THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

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

Case No. 2014-CP-21-2626
Appellate Case No. 2017-000693

County of Florence and the 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, the West Florence Fire District Commission, David Brown, Dustin Fails, Linda Lang Gipco, Richard Hewitt, and C. Allen Matthews, each in his or her official capacity as a member of the West Florence Fire District are . . . . . Appellants.

INITIAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

ARGUMENT 2

I. INCORPORATION OF ORDER 2

II. SUMMARY 3

III. STANDARD OF REVIEW 7

IV. FACTS 9

V. THE CIRCUIT COURT CORRECTLY CONCLUDED THAT THE ACT AND THE AMENDMENT VIOLATE THREE INDEPENDENT CONSTITUTIONAL AND PRECEDENTIAL REQUIREMENTS AND THEREFORE THEY AND THE NEW SPD ARE INVALID 17

A. *Wagener v. Smith and N.C. Electric Membership Corp. v. White forbid the imposition of a new governmental entity (a legislatively-created special purpose district) on top of an existing governmental entity (a county), where every service to be provided by the new entity was already being lawfully and sufficiently provided by the existing entity.* 17

B. *The record demonstrates no "substantial distinction" with respect to fire-protection services between the areas encompassed by the challenged legislation and other non-included areas, sufficient to form a "'logical basis and sound reason' for resorting to special legislation" contrary to S.C. Const. art. III, § 34.* 21

C. *Home Rule -- S.C. Const. art. VIII, §7 – precludes the creation of a special purpose district located effectively within a single county where there were no extraordinary regional concerns beyond the competence of the existing county governments under existing general law.* 28

CONCLUSION 34

TABLE OF AUTHORITIES

CASES

Bd. of Trustees for Fairfield Cty. Sch. Dist. v. State, 409 S.C. 119, 761 S.E.2d 241 (2014) 21

Curtis v. State, 345 S.C. 557, 549 S.E.2d 591 (2001) 8

Dreher v. S.C. Dep't of Health & Envtl. Control, 412 S.C. 244, 772 S.E.2d 505 (2015) .. 8

Elliott v. Sligh, 233 S.C. 161, 103 S.E.2d 923 (1958) 22, 24

Fort Hill Nat. Gas Auth. v. City of Easley, 310 S.C. 346, 426 S.E.2d 787 (1993) 31

Gillespie v. Pickens County, 197 S.C. 217, 14 S.E.2d 900 (1941) 21, 24

Hagley Homeowners Ass'n, Inc. v. Hagley Water, Sewer, and Fire Authority, 326 S.C. 67, 485 S.E.2d 92 (1997) 27

Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) 8

Horry Cty. v. Horry Cty. Higher Educ. Comm'n, 306 S.C. 416, 412 S.E.2d 421 (1991) 21

Kalber v. Redfearn, 215 S.C. 224, 54 S.E.2d 791 (1949) 29

Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975) 28, 31, 32

Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974) 4, 9, 28, 32

Manufacturers Finance Acceptance Corp. v. Bramlett, 157 S.C. 419, 154 S.E. 410 (1930) 31

McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985) 22

North Carolina Electric Corp. v. White, 301 S.C.274, 391 S.E.2d 571 (1990) 5, 7, 9

Sirrine v. State, 132 S.C. 241, 128 S.E. 172 22

Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) 28

State v. Ramsey, 409 S.C. 206, 762 S.E.2d 15 (2014) 30

Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1938) 22

Thorne v. Seabrook, 264 S.C. 503, 216 S.E.2d 177 (1975) 22

Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976) 32

Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976) 18

University of South Carolina v. Mehlman, 245 S.C. 180, 139 S.E.2d 771 (1964) 8

STATUTES

S.C. Code Ann. §4-9-25 9

S.C. Code Ann. §4-9-30(2) 26

S.C. Code Ann. §4-9-30(2) 26
S.C. Code Ann. §4-9-30(5) 4, 5, 10
S.C. Code Ann. §4-9-30(5)(a) 9
S.C. Code Ann. §4-11-290 19
S.C. Code Ann. §4-19-10 ..... 4, 5, 9, 10, 11, 26
S.C. Code Ann. §4-19-10(g) 26
S.C. Code Ann. §4-19-10(i) 26
S.C. Code Ann. §4-23-1000 *et seq.* 3
S.C. Code Ann. §4-23-1045 16
S.C. Code Ann. §5-3-312 (2004) 26
S.C. Code Ann. §6-1-320 10
S.C. Code Ann. §6-11-410 19

S.C. ACTS

Act No. 89, 2015 S.C. Acts ___ (the Amendment) ..... *passim*
Act No. 183, 2014 S.C. ____ (the Act) ..... *passim*
Act No. 259, 1973 S.C. Acts 302 5
Act No. 388, 2006 S.C. Acts 3133 ..... 10, 26, 27
Act No. 643, 1973 S.C. Acts 1236 4
Act No. 799, 1952 S.C. Acts 1987 31
Act No. 1817, 1972 S.C. Acts 3613 ..... 14, 19

CONSTITUTIONAL PROVISIONS

S.C. Const. art. III, §34 ..... 7, 9, 21, 26, 27
S.C. Const. art. V, §1 30
S.C. Const. art. VIII, § 10 32
S.C. Const. art. VIII, § 7 ..... 7, 32
S.C. Const. art. VIII, §13 16
S.C. Const. art. X, § 6 5

STATEMENT OF ISSUES ON APPEAL

1. Was the Circuit Court correct to follow *Wagener v. Smith* and *N.C. Electric Membership Corp. v. White* in disallowing the imposition of a new governmental entity (a legislatively-created special purpose district) on top of an existing governmental entity (a county), where every service to be provided by the new entity was already being provided by the existing entity?

2. Was the Circuit Court correct in finding that the record did not demonstrate a "substantial distinction" with respect to fire-protection services between the areas encompassed by the challenged legislation and other non-included areas, sufficient to form a "'logical basis and sound reason' for resorting to special legislation" contrary to S.C. Const. art. III, § 34?

3. Was the Circuit Court correct in enforcing S.C. Const. art. VIII (Home Rule) to invalidate the creation of a special purpose district located effectively within a single county, where there were no extraordinary regional concerns beyond the competence of the existing county governments under existing general law?

STATEMENT OF THE CASE[1]

The Statement of the Case as set forth in the BRIEF OF APPELLANTS is generally accurate, with the following exceptions.

- Act No. 89, 2015 S.C. Acts ___ (the "**Amendment**") (Rec. __ (Tr.Ex. 2)), did more than just "further define the coverage" of the new special purpose fire district that Act No. 183, 2014 S.C. Acts ___ (the "**Act**") (Rec. __ (Tr.Ex. 1)), purported to create and "add a five-year sunset provision." [See BRIEF OF APPELLANTS, "Statement of the Case," fifth paragraph.] Among other things, it removed the new district's obligation to pay Florence County for the acquisition cost of certain real estate, previously required by the Act.
- The Amendment did not "add a five-year sunset provision on the fire district." [See BRIEF OF APPELLANTS, "Statement of the Case," fifth paragraph; *emphasis added.*] Rather, it imposed a five-year sunset on the Amendment, so that after five years, the Act as originally enacted would come back into effect. Rec. __ (Tr.Ex. 2, § 6).
- After trial, the record was supplemented by Appellants' addition of the post-trial deposition transcript and exhibits of a witness who was not available for the trial.

ARGUMENT

I. INCORPORATION OF ORDER

The January 17, 2017, Order of the Circuit Court (Rec., p. ___) contains a thorough explication of the facts and the law relevant to this case , establishing that the Act and the

[1] References to the testimony of witnesses at trial are by page and line number to the Trial Transcript, cited as "Tr.Ts. [*witness last name*]." References to exhibits are to the exhibit number as "Tr.Ex. [*No.*]" and may include page and line numbers within the exhibit.

Amendment are invalid under the South Carolina Constitution and the precedents of this Court. It anticipates and addresses the arguments offered by the Appellants in their Brief. Respondents therefore incorporate the Order in full in this Brief. Respondents offer the following in further support of the conclusions and reasons of the Circuit Court, addressing primarily the deficiencies of the challenges that Appellants assert.

II. SUMMARY

The Act and the Amendment (together, the "**Amended Act**"), codified as S.C. Code Ann. § 4-23-1000 *et seq.* (Supp. 2015), purport to create a new special purpose district for fire protection services, the West Florence Fire District (the "**New SPD**"). The New SPD includes a large area in Florence County (sometimes herein, the "**County**") and a negligible (and largely temporary) area in Darlington County.

The Darlington County area included in the New SPD by the Act consists of the right-of-way along the approximately one-mile segment of Interstate 95 that cuts through Darlington County (the "**I-95 Segment**") and three (3) lots located in the portion of Darlington County south of the I-95 Segment (the "**Three Parcels**").[2] The remainder of the portion of Darlington County south of the I-95 Segment was not included in the New SPD – not even a fourth lot nestled among the included Three Parcels.[3]

The Amendment replaces the Act's reference to non-existent boundaries for the Florence County area and purports, among other revisions, to add to the New SPD an additional area in Darlington County that is not contiguous to the Three Parcels or the I-95 Segment (the

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[2] Rec. ___ (Order, p. 3); Rec. ___ and ___ (Tr.Exs. 18 and 19); Rec.___ (Tr.Ts. (Schofield)), p. 64, lines 20-21.

[3] Rec. __ (Order, p. __, "Findings of Fact" 34 and 35); Rec. ___ and ___ (Tr.Exs. 18, 19).

"**Darlington-Hoffmeyer Area**").[4] Pursuant to Section 6 of the Amendment, the provisions of the Amendment expire five years from its effective date, thereby causing the Act as originally enacted to come back into effect at that time.

Florence 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.* Those statutes are the result of a carefully developed and long-considered Constitutional event over four decades ago.

At the General Election of 1972, the people of South Carolina approved amendments, as previously proposed and subsequently ratified by the General Assembly, to Article VIII of the South Carolina Constitution. Known as the "Home Rule Amendments," those new provisions:

> . . . clearly intended that home rule be given to the counties and that county government should function in the county seats rather than at the State Capitol. If the counties are to remain units of government, the power to function must exist at the county level. Quite obviously, the framers of Article VIII had this in mind.

Knight v. Salisbury, 262 S.C. 565, 571, 206 S.E.2d 875, 877 (1974) [striking down Act No. 259, 1973 S.C. Acts 302, and Act No. 643, 1973 S.C. Acts 1236, which purported to create Lower Dorchester Recreation District and to authorize it to issue, and to impose a tax for, bonds].

Much of the effort of this Court since then with regard to services, finances, and functions in particular localities of the State has been to protect that determination by the people against old habits of legislative micro-management. The present case arises from another attempt – more than forty years after the people voted to govern themselves in their local jurisdictions – to dictate a local policy centrally, not by general law applicable throughout the State but by a specific law affecting only a small area. In particular, this case relates to local taxation for, and to

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[4] Rec. __ (Order, p. 2, fn. 3).

the control of, fire protection – a service entrusted by the Home Rule Amendments and their effectuating general legislation to the counties of this State.[5]

The property taxes levied by a county to support its services (such as fire protection) must be uniform; but different areas may have different taxation levels depending on the level of benefits that area receives. S.C. Const. art. X, § 6; S.C. Code of Laws § 4-9-30(5). Such different levels of taxation must be pursuant to "general law applicable to the same type of political subdivision throughout the State." S.C. Const. art. X, § 6. And the general law that permits different taxation levels (S.C. Code of Laws § 4-9-30(5)) vests the authority to determine whether to have uniform or varied tax levels in the governing body of each county.

Prior to the Act, Florence County was (along with Darlington County, each in their respective areas) controlling, financing, and providing fire protection service in the locality in question without problems or complaints. In such situations of ongoing service by a pre-existing entity, the decisions of this Court have forbidden superimposing another governmental entity on top of the existing one to provide those already in-place services. *Wagener v. Smith*, 221 S.C. 438, 71 S.E. 1 (1952)); and *North Carolina Electric Corp. v. White*, 301 S.C.274, 391 S.E.2d 571 (1990).

Florence County had been exercising its power with a series of separate fire protection special tax districts, each with its own County-determined tax rate. In 2014, however, Florence County, after careful consideration and with independent professional advice, consolidated those special tax districts, thus resulting in a uniform tax levy throughout the consolidated district (raising some tax levies and lowering others). Upon complaint by residents of one area that would see an increase, the General Assembly intervened with passage of the Act. The Act, by

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[5] 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.* Rec. ___ (Order, pp. 35-36).

overlaying a new special purpose district over a part of Florence County, sought to insulate the area of that new special purpose district from the tax increase and to remove the governance of fire protection service there from the control of the Florence County Council ("**Council**").

Had Florence County decided instead to continue the old, multiple special tax districts, there would be no Act, no Amendment, and no case. The uncontested findings of fact are that there had been no problems or complaints with regard to the way in which Florence and Darlington Counties had been serving their respective areas; there were no efficiencies to be gained by a district that crossed the county line; and the Act and the Amendment required no change in actual practice in the way in which service was provided or the entity by which service was provided to those areas.

Rather, the Act and the Amendment made one change and one change only – they overrode, from Columbia, a local policy decision made by local elected officials to whom general law had entrusted precisely those decisions and, by special law applicable no where else, removed that general law trust from Florence and Darlington Counties for the affected areas. Florence County has brought this lawsuit to defend Home Rule, to oppose that encroachment, and to resist the dropping of a new governmental entity into its midst to provide a service that Florence County not only is itself lawfully authorized to provide but was in fact already itself providing.

The question now before this Court is whether Florence County may, like every other county, continue to control, finance, and provide fire protection service within its unincorporated boundaries, without override or interference by special legislation not generally and uniformly applicable to counties providing those services. The Constitution of South Carolina and the rulings of this Court compel an affirmative answer.

As the Circuit Court noted:

> 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.

Rec. ___ (Order, p. 40).

Appellants charge that the Circuit Court was "second-guessing a policy decision." (BRIEF OF APPELLANTS, pp. 13, 15, 17 (at Sections IIC, IID, and III)). That accusation is entirely baseless. Instead, the Circuit Court exercised its appropriate judicial function, not to make a policy decision in place of elected officials but to ensure that policy decisions are made by the constitutionally-appropriate level of elected officials – in short, upholding the rule of law embodied in the Constitution approved by the voters of this State and in venerable case law prescribed by this Court.

III. STANDARD OF REVIEW

This suit seeks a declaration that the Act and the Amendment are unconstitutional as violative of: (i) the Constitutional prohibitions against local or special legislation in S.C. Const. art. VIII, § 7 (the "**Home Rule Amendment**"), and S.C. Const. art. III, §34, ¶ IX; and (ii) the long-standing and widely-accepted rule of *Wagener v. Smith*, 221 S.C. 438, 71 S.E. 1 (1952), and *North Carolina Electric Corp. v. White*, 301 S.C.274, 391 S.E.2d 571 (1990), that where one government is already in place and providing a service, another cannot be superimposed over it to provide the same service. It is thus primarily a question of law.

Respondents and the Circuit Court have acknowledged that such a challenge must clear a high hurdle. Rec. ___ (Order, p. 17). 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). Statutes "will be construed to render them valid." *Curtis v. State,* 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001).

Four factors affect the application of that standard in this case.

1. Appellants have not challenged the Circuit Court's "Findings of Fact" (except one related to the sequence of certain events, discussed below in Section V(A) of ARGUMENT). Consequently, those facts are established for purposes of this appeal. See *Dreher v. S.C. Dep't of Health & Envtl. Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015), reh'g denied (June 18, 2015) ("[S]hould the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings—whether correct or not—become the law of the case."). Citations herein to support factual assertions will therefore be largely to the Order rather than to testimony or exhibits from the trial.

2. Appellants have not challenged the plain meaning of the statutes, so there is no need for construction of statutory terms. See *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed . . .") [internal citations omitted]. Consequently, the aspect of the standard of review for constitutionality that addresses choosing a constitutional construction is inapplicable here.

3. The Home Rule Amendment and the quasi-constitutional, judicial doctrine regarding overlapping government service providers have already been definitively addressed by this Court with regard to legislatively-created special purpose districts. *Knight v. Salisbury*, *supra*; *Wagener v. Smith*, *supra*; and *North Carolina Electric Corp. v. White*, *supra*. So the tests for applying those principles are established and clear. Appellants have not challenged the continued vitality of those precedents of this Court, instead questioning only whether they apply to this case.

4. With regard to the prohibition of special legislation under S.C. Const. art. III, §34, ¶ IX, the burden of proof has shifted to the Appellants, as described in Section V(B) of ARGUMENT below.

Thus, the question resolves itself into a pure question of law: do the Act and the Amendment fit within the prohibitions of those cases and the Constitution and doctrine that they enforce?

IV. FACTS

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. That authority is 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). Rec. ___ (Order, p. 5, "Findings of Fact" 1).

Florence County funded its fire services through ad valorem property taxes on districts that it had created (the "**Prior Tax Districts**"), each with its own millage rate based on its own cost structures, tax bases, and capital expense programs; and it provided the service by

contracting with self-governing, not-for-profit entities ("**Fire Departments**"), each of which provided service in a Prior Tax District.[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 Hill/Olanta**"), which Council created in 2007. Rec. ___ (Order, pp. 6-7, "Findings of Fact" 4-6).

Beginning in 2012, Council began a comprehensive review of its system for fire protection to address concerns of funding adequacy for the Prior Tax Districts, funding equity among the Prior Tax Districts, and transparency and accountability. A portion of the funding-adequacy concern arose from the adverse effects of the limitations imposed by Act No. 388, 2006 S.C. Acts 3133 ("**Act 388**," codified as S.C. Code Ann. §6-1-320 (Supp. 2015)), which left Council unable to impose a sufficient millage to meet rising costs of fire protection. 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 by others) to persuade the General Assembly to re-visit the reforms of Act 388 were unsuccessful. West Florence Rural was one of those adversely constrained by Act 388. Rec. ___ (Order, pp. 7-8, "Findings of Fact" 7-9).

In May 2013, the consulting firm that Council engaged to study its fire protection arrangements reported that significant benefits would accrue from financial consolidation and operational coordination of the Prior Tax Districts. 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

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[6] 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). Rec. ___ (Order, p 6, "Findings of Fact" 4, fn. 12).

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. Rec. ___ (Order, p. 8, "Findings of Fact" 10-11).

After public notice and public hearing, 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. On May 15, 2014, County Council on May 15, 2014, adopted two ordinances. The first dissolved the existing Prior Tax Districts (the "**Dissolution Ordinance**," Rec. __ (Tr.Ex. 8)); and the second created the new, unified tax district (the "**Consolidated District**") (the "**Creation Ordinance**," Rec. __ (Tr.Ex. 9)). The Consolidated District included the Prior Tax Districts and certain areas within municipalities that had requested County service. Rec. ___ (Order, pp. 8-9, "Findings of Fact" 12-13).

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. Rec. ___ (Order, p. 9, "Findings of Fact" 14).[7]

The Fire Departments that provided operational fire protection services under the Prior Tax Districts continued to function under the new structure of the Consolidated District. Rec. ___ (Order, p. 10, "Findings of Fact" 17).

At that time, Darlington County was and had been providing service to the Darlington County areas affected by the Act and the Amendment – the Three Parcels area, since 1976 by Palmetto Rural Fire District; and the Darlington-Hoffmeyer Area, since 1987 by Darlington

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[7] This is the single Circuit Court "Finding of Fact" that Appellants challenge. The correctness of the finding is addressed below in Section V(A) of ARGUMENT).

County Fire District. Rec. ___ (Order, p. 10, "Findings of Fact" 18); Rec. ___ (Tr.Ex. 13); and Rec. ___ (Tr.Ts. (Stratton), p. 177, line 18 – p. 178, line 3; p. 179, line 4-8).

During County Council's consideration of the creation of the Consolidated District, West Florence Rural residents objected to the tax increase and to their taxes being used to pay costs on a Consolidated District-wide basis. Members of the Fire Department there objected to greater County oversight and control over their activities. Rec. ___ (Order, p. 10, "Findings of Fact" 19). As testified to by their House representative:

> 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 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?

Rec. ___ (Order, p. 10, "Findings of Fact" 19, fn. 15). In response, legislative representatives of the West Florence Rural area investigated how to keep the area out of 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. Rec. ___ (Order, p. 11, "Findings of Fact" 21).

South Lynches is a post Home-Rule special purpose district located partly 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. By contrast, the New SPD initially included only 3 lots in Darlington County and (based on Rec. ___ (Tr.Ex. 19)), approximately one-tenth of a square mile; after the Amendment, it included about 90 lots in Darlington County, and (based on Rec. ___ and ___ (Tr.Exs. 17 and 19)) approximately three-tenths of a square mile. Rec. ___ (Order, pp. 11-12, "Findings of Fact" 22).

On May 7, 2014, Legislative representatives of the West Florence Rural area introduced what became the Act. 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 the sponsoring Representative testified, "[i]t could have been considered a local issue." Governor Haley signed the Act on May 28, 2014. Rec. ___ (Order, p. 12, "Findings of Fact" 23).

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. During House consideration of the Amendment, the primary House sponsor of the Act and the Amendment described it as "a West Florence Rural Fire District bill," and "It's a, Florence County and a little, tiny piece of Darlington County." During Senate consideration of the Amendment, the primary Senate sponsor of the Act and the Amendment described it as "a local Florence County fire district bill." Rec. ___ (Order, pp. 12-13, "Findings of Fact" 25-27).

The Act mis-describes the geography of the I-95 Segment 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; and only about one mile is in Darlington County. Rec. ___ (Order, p. 2, fn. 2; p. 13, "Findings of Fact" 29). Even

more confusingly, the Act defines the portion of Florence County in the New SPD as the "West Florence Fire Subdistrict" established by Act No. 1817, 1972 S.C. Acts 3613 ("**Act 1817**"). There is, however, no such subdistrict under Act 1817. Act 1817 Sub-District 1 included the area of what became (35 years after Act 1817) West Florence Rural; but that Sub-District 1 was very substantially larger than just West Florence Rural, as it also included the Howe Springs Prior Tax District and part of Windy Hill/Olanta. The Amendment amends that definition so that the portion of Florence County in the New SPD is described as West Florence Rural. However, the Amendment expires on July 7, 2020. Rec. ___ (Order, p. 13, "Findings of Fact" 30).

There is, moreover, no logical connection between the West Florence Rural area and the Three Parcels and the I-95 Segment. Although West Florence Rural is contiguous to the Three Parcels, it is not directly accessible directly from them – they are separated by a swamp. Rec. ___ (Order, p. 13, "Findings of Fact" 31). 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. Rec. ___ (Order, p. 13, "Findings of Fact" 32).

Compounding the lack of logical nexus is the fact that the Act specifies the Three Parcels by tax map numbers 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. Without explanation, however, it excludes a fourth lot that is inside those same boundaries, nestled between two of the three included lots. And still 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). 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. None of the four lots (neither the Three Parcels nor the one excluded) is directly accessible from Interstate 95. Rec. ___ (Order, p. 14, "Findings of Fact" 33-37); Rec. ___ and ___ (Tr.Exs. 18, 19).

The only fire protection service that the County has provided to any of the New SPD located in Darlington County had been pursuant to an informal arrangement by which West Florence Rural and Windy Hill/Olanta provided service to the I-95 Segment. That arrangement was because there is no interchange allowing access to Interstate 95 in Darlington County, and entry must be made from interchanges in Florence County. Rec. ___ (Order, p. 14, "Findings of Fact" 38).

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 without contradiction 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. Multiple witnesses, including the professional firefighters who were asked, testified without contradiction that there was no difference between the excluded fourth lot and the Three Parcels, and no difference between the excluded south-of-I-95 part of Darlington County and the Three Parcels, that would make it logical or sound to have them served by different service providers. Rec. ___ (Order, pp. 14-15, "Findings of Fact" 39-40).

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. Rec. ___ (Order, p. 15, "Findings of Fact" 41). Of the three fire protection service providers surrounding the Three Parcels, the New SPD has the

longest route to get to the Three Parcels from its closest fire station. In fact, the distance from the New SPD's closest station to the Three Parcels is over four miles, more than twice the distance from the Palmetto Rural Fire District station (1.9 miles) that served it before the Act. Rec. ___ (Tr.Ex. 19); Rec. ___ (Tr.Ts. (Ervin), p. 46, line 1 – p. 47, line 3); Rec. ___ (Tr.Ts. (Brockington), p. 112, line 3 – p. 117, line 12).

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. No witness was able to provide any rationale why, based on plans, circumstances, facts, or projections, the date of July 7, 2020 (the sunset of the Amendment), 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. Rec. ___ (Order, p. 15, "Findings of Fact" 41); Rec. ___ and ___ (Tr.Exs. 17 and 19).

It is common practice for neighboring fire protection service providers to assist one another as needed. There was previously such an unwritten "gentlemen's agreement" with respect to the I-95 Segment. 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. In any event, following the implementation of the Act and the Amendment, there have been no changes 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. In particular, 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. Rec. ___ (Order, pp. 16-17, "Findings of Fact" 43-46).

V. THE CIRCUIT COURT CORRECTLY CONCLUDED THAT THE ACT AND THE AMENDMENT VIOLATE THREE INDEPENDENT CONSTITUTIONAL AND PRECEDENTIAL REQUIREMENTS AND THEREFORE THEY AND THE NEW SPD ARE INVALID.

A. *Wagener v. Smith* and *N.C. Electric Membership Corp. v. White* forbid the imposition of a new governmental entity (a legislatively-created special purpose district) on top of an existing governmental entity (a county), where every service to be provided by the new entity was already being lawfully and sufficiently provided by the existing entity.

> '[T]here cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction, and privileges.' [*Citations omitted.*]

Wagener v. Smith, *supra*, 221 S.C. at 445, 71 S.E.2d at 4. As described in the Order (Rec. ___ (Order, pp. 18-19)), this principle has long been recognized not only by our courts but also by the General Assembly, including in contexts of particular relevance here.

It is undisputed that all the areas taken into the New SPD were located in existing political subdivisions that were already constitutionally and capably providing effective fire protection services to those areas. Thus, absent some distinguishing factor, *Wagener v. Smith* forbids the creation of the New SPD.

Appellants offer two arguments in an attempt to remove the New SPD from the *Wagener* rule.

First, they contend that the rule applies only where the two entities are exactly co-terminous geographically and have exactly the same sets of authorized functions. BRIEF OF APPELLANTS, pp. 5-6 (at Section I). They argue that a county and a special purpose district are

not such twins, and therefore are excused from *Wagener*. But in doing so, although they refer in passing to *Wagener*'s "progeny," they completely ignore that progeny – *North Carolina Electric Membership Corp.*, *supra*, a case cited four times and factually summarized in the Order. There, as here, the conflict was between a county-created special tax district and a legislatively created special purpose district; and this Court held that the rule was in full force, and applicable, and ruled that the later-created special tax district was void. That "progeny" makes clear that the "same exact area"/"same exact function" argument is without merit.

Second, Appellants contend that the Act took effect during a gap in County service providers. BRIEF OF APPELLANTS, pp. 6-7 (at Section I). To make this argument, Appellants dispute the Circuit Court's Finding of Fact 14 that the creation of the Consolidated District was simultaneous with the dissolution of the Prior Tax Districts.[8] They contend, to the contrary, that the prior service entities were dissolved by order of the Secretary of State on May 12, that the Act became effective on May 28, and that the Creation Ordinance did not take effect until May 28.[9] Thus, they argue that there was no County service provider in place at the time of the Act and so no *Wagener* conflict.

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[8] The standard of review for this challenged factual finding is that the finding is to be upheld so long as the record contains "reasonable evidentiary support:"

> In an action at law, on appeal of a case tried without a jury, the Court views the trial court's findings of fact as equivalent to a jury's findings in a law action, and will not disturb the findings unless the Court views the trial court's findings to be without reasonable evidentiary support.

Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). As shown in the main text above, Appellants' challenge is based on an oversight and a confusion; and the challenged finding not only has "reasonable evidentiary support," it is in fact documented to be correct.

[9] Although they are not explicit on this point, it appears that the Appellants consider the effectiveness of Act to be at the moment of the Governor's signing, and the effectiveness of the Creation Ordinance (a set number of days after an event) to be not until either close-of-business

One of the three problems with that argument is its first date. Although the Secretary of State's order of dissolution (Rec. ___ (Tr.Ex. 11) was dated May 6 and filed May 12, it did not become effective until June 25 – twenty-one days after the last of three published notices, which occurred on June 4. That delayed effectiveness is spelled out in the Secretary of State's "Notice of Dissolution." Rec. ___ (Tr.Ex. 12, ¶6 and attached publication affidavit). So the Creation Ordinance took effect almost a month before the order of dissolution became effective – no gap there.

The second problem and more fundamental problem is that the Secretary of State's order of dissolution had nothing to do with the Prior Tax Districts through which service was being financed. Here, a bit of history is necessary. For a period of time, some portion of the County had received fire protection services through sub-districts (the "**Act 1817 Sub-districts**") created shortly before the advent of Home Rule by Act 1817. Those Act 1817 Sub-districts never became fully operative, however, due to a failure of referenda required by Act 1817. After Home Rule ratification in 1973, Council re-authorized those Sub-districts in 1979 as its own creation and from time to time exercised its authority to change Sub-district boundaries under S.C. Code Ann. §6-11-410 (2004) *et seq.*, and gradually replaced them with the Prior Tax Districts. With the creation in 2007 of West Florence Rural and Windy/Hill Olanta, the Act 1817 Sub-districts completely ceased to be operative.

In order to clean up the books, 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) requesting formal dissolution of the defunct Act 1817 Sub-districts. It was those Act 1817 Sub-

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or midnight of the set day. There is no evidence in the record of what time of day Governor Haley signed the Act. In any event, as explained in the main text above, there was no gap; so the question of when on May 28 either became effective is of only academic interest.

districts that were "dissolved" by the Secretary of State's order, not the entity actually providing service prior to the Creation Ordinance. Rec. ___ (Order, pp. 5-7, 9, "Findings of Fact" 3, 6, 15); Rec. ___, ___, ___, and ___ (Tr.Ex. 8, 9, 11, 12).

As far as the Prior Tax Districts actually in use at the time (dissolved by the Dissolution Ordinance) and the Consolidated District (created by the Creation Ordinance) go, the Circuit Court's Order is exactly correct – the effective date of each Ordinance is simultaneous with the other. Rec. ___ and ___ (Tr. Ex. 8, p. 2, §1.01, and Tr.Ex. 9, p. 4, § 1).

Third and most important, both the Prior Tax Districts and the Consolidated District are financing vehicles for the single entity exercising its lawful authority to provide fire protection service – that being Florence County. Florence County provided fire protection at all relevant times.

There was thus no gap.

Interestingly – and perhaps symptomatic of Darlington County's status as a makeweight to try to accomplish something local in Florence – Appellants ignore the fact that even if there were some kind of gap in Florence County's service history into which the Act could have inserted itself, there is no such gap even alleged with regard to Darlington County's service. As a result, *Wagener* is fatal to the Act and the Amendment on the Darlington side of the line, as well.

It is, therefore, inescapable 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.

B. The record demonstrates no "substantial distinction" with respect to fire-protection services between the areas encompassed by the challenged legislation and other non-included areas, sufficient to form a "'logical basis and sound reason' for resorting to special legislation" contrary to S.C. Const. art. III, § 34.

> 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.

The test on this provision is clear, and was recognized by the Circuit Court (Rec. ___ (Order, pp. 19-21)).

> 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).

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,

> "this 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)).

Here, Florence County has gone far beyond "presenting any evidence" that there are no distinguishing features "between the objects or places embraced in [the Act and the Amendment]

and the objects and places excluded," "having reference to [their] subject matter." As found by the Circuit Court based on the unanimous, uncontradicted witness testimony:

1. all areas brought into the New SPD by either the Act or the Amendment were already receiving fire protection service from constitutionally and statutorily authorized government bodies;
2. there were no problems or complaints with regard to fire protection in the included areas;
3. there was cooperation between existing service providers for fire protection in those areas;
4. there was no improvement in efficiency in providing fire protection through the New SPD as opposed to by the counties;
5. there was nothing about areas included in the New SPD that made them more suitable for inclusion than other areas not included;
6. there was nothing about the July 7, 2020, date that made inclusion of the Darlington-Hoffmeyer Area in the New SPD reasonable prior to that date and unreasonable afterwards; and
7. Florence County's process for determining how to provide fire protection services was careful and deliberate, whereas the process for establishing the New SPD was rushed and not duly and deliberatively considered.

The burden has thus shifted to Appellants to demonstrate: "peculiar local conditions requiring special treatment" *(Shillito, supra,* 214 S.C. at 21, 51 S.E.2d at 98); "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" (*Duke Power Co.,*

284 S.C. 81, 90, 326 S.E.2d 395, 400–401 (1985)); 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)); and "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 . . . . characterized by some substantial qualities or attributes" (*Elliott v. Sligh*, 233 S.C. 161, 165-66, 103 S.E.2d 923, 926 (1958)).

There is no longer on this issue a presumption of validity.

Appellants, however, presented no evidence of any of these factors. In fact, Appellants have not even suggested what such distinctions, *etc.*, in this case might be. For that reason, their appeal must fail.

Instead, Appellants present a misunderstanding of some aspects of the Circuit Court's Order and ignore others.

Appellants argue that because some other special purpose districts that cross county lines have been created (notably, South Lynches), that fact somehow legitimizes this New SPD. BRIEF OF APPELLANTS, p. 9 (at Section IIA). The test, however (distinctions as to objects and places in light of the subject matter, peculiar local conditions, *etc.*), is highly context-specific. The validity of one is not determined by the unchallenged existence of another. This argument collapses for that reason alone.[10]

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[10] In the course of making that argument, Appellants state "[t]he circuit court's holding ignores the existence of South Lynches Fire District . . ." BRIEF OF APPELLANTS, p. 9 (at Section IIA). To the contrary, not only does the Order address South Lynches in the Findings of Fact (cited to in the BRIEF OF APPELLANTS where they state that it was "ignored"), it also discusses South Lynches extensively in the "Conclusions and Application of Law" (Rec. ___ (Order, pp. 32-34)), describing in fn. 27 the "peculiar local condition" that would support South Lynches [the substantial area in each of the constituent counties, and historic fire service coverage based on local telephone exchange emergency call-routing based on then-current technology].

Appellants then attack an observation made by the Circuit Court at the outset of its analysis of the Amendment's expansion of the New SPD, the observation that the Amendment was motivated by a desire to diminish one of the constitutional infirmities shown by the first Complaint in this lawsuit by adding additional territory. BRIEF OF APPELLANTS, p. 13 (at Section IIC). Appellants argue that the motivation is irrelevant and that courts should not second-guess the wisdom of policy choices.[11] But they ignore what follows in the Order, which demonstrates that the observation was only an observation, not a premise. The Circuit Court's actual analysis regarding the expansion examines not its motivation but whether it could be accomplished by general law. And the Circuit Court correctly concludes that it could, pointing to other general legislation for the modification of special purpose district boundaries. The Circuit Court then concludes that "there is no substantial distinction between the New SPD and any other post-Home Rule special purpose district as relates to the need for a mechanism for boundary modification" that would justify special legislation. Rec. ___ (Order, pp. 24-25). Appellants have not contested that conclusion.

Appellants' next effort, to rebut the Circuit Court's Order with respect to the Amended Act's requirement that Florence County make a transfer of real estate on Hoffmeyer Road to the New SPD, also fails. Appellants attempt to construe that provision of the Amended Act to show that the transfer would not be uncompensated. BRIEF OF APPELLANTS, pp. 14-15 (at Section IID). The Amendment had stripped out of the Act an explicit statement that the New SPD would have to compensate Florence County for the property, raising the statutory construction question of what did that deletion mean. While that may be an interesting question, it is not the issue of

[11] As noted above, Respondents agree entirely that courts should not make policy choices. They should and must, however, make sure that policy choices are made by the constitutionally-appropriate body. The content of a policy choice should not matter to a court; the source of a policy choice should.

constitutional concern. The question, again, is whether the requirement to transfer the intended site of a fire station strips Florence County, but not other counties, of the 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 Circuit Court pointed to other general legislation [S.C. Code Ann. §5-3-312 (2004)] that deals with 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, to show that such topics can be dealt with by general legislation. On the basis of "clear, credible, and convincing evidence," the court below found "no distinguishing features to support the special legislation." Rec. ___ (Order, pp. 25-26). Again, Appellants have not challenged that conclusion.

Similarly, in addressing the Circuit Court Order's ruling with regard to the exemption given by the Amended Act to the New SPD from the restrictions of Act 388, Appellants focus on the content and operational aspect of the exemption and whether it has been invoked, instead of on the important and relevant question of whether it is special legislation prohibited by S.C. Const. art. III, §34, ¶ IX. BRIEF OF APPELLANTS, pp. 10-13 (at Section IIB). As noted above in FACTS, Florence County had itself, before creating the Consolidated District, requested a general law exemption from Act 388 that would be available to the Prior Tax Districts. Their concern, and the infirmity found by the Circuit Court, is that the exemption was provided to a single entity

when the same purpose of an Act 388 exemption could have been (and in similar contexts has been) encompassed by a general law. Rec. ___ (Order, pp. 22-24). As a part of their detour on this issue, Appellants urge that this particular issue is not ripe for adjudication because the exemption has not yet been used. Utilization of the exemption is not the issue. The harm of concern to Florence County is the constitutional injury of having its general law powers impaired by special law.[12]

Finally with respect to S.C. Const. art. III, §34, ¶ IX, Appellants note that prior to Home Rule the presence of that constitutional provision was not an impediment to the creation of special purpose districts. BRIEF OF APPELLANTS, p. 8 (at Section II). And so it wasn't.[13] But the issue here with regard to art. III, §34 is not that there is a special purpose district involved. It is that the various provisions and purposes of the Amended Act can all be treated under general

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[12] With regard to Appellants' remaining argument concerning Act 388, that of severability, it is clear from the structure and content of the Amended Act as well as from its legislative history that the purpose of the Amended Act was to give fiscal and operational control of the New SPD to the residents of that area. "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?" Rec. ___ (Order, p. 10, "Findings of Fact" 19, fn. 15, quoting the chief House sponsor of the Act and the Amendment). It would be extremely difficult to square fiscal and operational control with the constraints imposed by Act 388, and therefore extremely difficult to find that the exemption was not intended as an integral and non-severable part of the Amended Act. Moreover, the Amended Act has no severability clause.

[13] The case cited by Appellants on this point, *Hagley Homeowners Ass'n, Inc. v. Hagley Water, Sewer, and Fire Authority*, 326 S.C. 67, 485 S.E.2d 92 (1997) was a post-Home Rule case; but it was addressing the art. III, §34 validity of a pre-Home Rule (1967) special purpose district. The test is and was whether a purpose can be adequately served with general rather than special legislation. Because Home Rule, with its abandonment of Dillon's Rule for county and municipal governments (see discussion at Rec. ___ (Order, p. 30-32)) and the eventual abrogation of the county-purpose doctrine from old (pre-1977) art. X, § 6, greatly expanded the range of what can be accomplished by general legislation (or even with no legislation at all), the same old test may, depending on the particular facts and context, yield different results in a Home Rule setting.

rather than special legislation. The issues raised by the utilization of a special purpose district will be discussed more fully in the following section of this ARGUMENT.

C. Home Rule -- S.C. Const. art. VIII, §7 – precludes the creation of a special purpose district located effectively within a single county where there were no extraordinary regional concerns beyond the competence of the existing county governments under existing general law.

> 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, effective date March 7, 1973. After that date, the creation of new special purpose districts is forbidden:

> 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. . . . . 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). 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).

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. *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.

The question in this case is whether simply including a negligible amount of territory from another county in a special purpose district confers enough of a "regional impact" to avoid

the prohibition of art. VIII, §7. The Circuit Court's Order fully addresses the constitutional provision, its history, and its judicial interpretation in arriving at the conclusion that the original inclusion of the Three Parcels and the subsequent, temporary inclusion of the Darlington-Hoffmeyer Road Area in the New SPD, was not sufficient to avoid that prohibition because there was no logical need for such inclusions and actual service delivery was not expected to and has not changed in those areas. Rec. ___, Order, pp. 26-40. As elsewhere in this Brief, Respondents incorporate and rely upon the Order in that regard.

Appellants make three arguments in an effort to rebut the compelling logic of the Order.

First, Appellants argue that this Court should defer to some extent to an opinion of the Attorney General's office concerning South Lynches. BRIEF OF APPELLANTS, pp. 16-17 (at Section III), citing *Kalber v. Redfearn*, 215 S.C. 224, 237, 54 S.E.2d 791, 796 (1949), a case otherwise irrelevant to the issues here. In *Kalber*, this Court affirmed and adopted *per curiam* the opinion of the trial court, including the following *dictum*:

> Counsel for the defendants call my attention to the fact that my ruling here is in keeping with an opinion of the Attorney General of the State. While the opinions of the Attorney General are not binding upon the Court, they are persuasive, for that official occupies a quasi judicial position and it is gratifying to find that my views are in harmony with his opinion.

Id. In other words, the trial court did not follow the opinion; rather, it was just gratified that the Attorney General had agreed with its own reasoning. *Id. Kalber* has never been cited on that proposition in the nearly 70 years since. Much more recently, the Court has affirmed that whether it will adopt an Attorney General's opinion will depend entirely on whether the Court agrees with the opinion's reasoning.

> It is well settled that although it may be persuasive authority, an Attorney General's opinion is not binding on this Court, and because we disagree with the reasoning, we decline to adopt it.

State v. Ramsey, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014). Indeed, because the whole judicial power of the State is vested in a unified judicial system under this Court (S.C. Const. art. V, §1), deference on a constitutional question to a non-judicial body, no matter how august, would be inconsistent with that constitutionally-established judicial independence.

Second, Appellants argue again that the Circuit Court was improperly second-guessing policy decisions by elected officials:

> The circuit court was critical of the legislature's decision, describing it as "de minimis" and essentially concluding that the areas outside of Florence County were "a merely pretextual attempt to avoid" unconstitutionality under the Home Rule Amendments. Once again, this criticism and conclusion ultimately goes to the wisdom of the legislative enactments.

BRIEF OF APPELLANTS, p. 17 (at Section III).

As before, this charge has no foundation. The phrase "merely pretextual attempt to avoid" does not appear in the Order. Nor does the Order state that having a county-run Consolidated District would be preferable for any stated or unstated policy reason to having a legislatively created (and controlled) special purpose district.[14] Moreover, the use of a phrase like "*de minimis*" with regard to the part of Darlington County in the New SPD is not a criticism, but a recognition of material fact. Where this Court has to determine whether there is sufficient regional impact to constitutionally justify the creation of a special purpose district, the extent of territory, if any, beyond a single county's borders is an important fact to consider. The ruling here looked only at that fact in determining whether the constitutional tests had been met for moving the fire protection finance and control functions from the Council to the General Assembly. It did so without consideration of which body would produce a "better" policy result.

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[14] Although the Amended Act gives nominal control to the local residents, if the General Assembly can still create a special purpose district, it can still amend the creating act and to whatever extent it wishes micro-manage the district. Thus, such a new special purpose district would be ultimately under legislative, not local, control.

Third, Appellants appear to take the extreme position on permissible post-Home Rule special purpose districts that the amount of territory from either county included in the district is wholly irrelevant and that crossing a county line to any extent at all is sufficient to overcome the Home Rule prohibition on special purpose districts. BRIEF OF APPELLANTS, pp. 15, 16, 17, 18 (at Section III). They rely, both directly and indirectly through the Attorney General's South Lynches opinion discussed above, on a short-hand phrasing of *dictum* in *Fort Hill Nat. Gas Auth. v. City of Easley*, 310 S.C. 346, 426 S.E.2d 787 (1993) that legislation changing a statutory provision related to a pre-existing multi-municipality gas transmission district covering a multi-county area could be a solution in hypothetical circumstances not then before the Court. BRIEF OF APPELLANTS, pp. 16, 17 (at Section III). In *Fort Hill Nat. Gas*, the Court interpreted Section 6 of that 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, its 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. 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 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.

Moreover, this issue – whether crossing over a county line is sufficient, without more, to overcome Home Rule – was addressed directly by *Kleckley v Pulliam*, the case that originally created the "regionally significant" carve-out from the Home Rule/*Knight v. Salisbury* prohibition against special purpose districts. The Court there held that it was permissible for the General Assembly, post-Home Rule, to enact legislation related to a pre-Home Rule special purpose district because "[t]he record here clearly establishes that the function of this airport is not peculiar to a single county or counties," thus recognizing that a special purpose district could still be of impermissibly non-regional significance even if it has territory in more than one county. *Kleckley v. Pulliam*, 265 S.C. at 185, 217 S.E.2d at 221. [*emphasis added*]. Simply aggregating a "little, tiny piece" of one county with a portion of another county into a special purpose district to serve peculiar local concerns does not create a sufficiently regional impact to avoid art. VIII, §7 and the rule of *Knight v. Salisbury*. A year after *Kleckley*, *Torgerson v. Craver*, 267 S.C. 558, 230 S.E.2d 228 (1976), added the requirement that post-Home Rule special purpose district legislation must relate to a multi-county district. It did not eliminate the necessity of regional significance.

It is interesting to consider this issue in light of the parallel Home Rule provision for municipalities, S.C. Const. art. VIII, § 10, which (after changing "county" to "municipality") is identical to art. VIII, § 7. Imagine an enactment by the General Assembly taking a significant portion of Columbia and two or three houses in West Columbia (adjacent but not directly accessible, separated by water or wetlands) to make them into a fire protection special purpose

district, in order to save the Columbia residents from fire protection taxes. Legally, such an enactment would be identical to the Act here.

As the Circuit Court concluded in its Order on this point:

> Were putting such a "little, tiny piece" of another county into a new special purpose district 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.

Rec. ___ (Order, pp. 36-37).

CONCLUSION

For the reasons stated by the Circuit Court in its Order herein and for the reasons stated above, this Court should affirm the Order and remand this case for completion, submission, approval, and implementation of a plan 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.

July 21, 2017

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JUL 21 2017
S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

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

Case No. 2014-CP-21-2626
Appellate Case No. 2017-000693

County of Florence and the 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, the West Florence Fire District Commission, David Brown, Dustin Fails, Linda Lang Gipco, Richard Hewitt, and C. Allen Matthews, each in his or her official capacity as a member of the West Florence Fire District are . . . . . Appellants.

PROOF OF SERVICE

I certify that on July 21, 2017, a copy of the INITIAL BRIEF OF RESPONDENTS and a copy of the RESPONDENTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL have been served upon the below-named counsel for the Appellants by delivering the same to the United States Postal Service, First Class Mail postage prepaid, addressed as follows:

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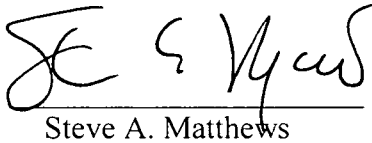
By: 

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