

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-21-2626

RECEIVED

MAR 22 2017

S.C. SUPREME COURT

County of Florence and Florence County Council, Respondents,

v.

West Florence Fire District, purported to have been created by S.C. Act No. 183 of 2014; the West Florence Fire District Commission, purported to have been created by S.C. Act No. 183 of 2014; David Brown, Dustin Fails, Linda Lang Gipco, Richard Hewitt, and C. Allen Matthews, each in his or her purported official capacity as a member of the West Florence Fire District Commission; and the State of South Carolina Defendants,

of whom

West Florence Fire District, purported to have been created by S.C. Act No. 183 of 2014; the West Florence Fire District Commission, purported to have been created by S.C. Act No. 183 of 2014; David Brown, Dustin Fails, Linda Lang Gipco, Richard Hewitt, and C. Allen Matthews, each in his or her purported official capacity as a member of the West Florence Fire District Commission are Appellants.

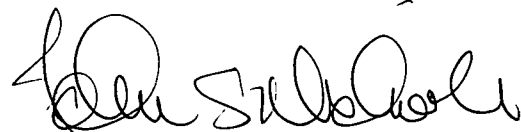
NOTICE OF APPEAL

Pursuant to Rule 203(d)(1)(A)(ii), SCACR, the West Florence Fire District appeals to this Court from an order of the Court of Common Pleas which declared two state statutes

unconstitutional under the State Constitution. The constitutional issues are central to this case and each is a significant one.

The judgment is dated January 17, 2017, and was filed January 23, 2017. Defendants timely filed a motion for reconsideration pursuant to Rules 52 and 59, SCRPC. The trial court denied the motion in a Form 4 order dated February 13, 2017 and filed February 15, 2017. Appellants received written notice of the entry of the order denying reconsideration, on February 21, 2017. This notice of appeal is from both the judgment dated January 17, 2017 and the order denying reconsideration dated February 13, 2017.

Respectfully submitted,



March 22, 2017

John S. Nichols, # 4210
Bluestein, Nichols,
Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202
jsnichols@bntdlaw.com
(803) 779-7599

Wallace Jordan, Jr., # 76222
WALLACE H. JORDAN, JR., P.C.
626 West Evans Street
PO Box 2010
Florence, South Carolina 29503-2010
(843) 662-4474

Attorneys for Appellants

Other Counsel of Record:

Steve A. Matthews
PO Box 11889
Columbia, SC 29211-1889

D. Malloy McEachin, Jr.
McEachin & McEachin, P.A.
323 S. Mcqueen Street
Florence, SC 29501

Attorneys for Respondent

J. Emory Smith, Jr.
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211

Attorney for Defendant State of South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-21-2626

RECEIVED

MAR 22 2017

S.C. SUPREME COURT

County of Florence and Florence County Council, Respondents,

v.

West Florence Fire District, purported to have been created by S.C. Act No. 183 of 2014; the West Florence Fire District Commission, purported to have been created by S.C. Act No. 183 of 2014; David Brown, Dustin Fails, Linda Lang Gipco, Richard Hewitt, and C. Allen Matthews, each in his or her purported official capacity as a member of the West Florence Fire District Commission; and the State of South Carolina Defendants,

of whom

West Florence Fire District, purported to have been created by S.C. Act No. 183 of 2014; the West Florence Fire District Commission, purported to have been created by S.C. Act No. 183 of 2014; David Brown, Dustin Fails, Linda Lang Gipco, Richard Hewitt, and C. Allen Matthews, each in his or her purported official capacity as a member of the West Florence Fire District Commission are Appellants.

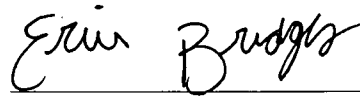
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel with a copy of the *Notice of Appeal* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Steve A. Matthews
PO Box 11889
Columbia, SC 29211-1889

D. Malloy McEachin, Jr.
McEachin & McEachin, P.A.
323 S. Mcqueen Street
Florence, SC 29501

J. Emory Smith, Jr.
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211



Erin Bridges
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC

March 22, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF FLORENCE
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-21-2626

County of Florence and Florence County Council

West Florence Fire District, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Motion to Reconsider filed on 2/6/17 is respectfully denied without a rehearing.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
 N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
 Circuit Court Judge

2117
 Judge Code

2/13/17
 Date

CERTIFIED: A TRUE COPY
 Clerk of Court C.R. & G.S.
 FLORENCE COUNTY, S.C.

FILED
 2017 FEB 15 PM 2:26
 COURT CLERK
 C.R. & G.S.
 FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

County of Florence and Florence County Council,

Plaintiffs,

v.

West Florence Fire District, purported to have been created by S.C. Act No. 183 of 2014; the West Florence Fire District Commission, purported to have been created by S.C. Act No. 183 of 2014; David Brown, Dustin Fails, Linda Lang Gipco, Richard Hewitt, and C. Allen Matthews, each in his or her purported official capacity as a member of the West Florence Fire District Commission; and the State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-21-2626

ORDER

FILED
MAY 13 2015
CLERK OF COURT
FLORENCE COUNTY, S.C.

CERTIFIED: A TRUE COPY

NATURE OF THE CASE¹

At issue in this case are Act No. 183, 2014 S.C. Acts ___ (the "Act," codified as Article 10 of Title 4, Chapter 23 of the South Carolina Code of Laws (S.C. Code Ann. § 4-25-1000 (Supp. 2015) *et seq.*), Ex. 1) and Act No. 89, 2015 S.C. Acts ___ (the "Amendment," Ex. 2), which replaces several sections of, and adds one new section to, that Article 10 as there codified.

The Act purports to create the West Florence Fire District (the "New SPD") as a special purpose district for fire protection in an area of Florence County (plus three lots in Darlington County (the "Three Parcels") and a section of Interstate 95 right-of-way (the "I-95 Segment")

¹ References herein to the testimony of witnesses at trial are by page and line number to the Transcript of Record, cited as "T.R. (*witness last name*)" References herein to exhibits are to the exhibit number as "Ex. [No.]" and may include page and line numbers within the exhibit.

in Darlington County).² The Amendment purports, among other revisions, to add to the New SPD an additional, non-contiguous area in Darlington County (the “Darlington-Hoffmeyer Area”).³ The Act as amended by the Amendment is referred to herein as the “Amended Act.”⁴ Pursuant to Section 6 of the Amendment, the provisions of the Amendment expire five years from its effective date, that is, on July 7, 2020. Act No. 89, 2015 S.C. Acts ___, §6.⁵

Florence County (sometimes referred to herein as “the County”) and Darlington County were, at the time of enactment of the Act and the Amended Act, already providing fire protection service in all areas included in the New SPD, pursuant to general law, in particular S.C. Code Ann. §4-9-30(5) (2015 Supp.) and S.C. Code Ann. §4-19-10 (1986) *et seq.*

This lawsuit asserts that the Act and the Amendment, among other infirmities, each violate the “Home Rule” provision of the South Carolina Constitution (S.C. Const. art. VIII, §7),⁶ the Constitutional prohibition against special legislation (S.C. Const. art. III, §34, ¶ IX),⁷

² The Act describes the segment of I-95 as being a three-mile segment in Darlington County. In fact, the segment from the beginning point identified by the Act to the end point identified by the Act has a significant portion in Florence County. Ex. 19; T.R. (Schofield), p. 64, lines 11-24.

³ The Darlington-Hoffmeyer Area is approximately 8.8 miles and 15 minutes driving time from the Three Parcels. T.R. (Brockington), p. 126, lines 2-8.

⁴ Plaintiffs brought this challenge after the enactment of the Act, on the bases here presented. Following enactment of the Amendment, the plaintiffs amended their complaint to include the Amendment within the scope of the challenge.

⁵ The Amendment states that it would take effect upon approval by the Governor. Act No. 89, 2015 S.C. Acts ___, §7. The Amendment was, however, never approved by the Governor. Her veto was overridden on July 7, 2015. The parties did not contest that the Amendment became effective on that date; and, for purposes of this opinion, this Court accepts that date as the effective date of the Amendment.

⁶ “No laws for a specific county shall be enacted and no county shall be exempted from the general laws.” S.C. Const. art. VIII, §7.

and the legal principle that where one government is already in place and providing a service, another cannot be superimposed over it to provide the same service (*Wagener v. Smith*, 221 S.C. 438, 71 S.E. 1 (1952); *North Carolina Electric Membership Corp. v. White*, 301 S.C.274, 391 S.E.2d 571 (1990)).

JURISDICTION

This Court has jurisdiction over the parties and the causes of action asserted by Plaintiffs, pursuant to S.C. Const. art. V, §11; its equitable powers; and the Uniform Declaratory Judgments Act, S.C. Code Ann. §15-53-10 (2005) *et seq.*, pursuant to which a portion of the relief in this action is sought. The undersigned has authority to decide the issues now before this Court pursuant to the November 17, 2014, order by the Chief Justice of South Carolina, whereby she assigned to me exclusive jurisdiction in all matters pertaining to this case.

PROCEDURAL STATUS

On July 25 and 26, 2016, the parties tried this case before me without a jury in Florence, South Carolina, at which time I heard testimony from all witnesses offered by each party, received all exhibits offered by each party, and heard argument from counsel for each party. At the request of counsel for the defendant New SPD and without objection by the plaintiffs, the record remained open to accommodate a witness, Representative Phillip D. Lowe, whose schedule did not allow his attendance at trial. Counsel for the parties deposed that witness on

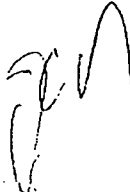
⁷ “In all other cases [listed exceptions not relevant here], where a general law can be made applicable, no special law shall be enacted . . .” S.C. Const. art. III, §34, ¶ IX.

August 24, 2016; and a transcript of his testimony has been included in the record, which is now complete and closed.⁸

DECISION

For the reasons set forth below, it is the decision of this Court that each of the Act and the Amendment violate the South Carolina Constitution's Home Rule provision and its prohibition of special legislation and violate the *Wagener v. Smith* principle against having separate governments asserting the same powers and providing the same services in the same territory. The Act and the Amendment are therefore declared invalid and of no continuing effect.

FINDINGS OF FACT


 Because this case is a challenge to the validity of statutory enactments, it is primarily a question (or questions) of law. The relevant facts are largely uncontroverted by the parties. Exhibits 1 through 6, 8 through 15, 18, 25, 26, and 30 (including all sub-parts) were jointly stipulated; and Exhibits 7, 16, 17, 19, and 27 through 29 (including all sub-parts) were offered by the plaintiffs and admitted without objection. The defendants did not submit any separate exhibits.⁹ An index to the exhibits is attached to this FINAL ORDER as APPENDIX A.

⁸ References herein to Representative Lowe's post-trial deposition are by page and line number to the transcript thereof, cited as "Lowe." Representative Lowe was also deposed prior to trial pursuant to subpoena from the plaintiffs. The transcript of that deposition is included in the record as Exhibit 14, including sub-Exhibits 14A through 14E, consisting of exhibits used in that earlier deposition.

⁹ Exhibit numbers 20 through 24 were not used by either party.

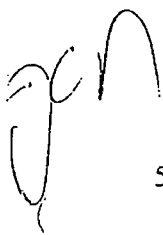
Much of the factual background consists of the history of the governmental processes that underlie the dispute, and it is based on government records and testimony of the participants.¹⁰ A second portion of the factual record consists of geographic information, and it is based on unobjected maps and aerial photography. A third portion consists of the operational manner in which fire protection service has been and is being provided, and it is based on testimony of the public officials charged with providing that service.

Having observed the witnesses and evidence presented at the trial, I find each witness and the factual information in each exhibit to be credible and that there is no significant disagreement among them with respect to the facts relevant to this case. Therefore, taking into consideration the burden of persuasion on the parties and the credibility of the witnesses and evidence, I make the following findings of fact upon clear and convincing evidence.

- 
1. Florence County has for many years – at least since 1982 – exercised its authority to provide and control fire protection services in the areas of the county not already being served and to determine the necessary millage rates to support those services. *See* Exs. 4, 5B, 8, 9, and 10. The authority exercised is that conferred by S.C. Const., art. VIII, §7; S.C. Code Ann. §4-9-25, §4-9-30(5)(a) and §4-19-10 *et seq.* (Supp. 2015) (discussed below).
 2. The history of Florence County’s provision of fire protection services recounted in Exhibits 4, 5B, 8, 9, and 10 is accurate. T.R. (Schofield) p. 63, lines 3-5.
 3. For a period of time, some portion of the County received fire protection services through sub-districts (the “**Act 1817 Sub-districts**”) created shortly before the advent of Home

¹⁰ The Court may take judicial notice of the potential exhibits that are public records pursuant to Rule 901(b)(7), SCRE (public records are self-authenticating) and the Court’s inherent power to take judicial notice of legislative facts (see Notes to Rule 201, SCRE).

Rule by Act No. 1817, 1972 S.C. Acts 3613 (“Act 1817”) (Ex. 3).¹¹ However, after Home Rule ratification in 1973, the County from time to time exercised its authority to change special purpose district boundaries under S.C. Code Ann. §6-11-410 (2004) *et seq.* over those districts – beginning at least as early as 1979. Exs. 5A and 5B.

- 
4. The County funded its fire services through ad valorem property taxes on districts that it had created (the “Prior Tax Districts”), some of which covered municipalities not providing their own service, such as Johnsonville.¹² Because each district bore its own expenses, had different cost structures and tax bases, and had different capital expense programs, the County imposed on each a different millage rate. The tax rates ranged from a low of about 8 mills to a high of about 40 mills. *See* Ex. 7, p. 99; and T.R. (Schofield) p. 52, lines 16-23; (Yokim) p. 91, lines 7-14; p. 101, line 21 – p. 102, line 6.
 5. Florence County provided service by contracting with self-governing, not-for-profit entities (“Fire Departments”), each of which provided service in a Prior Tax District. T.R. (Schofield) p. 51, lines 1-11.
 6. Two of the Prior Tax Districts were the West Florence Rural Volunteer Fire District (“West Florence Rural”) and the Windy Hill/Olanta Rural Fire District (“Windy

¹¹ Act 1817 required a favorable referendum in each of the sub-districts in order to be activated. Act No. 658, 1973 S.C. Acts 1264 (“Act 658”) (Ex. 4), which purportedly amended Act 1817, indicates that a favorable referendum was held in only three of the six sub-districts. *See* also Ex. 5B. Act 658 was enacted after the ratification of the Home Rule Amendments and so was presumably invalid under *Knight v. Salisbury*, 262 S.C. 565, 206 S.E.2d 875 (1974). Exs. 5B and 10, ¶ 4. The amendments in Act 658 are not relevant to this current proceeding, but it does recite some marginally relevant history.

¹² One of the Prior Tax Districts was created as a special tax district under S.C. Code Ann. §4-9-30(5) (Supp. 2015); the other five were created as fire protection service areas under S.C. Code Ann. §4-19-10 *et seq.* (Supp. 2015). Ex. 8; T.R. (Schofield) p. 51, lines 1-3.

Hill/Olanta”), which the County created in 2007. *See* Ex. 6. With their creation, the Act 1817 Sub-districts ceased to be operative.¹³ T.R. (Schofield) p. 61, lines 2-7; Ex. 10, ¶ 7.

7. At its 2012 Council retreat, Florence County Council began a comprehensive review of its system for fire protection to address several concerns. T.R. (Schofield), p. 52, line 3 – p. 58, line 18. Those included:

- (a) Funding adequacy. Various Prior Tax Districts were adversely affected by the limitation in Act No. 388, 2006 S.C. Acts 3133 (“Act 388,” codified as S.C. Code Ann. §6-1-320 (Supp. 2015)).¹⁴ Council was unable to impose a sufficient millage to meet rising costs of fire protection.
- (b) Funding inequity among the Prior Tax Districts.
- (c) Taxpayers were paying a very wide range of millage rates depending on where they lived, even though a different Prior Tax District provided protection where that taxpayer worked or shopped or went to school.
- (d) Plans to pay for some fire service capital improvements, including land, station houses, and equipment, with a uniform, County-wide local option sales tax made differential millage rates even less defensible.
- (e) Transparency and accountability. Although the County provided all funding to the Prior Tax Districts, funds were largely provided in bulk to the Fire Departments who, in turn, purchased and owned in their own names all fire-fighting assets. Necessary controls over government funds and accounting procedures were missing.

8. Council officials attempted to obtain from the General Assembly a general law exemption from Act 388 (similar to one granted in 2014), but all efforts by Council (and

¹³ Windy Hill/Olanta was created with two sub-districts, each served by its own Fire Department. Ex. 6; T.R. (Brockington), p. 109, lines 2-11.

¹⁴ Act 388 adopted a wide range of state-wide property tax reforms, including the imposition of limits on the amount by which any political sub-division could increase its millage rate from year to year. This limitation restricted the ability of political subdivisions (including counties and their special tax districts) to adjust readily to disproportionate cost increases or service needs.

by others) to persuade the General Assembly to re-visit the reforms of Act 388 were unsuccessful. T.R. (Schofield), p. 55, line 14 – p. 58, line 2.

9. West Florence Rural was one of those adversely constrained by Act 388. T.R. (Schofield), p. 56, lines 7-25.

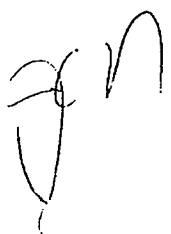
10. Around October 2012, Florence County Council engaged Emergency Services Consulting International (“ESCI”) to perform a thorough study of the County’s fire protection services and to make recommendations for improvements to address those concerns. ESCI issued its report (Ex. 7) in May 2013, finding significant benefits would accrue from financial consolidation and operational coordination of the Prior Tax Districts. *See* Ex. 7, pp. 98-113.

CEM

11. Council was also aware that because the consolidation of its Prior Tax Districts into a unified district would create a new entity, Act 388’s limitation on year-over-year revenue increases would not apply in that newly-consolidated district’s first year, thus creating a new base-line and the opportunity to address, in part and on a one-shot basis, the funding adequacy issue. T.R. (Schofield), p. 54, lines 6-12.

12. Following receipt of ESCI’s “study of the efficiency and effectiveness of the financing of fire protection and related rescue service through the Prior Taxing Districts” (Ex. 9, ¶ 4 of preamble) and its recommendation for greater uniformity in the provision of such services, and after public notice and public hearing, County Council determined to consolidate the Prior Tax Districts into a single fire protection service area under S.C. Code Ann. §4-19-10 *et seq.* (Supp. 2015), with the Fire Departments to provide operational services under the County’s consolidated and uniform financial direction and asset ownership. To do so, County Council adopted two ordinances. The first dissolved

the existing Prior Tax Districts (Ex. 8) (the “Dissolution Ordinance”); and the second created the new, unified tax district (the “Consolidated District”) (Ex. 9) (the “Creation Ordinance”). Those ordinances received first reading approval on February 20, 2014; second reading approval on March 20, 2014; public hearing on May 15, 2014; and final approval on May 15, 2014. *Id.*

- 
13. The Consolidated District included the Prior Tax Districts and “the area contained within the municipal limits of Quinby, Olanta, Pamplico, and Johnsonville, which Council hereby finds have, by and through their respective Councils in compliance with South Carolina law, requested and agreed to the inclusion of such area within [a new consolidated district] and the provision of fire and related rescue service by the County in such area, and have agreed not to impose taxes or fees for such services within their respective municipal limits so long as the County provides such services.” Ex. 9, ¶ 4 of preamble.
 14. The Creation Ordinance became effective simultaneously with the Dissolution Ordinance. There was, therefore, no break in fire protection service provided by the County to the affected areas.
 15. Simultaneously, a group of stakeholders including several Fire Department chiefs filed a petition with the Secretary of State under S.C. Code Ann. §4-11-290 (Supp. 2015) in order to formally dissolve the defunct Act 1871 Sub-districts. Ex. 10; T.R. (Schofield), p. 61, lines 15-22. The Secretary of State issued his Order formally dissolving those Sub-districts on May 12, 2014. Exs. 11 and 12.
 16. Since consolidation, some of the benefits anticipated by the ESCI report, including improved insurance ratings for properties in the Consolidated District and consequent

savings in insurance premiums, have been realized. T.R. (Brockington), p. 108, line 17 – p. 110, line 21.

17. The Fire Departments that provided operational fire protection services under the Prior Tax Districts continue to function under the new structure of the Consolidated District. T.R. (Schofield), p. 58, lines 13-18.

18. Darlington County, through two entities, has been providing service to the Darlington County areas affected by the Act and the Amendment. The area affected by the Act, the Three Parcels, has been served by Palmetto Rural Fire District since 1976. Ex. 13; T.R. (Spivey), p. 164, line 25 – p. 165, line 4; p. 166, lines 5-8. The area affected by the Amendment, the Darlington-Hoffmeyer Area, has been served by Darlington County Fire District since 1987. T.R. (Stratton), p. 177, line 18 – p. 178, line 3; p. 179, line 4-8.

19. During County Council's consideration of the creation of the Consolidated District, opposition arose, primarily in West Florence Rural, which would see the highest tax increase as a result of consolidating the tax bases of the Prior Tax Districts and the imposition of a uniform tax millage rate. Residents there objected to the tax increase and to having tax revenues raised inside their area used to pay costs on a Consolidated District-wide basis. Members of the Fire Department there objected to having greater County oversight and control over their activities. Lowe, p. 7, line 9 – p. 9, line 19. Ex. 14 (First Lowe Deposition), p. 31, line 23 – p. 33, line 23; p. 34, lines 12-14.¹⁵

¹⁵ Rep. Lowe testified regarding the issues of concern to residents of West Florence Rural that prompted the introduction of the Act:

It's fair to say that they wanted to keep it as close to or exactly like it was. That's the fire chief, that's the fire board, that's the citizens of the County. All of them that showed up, 100 percent of them, wanted to have an independent special purpose district, not come under the thumbs of the central government here, not come under a fire marshal that ran it, not come and irritate volunteers who have

20. All other County services are paid for on a consolidated, County-wide basis with a uniform County-wide millage rate. T.R. (Dorriety), p. 203, line 13 – p. 10; (Yokim), p. 98, lines 7-24; (Schofield), p. 58, lines 1-2.
21. In response to those concerns of the residents of West Florence Rural, legislative representatives of the West Florence Rural area investigated how the area could avoid being included in the Consolidated District and were advised that being in a special purpose district would exempt the area from County control. South Lynches Fire District (“South Lynches”) was cited as analogous. Lowe, p. 8, lines 15-24; Ex. 14, p. 24, lines 6-12.
22. South Lynches is a post Home-Rule special purpose district located partially in Florence County and partly in Williamsburg County. Its area is not involved in either the Act or the Amendment. It is excluded from the New SPD because it is an existing political subdivision already providing fire protection services in its area. South Lynches includes approximately 100 square miles, 2500 residents, and two towns/communities in Williamsburg County and approximately 150 square miles, 12,500 residents, and five towns/communities in Florence County. T.R. (Brockington) p. 105, line 2 – p. 106, line 16; Ex. 7, p. 15. By contrast, the New SPD initially included only 3 lots in Darlington County and (based on Ex. 19), approximately one-tenth of a square mile; after the

been the backbone that system, a system that does not have any bonds, a system that is the best in this county, a system that had the best fire protection for this county. They wanted to keep it as close to what they had with their own control and their own taxation taking care of themselves like they had previously done for 40 years. Is that clear? [Ex. 14, p. 33, lines 7-23.] So he [County Council Chairman James Schofield] started proposing tax increases of roughly 3 times the amount of taxes that the citizens were paying. They were very upset. [Ex. 14, p. 34, lines 12-14.]

Amendment, it included about 90 lots in Darlington County, and (based on Exs. 17 and 19) approximately three-tenths of a square mile.

23. In response to the concerns from West Florence Rural, legislative representatives of the West Florence Rural area on May 7, 2014, introduced what became the Act. The history of passage appears at Ex. 1, p. 1. The bill passed the House of Representatives in eight days, and the Senate in three days, without amendment in either body. The bill was not considered by committee in either body, because, as Representative Lowe testified in his first deposition “[i]t could have been considered a local issue.” Ex. 14, p. 44, lines 17-25.¹⁶ The Act was signed by the Governor on May 28, 2014.

24. As a result of the removal of the New SPD from the Consolidated District, the millage rate on the remainder of the Consolidated District increased by approximately 8 mills from the level needed to maintain the same level of funding if the New SPD were still in the Consolidated District. T.R. (Yokim), p. 92, lines 8-19.

25. After the County filed this lawsuit challenging the Act, the General Assembly enacted the Amendment to address the bases of that challenge. The Amendment was referred to committee but recalled without committee action in both chambers. Ex. 2, p. 1.

26. During the South Carolina House of Representatives’ consideration of the Amendment, the primary sponsor of the Act and the Amendment in that chamber (Rep. Phillip D. Lowe) described the subject matter of the Amendment as “a West Florence Rural Fire District bill,” and “It’s a, Florence County and a little, tiny piece of Darlington County.” Ex. 30Y (House Floor, June 4, 2015).

¹⁶ In that same response, Representative Lowe clarified “even though it’s not local legislation.” That, however, is the legal question under consideration in this lawsuit.

27. During the South Carolina Senate's consideration of the Amendment, the primary sponsor of the Act and the Amendment in that chamber (Sen. Hugh K. Leatherman, Sr.) described the subject matter of the Amendment as "a local Florence County fire district bill." Ex. 30BB (Senate Floor, June 4, 2015).
28. The Act does not dissolve or diminish West Florence Rural, any other Prior Tax District, or the Consolidated District. Ex. 1.
29. The Act mis-describes the geography of the I-95 Segment. See footnote 2 above.
30. The Act defines the portion of Florence County in the New SPD as the "West Florence Fire Subdistrict" established by Act 1817. There is, however, no such subdistrict under Act 1817. Act 1817 Sub-District 1 included the area of West Florence Rural but was very substantially larger, as it also included the Howe Springs Prior Tax District and part of Windy Hill/Olanta. T.R. (Ervin) p. 43, line 3 – p. 44., line 25; (Schofield) p. 59, line 18 – p. 60, line 13. The Amendment amends that definition so that the portion of Florence County in the New SPD is described as the West Florence Rural Prior Tax District. However, the Amendment expires on July 7, 2020.
31. West Florence Rural is contiguous to, but not accessible directly from, the Three Parcels, being separated by a swamp. T.R. (Brockington), p. 117, lines 13-22.
32. The I-95 Segment in Darlington County contains no on-off interchange. The closest access to the southbound lanes is from an interchange located in Florence County in Windy Hill/Olanta, and the closest access to the northbound lanes is from an interchange located in West Florence Rural. T.R. (Brockington), p. 117, line 23 – p. 118, line 6; (Schofield) p. 66, lines 9-21.

33. The Act specifies the Three Parcels that it includes in the New SPD by tax map numbers (TMS 218-14-01-013, 219-03-01-001, and 219-03-04-002) that are bounded by Interstate 95 to the north and west, E. McIver Road to the north and east, and the Florence County line to the south. Ex. 19.
34. Without explanation, the Act excludes a fourth lot (TMS 219-03-01-012) that is inside those same boundaries, nestled between two of the three included lots. The fourth lot shows up as a red parcel in the northwest corner of 219-03-01-001 on Ex. 19.
35. Without explanation, the Act also excludes the remainder (in red) of the small portion of Darlington County that is south of Interstate 95 (which at that point runs in an east-west direction). Ex. 19.
36. The excluded area and the excluded lot are no less accessible to service by the New SPD than are the Three Parcels. They are no more easily accessible to service by Palmetto Fire District than are the Three Parcels. Ex. 19.
37. None of the four lots (neither the Three Parcels nor the one excluded) is directly accessible from Interstate 95. T.R. (Brockington), p. 117, line 23 – p. 118, line 6.
38. The only fire protection service that the County has provided to any of the New SPD located in Darlington County is pursuant to an informal arrangement by which West Florence Rural and Windy Hill/Olanta have provided service to the I-95 Segment. This arrangement is because there is no interchange allowing access to Interstate 95 in Darlington County, and entry must be made from interchanges in Florence County. T.R. (Brockington), p. 119, line 8 – p. 120, line 21.
39. None of the witnesses was able to cite any situation in which provision of fire service to all areas included in the New SPD by their pre-Act providers was not prompt and

effective. Multiple witnesses, including the professional firefighters who were asked, testified that there are no facts or circumstances that would make the New SPD a faster, safer, more efficient means of serving the area included in it. See, for example, T.R. (Brockington), p. 120, line 23 – p. 121, line 18; p. 130, lines 14-23; (Spivey), p. 167, lines 19-23; (Stratton), p. 179, line 22 – p. 180, line 1; (Schofield), p. 67, lines 5-20; p. 72, line 21 – p. 73, line 4; (Sweatt), p. 158, line 8 – p. 159, line 9.

40. Multiple witnesses, including the professional firefighters who were asked, testified that there was no difference between the excluded fourth lot and the Three Parcels, and no difference between the excluded south-of-1-95 part of Darlington County and the Three Parcels, that would make it logical or sound to have them served by different service providers. T.R. (Spivey), p. 167, line 24 – p. 168, line 10; (Brockington), p. 121, line 19 – p. 122, line 2; (Schofield), p. 67, line 21 – p. 69, line 18.

41. Properties in Darlington County included in the New SPD are significantly closer to the fire houses previously serving them than to New SPD firehouses that became responsible for them upon their inclusion in the New SPD. Approximately 14 months after the Amendment brought the Darlington-Hoffmeyer Area into the New SPD, the New SPD was to acquire a new firehouse that would be closer to that area than the old Darlington County Fire District firehouse previously responsible for it. Upon the expiration of the Amendment, however, the Darlington-Hoffmeyer Area will again be served by the former firehouse. Exs. 19, 28, 29. No witness was able to provide any rationale why, based on plans, circumstances, facts, or projections, the date of July 7, 2020, would shift the relative merits of providing service to the Darlington-Hoffmeyer Area from the new New SPD firehouse back to the old Darlington County Fire District firehouse. T.R.

(Schofield), p. 73, lines 12 – 24; (Brockington), p. 131, lines 6-14; (Stratton), p. 182, lines 11 – 18.

42. With respect to the new firehouse to be acquired by the New SPD, the property for that firehouse and the construction thereof have been paid for by the County in the amount of approximately \$1,200,000. T.R. (Yokim), p. 96, lines 12-15. The Act directed the County to transfer the property and firehouse to the New SPD, and directed the New SPD to pay the County. The Amendment deleted the requirement that the New SPD make any payment.

43. Following the implementation of the Act and the Amendment, no changes have been made to emergency dispatch call routing to effectuate the Amended Act's changes in service providers. The former providers still provide service as they did previously. T.R. (Brockington), p. 133, line 2 – p. 135, line 14; p. 144, lines 4-18; (Sweatt), p. 154, line 18 – p. 158, line 8; (Stratton), p. 187, lines 13-25.


44. It is common practice for neighboring fire protection service providers to assist one another as needed. Ex. 14, p. 42, lines 5-14; T.R. (Brockington), p. 137, line 23 – p. 138, line 6. There was previously such an unwritten "gentlemen's agreement" with respect to the I-95 Segment. T.R. (Brockington), p. 119, line 8 – p. 120, line 21.

45. The Act expressly acknowledges that its allocation of service area may not be efficient and authorizes the New SPD to enter into such agreements (S.C. Code Ann. §4-23-1045 (Supp. 2015)). Such statutory authorization is unnecessary, however, as governmental fire protection service providers in South Carolina have express constitutional authority to cooperate in that manner with other such providers. S.C. Const. art. VIII, §13.

46. At the request of the New SPD, Palmetto Rural Fire District and the New SPD have entered an automatic aid agreement that essentially transfers the service responsibility specifically for the Three Parcels back to Palmetto Rural Fire District. Ex. 16; T.R. (Spivey), p. 168, line 13 – p. 170, line 17.

CONCLUSIONS AND APPLICATION OF LAW

The plaintiffs acknowledge that they must clear a high hurdle. A legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt. *University of South Carolina v. Mehlman*, 245 S.C. 180, 139 S.E.2d 771 (1964). A legislative enactment will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution. *Id.*



I. *Prohibition of Competing Governments*


The rule of *Wagner v. Smith* is that where one government is already in place and providing a service, another cannot be superimposed over it to provide the same service. It prohibits overlapping government entities having the same powers and functions.

~~We are in full accord with the well settled principle that "there cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction, and privileges." [citations omitted]~~

Wagner v. Smith, supra, 221 S.C. at 445, 71 S.E.2d at 4. *See also North Carolina Electric Membership Corp., supra*, 301 S.C. at 277, 391 S.E. 2d at 572.

In *Wagner*, the Court held that the prior government, a township created by the General Assembly through special legislation (the constitutionality of which was also challenged but undecided in the case), was necessarily subject to the prior right under the South Carolina Constitution of local populations to incorporate themselves, and that therefore the referendum to

incorporate a town in the same area pursuant to general law superseded the special-legislation township. In *North Carolina Elec. Membership Corp.*, the county attempted to create a water-and-sewer special taxing district on top of a pre-existing and pre-Home Rule special purpose district. Although the General Assembly had acted to dissolve that special purpose district, that action was void due to the recent passage of Home Rule. The creation of the new special tax district was therefore invalid under *Wagener*. A subsequent county ordinance reducing the size of the pre-existing special purpose district in order to remove the overlap was ineffective to validate the new special tax district because it did not again follow the mandatory procedures for creation of a special tax district, even though those procedures had been followed in the first enactment.

 The General Assembly itself has long been protective of this jurisprudential rule of good governance. It has, in authorizing the creation of local government mechanisms for rendering certain governmental services, repeatedly required that the new entity not serve in areas where a pre-existent entity was already serving. Of particular interest here are such prohibitions of overlapping service areas in S.C. Code Ann. §4-9-30(5)(a)(iii) (2015 Supp.) and S.C. Code Ann. § 4-19-10(b) (1986), those two provisions being contained in the two statues by which counties can provide (and by which Florence County has for a long time provided) fire protection services.

In addition, Act No. 516, 1992 S.C. Acts 3440, codified as S.C. Code Ann. §6-11-435(B) (2004), governing the modification by county councils of the boundaries of pre-Home Rule special purpose districts, is also such a prohibition; and that Act, in Section 1, explicitly states that its purpose is to ensure that the procedure for boundary modification complies with the rule as it had been recently reiterated in *North Carolina Electric Membership Corp.* Even the pre-Home Rule enabling legislation for Fort Hill Natural Gas Authority, the special purpose district

at issue in the case relied upon by the South Carolina Attorney General in opining on the validity of the two-county South Lynches Fire District (discussed below), included such a prohibition against overlapping service. See Act. No. 799, 1952 S.C. Acts 1987, §2(2).¹⁷

Under the rule of *Wagener v. Smith* concerning dueling, overlapped government functions for the same area, the questions are:

- (a) Prior to the enactment of the Act and the Amendment, were there in existence government entities with the authority to provide fire protection service in the areas placed into the New SPD by the Act and the Amendment?
- (b) If so, were those existing government entities exercising that authority by providing service in those areas?

If the answers to those two questions are 'Yes,' then *Wagener v. Smith* forbids the creation of the New SPD in the areas that the Act and the Amendment place within it. As found above, the existence and adequacy and continued feasibility and active oversight of the existing and long-standing service by Florence and Darlington Counties in their respective areas at issue in this lawsuit are clearly and convincingly established.

I therefore conclude that the creation of the New SPD by the Act and its expansion by the Amendment are each in violation of the rule of *Wagener v. Smith* and therefore void.

II. *Prohibited Special Legislation*

"In all other cases [listed exceptions not relevant here], where a general law can be made applicable, no special law shall be enacted . . ." S.C. Const. art. III, §34, ¶ IX.

With regard to special legislation, South Carolina's Supreme Court has repeatedly stated the rule under S.C. Const. art. III, §34 as follows:

¹⁷ The General Assembly's respect for the rule articulated in *Wagener* predates the *Wagener* decision itself, which was issued May 26, 1952 (*Wagener, supra*). For example, the General Assembly enacted the Ft. Hill Natural Gas Authority legislation including that prohibition on March 3, 1952. Act No. 799, §2(2), 1952 S.C. Acts 1987.

There must, however, be a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.

Duke Power Co., 284 S.C. at 90, 326 S.E.2d at 400-401 (1985) [quoting *Shillito v. City of Spartanburg*, 214 S.C. 11, 20, 51 S.E.2d 95, 98 (1948)]. In other words, the General Assembly must have a "logical basis and sound reason" for resorting to special legislation. *Gillespie v. Pickens County*, 197 S.C. 217, 14 S.E.2d 900 (1941).

Horry Cty. v. Horry Cty. Higher Educ. Comm'n, 306 S.C. 416, 419, 412 S.E.2d 421, 423 (1991).

gen While a mere allegation that there are no distinguishing features is not sufficient (*Bd. of Trustees for Fairfield Cty. Sch. Dist. v. State*, 409 S.C. 119, 126, 761 S.E.2d 241, 245 (2014)), once the challenger has "present[ed] any evidence" (*id.*), the rule is that the record must affirmatively show the required distinguishing features that justify special, local legislation.

"While it is impossible to lay down any general rule by which to determine whether a special or local statute comes within the constitutional inhibition now under discussion, there can be no doubt about the applicability of the inhibition in that class of cases, such as the present, where the record discloses no peculiar local conditions requiring special treatment."

Shillito v. City of Spartanburg, 214 S.C. 11, 21, 51 S.E.2d 95, 98 (1948), quoting *Webster v.*

Williams, 183 S.C. 368, 191 S.E. 51, 54, (1937).

At the stage where evidence has been introduced against the existence of peculiar, distinguishing conditions, no further presumption is accorded to the validity of a legislative enactment that addresses purely local issues.

"If it must be assumed, merely because the statute has been enacted, that the Legislature had information showing that there was a necessity for such legislation with reference to the particular locality, it would follow that all legislation local in form must be upheld, however general the nature and subject-matter of such legislation might be. Such a rule of construction would be contrary to the mandatory character of the constitutional provisions we are considering."

Thorne v. Seabrook, 264 S.C. 503, 510, 216 S.E.2d 177, 180 (1975), quoting *Thomas v. Macklen*, 186 S.C. 290, 298, 195 S.E. 539, 542-43 (1938). See also *Shillito, supra*, 214 S.C. at 20, 51 S.E.2d at 98 (“It cannot be maintained that because the Act is local in form, it must be presumed that there was some sufficient local necessity for its enactment, for this would totally defeat the provisions of the Constitution.”), also citing *Thomas v. Macklen, supra*.

Moreover:

“[T]his classification must be based upon differences which are either defined by the Constitution, or are natural or intrinsic, and which suggest a reason that may rationally be held to justify the diversity in the legislation. It must not be arbitrary, for the mere purpose of classification. The class must be characterized by some substantial qualities or attributes, which render such legislation necessary or appropriate for the individuals of the class.”

Elliott v. Sligh, 233 S.C. 161, 165-66, 103 S.E.2d 923, 926 (1958), quoting *Sirrine v. State*, 132 S.C. 241, 128 S.E. 172, 175 (overruled on other grounds, *McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985)).

The plaintiffs urge that several aspects of the Act and the Amendment violate the prohibition against special legislation. I will limit the discussion here to four, as they address four of the more fundamental aspects of the legislation and the concerns being addressed. Because I find that these aspects do violate the prohibition, it is unnecessary to examine additional issues on this topic.

A. Divestiture of generally-held county power

In the context of fire protection services, general law not only can be but has, in fact, been made applicable. S.C. Code Ann. §4-9-30(5) and the County Fire Protection Services Act, S.C. Code Ann. §4-19-10 *et seq.*. Yet, the Act and the Amendment, separately and together, treat Florence County and Darlington County differently from every other county, denying to those two counties the governmental power to control fire protection services for unincorporated areas

inside their boundaries (*see* S.C. Code Ann. §§4-23-1010(A) and 4-23-1015) and divesting them of their authority to tax the area of the New SPD for fire protection services (*see* S.C. Code Ann. §4-23-1040). There is no logical basis nor sound reason for treating Florence and Darlington Counties differently from the way in which the general laws of South Carolina treat every county in the State; there is no substantial distinction in this regard between Florence and Darlington Counties and every other county in the State; there is nothing distinctive about the areas carved out of the two counties by the Act; and treating the two counties differently from all other counties is both unreasonable and arbitrary. *See* Findings of Fact, in particular Nos. 1, 18, 35, 36, 39 – 41, and 43 – 45.

JM I therefore conclude that the evidence that there are no distinguishing features to support the special legislation is clear, credible, and convincing; and that the Amendment's removal of Florence and Darlington Counties' general-law power to control fire protection services for unincorporated areas inside their boundaries and their authority to tax those areas for fire protection services is therefore void.

B. The Act's relief from Act 388

S.C. Code Ann. §6-1-320 (Supp. 2015) generally prohibits property tax increases by any political subdivision – counties, school districts, special purpose districts, municipalities – for operating purposes. Since the incorporation of Act 388 into that section in 2006, there have been only two exemptions from that restriction. Under S.C. Code Ann. §6-1-320(F), adopted in 2011, special tax districts created under S.C. Code Ann. §4-9-30(5) are allowed to increase their millage up to the cap that was set for them when they were created; and under S.C. Code Ann. §6-1-320(G), adopted in 2014, certain small fire districts (not including any of the Prior Districts or the Consolidated District) are allowed to increase their millage rates by referendum. Both of

those modifications were effected by general law in the South Carolina Code. Clearly, such exemptions can be made by general law. No such exemption, prior to the Act, has been made by special legislation for a single entity.

One of the issues that the County faced in moving to consolidation was the problem presented by Act 388. Among the entities directly affected was West Florence Rural, which became the New SPD. County Council asked the General Assembly for relief in the form of a general law, but was rebuffed. Findings of Fact Nos. 7, 8, 9.

gc
The New SPD, however, by S.C. Code Ann. §6-23-1015(C) (Supp. 2015) is individually made exempt from the prohibition against millage increases in S.C. Code Ann. §6-1-320 and is permitted to increase its millage upon a favorable referendum. There is no suggestion or evidence in the record that the New SPD's need for relief from Act 388 is any greater than, more immediate than, or different from, that of any other political subdivisions, including by way of example the Consolidated District, Palmetto Rural Fire District, Darlington County Fire District, or South Lynches.

In the context of local government budget and tax-levy increase restrictions, general law not only can be but has, in fact, been made applicable. S.C. Code Ann. §6-23-1015(C) is, therefore, special legislation where a general law can be made applicable; there is no "substantial distinction" as relates to the need for exemption from Act 388 between the New SPD on the one hand and other fire protection providers and political subdivisions on the other (*Shillito v. City of Spartanburg*, 214 S.C. 11, 20, 51 S.E.2d 95, 98 (1948)); and there is thus no "logical basis and sound reason" (*Gillespie v. Pickens County*, 197 S.C. 217, 14 S.E.2d 900 (1941)) for resorting to special legislation in this situation.

West Florence Rural needed relief from Act 388. The creation of the Consolidated District afforded such relief. That West Florence did not want quite that much relief does not justify special legislation.

I therefore conclude that the evidence that there are no distinguishing features to support the special legislation is clear, credible, and convincing; and that the special relief granted by the Act to the New SPD from the constraints of Act 388 violates S.C. Const. art. III, §34, ¶ IX and is therefore void.

C. The Amendment's expansion of the New SPD

JN
The Amendment expanded the New SPD in an effort to avoid the concern, at the heart of the Home Rule issue addressed below, that three lots and a right-of-way were not sufficient to make West Florence Rural a matter of multi-county concern.

The Amendment itself was described by its sponsor in these terms: "What this does is add a neighborhood to an existing special purpose district."¹⁸ However, there is already (and has been since 1974) general law in force in South Carolina providing a mechanism whereby county governing bodies may adjust the boundaries of pre-Home Rule special purpose districts. See S.C. Code Ann. §6-11-410 (2004) *et seq.*¹⁹ This Court can find no reason, and none has been presented to it, why a general law for boundary modification could not also be made applicable to special purpose districts created after Home Rule. As such, S.C. Code Ann. §4-23-1006 (Supp. 2015), added by Section 2 of the Amendment, that enlarges the boundaries of the New SPD by

¹⁸ Representative Phillip D. Lowe, S.C. House of Representatives, March 24, 2015, transcript of proceedings. Ex. 30W.

¹⁹ Adopted by Act No. 926, S.C. 1974 Acts 2018. If a special purpose district lies in more than one county so that joint action by several counties would be required, counties have the Constitutional ability to act jointly under S.C. Const. art. VIII, §13.

adding the Darlington-Hoffmeyer Area, is special legislation where a general law can be made applicable; there is no "substantial distinction" between the New SPD and any other post-Honie Rule special purpose district as relates to the need for a mechanism for boundary modification (*Shillito v. City of Spartanburg*, 214 S.C. 11, 20, 51 S.E.2d 95, 98 (1948)); and there is thus no "logical basis and sound reason" (*Gillespie v. Pickens County*, 197 S.C. 217, 14 S.E.2d 900 (1941)) for resorting to special legislation in this situation.

I therefore conclude that the evidence that there are no distinguishing features to support the special legislation is clear, credible, and convincing; and that the Amendment's expansion of the New SPD boundaries violates S.C. Const. art. III, §34, ¶ IX and is therefore void.

gn
D. The Required Transfer of the New Hoffmeyer Road Firehouse

Florence County had, at the time of the Act's enactment, recently acquired real property on Hoffmeyer Road for the construction of a fire stationhouse that County Council had determined to be necessary to serve the fire protection needs of the Consolidated District. That protection would cover areas of Florence County beyond merely that portion now purportedly included in the New SPD. Findings of Fact No. 42. County Council had made that decision and taken that action pursuant to its powers under general law "to acquire real property" [S.C. Code Ann. §4-9-30(2)], "to select sites or places within the service areas where the fire-fighting equipment must be kept" [S.C. Code Ann. §4-19-10(d)], "to be responsible for the purchase, acquisition, upkeep, maintenance, and repairs of all fire-fighting equipment and fire stations and the sites of the stations" [S.C. Code Ann. §4-19-10(g)], and "to construct the necessary buildings to house the equipment authorized by this chapter, and all fire stations necessary to provide an adequate fire protection system" [S.C. Code Ann. §4-19-10(i)]. The Act and the Amendment have stripped Florence County Council (and no other county) of those powers with regard to the

Hoffmeyer Road property; and they have required the taxpayers of Florence County to make a donation for the provision of services to a limited area not only of Florence County but also of Darlington County.

The disposition of facilities, equipment, properties, and other assets when an area previously receiving service from one provider becomes part of the service area of another provider can be dealt with by general legislation, and in fact has been dealt with by legislation in the context of annexation. S.C. Code Ann. §5-3-312 (2004). There is no reason why the same could not be done with respect to such disposition when an area is being moved into a different special purpose or tax district (assuming, of course, that the movement itself is lawful).

OCN
I therefore conclude that the evidence that there are no distinguishing features to support the special legislation is clear, credible, and convincing; and that the Amendment's removal of Florence County's general law power to control the acquisition, use, and disposition of fire protection assets is therefore void.

III. Home Rule Prohibition of Laws for Specific County

"No laws for a specific county shall be enacted and no county shall be exempted from the general laws." S.C. Const. art. VIII, §7.

In the particular context of the creation of special purpose districts, Home Rule, S.C. Const. art. VIII, §7, imposes an additional roadblock to such legislation after March 7, 1973. Except in very rare circumstances, the creation of new special purpose districts after that date is forbidden. Barely a year after the adoption of the Home Rule amendments, South Carolina's Supreme Court, in considering a challenge to a post-Home Rule statute creating a new special purpose district, wrote:

If, despite the prohibition of laws for a specific county, the General Assembly may continue to carve a given county into special purpose districts, a frightful conflict would exist between the power of the General Assembly and the power of

the county government. . . . Such a result could well be chaotic and home rule intended by Section 7 would be frustrated in whole or in part since the result could well be that the governing body in each county contemplated by the draftsmen of Section 7 would have little or no power left. . . . It is clear that Section 7 sought to put an end to this practice, at least insofar as it relates to special purpose districts within a given county.

Knight v. Salisbury, 262 S.C. 565, 572-73, 206 S.E.2d 875, 878 (1974). See also *Kleckley v. Pulliam*, 265 S.C. 177, 217 S.E.2d 217 (1975); *Torgerson v. Craver*, 267 S.C. 558, 230 S.E.2d 228 (1976); *Van Fore v. Cooke*, 273 S.C. 136, 255 S.E.2d 339 (1979); *Cooper River Park & Playground Comm. v. City of North Charleston*, 273 S.C. 639, 259 S.E.2d 107 (1979).

JM
(Pre-Home Rule special purpose districts continued to exist after Home Rule: "The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law." S.C. Const. art. VIII, §1. However, in addition to the creation of new ones being forbidden, legislation modifying the structure, territory, or powers of existing, pre-Home Rule special purpose districts was also forbidden. *Spartanburg Sanitary Sewer District v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984); *Richardson v. McCutchen*, 278 S.C. 117, 292 S.E.2d 787 (1982).

(The only exception to the prohibition of General Assembly action with respect to special purpose districts is where the function to be served is: not one set aside for counties; not by its nature peculiar to a single county or counties in its scope or effect; and not amenable to local government control. See *Kleckley v. Pulliam*, 265 S.C. 177, 217 S.E.2d 217 (1975) allowing legislation affecting the pre-existing, two-county Richland-Lexington Airport District due to its regional impact; but cf. *Torgerson v. Craver*, 267 S.C. 558, 230 S.E.2d 228 (1976), repudiating legislation affecting the pre-existing, single-county Charleston County Airport District, despite its regional impact, because it could be dealt with adequately by a local body). See also *Fort Hill Nat. Gas Auth. v. City of Easley*, 310 S.C. 346, 426 S.E.2d 787 (1993) (discussed below), stating

in *dictum* that legislation changing a statutory provision related to a pre-existing multi-municipality gas transmission district covering a multi-county area would be permissible).

The narrow question presented here – whether the General Assembly should be able, if dissatisfied with the mechanism for providing fire protection service by local government in a particular area, to change the governmental mechanism by which that service is provided – replays in miniature one of the primary debates during the implementation of Home Rule. The question then was whether the choice of the form of county government for each county should be decided locally or by the General Assembly. Among the (ultimately prevailing) arguments made in favor of local control over the form of local government were these.

! gcm
I don't think the legislature should have such dramatic power to change the form of government. I think it would be a sword over the head of the county councils and is an unusual amount of power which we should not possess. [Senator James B. Stephen, Spartanburg]

To allow a legislator to hold over a county administrator or a county council the threat of a change of government if his wishes are not carried out is to create a very undesirable situation It could easily lead to bossism and corruption. [Barbara Moxon, President, South Carolina League of Women Voters: testimony at legislative hearing]

James Lowell Underwood, *The Constitution of South Carolina, Volume II: The Journey Toward Local Self Government* (University of South Carolina Press, 1989), pp. 155-156. Those arguments continue to have substantial weight and merit in the present situation.

The answer reached by the General Assembly to the general question of who decides the form of county government was, in recognition of its limitations under Home Rule, that such control should be locally vested and that the General Assembly would not have that authority. The General Assembly has also, again in recognition of its limitations under Home Rule (as

enforced by our Supreme Court in the *Knight*, *Kleckley*, *Spartanburg*, and *Richardson* cases), acknowledged by general law that fire protection is a local concern to be locally governed.²⁰

The general law Home Rule statute for counties, at S.C. Code Ann. §4-9-30(5) recognizes in county government the power to provide services, specifically including “public safety, including police and fire protection” In addition, the general law Fire Protection Services Act, S.C. Code Ann. §4-19-10 (1986) *et seq.*, specifically at §4-19-10(a) and (b) confers on county governing bodies the power to “establish, operate, and maintain a system of fire protection” and to “designate . . . the areas of the county where fire protection service may be furnished by the county under the provisions of this chapter . . .”²¹. The Fire Protection Services Act, originally enacted shortly prior to the Home Rule implementing statutes as Act. No. 1167, 1974 S.C. Laws 2681, was later held to have been impliedly repealed by the Home Rule statutes in *City of Myrtle Beach v. Richardson*, 280 S.C. 167, 311 S.E.2d 922 (1984). The General Assembly immediately re-enacted it in full as Act No. 408, 1984 S.C. Laws 1818. Section 1 of that re-enactment stated that because many areas “do not have adequate fire protection services,” the authority to provide such fire protection services “must be made available to counties in their efforts to provide this essential service,” thus emphasizing that fire protection responsibility has been, by general law, devolved locally to counties.

As held in *Kleckley, supra*, S.C. Const. art. VIII, §7 prohibits a special law “which relates to those powers, duties, functions, and responsibilities set aside for counties.” 265 S.C. at 183, 217 S.E.2d 220.

²⁰ See S.C.A.G. Op. June 16, 1983, to Peter D. Hyman; 1983 WL 181917, discussed below.

²¹ Those two statutes, S.C. Code Ann. §4-9-30(5) and S.C. Code Ann. §4-19-10 (1986) *et seq.*, are, as noted above, the statutes by which Florence County and Darlington County had been providing fire services to the areas of the New SPD for many years prior to the Act and the Amendment.

The defendants attempt two arguments to remove the New SPD from the constitutional restriction enforced by *Knight v. Salisbury, supra*.

The defendants first argue that the rule of *Knight v. Salisbury* has been overturned and that the 1973 Constitutional Home Rule amendment (S.C. Const. art. VIII) no longer impedes the General Assembly's creation of special purpose districts, citing *Evins v. Richland County Historic Preservation Commission*, 341 S.C. 15, 532 S.E.2d 876 (2000). This argument fundamentally misconstrues the subject matter and, hence, the holding of that case. *Evins* dealt with an aspect of Home Rule that is not at issue in this case. S.C. Const. art. VIII, §7, at issue in this case, concerns the General Assembly's authority (or, more accurately, lack of authority) to pass special legislation affecting a particular county. *Evins*, on the other hand, construed S.C. Const. art. VIII, §17, which concerns the rule of construction for powers of local governments.

Prior to the 1973 Home Rule amendment to the South Carolina Constitution, the rule in South Carolina and across much of the country with regard to local governments had been that a local government could exercise only the authority specifically granted to it by the state legislature. This restrictive reading of local government power is known as Dillon's Rule.²²

The adoption of new S.C. Const. art. VIII in 1973, however, changed that. Not only did S.C. Const. art. VIII, §7 withdraw local government from the General Assembly; S.C. Const. art. VIII, §17 further proclaimed:

The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities

²² For a brief background of Dillon's Rule, see *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993). For a brief description of pre-Home Rule history and the adoption of the Home Rule amendment and its impact, see *Hosp. Ass'n of S.C., Inc. v. Cty. of Charleston*, 320 S.C. 219, 224-27, 464 S.E.2d 113, 117-18 (1995). The most comprehensive treatment is in James Lowell Underwood, *The Constitution of South Carolina, Volume II: The Journey Toward Local Self Government* (University of South Carolina Press, 1989).

granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

In 1993, in *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 429 S.E.2d 802 (1993), the South Carolina Supreme Court considered the imposition of a real estate transfer tax by the Town of Hilton Head Island. No statute had specifically authorized such an imposition; but no statute had prohibited it, either. The Court ruled that the general powers granted to a municipality such as the Town must, under S.C. Const. art. VIII, §17 be read to include that power.²³

GJC N
Subsequently, in *D.W. Flowe & Sons Inc. v. Christopher Constr. Co.*, 326 S.C. 17, 482 S.E.2d 558 (1997), the Supreme Court, in *dictum*, held that Dillon's Rule had also been abrogated for special purpose districts.²⁴ In *Evins*, however, the Supreme Court reversed that *dictum* and reiterated that a special purpose district is, as the name implies, a limited purpose entity that can do only what the General Assembly has allowed. The Court in *Evins* limited S.C. Const. art. VIII, §17, to general purpose local governments, stating "Home Rule applies only to counties and municipalities, not special purpose districts." 341 S.C. at 19, 532 S.E.2d at 878. "Home Rule," in that quoted sentence, refers to the district's powers, not the General Assembly's lack of power to create new special purpose districts post-1973. The meaning of the reference is made clear in the footnote to that statement:

²³ The General Assembly subsequently imposed, by general legislation, a specific prohibition against the imposition of real estate transfer fees by local governments. Act. No. 497 (Part II, §132), 1994 S.C. Acts 5819, codified at S.C. Code Ann. §6-1-70 (2004).

²⁴ In a challenge to a special purpose district's procurement ordinance, the Court held that general legislation had empowered all special purpose districts and other local governments to adopt such ordinances. That holding was sufficient to dispose of the challenge. The Court also, however, in a footnote, rejected the challengers' reliance on Dillon's Rule, citing *Williams v. Town of Hilton Head Island*, *supra*.

There is dicta in *D.W. Flowe & Sons v. Christopher Constr. Co.*, 326 S.C. 17, 482 S.E.2d 558 (1997), which applies Home Rule to special purpose districts. To the extent that *D.W. Flowe* can be read to apply Home Rule to special purpose districts, it is overruled.

*Id.*²⁵ *D. W. Flowe* had dealt with the special purpose district's own power under S.C. Const. art. VIII, §17, not the General Assembly's power under S.C. Const. art. VIII, §7.

In the present case however, the issue is not what a special purpose district is allowed to do or even what a county is allowed to do. Rather it is what is the General Assembly allowed to do under the home rule provision of S.C. Const. art. VIII, §7, the special legislation prohibition of S.C. Const. art. III, §34, and the *Wagner v. Smith* principle. This Court cannot agree that *Knight v. Salisbury* and its multiple progeny were overruled by the unrelated *Evins* decision, without so much as a mention.

The defendants' second argument against *Knight v. Salisbury* is that the New SPD is legally on the same footing as South Lynches, the post-Home Rule special purpose fire district that includes portions of southern Florence County and northern Williamsburg County. The defendants point to an Attorney General's opinion on the constitutionality of South Lynches (S.C.A.G. Op. Apr. 15, 2011 to Yancy McGill; 2011 WL 1740746) to support their argument that extension of the New SPD into Darlington County, regardless of how small the intrusion, is sufficient to exempt the New SPD from the Home Rule and special legislation prohibitions.

An earlier opinion (S.C.A.G. Op. June 16, 1983, to Peter D. Hyman; 1983 WL 181917), issued while the creation of South Lynches was under consideration by the General Assembly, had concluded that South Lynches was "most probably unconstitutional," in reliance on *Kleckley*

²⁵ A contrary reading – that the General Assembly remains free, on a case-by-case, locale-by-locale basis to remove areas from all or part of the jurisdiction and service regime of particular municipalities or counties – would be in direct opposition to the art. VIII, §17 rule of *Williams v. Town of Hilton Head Island*, which *Evins* maintains, that municipal and county powers are broad and are to be liberally construed.

v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975). That earlier opinion recognized that “fire protection is one of the powers, duties, functions, and responsibilities set aside for counties” and was unaware that South Lynches bore any other hallmarks of regional concern. Notwithstanding that opinion, the General Assembly proceeded to create South Lynches by the passage of Act No. 149, 1983 S.C. Acts 416.

In the 2011 opinion, the Attorney General described the office’s view of what is necessary in order for a post-Home Rule creation of a new special purpose district to be valid. It described that view as having developed to “require[e] the purpose of the special purpose district to be regional in nature and not just simply crossing county boundaries in order to pass constitutional muster under Article VIII section 7.” S.C.A.G. Op. Apr. 15, 2011, *supra*. That 2011 opinion quoted a 1984 opinion (S.C.A.G. Op. January 18, 1984, to Joseph F. Anderson, Jr.; 1984 WL 249809) that reasoned “the emphasis should be on the purpose of the district and not on geography.” The 2011 opinion reversed the Office’s position on South Lynches, not by application of that understanding, however, but on a very broadly read *dictum* in *Fort Hill Nat. Gas Auth. v. City of Easley*, 310 S.C. 346, 426 S.E.2d 787 (1993). In that case, the Court interpreted Section 6 of the Authority’s enabling act (Act No. 799, 1952 S.C. Acts 1987) as requiring the Authority to treat certain funds in a certain way. The Court went on to state, in *dictum*:

If the Authority feels that section 6, requiring divestment of revenues, is unwise or substantially interferes with its operation of the system, it’s proper recourse is to seek an amendment from the legislature. *Manufacturers Finance Acceptance Corp. v. Bramlett*, 157 S.C. 419, 154 S.E. 410 (1930) (the power to change a statute rests with the lawmaking body). In that regard, we would note that any amendment to the statute would not violate Article VIII, Section 7 of the South Carolina Constitution, as the Authority extends beyond the confines one county. *Kleckley v. Pulliam*, 265 S.C. 177, 217 S.E.2d 217 (1975).

Fort Hill Natural Gas Authority was, however, an already-existing pre-Home Rule special purpose district covering a fifteen-mile wide swath through Anderson, Pickens, and Oconee Counties and including six municipalities in those counties. It would, under *Manufacturers Finance* cited in *Fort Hill Nat. Gas Auth.*, *supra*, clearly be outside the power of any county or group of counties to amend the prior statute with respect to the permissible disposition of funds.²⁶ To read a shorthand statement of the continuing power of the General Assembly to make necessary changes to an existing, pre-Home Rule special purpose district that has a substantial geographic presence and operating activity in three counties and multiple unit municipalities as authorizing the creation of new, post-Home Rule special purpose districts for a basic county function where there is a “little, tiny piece” in another county is a bridge too far.²⁷

Thus, under Home Rule, the questions are:

- (a) Is the function of the New SPD one that has been committed to local government?

²⁶ That prior statute, Act No. 799, 1952 S.C. Acts 1897, creating the Fort Hill Natural Gas Authority, was constitutional at the time of its enactment well before Home Rule; and its validity and the Authority’s existence were unaffected by Home Rule. See S.C. Const. art. VIII, §1, a part of the Home Rule amendment: “The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law.”

²⁷ My ruling here with respect to the Attorney General’s reading of *Fort Hill Nat. Gas Auth.*, *supra*, in his 2011 opinion supporting the constitutional validity of South Lynches should not be read to impugn the validity of that District. I concur with the Attorney General’s initial analysis in that opinion, that the appropriate question is not geographic – that is, whether a special purpose district “simply crosses county boundaries in order to pass constitutional muster” – but is instead whether the purpose of the district is regional in nature and beyond the power of local government to effectuate. Testimony at trial in the present matter from Chief Brockington, former 28-year chief of South Lynches, amply demonstrates not only that the area included in South Lynches in both of its two constituent counties is substantially more than *de minimis* and vastly larger than the “little, tiny piece of Darlington County” included in the New SPD (phrase from legislative history of the New SPD, quoted above in this Order), but also amply demonstrates that there were significant reasons of regional importance justifying the use of a special purpose district solution, including historic fire service coverage based on local telephone exchange call-routing. T.R. (Brockington) p. 104, line 12 – p. 108, line 19; Ex. 17.

- (b) Is the New SPD legitimately a multi-county district?
- (c) Is the concern addressed by the legislation regional in scope?

If the answer to any of those three questions is 'No,' then the Act and the Amendment violate S.C. Const. art. VIII, §7.

A. Fire Protection as a Local Function

As noted above, the provision of fire protection services has clearly been devolved upon local government. See S.C. Code Ann. §4-9-30(5) and the Fire Protection Services Act, S.C. Code Ann. §4-19-10 (1986) *et seq* (the latter of which was immediately re-enacted after its earlier incarnation was declared to have been impliedly repealed by the enactment of the former).²⁸ Both of those statutes were passed after the Home Rule amendments. But even before the empowerment of counties by Home Rule, the General Assembly had determined by general law that localities should have the ability to organize to provide their own fire protection service. See S.C. Code Ann. §6-11-10 (2004) *et seq*. Originally enacted in 1934 as Act No. 734, 1934 S.C. Acts 1292, that statute authorizes "portions of counties" (including areas that covered parts of more than one county) to constitute themselves into fire protection districts and was, pursuant to Section 9 of that Act No. 734, to be "liberally construed" as it was "necessary for the public health, safety, and welfare." It was under that general-law statute (then codified as §59-601, 1962 S.C. Code) that Palmetto Rural Fire District was formed in 1976. Ex. 13.

With regard to West Florence Rural, the Three Parcels, and the Darlington-Hoffmeyer Area, the uncontroverted testimony is that fire protection service by the counties to those areas under the general law authority described above was prompt and effective throughout those areas.

²⁸ Each of the State's 46 counties has the power to tax for and provide "public safety, including police and fire protection" (S.C. Code Ann. §4-9-30(5)), and to "establish, operate, and maintain a system of fire protection" and "designate . . . the areas of the county where fire protection service may be furnished by the county." S.C. Code Ann. §4-19-10(a) and (b).

Finding of Fact No. 39. The Act and the Amendment have divested Florence and Darlington Counties of all of the described general-law powers with regard to those areas.

Moreover, the sunset provision contained within the Amendment recognizes, at least with regard to the Darlington-Hoffmeyer Area, that the New SPD is unnecessary and that existing general legislation can be and in fact is not only applicable but working and fully adequate, as that Area will revert to that general legislation in five years' time.

JM
I therefore conclude that, based upon clear and convincing evidence, that fire protection services have been for a long time acknowledged to be matters of local concern and, since Home Rule, to have been set aside for counties; and that Florence and Darlington Counties have been actively and responsibly exercising their authority in that field. I further find that the Act and the Amendment strip Florence County and, for a much smaller area, Darlington County, alone among the 46 counties, of their fire protection authority – not in areas that were not served or only inadequately served, but in areas where service is active, prompt, and effective.

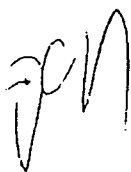
B. Multi-County Status

The Act's inclusion into the New SPD of the Three Parcels and the I-95 Segment – both already being fully served, with the I-95 Segment service demonstrating the ability of the neighboring service providers to act cooperatively – is *de minimis*. Were putting such a “little, tiny piece” of another county into a new special purpose district sufficient sufficient to evade a fundamental aspect of our governmental structure and negate Home Rule, then there is no viable principle remaining in S.C. Const. art. VIII, §7; and Home Rule will be reduced to just a 40-year experiment. Any portion of a county could be constituted as a special purpose district and removed from the general-law authority and pre-existing services of that county's government, merely by the subterfuge of a “shoe-string” connection along a roadway that touches a minuscule

portion of another county (even without actual direct access from that road to the connected parcels) and the inclusion of that minuscule portion (at least until the new district's commission exercises its power, set forth in the Act, to hand off the minuscule portion to its former service-provider). Where, as here, there is no evidence in the record suggesting that the Three Parcels or the later-added Darlington-Hoffmeyer Area were naturally constituent pieces of the New SPD; and where, as here, there is substantial, clear, and convincing evidence that they were not such naturally constituent pieces; and where the Act itself recognized that the Darlington County pieces would need to continue receiving service from their previous, Darlington County-based service provider; and where, as here, those areas (like the areas in Florence County) were already receiving effective fire protection service from existing local government providers under local government supervision, there is no logical basis and no sound reason for considering that inclusion sufficient to establish a multi-county district, in any meaningful sense of that term.

This Court has concluded that the Amendment's temporary addition of the Darlington-Hoffmeyer Area to the New SPD is still not sufficient for Home Rule purposes. However, even if it were, the Amended Act would still fail. Where an enactment (the original Act) is invalid in whole because it violates controlling constitutional or statute law, it cannot be cured by an amendment that simply corrects the violative aspects. Instead, such an enactment would have to be re-enacted *de novo*, and the validity of the new re-enactment would then have to be judged on its own. *North Carolina Electric Membership Corp., supra*, 301 S.C. at 276 - 77, 391 S.E. 2d at 572. Because the Amendment did not restate the entire Act, but only a few sub-sections of it, vital sections of the Amended Act are still invalid. The few sections or sub-sections dealt with by the Amendment are not, standing by themselves, comprehensible or coherent.

Moreover, the addition into the New SPD of the Three Parcels, the I-95 Segment, and the Darlington-Hoffmeyer Area – all of which were encompassed by the legislator’s description of a “a little, tiny piece,” used during consideration of the Amendment – is not only *de minimis*, it is also only nominal, illusory in fact. The Act, after basing itself on a finding that the New SPD will “provide fire service to all areas of the district on the most economically feasible basis possible” (S.C. Code Ann. §4-23-1000), abandons that finding and delegates to the New SPD the ability to second-guess that judgment by allowing it to mix-and-match service areas with other fire protection service providers “if this is considered to be a more cost-effective solution to the provision of fire protection services in that particular location.” S.C. Code Ann. §4-23-1045.

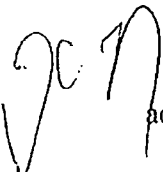
 I therefore conclude, based upon clear and convincing evidence, that the purported West Florence Fire District is, in fact, a single county special purpose district, the nominal inclusion of the Three Parcels, the I-95 Segment, and the Darlington-Hoffmeyer Area, which will continue to receive or later revert to receiving service as before, notwithstanding.

C. Regional vs. Local Concern

As shown above, Finding of Fact No. 19 and footnote 15, the concerns prompting the Act and the Amendment were tax rates in, use of revenue from, and the control structure for West Florence Rural, an entity created by Florence County Council in 2007 (Ex. 6) and located entirely within Florence County. Those were, in fact the same concerns with which Florence County Council was itself simultaneously grappling. Findings of Fact Nos. 7 – 9. The legislative creation of a special purpose district was seen not as a solution to the concerns but as a solution to the impediment that Home Rule posed to legislative action. Finding of Fact No. 21. The legislative sponsors of the Act and the Amendment described those enactments as a “local issue,” “a West Florence Rural Fire District bill,” and “a local Florence County fire district bill.”

Findings of Fact Nos. 23, 26, 27. The Act was introduced just as Florence County Council was finishing the process of consolidation, and it was rushed through the General Assembly without committee consideration and without amendment and with very substantial problems of interpretation with regard to exactly what area it covered. Finding of Fact Nos. 23, 29, 30. Areas of Darlington County that were immediately contiguous to the Three Parcels and that stood on the same footing with regard to fire protection needs and access were excluded from the New SPD without explanation and upon no logical or sound reason. Findings of Fact Nos. 34-36, 40. The Amendment was introduced after defects in the Act were alleged in this lawsuit, and enlarged the Darlington County portion of the New SPD by the addition of new Darlington County area that is neither contiguous nor related by service logic to the original Darlington County area. Finding of Fact No. 25; Ex. 2. The Darlington County areas included in both the Act and the Amendment were already being served on a prompt and efficient basis; and there were no facts or circumstances to support a conclusion that the New SPD would provide a faster, safer, more efficient means of serving the areas in it than would the county-provided arrangements. Findings of Fact Nos. 39, 41. Moreover, as is clear from the inclusion of S.C. Code Ann. §4-23-1045 (Supp. 2015), the immediate request from the New SPD to Palmetto Rural Fire District for an automatic aid agreement with respect to the Three Parcels, and the lack of any post-Act or post-Amendment change to fire protection and emergency response protocols, there was no need to be addressed in the Darlington County portions of the New SPD. Finding of Facts Nos. 43-46. If there were, utilization of existing authority for automatic aid and mutual aid agreements under S.C. Const. art. VIII, §13 was sufficient to transfer or cooperate with respect to neighboring service areas (just as the Act itself recognizes in S.C. Code Ann. §4-23-1045 (Supp. 2015)).

A response by elected officials to the concerns of their constituents is natural and commendable; but it must be within the bounds of the law. Constituents must take their concerns to those elected officials charged by law with responsibility for the subject matter of their concerns. The fact that some constituents will be displeased by the decision made at the constitutionally and statutorily appropriate level of government – and there will inevitably be some thus displeased – does not confer on any other level of government a power to override the decision of the duly-constituted and responsible authority. Under the Home Rule provision of our Constitution and the implementing statutes, the appropriate level for addressing local issues of fire protection service is the local (county or city) government, not the General Assembly.

 I therefore conclude, based upon clear and convincing evidence, that the concerns being addressed by the Act and the Amendment were internal to West Florence Rural and Florence County, relating to subject matter that is set aside under Home Rule for county government (fire protection and the financing thereof).

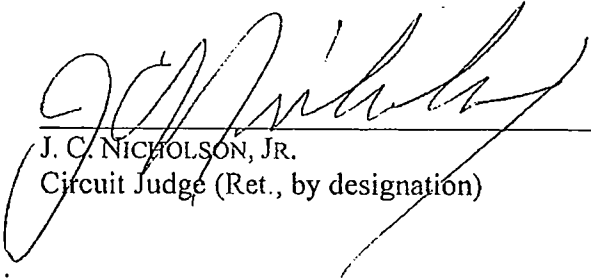
ORDER

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS AND APPLICATION OF LAW, it is hereby ordered and determined that Act No. 183, 2014 S.C. Acts ___ and Act No. 89, 2015 S.C. Acts ___, which purport to have created and subsequently modified the West Florence Fire District, are invalid and of no further force and effect as being in violation of the limitations imposed on the power of the South Carolina General Assembly by S.C. Const. art. III, §34 and S.C. Const. art. VIII, §7 and in violation of the rule of *Wagener v. Smith*, 221 S.C. 438, 71 S.E. 1 (1952), as applied and in force in this State; and the West Florence Fire District is therefore declared to be without legal existence.

For considerations of the public health, safety, and welfare of those persons and properties within the area of the purported West Florence Fire District, it is hereby ordered that,

not later than 30 days from the date of this ORDER, counsel for the parties shall present to this Court a joint plan, approved by the parties, for the prompt and orderly transition of operations and services from the West Florence Fire District to Florence County and for the prompt and orderly transfer of all assets and funds related thereto. If the parties cannot agree to all terms of a plan, the submission must identify those areas of agreement and disagreement. Until this Court approves that plan, the present officers of the West Florence Fire District are required to continue providing fire protection and emergency response services as agents of the County.

AND IT IS SO ORDERED.



J. C. NICHOLSON, JR.
Circuit Judge (Ret., by designation)

SAN, 17 ²⁰¹⁷
CHARLES YCM, ²⁰¹⁶ South Carolina

CERTIFIED: A TRUE COPY
Van Kato O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2017 JAN 23 PM 4:13
CLERK OF COURT
FLORENCE COUNTY, SC