed by Ala. Code § 36-25A-3(a)(3) (1975) and, for meetings other than regular meetings, § 36-25A-3(b) and (c);

G. Order the Board to produce and file with this Court the complete record of the May 29, 2026 meeting, including the notice and proof of its posting, any preliminary agenda, the minutes and the date of their approval, the roll of directors present and absent, the application submitted under Ala. Code § 40-9B-6(a) (1975), all cost/benefit material the Board received or relied upon, and the executed abatement agreement with its execution date;

H. Award Plaintiff a reasonable attorney's fee and the expenses of this litigation under the common-benefit and common-fund exceptions to the American Rule and under Ala. Code § 6-6-231 (1975), and reserve jurisdiction to determine the amount upon oral testimony;

I. Tax the costs of this proceeding against Defendants; and

J. Grant such other, further, and different relief, legal or equitable, as the Court may deem just and proper, including all further relief available under Ala. Code § 6-6-229 (1975).

Respectfully submitted this 10th day of September 2026.

Respectfully submitted,

/s/ K. Mark Parnell
K. Mark Parnell

OF COUNSEL:

PARNELL THOMPSON, LLC
120 19th Street North, Suite 2134
Birmingham, Alabama 35203
(205) 582-2766

s/ Donald R. James, Jr.
Donald R. James, Jr.

s/ Joel E. Dillard
Joel E. Dillard

/s/ David McKnight
David McKnight

OF COUNSEL:

DILLARD, MCKNIGHT, JAMES & MCELROY, LLP

P.O. Box 530333
Birmingham, Alabama 35253
Phone: (205) 271-1100
Fax: (205) 271-1108
rjames@dillardmcknight.com
jdillard@dillardmcknight.com
dmcknight@dillardmcknight.com

/s/ U. W. Clemon

U. W. Clemon

2001 Park Place, 10th Floor
Birmingham, AL 35203
Phone: (205) 506-4524
uwclemo1@gmail.com

Counsel for the Plaintiff

DEFENDANTS TO BE SERVED

The Industrial Development Board of the City of Birmingham

c/o David A. Perry, Chairman
2117 2nd Avenue North, Suite 100
Birmingham, Alabama 35203

and, in the alternative and simultaneously:

The Industrial Development Board of the City of Birmingham

c/o Office of the City Clerk, City of Birmingham
710 North 20th Street
Birmingham, Alabama 35203

David A. Perry, in his official capacity as Chairman of
The Industrial Development Board of the City of Birmingham
2117 2nd Avenue North, Suite 100
Birmingham, Alabama 35203

Nebius Inc.

C/O Corporaton Service Company
641 South Lawrence Street
Montgomery, AL 36105

Alabama ADC Holdings, LLC

C/O Corporaton Service Company
641 South Lawrence Street
Montgomery, AL 36105