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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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

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

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.

RECORD ON APPEAL - Volume 1

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The Supreme Court of South Carolina

Florence County,

v.

West Florence Fire District

Plaintiff

Defendant.

Florence County
2014-CP-21-02626

ORDER

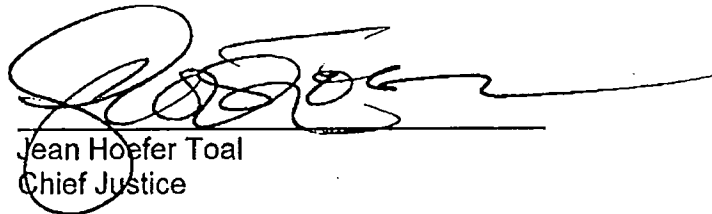
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Connie Reel-Spearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

IT IS ORDERED that the Honorable J. C. Nicholson, Jr., retired Circuit Court Judge of the Tenth Judicial Circuit, be vested with exclusive jurisdiction as a Circuit Judge to hear and dispose of the above case. Judge Nicholson shall decide all matters pertaining to this case, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

Pursuant to this assignment, he is to have and exercise all powers and duties appertaining to a Circuit Judge of the Twelfth Judicial Circuit while presiding over this case.


Jean Hofer Toal
Chief Justice

November 17, 2014
Columbia, South Carolina

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,
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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

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. § 4-23-
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.

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FLORENCE COUNTY, S.C.
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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 *Wagner 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

gn 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:

- gc n
- (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.

gf 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.

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(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 *Wagener 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]

Wagener 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 *Wagener*, 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.

gn 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).

gcm 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:

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"[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

jcN 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-Home 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.

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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).

gcM 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.

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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

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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.

JN
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

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.

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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.

JM
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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

JM 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 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.

ipm
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.”

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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.

VCN 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).

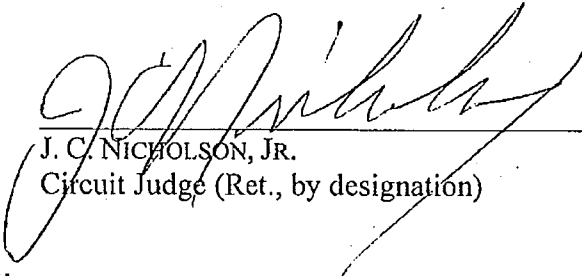
ORDER

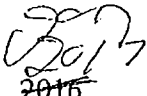
Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS AND APPLICATION OF LAW, it is hereby ordered and determined that Act No. 183, 2014 S.C. Acts ____ and Act No. 89, 2015 S.C. Acts ____, which purport to have created and subsequently modified the West Florence Fire District, are invalid and of 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.

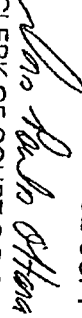
(For considerations of the public health, safety, and welfare of those persons and properties within the area of the purported West Florence Fire District, it is hereby ordered that,

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)


JAN, 17, 2016
CHARLES V. MC, South Carolina

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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FLORENCE COUNTY, SC

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 : ☐ Plaintiff ☐ Defendant
or
☐ 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 :

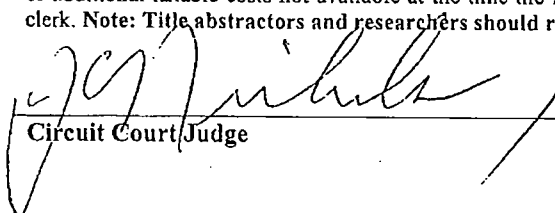
INFORMATION FOR THE PUBLIC INDEX

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.


Circuit Court Judge

2117
Judge Code

2/13/17
Date

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Jana South of the
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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CLERK OF COURT C.P. & 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

CONSENT ORDER OF STAY
PENDING APPEAL

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FLORENCE COUNTY, SC

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FLORENCE COUNTY, S.C.

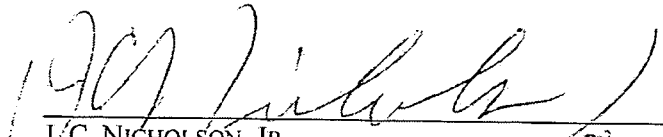
By order of January 17, 2017 (the "First Order"), this Court determined the invalidity of Act No. 183, 2014 S.C. Acts ___, and Act No. 89, 2015 S.C. Acts ___, and directed counsel for the parties to present to this Court a joint plan for the implementation of the First Order. Subsequently, by order of February 13, 2017 (the "Second Order"), this Court denied the motion of certain defendants to reconsider the First Order. The First Order and the Second Order are referred to together as the "Orders."

The Court, on March 15, 2017, held a telephonic status conference in which all counsel of record for all parties other than the State of South Carolina participated. Counsel for the State of South Carolina previously advised the Court and all other parties that it would not take a position on any proposed plan of implementation. In that conference, the parties advised the

Court of participating defendants' intention to appeal the Orders. The parties further advised the Court of their consent to a stay of the Orders during the pendency of any such appeal.

Therefore, upon and during any appeal of the Orders, such Orders will be stayed in their effect. Once the appellate court remits the case to the circuit court this stay will be lifted and the case will proceed in accordance with the appellate court's mandate.

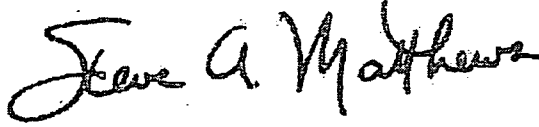
AND IT IS SO ORDERED.


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

March 3, 2017
3/20, South Carolina
We consent:

HAYNSWORTH SINKLER BOYD, P.A.

By:


Steve A. Matthews
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P.O. Box 11889
Columbia, South Carolina 29211-1889
803.779.3080

*Counsel for Plaintiffs County of Florence and
Florence County Council*

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FLORENCE COUNTY, SC

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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**BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC**

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and West Florence Fire District Commissioners*

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 Falls, Linda Lang
Gipeo, 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~~

COMPLAINT

FILED
2014 SEP 16 AM 9:19
CLERK OF COURT
FLORENCE COUNTY, SC

Plaintiffs County of Florence and Florence County Council allege the following:

NATURE OF THE CASE

1. This action contests the validity on several grounds of Act No. 183, 2014 S.C. Acts ____ (the "Act," copy attached as Exhibit A), which 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), where the respective counties are already, and for a long time have been, providing fire service to all of the included area.

2. The Act violates a fundamental principle in South Carolina and most jurisdictions against having two overlapping government bodies both exercising the same governmental power and serving the same governmental function.

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[Signature]
CLERK OF COURT, U.S.
FLORENCE COUNTY, S.C.

3. The Act violates South Carolina's constitutional Home Rule provisions by purporting to create a special purpose district that is effectively entirely within Florence County (forbidden since 1973), apparently on the basis that the new district is a multi-county district of more than local concern, due to the unnecessary and pretextual inclusion of three lots in another county.

4. The Act violates South Carolina's constitutional prohibition against special legislation where general legislation can be made applicable, in that it treats Florence County and Darlington County differently from every other county, in that it denies to them the governmental power to control fire protection services for unincorporated areas inside their boundaries. Not only can general legislation be made applicable in this situation, general legislation is applicable. There is no logical basis nor sound reason for treating Florence and Darlington Counties differently from the way in which the 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 area carved out of the two Counties by the Act; and treating the two Counties differently from all other counties is both unreasonable and arbitrary.

5. The Act further violates South Carolina's constitutional prohibition against special legislation where general legislation can be made applicable, in at least two additional particulars, those being exemptions granted to the New SPD, and to the New SPD alone, from the State's municipal annexation laws and from a local government finance law that is otherwise applicable to every local government body in the State. In both cases, not only can general legislation be made applicable, general legislation is applicable. There is no logical basis nor sound reason for treating the New SPD differently from the way the laws of South Carolina treat

every other local government and special purpose district in the State; there is no substantial distinction in these regards between the New SPD and every other local government and special purpose district in the State; and treating it differently from them is both unreasonable and arbitrary.

PARTIES

6. The County of Florence ("Florence County" or the "County") is a county of the State of South Carolina.

7. The Florence County Council (the "Council") is the governing body of the County.

8. The West Florence Fire District or New SPD purports to be a special purpose district, created by the Act.

9. The West Florence Fire District Commission (the "New SPD Commission") purports to be the governing body of the New SPD.

10. David Brown is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Mr. Brown is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against him in his personal capacity.

11. Dustin Fails is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Mr. Fails is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against him in his personal capacity.

12. Linda Lang Gipco is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Ms. Gipco is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against her in her personal capacity.

13. Richard Hewitt is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Mr. Hewitt is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against him in his personal capacity.

14. C. Allen Matthews is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Mr. Matthews is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against him in his personal capacity.

JURISDICTION

15. 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 *et seq.*, pursuant to which a portion of the relief in this action is sought.

FACTUAL BACKGROUND

The County's Fire Service Protection History

16. The County has, for a number of years, provided and will continue to provide fire protection service to the citizens, businesses, and property located in the Florence County portion of the New SPD.

17. Until very recently, the County's fire protection service in various unincorporated areas of the County, including the Florence County portion of the New SPD, was through the mechanism of six special tax districts, referred to herein as the "Prior Districts."

18. The Prior Districts have recently been consolidated by the County into a single special tax district for fire protection and rescue services (the "Consolidated County District"), as further described below.

19. The Florence County portion of the New SPD lies entirely within the area of the Prior Districts and entirely within the area of the Consolidated County District.

20. Each of the Prior Districts was a special tax district created by the County pursuant to S.C. Code Ann. §4-9-30(5) or S.C. Code Ann. §4-19-10 *et seq.* by the Council's adoption of a series of ordinances from 1982 through 2011, as described in Paragraph 2 of the preamble to Florence County Council Ordinance No. 18-2013/14, attached as Exhibit B.

21. In 2012, the County engaged the professional service firm Emergency Consulting Services International ("ECSI") to conduct a study of, and develop recommendations for improving the quality and efficiency of, the County's fire protection services. ECSI began its study in October 2012 and submitted its report to the Council in May 2013.

22. After consideration of ECSI's "study of the efficiency and effectiveness of the financing of fire protection and related rescue service through the Prior Districts" and its

recommendation for greater uniformity in the provision of such services, the Council "determined that it will be in the best interests of the County and the residents of the Prior Districts to dissolve each of the Prior Districts and create a new, single County Fire Protection District, to be designated the Florence County Fire Protection District, which will encompass all of the areas contained in the Prior Districts, to include of [sic] 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 the [Florence County Fire Protection 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." ¶ 4 of the preamble to Florence County Council Ordinance No. 18-2013/14, attached as Exhibit B.]

23. Other counties in South Carolina have likewise used their Home Rule powers to consolidate fire districts within those counties in order to protect the lives and property of their citizens in the most reliable and cost-effective manner.

24. Two ordinances to accomplish that purpose (one dissolving the old districts, and one creating the new, consolidated district) were given first reading by the Council on February 20, 2014, followed by second reading, the publication three times of a notice of public hearing, the holding of a public hearing, and final adoption on third reading of the two ordinances on May 15, 2014.

25. By the first of those two ordinances, Ordinance No. 17-2013/14 (the "Dissolution Ordinance"), the Council, pursuant to S.C. Code Ann. §4-9-30(5)(c) and S.C. Code Ann. §4-19-20 *et seq.*, dissolved the Prior Districts.

26. The Dissolution Ordinance, by its terms, became effective 20 days after the second publication of notice of its adoption, which occurred on May 23, 2014, so that the effective date was June 12, 2014.

27. By the second of those two ordinances, Ordinance No. 18-2013/14 (the "Creation Ordinance," attached as Exhibit B), the Council, pursuant to S.C. Code Ann. §4-19-10 *et seq.*, created the Florence County Fire Protection District (the "Consolidated County District") as a special tax district for fire protection.

28. The Creation Ordinance, by its terms, became effective simultaneously with the Dissolution Ordinance.

29. Consequently, from and after June 12, 2014, the County, through the mechanism of the Consolidated County District, will continue to provide fire protection service to the Florence County portion of the area purportedly included in the New SPD.

30. As a result of the consolidation of the existing special tax fire districts into a single special tax fire district, a uniform tax millage rate for fire protection purposes will be levied throughout the area of the Consolidated County District; and thus some of the Prior Districts will see an increase in their fire protection tax millage levy and others of the Prior Districts will see a decrease in their fire protection tax millage levy.

31. West Florence Rural Volunteer Fire District ("West Florence Rural," one of the Prior Districts) would, without the Act, experience the greatest increase in its fire protection tax millage levy among the six consolidated districts – more than doubling tax year 2013's levy of 8.0 mills.

32. All *ad valorem* property tax levies previously imposed and currently being imposed for fire protection service by the Auditor of the County and all tax receipts previously

collected, currently being collected, and currently held, or as a result of such current levies, to be collected and held, by the Treasurer of the County for fire protection service are levied, collected, and held for and on behalf of the County for its use in exercising its power under general law, S.C. Code Ann. §4-9-25, §4-9-30(5) and §4-19-10 *et seq.*, to provide fire protection service through the Prior Districts and the Consolidated County District.

The Act, Its History, and Its Geography

33. On May 7, 2014, nearly three months after the introduction of the Dissolution and Creation Ordinances and only eight days prior to their final adoption on May 15, 2014, House Bill 5225, which became the Act, was first introduced. It was considered by the House of Representatives without reference to committee and without hearing or markup, and received third reading approval by a vote of 50-38 on May 15. One week later, on May 22, 2014, again without reference, hearing or markup, it received third reading approval from the Senate by unanimous consent. It was ratified and signed by the Governor on May 28, 2014. By its terms, it became effective upon the Governor's signature.

34. The Act purports to create a fire protection special purpose district (the New SPD) on top of some indeterminate portion of the area of the Consolidated County District (which as described above has received and would, without the Act, continue to receive fire protection service from the County, through special tax districts created by the County), plus a negligible and unrelated portion of Darlington County consisting of three parcels and a highway right-of-way.

35. The Act does not dissolve or diminish West Florence Rural, any other Prior District, or the Consolidated County District.

36. The Act defines the Florence County area included in the New SPD as being one of the subdistricts established by Act No. 1817, 1972 S.C. Acts 3613 ("Act 1817").

37. None of the sub-districts authorized by Act 1817 has been operational since at least as early as 2007; and to the extent that they still had any legal existence they had been formally dissolved pursuant to S.C. Code Ann. §4-11-290 by order of the Secretary of State on May 6, 2014, prior to the adoption of the Act, and indeed prior to the first introduction of H. 5225 that became the Act.

38. More particularly, the Act at S.C. Code §4-23-1005 defines the Florence County area included in the New SPD as "the unincorporated areas of the West Florence Fire Subdistrict of the Florence County Fire District as established by Act 1817 of 1972."

39. Act 1817 nowhere refers to any "West Florence Fire Subdistrict."

40. Rather, Act 1817 refers to the six subdistricts that it established only by number -- Subdistrict No. 1, Subdistrict No. 2, *etc.*, through Subdistrict No. 6.

41. West Florence Rural lies entirely within Subdistrict No. 1. Also lying within Subdistrict No. 1 are a substantial portion of Howe Springs Fire District ("Howe Springs") and a portion of Windy Hill/Olanta Rural Volunteer Fire District ("Windy Hill").

42. West Florence Rural is contiguous to, but not accessible from, the Darlington County portion of the New SPD.

43. If the Act intended Subdistrict No. 1 to be its reference, then the New SPD includes large areas that are not considered "West Florence."

44. If the Act intended a different Subdistrict of Act 1817 to be its reference, then West Florence Rural is excluded from the New SPD.

45. Consequently, it is not possible to determine what area of Florence County is intended by the Act to be in the New SPD. On information and belief, the County Auditor, County Treasurer, and the Registration and Elections Commission for Florence County ("Florence Elections Commission") have each informally determined what areas of Florence County their respective offices will treat as being within the New SPD in order to allow them to perform their official duties.

46. The Act adds into the New SPD two small and unrelated bits in Darlington County, as follows.

47. First, the Act adds "the area of Darlington County reflected in the rights of way for Interstate 95 beginning at the boundary line of Florence County and Darlington County and extending northward into Darlington County for approximately three miles to Exit 169."

48. However, Exit 169 is not in Darlington County; it is in Florence County. Only a short segment of Interstate 95 runs through Darlington County.

49. That small segment of Interstate 95 contains no on-off interchange. The closest access to the southbound lanes is from an interchange located in Florence County in the Windy Hill Prior District, and the closest access to the northbound lanes is from an interchange located in West Florence Rural.

50. Next, the Act adds three lots, specified 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, and depicted on the map attached as Exhibit C.

51. However, without explanation, the Act excludes a small, quarter-acre 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 small parcel in the northwest corner of 219-03-01-001. See Exhibit C.

52. The Act also excludes the remainder of the small portion of Darlington County that is south of Interstate 95 (which at that point runs in an east-west direction).

53. None of the four lots (neither the three included nor the one excluded) is directly accessible from Interstate 95.

54. There is no fire protection equipment or facility located on any of those four parcels needed or useful for serving either themselves or any other properties.

55. The Darlington County portion of the area purportedly included in the New SPD is and for a number of years has been located in the Palmetto Rural Fire District, is taxed to support the Palmetto Rural Fire District, and receives, and for a number of years has received, fire protection service from Palmetto Rural Fire District.

56. Palmetto Rural Fire District is a fire protection district located in a portion of Darlington County, South Carolina, and created by a majority favorable vote of the voters in that area on November 2, 1976, pursuant to the general law authority set out in S.C. Code Ann. §6-11-10 *et seq.*

57. The County has not, through the Prior Districts or otherwise, provided fire protection service to any of the Darlington County portion of the New SPD, with the sole exception of an informal arrangement pursuant to which West Florence Rural has generally provided service in the northbound lanes (that is, on the southeast side) of Interstate 95 where Interstate 95 bisects the small angle of Darlington County, and, similarly, Windy Hill has generally provided service in the southbound lanes on that segment of Interstate 95, with each assisting the other as needed. 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.

58. The three included Darlington County lots are on E. McIver Road. The nearest Palmetto Rural Fire District station is also on E. McIver Road, approximately 1.9 miles away.

59. Although the Darlington County lots abut the Florence County portion of the New SPD, there is no convenient access from that part of Florence County or its fire stations to the Darlington County lots. The shortest driving route from the nearest fire station in the Florence County portion of the New SPD is approximately 4.38 miles away from the three included lots -- more than 2.25 times the distance of the nearer Palmetto Rural Fire District station.

60. A fire station in a portion of Florence County that is not included in the New SPD (that is, not in Subdistrict No. 1) is significantly closer to the three included lots than the nearest station that is included in the New SPD. The Quinby station is approximately 2.02 miles from the three lots. If the purpose of the Act was truly to provide fire protection to the included lots, the Quinby area would have been a more logical starting point than the West Florence area (although the Act would still have suffered the same infirmities described below).

The Act's Directives

61. The Act, at S.C. Code Ann. §4-23-1015(B), directs that the Florence Elections Commission, and its counterpart in Darlington County, must hold a special election on September 2, 2014, for the election of a governing body of the New SPD. The special election was held, resulting in the election of the five individual defendants as members of the defendant Commission. Subsequent elections are also required on a regular basis.

62. The Act, at S.C. Code Ann. §4-23-1015(B), requires the Auditor and Treasurer of Florence County to impose and collect property taxes on the Florence County portion of the New

SPD for the support and funding of the New SPD and its operations, at the millage rate determined by the governing body of the New SPD after its election.

63. No tax has yet been levied or collected for or on behalf of the New SPD nor will be until the fall of 2014 and/or winter of 2015; and as a consequence, no amount of the tax receipts previously collected, currently being collected, and currently held by the Treasurer of the County as a result of any current or previous *ad valorem* property tax levies imposed by the Auditor of the County for fire protection services is for or on behalf of or available for use by the New SPD.

64. The Act, at S.C. Code Ann. §4-23-1015(C), grants the New SPD an exemption from the millage rate restriction imposed on every other local governing body in the State by S.C. Code Ann. §6-1-320 (generally referred to as "Act 388").

65. The Act, at S.C. Code Ann. §4-23-1025(B), directs that the real and personal property of the "West Florence Fire Subdistrict of the Florence County Fire District now titled in the subdistrict's name" must be transferred to the New SPD. As noted above in the discussion of Act 1817 of 1972, however, there is not now and never has been a "West Florence Fire Subdistrict" of the "Florence County Fire District." On information and belief, there is no real or personal property titled in any subdistrict created under Act 1817; and there is no real or personal property titled in West Florence Rural. The Act makes no other provision for immediately equipping the New SPD or for providing fire service until such provision can be made.

66. The Act, at S.C. Code Ann. §4-23-1025(B), directs that "the real property on Hoffmeyer Road in the county which the governing body of Florence County has acquired to construct a new fire station for the West Florence Fire Subdistrict" must be transferred to the New SPD. Because there is no "West Florence Fire Subdistrict," there is no parcel that has been

acquired for it. Florence County has recently acquired real property on Hoffmeyer Road for a stationhouse for the County's own provision of fire service in that vicinity.

67. The Act, at S.C. Code Ann. §4-23-1025(B), requires that the New SPD assume a portion of certain existing indebtedness and pay to the County a purchase price for certain property required to be transferred, but states that the amount of debt and the amount of the purchase price must be determined by agreement of the County and the New SPD (and, in the case of the debt, two other entities that do not exist). There is no mechanism for dispute resolution or for halting or rescinding the assumption or transfer in the event of a failure to agree.

68. The Act, at S.C. Code Ann. §4-23-1040, prohibits any millage levy or fee for fire service in the New SPD by any other entity. This prohibits the Auditor and Treasurer from performing at their official duties when the County directs that a certain level of tax be imposed throughout the Consolidated County District.

69. The tax prohibition of S.C. Code Ann. §4-23-1040 is effective immediately "[u]pon the establishment of the district." The New SPD is created upon the effective date of the Act (S.C. Code Ann. §4-23-1005), which was May 28, 2014.

70. The Act makes no provision for fire protection service in the New SPD from its effective date until the election of a governing body, that body's determination of a tax levy, the imposition and collection of that tax by the Auditor and Treasurer, and the governing body's entering the necessary contractual arrangements for the provision of service.

71. 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.

72. The Act, at S.C. Code Ann. §4-23-1025(A), provides that so long as the New SPD is indebted to any person, "the provisions of this article and the powers granted to the [New SPD] and [its governing body] may not be in any way diminished or restricted." That section would strip any municipality annexing into the New SPD, for example the City of Florence, of its authority under S.C. Code Ann. §5-3-310 *et seq.* to take over the provision of fire protection service within the annexed portion of the New SPD.

73. On information and belief, the purpose of the Act was to protect property owners in the New SPD from sharing equally in the cost of fire protection throughout the areas under County control and from sharing equally in the cost of any other entity such as an annexing municipality. The fire protection plan embodied in the Act is inefficient, uneconomical, unnecessary and dangerous.

74. The Act has no severability clause.

FOR A FIRST CAUSE OF ACTION
The Act Violates Wagener v. Smith

75. Each of the above allegations is incorporated by reference into this cause of action.

76. The Act seeks to create a new political subdivision to provide, and to impose and collect *ad valorem* property taxes for, fire protection services in areas in which the local county governments are already providing and imposing *ad valorem* property taxes for such services.

77. The law of South Carolina is "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.'" Otherwise, "there would exist two

governments in the same territory, exercising similar powers at the same time. Such a situation cannot be permitted.” *Wagener v. Smith*, 221 S.C. 438, 445 (1952).

78. The Act is therefore invalid and void.

FOR A SECOND CAUSE OF ACTION

The Act's Creation of a Special Purpose District in a Single County Violates Home Rule

79. Each of the above allegations is incorporated by reference into this cause of action.

80. The Act seeks to create a special purpose district that is effectively entirely within one county.

81. The inclusion of three parcels in another county is inconsequential and is wholly unnecessary to the accomplishment of the stated objective of fire protection, and is moreover counterproductive to provision of crucial fire protection service in the most direct and efficient manner. The three parcels (as well as the Florence County area in the New SPD) already enjoy fire protection services from facilities that are considerably closer, pursuant to county government action utilizing generally applicable laws under S.C. Code Ann. §§ 4-9-30(5) and 4-19-10 *et seq.*; the three parcels do not themselves contain any facilities needed for serving either themselves or any other properties; and to the extent that cooperation may be needed or useful among the county governments providing fire protection services in the affected areas, S.C. Const. art. VIII, §13 fully provides that ability, and is reinforced and seconded by S.C. Code Ann. §6-11-1840. Moreover, the arrangement between West Florence Rural and Windy Hill with regard to the portion of Interstate 95 in Darlington County, which has no interchanges in and is therefore not accessible from Darlington County, demonstrates its workability.

82. The Act seeks to modify the boundaries of, and the powers of Florence County Council within, special tax districts located entirely within Florence County and duly created by Florence County under existing general law.

83. The Act seeks to modify the boundaries of, and the powers of a fire protection district, duly created under general law by the Darlington County voters within that district.

84. The Act seeks to require Florence County to transfer property duly acquired and owned by the County, without reference to or establishment of any general law regarding such mandated divestitures by a county or regarding the acquisition by one government of facilities owned by another government.

85. S.C. Const. art. VIII, §7 (part of what is known as the "Home Rule Amendments") declares: "No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government."

86. "It is clear that Section 7 does away with the necessity for creation by the General Assembly of the special purpose district within an existing county. Section 7 specifically directs the General Assembly to provide by general law a means by which the counties themselves may tax different areas at different rates of taxation on the basis of the nature and level of governmental services provided. . . . There is a sound reason for curtailing the power of the General Assembly to create special purpose districts within a county. 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. Each county could be carved into enumerable special districts. Commission or other agencies might be established for each, with each given the power to perform a function intended to have been vested in 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. To point

out the potential results of such a theory compels its rejection." *Knight v. Salisbury*, 262 S.C. 565, 572-73 (S.C. 1974).

87. If the Act is allowed to stand on the theory that it is a multi-county district of regional concern, despite the facts that:

- only three lots in Darlington County are included with a substantial portion of Florence County;
- all of the New SPD, including the three parcels in Darlington County, are already located in and taxed and served by existing governmental entities, duly created under general law for fire protection, and so do not need the New SPD;
- the three Darlington County lots are not directly accessible from the Florence County portion of the New SPD, either by fire truck or other vehicle, but, instead are accessible only by an extensive trek of several miles through Darlington County, past numerous other Darlington County parcels that are not included in the New SPD; and
- the New SPD is given the power to drop service to any inconvenient area (for example, the three Darlington County parcels) by arranging to have another entity (for example, Darlington County's Palmetto Rural Fire District which currently serves them) pick them up;

then there will be no effective principle in S.C. Const. art. VIII, , and §7 remaining, and Home Rule will be reduced to just a 40-year experiment, as 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 to hand off the minuscule portion to its former service-provider). This sort of limited-purpose secession of a portion of a county in order to allow it to avoid the taxes necessary to support the provision of vital services like fire protection throughout the county violates both the letter and the spirit of the Home Rule provisions of South Carolina's Constitution.

88. The Act is thus in conflict with S.C. Const. art. VIII, and is therefore invalid and void.

FOR A THIRD CAUSE OF ACTION

The Act's Unique Exemption Given to the New SPD from General Annexation Law Is Impermissible Special Legislation

89. Each of the above allegations is incorporated by reference into this cause of action.

90. The General Assembly of South Carolina has, by general law at S.C. Code Ann. §4-9-30(5) and §4-19-10 *et seq.*, assigned to counties the power to provide, organize, finance, and manage fire protection services.

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

92. In the context of fire protection services, general law not only can be but has, in fact, been made applicable.

93. The Act treats Florence County and Darlington County differently from every other county, in that it denies to them the governmental power to control fire protection services in the unincorporated areas inside their boundaries.

94. There is no logical basis nor sound reason for treating Florence and Darlington Counties differently from the way in which the 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 area carved out of the two Counties by the Act and no exigent circumstances related thereto; and treating Florence and Darlington Counties differently from all other counties is both unreasonable and arbitrary.

95. The Act is thus in conflict with S.C. Const. art. III, §34, ¶IX, and is therefore invalid and void.

FOR A FOURTH CAUSE OF ACTION
The Act's Unique Exemption Given to the New SPD from General Annexation Law Is Impermissible Special Legislation

96. Each of the above allegations is incorporated by reference into this cause of action.

97. Municipalities in South Carolina have for over a half-century been able to annex into the area of an adjacent special purpose district. *Tovey v. City of Charleston*, 237 S.C. 475 (1961).

98. The General Assembly of South Carolina has, by general law at S.C. Code Ann. §5-3-310 *et seq.*, provided for the orderly determination at the local level of the terms of a transfer of service rights and service area from a special purpose district to an annexing municipality if that municipality so desires, and for the full protection of bondholder rights in such situations.

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

100. In the context of municipal annexation of or into a special purpose district, general law has, in fact, been made applicable.

101. The Act, at S.C. Code Ann. §4-23-1025(A), purports to supersede that general law and to override its authorization of local government bodies to determine proper terms and conditions on a case-by-case basis. The Act does so by requiring that whenever the New SPD has outstanding debt, its service rights and service area cannot under any terms be transferred to an annexing municipality and establishes special, separate provisions for the protection of any New SPD bondholders, in each case contrary to the requirements in general law for identical circumstances.

102. The Act treats the New SPD differently from every other special purpose district, in that it gives them special, singular protection from annexation and the orderly growth of neighboring cities and towns.

103. There is no logical basis nor sound reason for treating the New SPD differently from the way in which the laws of South Carolina treat every special purpose district in the State; there is no substantial distinction in this regard between the New SPD and every other special purpose district in the State; and treating it differently from all other special purpose districts is both unreasonable and arbitrary.

104. The Act is thus in conflict with S.C. Const. art. III, §34, ¶ IX, and is therefore invalid and void.

FOR A FIFTH CAUSE OF ACTION

The Act's Removal from One or a Very Few Cities of Important Annexation Powers Violates Home Rule

105. Each of the above allegations is incorporated by reference into this cause of action.

106. The territory of the New SPD surrounds or is largely contiguous to the City of Florence.

107. S.C. Const. art. VIII, §10 (also part of what is known as the "Home Rule Amendments") declares: "No laws for a specific municipality shall be enacted, and no municipality shall be exempted from the laws applicable to municipalities or applicable to a particular form of government selected by any municipality as authorized by Section 9 of this article."

108. Municipalities in South Carolina have for over a half-century been able to annex into the area of an adjacent special purpose district. *Tovey v. City of Charleston*, 237 S.C. 475 (1961).

109. The General Assembly of South Carolina has, by general law at S.C. Code Ann. §5-3-310 *et seq.*, provided for the orderly determination at the local level of the terms of a transfer of service rights and service area from a special purpose district to an annexing municipality if that municipality so desires, and for the full protection of bondholder rights in such situations.

110. The Act, at S.C. Code Ann. §4-23-1025(A), purports to supersede that general law and to override its authorization of local government bodies to determine proper terms and conditions on a case-by-case basis. The Act does so by requiring that whenever the New SPD has outstanding debt, its service rights and service area cannot under any terms be transferred to an annexing municipality and establishes special, separate provisions for the protection of any New SPD bondholders, in each case contrary to the requirements in general law for identical circumstances.

111. The Act is thus in conflict with S.C. Const. art. VIII, § 10, and is therefore invalid and void.

FOR A SIXTH CAUSE OF ACTION

The Act's Singular Exemption from Act 388 Is Impermissible Special Legislation

112. Each of the above allegations is incorporated by reference into this cause of action.

113. The General Assembly of South Carolina has, by an enactment popularly known as Act 388 and codified at S.C. Code Ann. §6-1-320, a general law, that is applicable to every other local government in the State – including counties, cities, towns, special purpose districts, and school districts – imposed significant general restrictions on the power of local governments to increase tax rates and to raise revenues.

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

115. 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.

116. The Act, in S.C. Code Ann. §4-23-1015(C), creates an exemption for the New SPD from S.C. Code Ann. §6-1-320.

117. There is no logical basis nor sound reason for treating the New SPD differently from the way the laws of South Carolina treat every other local government and special purpose district in the State; there is no substantial distinction in this regard between the New SPD and every other local government and special purpose district in the State; and treating it differently from them is both unreasonable and arbitrary.

118. The Act is thus in conflict with S.C. Const. art. III, §34, ¶ 1X, and is therefore invalid and void.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that the Court issue an Order granting the following relief:

A. Declare Act No. 183, 2014 S.C. Acts ____ to be invalid and unenforceable due to conflict with the rule of *Wagener v. Smith*, 221 S.C. 438 (1952);

B. Declare Act No. 183, 2014 S.C. Acts ____ to be invalid and unenforceable due to conflict with the Home Rule Amendments, S.C. Const. art. VIII, §7;

C. Declare Act No. 183, 2014 S.C. Acts ____ to be invalid and unenforceable due to conflict with the Home Rule Amendments, S.C. Const. art. VIII, §10;

D. Declare Act No. 183, 2014 S.C. Acts ____ to be invalid and unenforceable due to conflict with S.C. Const. art. III, §34, ¶ 1X;

E. Enjoin each of the defendants from acting pursuant to or under authority of Act No. 183, 2014 S.C. Acts ____;

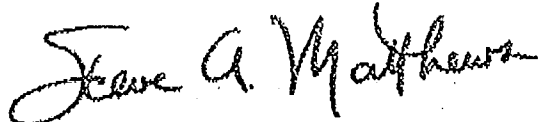
F. Declare that neither Florence County nor any other entity is required to transfer property to the new special purpose district purportedly created by Act No. 183, 2014 S.C. Acts ____;

G. Require each defendant to take all actions necessary to restore to the Plaintiffs all properties and funds rightfully belonging or owed to the Plaintiffs at the date of enactment of Act No. 183, 2014 S.C. Acts _____;

H. For such other relief as may be deemed appropriate by this Court.

Respectfully submitted,

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*Counsel for Plaintiffs County of Florence and
Florence County Council*

September 11, 2014

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) IN THE COMMON PLEAS COURT
) 12TH JUDICIAL CIRCUIT
)

C/A NO.: 2014-CP-21-2626

COUNTY OF FLORENCE AND
FLORENCE COUNTY COUNCIL,

Plaintiffs,

vs.

WEST FLORENCE FIRE DISTRICT,
ET AL,

Defendants.

ANSWER

FILED
2014 OCT 15 PM 2:05
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

The undersigned, Wallace H. Jordan, Jr. and John S. Nichols, hereby answer the Complaint of the Plaintiff in the name of the Defendants pursuant to Section 15-78-60 of the South Carolina Code of Laws (1976 as amended) as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted, qualified, or explained, is hereby denied.

FOR A SECOND DEFENSE

2. Defendants reiterate and reallege each and every affirmation and denial above as if repeated herein verbatim.
3. Responding to the Nature of the Case Paragraphs 1 through 5, these paragraphs relate to legal conclusions for which Defendants are not required to respond. However, to the extent that such a response is required, they are hereby denied.

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

4. Defendants admit Paragraphs 6 and 7 of Plaintiffs Complaint upon information and belief.
5. Responding to Paragraph 8 of Plaintiffs Complaint, West Florence Fire District is a special purpose district (SPD).
6. Responding to Paragraph 9 of Plaintiff's Complaint. West Florence Fire District Commission is the governing body of the SPD.
7. Responding to Paragraph 10 of Plaintiffs Complaint, David Brown is a resident of Florence County and a member of the SPD Commission.
8. Responding to Paragraph 11 of Plaintiffs Complaint, Justin Fails is a resident of Florence County and a member of the SPD Commission.
9. Responding to Paragraph 12 of Plaintiffs Complaint, Linda Lang Gipco is a resident of Florence County and a member of the SPD Commission.
10. Responding to Paragraph 13 of Plaintiffs Complaint, Richard Hewitt is a resident of Florence County and a member of the SPD Commission.
11. Responding to Paragraph 14 of Plaintiffs Complaint, C. Allen Matthews is a resident of Florence County and a member of the SPD Commission.
12. Responding to the Jurisdiction Paragraph 15, Defendants hereby admit that this Court has jurisdiction over the parties and subject matter.
13. Responding to the Factual Background, The County's Fire Service Protection History, Paragraphs 16 through 74, these paragraphs relate to legal conclusions for which Defendants are not required to respond. However, to the extent that such a response is required, they are hereby denied.

FOR A THIRD DEFENSE

14. Further answering the Plaintiffs Complaint, and as a Third Defense hereto, Defendants reiterate and reallege the allegations contained in the above-defenses as if fully repeated herein verbatim
15. Responding to Paragraph 75, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
16. Defendants admit the allegations contain in Paragraph 76 upon information and belief.
17. Defendants hereby deny the allegations in Paragraph 77 and request strict proof thereof.
18. Responding to Paragraph 78, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
19. Defendants deny the allegations of Paragraphs 80, 81, and 82, and hereby request strict proof thereof.
20. Defendants admit the allegations of Paragraph 83 upon information and belief.
21. Defendants deny the allegations of Paragraph 84 and hereby request strict proof thereof.
22. Defendants admit the allegations of Paragraph 85 upon information and belief.
23. Defendants deny the allegations of Paragraph 86 and request strict proof thereof.
24. Defendants deny the allegations of Paragraph 87 and request strict proof thereof.

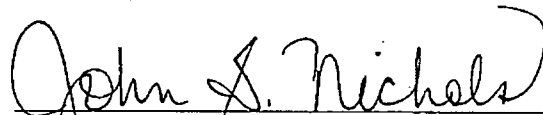
25. Defendants deny the allegations of Paragraph 88 and request strict proof thereof.
26. Responding to Paragraph 89, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
27. Defendants admit the allegations of Paragraph 90 upon information and belief.
28. Defendants deny the allegations of Paragraph 91 and request strict proof thereof.
29. Defendants admit the allegations of Paragraph 92 upon information and belief.
30. Defendants deny the allegations of Paragraph 93 and request strict proof thereof.
31. Defendants deny the allegations of Paragraph 94 and request strict proof thereof.
32. Defendants deny the allegations of Paragraph 95 and request strict proof thereof.
33. Responding to Paragraph 96, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
34. Defendants admit the allegations of Paragraph 97 upon information and belief.
35. Defendants admit the allegations of Paragraph 98 upon information and belief.
36. Defendants admit the allegations of Paragraph 99 upon information and belief.
37. Defendants deny the allegations of Paragraph 100 and request strict proof thereof.
38. Defendants deny the allegations of Paragraphs 101, 102, 103, and 104 and request strict proof thereof.

39. Responding to Paragraph 105, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
40. Defendants admit the allegations of Paragraph 106 upon information and belief.
41. Defendants admit the allegations of Paragraph 107 upon information and belief.
42. Defendants admit the allegations of Paragraph 108 upon information and belief.
43. Defendants admit the allegations of Paragraph 109 upon information and belief.
44. Defendants deny the allegations of Paragraph 110 and request strict proof thereof.
45. Defendants deny the allegations of Paragraph 111 and request strict proof thereof.
46. Responding to Paragraph 112, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
47. Defendants admit the allegations of Paragraph 113 upon information and belief.
48. Defendants deny the allegations of Paragraphs 114, 115, 116, 117, and 118 and request strict proof thereof.

WHEREFORE, having fully answered Plaintiff's Complaint herein, Defendants pray that the Complaint be dismissed, with costs and for such other and further relief as this Court may deem just and appropriate.



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Florence, SC
October 14, 2014

Attorneys for Defendants

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

Case No. 2014-CP-21-2626

ANSWER

The Defendant State of South Carolina, answering the Complaint alleges the following:

FOR A FIRST DEFENSE

1. The State denies each and every allegation of the Complaint not hereinafter specifically admitted.

2. As to Paragraph 1 of the Complaint, the State admits only that the Complaint contests the referenced matters, but the State is without sufficient knowledge or information to admit or deny the facts alleged, and therefore, denies them.

3. Paragraphs 2, 3, 4 and 5 set forth conclusions of law to which no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the paragraphs, and therefore denies them.

4. The State admits paragraphs 6 and 7.

5. As to Paragraphs 8 and 9, the State craves reference to Act No. 183, 2014 S. C. Acts.

6. The State admits Paragraphs 10, 11 12, 13, 14 and 15 on information and belief.

7. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 16 -32, inclusive, but craves reference to ordinances attached to the Complaint as to any allegations pertaining to their contents.

8. As to Paragraph 33, the State craves reference to the pertinent legislative journals and denies any allegations inconsistent therewith.

9. Paragraphs 34 and 35 sets forth conclusions of law to which no response is required. To the extent that a response is required, the State craves reference to Act. The State is without sufficient knowledge or information to admit or deny any conclusions of law about the Act and therefore denies them.

10. As to Paragraph 36, the State craves reference to the Act. The State is not required to respond to any conclusions of law about the effect of the Act, but to the extent that a response is required, the State is without sufficient knowledge or information to admit or deny any such conclusions and therefore denies them.

11. As to Paragraph 37, to the extent that the Paragraph sets forth any conclusions of law, no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny any conclusions of law about the Act and

therefore denies them. The State is without sufficient knowledge or information to admit or deny any fact allegations in this paragraph and therefore denies them.

12. As to Paragraph 38, 39 and 40, the State craves reference to the Act.

13. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 41 – 45, inclusive, and therefore denies them.

14. As to Paragraph 46, the State craves reference to the Act. The State is without sufficient knowledge or information to admit or deny any fact allegations in this Paragraph and, therefore denies them.

15. As to Paragraph 47, the State craves reference to the Act.

16. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 48 and 49 and therefore denies them.

17. As to Paragraphs 50, 51 and 52, the State craves reference to Act 183, but the State is without sufficient knowledge or information to admit or deny any fact allegations in those paragraphs and, therefore, denies them.

18. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 53 -- 60, inclusive, and therefore denies them.

19. The State craves reference to the Act as to the first and third sentences of Paragraph 61. The State admits the second sentence on information and belief.

20. The State craves reference to the cited Act as to Paragraph 62.

21. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraph 63, and therefore denies them.

22. As to Paragraph 64, the State craves reference to the Act.

23. The State craves reference to the Act as to the first and last sentences of Paragraph 65. The State is without sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 65, and therefore denies them.

24. The State craves reference to the Act as to the first sentence of Paragraph 66. The State is without sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 66, and therefore denies them.

25. The State craves reference to the Act as to Paragraph 67.

26. The State craves reference to the Act as to the first sentence of Paragraph 68. The second sentence sets forth conclusions of law to which no response is required. To the extent that a response is required, the State craves reference to the applicable authority and denies any allegations inconsistent therewith.

27. The State craves reference to the Act as to Paragraphs 69 – 71, inclusive.

28. The State craves reference to the Act as to Paragraph 72 and denies any allegations inconsistent with it. The State is without sufficient knowledge or information to admit or deny any allegations regarding the legal effect of the Act in the second sentence and, therefore, denies them.

29. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraph 73 and therefore denies them. The State craves reference to the Act.

30. As to Paragraph 74, the State craves reference to the Act.

31. Paragraph 75 is a cumulative paragraph to which no response is necessary. To the extent that, arguendo, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

32. As to Paragraph 76, the State craves reference to the Act. To the extent that the Paragraph sets forth conclusions of law as to the operation of fire districts at issue, no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the paragraph, and therefore denies it.

33. As to Paragraph 77, the State craves reference to the cited case. To the extent that the Paragraph sets forth conclusions of law as to the operation of fire districts at issue, no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the paragraph, and therefore denies it.

34. Paragraph 78 sets forth conclusions of law to which no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the paragraph, and therefore denies it.

35. Paragraph 79 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

36. As to Paragraph 80, the State craves reference to the Act and denies any allegations inconsistent with it.

37. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 81- 84, inclusive, including any conclusions of law, to which a response is not needed, and therefore denies those Paragraphs. The State craves reference to the cited legislation.

38. As to Paragraph 85, the State craves reference to the Constitutional provision.

39. As to Paragraph 86, the State craves reference to the cited case. To the extent that the Paragraph is intended to set forth conclusions of law as to the creation of the fire district at

issue, no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny any such allegations in the Paragraph, and therefore denies them.

40. Paragraph 87 sets forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the paragraph including any fact allegations therein, and therefore denies it.

41. Paragraph 88 sets forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the paragraph, and therefore denies it.

42. Paragraph 89 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

43. As to Paragraphs 90 and 91, the State craves reference to the cited provisions of law.

44. Paragraphs 92 – 95, inclusive, set forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the Paragraphs, and therefore denies them.

45. Paragraph 96 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

46. Paragraph 97, sets forth a conclusion of law to which no response is required. To the extent that a response is required to that conclusion, the State craves reference to the cited case and other applicable authority.

47. Paragraphs 98 - 104, inclusive, set forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the paragraphs, and therefore denies them. The State craves reference to the cited statutes and Constitutional provision.

48. Paragraph 105 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

49. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraph 106, and therefore, denies it.

50. As to Paragraph 107, the State craves reference to the cited Constitutional provision.

51. Paragraphs 108, sets forth a conclusion of law to which no response is required. To the extent that a response is required to that conclusion, the State craves reference to the cited case and other applicable authority.

52. As to Paragraph 109, the State craves reference to the cited statutes.

53. Paragraphs 110 and 111 set forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the Paragraphs, and therefore denies them.

54. Paragraph 112 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

55. As to Paragraph 113, the State craves reference to the cited statute and denies any allegations inconsistent with it.

56. As to Paragraph 114, the State craves reference to the cited section of the Constitution.

57. Paragraphs 115 – 118, inclusive, set forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the paragraphs as they are alleged to apply to the matter at issue, and therefore denies them.

58. The Prayer for Relief sets forth conclusions of law to which no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the Prayer except that the State denies that it is subject to an injunction in this case.

FOR A SECOND DEFENSE

59. The State of South Carolina, as a corporate entity and party, may not be enjoined.

WHEREFORE, having fully answered the Complaint, the State prays as follows:

1. That judgment for the State be entered as to the Complaint and that the relief sought by the Plaintiff be denied as to the State.

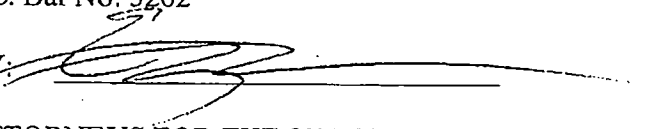
2. For such further relief as the Court deems just and proper.

ALAN WILSON
Attorney General

[Signature block continues, next page]

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BY: 

October 27, 2014

ATTORNEYS FOR THE STATE

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

2626
C.A. No.: 2014-CP-21-1428

AMENDED COMPLAINT

Plaintiffs County of Florence and Florence County Council allege the following:

NATURE OF THE CASE

1. This action contests the validity on several grounds of Act No. 183, 2014 S.C. Acts ____ (the "Act," copy attached as Exhibit A-1) and Act No. 89, 2015 S.C. Acts ____ (the "Amendment," copy attached as Exhibit A-2, with a copy showing the revisions made by the Amendment incorporated into the Act attached as Exhibit A-3). The Act as amended by the Amendment is referred to herein as the "Amended Act." 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 Amendment purports, among other revisions, to add to the New SPD an additional 100± lots in Darlington County. The

additional 100± lots in Darlington County are not contiguous to the original three lots in Darlington County. The respective counties are already, and for a long time have been, providing fire service to all of the included area.

2. The Act and the Amendment, separately and together, violate a fundamental principle in South Carolina and most jurisdictions against having two overlapping government bodies both exercising the same governmental power and serving the same governmental function.

3. The Act and the Amendment, separately and together, violate South Carolina's constitutional Home Rule provisions by purporting to create a special purpose district that is effectively entirely within Florence County (forbidden since 1973), apparently on the pretense that the new district is a multi-county district of more than local concern, due to the unnecessary and pretextual inclusion of a *de minimis* portion of another county.

4. The Act and the Amendment, separately and together, violate South Carolina's constitutional prohibition against special legislation where general legislation can be made applicable in that they 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. Not only can general legislation be made applicable in this situation, general legislation is applicable. There is no logical basis nor sound reason for treating Florence and Darlington Counties differently from the way in which the 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.

5. The Act and the Amendment, separately and together, further violate South Carolina's constitutional prohibition against special legislation where general legislation can be made applicable, in at least two additional particulars, those being exemptions granted to the New SPD, and to the New SPD alone, from the State's municipal annexation laws and from a local government finance law that is otherwise applicable to every local government body in the State. In both cases, not only can general legislation be made applicable, general legislation is applicable. There is no logical basis nor sound reason for treating the New SPD differently from the way the laws of South Carolina treat every other local government and special purpose district in the State; there is no substantial distinction in these regards between the New SPD and every other local government and special purpose district in the State; and treating it differently from them is both unreasonable and arbitrary.

6. The Act and the Amendment, separately and together, further violate South Carolina's constitutional prohibition against special legislation where general legislation can be made applicable, in that they require the transfer of property purchased, paid for, and owned by Florence County to the New SPD for the purpose of providing fire protection service to area of the County that extends beyond the New SPD, despite general law (i) authorizing counties to make their own decisions on the disposition of their real property and (ii) authorizing counties to determine where to locate their own fire-fighting assets. Moreover, the Amendment even goes so far as to eliminate the Act's requirement that the New SPD pay compensation for certain Florence County properties.

7. The West Florence Fire District Commission (the "New SPD Commission"), the putative governing body of the New SPD, was elected pursuant to the unconstitutional Act and is therefore invalidly constituted.

8. The Amended Act authorizes the invalidly-constituted New SPD Commission to levy *ad valorem* property taxes on the owners of property within the New SPD, thereby violating South Carolina's constitutional requirement that taxes for a special purpose district may only be levied by duly-elected representatives of the people.¹

9. The New SPD Commission, even if it had been duly elected under the original Act, is nonetheless not representative of the owners of the 100± lots added to the New SPD by the Amendment; and the residents of those lots will not have an opportunity to vote for new commissioners until November 2016 (after two tax cycles), and then will be able to vote for only a minority of the New SPD Commission. Those residents will not be able to vote for a majority of the New SPD Commission until November 2018, after four annual tax-levy cycles (by which time, these "new constituents" will have only one more tax cycle in the New SPD due to the Amendment's "sunset clause" described in the following paragraph).

10. The Amendment tacitly recognizes the invalidity of the original Act and is, in fact, a futile attempt to validate it. But the entire Amendment by its own terms expires after five years; so that, even if the Amendment were an effective corrective to any of the original Act's constitutional infirmities (which Plaintiffs deny), those infirmities are not removed but only postponed for a period, during which time additional infirmities of the Amendment will be in play. This sunset provision recognizes, at least with regard to the newly-added 100± lots, 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 those 100± lots will revert to that general legislation in five years' time.

¹ The Plaintiffs do not claim the invalidity or unconstitutionality of levies made by the New SPD Commission prior to any declaration by a court of the Act's or the Amendment's unconstitutionality.

PARTIES

11. The County of Florence ("Florence County" or the "County") is a county of the State of South Carolina.

12. The Florence County Council (the "Council") is the governing body of the County.

13. The West Florence Fire District or New SPD purports to be a special purpose district, created by the Act.

14. The New SPD Commission purports to be the governing body of the New SPD.

15. David Brown is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Mr. Brown is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against him in his personal capacity.

16. Dustin Fails is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Mr. Fails is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against him in his personal capacity.

17. Linda Lang Gipco is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Ms. Gipco is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against her in her personal capacity.

18. Richard Hewitt is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Mr. Hewitt is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against him in his personal capacity.

19. C. Allen Matthews is, on information and belief, a resident of Florence County who purports to be a member of the New SPD Commission, having been one of the top five vote-getters in an election held in a portion of Florence County under the auspices of the Act on September 2, 2014. Mr. Matthews is named in his capacity as a purported member of the New SPD Commission only, and no relief is sought against him in his personal capacity.

JURISDICTION

20. 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 *et seq.*, pursuant to which a portion of the relief in this action is sought.

FACTUAL BACKGROUND

The County's Fire Service Protection History

21. The County has, for a number of years, provided and will continue to provide fire protection service to the citizens, businesses, and property located in the Florence County portion of the New SPD.

22. Until very recently, the County's fire protection service in various unincorporated areas of the County, including the Florence County portion of the New SPD, was through the mechanism of six special tax districts, referred to herein as the "Prior Districts."

23. The Prior Districts have recently been consolidated by the County into a single special tax district for fire protection and rescue services (the "Consolidated County District"), as further described below.

24. The Florence County portion of the New SPD lies entirely within the area of the Prior Districts and entirely within the area of the Consolidated County District.

25. Each of the Prior Districts was a special tax district created by the County pursuant to S.C. Code Ann. §4-9-30(5) or S.C. Code Ann. §4-19-10 *et seq.* by the Council's adoption of a series of ordinances from 1982 through 2011, as described in Paragraph 2 of the preamble to Florence County Council Ordinance No. 18-2013/14, attached as Exhibit B.

26. In 2012, the County engaged the professional service firm Emergency Consulting Services International ("ECSI") to conduct a study of, and develop recommendations for improving the quality and efficiency of, the County's fire protection services. ECSI began its study in October 2012 and submitted its report to the Council in May 2013.

27. After consideration of ECSI's "study of the efficiency and effectiveness of the financing of fire protection and related rescue service through the Prior Districts" and its recommendation for greater uniformity in the provision of such services, the Council "determined that it will be in the best interests of the County and the residents of the Prior Districts to dissolve each of the Prior Districts and create a new, single County Fire Protection District, to be designated the Florence County Fire Protection District, which will encompass all of the areas contained in the Prior Districts, to include of [*sic*] 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 the [Florence County Fire Protection 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.” [¶ 4 of the preamble to Florence County Council Ordinance No. 18-2013/14, attached as Exhibit B.]

28. Other counties in South Carolina have likewise used their Home Rule powers to consolidate fire districts within those counties in order to protect the lives and property of their citizens in the most reliable and cost-effective manner.

29. Two ordinances to accomplish that purpose (one dissolving the old districts, and one creating the new, consolidated district) were given first reading by the Council on February 20, 2014, followed by second reading, the publication three times of a notice of public hearing, the holding of a public hearing, and final adoption on third reading of the two ordinances on May 15, 2014.

30. By the first of those two ordinances, Ordinance No. 17-2013/14 (the “Dissolution Ordinance”), the Council, pursuant to S.C. Code Ann. §4-9-30(5)(e) and S.C. Code Ann. §4-19-20 *et seq.*, dissolved the Prior Districts.

31. The Dissolution Ordinance, by its terms, became effective 20 days after the second publication of notice of its adoption, which occurred on May 23, 2014, so that the effective date was June 12, 2014.

32. By the second of those two ordinances, Ordinance No. 18-2013/14 (the “Creation Ordinance,” attached as Exhibit B), the Council, pursuant to S.C. Code Ann. §4-19-10 *et seq.*, created the Florence County Fire Protection District (the “Consolidated County District”) as a special tax district for fire protection.

33. The Creation Ordinance, by its terms, became effective simultaneously with the Dissolution Ordinance.

34. Consequently, from and after June 12, 2014, the County, through the mechanism of the Consolidated County District, will continue to provide fire protection service to the Florence County portion of the area purportedly included in the New SPD.

35. As a result of the consolidation of the existing special tax fire districts into a single special tax fire district, a uniform tax millage rate for fire protection purposes will be levied throughout the area of the Consolidated County District; and thus some of the Prior Districts will see an increase in their fire protection tax millage levy and others of the Prior Districts will see a decrease in their fire protection tax millage levy.

36. West Florence Rural Volunteer Fire District ("West Florence Rural," one of the Prior Districts) would, without the Act, experience the greatest increase in its fire protection tax millage levy among the six consolidated districts – more than doubling tax year 2013's levy of 8.0 mills.

37. All *ad valorem* property tax levies and receipts for fire protection service on property within the area of the Consolidated County District previously, currently being, or to be imposed, collected or held by the Auditor or Treasurer are levied, collected, and held for and on behalf of the County for its use in exercising its power under general law, S.C. Code Ann. §4-9-25, §4-9-30(5) and §4-19-10 *et seq.*, to provide fire protection service through the Prior Districts and the Consolidated County District.

The Act, Its History, and Its Geography

38. On May 7, 2014, nearly three months after the introduction of the Dissolution and Creation Ordinances and only eight days prior to their final adoption on May 15, 2014, House

Bill 5225, which became the Act, was first introduced. The House of Representatives considered the bill without reference to committee and without hearing or markup and gave its third reading approval on May 15. One week later, on May 22, 2014, again without reference, hearing or markup, the Senate likewise gave its third reading approval. The Governor signed the bill, and it purportedly became effective on May 28, 2014.

39. The Act purports to create a fire protection special purpose district (the New SPD) on top of some indeterminate portion of the area of the Consolidated County District (which as described above has received and would, without the Act, continue to receive fire protection service from the County, through special tax districts created by the County), plus a negligible and unrelated portion of Darlington County consisting of three parcels and a highway right-of-way.

40. The Act does not dissolve or diminish West Florence Rural, any other Prior District, or the Consolidated County District.

41. The Act defines the Florence County area included in the New SPD as being one of the subdistricts established by Act No. 1817, 1972 S.C. Acts 3613 ("Act 1817").

42. None of the sub-districts authorized by Act 1817 has been operational since at least as early as 2007; and to the extent that they still had any legal existence they had been formally dissolved pursuant to S.C. Code Ann. §4-11-290 by order of the Secretary of State on May 6, 2014, prior to the adoption of the Act, and indeed prior to the first introduction of H. 5225 that became the Act.

43. More particularly, the Act at S.C. Code §4-23-1005 defines the Florence County area included in the New SPD as "the unincorporated areas of the West Florence Fire Subdistrict of the Florence County Fire District as established by Act 1817 of 1972."

44. Act 1817 nowhere refers to any "West Florence Fire Subdistrict."

45. Rather, Act 1817 refers to the six subdistricts that it established only by number – Subdistrict No. 1, Subdistrict No. 2, *etc.*, through Subdistrict No. 6.

46. West Florence Rural lies entirely within Subdistrict No. 1. Also lying within Subdistrict No. 1 are a substantial portion of Howe Springs Fire District ("Howe Springs") and a portion of Windy Hill/Olanta Rural Volunteer Fire District ("Windy Hill").

47. West Florence Rural is contiguous to, but not accessible directly from, the Darlington County portion of the New SPD.

48. If the Act intended Subdistrict No. 1 to be its reference, then the New SPD includes large areas that are not considered "West Florence."

49. If the Act intended a different Subdistrict of Act 1817 to be its reference, then West Florence Rural is excluded from the New SPD.

50. Consequently, it is not possible to determine what area of Florence County is intended by the Act to be in the New SPD. On information and belief, the County Auditor, County Treasurer, and the Registration and Elections Commission for Florence County ("Florence Elections Commission") have each informally determined what areas of Florence County their respective offices will treat as being within the New SPD in order to allow them to perform their official duties.

51. The Act adds into the New SPD two small and unrelated bits in Darlington County, as follows.

52. First, the Act adds "the area of Darlington County reflected in the rights of way for Interstate 95 beginning at the boundary line of Florence County and Darlington County and extending northward into Darlington County for approximately three miles to Exit 169."

53. However, Exit 169 is not in Darlington County; it is in Florence County. Only a short segment of Interstate 95 runs through Darlington County.

54. That small segment of Interstate 95 contains no on-off interchange. The closest access to the southbound lanes is from an interchange located in Florence County in the Windy Hill Prior District, and the closest access to the northbound lanes is from an interchange located in West Florence Rural.

55. Next, the Act adds three lots, specified 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, and depicted on the map attached as Exhibit C-1.

56. However, without explanation, the Act excludes a small, quarter-acre 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 small parcel in the northwest corner of 219-03-01-001. See Exhibit C-1.

57. The Act also excludes the remainder of the small portion of Darlington County that is south of Interstate 95 (which at that point runs in an east-west direction).

58. None of the four lots (neither the three included nor the one excluded) is directly accessible from Interstate 95.

59. There is no fire protection equipment or facility located on any of those four parcels needed or useful for serving either themselves or any other properties.

60. The Darlington County portion of the area purportedly included in the New SPD is and for a number of years has been located in the Palmetto Rural Fire District, is taxed to

support the Palmetto Rural Fire District, and receives, and for a number of years has received, fire protection service from Palmetto Rural Fire District.

61. Palmetto Rural Fire District is a fire protection district located in a portion of Darlington County, South Carolina, and created by a majority favorable vote of the voters in that area on November 2, 1976, pursuant to the general law authority set out in S.C. Code Ann. §6-11-10 *et seq.*

62. The County has not, through the Prior Districts or otherwise, provided fire protection service to any of the Darlington County portion of the New SPD, with the sole exception of an informal arrangement pursuant to which West Florence Rural has generally provided service in the northbound lanes (that is, on the southeast side) of Interstate 95 where Interstate 95 bisects the small angle of Darlington County, and, similarly, Windy Hill has generally provided service in the southbound lanes on that segment of Interstate 95, with each assisting the other as needed. 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.

63. The three included Darlington County lots are on E. McIver Road. The nearest Palmetto Rural Fire District station is also on E. McIver Road, approximately 1.9 miles away, as shown on the map attached as Exhibit C-2.

64. Although the Darlington County lots abut the Florence County portion of the New SPD, there is no convenient access from that part of Florence County or its fire stations to the Darlington County lots. The shortest driving route from the nearest fire station in the Florence County portion of the New SPD is approximately 4.38 miles away from the three included lots --

more than 2.25 times the distance of the nearer Palmetto Rural Fire District station, as shown on the map attached as Exhibit C-3.

65. A fire station in a portion of Florence County that is not included in the New SPD (that is, not in Subdistrict No. 1) is significantly closer to the three included lots than the nearest station that is included in the New SPD. The Quinby station is approximately 2.02 miles from the three lots. If the purpose of the Act was truly to provide fire protection to the included lots, the Quinby area would have been a more logical starting point than the West Florence area (although the Act would still have suffered the same infirmities described below).

The Amendment, Its History, and Its Geography

66. On June 23, 2014, the Plaintiffs challenged the constitutionality of the Act by filing with the South Carolina Supreme Court a complaint and a petition for that Court to hear the matter in its original jurisdiction. The complaint and petition specified the constitutional defects of the Act. When the Supreme Court declined original jurisdiction, the Plaintiffs on September 16, 2014, instituted this action, renewing their challenge to the constitutionality of the Act and further identifying its constitutional failings.

67. On February 17, 2015, three members of the Florence County delegation in the South Carolina House of Representatives introduced House Bill 3670, which became the Amendment, in a transparent attempt to camouflage some of the Act's constitutional defects. The House considered and passed H. 3670 without committee hearing or markup. The Senate also considered and passed the bill, again without committee hearing or markup. The Governor vetoed the bill, but her veto was overridden and the bill purportedly became effective as Act No. 89 of 2015 (the Amendment) on July 7, 2015.

68. The Amendment completely redefined the Florence County portion of the New SPD as being not "the unincorporated areas of the West Florence Fire Subdistrict of the Florence County Fire District as established by Act 1817 of 1972" (the original definition of the Act") but being instead the West Florence Rural special tax district created by the County in 2007 and dissolved by the County on June 12, 2014.

69. The Amendment brazenly declares that the re-definition of the Florence County portion is not a change and that the new definition is what was intended by the General Assembly in enacting the original Act. However, the General Assembly that enacted the Amendment (the 121st) was a different General Assembly from the one that enacted the Act (the 120th), and so had no competence to declare, and no power to usurp the judicial function to find, after the fact, what an earlier legislative intent was.

70. The Amendment added 100± parcels in Darlington County to the New SPD as depicted on the map attached as Exhibit D-1, that are described generally as the property on either side of Hoffmeyer Road between the Darlington-Florence County Line and Winburn Drive and consisting of 65± acres north of and abutting Hoffmeyer Road and 105± acres south of Hoffmeyer Road.

71. The 100± lots are not contiguous to the portion of Darlington County included in the New SPD by the Act, as shown on the map attached as Exhibit D-2; and the two portions of Darlington County are, at their closest, over 8.8 miles apart, as shown on the map attached as Exhibit D-3.

72. The 100± lots added by the Amendment are located in, taxed for, and provided fire protection service by the Darlington County Fire District, created by Darlington County Council in 1987. Their primary fire protection service was provided, but for the Amendment,

from Darlington County Fire District Station No. 5, which is located at 4973 Hoffmeyer Road (the road that forms the defining spine of the 100± lots) and is a straight-shot along that one thoroughfare of less than 4 miles from the 100± lots, as shown on the map attached as Exhibit D-4. The nearest present New SPD station is more than 5 miles, crossing two interstate highways, from the 100± lots, as shown on the map attached as Exhibit D-5.

The Act's Directives

73. The Act, at S.C. Code Ann. §4-23-1015(B), directs that the Florence Elections Commission, and its counterpart in Darlington County, must hold a special election on September 2, 2014, for the election of a governing body of the New SPD. The special election was held, resulting in the election of the five individual defendants as members of the defendant New SPD Commission. Subsequent elections are also required on a regular basis at the same time as general elections, with a minority of two seats being subject to election in 2016 (and every four years thereafter) and the remaining majority of three seats being subject to election in 2018 (and every four years thereafter).

74. The Act, at S.C. Code Ann. §4-23-1015(B), requires the Auditor and Treasurer of Florence County to impose and collect property taxes on the Florence County portion of the New SPD for the support and funding of the New SPD and its operations, at the millage rate determined by the governing body of the New SPD after its election.

75. No tax had been levied or collected for or on behalf of the New SPD until the fall of 2014 and/or winter of 2015; and as a consequence, no amount of the tax receipts previously collected, currently being collected, and currently held by the Treasurer of the County as a result of any prior *ad valorem* property tax levies imposed by the Auditor of the County for fire protection services is for or on behalf of or available for use by the New SPD.

76. The Act, at S.C. Code Ann. §4-23-1015(C), grants the New SPD an exemption from the millage rate restriction imposed on every other local governing body in the State by S.C. Code Ann. §6-1-320 (generally referred to as "Act 388").

77. The Act, at S.C. Code Ann. §4-23-1025(B), directs that the real and personal property of the "West Florence Fire Subdistrict of the Florence County Fire District now titled in the subdistrict's name" must be transferred to the New SPD. As noted above in the discussion of Act 1817 of 1972, however, there is not now and never has been a "West Florence Fire Subdistrict" of the "Florence County Fire District." On information and belief, there is no real or personal property titled in any subdistrict created under Act 1817; and there is no real or personal property titled in West Florence Rural. The Act makes no other provision for immediately equipping the New SPD or for providing fire service until such provision can be made.

78. The Act, at S.C. Code Ann. §4-23-1025(B), ordered Florence County to transfer to the New SPD "the real property on Hoffmeyer Road in the county which the governing body of Florence County has acquired to construct a new fire station for the West Florence Fire Subdistrict," and ordered the New SPD to pay for that property an amount of compensation agreed upon by the County and the New SPD. Because there is no "West Florence Fire Subdistrict," there is no parcel that has been acquired for it. The Act made no provision for the determination or payment of compensation if the County and the New SPD could not agree on an amount.

79. The Amendment, at S.C. Code Ann. §4-23-1025(B), deleted the reference to "the West Florence Fire Subdistrict" so that the property ordered to be transferred is described simply as "the real property on Hoffmeyer Road in the county which the governing body of Florence

County has acquired to construct a new fire station.” The Amendment completely deleted any requirement that the New SPD pay to the County any compensation for the property.

80. 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 the Plaintiff County Council had determined to be necessary to serve the fire protection needs of the Consolidated County District. That protection would cover areas of Florence County beyond merely that portion now purportedly included in the New SPD. Florence 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 completely 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.

81. The Act, at S.C. Code Ann. §4-23-1025(B), requires that the New SPD assume a portion of certain existing indebtedness and pay to the County a purchase price for certain property required to be transferred, but states that the amount of debt and the amount of the purchase price must be determined by agreement of the County and the New SPD (and, in the

case of the debt, two other entities that do not exist). There is no mechanism for dispute resolution or for halting or rescinding the assumption or transfer in the event of a failure to agree.

82. The Act, at S.C. Code Ann. §4-23-1040, prohibits any millage levy or fee for fire service in the New SPD by any other entity. This prohibits the Auditor and Treasurer from performing at their official duties when the County directs that a certain level of tax be imposed throughout the Consolidated County District.

83. The tax prohibition of S.C. Code Ann. §4-23-1040 is effective immediately “[u]pon the establishment of the district.” The New SPD is created upon the effective date of the Act (S.C. Code Ann. §4-23-1005), which was May 28, 2014.

84. The Act makes no provision for fire protection service in the New SPD from its effective date until the election of a governing body, that body’s determination of a tax levy, the imposition and collection of that tax by the Auditor and Treasurer, and the governing body’s entering the necessary contractual arrangements for the provision of service.

85. 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.

86. The Act, at S.C. Code Ann. §4-23-1025(A), provides that so long as the New SPD is indebted to any person, “the provisions of this article and the powers granted to the [New SPD] and [its governing body] may not be in any way diminished or restricted.” That section would strip any municipality annexing into the New SPD, for example the City of Florence, of its

authority under S.C. Code Ann. §5-3-310 *et seq.* to take over the provision of fire protection service within the annexed portion of the New SPD. Although the Amendment purports to subordinate that provision to a portion of South Carolina's municipal annexation laws, the Amendment is only a temporary, 5-year proviso.

87. On information and belief, the purpose of the Act was to protect property owners in the New SPD from sharing equally in the cost of fire protection throughout the areas under County control and from sharing equally in the cost of any other entity such as an annexing municipality. The fire protection plan embodied in the Act is inefficient, uneconomical, unnecessary and dangerous

88. The Act has no severability clause.

FOR A FIRST CAUSE OF ACTION
The Act Violates Wagener v. Smith

89. Each of the above allegations is incorporated by reference into this cause of action.

90. Each of the Act and the Amendment seeks to create a new political subdivision to provide, and to impose and collect *ad valorem* property taxes for, fire protection services in areas in which the local county governments are already providing and imposing *ad valorem* property taxes for such services.

91. The law of South Carolina is "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.'" Otherwise, "'there would exist two governments in the same territory, exercising similar powers at the same time. Such a situation cannot be permitted.'" *Wagener v. Smith*, 221 S.C. 438, 445 (1952).

92. Each of the Act and the Amendment is therefore invalid and void.

FOR A SECOND CAUSE OF ACTION

The Act's Creation of a Special Purpose District in a Single County Violates Home Rule

93. Each of the above allegations is incorporated by reference into this cause of action.

94. Each of the Act and the Amendment seeks to create a special purpose district that is effectively entirely within one county.

95. The inclusion of three parcels in another county and the subsequent inclusion of an additional, unconnected 100± parcels in that other county are inconsequential and are wholly unnecessary to the accomplishment of the stated objective of fire protection, and are moreover counterproductive to provision of crucial fire protection service in the most direct and efficient manner. The three-parcel portion and the 100±-parcel portion (as well as the Florence County area in the New SPD) each already enjoy fire protection services from facilities that are considerably closer, pursuant to county government action utilizing generally applicable laws under S.C. Code Ann. §§ 4-9-30(5) and 4-19-10 *et seq.*; the two Darlington County portions do not themselves contain any facilities needed for serving either themselves or any other properties; and to the extent that cooperation may be needed or useful among the county governments providing fire protection services in the affected areas, S.C. Const. art. VIII, §13 fully provides that ability, and is reinforced and seconded by S.C. Code Ann. §6-11-1840. Moreover, the arrangement between West Florence Rural and Windy Hill with regard to the portion of Interstate 95 in Darlington County, which has no interchanges in and is therefore not accessible from Darlington County, demonstrates its workability.

96. The Act seeks to modify the boundaries of, and the powers of Florence County Council within, special tax districts located entirely within Florence County and duly created by Florence County under existing general law.

97. The Act seeks to modify the boundaries of, and the powers of a fire protection district, duly created under general law by the Darlington County voters within that district.

98. The Act seeks to require Florence County to transfer property duly acquired and owned by the County, without reference to or establishment of any general law regarding such mandated divestitures by a county or regarding the acquisition by one government of facilities owned by another government.

99. S.C. Const. art. VIII, §7 (part of what is known as the "Home Rule Amendments") declares: "No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government."

100. "It is clear that Section 7 does away with the necessity for creation by the General Assembly of the special purpose district within an existing county. Section 7 specifically directs the General Assembly to provide by general law a means by which the counties themselves may tax different areas at different rates of taxation on the basis of the nature and level of governmental services provided. . . . There is a sound reason for curtailing the power of the General Assembly to create special purpose districts within a county. 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. Each county could be carved into enumerable special districts. Commission[s] or other agencies might be established for each, with each given the power to perform a function intended to have been vested in 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. To point

out the potential results of such a theory compels its rejection." *Knight v. Salisbury*, 262 S.C. 565, 572-73 (S.C. 1974).

101. If the Act is allowed to stand on the theory that it is a multi-county district of regional concern, despite the facts that:

- only three lots in Darlington County are permanently included with a substantial portion of Florence County;
- a sham, temporary inclusion of 100± lots in Darlington County has all the constitutional infirmities of the original three lots;
- all of the New SPD, including the two portions in Darlington County, are already located in and taxed and served by existing governmental entities, duly created under general law for fire protection, and so do not need the New SPD;
- the three Darlington County lots are not directly accessible from the Florence County portion of the New SPD, either by fire truck or other vehicle, but, instead are accessible only by an extensive trek of several miles through Darlington County, past numerous other Darlington County parcels that are not included in the New SPD;
- the 100± lots are defined as either side of a road on which, less than 4 miles away, the pre-existing Darlington County fire protection service provider already owns and operates a fire protection station; and
- the New SPD is given the power to drop service to any inconvenient area (for example, the three Darlington County parcels) by arranging to have another entity (for example, Darlington County's Palmetto Rural Fire District which currently serves them) pick them up;

then there will be no effective principle in S.C. Const. art. VIII, , and §7 remaining, and Home Rule will be reduced to just a 40-year experiment, as 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 to hand off the minuscule portion to its former service-provider). This sort of limited-purpose secession of a portion of a county in

order to allow it to avoid the taxes necessary to support the provision of vital services like fire protection throughout the county violates both the letter and the spirit of the Home Rule provisions of South Carolina's Constitution.

102. The Act is thus in conflict with S.C. Const. art. VIII, and is therefore invalid and void.

FOR A THIRD CAUSE OF ACTION

The Act Deprives Florence and Darlington Counties of Powers of Fire Protection Held by Every Other County and Is Therefore Impermissible Special Legislation

103. Each of the above allegations is incorporated by reference into this cause of action.

104. The General Assembly of South Carolina has, by general law at S.C. Code Ann. §4-9-30(5) and §4-19-10 *et seq.*, assigned to counties the power to provide, organize, finance, and manage fire protection services.

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

106. In the context of fire protection services, general law not only can be but has, in fact, been made applicable.

107. The Act treats Florence County and Darlington County differently from every other county, in that it denies to them the governmental power to control fire protection services in the unincorporated areas inside their boundaries.

108. There is no logical basis nor sound reason for treating Florence and Darlington Counties differently from the way in which the 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 area carved out of the two Counties by the Act and no exigent circumstances related thereto; and treating Florence and Darlington Counties differently from all other counties is both unreasonable and arbitrary.

109. The Act is thus in conflict with S.C. Const. art. III, §34, ¶ IX, and is therefore invalid and void.

FOR A FOURTH CAUSE OF ACTION

The Act's Unique Exemption Given to the New SPD from General Annexation Law Is Impermissible Special Legislation

110. Each of the above allegations is incorporated by reference into this cause of action.

111. Municipalities in South Carolina have for over a half-century been able to annex into the area of an adjacent special purpose district. *Tovey v. City of Charleston*, 237 S.C. 475 (1961).

112. The General Assembly of South Carolina has, by general law at S.C. Code Ann. §5-3-310 *et seq.*, provided for the orderly determination at the local level of the terms of a transfer of service rights and service area from a special purpose district to an annexing municipality if that municipality so desires, and for the full protection of bondholder rights in such situations.

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

114. In the context of municipal annexation of or into a special purpose district, general law has, in fact, been made applicable.

115. The Act, at S.C. Code Ann. §4-23-1025(A), purports to supersede that general law and to override its authorization of local government bodies to determine proper terms and conditions on a case-by-case basis. The Act does so by requiring that whenever the New SPD has outstanding debt, its service rights and service area cannot under any terms be transferred to an annexing municipality and establishes special, separate provisions for the protection of any New SPD bondholders, in each case contrary to the requirements in general law for identical circumstances.

116. The Act treats the New SPD differently from every other special purpose district, in that it gives them special, singular protection from annexation and the orderly growth of neighboring cities and towns.

117. There is no logical basis nor sound reason for treating the New SPD differently from the way in which the laws of South Carolina treat every special purpose district in the State; there is no substantial distinction in this regard between the New SPD and every other special purpose district in the State; and treating it differently from all other special purpose districts is both unreasonable and arbitrary.

118. The Act is thus in conflict with S.C. Const. art. III, §34, ¶ IX, and is therefore invalid and void.

FOR A FIFTH CAUSE OF ACTION

The Act's Removal from One or a Very Few Cities of Important Annexation Powers Violates Home Rule

119. Each of the above allegations is incorporated by reference into this cause of action.

120. The territory of the New SPD surrounds or is largely contiguous to the City of Florence.

121. S.C. Const. art. VIII, §10 (also part of what is known as the "Home Rule Amendments") declares: "No laws for a specific municipality shall be enacted, and no municipality shall be exempted from the laws applicable to municipalities or applicable to a particular form of government selected by any municipality as authorized by Section 9 of this article."

122. Municipalities in South Carolina have for over a half-century been able to annex into the area of an adjacent special purpose district. *Tovey v. City of Charleston*, 237 S.C. 475 (1961).

123. The General Assembly of South Carolina has, by general law at S.C. Code Ann. §5-3-310 *et seq.*, provided for the orderly determination at the local level of the terms of a transfer of service rights and service area from a special purpose district to an annexing municipality if that municipality so desires, and for the full protection of bondholder rights in such situations.

124. The Act, at S.C. Code Ann. §4-23-1025(A), purports to supersede that general law and to override its authorization of local government bodies to determine proper terms and conditions on a case-by-case basis. The Act does so by requiring that whenever the New SPD has outstanding debt, its service rights and service area cannot under any terms be transferred to an annexing municipality and establishes special, separate provisions for the protection of any New SPD bondholders, in each case contrary to the requirements in general law for identical circumstances.

125. The Act is thus in conflict with S.C. Const art. VIII, § 10, and is therefore invalid and void.

FOR A SIXTH CAUSE OF ACTION

The Act's Singular Exemption from Act 388 Is Impermissible Special Legislation

126. Each of the above allegations is incorporated by reference into this cause of action.

127. The General Assembly of South Carolina has, by an enactment popularly known as Act 388 and codified at S.C. Code Ann. §6-1-320, a general law, that is applicable to every other local government in the State – including counties, cities, towns, special purpose districts, and school districts – imposed significant general restrictions on the power of local governments to increase tax rates and to raise revenues.

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

129. 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.

130. The Act, in S.C. Code Ann. §4-23-1015(C), creates an exemption for the New SPD from S.C. Code Ann. §6-1-320.

131. There is no logical basis nor sound reason for treating the New SPD differently from the way the laws of South Carolina treat every other local government and special purpose district in the State; there is no substantial distinction in this regard between the New SPD and every other local government and special purpose district in the State; and treating it differently from them is both unreasonable and arbitrary.

132. The Act is thus in conflict with S.C. Const. art. III, §34, ¶ IX, and is therefore invalid and void.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that the Court issue an Order granting the following relief:

A. Declare Act No. 183, 2014 S.C. Acts ____ and Act No. 89, 2015 S.C. Acts ____ to be invalid and unenforceable due to conflict with the rule of *Wagner v. Smith*, 221 S.C. 438 (1952);

B. Declare Act No. 183, 2014 S.C. Acts ____ and Act No. 89, 2015 S.C. Acts ____ to be invalid and unenforceable due to conflict with the Home Rule Amendments, S.C. Const. art. VIII, §7;

C. Declare Act No. 183, 2014 S.C. Acts ____ and Act No. 89, 2015 S.C. Acts ____ to be invalid and unenforceable due to conflict with the Home Rule Amendments, S.C. Const. art. VIII, §10;

D. Declare Act No. 183, 2014 S.C. Acts ____ and Act No. 89, 2015 S.C. Acts ____ to be invalid and unenforceable due to conflict with S.C. Const. art. III, §34, ¶ IX;

E. Enjoin each of the defendants from acting pursuant to or under authority of Act No. 183, 2014 S.C. Acts ____ and Act No. 89, 2015 S.C. Acts ____;

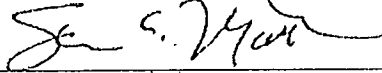
F. Declare that neither Florence County nor any other entity is required to transfer property to the new special purpose district purportedly created by Act No. 183, 2014 S.C. Acts ____ and Act No. 89, 2015 S.C. Acts ____;

G. Require each defendant to take all actions necessary to restore to the Plaintiffs all properties and funds rightfully belonging or owed to the Plaintiffs at the date of enactment of Act No. 183, 2014 S.C. Acts ____;

H. For such other relief as may be deemed appropriate by this Court.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Steve A. Matthews

smatthews@hsblawfirm.com

Sarah P. Spruill

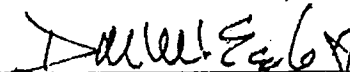
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*Counsel for Plaintiffs County of Florence and
Florence County Council*

August 6, 2015

) IN THE COMMON PLEAS COURT

) 12TH JUDICIAL CIRCUIT

)

C/A NO.: 2014-CP-21-2626

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The undersigned, Wallace H. Jordan, Jr. and John S. Nichols, hereby answer the Complaint of the Plaintiff in the name of the Defendants pursuant to Section 38-77-160 of the South Carolina Code of Laws (1976 as amended) as follows:

1. Each and every allegation not hereinafter specifically admitted, qualified, or explained, is hereby denied.

2. Defendants reiterate and reallege each and every affirmation and denial above as if repeated herein verbatim.
3. Responding to the Nature of the Case Paragraphs 1 through 10, these paragraphs relate to legal conclusions for which Defendants are not required to respond. However, to the extent that such a response is required, they are hereby denied.

4. Responding to the Parties Paragraphs 11 through 19, these paragraphs are admitted upon information and belief.
5. Responding to the Jurisdiction Paragraph 20, this paragraph is admitted upon information and belief.
6. Responding to the Factual Background Paragraph 21, is hereby denied and requests strict proof thereof.
7. Defendant admits Factual Background Paragraph 22, upon information and belief.
8. Defendant admits Factual Background Paragraph 23 in part, that some of the prior districts have been consolidated.
9. Defendant denies Factual Background Paragraph 23, in that SPD lies within an area in Florence County and has attempted to consolidate.
10. Responding to the Factual Background Paragraphs 25 and 26, these paragraphs are admitted upon information and belief.
11. Responding to the Factual Background Paragraph 27, this paragraph is asking for a legal conclusion which Defendant cannot give. However, to the extent that such a response is required, they are hereby denied.
12. Responding to the Factual Background Paragraph 28, is hereby denied and requests strict proof thereof.
13. Responding to the Factual Background Paragraphs 29 and 30, these paragraphs are admitted upon information and belief.
14. Responding to the Factual Background Paragraph 31, is hereby denied and requests strict proof thereof.

15. Defendant admits Factual Background Paragraph 32, upon information and belief.
16. Defendant denies Factual Background Paragraphs 33, and 34, and requests strict proof thereof.
17. Responding to Paragraph 35 of the Factual Background, this paragraph is asking for a legal conclusion which Defendant cannot give. However, to the extent that such a response is required, they are hereby denied.
18. Defendant admits Factual Background Paragraphs 36 and 37, upon information and belief.
19. Defendant admits to The Act, Its History, and Its Geography Paragraph 38, upon information and belief.
20. Defendant denies The Act, Its History, and Its Geography Paragraph 39, and requests strict proof thereof.
23. Responding to Paragraph 40 of The Act, Its History, and Its Geography, this paragraph is asking for a legal conclusion which Defendant cannot give. However, to the extent that such a response is required, they are hereby denied.
24. Defendant admits to The Act, Its History, and Its Geography Paragraph 41, upon information and belief.
25. Defendant denies The Act, Its History, and Its Geography Paragraph 42, and requests strict proof thereof.
26. Defendant admits to The Act, Its History, and Its Geography Paragraphs 43 through 46, upon information and belief.

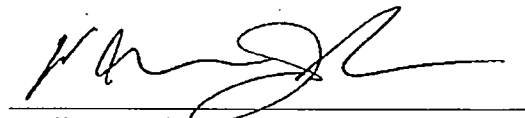
27. Defendant denies The Act, Its History, and Its Geography Paragraph 47, and requests strict proof thereof.
28. Responding to Paragraphs 48 and 49 of The Act, Its History, and Its Geography, these paragraphs are asking for a legal conclusion which Defendant cannot give. However, to the extent that such a response is required, they are hereby denied.
29. Defendant denies The Act, Its History, and Its Geography Paragraph 50, and requests strict proof thereof.
30. Responding to Paragraphs 51 through 58 of The Act, Its History, and Its Geography, Defendants are not required to respond to these paragraphs. However, to the extent that such a response is required, it is hereby denied.
31. Defendant denies The Act, Its History, and Its Geography Paragraph 59 and requests strict proof thereof.
32. Defendant admits to The Act, Its History, and Its Geography Paragraphs 60 and 61, upon information and belief.
33. Defendant denies The Act, Its History, and Its Geography Paragraph 62 and requests strict proof thereof.
34. Defendant admits to The Act, Its History, and Its Geography Paragraph 63, upon information and belief.
35. Responding to Paragraphs 64 of The Act, Its History, and Its Geography, Defendants are not required to respond to said paragraph. However, to the extent that such a response is required, it is hereby denied.

36. Defendant denies The Act, Its History, and Its Geography Paragraph 65 and requests strict proof thereof.
37. Responding to the The Amendment, Its History, and Its Geography Paragraphs 66 through 69, Defendants are not required to respond. However, to the extent that such a response is required, they are hereby denied.
38. Defendants admit to The Amendment, Its History, and Its Geography Paragraphs 70 and 71, upon information and belief.
39. Responding to the The Amendment, Its History, and Its Geography Paragraph 72, Defendants are not required to respond. However, to the extent that such a response is required, they are hereby denied.
40. Responding to the The Act's Directives Paragraphs 73 and 74 Defendants admit these paragraphs upon information and belief.
41. Responding to The Act's Directives Paragraph 75, Defendant is without sufficient information to admit or deny said allegations and therefore denies them and requests strict proof thereof.
42. Responding to the The Act's Directives Paragraph 76, Defendants admit said paragraph upon information and belief.
43. Responding to The Act's Directives Paragraphs 77 and 78, Defendant is without sufficient information to admit or deny said allegations of these paragraphs and therefore denies them and requests strict proof thereof.
44. Responding to the The Act's Directives Paragraph 79, Defendants admit said paragraph upon information and belief.

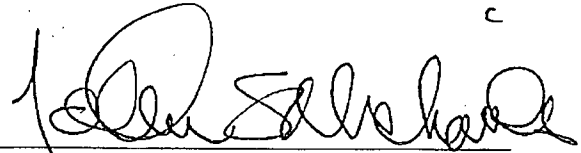
45. Responding to The Act's Directives Paragraph 80, Defendant is without sufficient information to admit or deny said allegations and therefore denies them and requests strict proof thereof.
46. Responding to the The Act's Directives Paragraph 81, Defendants admit said paragraph upon information and belief.
47. Responding to The Act's Directives Paragraph 82, this paragraph is asking for a legal conclusion which Defendant cannot give. However, to the extent that such a response is required, they are hereby denied.
48. Responding to the The Act's Directives Paragraph 83 through 85, Defendants admit said paragraph upon information and belief.
49. Responding to The Act's Directives Paragraphs 86 and 87, Defendant is without sufficient information to admit or deny said allegations and therefore denies them and requests strict proof thereof.
50. Responding to the The Act's Directives Paragraph 88, Defendants admit said paragraph upon information and belief.
-
51. Responding to Paragraph 89, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
52. Defendants admit Paragraphs 90, 91, and 92 of Plaintiffs Complaint upon information and belief.
53. Responding to Paragraph 93, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
54. Defendants admit Paragraphs 94, 95, 96, 97, 98, 99, and 100 of Plaintiffs Complaint upon information and belief.

66. Defendants admit Paragraph 121 of Plaintiffs Complaint upon information and belief.
67. Responding to Paragraph 122, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
68. Defendants admit Paragraphs 123 and 124 of Plaintiffs Complaint upon information and belief.
69. Responding to Paragraph 125 of Plaintiffs Complaint, Defendants deny said Paragraph and request strict proof thereof.
70. Responding to Paragraph 126, Defendants are not required to respond. However, to the extent that such a response is required, it is hereby denied.
71. Defendants admit Paragraphs 127 and 128 of Plaintiffs Complaint upon information and belief.
72. Responding to Paragraphs 129, 130, 131, and 132 of Plaintiffs Complaint, Defendants deny said Paragraph and request strict proof thereof.

WHEREFORE, having fully answered Plaintiff's Complaint herein, Defendants prays that the Complaint be dismissed, with costs and for such other and further relief as this Court may deem just and appropriate.



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Florence, SC

Sep. 7

2015

Attorney for Defendants

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

Case No. 2014-CP-21-2626

**ANSWER OF STATE
TO AMENDED COMPLAINT**

The Defendant State of South Carolina, answering the Amended Complaint (Complaint)
alleges the following:

FOR A FIRST DEFENSE

1. The State denies each and every allegation of the Complaint not hereinafter specifically admitted.

2. As to Paragraph 1 of the Complaint, the State admits only that Plaintiff challenges the referenced Acts, and craves reference to the statutes for their complete provisions. The State is without sufficient knowledge or information to admit or deny the facts alleged, and therefore, denies them.

3. Paragraphs 2, 3, 4, 5 and 6 set forth conclusions of law to which no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the paragraphs, and therefore denies them.

4. As to Paragraph 7, the State admits only that, on information and belief, the election was held. The State is without sufficient knowledge or information to admit or deny any conclusions of law about the Act or the governing body and therefore denies them.

5. Paragraphs 8, 9 and 10 set forth conclusions of law to which no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the conclusions in the paragraphs, and therefore denies them. The State craves reference to the original and amended Acts.

6. The State admits Paragraphs 11 and 12.

7. The State admits Paragraphs 13- 20, inclusive, on information and belief.

8. As to Paragraphs 21 - 37, inclusive, to the extent any of those paragraphs set forth conclusions of law, no response is required. To the extent that a response is required to any conclusions of law, the State is without sufficient knowledge or information to admit or deny any conclusions of law and, therefore, denies them. To the extent that these paragraphs contain allegations of fact, the State is without sufficient knowledge or information to admit or deny them but craves reference to ordinances attached to the Complaint as to any allegations pertaining to their contents.

9. As to Paragraph 38, the State craves reference to the pertinent legislative journals and denies any allegations inconsistent therewith.

10. Paragraphs 39 and 40 set forth conclusions of law to which no response is required. To the extent that a response is required, the State craves reference to Act¹. The State is without sufficient knowledge or information to admit or deny any conclusions of law about the Act and therefore denies them.

11. As to Paragraph 41 the State craves reference to the Act.

12. As to Paragraph 42, to the extent that the Paragraph sets forth any conclusions of law, no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny any conclusions of law about the Act and therefore denies them. The State is without sufficient knowledge or information to admit or deny any fact allegations in this paragraph and therefore denies them.

13. As to Paragraph 43, 44 and 45, the State craves reference to the Act.

14. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 46 – 50, inclusive, and therefore denies them.

15. As to Paragraphs 51 and 52, the State craves reference to the Act. The State is without sufficient knowledge or information to admit or deny any fact allegations in these paragraphs and, therefore denies them.

16. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 53 and 54 therefore denies them.

17. As to Paragraphs 55- 57, inclusive, the State craves reference to Act 183, but the State is without sufficient knowledge or information to admit or deny any fact allegations in those paragraphs and, therefore, denies them.

¹ References in this Answer to the Act include Act 183 of 2014 any pertinent amendments to that Act in Act 89 of 2015.

18. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 58 - 65, inclusive, and therefore denies them.

19. Paragraph 66 merely references the allegations made by Plaintiffs in seeking original jurisdiction and in filing this suit. The State craves reference to the pleadings that it has filed in this case as to its response to this case.

20. As to Paragraph 67, the State craves reference to the Bill and the House and Senate Journals as to the consideration of the Bill. The State denies any allegation inconsistent with the Bill and its legislative history. To the extent that the Paragraph sets forth any conclusions of law, no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny any conclusions of law about Act 89 and therefore denies them.

21. As to Paragraphs 68 and 69, the State craves reference to the Amendment. To the extent that the Paragraphs set forth conclusions of law, no response is required to them. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny any conclusions of law about the Act and therefore denies them.

22. As to Paragraph 70, the State craves reference to the Amendment.

23. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 71 and 72, and therefore denies them except that the State acknowledges only that Plaintiff has attached the referenced exhibits.

24. As to Paragraph 73, the State craves reference to the Act. The State admits, on information and belief, that the referenced election was held.

25. As to Paragraph 74, the State craves reference to the Act.

26. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraph 75, and therefore denies them.

27. As to Paragraph 76, the State craves reference to the Act.

28. The State craves reference to the Act as to the first and last sentences of Paragraph 77. The State is without sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 77, and therefore denies them.

29. As to Paragraph 78, the State craves reference to the Act. The State is without sufficient knowledge or information to admit or deny any fact allegations in this Paragraph and, therefore denies them.

30. As to Paragraph 79, the State craves reference to the Amendment.

31. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraph 80; and therefore denies them.

32. The State craves reference to the Act as to Paragraph 81.

33. The State craves reference to the Act as to the first sentence of Paragraph 82. The second sentence sets forth conclusions of law to which no response is required. To the extent that a response is required, the State craves reference to the applicable authority and denies any allegations inconsistent therewith.

34. The State craves reference to the Act as to Paragraphs 83 – 85, inclusive.

35. The State craves reference to the Act as to Paragraph 86 and denies any allegations inconsistent with it. To the extent that the Paragraphs set forth conclusions of law, no response is required to them. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny any conclusions of law about the Act and therefore denies them.

36. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraph 87 and therefore denies them. The State craves reference to the Act.

37. As to Paragraph 88, the State craves reference to the Act.

38. Paragraph 89 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

39. As to Paragraph 90, the State craves reference to the Act. To the extent that the Paragraph sets forth conclusions of law as to the operation of fire districts at issue, no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the paragraph, and therefore denies it.

40. As to Paragraph 91, the State craves reference to the cited case for its complete content. To the extent that the Paragraph sets forth conclusions of law as to the operation of fire districts at issue, no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the paragraph, and therefore denies it.

41. Paragraph 92 sets forth conclusions of law to which no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the conclusions in the paragraph, and therefore denies them.

42. Paragraph 93 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

43. Paragraph 94 sets forth conclusions of law to which no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the conclusions in the paragraph, and therefore denies them.

44. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraphs 95- 98, inclusive, including any conclusions of law, to which a response is not needed, and therefore denies those Paragraphs. The State craves reference to the cited legislation.

45. As to Paragraph 99, the State craves reference to the cited Constitutional provision.

46. As to Paragraph 100, the State craves reference to the cited case for its complete content. To the extent that the Paragraph is intended to set forth conclusions of law as to the creation of the fire district at issue, no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny any such allegations in the Paragraph, and therefore denies them.

47. Paragraph 101 sets forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the paragraph including any fact allegations therein, and therefore denies it.

48. Paragraph 102 sets forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the paragraph, and therefore denies it.

49. Paragraph 103 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

50. As to Paragraphs 104 and 105, the State craves reference to the cited provisions of law.

51. Paragraphs 106 – 109, inclusive, set forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the Paragraphs; and therefore denies them.

52. Paragraph 110 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

53. Paragraph 111, sets forth a conclusion of law to which no response is required. To the extent that a response is required to that conclusion, the State craves reference to the cited case and other applicable authority.

54. Paragraphs 112 - 118, inclusive, set forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the paragraphs, and therefore denies them. The State craves reference to the cited statutes and Constitutional provision.

55. Paragraph 119 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

56. The State is without sufficient knowledge or information to admit or deny the allegations of Paragraph 120, and therefore, denies it.

57. As to Paragraph 121, the State craves reference to the cited Constitutional provision.

58. Paragraph 122, sets forth a conclusion of law to which no response is required. To the extent that a response is required to that conclusion, the State craves reference to the cited case and other applicable authority.

59. As to Paragraph 123, the State craves reference to the cited statutes.

60. Paragraphs 124 and 125 set forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is without sufficient knowledge or information to admit or deny the Paragraphs, and therefore denies them.

61. Paragraph 126 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the State incorporates by reference its answers to the previous allegations and paragraphs of the Complaint and reasserts them.

62. As to Paragraph 127, the State craves reference to the cited statute and denies any allegations inconsistent with it.

63. As to Paragraph 128, the State craves reference to the cited section of the Constitution. To the extent the paragraph sets forth conclusions of law, no response is required. To the extent that a response is required to any such conclusion, the State is without sufficient knowledge or information to admit or deny the Paragraph, and therefore denies it.

64. Paragraphs 129 – 132, inclusive, set forth conclusions of law to which no response is required. To the extent that a response is required to those conclusions, the State is

without sufficient knowledge or information to admit or deny the paragraphs as they are alleged to apply to the matter at issue, and therefore denies them.

65. The Prayer for Relief sets forth conclusions of law to which no response is required. To the extent that a response is required, the State is without sufficient knowledge or information to admit or deny the Prayer except that the State denies that it is subject to an injunction in this case.

FOR A SECOND DEFENSE

66. The State of South Carolina, as a corporate entity and party, may not be enjoined.

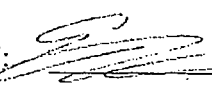
WHEREFORE, having fully answered the Complaint, the State prays as follows:

1. That judgment for the State be entered as to the Complaint and that the relief sought by the Plaintiff be denied as to the State.
2. For such further relief as the Court deems just and proper.

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BY: 

September 4, 2015

ATTORNEYS FOR THE STATE

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

**PLAINTIFFS' PRE-TRIAL BRIEF
AND
POTENTIAL EXHIBITS LIST**

PROCEDURAL STATUS AND SCHEDULE

Plaintiffs submit this pre-trial brief to the Court but are not serving it upon Defendants.

Plaintiffs are, however, serving Defendants with copies of the potential exhibits.

The non-jury trial of this case is scheduled to begin before Hon. J.C. Nicholson, Jr., at 9:30 a.m., Monday, July 25, 2016, in Florence, South Carolina. Plaintiffs anticipate that the trial will take approximately two days. Plaintiffs understand that Defendants may wish to hold the record open after the completion of live testimony to allow for the subsequent taking and introduction of a video deposition of a witness whose schedule does not allow him to attend at trial. In addition, because this action is brought under the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.*, seeking a declaration of the unconstitutionality of two enactments of the General Assembly, the Court at the closing of the record may wish to request

from all parties either briefing on the law or presentation of proposed orders including findings of fact and conclusions of law.

Plaintiff's potential exhibits are listed at the end of this pre-trial brief, and are cited herein as "Ex. [No.]." Copies are attached.

NATURE OF THE CASE AND RELIEF SOUGHT

This suit under the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* seeks a declaration that Act No. 183, 2014 S.C. Acts ____ (the "Act") (Ex. 1) and Act No. 89, 2015 S.C. Acts ____ (the "Amendment") (Ex. 2) are unconstitutional. Those two enactments are codified as S.C. Code Ann. § 4-23-1000 *et seq.* (Supp. 2015). They purport to create a new special purpose district for fire services that includes a large portion of Florence County and a negligible amount of Darlington County. Thus, this action concerns the continued vitality of the Home Rule amendments and of the venerable rule of law against the dangerous and expensive practice of dueling governments asserting the same powers and providing the same services in the same territory, as well as the issues

Stated briefly, the reasons for the Acts' unconstitutionality are that they violate: (i) the Constitutional prohibitions against local or special legislation in S.C. Const. art. VIII, §§ 7 and 10,¹ and S.C. Const. art. III, §34, ¶ IX;² and (ii) the long-standing and widely-accepted rule of

¹ S.C. Const. art. VIII, § 7: "No laws for a specific county shall be enacted and no county shall be exempted from the general laws" S.C. Const. art. VIII, § 10: "No laws for a specific municipality shall be enacted, and no municipality shall be exempted from the laws" These provisions are generally referred to as the "Home Rule Amendments."

² S.C. Const. art. III, §34, ¶ IX: "In all other cases [listed exceptions not relevant here], where a general law can be made applicable, no special law shall be enacted"

Wagener v. Smith, 221 S.C. 438, 71 S.E. 1 (1952) that where one government is already in place and providing a service, another cannot be superimposed over it to provide the same service.³

PRELIMINARY MOTIONS; EVIDENTIARY ISSUES

Plaintiffs do not anticipate making any preliminary motions and are not aware at this time of any evidentiary issues.

STANDARD OF REVIEW

With regard to the *Wagener v. Smith* issue of dueling, overlapped government functions, the record will show that all the areas taken into the new special purpose district, whose only function is to provide fire protection services, were at the time of the Act's enactment located in existing political subdivisions that were already constitutionally and capably providing effective fire protection services to those areas. Consequently, the standard on this issue is simple: Is the rule of *Wagener v. Smith* still in effect?

With regard to the issue of special legislation, South Carolina's Supreme Court has repeatedly stated the test as follows:

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

³ "[T]here cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction, and privileges." *Wagener*, 221 S.C. at 445, 71 S.E. at 4 (1952); see also *North Carolina Electric Corp. v. White*, 301 S.C.274, 391 S.E.2d 571 (1990).

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 that stage where evidence of 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 *Sirriner 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)).

In the particular context of the creation of special purpose districts, the Home Rule amendments (S.C. Const. art. VIII, §§ 7 and 10, quoted at footnote 2 above) impose an additional roadblock to such legislation post March 7, 1973. Special purpose districts after that date are 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. . . . 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). The only exception is where the function to be served is not one set aside for counties and not by its nature peculiar to a single county or counties, such as a regional airport (*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) or a broad-area utility (*Fort Hill Nat. Gas Auth. v. City of Easley*, 310 S.C. 346, 426 S.E.2d 787 (1993), stating in *dicta* that legislation affecting a

pre-existing multi-municipality gas transmission district covering a multi-county area would be permissible). Because this case involves fire protection services that are traditionally provided by areas at the county or even smaller, intra-county level, the mere fact that a small portion of another county was added in for no reason other than to try to avoid the Home Rule amendments does not permit it to escape the Constitutional restriction enforced by *Knight v. Salisbury*, *supra*.

FACTS OF THE CASE

The facts that Plaintiffs will adduce at trial, through the attached potential exhibits and the below-named potential witnesses, are summarized here.

Florence County, like every other county in the State, has Home Rule 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. 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). Florence County has exercised that authority for many years – at least since 1982. *See* Exs. 5A, 5B, and preamble to Ex. 8.

For a period of time, some portion of the County received fire protection services through sub-districts (the “**Act 1817 Sub-districts**”) created very shortly before the advent of Home Rule by Act No. 1817, 1972 S.C. Acts 3613 (“**Act 1817**”) (Ex. 3).⁴ However, after Home Rule ratification in 1973, the County from time to time exercised its authority under S.C. Code Ann. §6-11-410 *et seq.* over those districts – beginning at least as early as 1979. *See* Exs. 5A and 5B.

⁴ 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. 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). The amendments in Act 658 are not relevant to this current proceeding, but it does recite some marginally relevant history.

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.⁵ 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.

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.

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 the County created in 2007. *See* Ex. 6. With their creation, the Act 1817 Sub-districts ceased to be operative.⁶

Similarly, Darlington County, through various entities, had been providing service to the Darlington County areas affected by the Act and the Amendment. *See, for example*, Ex. 13.

In 2006, Act No. 388, 2006 S.C. Acts ____ (“**Act 388**,” codified as S.C. Code Ann. §6-1-320 (Supp. 2015)), 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.

⁵ Some of the Prior Tax Districts were created as special tax districts under S.C. Code Ann. §4-9-30(5) (Supp. 2015); others were created as fire protection service areas under S.C. Code Ann. §4-19-10 *et seq.* (Supp. 2015).

⁶ Windy Hill/Olanta was created with two sub-districts, each served by its own Fire Department. *See* Ex. 6.

By Spring of 2012, Florence County Council had begun a comprehensive review of its system for fire protection, in order to address several pressing issues:

- Funding adequacy. Various Prior Tax Districts were adversely affected by the limitation in Act 388: Council was unable to impose a sufficient millage to meet rising costs of fire protection. West Florence Rural, with the lowest millage rate of the Prior Tax Districts, was one of those adversely constrained. Attempts by Council (and by a great many others) to persuade the General Assembly to re-visit the reforms of Act 388 were unsuccessful.
- Funding inequity among the Prior Tax Districts.
 - 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.
 - 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.
- 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.

In 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 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. Council was also aware that because the Consolidated District was a new entity, Act 388’s limitation on year-over-year revenue increases would not apply in the Consolidated District’s first year, thus creating a new base-line and the opportunity to address in part the funding adequacy issue.

Following receipt of the ESCI report and pursuant to its recommendations, County Council conferred extensively with stakeholders throughout the Prior Tax Districts, both informally and more formally through a public hearing process. As a result, 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); and the second created the new, unified tax district (the "**Consolidated District**") (Ex. 9). 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. In addition, 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. The Secretary of State issued his Order formally dissolving those Sub-districts on May 12, 2014. Exs. 11 and 12.

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.

As noted, the millage rate (operational and debt service combined) in the Prior Districts ranged from about 8 mills in West Florence Rural to about 40 mills in Johnsonville. The projection was that the uniform tax levy in the new Consolidated District (assuming no other sources of revenue were available) would be 25 mills, which would achieve an overall funding

increase.⁷ As a result of a district-wide uniform tax levy, as opposed to the previous different tax levies in each of the Prior Districts, some areas would experience a tax increase and some would experience a tax decrease. The largest increase would occur in the West Florence Rural area. Operations in the areas of each of the Prior Districts would obtain some of the increase in funding; however, for the area of West Florence Rural, the increase in funds would not be proportionate to the increase in its millage rate.⁸ On the other hand, under the local option sales tax renewed by a County-wide referendum in November 2013, the County obligated itself to purchase property for West Florence Rural (the "Hoffmeyer Road Parcel") and to build a new fire station house thereon for West Florence Rural (the "WF-Hoffmeyer Firehouse") with the proceeds of that County-wide tax. Nevertheless, some taxpayers in West Florence Rural opposed consolidation as did some members of the West Florence Rural Fire Department who objected to increased County control.

In response to those concerns from West Florence Rural, State Representatives Kris Crawford and Phillip Lowe on May 7, 2014, introduced legislation to remove the West Florence Rural area from the supervision of Florence County Council by placing it in a special purpose district, the West Florence Fire District (the "New SPD"), to be governed by a separately elected

⁷ Since consolidation, the County has created a new funding source for the Consolidated District (not including the New SPD). The source was initially a per-parcel charge on properties in the Consolidated District; and in the upcoming fiscal year it will be a per-vehicle charge. As a result, the combined (operations and debt service) uniform millage rate in the Consolidated District has been reduced by more than 8 mills from the level without that new source.

⁸ In addition, since consolidation, the County has issued general obligation bonds for the acquisition of fire protection equipment (tanker vehicles, pump vehicles, *etc.*), causing an increase in millage in the Consolidated District of approximately 3 mills. Had the New SPD remained in the Consolidated District, it would have borne a portion of that cost but would also have obtained some of the new equipment. The new equipment has been instrumental in improving the insurance ratings throughout the Consolidated District.

commission. The legislation was not referred to committee in either the House or the Senate. It passed the House in 8 days, and the Senate in 3 days, and thereupon became the Act. Ex. 1.

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.

After the County filed a lawsuit challenging the Act on several grounds, including (i) that the Act's status as unconstitutional special legislation was not cured by the inclusion of three lots and a mis-characterized section of I-95 in Darlington County in the New SPD, and (ii) the meaningless description of the Florence County portion of the New SPD by reference to something that had never existed, the next General Assembly enacted the Amendment to address those allegations. Again, the process was concluded with no committee consideration See Ex. 2. Among other things, the Amendment (i) added an additional 100± Darlington County lots located over 8 miles from the original three lots, (ii) usurped the judicial function by declaring the meaning of the previous General Assembly's definition of the Florence County portion, and (iii) required the County to turn over to the New SPD, without charge, the Hoffmeyer Road Parcel.

The Amendment, by its terms, entirely expires on the fifth anniversary of its effective date. See Amendment, § 6 (Ex. 2).

Neither the Act nor the Amendment contains a severability clause.

PARTICULAR ALLEGATIONS OF UNCONSTITUTIONALITY

The particular allegations of unconstitutionality are detailed in the Amended Complaint. They are summarized here.

A. The Act purports to create the New SPD as a special purpose district for fire protection in an area of Florence County (plus three lots in Darlington County and a short stretch of I-95). The Amendment purports, among other revisions, to add for the duration of its five-year effectiveness an additional 100± lots in Darlington County to the New SPD that are not contiguous to the original three lots.

1. There is and has continuously been, over many years, effective and lawfully authorized fire protection service provided by existing government entities in all of the areas at issue in this lawsuit. Each of the Act and the Amendment violates the rule of *Wagener v. Smith, supra*.

2. The New SPD is effectively entirely within a single county, and the Act and the Amendment thereby violate the Home Rule Amendments and the constitutional prohibition on special legislation. The inclusion of the Darlington County areas in the New SPD is not based on any unmet cross-border service needs or unachieved efficiencies sufficient to justify local and special legislation.

(a) That the inclusion of areas outside Florence County is a merely pretextual attempt to avoid the prohibition on special legislation is shown by:

- (i) the Act's attempted description of the included area of Florence County by reference to a never-existent entity (which the Amendment attempts to clarify);
- (ii) confusion in the Act's description of what County the included section of I-95 is in;
- (iii) the Act's exclusion of a fourth lot nestled between two of the three included lots and its exclusion of properties directly across the street;

(iv) the Act's and the Amendment's failure to recognize that more rapid fire protection service is available to the Darlington County areas from their existing Darlington County providers (or even from other Florence County providers);

(v) the Act's and the Amendment's authorizing the New SPD to contract with the previous service provider to continue providing service in the Darlington County areas (S.C. Code Ann. §4-23-1045);⁹ and

(vi) the fact that the Amendment's inclusion of 100± lots (an attempted negation to the County's judicial challenge to the Act based on the minuscule three lots added by the original Act) and all other terms of the Amendment will revert in five years to *status quo ante* and those lots will thereupon be removed from the New SPD (Amendment, § 6).

B. The Act, at S.C. Code Ann. §4-23-1015(C), grants the New SPD an exemption from the millage rate restriction imposed on every other local governing body in the State by Act 388, and thereby violates the Home Rule Amendments and the constitutional prohibition on special legislation.

C. The Act, at S.C. Code Ann. §4-23-1025(B), orders Florence County to transfer to the New SPD the Hoffmeyer Road Parcel, for payment from the New SPD of an amount to be agreed upon by the parties. The Amendment, however, deleted any requirement that the New

⁹ This provision is in any event unnecessary, as is the inclusion of portions of Darlington County to allow them to be served by a Florence County entity. To the extent that cooperation may be needed or useful among the county governments providing fire protection services in the affected areas, S.C. Const. art. VIII, §13 fully provides that ability, and is reinforced and seconded by S.C. Code Ann. §6-11-1840.

SPD pay to the County any compensation for the property. The Act thus strips Florence County of its general law authority under S.C. Code Ann. §4-9-30 (2), § 4-19-10(d), (g), and (i) related to the acquisition and holding of property, and requires the taxpayers of Florence County, alone among all 46 counties, to make a donation for the provision of services to a limited area not only of Florence County but also of Darlington County. This directive is made without reference to or establishment of any general law regarding such mandated divestitures by a county or regarding the acquisition by one government of facilities owned by another government. In this also, the Act and the Amendment violate the Home Rule Amendments and the constitutional prohibition against special legislation.

D. The Act and the Amendment, separately and together, violate South Carolina's Home Rule Amendments and the constitutional prohibition against special legislation where general legislation can be made applicable in that they 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 and divesting them of their authority under S.C. Code Ann. §§4-9-30(5), 4-19-10(l) and 4-19-20(e)(4) to tax the area of the New SPD for fire protection services. In the context of fire protection services, general law not only can be but has, in fact, been made applicable.

E. The Act, at S.C. Code Ann. §4-23-1025(A), provides that so long as the New SPD is indebted to any person, "the provisions of this article and the powers granted to the [New SPD] and [its governing body] may not be in any way diminished or restricted." That section would strip any municipality annexing into the New SPD, for example the City of Florence, of its authority under S.C. Code Ann. §5-3-310 *et seq.* to take over the provision of fire protection

service within the annexed portion of the New SPD. The Act thus treats the New SPD differently from every other special purpose district, in that it gives them special, singular protection from annexation and the orderly growth of neighboring cities and towns. Although the Amendment purports to subordinate that provision to a portion of South Carolina's municipal annexation laws, the Amendment is only a temporary, 5-year proviso. In the context of municipal annexation of or into a special purpose district, general law has, in fact, been made applicable. The Act thereby further violates the Home Rule Amendments and the constitutional prohibition against special legislation.

PLANNED WITNESSES

James T. Schofield, member and former Chair, Florence County Council, will testify concerning:

- The provision of fire protection service in Florence County
- The effectiveness and reliability of that service
- The process and rationale for consolidation of the Prior Districts
- The report by the ESCI
- The impact of Act 388 on fire protection service in Florence County and on options therefor
- The concerns voiced by West Florence Rural.

Kevin V. Yokim, Florence County Finance Director, will testify concerning:

- Financing of fire protection service in Florence County
- The financial impact of consolidation of the Prior District
- The financial impact of the removal of the New SPD from the Consolidated District.

Sam Brockington, Florence County Fire Coordinator, will testify concerning:

- The provision of fire protection service in Florence County
- The effectiveness and reliability of that service

- The process and rationale for consolidation of the Prior Districts
- The report by ESCI
- The inefficiencies of providing fire protection service to Darlington County areas by the New SPD
- Improvements in ISO insurance ratings in the Consolidated District after consolidation.

William Sweatt, Florence County Emergency Management Administrator of Records, will testify concerning:

- The emergency dispatch process in Florence County
- The effectiveness and reliability of fire protection service in Florence County
- The allocation of service areas along that portion of I-95 now in the New SPD prior to the creation of the New SPD
- Changes in that allocation after the creation of the New SPD.

John DeLung, Windy Hill Fire Department Chief, will testify concerning:

- The provision of fire protection service along that portion of I-95 now in the New SPD prior to the creation of the New SPD
- Changes in that allocation after the creation of the New SPD
- The effectiveness and reliability of fire protection service along that portion of I-95
- The inefficiency of providing fire protection service to the E. McIver Road area from Florence County.

Thomas Spivey II, Palmetto Rural Fire District (Darlington County) Chief, will testify concerning:

- The provision of fire protection service to the E. McIver Road area before the creation of the New SPD
- The effectiveness and reliability that service
- The inefficiency of providing fire protection service to the E. McIver Road area from Florence County

- The Automatic Aid Agreement between Palmetto Rural FD and the New SPD.

Kenny Stratton, Darlington County Fire District Chief, will testify concerning:

- The provision of fire protection service to the Hoffmeyer Road area before the amendment of the New SPD
- The effectiveness and reliability that service
- The inefficiency of providing fire protection service to the Hoffmeyer Road area from Florence County.

Hon. Phillip D. Lowe, S.C. House District 60 Representative

Plaintiffs consider Representative Lowe, the primary sponsor of the Act and the Amendment, an adverse witness. Representative Lowe will not be available for the trial. Plaintiffs will present evidence at the trial from Representative Lowe through his deposition transcript and a transcript of his radio interview from August 2014. It is our understanding that Defendants will require a video deposition of Representative Lowe; if that is unable to be completed prior to trial, Defendants will request that the record be held open and that the deposition be submitted following the conclusion of the trial. The evidence that Plaintiffs will present from Representative Lowe will concern:

- The legislative purpose of the Act and the Amendment being to remove from Council control the setting of fire protection taxes in West Florence Rural and to avoid County-wide uniformity of fire protection taxes in West Florence Rural
- The legislative purpose of the Act and the Amendment not involving concern for how fire protection services are provided within the Darlington County areas of the New SPD
- The lack of any substantial distinction between the areas of Florence and Darlington Counties included in the New SPD and those excluded from the New SPD that would constitutionally justify special legislation.

Robert Ervin, Florence County GIS Database Manager, will testify concerning:

- The boundaries of the New SPD, as created under the terms of the Act

- The geographic relationships among various fire protection entities in Florence County
- The available routes to serve the E. McIver properties from existing fire service stations.

POTENTIAL PLAINTIFFS' EXHIBITS

Exhibit No.	Document
01	Act 183 of 2014
02	Act 89 of 2015
03	Act 1817 of 1972
04	Act 658 of 1973
05A	Florence County Ordinance No. 7-1979/80
05B	Florence County Ordinance No. 22-2000/01 adjusting boundaries of fire districts
06	Florence County Ordinance No. 31-2006/07 creating special purpose tax districts for West Florence Rural and Windy Hill-Olanta
07	Master Plan and Feasibility Study by Emergency Services Consulting International
08	Florence County Ordinance No.17-2013/14 dissolving Prior Districts
09	Florence County Ordinance No.18-2013/14 creating Consolidated District
10	Petition for dissolution of Act 1817 Sub-districts
11	Secretary of State's Order of Dissolution May 12, 2014
12	Secretary of State's Notice of Dissolution May 13, 2014
13	Darlington County Council resolution certifying creation of Palmetto Rural FD
14	Deposition of Phillip D Lowe November 24, 2015
14A	Exhibit 20 to Deposition of Phillip D Lowe November 24, 2015
14B	Exhibit 22 to Deposition of Phillip D Lowe November 24, 2015
14C	Exhibit 23 to Deposition of Phillip D Lowe November 24, 2015
14D	Exhibit 32 to Deposition of Phillip D Lowe November 24, 2015
14E	Exhibit 35 to Deposition of Phillip D Lowe November 24, 2015
15	Phillip Lowe radio interview with Ken Ard August 2014
16	Automatic Aid Agreement between New SPD and Palmetto Rural re E. McIver parcels
17	Map of Act 1817 sub-district that covers West Florence area
18	Aerial of E. McIver Road properties with tax map numbers
19	Map showing shortest routes to E. McIver Road parcels from various stations and fire districts and overlap with Act 1817 Sub-districts
20	Distance nearest Palmetto Rural Station to 3 lots on E. McIver
21	Distance nearest New SPD Station to 3 lots on E. McIver
22	Distance nearest New SPD Station to intersection with East McIver
23	Distance nearest Palmetto Rural Station to intersection where New SPD route picks up East McIver
24	Distance nearest Windy Hill-Olanta station to 3 lots on E. McIver
25	Aerial of new area added to New SPD by Act 89 of 2015

26	Aerial showing geographic proximity of 2 Darlington County areas in New SPD
27	Distance between 2 Darlington County areas in New SPD
28	Distance nearest Darlington Fire District Station to Hoffmeyer-area New SPD lots in Darlington
29	Distance nearest New SPD Station to Hoffmeyer-area New SPD lots in Darlington

Plaintiffs have consulted with Defendants and believe that the authenticity of Exhibits 1 through 6 and 8 through 15 will be stipulated so that, in the interest of time, those exhibits can be introduced without an authenticating witness.

In any event, most of those exhibits are downloads taken by or under the supervision of the undersigned counsel for Plaintiffs from government websites and are thus self-authenticated under SCRE Rule 902(5) which is identical to FRE Rule 902(5). See *Lorraine v. Markel American Ins. Co.*, 241 F.R.D. 534, 551; 2007 U.S. Dist. LEXIS 33020, **64; 73 Fed. R. Evid. Serv. (Callaghan) 446 (D.Md. 2007):

In *Equal Employment Opportunity Commission v. E. I. DuPont De Nemours and Co.*, the court admitted into evidence printouts of postings on the website of the United States Census Bureau as self-authenticating under *Rule 902(5)*. 2004 U.S. Dist. LEXIS 20748, 2004 WL 2347556 (E.D. La. Oct. 18, 2004). Given the frequency with which official publications from government agencies are relevant to litigation and the increasing tendency for such agencies to have their own websites, *Rule 902(5)* provides a very useful method of authenticating these publications. When combined with the public records exception to the hearsay rule, *Rule 803(8)*, these official publications posted on government agency websites should be admitted into evidence easily.

See also *Paralyzed Veterans of America v. McPherson*, 2008 U.S. Dist. LEXIS 69542, *21-23 (N.D.Cal., September 8, 2008):

The authentication and identification of evidence is governed by *Federal Rule of Evidence 901*. *Rule 902* addresses documents said to be "self-authenticating." It states that "Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following: . . . (5) Official publications. Books, pamphlets, or other publications purporting to be issued by public authority." *FED. R. EVID. 902(5)*. Federal courts consider records from government websites to be self-authenticating under *Rule 902(5)*. See, e.g., *Estate of Gonzales v. Hickman*, No. ED CV 05-660 MMM (RCx), 2007 U.S. Dist. LEXIS 84050, 2007 WL 3237727, *2 n.3 (C.D. Cal. May 30, 2007) (unreported) (finding

report issued by the Inspector General of the State of California on the Office of the Inspector General's website to be self-authentic); *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 551 (D. Md. 2007) ("Given the frequency with which official publications from government agencies are relevant to litigation and the increasing tendency for such agencies to have their own websites, Rule 902(5) provides a very useful method for authenticating these publications. When combined with the public records exception to the hearsay rule, Rule 803(8), these official publications posted on government agency websites should be admitted into evidence easily"); *United States ex rel. Parikh v. Premiera Blue Cross*, No. C01-0476P, 2006 U.S. Dist. LEXIS 70933, *23, 2006 WL 2841998, *4 (W.D. Wash. Sep. 29, 2006) (determining documents found on government websites to be self-authenticating); *Hispanic Broad. Corp. v. Educ. Media Found.*, No. CV027134CAS (AJWX), 2003 U.S. Dist. LEXIS 24804, 2003 WL 22867633, *5 n.5 (C.D. Cal. Oct. 30, 2003) (unreported) (holding, "exhibits which consist of records from government websites, such as the FCC website are self-authenticating").

The Court may take judicial notice of the potential exhibits that are public record documents 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).

Respectfully submitted,

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*Counsel for Plaintiffs County of Florence and
Florence County Council*

July 15, 2016
DM: 4599077 v.4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

County of Florence and Florence County
Council,

Plaintiffs,

vs.

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
FOR THE TWELFTH JUDICIAL CIRCUIT

C.A. FILE NO.: 2014-CP-21-2626

PRE-TRIAL BRIEF

DEFENDANTS WEST FLORENCE FIRE
DISTRICT, WEST FLORENCE FIRE
DISTRICT COMMISSION, DAVID BROWN,
DUSTIN FAILS, LINDA LANG GIPCO,
RICHARD HEWITT, AND C. ALLEN
MATTHEWS

Pursuant to Rule 16(c), SCRCP, the Defendants West Florence Fire District, West
Florence Fire District Commission, David Brown, Dustin Fails, Linda Lang Gipco, Richard
Hewitt, and C. Allen Matthews provide the following Pre-Trial Brief.

(1) A Concise, Non-argumentative Statement of the Facts of the Case.

On May 28, 2014, Governor Haley signed Act. No. 183, 2014 S.C. Acts, into law creating
the West Florence Fire District ("WFFD") as a special purpose district in a portion of Florence
County. On June 23, 2014, Florence County and the Florence County Council pursued an action
in the Supreme Court's original jurisdiction, challenging the validity of the WFFD as violative of
Home Rule and the rule set forth in *Wagener v. Smith*, 221 S.C. 438, 71 S.E.2d 1 (1952) and its

progeny ("there cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdictions, and privileges."). The County sued the Florence County Commission on Registration and Elections, the Florence County Auditor, and the Florence County Treasurer. Following returns filed by each respondent, on August 6, 2014, the Supreme Court denied the petition for original jurisdiction because the County did not establish "that their rights would be materially prejudiced by the circuit court hearing this action or that extraordinary circumstances exist...." *Florence County v. Registration and Elections Comm'n for Florence County*, Order (S.C. Sup. Ct. filed Aug. 6, 2014).

The WFFD held elections and selected its commissioners on September 9, 2014. The District has been operating continuously since that time.

On September 16, 2014, plaintiffs Florence County and the Florence County Council (collectively "the County") filed an action against the WFFD, the WFFD Commission, the WFFD Commissioners (David Brown, Dustin Fails, Linda Lang Gipco, Richard Hewitt, and C. Allen Matthews), and the State of South Carolina. The new action challenged the validity of 2014 Act No. 183. All defendants answered.

On November 17, 2014, the Supreme Court appointed the Honorable J.C. Nicholson to preside and decide this matter. *Florence County v. West Florence Fire District*, Order (S.C. Sup. Ct. filed Nov. 17, 2014).

On June 4, 2015, the General Assembly enacted Act No. 89, 2015 S.C. Acts. This Act amended the legislation created by 2014 Act No. 183 to further define the coverage of the WFFD and to add a five-year sunset provision on the district. On June 13, 2015, the governor vetoed 2015 Act No. 89 and the General Assembly subsequently overrode that veto. The County filed

and served an amended complaint on August 15, 2015, and all defendants filed answers to the amended complaint in September 2015.

(2) An Objective Statement of the Facts in Controversy.

The only matter in controversy is the validity of 2014 Act No. 183 and 2015 Act No. 89.

(3) The Legal Issues Involved. This Includes the Law Applicable to the Cause of Action and the Defense.

The legal issues involve whether the WFFD created by 2014 Act No. 183 and 2015 Act No. 89 is invalid under *Wagener v. Smith*, the Home Rule Amendments to the State Constitution, and the Home Rule Act. The defense contends that *Wagener v. Smith* does not preclude the enactment of these two bills because the case is limited to overlapping municipal corporations. Furthermore, these statutory provisions create a special purpose district and are not violative of the Home Rule Act or Amendments. See *Evins v. Richland County Historic Preservation Comm'n*, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000) ("Home Rule applies only to counties and municipalities, not special purpose districts."). The *Evins* court overruled *D.W. Flowe & Sons v. Christopher Constr. Co.*, 326 S.C. 17, 482 S.E.2d 558 (1997), to the extent that *D.W. Flowe* can be read to apply Home Rule to special purpose districts. *Evins*, 341 S.C. at 19 n. 7, 532 S.E.2d at 878 n. 7. Cf. *Hagley Homeowners Ass'n, Inc. v. Hagley Water, Sewer, and Fire Authority*, 326 S.C. 67, 485 S.E.2d 92 (1997) (noting that "for decades," the Court has recognized the right of the General Assembly to create special purpose districts without regard to the prohibition of S.C. Constitution art. III, § 34(IX) against special legislation).

(
(4) **A Listing of Exhibits, Indicating Those to Which There Is Disagreement and a Listing of Witnesses Who May Be Called And, If Available, Their Address and Phone Number.**

A. Exhibits

- i. Act No. 183, 2014 S.C. Acts and its preamble;
- ii. Act No. 89, 2015 S.C. Acts and its preamble.
- iii. Documents Plaintiff has identified with their disclosure or as exhibits to depositions.

B. Witnesses

- 1. Sam Brockington
180 N. Irby Street
Florence, SC 29501
- 2. Hon. Phillip Lowe
507 W Cheves St
Florence, SC 29501
(By Deposition)
- 3. James T. Schofield
180 N. Irby Street
Florence, SC 29501
- 4. David Brown
Dustin Fails
Linda Lang Gipco
Richard Hewitt
C. Allen Matthews
These witnesses are named defendants.
- 5. Hon. Willard Dorriety, Jr.
828 Albemarle Blvd.
Florence, SC 29501
(843) 229-7088
- 6. Hon. Jason Springs
709 Lancelot Way

Lake City, SC 29560
(843) 598-0325

7. David K. Alford
Director
Florence County Voter Registrations and Elections Commission
219 Third Loop Road
Florence, SC 29505
(843) 665-3094
8. Chief Larue Hendrix
West Florence Fire District
3379 Pine Needles Road
Florence, SC 29501-7911
(843) 665-8857

There is no known disagreement regarding exhibits or witnesses.

- (5) **Any Unusual Problems Relating to Evidence to Be Introduced, Such as "Business Records as Evidence Act," Hearsay, Use of Depositions, Etc.**

No unusual problems known. The parties will stipulate to the authenticity of documents in the public record as well as other documents to be mutually agreed upon prior to trial.

The parties have agreed that Plaintiff may introduce several documents pertaining to
Representative Phillip Lowe:

- (1) Rep. Lowe's testimony from his deposition;
 - (2) the transcript from a July 12, 2016 radio interview (FLO_CTY_003505); and
 - (3) Emails that Rep. Lowe produced at the time of his discovery (LOWE 000001 et seq.)
- (6) **Any Unusual Question or Matter Which Should Be Brought to the Attention of the Court.**

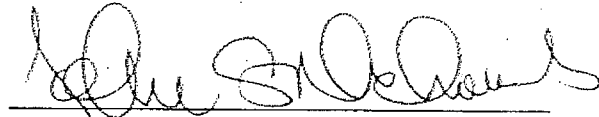
The issue in this case is the validity of legislation passed in 2014 and 2015 and involves

primarily questions of law. Much of the evidence will be documentary although the parties will submit some live testimony.

The WFFD has been in operation since September 2014. Plaintiff seeks a declaration from the court that 2014 Act No. 183 and 2015 Act No. 89 are not valid or enforceable, and injunction relief against the defendants from acting pursuant to or under the authority of each Act. Plaintiffs also sought a declaration that neither the County nor any other entity were required to transfer property to the WFFD under those Acts. Finally, they sought a court order requiring "each defendant to take all actions necessary to restore to the Plaintiffs all properties and funds rightfully belonging or owed to the Plaintiffs at the date of enactment of Act No. 183, 2014 S.C. Acts ____."

(7) **A Statement That Settlement Negotiations Were Attempted Before the Date of the Pre-trial Hearing and the Status of Settlement Negotiations.**

Due to the nature of the controversy and the relief sought, the parties have not engaged in any settlement negotiations.



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Attorneys for Defendants West Florence Fire
District, West Florence Fire District Commission,
David Brown, Dustin Fails, Linda Lang Gipco,
Richard Hewitt, and C. Allen Matthews

Columbia, South Carolina
July 15, 2016.

(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

Case No. 2014-CP-21-2626

**POST-TRIAL MEMORANDUM
OF STATE**

The Defendant State of South Carolina submits the following post-trial memorandum as authorized by the Court in lieu of the State's submitting a proposed order.

This case was tried before this Court on July 25 and 26, 2016. Subsequently, the Defendant West Florence submitted the post-trial deposition testimony of Representative Philip Lowe with the consent of the parties and the authorization of this Court.

The State defers to the Statements of Fact of the other parties. The following legal issues are before the Court in this case:

- A. Whether Act No. 89, 2015 S.C. Acts and Act No. 183, 2014 S.C. Acts violate the Home Rule provisions of the Constitution at art. VIII, §7 which provides in part that "[n]o laws for a specific county shall be enacted."

A prior opinion of the Office of the Attorney General concluded that a statute for a fire district located in more than one county is not a law for a specific county and is valid under art. VIII, §7. Ops. Atty. Gen. April 15, 2011 (2011WL1740746)(copy attached).¹ The opinion stated that “the current position of this Office [is] that so long as the legislation is multicounty in nature, a court will likely uphold the legislation as constitutional under article VIII section 7.” 2011 WL 1740746, at *5. The Opinion did not condition or limit its conclusion according to how much of one county is encompassed within a district. The State respectfully requests that this Court consider that 2011 Opinion when addressing this issue.

In addition, the State respectfully requests that this Court apply the rule that “all statutes are presumed constitutional and, if possible, will be construed to render them valid.” *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001). Accordingly, [the Court] will not find a statute unconstitutional unless ‘its repugnance to the Constitution is clear beyond a reasonable doubt.’ *Id.* at 570, 549 S.E.2d at 597.” *Abbeville County School Dist. v. State*, 767 S.E.2d 157, 161, 410 S.C. 619, 628 (2014).

The State respectfully requests that this Court give weight to the above presumption and the 2011 Opinion as it evaluates this issue. Additional issues are as follows:

- B. Whether Act No. 89, 2015 S.C. Acts and Act No. 183, 2014 S.C. Acts violate the Home Rule provisions of the Constitution at art. VIII, §710 which provides that “[n]o laws for a specific municipality shall be enacted and no municipality shall be exempted from the laws applicable to municipalities or applicable to a particular form of government selected by any municipality as authorized by Section 9 of this article.”

¹ As has been stated by the Court of Appeals, “While [the Court of Appeals] is not bound by an opinion of our Attorney General, it should not be disregarded without cogent reason. *Marchant, Adjutant General v. Hamilton*, 309 S.E.2d 781 (Ct. App.1983) citing *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 S.C. 354, 60 S.E.2d 682 (1950).” *Price v. Watt*, 313 S.E.2d 58, 60, 280 S.C. 510, 514 (S.C.App.,1984); see also, *S.C. Dept. of Social Services v. Johnson*, 688 S.E.2d 588, 593, 386 S.C. 426, 436 (Ct. App., 2009).

- C. Whether these Acts violate restrictions on special legislation in S.C. Const. art. III, §34 ¶IX which provides, in part, that where a general law can be made applicable, no special law shall be enacted.
- D. Whether the Acts violate *Wagener v. Smith*, 221 S.C. 438, 445 (1952) which holds, in part, as follows:

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.' . . . The foregoing inhibition does not prevent the formation of two municipal corporations coextensive in area for different purposes. Stated differently, 'the legislature may, for one purpose, create a municipal corporation embracing territory situated wholly or partly within the boundaries of another municipal corporation already organized for another purpose.'

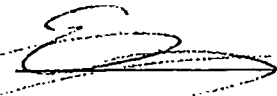
The other parties will be providing authority regarding their positions concerning the above issues. The State defers to the Court's determination of how the law applies to the facts of this case and respectfully requests that this Court apply the presumption of constitutionality, *supra*, and make such determination as it deems appropriate under the facts of this case and the law applicable to it.

Respectfully submitted,

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BY: 

October 21, 2016

ATTORNEYS FOR THE STATE

2011 WL 1740746 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 15, 2011

*1 The Honorable Yancey McGill

Member

South Carolina Senate

Post Office Box 142

Columbia, South Carolina 29202

Dear Senator McGill:

We received your letter requesting that we reconsider an opinion issued by this Office in 1983 concerning the South Lynches Fire District in Florence and Williamsburg counties.

Law/Analysis

In 1983, this Office issued an opinion addressing the validity of a proposed bill creating the South Lynches Fire District (the "District"). Op. S.C. Atty. Gen., June 16, 1983. We responded as follows:

The bill is special legislation that would create a fire district in parts of two counties. Under the Home Rule Act, county councils have been expressly empowered to provide for fire protection in their respective counties. § 4-9-30(5), Code of Laws of South Carolina, 1976 (1982 Cum. Supp.). Article VIII, § 7 of the South Carolina Constitution prohibits a special law for 'a specific county which relates to those powers, duties, functions, and responsibilities which, under the mandated systems of government, are set aside for counties.' Kleckley v. Pulliam, 265 S.C. 177, 183, 217 S.E.2d 217, 220 (1975). Since fire protection is one of the powers, duties, functions, and responsibilities set aside for counties under the Home Rule Act, § 4-9-30(5), *supra*, it follows that this bill is most probably unconstitutional. See Cooper River Park and Playground Comm. v. City of N. Charleston, 273 S.C. 639, 642, 259 S.E.2d 107, 109 (1979).

The constitutionality of the bill is not saved by virtue of the fact that it relates to more than one county. Although the Supreme Court upheld a special act for a multicounty airport district in Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975), the rationale for that decision was that the subject of the special act 'extend[ed] beyond the purely local concern.' *Supra* at 186, 217 S.E.2d at 221. It was not feasible for the counties included within the airport district to perform this function themselves using only the powers given them by general law. Kleckley v. Pulliam, *supra* at 189, 217 S.E.2d at 223. Here, however, it is apparent that H-2836 deals solely with the local concern of fire protection within the proposed district. The two counties involved could create a similar taxing district by agreement if such were deemed necessary. Art. VIII, § 13, South Carolina Constitution. Since this is a matter committed to the counties under the Home Rule Act, it follows that H-2836 would most probably be unconstitutional.

Id.

The Legislature adopted proposed legislation considered in our 1983 opinion by act 149 of 1983. 1983 S.C. Acts 416. You are now asking us to reconsider our 1983 opinion and determine whether the Legislature legally created the District. We must begin our analysis with the understanding that "all statutes are presumed constitutional and, if possible, will be construed to render them valid." State v. Neuman, 384 S.C. 395, 402, 683 S.E.2d 268, 271 (2009). Moreover, only a court, not this Office, has jurisdiction to declare a statute unconstitutional. Op. S.C. Atty. Gen., February 24, 2010.

*2 In our 1983 opinion, we relied on Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975). In that case, the Supreme Court considered whether legislation allowing an airport commission created prior to home rule to issue bonds violated article VIII section 7 of the South Carolina Constitution. Id. Article VIII section 7 of the South Carolina Constitution contains a provision stating that "No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government." S.C. Const. Art. VIII § 7 (2009). The Court noted that "[t]he mandate by its express terms relates only to 'counties' and does not relate to legislation dealing with the 'powers, duties, functions, and the responsibilities' which are not 'of counties'." Kleckley, 265 S.C. at 183, 217 S.E.2d at 220. Furthermore, the Court found:

The prohibition against laws for a specific county cannot be given an interpretation which might result if the words were taken by themselves and out of context. The prohibition was not intended to create an area in which no laws can be enacted. Rather, the prohibition only means that no law may be passed relating to a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for counties.

Id.

The Court set forth the following test to determine whether or not an act violates this portion of article VIII section 7: "whether the Act here relates to the powers, duties, functions and responsibilities, which belong Peculiarly to counties." Id. at 184, 217 S.E.2d at 220. Accordingly, the Court determine that [t]he record here clearly establishes that the function of this airport is not peculiar to a single county or counties. To a large segment of the population of this State, the maintenance of the airport is as important as the existence of an interstate highway. It, therefore, follows that since the governmental purpose under the Act establishing the District is not one peculiar to a county, the power of the General Assembly to legislate for this purpose continues, despite Article VIII, Section 7.

A year after it decided Kleckley, in Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976), the Supreme Court considered whether or not the Legislature could amend another airport district's enabling legislation to allow it to issue bonds. The Court noted that in Kleckley it was absolutely impossible for either the governing body of Richland County or the governing body of Lexington County to provide for the bond issue. There was involved a matter with which only the General Assembly could deal. The bond legislation was not for a specific county; it was for a region.

Id. at 563, 230 S.E.2d at 230. However, in Torgerson, the airport district was located entirely within Charleston County and "involves problems which can be solved by the local governing body of Charleston County." Id. Furthermore, the Court stated:

*3 The fact that a Charleston County Airport serves travelers from other counties does not change its local status. It would hardly be argued that a Charleston County Hospital, a Charleston County Library, a Charleston County Museum, or a Charleston County Zoo, is not a local county function merely because it served the needs of citizens from other counties.

In summary, we hold that act bearing Ratification No. R-297 of the 1975 Acts of the General Assembly is violative of Article VIII, s 7, of our Constitution, because it is legislation for a specific county.

Id. at 564, 230 S.E.2d at 230.

Several opinions issued by this Office subsequent to our 1983 opinion interpret Kleckley and Torgerson as requiring 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. For instance, in a 1984 opinion considering whether the enabling legislation of a multicounty water and sewer authority could be amended, we noted "the emphasis should be on the purpose of the district and not on geography . . ." Op. S.C. Atty. Gen., January 18, 1984.

In another 1984 opinion, we addressed the ability of the Legislature to establish a multicounty fire district. Op. S.C. Atty. Gen., November 14, 1984.

It is certainly possible that if the Supreme Court were faced with the issue presented by your inquiry, the Court would interpret Kleckley and Article VIII, Section 7 as permitting local legislation dealing with multi-county special purpose districts without regard to the nature of the governmental services provided by the district. We think, however, that the proper interpretation of Article VIII, Section 7 would prohibit any special legislation dealing with a multi-county special purpose district which would perform a governmental function or provide a governmental service which could be done by the respective counties. See, Kleckley v. Pulliam, *supra*, 265 S.C. at 169, 217 S.E. 2d at 223. Thus, we believe a court could conclude that Act No. 346 of 1982, and as a result thereof Act No. 35 of 1983, would be invalid as violative of Article VIII, Section 7 of the State Constitution.

Id.

However, in 1985, we determined the Legislature could amend the enabling legislation of a multicounty fire district without violating article VIII section 7 of the South Carolina Constitution. Op. S.C. Atty. Gen., April 3, 1985. We stated: A court considering the issue which you have raised and following the reasoning in Kleckley would probably note the geographic area encompassed by the District as well as the powers and duties of the district's governing body specified in Section 5 of Act No. 876 of 1966. A court could reasonably conclude that the powers, duties, functions and responsibilities of the District and its governing body are not peculiar to a county, particularly since municipal fire departments and volunteer fire departments provide the same services as the District in other parts of the State. While we cannot second-guess the court, we believe there is a reasonable basis for a court to conclude that an amendatory act of the General Assembly for the Murrells Inlet-Garden City Fire District would not violate Article VIII, Section 7 of the State Constitution.

*4 Id. Nevertheless, in this opinion and in several opinions subsequent to this one, we concluded that in determining whether or not legislation violated article VIII section 7, a court would consider whether the public service district is regional in scope and whether its "functions, powers, duties, and responsibilities are not peculiar to a county . . ." Op. S.C. Atty. Gen., May 23, 1985. See also Op. S.C. Atty. Gen., March 23, 1995.

More recent opinions interpret the Court's decision in Kleckley more broadly based on dicta contained in Fort Hill Natural Gas Authority v. City of Easley, 310 S.C. 346, 426 S.E.2d 787 (1993). In that decision, the Supreme Court considered whether a natural gas authority had the authority to set aside profits for future construction projects. Id. The Court determined the authority's enabling legislation did not allow for such set asides. Id. However, the Court suggested the authority could seek an amendment from the Legislature to allow for them. Id. at 350, 426 S.E.2d at 789. Moreover, the Court added that "any amendment to this statute would not violate Article VIII, Section 7 of the South Carolina Constitution, as the Authority extends beyond the confines of one county." Id.

A 2005 opinion of this Office explained as follows:

[W]hile the Court in Kleckley appeared not to have based its decision solely upon the fact that the special purpose district in that case encompassed more than one county, dicta from the Court in a subsequent decision indicates that the multi-county nature of the district is pivotal. In interpreting the powers of the Fort Hill Natural Gas Authority - created by the General Assembly in 1952 - the Court stated that "[i]f the [Fort Hill] Authority feels that [a portion of its enabling

Act] is unwise or substantially interferes with its operation of the system, its proper recourse is to seek an amendment from the legislature." Fort Hill Natural Gas Authority v. City of Easley, 310 S.C. 346, 426 S.E.2d 787 (1993). The Fort Hill Court, citing Kleckley v. Pulliam, supra, further stated that "in that regard, we note that any amendment to this statute would not violate Article VIII, Section 7 of the South Carolina Constitution, as the Authority extends beyond the confines of one county." 426 S.E.2d at 789.

Thus, based upon Kleckley and Fort Hill, we stated in an Opinion concerning the Donalds-Due West Water Authority that

[i]f the defined service area [of the Donalds-Due West Water Authority] as provided in the Authority's enabling legislation, encompasses more than one county it is my opinion that the General Assembly most likely has the power to enact specific legislation related to the Authority.... If, on the other hand, the Authority's defined service area is confined to a single county, then it is my opinion that specific legislative action related to the Authority by the General Assembly would most likely be found by a reviewing court to be unconstitutional pursuant to the prohibitions of Article VIII, Section 7 and/or Article III, Section 34. [special legislation].

*5 Op. S.C. Atty. Gen., July 31, 2003.

Op. S.C. Atty. Gen., March 29, 2005. Relying on this opinion, another 2005 opinion of this Office concluded that the enabling legislation of a multicounty water and sewer authority passed after the enactment of article VIII section 7 is constitutional. Op. S.C. Atty. Gen., November 29, 2005. Thus, these opinions reflect the current position of this Office that so long as the legislation is multicounty in nature, a court will likely uphold the legislation as constitutional under article VIII section 7.

Conclusion

Given our current interpretation of article VIII section 7, we herein overrule our 1983 opinion concerning the constitutionality of the District's enabling legislation. Because the District is located in more than one county, we believe our courts would conclude that the District's enabling legislation is not a law for a specific county and therefore, is valid under article VIII section 7 of the South Carolina Constitution.

Very truly yours,

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

2011 WL 1740746 (S.C.A.G.)

End of Document

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STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

County of Florence and Florence County
Council,

Plaintiffs,

vs.

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
FOR THE TWELFTH JUDICIAL
CIRCUIT

C.A. FILE NO.: 2014-CP-21-2626

**DEFENDANT'S MOTION FOR
RECONSIDERATION PURSUANT TO
RULES 52 AND 59, SCRCP**

FILED
FEB -6 PM 3:58
POULOS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

Pursuant to Rules 52 and 59, SCRCP, and *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), Defendants West Florence Fire District, *et. al*, collectively file this motion asking the Court to reconsider its decision finding in favor of the Plaintiffs, County of Florence and Florence County Council. Defendants request that the Court reconsider its ruling in light of the arguments Defendants presented at trial and in the proposed order Defendants submitted to the Court.

Furthermore, Defendants submit that the Court overlooked or failed to rule upon the following arguments Defendants presented:

1. In ruling that the creation of the new Special Purpose District (SPD) violated the rule of *Wagener v. Smith*, the Court failed to address Defendants' arguments that:

(a) the rule of *Wagener v. Smith* is a narrow rule and ensures a lack of confusion

by two governments attempting to function coincidentally, and those concerns do

not exist in this case; and

CERTIFIED: A TRUE COPY

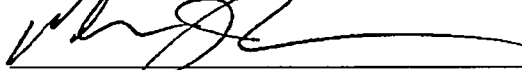
Donna Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

(b) the Act creating the new SPD became effective prior to the effective date of the County ordinance creating the unified fire district so that the rule of *Wagener v. Smith* was not implicated.

2. In declaring the Acts violate article III, § 34, the Court failed to rule upon Defendants' contention that even if the provision violated Act 388, the offending provision could be severed from the Acts pursuant to *American Petroleum v. S.C. Dept. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009) and *Joytime Distrib. & Amusement Co., Inc. v. State*, 338 S.C. 634, 528 S.E.2d 647 (1999).

Defendants request that the Court grant this motion, withdraw its prior order, and enter a new order addressing all arguments and finding in favor of the Defendants.

Respectfully submitted,



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Florence, SC
February 6, 2017

Attorneys for Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	2014-CP-21-02626
	)	
COUNTY OF FLORENCE AND	)	
FLORENCE COUNTY COUNCIL,	)	
	)	
Plaintiffs,	)	Transcript of Record
	)	
vs.	)	
	)	July 25-26, 2016
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.	)	

B E F O R E:

Honorable J.C. Nicholson, Jr.
Florence County Courthouse
Florence, South Carolina

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Kay H. Richardson
Circuit Court Reporter

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1 (July 25, 2016)

2 BY THE COURT:

3 THE COURT: If everybody would stand and announce their
4 name and who they represent for the record please and we'll
5 get started.

6 MR. MATTHEWS: Yes, Your Honor. My name is Steve
7 Matthews with Haynsworth, Sinkler, Boyd, here representing the
8 Plaintiffs, Florence County, and with me is Malloy McEachin.

9 MR. MCEACHN: I'm Malloy McEachin with the law firm,
10 McEachin & McEachin and I'm here on behalf of Florence County.

11 THE COURT: Okay.

12 MR. SMITH: Emory Smith, Your Honor, I'm from the
13 Attorney General's Office and I represent the State of South
14 Carolina.

15 MR. NICHOLS: John Nichols from Bluestein, Nichols,
16 Thompson, Delgado in Columbia and I represent the remaining
17 Defendants.

18 THE COURT: Okay. All right. How would y'all like to
19 proceed? I have read your pretrial briefs ---

20 MR. NICHOLS: Judge ---

21 THE COURT: --- and I appreciate y'all sending them.

22 MR. NICHOLS: We have Jay Jordan here.

23 THE COURT: Pardon?

24 MR. JORDAN: Jay Jordan also on behalf of the Florence Bar
25 also on behalf of the Defendants, Your Honor.

1 THE COURT: Oh, okay. Do y'all want to make brief
2 opening statements or you want to go straight into the
3 testimony; how do you wish to proceed, Mr. Matthews?

4 MR. MATTHEWS: If we could make a brief opening
5 statement, but in addition, there are a couple of housekeeping
6 matters I'd like to bring to Your Honor's attention or Mr.
7 Nichols wants to bring to Your Honor's attention.

8 MR. NICHOLS: Yes, sir, we agreed to this day, I just
9 didn't coordinate with my brain that today is the first day of
10 the bar exam. My portion of the bar exam will be given at
11 3:30 to 5:30. I need to have my telephone with me in case the
12 proctor has a question. We haven't had a question now for the
13 last ten exams ---

14 THE COURT: Well, you're bound to have one today.

15 MR. NICHOLS: Mr. Matthews and I talked about that. I
16 just jinxed it and it is the last time we'll be giving the bar
17 exam in this forum.

18 THE COURT: Well put your phone out here and if it
19 vibrates, pick it up. Okay?

20 MR. NICHOLS: Thank you, Judge. I just wanted to let you
21 know.

22 THE COURT: That's fine. I appreciate it. I know what
23 the rule says, but sometimes a rule was done what, ten years
24 ago, it's a little bit antiquated now.

25 MR. NICHOLS: Right. It's on vibrate.

1 THE COURT: I don't have an objection personally with
2 phones in the courtroom as long as they're on vibrate. I do
3 have an objection if it's ringing and disturbing people.

4 MR. NICHOLS: I agree, Judge.

5 THE COURT: Okay.

6 MR. NICHOLS: I just wanted to warn you I might have to
7 bolt out.

8 THE COURT: Well, if, if, if you have to do that, just
9 let me know and we'll take a break, okay?

10 MR. NICHOLS: Thank you, Judge.

11 THE COURT: All right. Before we get started with
12 opening statements, I understand that y'all have agreed on the
13 authenticity of several documents and I believe One through
14 Eight, except for Seven and then -- I forget the other
15 numbers?

16 MR. MATTHEWS: Yes, Your Honor, we have. Your Honor
17 should have copies of documents One through Thirty. Some -- a
18 couple of them have some sub-parts and we've agreed in respect
19 to the authenticity of a number of those so that we won't have
20 to have them authenticated by witnesses. So, we're going to
21 stipulate with the agreement of both sides to the following
22 documents and I'll go through this list. They are items One
23 through Five-A and Five-B and Six. So that's One, Two, Three,
24 Four, Five-A, Five-B and Six all being government documents.
25 Then, in addition, Eight, Nine, Ten, Eleven, Twelve, Thirteen

1 ---

2 THE COURT: I can't write that fast. Eight, Nine what?

3 MR. MATTHEWS: Eight through Thirteen.

4 THE COURT: Eight through Thirteen, okay.

5 MR. MATTHEWS: Then in addition, Fourteen, which is
6 Representative Phillip Lowe's deposition, including Fourteen-
7 A, Fourteen-B, Fourteen-C, Fourteen-D and Fourteen-E. Those
8 are the exhibits.

9 THE COURT: A-E?

10 MR. MATTHEWS: A-E, yes, Your Honor.

11 THE COURT: Okay.

12 MR. MATTHEWS: Those are the exhibits to Mr. Lowe's
13 Deposition. And although you may notice on the index that
14 indicates them as exhibits Twenty, Twenty-two, Twenty-three,
15 Thirty-two ---

16 THE COURT: All right. Do you have a typed up list of
17 all those exhibits?

18 MR. MATTHEWS: I do.

19 THE COURT: Would you mind giving those to the Court
20 Reporter so hopefully it will make her job easier.

21 MR. MATTHEWS: I'll be happy to do that.

22 THE COURT: I think yours is included in with the pre-
23 trial exhibit for me.

24 MR. MATTHEWS: That's correct, Your Honor.

25 THE COURT: But if you'll give one to the Court Reporter,

1 I'd appreciate it.

2 MR. MATTHEWS: In addition to that, item Fifteen, we've
3 agreed to stipulate, which was Mr. Lowe's radio interview.
4 Item Eighteen, which is an aerial map taken from the
5 Darlington County Tax Assessor's website. Item's Twenty
6 through Twenty-four are not stipulated; they will not be used.

7 THE COURT: Okay.

8 MR. MATTHEWS: What shows up as Twenty-three, Twenty-four
9 on your index will not be used and then we've also agreed to
10 stipulate items Twenty-five and Twenty-six also taken from the
11 assessor's website and I will -- I have copies of the ones
12 that are stipulated. They are marked and I can provide to the
13 Court Reporter.

14 THE COURT: Okay. Are they marked as you just called
15 out?

16 MR. MATTHEWS: Yes, sir, they are marked as I just called
17 out and I'll get for you in just a -- at the next break, I'll
18 get you an index to those.

19 THE COURT: Okay. What about all the, the second thing
20 that you mailed, which is basically a history of the statute?

21 MR. MATTHEWS: Yes, Your Honor, those are also being
22 stipulated as ---

23 THE COURT: That's Thirty-A through Thirty-BB?

24 MR. MATTHEWS: Yes, Your Honor, that's correct. Those
25 are also stipulated and let me hand up a copy of those to the

1 Reporter as well. The Thirty-A through Thirty-R are excerpts
2 from the Legislative Journals of South Carolina. And Thirty-S
3 through Thirty-BB are transcripts of the Legislative
4 videotapes of their sessions and here are copies of those as
5 well also marked and they'll be included on the exhibit.

6 Your Honor, with regard to some of those exhibits, two of
7 them are blown up here as maps. We do have PDFs available in
8 case during your consideration you won't be able to zoom in.
9 Both sides of copies of PDFs and if the Court would like
10 copies of those as well, we can make those available.
11 In addition to the PDFs, with regard to Mr. Lowe's radio
12 interview and with regard to the transcripts of the
13 legislative proceedings, we have an audio of Mr. Lowe's
14 interview and we have video clips from which the transcripts
15 were taken if the Court would like to hear the original or see
16 the video.

17 THE COURT: You've got it reduced to writing, transcript,
18 right? I prefer the transcript. I don't really care about
19 listening to it.

20 MR. MATTHEWS: You have the transcript. I just wanted to
21 make sure in case you did want them, they're available.

22 THE COURT: I mean, if you want to mark them as exhibits
23 for the record, that's fine.

24 MR. MATTHEWS: We do not.

25 THE COURT: Okay.

1 MR. MATTHEWS: We have a copy of those transcripts.

2 THE COURT: Have you agreed to any other exhibits?

3 MR. MAETTHEWS: No, Your Honor, those are the ones to
4 which we have agreed. That includes the ones that we have
5 listed and I believe the ones that y'all have listed in your
6 pre-trial brief was included in those already.

7 THE COURT: All right. I guess, Mr. Nichols and the
8 other counsel, I presume from reading the pretrial briefs, Mr.
9 Smith, you're sort of here, but you along for the ride with
10 Mr. Nichols?

11 MR. SMITH: Well, Your Honor, we are going to defer to
12 the Court as to the application of the law to the facts here.
13 I did cite in our pretrial brief that the Attorney General's
14 Office opinion that said that a statute for a fire district
15 located in more than one county is not a law for a specific
16 county.

17 THE COURT: Do you have a copy of that transcript, I mean
18 of that opinion? I know you mentioned it and I did not -- if
19 you have a copy of it, I would like to read it.

20 MR. SMITH: I thought I had in the pretrial but I may not
21 have.

22 MR. MCEACHIN: I've got one; I've scribbled on it. I'll
23 be happy to ---

24 MR. SMITH: I can email it to you, Your Honor.

25 THE COURT: That's fine, if you would. My question to

1 you about it is what were the factual scenarios of that case?

2 MR. SMITH: I would have to look ---

3 THE COURT: Or that opinion I guess I should say?

4 MR. SMITH: The opinion said that the home rule
5 Constitutional Provision says a law for a specific county so
6 if it intrudes by just one parcel into another county, then
7 arguably it is not ---

8 THE COURT: I understand that, but is that what the
9 attorney, this particular Attorney General's opinion addressed
10 or was it more than one entire county or was it partial one,
11 partial the other?

12 MR. SMITH: I think it was just a small portion of one
13 county, but I'd have to look at it to see, Your Honor.

14 THE COURT: Okay. Just find it and email it to me if you
15 would, please, sir.

16 MR. SMITH: I will, Your Honor. And I'll -- well, I've
17 got your email address.

18 MR. MATTHEWS: Your Honor, on that point, if I may, I
19 don't mean to interrupt. One of our witnesses actually is
20 involved with that entity or was involved with that entity and
21 can address under oath what the circumstances were. That was
22 the South Lynches Fire District in that Attorney General's
23 Opinion, which is part of Florence County and part of
24 Williamsburg County, and Mr. Brockington is one of the
25 witnesses who was formerly with the South Lynches and can

1 testify with regard to the circumstances that lead to its
2 creation.

3 THE COURT: Okay. All right. Mr. Smith and Mr.
4 Nichols, do y'all agree that the exhibits that Plaintiff's
5 counsel has presented to the Court; you have no objection to
6 those exhibits?

7 MR. NICHOLS: We have no objection, Judge. We had gotten
8 with Mr. Matthews earlier.

9 THE COURT: Is that correct also on behalf of the State?

10 MR. SMITH: Yes, Your Honor.

11 THE COURT: Okay. Thank you so very much. All right.
12 So those exhibits that were enumerated by Mr. Matthews for the
13 record marked by the Court Reporter are admitted without
14 objection.

15 PLAINTIFF'S EXHIBIT NUMBERS ONE THROUGH SIX
16 EIGHT THROUGH FIFTEEN, EIGHTEEN,
17 TWENTY-FIVE, TWENTY-SIX, THIRTY-A THROUGH 30-BB
18 ADMITTED INTO EVIDENCE

19 THE COURT: All right. Anything else before we get
20 started that y'all have agreed on as far as defense exhibits
21 possibly? I think the State said they didn't have any
22 exhibits. I don't know, Mr. Nichols, you didn't add any to
23 your brief. I don't know if you have any or not?

24 MR. NICHOLS: Judge, I don't believe we had any other
25 than what Mr. Matthews has listed.

1 THE COURT: Okay. Because it appears to me the facts are
2 pretty well set almost to the point of -- almost could
3 stipulate to facts, I understand, but they don't want to do
4 that and I understand why, but that's neither here or there.

5 MR. NICHOLS: And I understand as well, Judge, I mean,
6 you know the, the Plaintiff feels the need to create a factual
7 record and ---

8 THE COURT: I understand.

9 MR. NICHOLS: -- as a plaintiff's lawyer most of the
10 time, I understand that.

11 THE COURT: Do I understand you want to take what
12 representative -- was it Representative Lowe's deposition
13 after the testimony because he's not available at this time?

14 MR. NICHOLS: Yes, sir, we've agreed if ---

15 THE COURT: Leave the record open for that deposition?

16 MR. NICHOLS: Yes, sir, only for submitting Mr. Lowe's
17 deposition and we're working on a date right now.

18 MR. MATTHEWS: We're working on a date and -- in case
19 there's any need for rebuttal after that, we would reserve the
20 right for whatever rebuttal.

21 MR. NICHOLS: We have no objection.

22 THE COURT: All right. Is there anything else
23 preliminary we can talk about before we actually get into
24 opening statements and calling your first witness?

25 MR. NICHOLS: No, Your Honor.

1 THE COURT: Okay. All right. I'll be glad to hear you.

2 OPENING BY MATTHEWS:

3 MR. MATTHEWS: Thank you, Your Honor.

4 Your Honor. I think Emory just mentioned this is an issue
5 on which the question is one of law that the Court will be
6 called upon to decide and the facts, as you indicated, are
7 fairly straight forward. I don't think there will be a whole
8 lot of dispute about what the underlying facts are.

9 Beginning shortly after the advent of home rule, when it
10 took effect March 7th of 1973, shortly after that, Florence
11 County undertook responsibility for providing fire protection
12 services in the unincorporated areas of Florence County. They
13 did that through several different mechanisms. Most recently,
14 from a series of six special taxing districts that they have
15 created under the two statutory options for creating special
16 tax fire districts. There was no break in the service and all
17 of the unincorporated areas of Florence County were being
18 served. Similarly, Darlington County has been serving since
19 at least, I believe, 1976, with regard to one area, two pieces
20 of Darlington County. And I'll point to this map, which is
21 Exhibit Seventeen, that is now admitted shortly. The black
22 line, the bold black line going through here and up, separates
23 Darlington County from Florence County. This piece between
24 the red line and the black line is a portion of Darlington
25 County east of I95. These three green lots are part of the

1 Palmetto Rural Fire District to which Darlington County has
2 been providing fire service since I believe 1976, if I'm
3 remembering that date correctly. In addition, this piece,
4 this white piece that you can see on the triangle here, this
5 we'll talk about as the Hoffmeyer Road area, had been provided
6 service by the Darlington County Fire District, which is
7 another Darlington County entity. All areas were being
8 provided service.

9 Beginning in 2012, Florence County decided that they
10 would consider changes to their mechanism for providing
11 service. Instead of having six special taxing districts with
12 a hodgepodge of millage rates and different mechanisms for
13 providing service, for reasons the former chairman of counsel
14 will testify regarding, they thought it was better to
15 consolidate that into a single taxing district in Florence
16 County that would have a uniform millage rate across all six
17 areas. There were still gonna provide service from the same
18 fire stations which were located throughout, but to have a
19 single government entity responsible for that. That was
20 obviously going to cause -- with the leveling out of millage
21 rates, some would level down and some would level up. One of
22 the areas that would level up was the West Florence Fire
23 District, which is the area shown here outlined in purple,
24 essentially this western edge here. The West Florence Fire
25 District was going to experience a millage increase. And

1 understandably, they didn't want to pay higher taxes, and they
2 went to their legislative delegation who understandably wanted
3 to accommodate their constituents, and the legislative
4 delegation was trying to figure out how they could aide those
5 constituents. The -- what they came upon was we could create
6 a special purpose district. Well, under Article A, Section 7,
7 home rule provision of the constitution, that's not
8 permissible. The case was *Knight v. Salisbury* from 1974 I
9 believe it was. So they thought, well, is there some way to
10 avoid that? Well, in 1975 there was another case, *Kleckley v.*
11 *Pulliam* where there was a special purpose district consisting
12 of Richland County and Lexington County, all of both counties.
13 It was the Richland/Lexington Airport District for the purpose
14 of running the Columbia Airport and the Court said that that's
15 not just a matter of local concern, that's a matter of
16 statewide concern because people use that airport from all
17 over. As a consequence, that's okay. But there it wasn't
18 just that there was part of one county lumped in; it was an
19 issue of statewide concern and a multi-county district.
20 So in 19 -- excuse me -- in 2014, in order to avoid
21 consolidating West Florence into the new consolidated
22 district, the General Assembly enacted, Act 183 of 2014, and
23 it picked up West Florence plus these three blocks in
24 Darlington County and said, okay, we now have a multi special
25 purpose district.

1 THE COURT: Let me ask you a question?

2 MR. MATTHEWS: Yes, sir.

3 THE COURT: Is the green just Florence County?

4 MR. MATTHEWS: Yes, the -- except for the -- it's kind of
5 hard to see.

6 THE COURT: Except for the lots in Darlington County?

7 MR. MATTHEWS: Right. This green is not all of Florence
8 County. This white over here is Florence County.

9 THE COURT: Okay. So, that map is entirely Florence
10 County?

11 MR. MATTHEWS: Above this black line is Darlington
12 County.

13 THE COURT: Okay.

14 MR. MATTHEWS: Below is Florence ---

15 THE COURT: Is Florence County.

16 MR. MATTHEWS: --- and then over here is another county
17 line.

18 THE COURT: Okay. All right.

19 MR. MATTHEWS: But all of the light green is inside
20 Florence County, although it's not everything in Florence
21 County. So they took the West Florence Fire District, which
22 was the area concerned about the higher taxes, added in three
23 lots and said, okay, now we have a multi-county special
24 purpose district, that would be constitutional and so they get
25 to set their own millage rate; they're not gonna have to have

1 the rate increase that the county was going to impose.

2 The County challenged that and filed a lawsuit arguing
3 two things. One is that service was already being provided to
4 the entire area being covered and, under South Carolina law,
5 the *Wagener v. Smith* case and the *North Carolina Electric Coop*
6 *v. White* case, which we cited in our pretrial brief, under
7 those cases, where you have an existing government already
8 providing service, you can't just come in and drop another
9 government on top of it to provide the same service. So that
10 was one issue. The other issue was the inclusion of just
11 three lots here was a subterfuge. I should mention, in
12 addition to the three lots, it was to pick the right of way on
13 I95 from here up through Exit 169, which is here. So that
14 portion of 95, which wasn't even in the West Florence area, it
15 was picking up that. The County alleged, among other things,
16 that that was a subterfuge of that it was not really a matter
17 of statewide concern; it was just a local issue.

18 In response, the General Assembly, in 2015 amended their Act
19 183. And what they did in 2015 was a couple of things. They
20 added in an additional area of Darlington County. They added
21 in this piece here, that little triangle that you can see off,
22 this is Hoffmeyer Road coming through, they added in this
23 piece there and said that is also now going to be part of the
24 West Florence Fire District. The County has amended its
25 complaint to say that that too is a subterfuge and there are

1 reasons within the legislation to understand that. First, the
2 reason, one reason in the legislation in addition to facts
3 that will be testified to, with regard to these three lots,
4 the legislation said, by the way, we're gonna put this in the
5 West Florence Fire District, but West Florence, you don't have
6 to serve them. If you can find somebody else who can serve
7 them more conveniently, that's fine, get them to do it. Well,
8 they were already being served by a fire station, which shows
9 up here, the fire station is on the map that belongs to
10 Palmetto Rural Fire District of Darlington County. It's on
11 the same road. It goes straight down the road to get to those
12 areas. To get from West Florence, you have to come all the
13 way up, get on that same road and then go down. There is no
14 direct access. If you look here, West Florence borders those
15 three lots, but you can't get there from here. There's a
16 creek between them with no roadway. 195, which runs alongside
17 it, doesn't have any access in or out of Darlington County.
18 So, the only way to get it is to go up almost to the Palmetto
19 Rural Fire Station and then come down. So, it was clear that
20 West Florence was never gonna serve that area, that Palmetto
21 Rural was gonna continue to serve it.

22 With regard to this area on Hoffmeyer Road and its
23 service, same situation applies, if there's a closer
24 Darlington County Fire District Station than the nearest West
25 Florence Station, that's one thing. But the statute also says

1 after five years, Act 89 of 2015 disappears. All the changes
2 that it made disappear. So in five years, July the 7th, 2020,
3 that little triangle drops out. It would seem that it either
4 is more convenient to serve from there or it's not, but it
5 doesn't seem like July 7th, 2020 is gonna make any sort of a
6 turning point in that.

7 THE COURT: And that -- did that amendment address the
8 original three lots and the strip up 95?

9 MR. MATTHEWS: It did not.

10 THE COURT: It left that alone like it was?

11 MR. MATTHEWS: It left that alone; left that as it was.
12 One thing that it did do, it -- is the definition of West
13 Florence, and this is an issue that is a little bit
14 convoluted. The original act, Act 183, said that the
15 territory is gonna consist of three lots in Darlington, plus
16 that segment of 95, plus the West Florence Fire Subdistrict
17 from Act 1817 of 1973. Well, if you look back at Act 1817 of
18 1973, there is no West Florence Fire Subdistrict in there.
19 There is Subdistricts 1, 2, 3, 4, 5 and 6. So what were they
20 talking about in 2014? Well, if you look back to see, okay,
21 of 1, 2, 3, 4, 5 and 6, which one contained the West Florence
22 area; that was Subdistrict 1. A Subdistrict 1 wasn't just
23 West Florence, the part outlined in purple. Subdistrict 1 was
24 all of this green area. So, one of the things that the County
25 said in this suit originally was not only is there subterfuge,

1 but you got this huge part of Florence County that was
2 identified as West Florence under Act 1817; there isn't one --
3 there isn't a West Florence, there's only Subdistrict 1. The
4 best we can tell, Subdistrict 1 is the one that included West
5 Florence. So you look like you've got the big green block.

6 In 2015 when the General Assembly came back and added in
7 the Hoffmeyer Road area, they also amended the definition of
8 what was being included from Florence County into the new fire
9 district and there they said it would be the West Florence
10 Rural Fire District as it existed on May 7th, 2014. The West
11 Florence Rural Fire District was one of the county's old
12 special tax districts. So, it was clearly piggy-backed off of
13 what the -- of the fire protection service and the county was
14 already providing.

15 The -- again, the, the, the issues here are the issues
16 raised by Article 8, Section 7, which is that the counties are
17 essentially in charge of their own affairs, that the General
18 Assembly no longer passes local legislation for counties and
19 the *Wagener v. Smith* issue that I raised earlier.

20 I would address just quickly one point that was raised in
21 the pretrial brief for the Defendants and that was the case,
22 *Evins v. Richland County Historic Preservation Committee*, I
23 believe it was called, and it was cited for the proposition
24 that home rule doesn't apply to special purpose districts and
25 what I want to clarify is that that was talking about a

1 completely different portion of home rule. Article 8, Section
2 7, which is at issue here, has to do with ---

3 THE COURT: I'm sorry, what article now?

4 MR. MATTHEWS: I'm sorry. Article 8, Section 7.

5 THE COURT: Section 7?

6 MR. MATTHEWS: Yes, sir, Your Honor.

7 THE COURT: Okay.

8 MR. MATTHEWS: Is the provision at issue here, which has
9 to do with the General Assembly's authority or lack of
10 authority to pass special legislation affecting a particular
11 county.

12 THE COURT: Well, what -- what section did the *Evins* case
13 apply from this perspective?

14 MR. MATTHEWS: The *Evins* case is related Article 8,
15 Section 17 and that has to do with the powers of local
16 governments.

17 THE COURT: You said 17?

18 MR. MATTHEWS: Yes, Your Honor. Article 8, Section 17.

19 The old law in South Carolina and across most of the
20 country with regard to local governments was something called
21 Dillon's Rule. Dillon's Rule said that a local government
22 could only exercise the authority specifically granted to it
23 by the State Legislature, whichever state you happen to be in.
24 It was a restricted reading of local government power.

25 The South Carolina Supreme Court in 1993, I think,

1 *Williams v. Town of Hilton Head Island*, said look, Article 8,
2 Section 17 says the powers given to local governments are to
3 be construed liberally and what that means is, as long as the
4 power hasn't been denied to the local government by the
5 General Assembly, the local government can go ahead and do it.
6 In that case, the Town of Hilton Head Island had imposed a
7 real estate transfer tax. Nothing said they could, nothing
8 said they couldn't. The Court said they can under Article 8,
9 Section 17 having to do with the power of the local
10 government.

11 A later case said *indicta* that the same thing for a
12 special purpose district. They can do things as long as it's
13 not forbidden to them. It wasn't really an issue but the *D.W.*
14 *Flowe v. Christopher Construction*, I think. The Supreme Court
15 came back in the *Evins* case and said no, special purpose
16 district, like the name implies, is a special purpose
17 district. It can only do what the General Assembly has
18 allowed it to do. But that's not the issue in this case. The
19 issue in this case isn't what the local government can do;
20 it's what the General Assembly can do and so I just wanted to
21 address that one issue ahead.

22 So what we have here is every county in South Carolina
23 can provide fire protection service. It's authorized by
24 Section 4-9-30, the provision relating to county powers.
25 There's a special provision specifically relating to fire, 4-

1 19-10 and the following sections, which have been utilized by
2 counties in creating the new consolidated tax district. It's
3 clearly the case that fire protection is a matter of local
4 concern; it is not a matter of statewide concern. And, as
5 consequence, we believe that the attempt to create a new
6 special purpose district that is a large portion of Florence
7 County, a tiny piece of Darlington here and a temporary tiny
8 piece of Darlington County here doesn't pass muster under
9 Article 8, Section 7 and doesn't pass muster under the *Wagener*
10 v. *Smith* case either.

11 And I don't know if you would like to hear an opening
12 statement from opposing counsel or if you would like me to ---

13 THE COURT: I'll give them the opportunity. I just have
14 one question.

15 MR. MATTHEWS: Yes, sir.

16 THE COURT: You brought up in your brief the limitation
17 by the, the statute was passed three or four years ago,
18 commonly referred to as, I believe, the loss statute about the
19 tax -- sales tax and getting a credit of property tax and
20 limited the governments, municipal and county governments as
21 to how much millage they could raise per year. First question
22 is, what was that limitation; do you know?

23 MR. MATTHEWS: Your Honor, I don't know, although one of
24 our witnesses, Mr. Yokum, the County Finance Director, may be
25 able to testify to that.

1 THE COURT: Okay. All right. The second question, how
2 did this statute that set up a special tax district for West
3 Florence Fire District impose a limitation or did it impose a
4 limitation? Your brief said it did not impose a limitation;
5 that was the only taxing area in the State of South Carolina
6 that did not have that limitation.

7 MR. MATTHEWS: That's correct.

8 THE COURT: Please expound upon that.

9 MR. MATTHEWS: Yes, Your Honor. The, the section of the
10 Act 183 is -- it was equity, I believe it was qualified as 4-
11 23 -- I believe it was 4-23-1015(b); 4-23-1015(b) -- excuse
12 me, C, C as in Charlie, where it says notwithstanding the
13 provisions of Section 6-1-320. 6-1-320 is the codification of
14 Act 388, which is the issue we're talking about. It says
15 notwithstanding the provisions of Section 6-1-320, the
16 commission is authorized to impose a millage levy after 2014.
17 It considers appropriate and necessary for the operation of
18 the district above that permitted by District 6-1-320, upon
19 favorable vote of the registered electors of the district. 6-
20 1-320 doesn't allow that exception for anybody else in the
21 state, no school district, no city, no county, no other
22 special purpose district.

23 THE COURT: So the tax district -- the commission could
24 not approve it without the referendum?

25 MR. MATTHEWS: That's correct.

1 THE COURT: It had to be approved by the voters in that
2 particular district?

3 MR. MATTHEWS: That's correct.

4 THE COURT: Okay.

5 MR. MATTHEWS: That's correct, but in any other area, say
6 the City of Florence or the Richland/Lexington Airport or
7 whatever, they can't even raise it with a referendum. They
8 have no ability to raise it beyond what's bound by 6-1-320.
9 This is the only exception from 6-1-320 that has been granted.
10 And, on that point, again this will anticipate some of the
11 testimony, but when the County was considering the
12 consolidation, one of the hurdles they were trying to overcome
13 was the fact that they were hamstrung by Act 388, 6-1-320.
14 They couldn't raise the millage on some of their taxing
15 districts enough to be able to get the revenue needed to
16 provide service.

17 THE COURT: Historically, was that the different millage
18 and the different six -- I believe you said it was six or
19 five?

20 MR. MATTHEWS: There were six ---

21 THE COURT: Six?

22 MR. MATTHEWS: Yes, Your Honor.

23 THE COURT: From a historical standpoint, was the
24 difference in the millage -- I think you said there was one
25 that was 8 mills, another was 20 mills. Was that because of

1 the industrial areas and I guess high dollar real estate in
2 the areas where it was lowered versus the higher in the rural
3 area? Or why was that or do we know?

4 MR. MATTHEWS: It is historical and it is in part based
5 on exactly what you were describing. Just to give you a
6 couple of examples, West Florence Fire District -- West
7 Florence Rural Fire District was its name when it was a
8 Special Taxing District. West Florence Rural had the 8 mill
9 levy. They have a fairly high tax base. The value of an acre
10 there is fairly high compared to other parts of the county,
11 better homes, more valuable homes, commercial businesses.
12 Other parts of the county, less valuable property either for
13 agricultural usage or lower valued homes. There also was some
14 issue with regard to the, the -- I think for example,
15 Johnsonville had lost an industry that was a huge part of its
16 tax base and that, of course, drives -- you know, drives part
17 of the concern. But in the face of Act 388, 6-1-320, there's
18 no way for the county to get its arms around that. One of the
19 mechanisms was through consolidation, which let them do two
20 things. It let them level out the millage ---

21 THE COURT: Well, how did the leveling out the millage
22 correspond with the insurance rates going down or do we know?

23 MR. MATTHEWS: Well, it's ---

24 THE COURT: As far as dollars are concerned?

25 MR. MATTHEWS: That's sort of after the fact, after the

1 legislation ---

2 THE COURT: Right.

3 MR. MATTHEWS: --- which may or may not be relevant and
4 we can talk about that. But, the, the -- one of the concerns
5 ---

6 THE COURT: That may not -- it may not be involved in my
7 legal decision, but I'm just sort of curious to know if you
8 raise the millage in one area to where it's standard, what
9 dollar-wise to that would it decrease in insurance because
10 it's gonna change the insurance premium and I suspect it made
11 it lower?

12 MR. MATTHEWS: That's correct, Your Honor. The, the
13 millage rate itself, my understanding, I don't mean to -- with
14 regard to this, but my understanding is the millage rate
15 itself would not affect the ISO rating, the insurance rating.

16 THE COURT: Right, it did not affect the IOS?

17 MR. MATTHEWS: The millage rate wouldn't. However, what
18 goes along with the millage rate is a higher level of service,
19 a more uniform level of service across the county, which
20 would, if the service level ---

21 THE COURT: Well, if you increase the service level,
22 you're gonna change the ISO?

23 MR. MATTHEWS: Correct. Exactly right, Your Honor, and
24 so that's sort of a secondary effect that you do improve the
25 insurance rating and you bring down the insurance costs. When

1 the County Council first began consideration of the -- of the
2 consolidation, it was at their retreat in March of 2012. One
3 of the things that they talked about in a very brief
4 discussion was that consolidation may improve the ISO rating;
5 that was one of the factors they had in mind, and one of our
6 witnesses, Mr. Brockington, who is the Fire Coordinator for
7 Florence County, can testify with regard to what has in fact
8 happened with regard to the ISO.

9 THE COURT: All right.

10 MR. MATTHEWS: My understanding is that it has gone down
11 across the county and is now uniformly better across -- it may
12 be uniform yet, but it is uniformly better across the
13 consolidated part of, which no longer includes West Florence.

14 THE COURT: But nobody knows how that played dollar-wise
15 versus increase in the millage?

16 MR. MATTHEWS: On a ---

17 THE COURT: In certain areas.

18 MR. MATTHEWS: Other than being able to say that the, the
19 millage rate went up and the ISO rating went -- improved, went
20 down, I don't know if anybody can give you an exact dollar-
21 for-dollar correspondence.

22 THE COURT: Probably no -- that issue probably hasn't
23 been addressed, but it's not real relevant for my purposes,
24 okay, I was just sort of curious. Thank you so very much.

25 MR. MATTHEWS: Thank you, Your Honor.

1 THE COURT: Mr. Smith and Mr. Nichols, either one or
2 both?

3 OPENING BY SMITH:

4 MR. SMITH: Your Honor, if I may just say briefly I don't
5 have anything to add at this point other than what I've
6 referenced in the PDF in our pretrial brief that we defer to
7 the Court as the application of the law to the facts of this
8 case. We cited the 2011 opinion and I'm getting ready to
9 email that to everybody right now. I'm sorry I didn't have
10 paper copies of it. I reserve the right to take a position on
11 the law beyond this depending upon the course of the trial,
12 but right now, that's all I anticipate doing, Your Honor.

13 THE COURT: Okay. Thank you, Mr. Smith.

14 Mr. Nichols?

15 OPENING BY NICHOLS:

16 MR. NICHOLS: Yes, sir, Judge. Very, very briefly. We
17 don't disagree with a lot of the facts that Mr. Matthews set
18 out. I will say that I think you will hear testify that while
19 concern about millage is what started this investigation, it
20 was at that point and Representative Lowe said in his
21 deposition and he'll say in his testimony I anticipate, that
22 that wasn't the only concern here that there was also -- that
23 it became known of the safety concern along that stretch of 95
24 and so there was an -- there was an -- they were concerned
25 with the millage, but they were also concerned with providing

1 fire service there. They'd been -- there was a statement that
2 -- and we will -- we have agreed to, to these, but I think Mr.
3 Matthews is still gonna put up a sponsoring witness to at
4 least describe some of what you see on this large map.

5 THE COURT: So your concern was the millage of Number 2
6 and the service itself?

7 MR. NICHOLS: Well, and services particularly along the
8 stretch of I95 that's in Darlington County, but only
9 accessible through Florence County.

10 Judge, let me just say this. I, I -- and sometimes I'm
11 pretty thick about things, so let me just say, I read *Evins*
12 perhaps too broadly. I realize that they were dealing with
13 Article 8, Section 17. We're concerned with Article 8,
14 Section 7. Both of those are part of the home rule amendments
15 that were adopted and that lead to the adoption of the home
16 rule act that both the Court of Appeals and the Supreme Court
17 explained to me in great detail in the *Cunningham* case that I
18 took up, but I don't know how else you read what Justice Moore
19 said in *Evins*. So, if *Evins* is wrong or maybe *Evins* is not
20 artfully stated, the Supreme Court is gonna have to tell us
21 that, but I'm just saying, this is how *Evins* is being cited.
22 So, I would just submit to you that they overruled *D.W. Flowe*.
23 And, if you don't mind me reading it, it says which applies
24 home rule to special purpose districts to the extent *D.W.*
25 *Flowe* could be read to apply home rule to special purpose

1 districts, it is overruled. I don't know how else to read
2 that and perhaps I'm reading it too broadly because they were
3 dealing with Section 17 and not Section 7. He did not --
4 Justice Moore, and the four folks who signed on, a couple of
5 acting associate justices.

6 THE COURT: Do you -- I know from who you're representing
7 where you are, but do you see a distinction between the
8 different sections as far as what the Supreme Court did in the
9 evidence as Mr. Matthews has pointed out earlier to the Court?

10 MR. NICHOLS: He is correct that they were dealing with a
11 different section.

12 THE COURT: Right.

13 MR. NICHOLS: But the Court was concerned with language
14 which they described as dicta in the *D.W. Flowe* case.

15 THE COURT: Uh-huh (affirmative response).

16 MR. NICHOLS: And it sounded to me like they were making
17 it a statement. Now, I will also concede there was a
18 subsequent case where they, without ruling on whether it
19 applied, they did -- and the case name escapes me, but the
20 Court has not been entirely clear on this, I don't believe.

21 THE COURT: What -- you don't remember the name of the
22 subsequent case? Was *Evins* cited in the case?

23 MR. NICHOLS: I think *Evins* is cited in the case, but I
24 will have that ---

25 THE COURT: Shepardize -- can you find that case for me?

1 MR. NICHOLS: Yes, sir, I will find that case. But
2 getting back to, to this, and I believe it is a question of
3 law for you. I don't believe we'll have much in the way of
4 disagreement of the facts of the case. There was -- you will
5 probably hear testimony from, from Mr. Schofield about the
6 disparity in the millages. Johnsonville was at forty percent,
7 West Florence was eight, and there was also a concern that
8 according to ---

9 THE COURT: I guess, that's why I was asking the question
10 about the ISO. I don't -- I understand that that doesn't
11 necessarily affect my ruling, but if the reason for passing
12 legislation of West Florence Fire District was for the
13 disparity in the millage, I don't know how you can complain
14 about the millage unless somebody does a comparison with the
15 ISO because there's a good probability they'd save more in
16 insurance premiums than the millage costs them.

17 MR. NICHOLS: Well ---

18 THE COURT: I don't know that.

19 MR. NICHOLS: And I don't really think they got into
20 that, Your Honor. I don't recall ---

21 THE COURT: And I don't know if what that statement I
22 just made is correct, but if you gonna complain about the
23 millage, you're gonna have to balance it off on what your ISO
24 does on your house insurance.

25 MR. NICHOLS: Well ---

1 THE COURT: And your premiums.

2 MR. NICHOLS: And again, we think that's -- that may have
3 started the train on the track, but at some point there was
4 some concern over whether there could be a different way to
5 provide service or service was being provided. We do have an
6 argument about *Wagener v. Smith*.

7 THE COURT: Uh-huh (affirmative response).

8 MR. NICHOLS: Judge, *Wagener v. Smith* ---

9 THE COURT: Well, let me ask you this, when they went --
10 consolidated, did that mean West Florence Fire District's
11 service would be upgraded or it would remain status quo or
12 does anybody even know?

13 MR. NICHOLS: As far as I can tell, there would be a
14 different response time to some of this -- some of these
15 areas. I don't know what you mean about upgraded. They were
16 building fire ---

17 THE COURT: Well, either in facilities or equipment or --
18 or service. When I say service, any service they provide.

19 MR. NICHOLS: There's a new fire station opened up on
20 Hoffmeyer Road. That fire station, I believe, was in the plan
21 at the time.

22 THE COURT: Uh-huh (affirmative response).

23 MR. NICHOLS: But it will be online very shortly.

24 There's also concern that some of the facilities were on land
25 that wasn't owned or leased and therefore, there was some

1 risks to it, but that will be remedied. They're closing on
2 that and I think you'll hear about that. But -- and I lost my
3 train of thought, Judge, you were asking me about whether ---

4 THE COURT: I'm sorry I did that to you.

5 MR. NICHOLS: No, that's all right. You were asking me
6 about whether this improved service or improved facilities; I
7 don't know that it did. I believe that West Florence is
8 providing service to this district. I will note that, you
9 know, there's a -- there's an argument that Florence was
10 consolidated, it's all of the fire service here, but as you
11 will hear there is at least some portion of Florence County
12 that's not within this consolidated or part of the West
13 Florence Fire District and that would be the South Lynches,
14 which leads over into Williamsburg County.

15 THE COURT: Uh-huh (affirmative response).

16 MR. NICHOLS: And has its own special purpose district
17 created by statute. So, you know, at the end of the day,
18 you've got to rule as to whether the General Assembly -- what
19 the General Assembly did in 2014 and then again in 2015. The
20 Governor signed that bill into law in 2014; she vetoed ---

21 THE COURT: Vetoed the '15 bill.

22 MR. NICHOLS: --- she vetoed the '15 bill.

23 THE COURT: And they overrode the veto?

24 MR. NICHOLS: Yes, sir. Overrode the veto and so both
25 are coming to place. I don't have anything further to say

1 except that we think that it's -- that you should uphold it.

2 THE COURT: Let me -- let me just ask you one question up
3 front after reading your brief and reading the briefs and
4 maybe I should ask it at closing arguments, but I'm gonna ask
5 it now because I sort of want to mill over your answer. The
6 special consideration that was given to the West Florence Tax
7 District, i.e., they did not have to abide by the increase in
8 millage by having a referendum if they wanted to raise it.

9 MR. NICHOLS: Right.

10 THE COURT: That's the only taxing district in the State
11 of South Carolina that has that authority. Why is that not
12 local irrespective of all the fire issues?

13 MR. NICHOLS: I -- and ---

14 THE COURT: And that's in the statute and it's not
15 severable from what I understand.

16 MR. NICHOLS: That's correct and, and you're saying the
17 provision in the statute which says notwithstanding provision
18 of 6-1-320?

19 THE COURT: Right.

20 MR. NICHOLS: Well, you know ---

21 THE COURT: I mean, my question is very blunt to you.
22 Why -- how can that not be local in nature and violate your
23 constitution?

24 MR. NICHOLS: Well, it's a difficult question for me,
25 Judge.

1 THE COURT: I know it is. That's why I'm asking it now.

2 MR. NICHOLS: I know it is.

3 THE COURT: Irrespective of everything else.

4 MR. NICHOLS: I understand, Judge, but the General
5 Assembly was aware of 6-1-320. They were -- in fact there's
6 expression in there that they understand 6-1-320 which is the
7 codified act or, you know, Act number 388. And, you know,
8 they, they took that into consideration whenever they, they
9 adopted this. You may find that there is just no way we can
10 save it and there is not.

11 THE COURT: And I agree with your argument. The Courts
12 are obligated to find out -- to find that the statute
13 constitutional.

14 MR. NICHOLS: Yes, sir.

15 THE COURT: And that's why I'm asking these questions,
16 okay?

17 MR. NICHOLS: I understand, Judge, and I -- you do start
18 with a presumption of constitutionality and it's their burden
19 to come in and demonstrate that this violates the statute ---

20 THE COURT: And I agree with that.

21 MR. NICHOLS: --- and that this violates it and creates a
22 special local legislation that violates the constitution and
23 perhaps runs afoul of the home rule. We, we contend it
24 doesn't. I can't, you know, Judge, I don't know that they're
25 gonna overcome the presumption.

1 THE COURT: Okay. I understand. Thank you so very much.

2 MR. NICHOLS: Thank you, Judge.

3 THE COURT: All right. Mr. Matthews, you want to call
4 your first witness?

5 MR. MATTHEWS: Yes, Your Honor. I'd like to call Robert
6 Ervin.

7 CLERK: Please step up to the witness stand, place your
8 left hand on the Bible and raise your right hand?

9 ROBERT ERVIN, HAVING BEEN SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK: Please be seated and then state your name for the
12 record.

13 MR. ERVIN: My name is Robert Ervin.

14 DIRECT EXAMINATION OF ROBERT ERVIN BY MR. MATTHEWS:

15 Q: Mr. Ervin, will you please spell your last name?

16 A: It's E-R-V-I-N.

17 Q: Mr. Ervin, could you tell us what your profession is?

18 A: I work with Florence County GIS. I'm the GIS Database
19 Manager.

20 Q: All right. How long have you been in data base -- in GIS
21 mapping?

22 A: I've been in GIS mapping since about 1986.

23 Q: Was the entire time with Florence County?

24 A: I've been with Florence County since 1997.

25 Q: And how long have you been the GIS Data Base Manager

1 there?

2 A: I've been the GIS Data Base Manager since 2007.

3 Q: All right. Mr. Ervin, I want to show you what is marked
4 as Exhibit Seventeen, Plaintiff's Exhibit Seventeen and ask if
5 you can identify this document?

6 A: Yes, I can identify it.

7 Q: Can you describe what that is?

8 A: That is taking the interpretation from the, I think it
9 was Act 1817 and it is what the Subdistrict 1 that was
10 mentioned that Act.

11 Q: Did you prepare that map?

12 A: Yes, I did.

13 Q: When did you prepare it?

14 A: I prepared -- I printed it on June 19th, 2014.

15 Q: Okay. I'm going to show you this blowup just so it will
16 be easier for the Court to see what you're referring to. This
17 is a blowup of the, of the same document. Can you describe
18 what is shown on this map? For example, the large green
19 area, what does that constitute?

20 A: That was what, in, in that law it described it was
21 basically school district one divided by a line that was
22 described in the law and that is what the Subdistrict 1 in the
23 description of that law.

24 Q: And the area included inside the purple outline?

25 A: That was the -- a description of the West Florence Fire

1 District that was in a county ordinance.

2 Q: Okay. And the large bold black line moving northeast
3 then due east and then north northeast?

4 A: That's the Darlington/Florence County line.

5 Q: Would you describe the basis of the technique that you
6 used to prepare the map?

7 A: I used, you know, the best GIS mapping practices in doing
8 it, looking at the county ordinances, looking at maps that we
9 have received that the South Carolina Budget Control Board,
10 the Office of Research and Statistics provides for us for
11 election maps and just interpreting those as best I could.

12 Q: Okay. You mentioned a line through School District 1;
13 what was the issue with that line?

14 A: In the law it described the two territories that it
15 divided School District 1 up into the -- Subdistrict 1 and
16 Subdistrict 6 and the description was that one subdistrict
17 was, I think it was north and west of the line and other one
18 was south and west and, you know, realized that that just
19 wasn't geographically logical.

20 Q: All right. And how did you resolve that?

21 A: I realized it was meaning -- one was south and west of
22 the line and one was north and east of the line.

23 Q: Based on the records and technology that you had in
24 preparing that map, is this a fair and accurate representation
25 for us to show?

1 A: Yes.

2 MR. MATTHEWS: Your Honor, I would move the admission of
3 Exhibit Seventeen into evidence.

4 MR. NICHOLS: Judge, we have no objection.

5 THE COURT: Any objection?

6 MR. SMITH: None, Your Honor.

7 THE COURT: All right. So admitted into evidence without
8 objection.

9 PLAINTIFF'S EXHIBIT NUMBER SEVENTEEN

10 ADMITTED INTO EVIDENCE

11 THE COURT: You don't have a fold version of that by any
12 chance, do you?

13 MR. MATTHEWS: I can get one.

14 THE COURT: Ask the Clerk. Do y'all need a folding
15 version of that for storage instead of that cardboard?

16 CLERK: No, sir, I can use that.

17 THE COURT: Okay. She says they don't need it. That's
18 fine.

19 MR. MATTHEWS: I can get a PDF we can zoom in on for
20 those lines.

21 THE COURT: Well, whatever the Clerk -- some Clerk's want
22 that; some Clerk's don't. I mean if she doesn't want it
23 that's fine.

24 MR. MATTHEWS: Thank you, Your Honor.

25 BY MR. MATTHEWS:

1 Q: Mr. Ervin, next I'm gonna show you what's marked as
2 Plaintiff's Exhibit Nineteen and ask if you can identify this.
3 document?

4 A: Yes, I can.

5 Q: And could you tell us what that is?

6 A: Yes, that is showing the parcels in the Act that were in
7 Darlington County in the Act, the first Act, and then it also
8 shows the fire districts and in this case it shows the Windy
9 Hill Fire District and the West Florence Fire District in the
10 City of Florence coverage area and it also, also shows
11 distances from the West Florence Fire -- the closest West
12 Florence Fire Station and two different routes that it could
13 get to those three parcels in Darlington County and then the
14 distance from the closest Windy Hill Fire Station and the
15 distance from the Darlington County Fire Station.

16 Q: And did you prepare this map?

17 A: Yes, I did.

18 Q: When did you prepared it?

19 A: I prepared it in 2014.

20 Q: And how did you prepare it; the same way as the other map
21 or ---

22 A: The same way as the other map using GIS software. I
23 estimated the routes, but the information was gathered the
24 same way.

25 Q: And again based on the records and technology available

1 to you and the method you used for preparing it, is this a
2 fair and accurate representation of what it purports to show?

3 A: Yes.

4 Q: By this I mean the exhibit now. I want to direct your
5 attention to what appears to be an enlargement of Exhibit
6 Nineteen; is this also a map that you prepared?

7 A: Yes.

8 Q: And I believe you said you prepared that on some date in
9 2014 and this shows the date of February 9, 2015. Is there
10 any difference between that and this enlargement?

11 A: Yes, there is.

12 Q: What's the difference?

13 A: The difference is that the second map shows a proposed
14 Windy Hill Fire Station and, which is under construction, that
15 is across the street from the one that was in the original.

16 Q: Are you referring to this fire station?

17 A: Correct.

18 Q: And, Your Honor, I know you can't see this; it says Windy
19 Hill Fire Station Number 2 and underneath it another fire
20 station, it says proposed Windy Hill Fire Station. Other
21 than that difference, are these, the exhibit and the enlarged
22 map the same?

23 A: Yes.

24 Q: Thank you, Mr. Ervin.

25 Your Honor, I made the point of those differences.

1 THE COURT: Number Nineteen, any objection?

2 MR. NICHOLS: No objection, Your Honor.

3 THE COURT: Mr. Smith, I assume in your silence you don't
4 have any objection either? I'm not gonna require you to stand
5 up. I assume your silence means acquiescence, okay?

6 MR. SMITH: Thank you, Your Honor. I will speak up if I
7 do have an objection.

8 THE COURT: Okay. Please do, okay; otherwise I'll think
9 you don't have an objection, okay?

10 MR. SMITH: Thank you.

11 THE COURT: Thank you very much.

12 PLAINTIFF'S EXHIBIT NUMBER NINETEEN

13 ADMITTED INTO EVIDENCE

14 MR. MATTHEWS: Thank you, Your Honor. We pointed out the
15 difference only because we realized it could be later printed
16 off slightly later map version of the map with only the one
17 difference. We want to be able to use the enlargement as an
18 illustration for other witnesses and tie it back to the
19 exhibit and that's why we clarified that although this has a
20 different date, it's actually the same except for one item.

21 THE COURT: Okay.

22 MR. MATTHEWS: No further questions, Judge.

23 THE COURT: Cross examination?

24 MR. NICHOLS: No, sir.

25 THE COURT: Okay. You may step down. Thank you very

1 much.

2 MR. NICHOLS: That's all right.

3 MR. MATTHEWS: Thank you, Mr. Ervin.

4 THE COURT: Yes, sir, you want to call your next witness?

5 MR. MATTHEWS: Yes, Your Honor. I'd like to call James
6 Schofield.

7 CLERK: Please place your left hand on the Bible and
8 raise your right hand?

9 JAMES SCHOFIELD, HAVING BEEN SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK: Please be seated and then state your name for the
12 record.

13 MR. SCHOFIELD: James Schofield.

14 COURT REPORTER: Will you spell your last name, please?

15 MR. SCHOFIELD: S-C-H-O-F-I-E-L-D.

16 DIRECT EXAMINATION OF JAMES SCHOFIELD BY MR. MATTHEWS:

17 Q: Mr. Schofield, would you please explain to the Court what
18 your connection is to Florence County?

19 A: Florence County Councilman.

20 Q: And do you live inside the county?

21 A: Yes, sir.

22 Q: How long have you been a resident?

23 A: Sixty-seven years; all my life.

24 Q: How long have you been a member of Florence County
25 Council?

1 A: I took office in January of 2007.

2 Q: And you've served continuously since that time?

3 A: Yes, sir.

4 Q: What positions have you held on council?

5 A: Chairman for two years; Vice-Chairman for one year.

6 Q: What was your -- what was the time period when you were
7 Chairman?

8 A: 2013 and 2014, I was Chairman of the Council; and 2015, I
9 was Vice-Chairman.

10 Q: Prior to your service on Council, did you have any
11 involvement in public safety or emergency response in Florence
12 County?

13 A: Yes, sir, when I got out of college, I became a State
14 Constable in the mid-seventies and until 1981, I did crime
15 scene photography for the City of Florence and backed up city
16 units. I had Kodak law enforcement photography training and
17 arson training. When I was on the City Council, I gave up the
18 State Constable and then, in 2001, when 911 happened I went
19 back and applied for the State Constable again and still have
20 that currently today.

21 Q: When you came on to County Council, was Florence County
22 providing fire protection service in any parts of the county?

23 A: Yes, sir.

24 Q: Could you describe what areas were being served and with
25 what structure?

1 A: We had one special tax district created in Section 49.

2 It was the sorriest tenant in the district. We had five other
3 districts created in a Section 40-19. They were operating
4 with a board and then that board contracted with the
5 501(c)(3)s that were the operating districts, West Florence,
6 Windy Hill ---

7 Q: The 501(c)(3)s, was there one 501(c)(3) for the county or
8 was there one for each of your districts?

9 A: There was a 501(c)(3) and I believe in one case, I don't
10 even think they had a 501(c)(3), but the majority of it had a
11 501(c)(3) that was the operating entity with a fire chief.

12 Q: During your time on County Council, has the Council
13 considered changing the structure that you found when you
14 first arrived?

15 A: Yes, sir.

16 Q: Were you actively involved in that consideration?

17 A: Yes, sir.

18 Q: In addition to the information that you get as a member
19 of County Council, do you have any other regular sources of
20 information with regard to fire and emergency response in the
21 county?

22 A: I have Florence County Public Safety radios at my home
23 and in my vehicle. I listen to those when I'm traveling and
24 night, occasionally, I listen to radio if we have bad weather
25 or storms. When I was Chairman, I could be notified if we had

1 a significant event and then just talk to the fire chiefs and
2 people in the county about public safety titles.

3 Q: Okay. What were the concerns of the events that prompted
4 the Council to consider changes the fire protection structure?

5 A: Well, we had had a negative impact with 388 and we needed
6 an adequate source of revenue, an equitable source of revenue
7 for the fire districts. We had attempted to get Section 4-19
8 of the code, amended so that it would be exempt from Act 380
9 and similar to 4-9, which had been done previously. We were
10 unsuccessful in that. But we also after the study, we had a
11 study done of fire service and EMS. I think it was
12 commissioned then in 2013 and we got it in 2014. I may have
13 those dates wrong. I believe it was 2012 that it was
14 commissioned and got it in 2013, but there were administrative
15 efficiencies that we thought could be had with the
16 consolidation into one district. Those current concerns about
17 380(A) had to do with the loss of industry and the loss of
18 taxation base from annexation and thought it was better to
19 share all the revenue in a large area rather than one tax
20 district. Like they said, Johnsonville was at 40 mils and
21 they lost an industry and that's partially why they're at 40
22 mils. Other areas we were experiencing annexation loss and
23 there was some deficits in the budget.

24 Q: You mentioned administrative efficiencies. What sort of
25 administrative efficiencies did you consider?

1 A: Well, we felt like that, and that's kind of coupled with
2 the last question is to have the ability to have the budgets
3 reviewed at the county level by elected officials rather than
4 the other system where the treasurer wrote the check to the
5 501(c)(3) or to the fire district. We felt like that that was
6 a plus and we felt like the workman's comp purchasing
7 compliance with DOT, excuse me, not DOT, compliance with
8 federal state regulations that it would be better to have one
9 operating overall fire district, but we wanted to leave the
10 fire control and command in those six other fire districts.
11 So it's pretty much an administrative thing rather than an
12 operating thing, other than insuring operating standards,
13 OSHA Regulations and the like.

14 Q: Just to make sure I'm clear, you referred to the other
15 system in which the treasurer turned the revenues over to the
16 501(c)(3), were you referring there to the, the prior system
17 of six taxing districts?

18 A: That's right. Those available tax districts, if he would
19 -- if they would sign a warrant and ask for the full and
20 stipulating certain conditions and the check would be issued
21 to them. One other thing that I would point out that we did
22 have a retreat in 2012 where we talked about fire service.
23 That was before the study. And we knew and felt strongly that
24 if we could introduce some operating efficiency, the
25 administrative efficiency or the like, that we could.

1 significantly change the level of service to lower the fire
2 insurance ratings. That's one of our biggest concerns was
3 that -- and did have the varying level of tax -- taxation. We
4 knew it was gonna go up in a couple of them. It was probably
5 gone go down in the rest of them, but we felt that, you know,
6 that would probably get offset. I would point out that our
7 reading of the statutes and the conversations with the
8 Department of Revenue that when we did the consolidation to
9 the single districts, that was a one-time reset of the
10 millage. That would -- they gave us several different options
11 on how to do that and there was gonna be some additional
12 revenue available to try to improve our services.

13 Q: Mr. Schofield, you mentioned a consultant's report. I'm
14 gonna show you the document marked as Plaintiff's Exhibit
15 Seven. Tell me, do you recognize that?

16 A: Yes, sir, it's the report from Emergency Services
17 Consulting International that the County commissioned as it as
18 the date of May 2013; that's when we received it, I believe.

19 Q: And is the report that you received from the consultants
20 hired by the County?

21 A: Yes, sir.

22 MR. MATTHEWS: Your Honor, I'd move to admit this as
23 Exhibit Seven as a report received by the county?

24 THE COURT: Yes, sir, I think it's already been admitted
25 hasn't it?

1 MR. MATTHEWS: Seven had not.

2 THE COURT: Oh, Seven had not?

3 MR. MATTHEWS: Seven had not been.

4 THE COURT: Any objection?

5 MR. JORDAN: No objection.

6 THE COURT: All right. Seven admitted without objection.

7 PLAINTIFF'S EXHIBIT NUMBER SEVEN

8 ADMITTED INTO EVIDENCE

9 MR. MATTHEWS: Thank you.

10 BY MR. MATTHEWS:

11 Q: Mr. Schofield, could you describe the, the course of
12 Council's consideration and changes; what did they consider
13 doing and through what process?

14 A: Well, as I mentioned earlier that early on we realized
15 that Timmons ville created under the 4-9 statute was allowed to
16 raise their millage, but in their setup they had a prohibition
17 against any bonds, so if they had a problem with a firetruck,
18 if it got wrecked they would be in a bad place to replace it.
19 Again we looked and knew that 4-19 was -- both of them created
20 fire districts in the counties very similar to each other and
21 the State Legislature, I think it's Act 87, several years ago
22 changed 4-19 and said they're exempt from fire operations from
23 Act 388, which put the limit on them. So we -- when I became
24 Chairman in January of 2013, if I can get my dates right in
25 there, I had a meeting with Senator Leatherman in Columbia on

1 another matter, a cap to -- sales tax and at the end of that
2 meeting, I explained to him my concern about the fact that the
3 state had been exempted fire service from -- in 4-9, and I
4 supported that because fire service is -- most in service --
5 one you've got to just do what it takes to get it there and
6 that there was a problem in 4-19 and he said he would look at
7 it. Then in February I sent a copy of the proposed
8 legislation to his Chief of Staff. I did not hear back from
9 that. I later gave a copy of the proposed legislation to Dr.
10 Fred Carter at Francis Marion University knowing his close
11 relationship with the Senator, telling him that, you know, the
12 County really had a serious problem, West Florence had a
13 problem with its funding and other fire districts were having
14 problems and we needed to come up with some way that to solve
15 these problems. There was a lot of discussion as to doing
16 single district, but Myrtle Beach had done it, but there were
17 still questions as to how the Revenue Department was gonna
18 look at it.

19 Q: I don't mean to cut you off. Did the attempt to get an
20 exemption from 388 under 4-19-10, was that successful?

21 A: It was not successful.

22 Q: So what did the County do at that point?

23 A: Well, at that point, we realized that to try to address
24 the deficit at West Florence and solve the problem of
25 equitable funding and taking care of our service in Florence

1 County, we looked at what Myrtle Beach did and they, they had
2 done a consolidation. Their consolidation was much different
3 than ours. They created a county-wide fire service and
4 disbanded all the named and local fire stations and we didn't
5 want to do that. We felt like volunteers were the critical
6 part that kept the taxes low and we wanted them to maintain
7 that identity as their -- and all we were trying to do was get
8 an administrative oversight and adequate millage. One of the
9 things in that is after 2001, fire service was dramatically
10 different in this country with first response. These fire
11 districts were created in the 70's and 80's and recreated in
12 2007 when I got on Council. They did not -- they didn't deal
13 with first response when I first got into public safety stuff.
14 After 2001, I mean, they were -- some districts, seventy
15 percent of their calls are to vehicles and we, we understood a
16 lot of the cost of it was owed the County. That means to
17 people that it's not just where you sleep and you pay millage
18 where you sleep. Fire service and first response, first
19 response, somebody's life is in danger. You may live in West
20 Florence or Windy Hill, but you may be traveling through
21 Johnsonville going to the beach. You, as a county resident,
22 deserve adequate first response and first response shouldn't
23 be paid for by unequitable millage in my opinion.
24 Q: Is it -- is that what you referred to earlier when you
25 said that you were looking for an equitable source of funding?

1 A: That's correct. No other service this county provides,
2 EMS, Sheriff, Public Safety, is provided any other way.

3 Q: Mr. Schofield, I'm gonna show you Plaintiff's Exhibits
4 Eight and Nine, which have already been introduced as
5 evidence. Can you tell me what those were?

6 A: Eight, Exhibit Eight, I believe these are the County
7 Ordinances in 2014 where we dissolved the then present six
8 county tax districts, special tax districts and created the
9 Unified Tax District.

10 Q: And Eight was the one that dissolved the old and Nine was
11 the one that created the new; is that correct?

12 A: Yes.

13 Q: I believe you testified a minute ago that after the
14 creation of the new you were, operationally, you were still
15 gonna have the fire departments located where they were and
16 existing but that you would have administrative oversight; is
17 that correct?

18 A: That's correct.

19 Q: I want to circle back in time. Are you familiar with Act
20 1817 of 1972?

21 A: Yes, sir.

22 MR. MATTHEWS: Your Honor, Act 1817 is in the Exhibit
23 Book as Exhibit Three.

24 THE COURT: I'm sorry, which number?

25 MR. MATTHEWS: Exhibit Three.

1 THE COURT: Okay.

2 MR. MATTHEWS: And just very briefly, to sort of set the
3 stage for the next part of the discussion.

4 THE COURT: Okay.

5 BY MR. MATTHEWS:

6 Q: What Act 1817 did was it split Florence County, the
7 unincorporated part of Florence County into six subdistricts
8 as potential fire protection subdistricts, but they were gonna
9 be contingent on passing a referendum in each one. And so it
10 had six areas. They would each have a referendum and if the
11 referendum was successful, it would then become a special tax
12 district. Mr. Schofield, were the areas, the six subdistricts
13 of Act 1817, were those the same as the county's special
14 taxing districts in existence before consolidation?

15 A: No, sir.

16 Q: Were the differences significant?

17 A: Yes, sir.

18 Q: I'm gonna point you to Exhibit Seventeen, the enlargement
19 here that Mr. Ervin did testify to earlier, and I want you to
20 look at the green area which Mr. Ervin testified it was old
21 Subdistrict 1. Which ones of the County's special tax
22 districts were wholly or partly included in the green area?

23 A: The lower portion of that big green area is Howe Springs.
24 West Florence is, I believe, inside that purple line.

25 Q: Okay.

1 A: And I think at the top of the map, that's the tiny little
2 portion that is Windy Hill.

3 Q: Okay. So, when you say the lower portion, you're talking
4 about this spot across the bottom?

5 A: Yes, sir, below the yellow which is the City of Florence.

6 Q: And the part inside the purple is sort of a western
7 crescent around here?

8 A: Yes, sir.

9 Q: And then this piece outside of the purple is Windy Hill?

10 A: That's correct.

11 Q: So, there were three of your special tax districts that
12 were either wholly or partly inside of Subdistrict 1?

13 A: Yes, sir.

14 MR. MATTHEWS: Okay. Again, Your Honor, with respect to
15 Act 1817, Exhibit Number Four is Act 658 of 1974. Act 658
16 purported to address Act 1817, but there was special
17 legislation after home rule, so presumably invalid. But it
18 recites history, which is that only three of subdistricts
19 actually passed the referendum and I only included it for the
20 historical aspect that it, that it included the three. In
21 addition, coordinates 22-2000/2001, which was included in 5-B
22 is an ordinance that the County, and again recited some of the
23 history of 1817 just for the background. I'm not gonna go
24 into what it was, but it was essentially that they had the
25 referendum that only passed in three, and so only three of

1 those subdistricts were ever activated.

2 Q: Chairman Schofield, you said that you joined County
3 Council in January of 2007?

4 A: That is correct.

5 Q: Were those three Act 1817 subdistricts still operating
6 when you joined Council?

7 A: No, sir.

8 Q: Were they ever formally dissolved?

9 A: Yes, sir.

10 Q: I want to ask you to take a look at Exhibit Ten, which is
11 already in evidence, which is the Petition for Dissolution.

12 And first of all, can you look at the signers of the petition
13 and tell me do you recognize those names?

14 A: I recognize some of them.

15 Q: Who are the petitioners?

16 A: John DeLung, he was Chief of Windy Hill; Jimmy Coker;
17 Will Ward, Chief of Sardis-Timmons ville; Kerry Tanner,
18 Johnsonville Chief; David or Daniel Jordan.

19 Q: And were they members of County Council or ---

20 A: No, they were -- I'm not sure, Daniel Jordan, I'm not
21 sure what his position was -- but some of them were fire
22 chiefs.

23 Q: Okay. Did that petition have County Council's support?

24 A: Yes, it did.

25 Q: Okay. Would you look at paragraph four and paragraph

1 seven and read those?

2 A: Paragraph four reads only certain portions of the
3 district were approved by referendum as required by Act 1817
4 within the applicable areas designated in Act 1817 and certain
5 other portions of the districts have been removed from the
6 district by the creation of the South Lynches Fire District by
7 South Carolina General Assembly. Pursuant to Act 149, 1983,
8 the majority of Subdistrict 3 (a copy of said Act 149, 1983,
9 being attached hereto as Exhibit B) and certain portions have
10 been excluded from the Florence County Fire District, FCFD,
11 Ordinance of Council authorized by Section 6-11-410 through 6-
12 11-450 of the Code (the entirety Subdistrict 2). A copy of
13 said ordinance being attached hereto as Exhibit C. Those
14 remaining portions of the Florence County Fire District that
15 were approved by referendums or acquired by Act 1817 have
16 seated the provision of fire service to the county (remainder
17 of Subdistricts 3 and the entire Subdistrict 1, which portions
18 of the FCFD have been provided fire protection services by
19 Florence County by and through the Windy Hill/Olanta Rural
20 Fire District created by ordinance of Council Number 31, 2006
21 -- excuse me -- ordinance of Council Number 31, 2006/2007
22 dated July the 1st, 2007, a copy of which is attached hereto
23 as Exhibit D. Now, that's four. What were the other one?

24 Q: That's seven.

25 A: Seven. The District has not provided any government

1 services of any type since July the 1st, 2007 and is presently
2 not providing said services.

3 Q: Chairman Schofield, to your knowledge, is that recitation
4 an accurate statement of the facts contained in them?

5 A: Yes, sir.

6 Q: I want to direct your attention to the legislation being
7 challenged now in this lawsuit. Are you familiar with Act 183
8 of 2014?

9 A: Yes, sir.

10 MR. MATTHEWS: And again, Your Honor, that Act is item
11 number one in the exhibit book and we've described already in
12 the opening statement largely what it does.

13 BY MR. MATTHEWS:

14 Q: I want to direct your attention, Mr. Schofield, to the
15 portion of Darlington County that was included in the new West
16 Florence Fire District under Act 183?

17 A: Okay.

18 Q: The part of Darlington County in the new district under
19 Act 183; are you familiar with that area?

20 A: Yes, sir.

21 Q: All right. And in looking at this blowup of Exhibit
22 Nineteen, which is this -- and if you need to stand up to
23 indicate please do. Would you indicate here the, the, the
24 three parcels, the three tax map numbers that was specified in
25 Act 183?

1 A: The area in green, 218-14-01-013, 219-03-01-001, 219-03-
2 01-002.

3 Q: And would you also identify the portion of Interstate 95
4 that Act 183 included in the new West Florence Fire District?

5 A: Portion 95 starts at the Florence County/Darlington
6 County line and goes up to Exit 169 back in Florence County.

7 MR. MATTHEWS: Okay. Your Honor, I'm not sure if you
8 could see that; could you see that?

9 THE COURT: Yes, sir.

10 BY MR. MATTHEWS:

11 Q: Okay. And I'm going to refer to the -- you can sit back
12 down -- I'm gonna refer to the lots as the three parcels and I
13 will refer to the segment of 95 that you've just referred to
14 as the I95 segment. Is all of the I95 segment in Darlington
15 County?

16 A: The segment from the Florence County line up to 169 all
17 of it is not in Darlington County.

18 Q: Okay. So, you're talking about from here to here is not
19 in Darlington County?

20 A: That's right; about a one-mile segment of 95, I believe,
21 is in Darlington County.

22 Q: Okay. Of that part that's not, which of the old special
23 taxing districts is that inside?

24 A: The part up there, it'd be the Windy Hill in purple.

25 Q: Okay. Now, I want to direct your attention to the part

1 of Florence County that was included in Act 183. Now that
2 we've talked about Darlington; let's talk about Florence. Can
3 you define that area?

4 A: No, sir, I can't define it, but they've been talking
5 about the West Florence subdistrict contained in that Act and
6 my reading of the Act didn't have those words in it.

7 Q: Okay.

8 A: The description they give me was I believe would be the
9 green area.

10 Q: Okay. Then look at the second Act -- this would be the
11 challenged act -- 89 of 2015. Under that, under, under the
12 second challenge of the statute, can you define the portion of
13 Florence County that's included in the new West Florence Fire
14 District?

15 A: Yes, sir, that is the same area that West Florence in our
16 Act -- in our ordinance Number 31, 2007, for the West Florence
17 Fire District.

18 Q: Okay. And Mr. Ervin had testified previously that that
19 area was the area inside the purple. Do you agree that that's
20 a reasonably accurate representation of the West Florence
21 Rural Fire District area?

22 A: Yes, sir.

23 Q: I'm gonna represent to you that based on the legislative
24 history, that Act 183 became effective by its terms on May the
25 28th, 2014. Who provided service to the three parcels in

1 Darlington County prior to that date?

2 A: Palmetto Rural Darlington County, part of their fire
3 service.

4 Q: What is Palmetto Rural?

5 A: They're a rural fire department authorized by Darlington
6 County.

7 Q: Who provided service to the I95 segment prior to that
8 date?

9 A: The West Florence Fire Department and the Windy Hill Fire
10 Department both were handling calls on I95 from the 164 to 169
11 as there are no interchanges that let Darlington County
12 Palmetto Rural access the interstate. So, from a dispatch
13 standpoint and from a 911 standpoint, a person with a cell
14 phone dialed 911 out there, they'd get Florence County
15 Dispatch. So, Florence County Dispatch has always handled
16 that, to my knowledge.

17 Q: All right. So, to get onto the Darlington County portion
18 of I95, if I'm understanding you correctly, you've either got
19 to get on at Exit 169 and travel south or get on at 164 and
20 travel north; is that correct?

21 A: That is correct.

22 Q: Are you aware of any area that was included in the new
23 West Florence Fire District that was not already receiving
24 service, fire protection service on May 28th, 2014?

25 A: No, sir, all areas.

1 Q: Are you aware of any problem that Palmetto Rural Fire
2 District had in providing prompt effective service to the
3 three parcels prior to May 28th, 2014?

4 A: No, sir.

5 Q: Are you aware of any problem providing prompt and
6 effective fire service to the I95 segment prior to May 28th,
7 2014?

8 A: No, sir.

9 Q: Are you aware of any facts or circumstances that would
10 make the new West Florence Fire District a faster, safer or
11 more efficient means of providing fire protection service to
12 the three parcels?

13 A: No, sir, those are further away from their fire station
14 than Palmetto Rural.

15 Q: Okay. Are you aware of any facts or circumstances that
16 would make the new West Florence Fire District a faster,
17 safer, more efficient way of providing service to the I95
18 segment, faster, safer, more efficient than the way it was
19 already being done?

20 A: No, sir.

21 Q: Looking again at the three parcels, are you aware of any
22 reason why it would be logical or sound for the new West
23 Florence Fire District to serve one side of East McKiever Road
24 -- this is East McKiever here -- any reason why it's more
25 logical or sound for them to serve this area, but not directly

1 across the street?

2 A: No, sir, all that is in the green is the three lots. The
3 red is the rest of Darlington County east of I95. And I can't
4 say where it would be logical for West Florence to catch the
5 three green and not the rest of it.

6 Q: Thank you. Still with regard to those three parcels, I'm
7 gonna show you Exhibit Number Eighteen, which is also already
8 admitted. It's an aerial map taken from the Darlington County
9 Tax Assessor's Office. Bear with me while I locate a copy of
10 that. Based on your knowledge of the area, is this aerial
11 photograph a fair and accurate representation of the three
12 parcels area?

13 A: Yes, sir.

14 Q: Do you see a fourth tax map number on the exhibit?

15 A: Yes, sir, I'm not sure if I can read it, but there's a
16 little square of red in-between two of the green parcels; 219-
17 03, and I believe it's 01-012.

18 Q: And about a little red square you're talking now about
19 Exhibit Nineteen?

20 A: That is right. Exhibit Nineteen, there's a little small
21 parcel of land on the same side of the street of the green
22 parcels which are included Act 183, but it was left out.

23 Q: It was left out of Act 183?

24 A: Yes, sir.

25 Q: Was it also left out in Act 89 in 2015?

1 A: Yes, sir.

2 Q: Are you aware of any reason why it would be logical or
3 sound for the new West Florence Fire District to provide
4 service to these three parcels but not to that parcel?

5 A: No, sir.

6 Q: And again looking at the red area, I believe you
7 testified that the red area is Darlington County, east of 95,
8 but not included in West Florence; is that correct?

9 A: That's correct.

10 Q: And do you know, if you know, are there homes and/or
11 businesses located in that area?

12 A: Yes, there is quite a few homes in that area.

13 Q: Is there any reason why it would be logical or sound for
14 West Florence to serve these -- this part of Darlington east
15 of 95, but not that part of Darlington east of 95?

16 A: No, sir, because that area is gonna have to be served by
17 the Palmetto Rural under Act 183. So, I don't -- I don't
18 understand that.

19 Q: All right. Again with regard to Exhibit Nineteen, I want
20 you to look at the route from this is the; I believe Mr. Ervin
21 testified, the closest West Florence Fire Station to the three
22 parcels, West Florence Fire Station Number 2 and the shortest
23 route is this blue line so that West Florence Fire District
24 would come here up, up, down East McKiever to get to the three
25 parcels. Are you aware of any reason why it would be logical

1 or sound for West Florence Fire District to serve these areas,
2 but not to serve the areas that they pass along the way?

3 A: No, sir.

4 Q: During the County's consideration of the two ordinances
5 that you just looked at and the consolidation of the
6 districts, did you hear any objections or concerns voiced by
7 residents of the West Florence Rural Fire District?

8 A: Yes, sir.

9 Q: And what was the major of those objections or concerns?

10 A: A lot of them didn't like the tax increase that equitable
11 funding would bring forth.

12 MR. JORDAN: Your Honor, we would object to this at this
13 point. We've given the witness or we haven't ---

14 THE COURT: I'm sorry, what?

15 MR. JORDAN: We would object at this point. The witness
16 has had a large latitude to testify, but at this point, he's
17 getting into what constituents told him. Certainly, there are
18 ---

19 THE COURT: I'll sustain the objection.

20 BY MR. MATTHEWS:

21 Q: What is your understanding of why the new West Florence
22 District was created?

23 A: At the West -- at the Poyner School public meeting we had
24 on this, Representative Crawford said they didn't want to
25 subdivide -- they didn't want to subsidize the rest of the

1 county and the revenue out of West Florence.

2 Q: Was the creation of the new West Florence Fire District,
3 by 183, inconsistent with the County's plan for consolidation?

4 A: Yes, sir.

5 Q: In what way?

6 A: We were trying to have administrative efficiency in all
7 areas of the county other than the special purpose district,
8 South Lynches down in Lake City. It's been mentioned before
9 here. We were trying to have a consolidated taxing district
10 where we could have unified votes approved by the Florence
11 County Council, funding then returned to the district
12 similarly, but after a review process. You know, so that left
13 out a significant portion of Florence County and then that's a
14 portion of Florence County where annexation is occurring,
15 which is affecting their revenue and, again, we've took under
16 consideration and thought that a large single taxing district
17 in the future would be the best protection for loss of area.

18 Q: Let's turn for a minute to the second act, with the
19 challenged act, 89 of 2015. Are you familiar with that act?

20 A: Yes.

21 Q: Okay. And I want to direct your attention to the portion
22 of Darlington County that was added into the new West Florence
23 Fire District by Act 89. And again I'll ask you to approach
24 the map, Exhibit Seventeen, can you show me on that map the
25 that area -- I may've said Nineteen; this is Exhibit

1 Seventeen.

2 A: Hoffmeyer Road is right here and the Darlington County
3 line and then you have, I think it's Winburn and I can't read
4 that -- these lots right here.

5 Q: Okay. So, those lots there (indicating). For
6 convenience of reference I'm gonna refer to those as the
7 Darlington/Hoffmeyer area. The -- I'm gonna represent to you
8 that Act 89 apparently became effective on July 7th of 2015.
9 And, Your Honor, I say apparently became effective, the
10 legislative history of where it shows the dates it says
11 effective date July 7, 2015, but the text of Act 89 says it
12 becomes effective upon the approval of the Governor. It was
13 never approved by the Governor. She vetoed it and then it was
14 overridden on July 7th. So, I think everybody thinking the
15 working assumption that July 7 is the effective date, but so
16 assuming that July 7, 2015 is the effective date, who provided
17 service to the Darlington/Hoffmeyer area prior to that date?

18 A: Another Darlington County Fire Department.

19 Q: Do you know the name of that one?

20 A: I do not.

21 Q: Are you aware of any problem that that other Darlington
22 County Fire Department had in providing prompt and effective
23 service to the Darlington/Hoffmeyer area before July 7, 2015?

24 A: No, sir.

25 Q: Are you aware of any facts or circumstances in place

1 before that date that would make the new West Florence Fire
2 District a faster, safer or more efficient means of providing
3 service to the Darlington/Hoffmeyer area?

4 A: No, sir.

5 Q: All right. I want now to direct your attention to
6 Section 6 of Act 89, which is Exhibit Two which is already
7 admitted. If you'll take a look at Section 6?

8 A: Yes, sir.

9 Q: Could you read that?

10 A: Section 6. The provisions of this act shall expire five
11 years from its effective date.

12 Q: So, do you understand that to mean that on July 7, 2020,
13 the Darlington/Hoffmeyer Road area would cease to be a part of
14 any Florence Fire District -- West Florence Fire District?

15 A: It appears to me to revert back to Darlington County,
16 yes, sir.

17 Q: All right. Thinking about the relevant merits of
18 providing service to the Darlington/Hoffmeyer area either from
19 the other Darlington Department that you mentioned or from
20 West Florence, thinking about the relevant merits of providing
21 from those two, is there anything about July 7, 2020, plans,
22 circumstances, facts, projections that would make the relative
23 merits of those two servers change on July 7, 2020?

24 A: Not that I'm aware of.

25 Q: No further questions, Your Honor.

1 THE COURT: Cross examination?

2 COURT REPORTER: Sir, there's two exhibits there.

3 A: Some of these yours?

4 COURT REPORTER: Yes.

5 MR. MATTHEWS: You've got copies of these; they were
6 already admitted, 8 and 9.

7 THE COURT: How long do you think your cross is gonna be?

8 MR. JORDAN: Judge, it's gonna be pretty quick.

9 THE COURT: Okay.

10 MR. JORDAN: Less than ten minutes.

11 THE COURT: Okay. All right. What I think I'll do is
12 take about a five or ten minutes break before you do your
13 cross if that's okay?

14 MR. JORDAN: Yes, sir.

15 THE COURT: All right. We'll adjourn -- we'll adjourn
16 for about ten minutes. Thank you very much.

17 Mr. Schofield, you are welcome to step down; just don't
18 discuss the case.

19 (RECESS - 12:17 P.M.)

20 *****OFF THE RECORD*****

21 (On the Record - 12:32 P.M.)

22 THE COURT: Cross examination, please, sir.

23 MR. JORDAN: Thank you, Your Honor.

24 CROSS EXAMINATION OF JAMES SCHOFIELD BY MR. JORDAN:

25 Q: Mr. Schofield, how are you today?

1 A: Good; thank you.

2 Q: Previously you testified that I think there was this
3 consolidation process in the county in 2008, a long process;
4 is that fair to say?

5 A: Yes, sir.

6 Q: And that the County had looked at it from a lot of
7 different angles?

8 A: Yes, sir.

9 Q: I think ultimately you boiled down to -- I think your
10 initial revenue concerns; is that right?

11 A: Right.

12 Q: There were multiple layers of that revenue concern, was
13 there not?

14 A: Revenue, equitable funding, accountability, doing ISO
15 ratings trying to improve compliance with federal and state
16 regulations.

17 Q: Now, during the course of this process from the first
18 time y'all -- the County looked at it up until today, is it
19 fair to say that County Council has taken multiple votes on or
20 relating to the issue?

21 A: Yes, sir.

22 Q: And it's fair to say it's been a fairly contentious
23 issue; is that fair?

24 A: Yes, sir.

25 Q: It's not at any point in time been a unanimous vote --

1 that's maybe a plain way to say it.

2 A: Seven to two originally and then I think it five to four
3 at the end.

4 Q: Okay. So it's moved around?

5 A: It's moved around.

6 Q: Now, prior to consolidation being complete. and I think
7 you testified to this earlier, the prior six subdistricts had
8 to be dissolved; is that right?

9 A: That's correct.

10 Q: And that was in fact accomplished; is that right?

11 A: That's right.

12 Q: I believe the date of that effective date was around May
13 15th of 2014; does that sound right?

14 A: That sounds right.

15 Q: Okay. Let me transition on you a little bit -- and I'm
16 probably gonna point you to what's been marked as Plaintiff's
17 Exhibit Seventeen and ask you a few questions. Specifically,
18 I want to talk about the interstate portion, which would be
19 this area up here; is that correct?

20 A: Yes, sir.

21 Q: Now, that area in theory would be -- it's in Darlington
22 County, the majority of the portion; is that fair to say?

23 A: There's a five-mile strip from 52 and 95 up to T.V. Road
24 and there's a one-mile -- about a one-mile section that's in
25 Darlington County.

1 Q: Okay. And that area in Darlington County, in theory,
2 that should have been covered it looks like Palmetto Rural; is
3 that right?

4 A: Yes, sir, it's in their county; it's just not accessible
5 by interstate.

6 Q: They can't get to it ---

7 A: They can't get to it.

8 Q: --- without coming into Florence County and getting on
9 the exit and then coming up to the scene; is that right?

10 A: And it's problematic getting to it up there at 169;
11 there's not as many roads. It just worked out that West
12 Florence -- is at 52 and 95 right at the interchange? Windy
13 Hill has a station very close to the T.V. Road so that's why
14 it evolved those two.

15 Q: So sort of out of efficiency and for like you testified
16 earlier, for the best possible service, public service, those
17 entities, the Florence entities, were performing the service
18 in that Darlington strip of the interstate?

19 A: Yes, sir.

20 Q: And that's been going on for a very long time; is that
21 not -- is that fair to say?

22 A: As long as I can remember.

23 Q: Now, do you have any idea, let's say over the last five
24 years, approximately, how many calls that Florence -- West
25 Florence, for instance, has responded to on that stretch of

1 Darlington Interstate?

2 A: I couldn't tell you over five years, I know it's
3 significant. Somewhere I've seen an email years ago that I
4 think they looked at about a year stretch, a year and a half
5 stretch or something and there was like twenty-five in one
6 district and eighteen or twenty in the other district. And
7 you have to realize calls to the interstate or anywhere
8 depending on the manpower availability, you know, whether
9 they're fighting a fire somewhere else. So I mean it varied
10 between the two of them.

11 Q: So, basically you would testify that to your
12 understanding over a period of a year there's been -- there
13 would be significant calls that would be responded to by the
14 West Florence Fire District to that portion of interstate;
15 that would be a fair statement?

16 A: Yes, sir.

17 Q: Okay. Let me ask you this. You testified earlier you
18 have significant law enforcement experience and public service
19 experience, both as a constable and otherwise, is it fair say
20 that an interstate call has the potential to be a very, very
21 serious call?

22 A: Yes, you know in bad weather the wrecks out there can be
23 very severe. You know, one of the things in that stretch, the
24 one-mile stretch as opposed to the four-mile stretch, someone
25 calls into 911 and talks to the dispatch, they don't know

1 where they are, okay? They can't tell you I'm at the 160 or
2 whatever it is where the one-mile stretch is. So, I mean, a
3 lot of times, not just that segment up there but the lower
4 segment of the interstate also, you hear West Florence trying
5 to find the wreck. So I mean, but it is significant, it's
6 just it's just not easily to find as to exactly where the
7 wreck is because the caller does not know the mile marker
8 usually.

9 Q: And Florence is responding the areas around that area,
10 correct?

11 A: Yes, sir.

12 Q: Now, you're familiar with -- with Palmetto Rural in
13 Darlington?

14 A: Yes, sir.

15 Q: It's a fairly small entity?

16 A: Yes, sir.

17 Q: Would it surprise you that it had a budget of
18 approximately \$176,000?

19 A: No, sir.

20 Q: Would it surprise you that the West Florence budget is
21 about 1.4 million dollars?

22 A: No, sir.

23 Q: So, in resources, we're comparing two very different
24 entities are we not?

25 A: Yes, sir, the, the fire districts in both Darlington and

1 Florence County are very different. The Sardis/Timmons ville
2 department, that covers part of I95, had a revenue of about
3 \$100,000 and another 80 or so from Honda paying -- so, they
4 were less than \$100,000 in revenue and they're trying to
5 handle calls on the interstate also.

6 Q: Very different entities, though?

7 A: Different entities, yes. Well, again that's part of our
8 consolidation effort is that you can imagine where I cited the
9 lower part of I95, the Sardis/Timmons ville Fire Department
10 protects Honda Manufacturing and to think that they protect
11 them on a budget of less than \$200,000 when the fire
12 department next to them before the special purpose district, I
13 think it was around 880 -- sometimes they spent up to a
14 million and something but that was from reserve funds. So, I
15 mean, there's a wide disparity in that.

16 Q: I understand. Let me transition on you for just a second
17 here. Now, I want to talk to -- I think Mr. Matthews
18 referenced this portion here that's in Darlington County and I
19 think called the Darlington/Hoffmeyer section of the special
20 purpose district; are you familiar with that area?

21 A: Yes, sir.

22 Q: Now that area, is it fair to say, that has been brought
23 into the special purpose district that is in Darlington would
24 be close or minus ninety homes or so; would that be a rise to
25 it?

1 A: I guess.

2 Q: Now you also testified -- now let me ask you this. Are
3 you aware that West Florence has -- it would be West Florence
4 IV under construction in that area as we sit here today?

5 A: Yes, that's part of the capital project sales tax
6 provided a fire station and the land was bought at the
7 intersection of Ebenezer and Hoffmeyer for that fire station.

8 Q: So West Florence IV would be right kind of where my
9 finger is; is that right?

10 A: It's about a mile and a half or so from the Darlington
11 County line.

12 Q: It would be -- let me say it this way. It'd be fair to
13 say it's in the heart of this addition, this
14 Darlington/Hoffmeyer addition?

15 A: Yes, so that those two fire stations, there's about a
16 mile difference. The Darlington station that was previously
17 serving them is about a mile or less farther.

18 Q: Further away?

19 A: So you've got one mile difference ---

20 Q: Compared to the one that's across the street?

21 A: Yes, sir.

22 Q: Wrapping up, the -- are you familiar with the term sunset
23 clause?

24 A: I heard it said.

25 Q: Now it's present as you testified to -- you understand

1 its presence in relation to the new -- the second legislation;
2 is that fair?

3 A: I read the second legislation, it says it ends in five
4 years and, the way I read it, the whole Act 89 ends in five
5 years and I guess it reverts back to 183.

6 Q: Now, you would agree with me though, there's nothing to
7 stop the legislature at an appropriate time from taking up
8 that issue and extending that time period; is there not?

9 MR. MATTHEWS: Your Honor, I would object to this line of
10 questioning. He's asking for legal conclusions from a lay
11 witness.

12 THE COURT: Well, I'll overrule. If he doesn't know, he
13 doesn't know; if he does, he can answer it. Go ahead.

14 MR. JORDAN: Thank you, Your Honor.

15 THE COURT: If you know, Mr. Schofield, answer it; if you
16 don't, don't.

17 BY MR. JORDAN:

18 Q: I'm not saying they would, I'm just saying it's possible?

19 A: Anything's possible with the legislature.

20 Q: Thank you, Mr. Schofield.

21 Thank you, Your Honor.

22 THE COURT: Okay. Redirect?

23 MR. MATTHEWS: Yes, Your Honor, just very briefly on
24 that.

25 REDIRECT EXAMINATION OF JAMES SCHOFIELD BY MR. MATTHEWS:

1 Q: Mr. Schofield, Mr. Jordan just asked you if you were
2 aware that West Florence has Fire Station Number 4 under
3 construction; do you remember that question?

4 A: Yes, sir.

5 Q: Who is actually paying for that fire station?

6 A: All of the taxpayers in Florence County and people that
7 visit Florence County as part of the capital project sales
8 tax.

9 Q: It's not being paid for by West Florence millage?

10 A: No, sir.

11 Q: What about the land on which it's being constructed; who
12 paid for that land?

13 A: Florence County previous to the SPD being created. I
14 believe.

15 Q: Okay. I believe Mr. Jordan indicated that that station,
16 once completed, would be closer to the Darlington/Hoffmeyer
17 area than the existing Darlington County Fire District
18 Station; do you recall his questioning to that effect?

19 A: Yes, sir.

20 Q: Is the new station going to disappear or become farther
21 away on July 7, 2020?

22 A: No, sir, it's gonna be right there.

23 Q: With regard to the -- your recollection on the frequency
24 of calls related to the I95 segment. I believe you indicated
25 you recalled an email from some point in the past that covered

1 a year to an eighteen-month time period that showed twenty-
2 five calls going to West Florence and eighteen to Windy Hill
3 or vice versa?

4 A: I'm not sure which way it was.

5 Q: Okay. Did that -- was that covering just the Darlington
6 County piece or was that covering Exit 64 to Exit 69?

7 A: That was 64 to 69, five-mile segment.

8 Q: So only a part of that would have been Darlington County;
9 is that correct?

10 A: That's right.

11 Q: If any of it. The -- scratch that last statement. I
12 can't testify. The -- no further questions, Your Honor.

13 BY THE COURT:

14 THE COURT: Okay. You may step down, Mr. Schofield.
15 Thank you very much.

16 All right. Does anybody have any conflicts if we come
17 back at about 2:15, 2:30 after lunch?

18 MR. MATTHEWS: Not here, Your Honor.

19 MR. SMITH: No, sir.

20 THE COURT: All right. We're gonna adjourn for lunch and
21 we'll try to reconvene about 2:15. Okay.

22 MR. SMITH: If I may, Your Honor, if I could do this
23 during lunchtime, you had asked about the opinion I cited in
24 the pretrial brief. I have emailed that two different emails.
25 I hope you'll get a copy of it that way. You'd also asked

1 about the facts, I do have a copy of the 1983 legislation that
2 was at issue. I can't tell from that how much of the district
3 was in one county versus another, but it does have a
4 description of the district in there and I can email that to
5 you and Counsel if Your Honor would like it

6 THE COURT: Well, the reason I asked the question, one of
7 the things he raised was the two lots was just -- try to bring
8 in another county to comply with state law and I was just
9 curious to know with the case you cited was that a substantial
10 portion of both counties or just a limited, very limited, and
11 if those lots were right small?

12 MR. SMITH: I can't tell from either looking at the 1983
13 Act itself on its face or from the opinion, Your Honor, but
14 I'll be glad to send you the 1983 statute if you would like
15 that.

16 THE COURT: You might as well, I got -- give me something
17 else to look at.

18 MR. SMITH: It just has a legal description on it that
19 say -- all right, sir.

20 MR. MATTHEWS: Your Honor, again one of our witnesses was
21 a former Fire Chief in South Lynches Fire District, which was
22 his position and he'll be able to testify to ---

23 THE COURT: I mean, if he can testify, don't worry about
24 it.

25 MR. SMITH: All right.

1 THE COURT: You can cross examine him on that subject if

2 you want ---

3 MR. SMITH: All right. Thank you.

4 THE COURT: --- to secure your Attorney General's opinion
5 if you so choose.

6 MR. SMITH: Thank you, Your Honor.

7 THE COURT: Or help your Attorney General's opinion,
8 okay?

9 MR. SMITH: All right, sir. Thank you.

10 MR. MATTHEWS: Your Honor, just in the spirit of giving
11 you something else to read, my recollection is, although you
12 may be able to correct me, I think that was the second
13 Attorney General's opinion on the South Lynches Fire District
14 legislation. I think the original opinion was that it was
15 unconstitutional in that they reversed and announced that it
16 was constitutional.

17 THE COURT: Well, they're entitled to change their mind.

18 MR. MATTHEWS: We're trying to get to the first ---

19 THE COURT: They're entitled to change their mind, okay,
20 I'm don't -- I'm not -- I'm not opposed to that.

21 MR. SMITH: It wasn't exactly a change of mind; it was a
22 change in the authority that occurred since the original
23 opinion had been written nearly thirty years earlier until it
24 was reversed in the second one, so it was based upon a change
25 in the law, I believe.

1 MR. MATTHEWS: I thought there was another one
2 specifically on South Lynches.

3 MR. SMITH: There was, but the -- the reversal of that
4 one was based on a change in law that occurred after other
5 Supreme Court decisions. That's discussed in the 2011
6 opinion.

7 THE COURT: Okay. Thank y'all very much.
8 (RECESS - 12:50 P.M.)

9 *****OFF THE RECORD*****

10 (On the Record - 2:18 P.M.)

11 THE COURT: All right. You want to call your next
12 witness?

13 MR. MATTHEWS: Thank you, Your Honor. If I might, before
14 we begin, let me go back to something I said during the
15 opening as I was listening to testimony, if I remember what I
16 said, I may have overstated something so let me just go back
17 and correct that. With regard to Act 388 that you had asked
18 questions concerning and the exemption ---

19 THE COURT: About what now?

20 MR. MATTHEWS: With regard to Act 388 ---

21 THE COURT: Okay.

22 MR. MATTHEWS: --- that you asked some questions about
23 and the exemption from Act 388 and I'm remembering what I said
24 correctly, I said that this was the only exemption from that,
25 okay. No other entity has been singled out by the legislature

1 for an exemption from 388. 388 does by its terms have in 6-1-
2 320 -- 6-1-320(F), I believe it is.

3 THE COURT: As a what now?

4 MR. MATTHEWS: 6-1-320(F) as in Frank. There is in that
5 a provision that a special taxing district created pursuant to
6 4-9-30(5) is exempt from Act 388. However ---

7 THE COURT: All right. What was that section for the
8 special tax district?

9 MR. MATTHEWS: 4-9-30(5).

10 THE COURT: Okay.

11 MR. MATTHEWS: However, in creating the consolidated
12 taxing district, the County didn't have the option of using 4-
13 9-30(5), they had to use the alternate provision which is 4-
14 19-10 et seq. This is a little bit inside -- but the reason
15 for that is in order to create a 4-9-30(5) special tax
16 district, the County can proceed without a referendum if
17 they're doing the entire unincorporated area of the county
18 which the consolidation was except for one issue in the
19 statute. The 4-9-30(5) when it defines the entire
20 unincorporated area says that the entire unincorporated area
21 excludes a special tax district -- a special purpose district
22 providing that service which would make sense. If that
23 special purpose district was created on or before March 1st,
24 197-- excuse me, March 7th, 1973, the date of home rule
25 enactment. So, the General Assembly thought, well, there

1 weren't any after that, so by excluding those from the
2 unincorporated that's fine. However, in Florence County, as
3 we mentioned, they've got the South Lynches Fire District,
4 which covers part of Williamsburg, part of Florence; that was
5 created after March 7th, 1973. So, as a consequence, the
6 exemption that would ordinarily be allowed to the County to
7 create a countywide district wasn't there. So, the County's
8 only option was to go through 419, which does not have an Act
9 388 exemption. So, I just wanted to -- I don't think I can
10 qualify that as a clarification, but I just wanted to explain
11 kind of what the -- what the background was because I think I
12 misspoke on the first part of that.

13 THE COURT: Okay. Thank you very much.

14 MR. MATTHEWS: Your Honor, I'd next like to call Kevin
15 Yokim to the stand.

16 CLERK: Please step up to the witness stand and place
17 your left hand on the Bible and raise your right hand?

18 KEVIN YOKIM, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: Please be seated and then state your name for the
21 record.

22 MR. YOKIM: Kevin Yokim.

23 COURT REPORTER: Can you spell your last name for me
24 please?

25 MR. YOKIM: Last name is Y-O-K-I-M, as in Mary.

1 DIRECT EXAMINATION OF KEVIN YOKIM BY MR. MATTHEWS:

2 Q: Mr. Yokim, could you please tell us, what is your
3 profession?

4 A: It's I've been a CPA for over twenty-eight years and I'm
5 also a Certified Government Finance Officer and also hold a
6 degree of Master's in Public Affairs from Indiana University.

7 Q: And by whom are you employed?

8 A: Florence County.

9 Q: What's your title?

10 A: Finance Director.

11 Q: How long have you been the Florence County Finance
12 Director?

13 A: A little over twenty years.

14 Q: Okay. In that role are you familiar with the financing
15 of Fire Protection Services that are provided by Florence
16 County?

17 A: Yes, sir.

18 Q: Earlier this morning, Council member Schofield testified
19 concerning the process for considering changes to the County's
20 mechanism for providing fire protection service. That
21 consideration was in the period from 2012 to 2014. Are you
22 familiar with those considerations?

23 A: Yes, sir.

24 Q: Did you have a role in those considerations and, if so,
25 would you describe your role?

1 A: I was aware of what was transpiring and was asked on a
2 few different occasions to run various calculations of millage
3 rates scenarios to fund a consolidated district.

4 Q: Okay. Think about the period before then, before any
5 change was made either by county ordinance or Act 183, before
6 that, what was the range of the combined millage rates for the
7 six previous special taxing districts. And let me clarify,
8 when I say the combined millage rate, include operating and
9 debt service, what was the range of those six millage rates?

10 A: They range from a low of 8 mils to a high of 40 mils.

11 Q: Okay. And who had the highest?

12 A: Johnsonville had the highest.

13 Q: And who had the lowest?

14 A: West Florence did.

15 Q: Okay. On the consolidation of the six districts, still
16 operating just off millage rates, don't assume new or
17 different sources of income, what was the projected combined
18 millage rate for the consolidated county district, if all six
19 districts had been brought in?

20 A: Probably around 23 mils, give or take.

21 THE COURT: And you said, I'm sorry, what did you say?

22 A: 23 mils.

23 THE COURT: 23?

24 A: Yes, sir.

25 BY MR. MATTHEWS:

1 Q: And would that have been a uniform tax millage across the
2 consolidated district?

3 A: Yes, sir.

4 Q: So, under the County's consolidation plan, anybody below
5 23 would have moved up to 23 and anybody above 23 would have
6 moved down to 23?

7 A: Correct.

8 Q: When the legislature proposed to exclude the West
9 Florence Rural Fire District from the new consolidated
10 district, in order to obtain the same revenue level for the
11 remaining five consolidated tax districts, the same revenue
12 that they would've gotten with the 23 mils, what millage did
13 the five have to have to get that same revenue level?

14 A: It would have had to been 30 to 31 mils.

15 Q: And so removing the West Florence Rural Fire District
16 would cause the other five to have a millage rate of 7 to 8
17 mils higher than it would've been with West Florence included;
18 is that correct?

19 A: Yes, sir.

20 Q: Now, speaking again about the 23 millage rate that
21 would've been necessary for all six of them consolidated,
22 would that have generated more or less revenue than the six
23 previous millage rates combined?

24 A: It would've been more.

25 Q: And would some of that access have gone to West Florence?

1 A: Yes.

2 Q: All right. I wanted to direct your attention to the last
3 sentence of 4-23-1025(B) as enacted by Act 183; let me provide
4 you a copy of that 4-23-1025(B), if you'll look at the last
5 sentence there. Let me get to that. Would you please read
6 that last sentence?

7 A: Yes, sir. It states the real property on Hoffmeyer Road
8 in the county which the governing body of Florence County has
9 acquired to construct a new fire station for the West Florence
10 Fire Subdistrict also must be transferred to the new district
11 established by this article with the consideration for it to
12 be determined by the agreement between the District Commission
13 and the governing body of Florence County.

14 Q: Okay. Now, I want to direct your attention to Act 89 of
15 2015 to the same last sentence of 4-23-1025(B) and both of
16 these are -- the first one he was reading from was Exhibit
17 One; this one is Exhibit Two. If you again read the last
18 sentence of 4-23-1025(B)?

19 A: It states the real property of Hoffmeyer Road in the
20 county which the governing body of Florence County has
21 acquired to construct a new fire station also must be
22 transferred to the new district established by this article.

23 Q: Okay. Can you tell me what changes here that was
24 affected by the Act 89 amendments?

25 A: Act 89 does not require any consideration from the

1 subdistrict back to the county for the cost of the land.

2 Q: Okay. Are you familiar with those two sections -- what
3 those two sections are referring to with regard to real
4 property on Hoffmeyer Road?

5 A: Yes, sir.

6 Q: Had Florence County, prior to Act 89, 2015, and I'll
7 represent that was July the 7th, 2015, had Florence County
8 previously acquired property on Hoffmeyer for the construction
9 of a fire station?

10 A: Yes, sir.

11 Q: Was that acquisition also prior to Act 183 which was May
12 28 of 2014?

13 A: Yes, sir.

14 Q: What was the cost of that property acquisition?

15 A: Approximately \$150,000.

16 Q: What was the source of the funding for that acquisition?

17 A: The ultimate source was the Capital Project Sales Tax.

18 Q: Is that a countywide tax?

19 A: Yes, sir.

20 Q: Is a new fire station being built on the Hoffmeyer Road
21 property?

22 A: Yes, sir.

23 Q: Who's paying for that construction?

24 A: The County is.

25 Q: Same source?

- 1 A: Yes, sir.
- 2 Q: The Capital Project Sales Tax?
- 3 A: Yes, sir.
- 4 Q: The -- has West Florence Fire District reimbursed the
5 County for the cost of the Hoffmeyer Road property?
- 6 A: No, sir.
- 7 Q: Has it reimbursed the County for the cost of any real or
8 personal property transferred to it?
- 9 A: No, sir.
- 10 Q: Were the proceeds used either for the -- let me ask is
11 the construction of the Hoffmeyer Road Fire Station ongoing
12 currently?
- 13 A: Yes, sir.
- 14 Q: When is the anticipated completion date?
- 15 A: I couldn't state that exactly.
- 16 Q: You know a ballpark?
- 17 A: Probably the next month or two.
- 18 Q: Okay. Was the reimbursement to the County from Capital
19 Project Sales Tax and you said the ultimate source of
20 financing was Capital Project, was the replenishing of County
21 coffers for the acquisition and the payment for the actual
22 construction, was that done from Capital Projects Sales Tax as
23 it came in or was it funded in advance by bonds?
- 24 A: It was funded in advance by bonds.
- 25 Q: And those bonds are payable from the Capital Projects

1 Sales Tax; is that correct?

2 A: Yes, sir.

3 Q: Okay. Are those considered general obligation bonds of
4 the County?

5 A: Yes, sir.

6 Q: I would next ask ---

7 THE COURT: Is that funded by the bond, the land and the
8 building or just the building?

9 A: Your Honor, both were ---

10 THE COURT: Funded by revenues, bonds. Okay. All right.

11 BY MR. MATTHEWS:

12 Q: What is the total amount, building and land combined,
13 attributable to the West Florence -- to the Hoffmeyer Road new
14 fire station?

15 A: Approximately 1.2 million.

16 Q: Okay. Were there any other expenditures for West
17 Florence that were financed by the Capital Project Sales Tax
18 General Obligation Bonds?

19 A: They were two items approved by the voters in the
20 referendum. One was a million and a half dollars for the
21 Hoffmeyer Road Station; and the second item was a million
22 dollars for improvements to Station 1.

23 Q: Station 1 of West Florence?

24 A: Yes, sir.

25 Q: So that's a total of two and a half million?

- 1 A: Yes, sir.
- 2 Q: Was there an item in that countywide bond for emergency
3 management fire -- emergency management radio services?
- 4 A: Yes, sir.
- 5 Q: What was the amount of that?
- 6 A: About fifteen million dollars?
- 7 Q: Would that be utilized for West Florence as well as the
8 other five districts?
- 9 A: Yes, sir.
- 10 Q: Do you have a breakdown, if you don't that's fine, but do
11 you have a breakdown of what proportion of the fifteen million
12 would be attributable to West Florence?
- 13 A: I don't.
- 14 Q: Some piece, but we don't know exactly how much?
- 15 A: Yes, sir.
- 16 Q: If you would look again at -- just a moment. If you
17 would look at the next to the last sentence of the section you
18 were reading 4-23-1025(B) and look at the most recent
19 amendment, the Act 89, which is Exhibit Two?
- 20 A: 4-23-1025?
- 21 Q: 1025(B) as in boy; the next to the last sentence of that
22 section beginning however?
- 23 A: However, the district must assume any current
24 indebtedness attributed to the West Florence Rural Fire
25 District, if any, to be -- to be determined by agreement of

1 the West Florence Fire District Commission and the governing
2 body of Florence County.

3 Q: Okay. Could you tell me when were the capital
4 improvement bonds that you mentioned issued?

5 A: We closed on those bonds I believe it was June 30th,
6 2014.

7 Q: Okay. In your role as County Finance Director, are you
8 familiar with the funding sources for other services provided
9 by the County?

10 A: Yes, sir.

11 Q: Does the area encompassed by the new West Florence Fire
12 District pay higher, lower or the same millage rate for
13 funding county law enforcement services?

14 A: They pay the same.

15 Q: Same as other parts of the county?

16 A: Correct.

17 Q: Does the area of the West Florence District pay higher,
18 lower or the same millage rate compared to other parts of the
19 county for funding county library services?

20 A: They pay the same.

21 Q: County Administrative Services?

22 A: The same.

23 Q: County Magistrate Services?

24 A: The same.

25 Q: Okay. No further questions, Your Honor.

1 MR. MATTHEWS: Your Honor, I apologize, if I could ask a
2 question in the outset that I indicated Mr. Yokim may be
3 suitable to respond to and I'm not sure if I picked that up
4 and I'm having trouble remembering what it was now?

5 MR. SMITH: Configuration of the Lynches District.

6 MR. MATTHEWS: No, that's Mr. Brockington.

7 THE COURT: I'm sorry, what?

8 MR. SMITH: I thought he was referring to configuration
9 of Lynches Fire District

10 THE COURT: That's ---

11 MR. JORDAN: I believe that, Your Honor, related to the
12 calculation of the millage rate cap and how that was
13 determined by Act 388.

14 THE COURT: Cross examination?

15 MR. JORDAN: Just a few questions, Your Honor.

16 CROSS EXAMINATION OF KEVIN YOKIN BY MR. JORDAN:

17 Q: Mr. Yokim, the Capital Sales Project Tax, tell me a
18 little bit about that; what exactly is that?

19 A: That -- it is a tax permitted in-state law whereby a
20 county can put a referendum on the ballot for voters to
21 approve that lists various capital projects to be funded by
22 that sales tax. The sales tax, assuming a successful
23 referendum, the tax then begins to be collected by the
24 merchants and it's typically sunsetted after a period of seven
25 years.

1 Q: And this I think was commonly known as the penny tax in
2 our area; is that correct?

3 A: Yes.

4 Q: And that tax was imposed -- let me ask it this way.
5 Where was that tax imposed?

6 A: What -- what?

7 Q: Where would you pay that tax? Was it refined to just
8 certain places or everywhere you'd spend a dollar?

9 A: Everywhere you'd spend a dollar.

10 Q: So, and that would be throughout the county?

11 A: Yes, sir.

12 Q: So it's fair to say that the people that lived in the
13 West Florence area had paid towards that tax?

14 A: Yes.

15 Q: All right. A significant amount of money; is that fair?

16 A: I couldn't speak to how much they paid, but they -- I
17 mean they would pay.

18 Q: Do you have access to those figures?

19 A: Not broken down to individual, no.

20 Q: So, you can't see how much money is generated from one
21 area or another?

22 A: Correct.

23 Q: But we know or we can deduce from the millage rates that
24 that area, the West Florence area, is a affluent area for lack
25 of a better term?

1 A: The property values there are higher, yes.

2 Q: So, it would be fair to assume that money is being spent
3 in that area in different businesses or restaurants,
4 everything in between so to speak?

5 A: You could say that.

6 Q: And when we look at the list and I think you testified a
7 minute ago, there's a list that went on the referendum?

8 A: Yes.

9 Q: And those projects were all across the county?

10 A: Yes.

11 Q: Were there -- you may not have this in front of you, but
12 were there -- that list was spread across the county?

13 A: Yes.

14 Q: Was there any ratio by which it was determined one
15 section of the county got a certain amount of projects or a
16 certain amount of money and another part of the county got a
17 certain amount of projects or a certain amount of money?

18 A: Not to my knowledge..

19 Q: Okay. Thank you, Your Honor.

20 EXAMINATION BY THE COURT:

21 THE COURT: You may not know the answer to this, but I
22 believe you earlier said that when you first started the
23 consolidation -- and my figures may be incorrect -- I think
24 you said the highest millage was 40 and the lowest millage was
25 8?

1 A: Yes, Your Honor.

2 THE COURT: I -- what part of the county was the 8; do
3 you know?

4 A: West Florence.

5 THE COURT: All right. What part of the county was 40?

6 A: Johnsonville.

7 THE COURT: All right. Do you know or do you have any
8 way to determine the value of one mil in West Florence and the
9 value of one mil in Johnsonville?

10 A: From memory, Your Honor, the value of a mil in West
11 Florence is approximately \$110,000.

12 THE COURT: 110?

13 A: Yes, sir.

14 THE COURT: Okay.

15 A: And in Johnsonville it was approximately 10,000.

16 THE COURT: About 10,000?

17 A: Yes, sir.

18 BY THE COURT:

19 THE COURT: Okay. Any questions from anybody concerning
20 the questions I just asked; I'll allow either party to ask any
21 further questions?

22 MR. JORDAN: None from the defense, Your Honor.

23 MR. MATTHEWS: None here, Your Honor.

24 THE COURT: All right. You may step down. Thank you
25 very much.

1 A: Thank you, sir.

2 THE COURT: Call your next witness.

3 MR. MATTHEWS: Thank you, Your Honor. I call Sam
4 Brockington to the stand.

5 CLERK: Please place your left hand on the Bible and
6 raise your right hand.

7 MR. SAM BROCKINGTON, HAVING BEEN
8 SWORN TESTIFIES AS FOLLOWS:

9 CLERK: Please be seated and then state your name for the
10 record.

11 MR. BROCKINGTON: Sam Brockington.

12 DIRECT EXAMINATION OF SAM BROCKINGTON BY MR. MATTHEWS:

13 Q: Mr. Brockington, if you would just for the record, please
14 spell your last name?

15 A: B-R-O-C-K-I-N-G-T-O-N.

16 Q: What is your profession?

17 A: Fire fighter, Fire Chief Administrator.

18 Q: And by whom are you employed?

19 A: Florence County.

20 Q: What's your title with Florence County?

21 A: Coordinator of Florence County Fire and Rescue.

22 Q: When were you hired in that position?

23 A: April 15, 2013.

24 Q: Have you been serving continuously in that role since
25 then?

1 A: Yes.

2 Q: What was the occasion of your hiring?

3 A: The occasion was to implement a plan that was done by
4 Florence County to consolidate and improve fire service in the
5 various fire districts.

6 Q: Okay. Before your employment as the Florence County Fire
7 Rescue Services Coordinator, you said?

8 A: Yes.

9 Q: Before your employment with Florence County in that role,
10 what experience did you have in fire protection and emergency
11 services?

12 A: I've been a firefighter member at South Lynches Fire
13 Department since 1969 of which twenty-eight years I spent as
14 chief of South Lynches.

15 Q: Okay. I think that answers my next question, but just in
16 case there was something else, how long have you been employed
17 or involved in fire protection services in or around Florence
18 County?

19 A: Over forty-five years.

20 Q: Okay. Chief Brockington, in your role as the Fire
21 Coordinator -- well, actually let me stop for a minute. Judge
22 Nicholson asked a couple of questions earlier that I may -- I
23 think you may be uniquely qualified to respond to as one of
24 the witnesses. You indicated that you were chief at South
25 Lynches Fire District for ---

1 A: Twenty-eight years.

2 Q: And, Your Honor, South Lynches is the Special purpose
3 district at issue in the Attorney General's opinion.

4 Can you tell me ---

5 THE COURT: What's the name of it?

6 MR. MATTHEWS: South Lynches.

7 THE COURT: South Lynches?

8 MR. MATTHEWS: Lynches, like Lynches River; South Lynches
9 Fire District.

10 BY MR. MATTHEWS:

11 Q: Can you describe what territory is included in the South
12 Lynches Fire District?

13 A: It's Lower Florence County and Upper Williamsburg County.
14 It's a fire district that has approximately 1500 residents,
15 205 square miles of which, just over 100 square miles would be
16 in Williamsburg and a population of just over 2500 in
17 Williamsburg with a balance of the population in Florence
18 County. It includes the towns of Scranton and Coward and
19 rural communities of Cades, Hebron, Camp Branch, High Hill and
20 Leo.

21 Q: Okay. I know some of the geography, but just let's
22 clarify a little bit. You said approximately 200 square
23 miles?

24 A: Approximately 250 square miles.

25 Q: 250 square miles. And how much of that is in

1 Williamsburg?

2 A: 100 square miles.

3 Q: 100 in Williamsburg so 150 square miles in Florence?

4 A: Yes.

5 Q: Okay. And the population I think you said was about
6 15,000?

7 A: Approximately 15,000 of which just over 2500 live in
8 Williamsburg County.

9 Q: So, that would leave 12,500 in Florence County?

10 A: Approximately.

11 Q: You mentioned a series of towns or communities. Can you
12 tell us -- go through that list again and tell us which county
13 each one is in?

14 A: Williamsburg County has Cades and Hebron. Florence
15 County has Camp Branch, the municipal towns of Coward,
16 Scranton, and the communities of High Hill and Leo.

17 Q: Okay. Let me point to Plaintiff's Exhibit Seventeen.
18 Are you familiar with what I referred to previously as the
19 Darlington/Hoffmeyer piece; the area of Darlington County that
20 was added into the West Florence Fire District in Act 89 in
21 2015?

22 A: Yes.

23 Q: Do you know the approximate square mileage of that area?

24 A: No, it would be very small.

25 Q: Okay. Same question you may not know the answer. Do you

1 know the square mileage of the three Darlington parcels?

2 A: It would be smaller than Hoffmeyer.

3 Q: Okay. Let me direct your attention to Exhibit Nineteen,
4 which is showing a ratio, I don't know if you can see this, a
5 ratio of it looks like about two inches is a quarter of a
6 mile. Looking at that and the three parcels -- I'll let the
7 exhibit speak for itself; we don't need to go through the
8 calculation on that.

9 Do you know what the approximate square mileage is of the
10 Old West Florence Rural Fire District?

11 A: No.

12 Q: Okay. All right.

13 MR. MATTHEWS: Your Honor, did you have any other
14 particular questions with regard to the South Lynches
15 configuration?

16 BY MR. MATTHEWS:

17 Q: Let me ask, in terms of the rationale for serving that
18 part of Williamsburg County and that part of Florence County
19 together, when was the South Lynches Fire District created?

20 A: 1982.

21 Q: 1982. And what was the purpose of combining those two
22 pieces?

23 A: Historically, the original Lake City Rural Fire
24 Department, which evolved into South Lynches Fire served the
25 ---

1 Q: Let me stop you for just a minute. Lake City is in which
2 county?

3 A: Florence.

4 Q: Lake City in Florence County. Okay.

5 A: Lake City Rural Fire Department, a non-profit
6 corporation, chartered in 1955, traditionally served Cades,
7 Hebron area of Williamsburg County.

8 Q: Okay. Why would they have served that area?

9 A: At first the telephone exchange was local to Lake City
10 and it was called the Scranton Phone Exchange, Farmer's
11 Telephone and was local to Lake City; second, most residents
12 in that area used Lake City as their business center for
13 shopping; and third, the area also allowed the schools -- the
14 students to attend Florence County School District Three.

15 Q: Was there, prior to 1982, already an organized entity
16 providing fire service to that area?

17 A: Not a government controlled. South Lynches had
18 established a station in Cades that was a non-profit
19 corporation and approved by Williamsburg County.

20 Q: Okay. All right. Let me turn then for a minute to
21 another question that Judge Nicholson had raised with regard
22 to the insurance ratings. Now let me ask you, before the
23 May/June timeframe of 2014 before either consolidation or
24 creation of a special purpose district, what were the
25 insurance ratings for the six tax districts in Florence

- 1 County?
- 2 A: And are you considering one of the six to be the Windy
3 Hill/Olanta District?
- 4 Q: Yes. Why do you ask that question?
- 5 A: Because they had separate ratings.
- 6 Q: Okay. It was referred to as the Windy Hill/Olanta
7 District ---
- 8 A: Correct.
- 9 Q: --- with two different departments serving it?
- 10 A: Two different departments being funded out of one tax
11 district.
- 12 Q: Okay.
- 13 A: I can answer the ISO ratings for each of those districts
14 if you like.
- 15 Q: If you can just tell the range?
- 16 A: The range would be from a low of four to a high of nine
17 and any area over five miles from a fire station would have
18 been ten, which is no fire protection.
- 19 Q: So the lower -- let me make sure I understand. The lower
20 the rating, the better off you are in terms of your insurance?
- 21 A: Correct, the lower the number, the better the insurance
22 rating.
- 23 Q: Okay. So it went from four to nine ---
- 24 A: Right.
- 25 Q: --- before consolidation?

1 A: And some areas were a ten, which meant there was not a
2 fire station within five road traveled miles of the county
3 property.

4 Q: Considering the consolidated area consisting of the five
5 districts, without West Florence, what's the current range of
6 ratings?

7 A: Since we created the consolidated fire district, we've
8 lowered the rating in three of the six departments and we
9 range from a low of 3 to a high of 6.

10 Q: Okay. And do you know what the insurance rating is
11 currently in the new West Florence Fire District?

12 A: Yes, it's a split classification that's a 3/3y.

13 Q: And what was it's rating before the creation of the new
14 special purpose district?

15 A: A 4/9.

16 Q: Okay. What is a 3y?

17 A: 3y means any property within a thousand feet of a fire
18 hydrant and within five road traveled miles gets a 3. Any
19 property greater than a thousand feet from the fire hydrant
20 but within five miles gets a 3y, which is comparable to the
21 old 8.

22 Q: Okay. All right. In your role as the Fire Rescue
23 Coordinator, Chief Brockington, are you familiar with the
24 provision of fire protection services in and adjacent to
25 Florence County?

1 A: Yes, sir.

2 Q: And have you been familiar with the provision of those
3 services and changes in the provision since before April 15th,
4 2013?

5 A: Yes, sir.

6 Q: That role or that position that you hold, are you
7 familiar with the location of fire protection assets in and
8 adjacent to Florence County?

9 A: Yes, sir.

10 Q: Are you familiar with the governmental and private
11 entities providing fire protection services in and adjacent to
12 Florence County?

13 A: Yes, sir.

14 Q: Are you familiar with the territories served by the
15 governmental and private entities in and adjacent to Florence
16 County?

17 A: Yes, sir.

18 Q: All right. I want to direct your attention again to the
19 legislation that's being challenged in this lawsuit. First
20 the 2014 Act which we have Exhibit One. Are you familiar with
21 Act 183 of 2014?

22 A: Yes, sir.

23 Q: All right. I want to direct your attention to the
24 portion of Darlington County included in the new West Florence
25 Fire District by that Act 183 of 2014; are you familiar with

1 that area?

2 A: Yes, sir.

3 Q: All right. I'm gonna ask you to look at this enlargement
4 of Plaintiff's Exhibit Nineteen and would you identify on the
5 map the three parcels in Darlington County that Act 183
6 included?

7 A: It would be the green portion.

8 Q: You're talking about this area here?

9 A: That area except the small red dot.

10 Q: Okay. I'm gonna, as I did with every witness, I'm gonna
11 refer to that as the three parcels. I'm gonna point out,
12 Chief Brockington, several features of this map and I'm gonna
13 ask you with regard to each one whether it's a fair and
14 accurate representation of either the location, the border,
15 the distance or the route?

16 A: Yes, sir.

17 Q: And I'll ask, Your Honor, and also opposing counsel, this
18 would move a lot more speedily if I'm allowed to lead this
19 witness on those issues to get him to check off some things
20 but I'm happy to do it the old fashioned way if you prefer?
21 If I get into something and you think I'm getting outrageous,
22 please stop me -- you tell me what you ---

23 THE COURT: Go ahead.

24 Q: Just to move it along a little more quickly.

25 Chief Brockington, do you agree with me the mileage key

1 is reasonably accurate in terms of the scale of this map?

2 A: Yes.

3 Q: And would you agree that the Darlington County portion of
4 this map is the portion shown as either white, green or red;
5 that that's the Darlington County portion?

6 A: Yes.

7 Q: The -- and you already stated that the green parcels were
8 the part included in the West Florence Fire District. Have
9 you viewed those, those parcels; have you been to that
10 location?

11 A: Yes.

12 Q: Tell me what's located on those three parcels?

13 A: Two houses, a garage, and a vacant lot.

14 Q: Okay. And is it correct that the red area is in
15 Darlington County but not in West Florence Fire District?

16 A: Correct.

17 Q: To your knowledge, are there homes and businesses in the
18 red area?

19 A: Yes.

20 Q: The -- you concur that there is a separate parcel here
21 shown as red on the same side of East McKiever?

22 A: Yes.

23 Q: Okay. Would you concur that you mentioned the Windy
24 Hill/Olanta Special Tax District which includes two fire
25 departments, do you agree that the purple area shows the Windy

1 Hill area?

2 A: Yes.

3 Q: And that that area is now part of the Florence County
4 Consolidated Fire District?

5 A: Yes.

6 Q: And would you agree that the, the -- I'm not sure what
7 that is -- pink or plum or something, that this color is the
8 West Florence Rural Fire District?

9 A: Yes.

10 Q: Okay. And I may refer to that as West Florence for short
11 and that that's the area included in the new special purpose
12 district?

13 A: Yes.

14 Q: Okay. Would you agree that the eastern terminus of the
15 I95 segment is located in Florence County, that being Exit
16 169?

17 A: Yes.

18 Q: And it's in the Windy Hill area?

19 A: Yes.

20 Q: And would you agree that the West Florence Fire Station
21 Number 2 on West Milwaukee Drive is properly located here?

22 A: Yes.

23 Q: And that Windy Hill Fire Station Number 2, the Ashby Road
24 Station, is properly located here?

25 A: Yes.

1 Q: And is it correct that's also sometimes called the Quinby
2 Station?

3 A: Yes.

4 Q: Okay. And would you agree that the Palmetto Rural Fire
5 District Station on McKiever Road is located here; that's an
6 accurate location?

7 A: Yes.

8 THE COURT: Have you marked those on the map or you just
9 asking him; are they marked on the map?

10 MR. MATTHEWS: They are marked on the map.

11 THE COURT: I can't see from this distance to see if
12 you've got them marked and what they are.

13 MR. MATTHEWS: I'm sorry, Your Honor. It may be possible
14 to follow it better on the exhibit.

15 THE COURT: The only thing I'm just asking, if you would
16 at some point in time, write on there what they are with the X
17 or however you want to identify them.

18 MR. MATTHEWS: All right. I think most of them are
19 already marked; you won't be able to see ---

20 THE COURT: If they are, that's fine. I just can't tell
21 from this distance.

22 MR. MATTHEWS: Right. They're -- I can barely tell from
23 this distance.

24 THE COURT: Okay.

25 MR. MATTHEWS: But they are marked.

1 BY MR. MATTHEWS:

2 Q: Now the title says that this is the distance from the
3 closest West Florence and Windy Hill stations to the
4 Darlington County parcels. Is it correct that the fire
5 station in the West Florence Fire District that is closest to
6 the three parcels is Fire Station Number 2?

7 A: Yes.

8 Q: And the route that makes it closest is the blue line; is
9 that correct?

10 A: ^uCorrect.

11 Q: And the distance on that route of 4.027 miles; is that a
12 reasonably accurate calculation of the distance?

13 A: Yes.

14 Q: And the alternate route shown, which is the red line
15 going down Lucas Road and up T.V. Road, is that an alternate
16 route to get from Milwaukee to the three parcels?

17 A: Yes.

18 Q: And is it correct that the distance of the alternate of
19 6.007 miles, is that a reasonably accurate calculation?

20 A: Yes.

21 Q: Okay. Is it correct that the fire station anywhere in
22 Florence County that is closest to the three parcels is the
23 Windy Hill Station?

24 A: Correct.

25 Q: And is it correct that the purple line is the route from

1 the Windy Hill/Quinby Station to the three parcels?

2 A: Yes.

3 Q: And is the distance calculation on that 2.107 miles a
4 reasonably accurate calculation of that distance?

5 A: Yes.

6 Q: And is it accurate that the shortest route that the
7 Palmetto Rural Fire District Station on East McKiever to the
8 three parcels is shown by the brown line?

9 A: Yes.

10 Q: And that the mileage calculation there of 1.855 miles is
11 reasonably accurate?

12 A: Yes.

13 Q: The -- and that the West Florence Fire District is
14 adjacent to the three parcels, but this map doesn't show any
15 access to get from West Florence into the three parcels,
16 directly in from West Florence and those three parcel; is that
17 correct ---

18 A: Correct.

19 Q: --- that there's no direct access here?

20 A: That is correct.

21 Q: What separates those?

22 A: A large swamp area.

23 Q: And the map also fails to show any access from 95,
24 Interstate 95 directly into Darlington County; is that
25 accurate that there's no access, 95 into Darlington County?

1 A: That's correct.

2 Q: In order to get to the Darlington County portion of
3 Interstate 95; you've either got to come in on Exit 164 or
4 Exit 169; is that correct?

5 A: Correct, but you cannot access the green area from the
6 interstate.

7 Q: Correct. Chief Brockington, can I get you to come here,
8 there's something that's not marked on here that may be
9 helpful. This does not show mile markers, so it's hard to
10 kinda see if we're going from 164 to 169. Can you mark where
11 the mile markers are approximately?

12 A: 164, and then if I'm correct, about every two inches.

13 Q: Two inches is a quarter of a mile.

14 A: A quarter of a mile; I'm sorry.

15 Q: If you don't have it -- if you're not directly familiar
16 with it, that's okay.

17 A: I would rather refer to the other map.

18 Q: Okay. That's fine. The -- we discussed previously that
19 the effective date of Act 183 was May 28h, 2014?

20 A: Yes.

21 Q: Who provided service to the three parcels prior to that
22 date?

23 A: Identify the three parcels again?

24 Q: The three parcels here, the Darlington County three
25 parcels?

- 1 A: Palmetto Rural.
- 2 Q: Palmetto Rural. And what is Palmetto Rural?
- 3 A: Palmetto Rural is a fire district created by home rule by
- 4 Darlington County Council.
- 5 Q: So, it's a Darlington County ---
- 6 A: It's a Darlington County special purpose district for
- 7 fire protection.
- 8 Q: Who provided service to the I95 segment prior to that
- 9 date? The I95 segment being I95 from where it crosses into
- 10 Darlington up to Exit 169; who serviced that before May 28,
- 11 2014?
- 12 A: West Florence and Windy Hill Fire Departments.
- 13 Q: Okay. Do you know how they split up the ---
- 14 A: Yes.
- 15 Q: --- fire protection service?
- 16 A: Yes.
- 17 Q: The northbound side would be handled by West Florence;
- 18 the southbound side by Windy Hill under a gentlemen's
- 19 agreement.
- 20 Q: All right. And how did that work?
- 21 A: Excellent.
- 22 Q: How would they -- let me continue with that question.
- 23 How did it work?
- 24 A: Fine.
- 25 Q: Were you aware of any problems with serving the I95

1 segment prior to May of 2014?

2 A: No.

3 Q: Why was it split up that way that one got northbound and
4 one got southbound?

5 A: Windy Hill can access the southbound lane from T.V. Road.

6 Q: Okay.

7 A: There's no practical way to cross the interstate. On
8 location West Florence could access from the 164 at 52 and go
9 north; that was the most reasonable, safest route for either
10 department to operate.

11 Q: So, West Florence would come up to 164 and travel north,
12 Windy Hill would come up T.V. Road and pick up 169 and follow
13 south; and one would have northbound and would one have
14 southbound. Is that correct?

15 A: Correct.

16 Q: Okay. Are you aware of any area that was included in the
17 new West Florence Fire District and by that I'm gonna
18 represent to you that I'm talking about three areas; the new
19 West Florence Fire District, consider it to include Old West
20 Florence Rural plus the three parcels, plus Interstate 95 from
21 the Darlington line up to Exit 164, okay?

22 A: Yes.

23 Q: Are you familiar with any part of that territory that was
24 not served by a fire protection service provider prior to May
25 28, 2014?

1 A: No area was lacking.

2 Q: Are you aware of any problem that Palmetto Rural had in
3 providing prompt and effective fire service to the three
4 parcels prior to that date?

5 A: No.

6 Q: Any problem in providing prompt and effective fire
7 service to the I95 segment?

8 A: No.

9 Q: I think you've answered that question already. Are you
10 aware of any facts or circumstances that would make the new
11 West Florence Fire District a faster, safer, more efficient
12 means of serving the three parcels?

13 A: No.

14 Q: Any faster circumstances that would make the new West
15 Florence Fire District a faster, safer or more efficient means
16 of providing fire protection service to the I95 segment than
17 it was previously getting by the ---

18 A: No.

19 Q: Looking at the three parcels, are you aware of any reason
20 why it would be logical or sound to have West Florence serve
21 the three parcels, but not serve the other side of the street?

22 A: No.

23 Q: And you mentioned the other parcel here on the same side.
24 Is there any reason why it would be logical or sound for West
25 Florence to provide service for the three parcels, but not to

1 the fourth parcel?

2 A: No.

3 Q: Look at the route to get from West Florence to the three
4 parcels. Are you aware of any reason why it would be logical
5 or sound for West Florence to serve the three parcels, but not
6 to be the service provider for the homes and businesses that
7 it passes on the way to get to the three parcels?

8 A: No.

9 Q: Going back to the legislation that's being challenged
10 here, there are two pieces; the Act 183 of 2014 and Act 89 of
11 2015, which made changes to Act 183. Are you familiar with
12 Act 89 of 2015?

13 A: Yes.

14 Q: I'm gonna ask you to look at an enlargement of
15 Plaintiff's Exhibit Seventeen, which is this poster and again
16 I'm gonna ask you -- I'm gonna point out certain features and
17 ask you if it's a fair and accurate representation, reasonably
18 accurate of scale, location, route, et cetera.

19 The mileage key, which shows this black segment from zero
20 to one mile as one mile; is that a reasonable -- a reasonably
21 accurate representation of the scale of this map?

22 A: Yes.

23 Q: Is the area of the West Florence Rural Fire District,
24 purple outline, a reasonably accurate indication of the area
25 of West Florence Rural Fire?

1 A: Yes.

2 Q: The location of the Windy Hill Fire District Number 2,
3 which we've already seen on this map, is its location here
4 reasonably accurate? And if you need to come out to look,
5 please do.

6 A: May I come up?

7 Q: We're talking about the West Florence Station Number 2
8 and the Milwaukee Drive Station; is that reasonably accurate?

9 A: Yes.

10 Q: You may want to stay here. The Windy Hill Station as
11 seen here on this map, is that a reasonably accurate location?

12 A: Yes.

13 Q: And the same question with regard to the Palmetto Rural
14 Fire District Station, reasonably accurate there?

15 A: Yes.

16 Q: And the three parcels of Darlington County, accurate
17 there?

18 A: Yes.

19 Q: Thank you. Chief Brockington, actually I need to ask you
20 to come back down. Could you please on this map point out the
21 area of Darlington County that was added into the new fire
22 district, the new West Florence Fire District?

23 A: By which act?

24 Q: The second act, the Hoffmeyer Road -- the
25 Darlington/Hoffmeyer Road we talked about and if you'll just

1 stand back so that the Judge can see what you're talking to
2 him about? That is this one -- for convenience of reference
3 in going back later is just a little bit northeast along the
4 county line from where I20 crosses the Darlington County line.

5 Mr. Brockington, I'm gonna ask you if you will direct
6 your attention to Exhibits Twenty-Five and Twenty-Six, which
7 are already in evidence and these are taken from the website
8 of the Darlington County Tax Assessor. And let me get a copy
9 of this for you. Looking at the areas shown there and the
10 two areas shown there. If you would, look at Exhibit Twenty-
11 five, which is the -- where we zoomed in. Can you tell me
12 what that depicts?

13 A: That's Hoffmeyer Road and the area annexed into the new
14 fire district.

15 Q: Is that a fair and accurate representation of the
16 Darlington/Hoffmeyer area that was annexed into the district
17 by Act 89?

18 A: Yes.

19 Q: All right. Would you look at Exhibit Twenty-six and tell
20 me what that shows?

21 A: It shows the parcels on McKiever Road off of I95.

22 Q: Okay. And is that to your knowledge a fair and accurate
23 representation of the geographic relationship between those
24 two pieces of Darlington County that are now in the new
25 special purpose district?

- 1 A: Yes.
- 2 Q: Mr. Brockington, I'm gonna direct your attention now to
3 Exhibit Twenty-seven, which has not yet been admitted. And I
4 want to represent to you that this is an exhibit that I
5 prepared from a MapQuest.com website. Can you tell me what it
6 depicts?
- 7 A: It depicts Hoffmeyer Road and Lucas Street as well as
8 McKiever Road areas of Florence County.
- 9 Q: Is there a route shown on that map?
- 10 A: Yes.
- 11 Q: What does the route connect? What are the two end
12 points?
- 13 A: It connects the two parcels in question.
- 14 Q: The parcels in question?
- 15 A: Annexed into West Florence Fire District.
- 16 Q: For clarification, can you show me on this map which two
17 parcels you're talking about?
- 18 A: Yes, the Hoffmeyer Road and McKiever.
- 19 Q: Okay. So Darlington/Hoffmeyer area?
- 20 A: Yes.
- 21 Q: And the three parcels on McKiever?
- 22 A: Correct.
- 23 Q: Okay. Is the map shown on that exhibit a fair and
24 accurate representation to scale, the geography, streets and
25 distances?

1 A: Yes.

2 Q: Is the route shown there, to your knowledge, the shortest
3 route between the three parcels and the Darlington/Hoffmeyer
4 area?

5 A: Yes.

6 Q: Are the distance in time of travel calculated there; 8.82
7 miles and about fifteen minutes, reasonably accurate?

8 A: Yes.

9 MR. MATTHEWS: Your Honor, I would move that Exhibit
10 Twenty-Seven be admitted into evidence?

11 THE COURT: Any objection?

12 MR. JORDAN: No, sir.

13 THE COURT: All right. Twenty-seven admitted without
14 objection.

15 PLAINTIFF'S EXHIBIT NUMBER TWENTY-SEVEN

16 ADMITTED INTO EVIDENCE

17 BY MR. MATTHEWS:

18 Q: Mr. Brockington or Chief Brockington, in light of that
19 distance and location of fire protection assets in or around
20 or used to serve the three parcels in the Darlington/Hoffmeyer
21 area, is there any reason of safety or efficiency why the
22 three parcels here and the Darlington/Hoffmeyer area here need
23 to be served by the same fire protection entity?

24 A: No.

25 Q: All right. I'll hand this to the Court Reporter. This

1 one is -- there were already admitted.

2 Mr. Brockington, I'm gonna represent to you that based on
3 our Exhibit Number Two, that Act 89 became effective on July
4 the 7th, 2015?

5 A: Yes.

6 Q: Who provided service to the Darlington/Hoffmeyer area
7 prior to July the 7th, 2015?

8 A: Darlington County Fire Protection District.

9 Q: And what is that?

10 A: Darlington County Fire Protection District, it's a home
11 rule created fire district of unincorporated areas in
12 Darlington County excluding Hartsville, Darlington and
13 Palmetto Rural Fire Districts.

14 Q: Where is the nearest Darlington County Fire District
15 Station to the Darlington/Hoffmeyer area?

16 A: It's down Hoffmeyer Road approximately three-and-a-half
17 miles.

18 Q: When you say down Darlington/Hoffmeyer Road?

19 A: West. West.

20 Q: West. Okay.

21 A: Just west of ---

22 Q: Would you take a look at this exhibit and tell me if it
23 shows -- if the location shows up on here or maybe off this
24 map?

25 A: It would be right there.

1 Q: Okay. So underneath where the logo legend?

2 A: Yes, sir.

3 Q: Mr. Brockington, I'm gonna now show you another exhibit,
4 Exhibit Twenty-Eight and again I represent that this is an
5 exhibit that I prepared from the MapQuest.com website. I'm
6 gonna ask if you would tell me what that map depicts?

7 A: It depicts the distance between the Darlington County
8 Fire Station on Hoffmeyer to the newly annexed area in the
9 West Florence Fire District.

10 Q: Is the -- is that a fair and accurate representation to
11 scale of the geography, streets and distances involved?

12 A: Yes.

13 Q: Is the route shown there by the heavy line the shortest
14 route between a Darlington County Fire District fire station
15 and the Darlington/Hoffmeyer area?

16 A: Yes.

17 Q: Are the distance and the time of travel calculated there
18 at 3.98 miles in about four minutes reasonably accurate?

19 A: Yes.

20 MR. MATTHEWS: Your Honor, I would move that Exhibit
21 Twenty-Eight be admitted into evidence?

22 THE COURT: Any objection.

23 MR. JORDAN: No objection.

24 THE COURT: All right. Twenty-Eight admitted without
25 objection.

EXHIBIT NUMBER TWENTY-EIGHT

ADMITTED INTO EVIDENCE

BY MR. MATTHEWS:

Q: Chief Brockington, what is the nearest West Florence Fire District Station to -- I'm sorry. I almost forgot. What is the nearest West Florence Fire District Station to the Darlington/Hoffmeyer area?

A: Pine Needles Road, Station 1.

Q: Okay. And I am going to now ask you to look at Exhibit Twenty-Nine and, if you would please, tell me what that depicts?

A: The distance in route from their Station 1 to the newly annexed area on Hoffmeyer Road.

Q: Okay. Again, is this a fair and accurate representation to scale of the geography, streets and relative distances involved?

A: Yes.

Q: Is the route there, the highlighted line, the shortest route between a West Florence Fire Station and the Darlington/Hoffmeyer area?

A: Yes.

Q: Are the distance and the time of travel calculated there, 5.06 miles and about seven minutes, accurate?

A: Yes.

Q: Is there any significance to the distance from the

1 nearest West Florence Fire Station to Darlington/Hoffmeyer
2 area being greater than five miles?

3 A: Yes, they would have no insurance classification
4 protection.

5 MR. MATTHEWS: I would move that Exhibit Twenty-Nine be
6 admitted into evidence.

7 THE COURT: Yes, sir, any objection?

8 MR. JORDAN: No, sir.

9 THE COURT: All right. Twenty-Nine is in without
10 objection.

11 PLAINTIFF'S EXHIBIT NUMBER TWENTY-NINE

12 ADMITTED INTO EVIDENCE

13 BY MR. MATTHEWS:

14 Q: Are you aware of any problem that Darlington County Fire
15 District had providing prompt and effective fire service to
16 the Darlington/Hoffmeyer area prior to July 7th, 2015?

17 A: No.

18 Q: Are you aware of any facts or circumstances in place or
19 before that date that would make the new West Florence Fire
20 District a faster, safer or more efficient means of providing
21 fire protection service to that area than the manner in which
22 it was previously provided by Darlington County Fire District?

23 A: No.

24 Q: All right. I want to direct your attention to Section 6
25 of Act 89 and I would read that to you just for -- in the

1 interest of moving this along. Section 6 of Act 89, which
2 added in the Darlington/Hoffmeyer area says, Section 6, the
3 provisions of this act shall expire five years from its
4 effective date -- effective date of July 7th, 2015 five years
5 July 7th, 2020.

6 In thinking about the relative merits of fire protection
7 service to the Darlington/Hoffmeyer area from either
8 Darlington County Fire District on the one hand or West
9 Florence Fire District on the other hand, thinking about the
10 relative merits of those two possible providers, are you aware
11 of any policies, procedures, plans, projections, facts or
12 circumstances that would cause a shift in those relative
13 merits to occur on or around July 7th, 2020?

14 A: No.

15 Q: Mr. Yokim previously testified that the County is funding
16 the construction of the new fire station on land purchased by
17 the County that would, under Act 183 and Act 89, be
18 transferred to the new West Florence Fire District; are you
19 familiar with that property and the new fire station?

20 A: Yes.

21 Q: Can you point out on Exhibit Seventeen where that would
22 be located?

23 A: (Indicating on Exhibit Seventeen.)

24 Q: All right. If you could stand back so the Judge could
25 see where you're pointing.

1 Your Honor, I'm not sure if you can see that -- is that
2 the approximate correct location?

3 A: Yes.

4 MR. MATTEWS: Your Honor, I've marked that as the new
5 station.

6 THE COURT: Okay.

7 MR. MATTHEWS: And if we do get a fold-up copy for the
8 Clerk's Office, I'll mark that one the same way.

9 THE COURT: Okay.

10 BY MR. MATTHEWS:

11 Q: Once this construction is complete, will that station be
12 closer to the Darlington/Hoffmeyer area than the Darlington
13 County Fire District Station also on Hoffmeyer Road?

14 A: Yes.

15 Q: Okay. July 7th, 2020, will it stop being any closer?

16 A: No.

17 Q: To your knowledge has a fire protection entity operating
18 from West Florence ever been, been assigned the, the territory
19 of the three parcels?

20 A: Prior to or now?

21 Q: Prior to -- prior to the ---

22 A: No.

23 Q: --- Act 183. Are you aware, is any West Florence located
24 fire protection entity ever been assigned to service for the
25 Darlington/Hoffmeyer area prior to Act 189?

1 A: No.

2 Q: I want to talk about kinda how this works on the ground
3 if we could for a minute. If, if a fire related 911 call was
4 made from somebody in their home or business either in the
5 Darlington/Hoffmeyer area or in the three parcels, somebody's
6 home, they spot a kitchen fire, they pick up the phone, they
7 call 911 and say my house is on fire. Who gets the call?

8 A: Darlington County Central Dispatch.

9 Q: And why does it go to them; how does that work?

10 A: Phone companies have service numbers per phone line, they
11 call it an ESN, and those lines are predetermined to be
12 answered at a Public Safety answering point based on legal
13 jurisdiction and the phone system was put in as Darlington
14 County.

15 Q: Okay. So, if it goes to Darlington County Central
16 Dispatch, Emergency Dispatch, the person there who receives
17 the call, who picks it up, how does that person know which
18 fire service provider to contact to say get to this fire right
19 away?

20 A: It will show on the screen provided by the phone company
21 that will show whose jurisdiction it's in.

22 Q: So let's suppose somebody makes a call, the Darlington
23 County Dispatcher gets the call, they look on the screen and
24 it says -- let's talk for a minute outside of this area, let's
25 say it's somebody up here, okay, so we're not talking about

1 the two contested areas. There's somebody up here, they get
2 the call, it shows up on the operator's screen that this is
3 someone located in the service area of Darlington County Fire
4 District ---

5 A: Darlington Fire District.

6 Q: --- how does the dispatcher technologically notify
7 Darlington County Fire District of what's going on; how would
8 they get in touch with them?

9 A: By radio, by paging out, pagers, and announcing the
10 location of the fire via a radio system.

11 Q: You mentioned that a call placed from a home or business
12 in the Darlington/Hoffmeyer area or in the three parcels would
13 go to the Darlington Dispatch because of the phone company
14 ESN?

15 A: ESN, correct.

16 Q: Has that changed since the enactment of Act 183 or Act
17 89?

18 A: Not to my knowledge.

19 Q: Would Darlington County dispatch have the technological
20 capability to do a radio or pager contact to West Florence
21 Fire District?

22 A: No.

23 Q: So, they're not on the same network?

24 A: No.

25 Q: To your knowledge, since the enactment of Act 183, has

1 there been any change in the way in which fire protection
2 calls would be received or dispatched with respect to the I95
3 segment?

4 A: No.

5 Q: Since the enactment of Act 89 in 2015, has there been any
6 change in the way in which fire protection calls are received
7 or dispatched for the Darlington/Hoffmeyer area?

8 A: No.

9 Q: And I think I asked the same question already with regard
10 to the three parcels and I can't recall, just to look back.
11 Since Act 183, May 28th of 2014, to your knowledge has there
12 been any change in the way in which calls are received or
13 dispatched for the three parcels?

14 A: No.

15 Q: Okay. Mr. Brockington or Chief Brockington, please
16 describe what a Mutual Aid Agreement is, what an Automatic Aid
17 Agreement is and what the differences are between the two?

18 A: Yes, the fire service traditionally has what's known as a
19 Mutual Aid Agreement between fire departments, municipalities
20 or any type fire department that's basically states I'll help
21 when you help me in a time of crisis. It's an understanding
22 and it's an if available. There's no further activity other
23 than if I call you for help please come and if you call me I
24 will come if available; that's Mutual Aid.

25 Q: Okay. What's an Automatic Aid Agreement?

1 A: Automatic Aid is a predetermined response procedure by
2 two fire departments to cover a specific area. In order to
3 qualify for Automatic Aid, there has to be commonality in the
4 dispatch procedure, the handling and receiving and dispatch of
5 the alarms. Number two, the two departments have to train
6 together four times a year. Number three, an inventory of
7 each department's equipment must be taken. And number four, a
8 determination as to what assets will be dispatched based on
9 the type of property, type of hazard, to handle the particular
10 emergency there. It cannot be I'll call you if I need you; it
11 must be sent immediately upon receipt of an alarm.

12 Q: Okay. Let me go back to the first and second of the
13 criteria that you mentioned which is the commonality of
14 dispatch mechanisms ---

15 A: Correct.

16 Q: Is that what you called it?

17 A: Correct.

18 Q: If two entities are not on the same network, is it
19 possible to have a commonality of dispatch mechanisms?

20 A: It would have to have comparable radio equipment.
21 Darlington County operates an analog high-band radio system.
22 Florence County as mentioned earlier operates a new digital
23 trunking 800 megahertz radio system. There's no inoperability
24 there.

25 Q: So, if an Automatic Aid Agreement were attempted between

1 a Darlington County entity and a Florence County entity, there
2 would be technological differences -- difficulties in
3 implementing that; is that correct?

4 A: Technological difficulties presently have not been
5 overcome.

6 Q: Why wouldn't it be possible for the Darlington County
7 Dispatcher, let's say, simply to pick up the phone and call
8 West Florence District?

9 A: That's not a reliable method of notifying that other
10 dispatch center and it takes too long.

11 Q: Is time important in that regard?

12 A: Time is of the essence. Time of receipt of call until --
13 dispatch is critical. The fire service can do nothing until
14 they get the tone.

15 Q: Does, does that timing issue have any impact on insurance
16 ratings?

17 A: Yes, an insurance service office grades ten percent of a
18 hundred proof -- ten points of a hundred point scale just on
19 handling and dispatching of alarms.

20 Q: If prior to May/June 2014 timeframe, prior to all this,
21 if a Florence County entity, fire protection entity and a
22 Darlington County Fire Protection entity -- well, let me ask
23 this and I'll come back to that question. Is it, is it, is it
24 a frequent occurrence that fire protection entities cooperate
25 in providing service ---

1 A: Yes.

2 Q: --- in and near their borders?

3 A: Yes.

4 Q: Is there any reason either without legislation why a
5 Florence County entity and a Darlington County entity could
6 not have agreed between themselves to cooperate?

7 A: Certainly, it should be done.

8 MR. MATTHEWS: No further questions, Your Honor.

9 THE COURT: Okay. Cross examination?

10 CROSS EXAMINATION OF SAM BROCKINGTON BY MR. JORDAN:

11 Q: Chief Brogdon, I apologize if I cover some similar
12 ground, but I'll try and do it quickly. You testified earlier
13 that you've been with Florence County in your current
14 employment for a little over three years?

15 A: Yes.

16 Q: And prior to that, you were the chief down at South
17 Lynches for approximately twenty-eight years, I think?

18 A: Yes.

19 Q: And South Lynches is the special purpose district that
20 operates in what we refer to as the low end of the county and
21 in conjunction with Williamsburg County?

22 A: Correct.

23 Q: And it's been in existence since roughly 1983, I think
24 you said?

25 A: 1982.

1 Q: Okay. Now, I'm gonna use the Exhibit Seventeen a little
2 bit as well. You previously testified that you were familiar
3 with Act 183 of 2014?

4 A: Yes.

5 Q: And that is the legislation that brought in this portion,
6 the slightly shaded, differently shaded green on the north end
7 of the map in Darlington County?

8 A: Yes.

9 Q: As well as a portion of the Interstate 95 there?

10 A: Correct.

11 Q: No question about that being Darlington County?

12 A: No.

13 Q: Okay. And then you -- I think you previously testified
14 also that you're familiar with Act 89 of 2015; is that right?

15 A: Correct.

16 Q: And that is the portion of legislation that brought in
17 this section here that I'm referring to in Plaintiff's
18 Seventeen that brought in this portion of Darlington County?

19 A: Correct.

20 Q: No question that's Darlington County?

21 A: No question.

22 Q: Okay. Let's stay there for just a second. You were
23 testifying and I think Mr. Matthews had you view multiple
24 MapQuest exhibits, did he not?

25 A: Correct.

1 Q: And you testified through those different exhibits and I
2 think you've said it again since that timeliness is important
3 when it comes to your profession?

4 A: It is.

5 Q: And at the time of the creation of the 2015 legislation,
6 the closest Darlington response station would have been
7 Darlington Fire; is that right?

8 A: To which location, I'm sorry?

9 Q: To the 2015 ---

10 A: Yes, sir, it's Darlington Fire Station.

11 Q: Somewhere over here?

12 A: Yes.

13 Q: Okay. And I think you also testified that there's a new
14 station that I'm pointing to now on Seventeen that is much
15 closer to the added area; is that fair to say?

16 A: That's correct.

17 Q: And again you testified timeliness is important?

18 A: Correct.

19 Q: So, in that theory, these people would be better served
20 by this new station than the prior station?

21 A: In theory the time lost in handling of the call would
22 negate the closeness of the closer fire station.

23 Q: Okay. We can agree this one's closer?

24 A: We can agree it's closer, but we also have to agree that
25 they're not gonna get a call in a timely fashion.

1 Q: All right. I'm gonna get to that in a second. But we
2 can agree it's closer and we can agree that you can get from A
3 to B here quicker than you can A to B here; is that fair?

4 A: Correct.

5 Q: Okay. Now, that new station and you may or may not know
6 this, but it's been on the -- it's been an idea so to speak
7 for quite some time; is that correct?

8 A: Yes.

9 Q: And it's referred to I think now as West Florence 4?

10 A: Correct.

11 Q: And it is scheduled to go online sometime in the next
12 thirty to forty-five days; is that right?

13 A: Correct.

14 Q: Okay. And it's -- I think I saw you at the ground
15 breaking, it's a fairly impressive facility; is it not?

16 A: Very much so.

17 Q: No issues with the facility or future facility in that
18 area?

19 A: No.

20 Q: Mr. Matthews asked you about the dispatch and I want to
21 talk about that for a minute. It's important that everybody
22 communicates and stays on the same page, right?

23 A: Correct.

24 Q: And that can be accomplished, can it not?

25 A: It can be accomplished, but has not to this day.

1 Q: Okay. So, let's talk about, he used several examples
2 both in and outside the district. Currently if we're in for
3 instance South Lynches, Williamsburg and Florence have two
4 different operating systems; is that correct?

5 A: Correct.

6 Q: So, they're having to deal with this issue?

7 A: We did handle it. We have since the creation of the fire
8 district.

9 Q: So, there is a mechanism by which to handle it?

10 A: Yes, we have addressed it from the creation.

11 Q: So it can be done?

12 A: It can be done.

13 Q: Okay. And just for my clarification, you testified that
14 when the phone call comes in to the Darlington dispatch,
15 they're responsible based on the screen they have to alert the
16 appropriate responding authority; is that right?

17 A: Correct..

18 Q: And you're speculating that or do you know that for
19 certain as to what that screen says when it pops up for that

20 ---

21 A: I haven't been in their dispatch center, but their prior
22 chief says that it only shows Darlington County assets.

23 Q: Let's talk about the interstate portion for a second. We
24 can agree that prior to the creation of the new Special
25 Purpose West Florence District that West Florence was

1 responding to Darlington portion of Interstate 95?

2 A: Yes.

3 Q: I think Windy Hill as well?

4 A: Yes.

5 Q: And that would have been ordinarily the responsibility

6 of, I think you said Palmetto Rural?

7 A: Palmetto Rural.

8 Q: But for a lot of different reasons, it makes more sense

9 for Florence to respond?

10 A: Correct.

11 Q: And that has been the case for a long period of time?

12 A: Correct.

13 Q: And continues to be the case today?

14 A: Correct.

15 Q: Last question to you. West Florence Fire special purpose

16 district has been in existence now for a little over two

17 years; is that right?

18 A: One portion and the second yes.

19 Q: And it has been operating and functioning all during that

20 time period?

21 A: Correct.

22 Q: Any issues of -- or criticisms of it since that

23 inception?

24 A: No, sir.

25 MR. JORDAN: No further questions, Your Honor.

1 THE COURT: Redirect?

2 MR. MATTHEWS: Yes, Your Honor.

3 REDIRECT EXAMINATION OF SAM BROCKINGTON BY MR. MATTHEWS:

4 Q: Chief Brockington, Mr. Jordan just asked about the I95
5 portion. If someone is their car on the I95 segment and they
6 see an accident, a fire, they take out their cell phone and
7 call, who receives that cell phone 911 call?

8 A: My understanding that it goes to Florence Central.

9 Q: You mentioned earlier that the routing of those calls
10 depended on the telephone company. Is that something the
11 telephone companies coordinate from towers or how does that
12 work?

13 A: When enhanced 911 first came into being, the calls were
14 handled by a hard line. Everybody had a phone at their house.
15 Rarely did we receive calls by cell. Today over half of the
16 calls come by cell and they're handled by tower.
17 Identification of your location, a cell call can be pinpointed
18 very close if it's handled by cell by location.

19 Q: Let me ask you about fire protection assets. Mr. Jordan
20 asked you about the distance between two stations, the new
21 West Florence station approximately here, and the existing
22 Darlington Fire District Station somewhere up here. First of
23 all, you said that the new station would come online in the
24 next thirty days or so?

25 A: Yes.

1 Q: So for the past year, a little bit over a year, the
2 Darlington/Hoffmeyer area is in the West Florence District but
3 without that station?

4 A: Correct.

5 Q: And in four more years, the Darlington/Hoffmeyer station
6 -- Darlington/Hoffmeyer area will come out of that district?

7 A: Correct.

8 Q: Can you describe for me the, the equipment and the assets
9 -- you talked about the response time, but can you describe
10 for me the difference between the equipment and assets of the
11 existing Darlington County Fire District Station and the
12 planned new West Florence Station and what impact the
13 equipment and assets would have on their ability to serve this
14 area?

15 A: Yes. It's my understanding the new Hoffmeyer Road Fire
16 Station will have one engine, which is a pumper and one man on
17 duty twenty-four hours a day.

18 Q: What is a pumper?

19 A: Pumper is a traditional fire truck, fire engine. It
20 carries water hose, pump and assorted equipment.

21 Q: So it carries its own water?

22 A: Carries its own water.

23 Q: So -- so back up, you said it would have one pumper?

24 A: Right.

25 Q: A full time employee?

1 A: A full time employee.

2 Q: And the other manpower would come from where?

3 A: Volunteer and backup from other stations.

4 Q: Okay.

5 A: But I don't know their response plan for that new area.

6 Q: If you know, where would the volunteers be coming from to
7 reach that station?

8 A: Throughout West Florence Fire District.

9 Q: Would the district be able to respond before the
10 volunteers got to the station?

11 A: The truck can respond with one person.

12 Q: And that would be -- so you could have a one person
13 response right away?

14 A: Yes.

15 Q: Does that configuration of assets and manpower have any
16 impact on the insurance rating of the Darlington/Hoffmeyer
17 area?

18 A: The situation would be any properties in that newly
19 annexed area that are greater than a thousand feet from a fire
20 hydrant will have a new 3y which will be less than Darlington
21 County's 5 without regard to hydrant distance. Darlington
22 County is what we would refer to as a water hauling fire
23 district, not dependent on fire hydrants per say. West
24 Florence is primarily dependent upon fire hydrants.

25 Q: Let me make sure I understand. Currently this area has a

- 1 5 for Darlington Fire District?
- 2 A: Correct.
- 3 Q: Included in West Florence, it will have -- a residence
- 4 there will have either a 3 ---
- 5 A: If it has a hydrant within a thousand feet.
- 6 Q: Hydrants within a thousand feet.
- 7 A: If there property is over a thousand feet ---
- 8 Q: If the hydrant is more than a thousand feet, which is
- 9 essentially three football fields, if the hydrant is more than
- 10 a thousand feet, then it has a 3y?
- 11 A: Right.
- 12 Q: And I think you testified earlier that a 3y is equivalent
- 13 to an 8?
- 14 A: An old 8, which is about a twenty percent savings versus
- 15 about a sixty percent savings in insurance premiums.
- 16 Q: When we say --- what are you referring to?
- 17 A: A Class 10 is no fire protection.
- 18 Q: Okay.
- 19 A: That's where you pay the full fee.
- 20 Q: The full insurance premium rate?
- 21 A: If you're around a class 8, old 8 or a 3y, you would save
- 22 about twenty percent on your premiums.
- 23 Q: Okay.
- 24 A: If you were in a 5, it would be fifty to sixty percent
- 25 and in a 3y, it could be an additional ten percent based on

1 the insurance company and commercial property is affected by
2 rates lower than a 4 than residential. But generally
3 speaking, that -- that area, a number of residents will lose
4 insurance rating assistance.

5 Q: So again, I just want to outline this and I think the
6 Judge mentioned earlier, and it may or may not necessarily be
7 relevant, but just to try to fill in some gaps. If you're a 3
8 rating, just a plain 3 ---

9 A: Yes.

10 Q: --- what level of savings is that as compared to a 10?

11 A: Sixty.

12 Q: Sixty. Okay. So the -- currently with a 5 rating, the
13 residents in this area, regardless of how close they are to a
14 hydrant, have about a fifty percent savings?

15 A: Fifty, correct.

16 Q: Moving them into West Florence means that some of them,
17 those who are within a thousand feet of a hydrant, will have a
18 sixty percent savings?

19 A: Correct, pickup ten percent.

20 Q: Pickup ten percent. The others who are not within a
21 thousand feet of a hydrant, will have a decrease in savings --

22 -

23 A: Of thirty percent.

24 Q: --- they'll drop back to a twenty percent savings?

25 A: Yes.

1 Q: Okay. And it's a savings measured against a full
2 insurance premium?

3 A: Correct.

4 Q: Thank you, Chief.

5 THE COURT: I think we got a little new material if you
6 want to go into this IOS and premiums, if you want to I'll
7 give you the opportunity because I think that was sort of new
8 in redirect. Okay?

9 MR. JORDAN: It was.

10 THE COURT: And if you want to cross examine, I'm not
11 gonna go into recross in this case, but on that particular
12 issue I'll let you do since it's new material.

13 MR. JORDAN: Just a couple of questions.

14 THE COURT: That's fine.

15 RECROSS EXAMINATION OF SAM BROCKINGTON BY MR. JORDAN:

16 Q: Mr. Brockington ---

17 THE COURT: I'm not gonna open up redirect on this case.
18 Okay?

19 MR. JORDAN: It's a ---

20 THE COURT: Excuse me, recross.

21 MR. JORDAN: Just on this particular issue.

22 THE COURT: Just on this issue.

23 BY MR. JORDAN:

24 Q: You testified you don't know, you haven't done a study to
25 determine how many house are within the thousand feet of the

1 -- or how many houses are outside the thousand feet on this
2 new area?

3 A: I haven't done an exact number. I've ridden through the
4 subdivision and used our county GIS mapping to determine that
5 there are houses outside of the thousand foot level -- limit.

6 Q: What neighborhoods are we talking about?

7 A: It would be on the ends of the short streets off of
8 Wilburn.

9 Q: Okay.

10 A: Not in the first subdivision; it would be in the ones off
11 of Wilburn.

12 Q: And these are newer subdivisions?

13 A: This is an older subdivision.

14 Q: That area has a new -- I think it has a new subdivision
15 and an older subdivision?

16 A: Correct. This is the older area that has two fire
17 hydrants in it.

18 Q: Okay. That's all the questions.

19 THE COURT: Thank you very much. You may step down.
20 Thank you very much.

21 A: Thank you, sir.

22 THE COURT: Thank you so very much.

23 BY THE COURT:

24 THE COURT: Gentlemen, it's about ten minutes to 5:00. I
25 normally go to about -- excuse me, about 4:00 to 5:00. I've

1 about absorbed all I can absorb today. So, I'm gonna stop
2 now. What time is convenient for y'all to start back in the
3 morning? Are y'all commuting from Columbia or staying here in
4 Florence?

5 MR. NICHOLS: Staying here.

6 MR. MATTHEWS: I'm staying here as well, Your Honor.

7 THE COURT: Okay.

8 MR. MATTHEWS: 9 o'clock?

9 THE COURT: 9 o'clock satisfactory?

10 MR. MATTHEWS: Yes, sir.

11 THE COURT: Mr. Smith?

12 MR. SMITH: I'm commuting from Columbia, but I could
13 easily be here by 9 o'clock, Your Honor.

14 THE COURT: Think you can get out of that Garner's Ferry
15 Road?

16 MR. SMITH: I get on 77.

17 THE COURT: You get on 77 and get on I20 and hit the
18 road, huh?

19 MR. SMITH: Yes, sir.

20 THE COURT: All right. But you can be here by 9:00?

21 MR. SMITH: Yes, sir.

22 THE COURT: All right. We'll adjourn to 9:00 o'clock in
23 the morning.

24 MR. MATTHEWS: Thank you, Your Honor.

25 THE COURT: Thank you very much.

1 (RECESS - 3:54 P.M.)

2 *****OFF THE RECORD*****

3 JULY 26, 2016

4 (On the Record - 9:23 A.M.)

5 THE COURT: All right. You ready to call your next
6 witness?

7 MR. MATTHEWS: I am, Your Honor and a housekeeping
8 matter, just for whatever planning you propose to do with
9 regard to timing, we had four more witnesses listed. One that
10 would have been pure duplication. We're not gonna call Chief
11 DeLung. So, we're down to -- on the Plaintiff's side we're
12 down to three witnesses.

13 THE COURT: Okay. All right.

14 MR. MATTHEWS: At this time, Your Honor, we'd like to
15 call William Sweatt to the stand?

16 CLERK: Please step up to the witness stand and place
17 your left hand on the Bible and raise your right hand?

18 MR. WILLIAM SWEATT, HAVING BEEN SWORN
19 TESTIFIES AS FOLLOWS:

20 CLERK: Please be seated and state your name for the
21 record?

22 MR. SWEATT: William Sweatt.

23 COURT REPORTER: Will you spell your last name please?

24 MR. SWEATT: S-W-E-A-T-T.

25 DIRECT EXAMINATION OF WILLIAM SWEATT BY MR. MATTHEWS:

1 Q: Mr. Sweatt, could you please tell us what your profession
2 is?

3 A: Operation Manager for the 911 center?

4 Q: And by whom are you employed?

5 A: Florence County.

6 Q: And what is your title?

7 A: It's the Operations Manager.

8 Q: Operations Manager?

9 A: Yes, sir.

10 Q: And how long have you been the Florence County Operations
11 Manager and is that the -- what do you call that, the 911
12 center or dispatch center?

13 A: Florence County Central Dispatch, E911

14 Q: Florence County Central Dispatch. How long have you been
15 with the ---

16 A: Twenty-six and a half years.

17 Q: And would you describe your job responsibilities in that
18 position?

19 A: Oversight of the 911 Center and general oversight duties,
20 I guess you would say.

21 Q: All right. And what does the 911 Center do?

22 A: We answer all 911 calls for the Florence County area as
23 well as dispatch all emergency services except for Highway
24 Patrol within the county.

25 Q: That would include fire dispatch?

1 A: Yes, sir.

2 Q: Okay. By virtue of your position, are you familiar with
3 policies and procedures for the dispatch of fire and other
4 emergency response providers in Florence County?

5 A: Yes, sir.

6 Q: Are you familiar with the government entities or private
7 entities that provide fire protection service in Florence
8 County?

9 A: Yes, sir.

10 Q: And are you familiar with the fire protection entities
11 that would provide service in areas adjacent to Florence
12 County?

13 A: Vaguely.

14 Q: Are you familiar with the service areas of the
15 governmental entities or private entities in Florence County
16 that provide fire protection?

17 A: Yes, sir.

18 Q: All right. If within Florence County and I'm just gonna
19 pick a spot here -- here this is a map I'm pointing to Exhibit
20 Seventeen. If you've got someone in a home or business let's
21 say here in Florence and I'll represent that this is
22 Darlington County above the bold line and Florence County
23 below, if someone in Florence County here or here or somewhere
24 in Florence County at a home or business picks up the phone,
25 dials 911 and says we have a fire, for the purpose of saying

1 they have a fire, where does that call ring?

2 A: It will ring into the 911 center in Effingham.

3 Q: In Effingham, okay.

4 A: Yes, sir.

5 Q: Okay. And that's the Florence County 911 center?

6 A: Yes, sir.

7 Q: And who would answer the call?

8 A: One of the Florence County dispatchers.

9 Q: What would they do?

10 A: They'll basically process ---

11 Q: I'm sorry. They hear someone say we have a fire; what

12 does the person do?

13 A: They will process the call and then notify whichever

14 first responder agency or fire agency responsible for that

15 coverage area to respond to the call.

16 Q: All right. How do they know, for example, West Florence

17 or Windy Hill or Sardis/Timmons ville; how do they know which

18 one to notify?

19 A: The geographic areas are broken into zones. And then CAD,

20 the Computer Aided Dispatch System, basically tells them from

21 wherever that area, which department responds to it.

22 Q: Once they see which department is responsible that they

23 need to notify, how would they notify that department?

24 A: They set off a tone on the radio system that will alert

25 them via radio system as well as text alerts and then pager

1 alerts to their radio system.

2 Q: Okay. Can you describe that radio system you just
3 referred to?

4 A: Not really. It's just an 800 megahertz radio system
5 provided by Motorola ---

6 Q: Okay.

7 A: --- that allows us to alert the agencies that -- that we
8 dispatch for.

9 Q: All right. If someone in Darlington County, say over
10 here or way up in Darlington County here, home or business,
11 same situation, they pick up the phone, they call 911 because
12 they see a fire ---

13 A: Uh-huh (affirmative response).

14 Q: --- either in the kitchen or in a restaurant or wherever
15 and they pick up the phone, where does that call ring?

16 A: It goes to Darlington County 911.

17 Q: All right. And do you know what policies or procedures
18 they follow in the Darlington County 911?

19 A: I do not.

20 Q: The -- and that would apply when we ask -- would that
21 same thing apply if the Darlington County parcel were in this
22 area off Hoffmeyer Road? Let's talk about pre date 2014
23 timeframe.

24 A: Uh-huh (affirmative response).

25 Q: If someone were to have picked up their phone here and

1 called 911, that would've gone I think you said to Darlington
2 dispatch?

3 A: As far as I'm aware that would go to Darlington County.

4 Q: And here are these three green parcels in Darlington
5 County the same issue there?

6 A: Yes, sir.

7 Q: Let me ask you this. Look at on this map I'm gonna
8 reference a portion of Interstate 95 beginning where
9 Interstate 95 crosses into Darlington County up to Exit 164
10 here, and you may be able to see it a little bit better on
11 this blowup which is Exhibit Nineteen, from this point where
12 95 crosses into Darlington up to here.

13 A: Uh-huh (affirmative response).

14 Q: Suppose someone is on that stretch of Interstate 95 and
15 they need to report an accident, a fire and they -- they're in
16 their car and they pick up a cell phone ---

17 A: Uh-huh (affirmative response).

18 Q: --- and they dial from Interstate 95 and they dial 911,
19 where does that call get received?

20 A: Well, that section of 95 goes to Florence County.

21 Q: It goes to Florence County?

22 A: Yes, sir.

23 Q: All right. Even though that section of 95 from here to
24 here is passing through Darlington County?

25 A: It is.

1 Q: And why would that go to Florence County? How does that
2 work?

3 A: It's programming inside the tower there I guess located
4 along the interstate. It's programmed, I'm assuming, to go to
5 Florence County.

6 Q: Okay. To your knowledge, has there been any change in
7 the way those calls get routed since May 28th of 2014?

8 A: Not that I'm aware of.

9 Q: All right. Just to -- just to be clear on what it is
10 we're talking about, I'm going to define a few terms. Let's
11 -- on this map that area of Interstate 95 I was just talking
12 about from the Darlington County line up to Exit 164; we'll
13 call that the I95 segment. Okay?

14 A: Okay.

15 Q: Before May 28th of 2015, were you aware of any problems
16 in serving and responding to the I95 segment if there was a
17 call from there?

18 A: No, sir, not that I'm aware of.

19 Q: And prior to that same date, were you aware of any
20 problem that Darlington County Dispatch had in responding to
21 the Darlington County area consisting of the three parcels?

22 A: Not that I'm aware of.

23 Q: But you're not familiar particularly with the policies of
24 Darlington County?

25 A: No, sir.

1 Q: The -- with regard to the -- this area, which is just off
2 of Hoffmeyer, we're representing that this is Hoffmeyer Road
3 and with regard to this triangle in Darlington County just off
4 Hoffmeyer Road, just south of Hoffmeyer where it crosses into
5 Darlington, with regard to that area, are you aware of any
6 problems that Darlington dispatch or the role with Darlington
7 fire protection entity, concerning that area prior to July
8 7th, 2015?

9 A: Not that I'm aware of.

10 Q: No further questions, Your Honor. Thank you.

11 THE COURT: Cross examination?

12 MR. JORDAN: Thank you, Your Honor.

13 CROSS EXAMINATION OF WILLIAM SWEATT BY MR. JORDAN:

14 Q: Mr. Sweatt, just a few questions for you. I think you
15 testified earlier that you've been with Florence County 911
16 for twenty-six years?

17 A: Yes, sir.

18 Q: In that timeframe, I would imagine dispatch technology
19 has changed over the years; is that fair to say?

20 A: Yes, sir.

21 Q: It's improved, I guess?

22 A: Absolutely.

23 Q: Now, Mr. Matthews asked you questions, for instance, if
24 you were in Florence County and you picked up the phone and
25 dialed 911, it's gonna ring in your call center; is that

1 right?

2 A: Correct.

3 Q: And if you're in Darlington, it's gonna ring in their
4 call center?

5 A: Correct.

6 Q: Now, of course we know that there does exist in the low
7 end of our county, the South Lynches Fire, special purpose
8 district; are you familiar with area?

9 A: Correct.

10 Q: So, for instance, if you're in that portion of Florence
11 County and you pick up the phone to call 911, dispatch would
12 alert South Lynches with would be the appropriate entity to
13 that; is that correct?

14 A: Correct.

15 Q: The same being true if you were in Williamsburg County
16 that they would call South Lynches based on -- even though
17 it's in a different county, they would still get the word that
18 they were to respond?

19 A: Correct.

20 Q: All right. And while there are different technologies
21 involved, I'm assuming -- is that fair to say -- in the
22 counties?

23 A: Yes, sir.

24 Q: There are mechanisms and ways to deal with that issue?

25 A: Yes, sir.

1 Q: And make sure that the appropriate party responds to the
2 appropriate call?

3 A: Correct.

4 Q: And that occurs on a regular basis?

5 A: Yes, sir.

6 Q: You also were asked questions regarding the strip of land
7 on the interstate that some is in Darlington County and some
8 is Florence County, specifically on Plaintiff's Nineteen, this
9 area up here?

10 A: Uh-huh (affirmative response).

11 Q: You see that?

12 A: Yes, sir.

13 Q: And I think you testified that if you were on the
14 interstate on your cell phone and called, whether you were in
15 the Darlington stretch or the Florence stretch, it would go to
16 Florence EMS or Florence 911?

17 A: Yes, sir.

18 Q: And that's been the case for how long?

19 A: As long as I've been there or as long as we've been
20 centralized anyway, since 2000.

21 Q: So, since at least 2000, Florence has been covering the
22 Darlington portion of the interstate?

23 A: Correct.

24 MR. JORDAN: No further questions, Your Honor.

25 THE COURT: Redirect?

1 MR. SMITH: I do have one or two questions, Your Honor.

2 THE COURT: Oh, I'm sorry. You didn't stand up fast
3 enough.

4 MR. SMITH: I apologize. I just wanted to get something
5 straight in my mind.

6 CROSS EXAMINATION OF WILLIAM SWEATT BY MR. SMITH:

7 Q: I'm Emory Smith. I represent the State of South
8 Carolina. Which exhibit number is this?

9 MR. MATTHEWS: Seventeen. Seventeen.

10 MR. SMITH: Okay. Where is this Hoffmeyer Road area on
11 it?

12 MR. MATTHEWS: This is Hoffmeyer.

13 MR. SMITH: Should that be marked on there? There have
14 been a lot of references to it?

15 MR. MATTHEWS: Your Honor, I've circled the area and I've
16 labeled it Darlington/Hoffmeyer area.

17 THE COURT: Okay.

18 BY MR. SMITH:

19 Q: Sir, if someone made a landline call from this Hoffmeyer
20 Road area today to 911, where would that go?

21 A: Darlington.

22 Q: It would go to Darlington even though it's served by West
23 Florence Fire District?

24 A: It would go to Darlington, yes.

25 Q: If it's in Darlington County, it would go to Darlington

1 County.

2 Q: If somebody was standing in the yard of one of those
3 homes, the Hoffmeyer Road area, and made a cell phone call or
4 made a cell phone call from inside of the house, where would
5 that go?

6 A: It could go to Florence or it could go to Darlington; it
7 depends on the tower.

8 Q: All right. Looking at this area at the upper part of
9 this map that says parcels in Darlington County referenced in
10 Act 183 that's adjacent to 95, if someone made a landline call
11 from one of those houses, where would that go, 911 call?

12 A: I think all that's on the interstate and I don't know
13 that there's any residences there, but those along the
14 interstate would go to Florence.

15 Q: Okay. And if someone made a cell phone call?

16 A: That would come to Florence.

17 Q: Okay. All right. Thank you. That's all.

18 THE COURT: Any redirect?

19 MR. MATTHEWS: Just briefly on that one last question.

20 REDIRECT EXAMINATION OF WILLIAM SWEATT BY MR. MATTHEWS:

21 Q: The three parcels in Darlington County, the next to the
22 last question, if a landline call was made from those three
23 parcels in Darlington County, where would they go?

24 A: If it's a landline, it would go to Darlington.

25 Q: And the follow up question Mr. Smith asked but if it's a

1 cell phone you think it'd probably go to Florence?

2 A: If it's a cell phone it would come to Florence.

3 Q: Because of the tower location you said?

4 A: Yes,

5 Q: No further questions, Your Honor.

6 THE COURT: You may step down. Thank you very much.

7 Call your next witness?

8 MR. MATTHEWS: Yes, Your Honor. We would call Keith
9 Spivey.

10 CLERK: Please step up to the witness stand and place your
11 left hand on the Bible and raise your right hand.

12 KEITH SPIVEY, HAVING BEEN SWORN

13 TESTIFIES AS FOLLOWS:

14 CLERK: Please be seated and then state your name for
15 the record.

16 MR. SPIVEY: My name is Keith Thomas Spivey, Chief of
17 Palmetto Rural Fire Department.

18 DIRECT EXAMINATION OF KEITH SPIVEY BY MR. MATTHEWS:

19 Q: Good morning, Chief Spivey.

20 A: Good morning.

21 Q: I think you just answered my first couple of questions.
22 You stated that you are the Chief of the Palmetto Rural Fire
23 District?

24 A: That's correct.

25 Q: What is the Palmetto Rural Fire District?

1 A: Palmetto Rural Fire District is the fire department that
2 protects 36 square miles of the Palmetto voting district.

3 Q: In which county?

4 A: In Darlington.

5 Q: Do you know when the Palmetto Rural Fire District was
6 created?

7 A: In 1996.

8 Q: Do you know by whom it was created?

9 A: No, sir, I don't.

10 Q: Okay. How long have you been the fire chief there?

11 A: I've been the fire chief there now seven years.

12 Q: What were your responsibilities prior to that position?

13 A: As a lieutenant.

14 Q: And how long have you been with Palmetto Rural Fire
15 District in total?

16 A: Twelve years.

17 Q: Can you describe your responsibilities as fire chief
18 there?

19 A: My responsibilities as fire chief to oversee the day-to-
20 day operations of the fire department and making sure that,
21 you know, everything is there that we need to provide the
22 services for fire fighting or any lifesaving activity.

23 Q: Okay. Chief Spivey, I'm gonna direct your attention to
24 what's been introduced into evidence as Exhibit Nineteen,
25 which is -- this is an enlargement of Exhibit Nineteen. I'm

1 gonna direct your attention to these three parcels that were
2 colored green. If you need to step down to be able to see
3 this better feel free but if you can see from there ---

4 A: I'm good.

5 Q: I direct your attention to these three parcels that are
6 colored in green. Prior to May 28th, 2014, were those three
7 parcels in Palmetto Rural service area?

8 A: Correct.

9 Q: And now I want you to look at the red area north of the
10 three parcels. Same question with regard to those, prior to
11 May 28th, 2014 was the red area inside the Palmetto Rural Fire
12 District?

13 A: That's correct.

14 Q: Okay. To your knowledge are there homes or businesses
15 located in that red area?

16 A: Yes, there are homes.

17 Q: Okay. In the event of a call directing your department
18 to come to a fire in the three parcels, where would your
19 department respond?

20 A: Station 1 which is located at 1304 East McKiever Road.

21 Q: Okay. Would that be here?

22 A: That's correct.

23 Q: Okay. I'm going to direct your attention to a brown line
24 that shows up on this map going from what you refer to as
25 Station 1 down to the three parcels and I'll represent to you

1 that it says here 1.855 miles distance along that route. Is
2 that a reasonably accurate calculation of the distance from
3 your station house to those three parcels?

4 A: That's about right, yes, sir.

5 Q: Are any assets of your department located on those three
6 parcels?

7 A: No.

8 Q: Chief Spivey, are you aware of any problem that Palmetto
9 Rural had in protecting those three parcels prior to May 28th,
10 2014?

11 A: No, sir.

12 Q: Are you aware of legislation in 2014 that purported to
13 those three parcels into a new special purpose district with
14 West Florence?

15 A: Yes, sir.

16 Q: All right. And I'm gonna refer to that as the new West
17 Florence Fire District ---

18 A: Okay.

19 Q: --- for the next questions. Are you aware of any facts
20 or circumstances that would make it faster, safer or more
21 efficient for the new West Florence Fire District to serve
22 those three parcels than for Palmetto Rural to serve them?

23 A: No, sir.

24 Q: Still on this, are you aware of any reason why -- are you
25 aware of any reason why it would be logical or sound to have

1 West Florence serve one side of East McKiever here, but not
2 the other side?

3 A: It didn't make no sense to me, but ---

4 Q: Okay. The -- I'm gonna ask you again on this map, they
5 are showing a small red square along the three parcels, which
6 is a separate parcel, tax map number 219-03-01012. Are you
7 aware of any reason why it would be logical or sound to have
8 West Florence serve these three parcels, but not to serve that
9 other parcel in the middle of them?

10 A: No, sir.

11 Q: Chief Spivey, I'm gonna show you an exhibit which is not
12 yet been introduced. It is marked as Plaintiff's Exhibit
13 Sixteen. Do you recognize these documents?

14 A: Yes, sir.

15 Q: Can you tell me what they are?

16 A: It's an Automatic Aid Agreement that was signed between
17 the West Florence Fire District and the Palmetto Rural Fire
18 District.

19 Q: Okay. And ---

20 A: That was for those three parcels of property on the
21 right-hand side there facing McKiever Road.

22 Q: An Automatic Aid Agreement for the three green parcels?

23 A: Correct.

24 Q: Okay. And if you'll look at the third page of that
25 document or that exhibit; can you tell me what that document

1 is?

2 A: That's the signatures of the Chief of West Florence Fire
3 District, which is Larue Hendricks and myself.

4 Q: Okay. And look, I'm sorry, look at the fourth page.
5 Excuse me.

6 A: Okay.

7 Q: Can you tell me what the caption is on that page; what
8 does it ---

9 A: State of South Carolina, County of Florence, Mutual Aid
10 Agreement which was May the 11th dated July of 2014 between
11 us, the Palmetto Rural Fire Department and West Florence Fire
12 District.

13 Q: Okay. So that -- the first three pages I think you said
14 were said were an Automatic Aid Agreement and that next
15 document is a Mutual Aid Agreement?

16 A: Correct.

17 Q: Okay. Looking back at the Automatic Aid Agreement, tell
18 me again who signed that?

19 A: That's Larue Hendricks who is the Fire Chief of West
20 Florence and myself as Chief of Palmetto Rural Fire
21 Department.

22 Q: Okay. What does that Automatic Aid Agreement commit
23 Palmetto Rural to do?

24 A: What an Automatic Aid Agreement does is, if they have a
25 call on those three parcels of property, that we would

1 automatically respond with West Florence to assist in the fire
2 fighting operations there.

3 Q: So that agreement requires Palmetto Rural automatically
4 when there's a call to those three parcels, even though it's
5 been removed from your territory by the legislation, it still
6 requires you automatically to respond to; is that correct?

7 A: That's correct.

8 Q: What was the date on that Automatic Aid Agreement?

9 A: The 11th of July ---

10 Q: All right.

11 A: --- 2014.

12 Q: Whose letterhead is the Automatic Aid Agreement on?

13 A: West Florence.

14 Q: Is that who prepared it?

15 A: I'm making an assumption that's correct.

16 Q: Who, who presented it to you for your signature?

17 A: Chief Hendricks.

18 Q: Okay. And I believe you said the date on it was July the
19 11th?

20 A: Correct.

21 MR. MATTHEWS: Okay. Your Honor, I would move the
22 introduction of Exhibit Six into evidence.

23 THE COURT: Sixteen?

24 MR. MATTHEWS: I'm sorry, Sixteen, yes, sir.

25 THE COURT: Any objection?

1 MR. JORDAN: No, sir.

2 THE COURT: Sixteen admitted without objection.

3 PLAINTIFF'S EXHIBIT NUMBER SIXTEEN

4 ADMITTED INTO EVIDENCE

5 BY MR. MATTHEWS:

6 Q: No further questions for this witness, Your Honor.

7 THE COURT: Cross examination?

8 MR. JORDAN: Yes, sir.

9 CROSS EXAMINATION OF KEITH SPIVEY BY MR. JORDAN:

10 Q: Chief Spivey, how are you today?

11 A: I'm good; how about yourself?

12 Q: Good; thank you. I think you said you'd been at Palmetto
13 Rural in one form or fashion for twelve years?

14 A: That's correct.

15 Q: How many stations do y'all have?

16 A: Two.

17 Q: Two. And that would be, of course, you referenced in
18 Plaintiff's Exhibit Nineteen Palmetto Rural Fire here on
19 McKiever; is that 1 or 2?

20 A: That's Station 1.

21 Q: That's Station 1?

22 A: Uh-huh (affirmative response).

23 Q: And then I think Number 2 is on Plaintiff's -- it's not
24 marked on here, but on Plaintiff's Seventeen it will be
25 somewhere over in this area?

- 1 A: Ebenezer Road.
- 2 Q: How far from the Florence County line would that be?
- 3 A: Probably about three miles.
- 4 Q: Three miles. What's your ball park annual budget at
- 5 Palmetto Rural?
- 6 A: About \$200,000 a year.
- 7 Q: And that's for both stations and ---
- 8 A: Uh-huh (affirmative response).
- 9 Q: How many full-time staff do you have?
- 10 A: As of right now, we have one.
- 11 Q: One?
- 12 A: Uh-huh (affirmative response).
- 13 Q: Is that a fire fighter or is that a staff person?
- 14 A: That's me.
- 15 Q: That's you?
- 16 A: Right.
- 17 Q: Where's your primary office?
- 18 A: Right there at 1304 McKiever Road.
- 19 Q: I want to ask you some -- kind of a broad a question that
- 20 deals with boundaries. Any time when it's determined what
- 21 your zone is, your area of responsibility, it's outlined by
- 22 boundaries; is that fair to say?
- 23 A: Uh-huh (affirmative response).
- 24 Q: And then you have neighboring zones where other
- 25 departments have responsibility; is that fair to say?

1 A: Right.

2 Q: Oftentimes those lines are determined -- or how are those
3 lines determined?

4 A: That was a process that happened way before me, but I
5 guess that's -- you just sit down and whoever decides they
6 want to develop a fire district, they just, you know they sit
7 down and -- you know that was down back in '76 as far as ours
8 and they had to deal with the County and, you know, the other
9 fire departments at that time.

10 Q: Would you agree that in every setting -- would you agree
11 we need the boundaries to divide up who's responsible for
12 what?

13 A: Of course.

14 Q: Would you agree that in every setting, that once somebody
15 is gonna be responsible for one side of the street and
16 somebody is gonna be responsible for another because we've got
17 to have a boundary?

18 A: Right.

19 Q: Okay. Now, you were shown and testified to, I believe,
20 an Automatic Aid and Mutual Aid Agreement. Those agreements
21 happen all over the state; is that fair to say?

22 A: That's correct.

23 Q: Between different entities?

24 A: That's correct.

25 Q: They are tools in providing the best possible service,

1 are there not?

2 A: That's correct.

3 Q: To make sure that -- that everyone -- every constituent,
4 every resident gets the best possible fire service?

5 A: That's true.

6 Q: And while they're not used everywhere, they are very
7 common; is that fair to say?

8 A: That's correct.

9 Q: They're not just particular -- this isn't the first one
10 you've seen?

11 A: No.

12 Q: You testified earlier that you're aware of legislation
13 that created West Florence Special Purpose Fire District back
14 in '14; is that right?

15 A: Right.

16 Q: Since that time, are you aware of any problems associated
17 with the service as to this particular area of Darlington?

18 A: Well, that's -- I'm not sure what you're looking at
19 there.

20 Q: I'm pointing to the three parcels that are in Darlington
21 County that the statute provided that West Florence would now
22 be responsible for?

23 A: There hadn't been any problems with that area right
24 there.

25 Q: Okay.

1 A: As far as response from us.

2 Q: Okay. Thank you very much.

3 A: You're welcome.

4 MR. JORDAN: Thank you, Your Honor.

5 THE COURT: Has there been any calls on those three lots?

6 A: We've had plenty of wrecks in front of this.

7 THE COURT: Since 2014 on those particular three lots?

8 A: We've had some wrecks in front of them, but no direct ---

9 THE COURT: I wasn't talking about on the interstate but
10 on the three lots. I think they said there's two houses and a
11 garage.

12 A: No, no, sir.

13 THE COURT: Have you ever had a call on those?

14 A: I don't think we've had anything there in the twelve
15 years that I've been there.

16 THE COURT: Okay. On the interstate you have?

17 A: Well see, we don't cover the interstate; that's an
18 agreement that we have. The Darlington area of the
19 interstate, we have an agreement with West Florence and Windy
20 Hill.

21 THE COURT: Okay.

22 A: Because we don't have access. All we have is the
23 overpass, but we have no way to get to it and our response
24 time would be so long to get there to go to 52 or T.V. Road to
25 get there, that's why we have the agreements. West Florence

1 covers the northbound lanes for us and Darlington and Windy
2 Hill covers the southbound lanes.

3 THE COURT: Okay. All right. Any questions pursuant to
4 the questions the Court asked?

5 MR. MATTHEWS: Just one, Your Honor.

6 REDIRECT EXAMINATION OF KEITH SPIVEY BY MR. MATTHEWS:

7 Q: The agreements that you indicated you have, that Palmetto
8 Rural has with West Florence and Windy Hill for the coverage
9 of Interstate 95, have those agreements been in place since
10 before May 28th of 2014?

11 A: Yeah, those have been in place ever since I've been
12 there.

13 MR. MATTHEWS: That's all, Your Honor.

14 MR. JORDAN: I was gonna ask that question so he answered
15 my question as well.

16 THE COURT: You may step down. Thank you.

17 A: Thank you.

18 THE COURT: Call your next witness.

19 MR. MATTHEWS: Your Honor, I'd like to call Chief Kenny
20 Stratton.

21 CLERK: Please place your left hand on the Bible and
22 raise your right hand.

23 KENNY STRATTON, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated and state your name for the

1 record.

2 MR. STRATTON: Kenny Stratton.

3 COURT REPORTER: Will you spell your last name, please?

4 MR. STRATTON: S-T-R-A-T-T-O-N.

5 DIRECT EXAMINATION OF KENNY STRATTON BY MR. MATTHEWS:

6 Q: Chief Stratton, are you currently employed?

7 A: Currently employed, yes, sir. I'm currently employed
8 with Newton's Fire and Safety in sales.

9 Q: Okay. What has your role previously been with the
10 Darlington County Fire District?

11 A: I started in there as the Assistant Chief, promoted to
12 Deputy Chief and retired this past May as Fire Chief.

13 Q: How long did you serve as either Fire Chief or Interim
14 Detective Chief?

15 A: Fire Chief would have been three years this coming
16 September, so and I was interim twice for a total of about
17 seven years in that role.

18 Q: What is the Darlington County Fire District?

19 A: Darlington County Fire District is a Special Taxing
20 District formed under the Darlington County Government by
21 County Council.

22 Q: What does it cover?

23 A: We cover all the boundaries of Darlington County with the
24 exception of the City of Hartsville Fire Department, the City
25 of Darlington and Palmetto Rural.

1 Q: Okay. Do you know when the Darlington County Fire
2 District was created?

3 A: 1987.

4 Q: '87.. Would you describe your job responsibilities as
5 Chief there?

6 A: Yes, sir, I'm responsible for the overall day-to-day
7 operations of the fire district to include budgeting, just
8 general oversight and commanding of fires and -- budgeting.

9 Q: Okay. Chief Stratton, I'm gonna direct your attention to
10 an enlargement of Plaintiff's Exhibit Seventeen and in
11 particular I want to direct your attention to an area. I'll
12 represent that the heavy black line represents the boundary
13 between Darlington and Florence Counties. And I want to draw
14 your attention to an area in Darlington County just south of
15 Hoffmeyer Road where Hoffmeyer crosses into Darlington County.
16 It's an area that includes Sandy Lane, Rose Drive, Hickory Nut
17 Ridge, Winburn Drive; are you familiar with that area?

18 A: Yes, sir.

19 Q: And I'm gonna refer to that as the Darlington/Hoffmeyer
20 area ---

21 A: Okay.

22 Q: --- for convenience of reference. First, can you tell me
23 is the relative location of the Darlington/Hoffmeyer as shown
24 on this map an accurate location?

25 A: Yes, sir.

1 Q: Are any of the assets of your department located in the
2 Darlington/Hoffmeyer area?

3 A: No, sir, not on those properties.

4 Q: Okay. Are you aware of any problem that Darlington --
5 first of all, prior to July 7th, 2015 was the
6 Darlington/Hoffmeyer area in the service territory of
7 Darlington County Fire District?

8 A: Yes, sir, that's correct.

9 Q: Are you aware of any problem that the Darlington County
10 Fire District had in providing prompt and effective service to
11 the Darlington/Hoffmeyer area prior to July 7th, 2015?

12 A: No, sir.

13 Q: Are you aware of legislation from 2014 that attempted to
14 create a new special purpose district that included an area of
15 Florence County and three parcels in Darlington County?

16 A: Yes, sir.

17 Q: All right. I'm gonna refer to that as the new West
18 Florence Fire District. Are you aware of legislation in 2015
19 that purported to include the Darlington/Hoffmeyer area into
20 the new West Florence Fire District?

21 A: Yes, sir.

22 Q: Are you aware of any facts or circumstances that were in
23 place on January 7, 2015 that would have made it more fast or
24 safer or efficient to serve the Darlington/Hoffmeyer area from
25 West Florence instead of from Darlington County?

1 A: No, sir.

2 Q: Where would Darlington County Fire District have provided
3 service to Darlington/Hoffmeyer area?

4 A: The primary station would be our Station 5 at 4793
5 Hoffmeyer Road.

6 Q: Okay. An earlier witness testified that that would
7 probably be about here (indicating)?

8 A: That's it.

9 Q: That's an accurate location? Chief Stratton, do you know
10 at July 7, 2015, if you know, if West Florence Rural District
11 or the West Florence Fire District were called to the
12 Darlington/Hoffmeyer area, do you know where they would serve
13 from?

14 A: From, yeah, I guess their Station 1 off Pine Needle Road,
15 I would assume.

16 Q: Okay. And again, if you know, would switching fire
17 protection service for the Darlington/Hoffmeyer area from West
18 Florence Fire District at Pine Needles Road -- excuse me,
19 switch it from Darlington County Fire District further up
20 Hoffmeyer, switching it to West Florence Fire District at Pine
21 Needles Road, would that be likely to result in an increase or
22 a decrease in the insurance ratings for that area?

23 A: I would assume so based on testimony yesterday on the
24 road mileages.

25 Q: So, it's your testimony that it would be an increase or

1 that it would be a decrease? .

2 A: Could you repeat the question? Maybe I misunderstood
3 you.

4 Q: Would changing the service provider at July 7, 2015, from
5 the Darlington County Fire District further up Hoffmeyer Road
6 to the new West Florence Fire District on Pine Needles Road,
7 would that change on July 7, 2015 be likely to affect the
8 insurance rating for the Darlington/Hoffmeyer area -- and I
9 think you just said you felt that it probably would?

10 A: Yes, it would.

11 Q: Do you think it would improve the rating or affect it
12 negatively?

13 A: I would say negative.

14 Q: Okay.

15 THE COURT: I'm sorry, what did you say; I didn't hear
16 you?

17 A: Negative.

18 THE COURT: Okay.

19 BY MR. MATTHEWS:

20 Q: And are you familiar that a new station is under
21 construction for West Florence Fire District also on Hoffmeyer
22 Road in the other direction approximately here?

23 A: Yes, sir.

24 Q: When that station comes online, do you anticipate that it
25 would improve -- that it would affect the insurance rating on

1 the Darlington/Hoffmeyer area?

2 A: Yes, sir.

3 Q: And you think that would be an improvement or a negative
4 impact?

5 A: I think it would be both based on the circumstances and
6 the road mileages and the way the ISO ratings are, you know,
7 distributed.

8 Q: Could it -- could it have a positive effect on some and a
9 negative effect on others?

10 A: That's correct.

11 Q: Okay. I'm gonna represent to you that the legislation
12 that we talked about a minute ago from 2015 includes a
13 provision that causes it to expire on July the 7th, 2020. Are
14 you aware of any facts or circumstances or plans or
15 projections that on or about July 7, 2020 would change the
16 relevant merits of who should serve the Darlington/Hoffmeyer
17 area?

18 A: No, sir.

19 MR. MATTHEWS: No further questions, Your Honor.

20 THE COURT: Cross examination?

21 CROSS EXAMINATION OF KENNY STRATTON BY MR. JORDAN:

22 Q: Chief Spivey, how are you today?

23 A: Chief Stratton.

24 Q: Chief Stratton, I'm sorry. Too many chief's coming
25 through here.

- 1 A: I'm fine; thank you.
- 2 Q: You said you'd recently retired; is that right?
- 3 A: Yes, sir.
- 4 Q: When did you say you retired?
- 5 A: May 31st of this year.
- 6 Q: Okay. But you were the Chief, we can agree, from July of
- 7 last year when the Darlington/Hoffmeyer portion was moved from
- 8 Darlington to West Florence's responsibility?
- 9 A: I came in September of 2013 as the chief.
- 10 Q: So, from the time of that second legislation that brought
- 11 in the Darlington/Hoffmeyer portion ---
- 12 A: Right.
- 13 Q: --- up until the time you retired, that was your area?
- 14 A: Yes, sir.
- 15 Q: I think you testified that, and I'm pointing to the
- 16 Darlington/Hoffmeyer area that's been circled here on
- 17 Plaintiff's Seventeen, the Darlington station, I think you
- 18 said Station 5?
- 19 A: That's correct.
- 20 Q: Would be somewhere where my left hand is up in the left
- 21 corner of the map.
- 22 A: Right.
- 23 Q: And that would've been the primary entity responsible for
- 24 coming to ---
- 25 A: That's correct.

1 Q: And I think you testified that it's your understanding
2 that, as we sit here today and in the last twelve months, that
3 if there was an issue in this area that required fire
4 response, that the Pine Needles Station, West Florence 1 would
5 be the responding entity; is that your understanding?

6 A: If that was in their response area, yes, sir.

7 Q: Now, you also testified that you understand there's a new
8 station under construction where I'm pointing to now that will
9 most likely be the responding entity for this
10 Darlington/Hoffmeyer portion?

11 A: That's correct.

12 Q: And I think you would agree with me that this new station
13 is much closer to the Darlington/Hoffmeyer area portion that
14 we're talking about than the Darlington Number 5?

15 A: Yeah, I'm not sure of the road mileage. I haven't
16 checked that myself from the West Florence station, but ---

17 Q: It's definitely in this area?

18 A: --- it's definitely closer to that area.

19 Q: Definitely closer?

20 A: Yes, sir.

21 Q: Mr. Matthews asked you -- let's talk about that area for
22 just a minute, this area right here. He asked you some
23 question regarding this ---

24 THE COURT: While you're by the map, would you circle
25 that area and put it Darlington County Hoffmeyer Road area so

1 it could be identified?

2 MR. JORDAN: It's been marked that way, Judge.

3 THE COURT: Oh, is it already marked?

4 MR. JORDAN: It is -- it's hard to tell from any distance
5 but ---

6 THE COURT: I mean, I can't tell if it is or not.

7 MR. JORDAN: It's been circled ---

8 THE COURT: And marked?

9 MR. JORDAN: --- and marked Darlington/Hoffmeyer area.

10 THE COURT: Okay. All right. Thank you, sir.

11 MR. JORDAN: Yes, sir.

12 BY MR. JORDAN:

13 Q: Mr. Matthews asked you questions about the ISO rating of
14 this area?

15 A: That's correct.

16 Q: Tell me, have you done any special study or review to
17 look at that area in particular?

18 A: In what aspect?

19 Q: To determine the ISO rating?

20 A: Our ISO rating is a 5/10 for Darlington County.

21 Q: I understand that, but I'm talking about this area in
22 particular. You said -- you speculated as to how this all
23 would affect that area ISO rating; did you not?

24 A: Yes, I did.

25 Q: All right. So, I'm asking, did you rely on any specific

1 information that you have, for instance did you go do a study
2 or review of that area to determine your opinion on that?

3 A: My opinion is based on the facts of Darlington County
4 Fire District's ISO rating of 5/10.

5 Q: Okay.

6 A: Another District's ISO information is not privy to
7 another Fire Chief, so I can't confirm what Darlington and
8 West Florence ISO rating is.

9 Q: So you haven't gone out there yourself as an individual
10 and walked that area and looked at it and give -- to determine
11 your opinion on the ISO aspect?

12 A: No need because I know our district.

13 Q: I understand. Thank you very much.

14 A: Thank you.

15 THE COURT: Any redirect?

16 MR. MATTHEWS: Just a little bit, Your Honor.

17 REDIRECT EXAMINATION OF KENNY STRATTON BY MR. MATTHEWS:

18 Q: Chief Stratton, on the last question about the ISO, I
19 believe you had testified on direct examination that you were
20 referring to testimony yesterday about the distances?

21 A: That's correct.

22 Q: And if the -- just a moment. If the -- were you here in
23 court yesterday, sir, and that's where you heard the
24 testimony?

25 A: That's correct.

1 Q: Are you referring to the testimony of Chief Brockington?

2 A: That's correct.

3 Q: I will represent to you that Chief Brockington's
4 testimony was that the distance from your station to the
5 Darlington/Hoffmeyer area, your station up Hoffmeyer Road to
6 the Darlington/Hoffmeyer area from which it would have
7 previously been served, was 3.9 miles and that the distance
8 from the Pine Needles Road Station to the Darlington/Hoffmeyer
9 area was just over five miles?

10 A: Right.

11 Q: Would that distance differential be relevant to the ISO?

12 A: Yes, sir, very much.

13 Q: Mr. Jordan also asked that over the past year since July
14 7th of 2015, would West Florence have responded to these
15 areas. Are you familiar -- to your knowledge, has there been
16 any change in the dispatch mechanisms since July 7, 2015?

17 A: Not that I'm aware of.

18 Q: So prior to July 7, 2015, a dispatch call from this area
19 would have gone to Darlington dispatch?

20 A: That's correct.

21 Q: And that would have been routed to Darlington?

22 A: That's right.

23 Q: And to your knowledge, I think you just said that hasn't
24 changed since July 7, 2015?

25 A: Not to my knowledge.

1 Q: And I believe you testified to this earlier. Prior to
2 July 7, 2015, were you aware of any problems in getting prompt
3 and effective service to that area?

4 A: No, sir.

5 MR. MATTHEWS: No further questions, Your Honor.

6 BY THE COURT:

7 THE COURT: Your response by phone, would that be the
8 landline phone from that area Hoffmeyer and Darlington County?

9 A: Yes, sir.

10 THE COURT: Now what would happen with a cell -- if it
11 was a cell phone call 911?

12 A: I'm not sure.

13 THE COURT: Depending on where the tower was?

14 A: I can't answer that; I'm not sure on how that works.

15 THE COURT: All right. Thank you very much.

16 A: Thank you.

17 THE COURT: You may step down. Call your next witness?

18 MR. MATTHEWS: Your Honor, that concludes our case in
19 chief. We reserve the right to rebuttal if necessary after
20 the three witnesses of the defense.

21 THE COURT: Are you going -- are you planning on calling
22 Representative Lowe or is Defense gone call him.

23 MR. MATTHEWS: We have submitted his earlier deposition
24 and a radio interview as part of the exhibits. We're not
25 gonna call him as a witness. I believe that the Defendants

1 are gonna call him by video ---

2 THE COURT: All right. All right. Now, you've already
3 submitted his excerpts on deposition, right?

4 MR. MATTHEWS: That's correct. In fact the entire
5 deposition has been submitted as an exhibit.

6 THE COURT: What number is that?

7 MR. MATTHEWS: That is Exhibit Fourteen.

8 THE COURT: Fourteen?

9 MR. MATTHEWS: Yes, Your Honor, and the attachments to
10 his deposition, the exhibits to his deposition are Fourteen(A)
11 ---

12 THE COURT: Through E?

13 MR. MATTHEWS: Through E, yes, Your Honor.

14 THE COURT: Okay. And y'all are planning on calling Lowe
15 in your case, right?

16 MR. NICHOLS: Yes, sir.

17 THE COURT: All right. He's rested. I'll be glad to
18 hear any motions either party would like to make?

19 Plaintiff, you have any motions?

20 MR. MATTHEWS: Not to make at this point, Your Honor. I
21 understand that ---

22 THE COURT: I'll be glad to hear any motions Defense
23 wants to make?

24 MR. NICHOLS: Judge, we have no motions to make at this
25 time. We know we need to go on forward.

1 THE COURT: Okay. All right. Do you want to take a
2 short break to get your witnesses ready to go or -- I think
3 you're gonna have what, two, I think you said?

4 MR. JORDAN: We have two, Judge. Mr. Nichols put me in
5 charge of the witnesses and they're both here, but ---

6 THE COURT: All right. We'll take about a five or ten-
7 minute break. Let me know when you're ready to proceed, okay?

8 MR. JORDAN: Great. Thank you.

9 THE COURT: All right. Thank you.

10 (RECESS - 10:13 A.M.)

11 *****OFF THE RECORD*****

12 (On the Record - 10:24 A.M.)

13 THE COURT: Is the defense ready to call their first
14 witness?

15 MR. JORDAN: Yes, sir, Your Honor.

16 THE COURT: All right.

17 MR. JORDAN: We call Mr. Willard Dorriety.

18 THE COURT: I'm sorry, call who?

19 MR. JORDAN: Mr. Willard Dorriety.

20 THE COURT: Okay.

21 CLERK: Please step up to the witness stand and then
22 place your left hand on the Bible and raise your right hand.

23 MR. WILLARD DORRIETY, JR., HAVING
24 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated.

1 MR. DORRIETY: All right. Thank you.

2 CLERK: And then state your name for the record?

3 MR. DORRIETY: My name is Willard Dorriety, Jr.

4 COURT REPORTER: Please spell your last name?

5 MR. DORRIETY: My last name is spelled D-O-R-R-I-E-T-Y.

6 DIRECT EXAMINATION OF WILLARD DORRIETY, JR. BY MR. JORDAN:

7 Q: Mr. Dorriety, you're from Florence; is that correct?

8 A: From Florence, yes. I was born and raised in
9 Timmons ville but I've already been a resident of Florence
10 County.

11 Q: And I believe you have service within the county
12 government; is that right?

13 A: Yes, I have -- I served on the Florence District I School
14 Board for ten years and I'm presently serving as the County
15 Council member for District 9 in West Florence.

16 Q: And how long have you been serving on County Council?

17 A: I'm in my -- coming to the conclusion of my first term
18 which in January will be four years.

19 Q: And are you running for re-election?

20 A: Yes, I am.

21 Q: Are you opposed?

22 A: No.

23 Q: Barring unforeseen circumstances, you will be elected to
24 another term -- another four-year term to County Council?

25 A: That is correct.

1 Q: Now I want to talk to you and ask you some questions
2 about the unification or consolidation process of the Florence
3 Fire System in Florence County. Are you familiar with that?

4 A: Yes, I am.

5 Q: To your knowledge, when did that first become a hot topic
6 or consideration, I guess you'd say?

7 A: Actually after we finished the Capital Sales Tax II it
8 really became a discussion with County Council.

9 Q: And so approximately what year would that have been?

10 A: Right off hand, I don't remember the year of that
11 inception.

12 Q: That was several years ago?

13 A: Yes, yes.

14 Q: What were some of the reasons for the purpose of
15 considering that consolidation?

16 A: Hopefully to improve service for the fire districts, well
17 for the county. Also, I think millage reasons were included
18 in that to try to bring revenue out of -- out of the West
19 Florence Fire Department to subsidize the remainder of the
20 fire departments in the county or excuse me, in the
21 unconsolidated areas.

22 Q: And when you look -- step back and look at the county
23 that y'all were looking at consolidating, was that the
24 entirety of Florence County?

25 A: No, it was not. It was actually six fire districts that

1 were operating basically individually at that time and we had
2 one special purpose fire district, South Lynches, that was in
3 the county that was not included in that, nor was
4 Timmons ville, Lake City or the City of Florence; they were not
5 included.

6 Q: Now that special purpose district, South Lynches, you
7 referenced, how long has it been in existence?

8 A: I don't know the exact date, but it's been I would say in
9 excess of twenty years at least. I remember when Tony Nettles
10 was in the House, I think he was instrumental in having that
11 done.

12 Q: Now, to -- from your testimony, you were present since it
13 sounds like the consolidation process got started; is that
14 fair to say?

15 A: Yes.

16 Q: How would you describe the consolidation process, rocky
17 road, smooth road?

18 A: A little bit of all of that. I think at first it was
19 more of exploratory; what can we do, how we gonna do it. I
20 think several councilmen weren't aware of the ramifications to
21 West Florence as well as -- we were trying to work something
22 out. It was pretty evident to me that a dollar amount was
23 pretty much in mind and we were gonna move to that if we could
24 at all costs.

25 Q: And how did you come to that conclusion?

1 A: Well, basically, you know, we started out saying we
2 wanted to equalize taxes and to me the equalization of the
3 taxes at that point would have been 16.9 mils because that was
4 actually generated the same dollar amount that the six
5 districts would have generated, but it was pretty obvious to
6 me that we weren't gonna stop at 16.9, that we were going past
7 that. So, in essence, not only were we gone equalize taxes,
8 increasing West Florence, we were also gone raise taxes, which
9 the West Florence District would have contributed most of
10 that.

11 Q: Now, putting aside the millage and tax aspect of it for a
12 second, were there other issues that were driving the
13 consolidation such as embezzlement concerns and things --
14 other problems that made consolidation ---

15 A: Yes, we had one fire district where there had been some
16 embezzlement that had happened, and we had one fire district
17 that was brought up that was slow to answer a call and they
18 felt that was, you know, unneeded. But what disturbed me was
19 and what I, you know, in discussion with the fire fighters in
20 West Florence was they had not had any of these problems, and
21 they didn't like being lumped in the discussion where it
22 looked like they were part of those problems. I mean, West
23 Florence has always run a clean ship, they've always done a
24 great job. And I'm not saying the other fire districts don't
25 because we've got some great fire fighters out there, don't

1 get me wrong, in these other districts. And but they've
2 always run a clean ship, they've always done a great job.
3 Stations 1, 2 and 3 were paid, paid for with the revenue that
4 was collected from the West Florence Fire District, taxpayers
5 from that district. It was paid for it, the equipment was
6 paid for it and they were very frugal with it. And they
7 honestly didn't feel like that they may not or I got the
8 opinion -- let me put it this way -- I felt like that West
9 Florence wouldn't receive its -- its fair share.
10 Q: Now, you made reference a minute ago and I want to talk
11 about the Capital Sales Project Tax, the penny as we call it
12 here in Florence?
13 A: Right.
14 Q: And this is we're on Penny II, I believe; is that right?
15 A: Correct.
16 Q: And that's a tax that has to be approved by a referendum;
17 is that right?
18 A: That's correct.
19 Q: And it runs for a certain number of years, I believe
20 seven?
21 A: Seven years, correct.
22 Q: Now, the Penny II, it had a laundry list of projects; is
23 that right?
24 A: Correct.
25 Q: On that list of projects was the -- and I'm gonna walk

1 over to what's been marked as Plaintiff's Exhibit Seventeen,
2 was one of those projects a new station for the West Florence
3 area fire station?

4 A: Yes, on Hoffmeyer Road; it's called station West Florence
5 Station 4.

6 Q: And it is currently under construction?

7 A: Yes, it should be completed shortly.

8 Q: Within the next thirty to forty-five days I think?

9 A: Yes.

10 Q: Now that, like I said earlier, that's a laundry list of
11 projects?

12 A: Correct.

13 Q: And those projects, is it -- what area do those projects
14 cover?

15 A: It covers the entire Florence County. It covers the City
16 of Florence and it covers the towns of Pamplico, Johnsonville,
17 Lake City, Timmons ville, Olanta, and it covers all the fire
18 districts, it covers the Special Fire District of South
19 Lynches.

20 Q: This is one example of a project -- just for the Court's
21 understanding, what are just a couple other references you can
22 make of other projects?

23 A: I mean, you know, certain towns in the rural area have
24 water towers that went up which belonged to the towns. I
25 mean, the City of Florence has several road projects that come

1 from the penny sales tax. I can think of one, the soccer
2 field I think was a \$1,040,000, if I'm correct, and went to it
3 which was on county land at one time, which is now in the
4 city, but that money will -- will go to that project.

5 Q: Is there also, I think, a project in the South Lynches?

6 A: Yes, in fact I reviewed some notes last night. West
7 Florence receives two and a half million dollars for its fire
8 district for stations and all out of the penny sales tax. And
9 South Lynches has three projects, which also equal two and a
10 half million dollars on the list of the project, and we just
11 approved at the last meeting, one of those projects \$820,000
12 is a bid for a training center in South Lynches and by the
13 way, that property is owned by South Lynches, not by the
14 county.

15 Q: Now, that -- this tax we're talking about that creates
16 these different projects, that is a county-wide tax?

17 A: Correct.

18 Q: So that everyone who lives in Florence County contributes
19 to that?

20 A: Exactly.

21 Q: So, the people that benefit from the New West Florence
22 Fire District, the residents of that area, they contributed
23 toward that tax, did they not?

24 A: Oh, greatly, yes. I might add this, if you don't mind.
25 I went to several subdivisions to push the idea that we

1 support this penny sales tax even though I didn't feel like
2 that West Florence or the district that I represented received
3 a great deal of benefit. Did we receive benefit from other
4 projects, yes, I felt like other areas, but I continually made
5 the remark to folks at those subdivision meetings that they
6 should support it because it gave us an opportunity to help
7 the rural area of Florence County, which didn't have the tax
8 base and this was our way of doing it without having to raise
9 millage, which is what I thought was gonna happen.

10 Q: Now, obviously you're familiar with or have an
11 understanding of the legislation that created the West
12 Florence District?

13 A: Yes.

14 Q: And that would've been in 2014?

15 A: Correct.

16 Q: And then it was updated or amended in 2015?

17 A: Correct.

18 Q: So, the district, the new district has existed since the
19 summer of 2014?

20 A: Correct.

21 Q: About two years?

22 A: Yes.

23 Q: And that represents a significant portion, that district
24 is a significant portion of your County Council district?

25 A: I serve a portion of West Florence Fire District. My

1 County Council district, the only fire district that's in my
2 Council District is West Florence. So, you know, but I do
3 have probably half the city in my district, also.

4 Q: Are you aware of any problems or concerns related to
5 since the new district has been created?

6 A: None whatsoever. I mean, like I said before, West
7 Florence Fire Department I think does an excellent job.

8 Q: Are they, as best you can tell, meeting the needs of your
9 constituents and the citizens in their area?

10 A: Well, I haven't had a complaint, so I would say that they
11 would meet that criteria.

12 Q: Just one moment, Your Honor, please?

13 No further questions.

14 THE COURT: Cross examination?

15 CROSS EXAMINATION OF WILLARD DORRIETY, JR. BY MR. MATTHEWS:

16 Q: Good morning, Mr. Dorrierty?

17 A: How you doing, Mr. Matthews?

18 Q: Well. Mr. Dorriety, just to confirm a couple of things
19 first. You said you were about to wrap up four years of
20 County Council?

21 A: Correct.

22 Q: So you took office in January of 2013?

23 A: Correct.

24 Q: Okay. And you indicated, I'm gonna refer to this map,
25 which is Exhibit Seventeen, you indicated that your District 9

1 consists of part of West Florence Fire District, which was in
2 Florence County that's the old West Florence Rural?

3 A: Uh-huh (affirmative response).

4 Q: And a part of the city?

5 A: Right.

6 Q: Can you indicate here just how roughly what your district
7 looks like?

8 A: You want me to come to the map?

9 Q: If you would that would be great and I'll represent to
10 you the city is the yellow and West Florence Rural is outlined
11 in purple.

12 A: Okay. All right. (Indicating) There's supposed to be a
13 stream through here. Come in here and go across to another
14 subdivision, come in here, go back out to West Palmetto, I
15 come in through -- Second Loop and then turn down Cashua and
16 both sides of the road of Cashua then all of Palmetto ---

17 Q: If you would speak a little bit louder?

18 A: Okay. I wish we had a map just to show you, but I have
19 this area back here if I'm looking at it correctly. Wait a
20 minute; this is not my area. I come down this line here
21 right. I have this side of Meadows, I come to Stratton, I go
22 to the railroad bed, and ---

23 Q: You don't have to be precise, just in general terms
24 you're describing sort of the north part of ---

25 A: I'm describing through here (indicating).

1 Q: Through here? 2

2 A: Yes. Actually the Fire District is much larger than
3 what's -- if that's what you're trying to get at.

4 Q: So your sort of a belt that goes in that area generally
5 speaking?

6 A: Yes.

7 Q: Okay. Thank you.

8 MR. SMITH: Steve, I don't know that's gonna be apparent
9 from the record about referring to that ---

10 MR. NICHOLS: It won't be and I don't know that it's
11 particularly critical, but ---

12 BY MR. MATTHEWS:

13 Q: Mr. Dorrierty, is it accurate to say, reasonably accurate
14 to say that what you described is a -- is a band that as we
15 move from -- from west to east it begins a little bit south of
16 the Interstate 20 on the Darlington County/Florence County
17 line?

18 A: Uh-huh (affirmative response).

19 Q: And then it comes to south along the border of West
20 Florence?

21 A: Uh-huh (affirmative response).

22 Q: To about Meadows and then moves east into the City of
23 Florence across the City of Florence; is that roughly
24 accurate?

25 A: It doesn't move across the City of Florence. It actually

1 quits at Second Loop.

2 Q: It quits at Second Loop which would be here?

3 A: Okay.

4 Q: All right.

5 A: It quits at Second Loop. I mean ---

6 Q: All right.. So from ---

7 A: The large area of my district if you're trying to get at
8 that's in the city would be mostly the commercial property.

9 Q: Okay. All right.

10 A: I can tell you the subdivisions that's in my district;
11 they seem to increase every day. I'm pretty familiar with
12 this area because I've lived here sixty-seven years.

13 Q: All right. Mr. Dorrierty, you indicated that your
14 understanding was that at -- with a consolidation of the six
15 special taxing districts, that if revenue had been left flat,
16 no increase in revenue, that that would've been a uniform
17 millage and about 16.9 mils?

18 A: Based on the dollar amount that had been collected from
19 those, I know there's another way to figure it so if the
20 dollar amounts high, that would do it.

21 Q: Okay.

22 A: Anything above that dollar amount to me is an increase in
23 taxes.

24 Q: Right. So, were you comfortable -- would you have been
25 comfortable if the revenue had been left, left level?

- 1 A: You know, that's hard to say because I really wasn't
2 given that opportunity.
- 3 Q: The new West Florence Fire District, the old West
4 Florence Fire District, do you know what the millage rate was
5 there?
- 6 A: It was 8.
- 7 Q: 8 mils. Do you know what the new West Florence Fire
8 District millage rate is?
- 9 A: 12.8.
- 10 Q: So they took a millage increase and an increase in
11 revenue, didn't they?
- 12 A: Yes.
- 13 Q: Okay. You mentioned the project sales tax and the fact
14 that the projects were being done county wide; did you not?
- 15 A: Correct.
- 16 Q: And is the capital project sales tax a countywide tax?
- 17 A: Yes, it is.
- 18 Q: So, it applies across the county the same in one area as
19 it is does in another area?
- 20 A: Correct.
- 21 Q: Think for a moment about the county's provision of
22 library services. Is the millage rate that's imposed for
23 library services uniform across the county?
- 24 A: I think it is.
- 25 Q: Think about the county's Magistrate Court services. Is

1 the millage rat imposed for Magistrate Court services uniform
2 across the county?

3 A: I think it is.

4 Q: Think about the county's law enforcement services, is the
5 millage rate imposed to the county's law enforcement services
6 uniform across the county?

7 A: Yes, it is.

8 Q: The same thing, is County administrative services uniform
9 across the county?

10 A: Yes.

11 Q: But the opposition to consolidation is that the one issue
12 of millage rate for fire protection should not be uniform
13 across the county?

14 A: It's not. It won't be if you consolidate; that's my
15 objection. If they would -- if they would consolidate the
16 entire county, I would not have objected, but they didn't
17 consolidate the entire county. They left out Lynches, they
18 left out Lake City, it left out the City of Florence. It's
19 not a true county consolidation or true county tax like these
20 other taxes that you just mentioned, Mr. Matthews.

21 Q: Are you aware of any legal mechanism whereby the county
22 could consolidate into a charter municipal government?

23 A: I'm not a lawyer.

24 Q: You mentioned the -- the discussion within County Council
25 with regard to the consolidation and I believe you said with

1 respect to Mr. Jordan's question as to whether it was a rocky
2 or smooth road; you said it was some of both?

3 A: Yes.

4 Q: Okay. But it was presented as a vote to County Council
5 as to whether or not to consolidate?

6 A: It was. We discussed it for a long, lengthy time.

7 Q: After that lengthy consideration, the majority of County
8 Council voted to move forward with the consolidation?

9 A: Yes, they did.

10 MR. MATTHEWS: No further questions, Your Honor.

11 THE COURT: Any redirect?

12 MR. JORDAN: Just very briefly based on Mr. Matthews last
13 questions.

14 REDIRECT EXAMINATION OF WILLIAM DORRIETY, JR. BY MR. JORDAN:

15 Q: During the course of this consolidation process, County
16 Council has taken multiple votes in some form or fashion
17 related to consolidation; is that fair?

18 A: That's fair.

19 Q: I think the first one was around seven to two?

20 A: That's correct. Well, that's what I remember anyway.

21 Q: And the most recent would be five/four; is that right?

22 A: Yes.

23 Q: And so that's sort of been the bookend process of this
24 process?

25 A: Yes.

1 MR. JORDAN: Okay. That's all, Your Honor.

2 THE COURT: Okay. You may step down. Thank you very
3 much.

4 A: Thank you, sir.

5 THE COURT: Call your next witness.

6 MR. JORDAN: Your Honor, we would call Dustin Fails.

7 CLERK: Please place your left hand on the Bible and
8 raise your right hand.

9 DUSTIN FAILS, HAVING BEEN SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK: Please be seated and state your name for the
12 record.

13 MR. FAILS: Dustin Fails.

14 COURT REPORTER: Spell your last name, please, sir.

15 MR. FAILS: F-A-I-L-S.

16 DIRECT EXAMINATION OF DUSTIN FAILS BY MR. JORDAN:

17 Q: Mr. Fails, you are from Florence; is that right?

18 A: Yes, sir.

19 Q: And you're obviously affiliated with the West Florence
20 Fire District?

21 A: Yes, sir.

22 Q: Tell me how so?

23 A: I volunteer with West Florence. I've been part of it for
24 twelve years. Battalion Chief for the last, going on six
25 years?

1 Q: And as Battalion Chief, what are your current duties and
2 responsibilities?

3 A: Oversee a company of lieutenants and captains and also
4 oversee the training for the department.

5 Q: Okay. And in the department, approximately -- you
6 mentioned you oversee the different aspects of how many
7 individuals are under your purview?

8 A: About ten.

9 Q: And you've been the Battalion Chief both before the
10 creation of the new West Florence Special Purpose Fire
11 District and since that time; is that right?

12 A: Yes, sir.

13 Q: Now, also, you're very familiar with the legislature that
14 created -- the 2014 and then 2015 legislation that created and
15 amended the West Florence Fire District Special Purpose
16 District?

17 A: Yes, sir.

18 Q: And according to that legislation a commission was
19 established; is that right?

20 A: Yes, sir.

21 Q: And I believe you ran for it and were elected to a
22 position on that?

23 A: Yes, sir.

24 Q: And what is that?

25 A: West Florence Board of Commissioner's Chairman.

1 Q: Okay. And as Chairman, were you selected -- is that a
2 special designation or were you elected to that by the
3 Commission?

4 A: Elected by the Commission.

5 Q: And how long have you served in that capacity?

6 A: Two years.

7 Q: And you are up for reelection when?

8 A: I've got two more years.

9 Q: Now, I want to talk to you first about -- I'm gonna go up
10 to the Exhibit Seventeen. This area has been circled the
11 Darlington/Hoffmeyer area of the map. That is the portion of
12 Darlington that was added through the 2015 legislation; is
13 that right?

14 A: Yes, sir.

15 Q: And how -- when was that added?

16 A: 2015.

17 Q: Approximately when that would be calendared?

18 A: I guess, July timeframe.

19 Q: And since that time, you've been responsible or West
20 Florence has been responsible for covering that area?

21 A: Yes, sir.

22 Q: Have you done any research or review of that area since
23 it's been under y'all's dominion?

24 A: Yes, we have gone out there -- the area and taken a look
25 at the water supply situation and what it would take to

1 respond out there.

2 Q: Now there's been questions relating to the ISO rating.
3 Tell me a little bit about what is an ISO rating?

4 A: It's the insurance rating that the insurance gives you
5 based off performance of the department.

6 Q: And there is some relationship between how close a
7 property is to a hydrant; is that correct?

8 A: Yes, sir.

9 Q: And what is that?

10 A: Within a thousand feet of a hydrant.

11 Q: And I believe there has been some concern expressed that
12 some of these properties will be negatively impacted by the
13 new West Florence because of the proximity to the hydrant; is
14 that right?

15 A: Not in that area.

16 Q: Tell me why not.

17 A: Because all those areas are very -- one part off of
18 Winburn over I20 into back into Florence County, they recently
19 added two to three more hydrants because of the capital
20 service tax.

21 Q: Would that be Capital Service Tax I or II?

22 A: Number II.

23 Q: Number II, the one that actually paid for this Station 4;
24 is that right?

25 A: Yes, sir.

1 Q: So that was done very recently?

2 A: Yes, sir.

3 Q: And the existence of those new hydrants paid for by that
4 capital project tax has -- would benefit those or would change
5 that thousand feet, would it not?

6 A: Yes.

7 Q: Okay. How many stations does West Florence have?

8 A: Currently three with the fourth being built.

9 Q: Tell me about the fourth station?

10 A: It's about thirty days or so from being completed and
11 people have already been hired to staff that station.

12 Q: And where would that station be?

13 A: On Hoffmeyer Road just past Ebenezer Road.

14 Q: Describe for me the station.

15 A: It will be four bays. They are currently gonna put an
16 engine out there with a new engine on order for it. As I
17 said, three people ---

18 THE COURT: Could interrupt just a second?

19 A: Yes, sir.

20 BY THE COURT:

21 THE COURT: I know y'all have offered a lot of testimony
22 about this new station, but it's new. I don't think it has
23 any relevance as to my decision because it was by the one cent
24 sales tax and it's new. I got to look at the situation when
25 the statute was passed.

1 MR. JORDAN: Yes, sir.

2 THE COURT: As far as whether it's local or not, not what
3 has happened subsequent. I mean, tell me why it's -- and I
4 should have stopped him a long time ago, but I didn't. But
5 what's that have to do with my decision on whether building
6 that station new or a half a dozen stations new?

7 MR. JORDAN: Well, Judge, I would say the question I've
8 asked during the course of the trial and to Mr. Fails would be
9 largely in response to ---

10 THE COURT: I understand, but I don't think that
11 testimony is relevant at all.

12 MR. JORDAN: Yes, sir.

13 THE COURT: Or maybe I'm wrong, as far as the decision I
14 have to make.

15 MR. JORDAN: I guess it would be in relation to as well,
16 Judge, a lot of testimony has occurred as to the ISO ratings
17 and the service that these individuals around would receive.
18 So ---

19 THE COURT: I understand.

20 MR. JORDAN: --- that was the reason for the question.

21 THE COURT: I understand, but I just -- I'm just of the
22 opinion I have to look at what was in Florence County at the
23 time they passed the legislation and whether sufficient
24 reasons for the legislature to distinguish -- any
25 distinguishing features or interest as to why it was done at

1 that time, not today.

2 MR. JORDAN: Yes, sir.

3 THE COURT: Maybe I'm wrong. If you think I'm wrong,
4 please tell me.

5 MR. JORDAN: Yes, sir.

6 THE COURT: I'm wrong or not wrong? What's your
7 position?

8 MR. JORDAN: I think it has to be when you look at it as
9 a total -- in total. I think it is valid to consider how
10 something that is going to impact all these other sub-issues.

11 THE COURT: But the consolidation or the lack of
12 consolidation or the fire tax, the Special Fire District
13 doesn't have anything to do with these new projects because,
14 from what I understand, it was paid for by the one cent sales
15 tax, which doesn't have anything to do with this.

16 MR. JORDAN: It was, Judge, except to say this station
17 was on the books or plans years before that ever took place,
18 years before the ---

19 THE COURT: Well, I understand that, but it's a question
20 of how it was gonna be paid for. It was paid by the one cent
21 sales tax from what I understand, one of the projects where
22 they -- the County dedicated the money to pay for that
23 project. So, what does that have to do with consolidation or
24 the lack of consolidation or -- excuse me -- what does that
25 have to do with the Florence West Tax District legislation?

1 MR. JORDAN: I think it has to with all the testimony
2 that we've heard that deal with the response times, the ISO
3 ratings, all those things that relate to the overall ---

4 THE COURT: Well, that's what I'm trying to say to you.
5 I'm not sure any of that's relevant.

6 MR. JORDAN: Yes, sir.

7 THE COURT: Okay?

8 MR. JORDAN: Yes, sir. I think we have had testimony
9 that would say and I think Representative Lowe's testimony
10 would say this, that there were multiple considerations that
11 came as a result of ---

12 THE COURT: I mean, are you trying to say that the new
13 station with the one cent sales tax was the logical basis and
14 sound reason as to why the legislature passed the local
15 legislation?

16 MR. JORDAN: No, sir, I'm not saying that.

17 THE COURT: Because that's the issue before this Court.

18 MR. JORDAN: Yes, sir.

19 THE COURT: And that's the sole issue before this Court.

20 MR. JORDAN: I agree with that, yes, sir.

21 THE COURT: Okay? That's why I'm saying we're going off
22 of -- and I probably should have stopped Mr. Matthews some
23 time yesterday afternoon, but I didn't. Okay?

24 MR. JORDAN: Yes, sir.

25 THE COURT: I just want to make sure I'm in line with

1 what you think is -- I have to decide.

2 MR. JORDAN: Judge, I think that when we did openings, I
3 think you were very correct when you said we almost could've
4 stipulated to the facts in this case.

5 THE COURT: Right. I agree with you.

6 MR. JORDAN: And partially I am -- my testimony today
7 that I'm putting up is really in response to the factual
8 positions that were ---

9 THE COURT: Okay. Go ahead. Go ahead. I'm sorry, I
10 just wanted to hear your thoughts on what I'm supposed to be
11 looking at. Okay?

12 MR. JORDAN: I think that Mr. Matthews as well as our
13 side, particularly Mr. Nichols, outlined the legal conclusions
14 that is the only real issue at this stage.

15 THE COURT: Well, other than trying to assess factually
16 what was the basis and the sound reason for passing the local
17 legislation. I think from a factual standpoint, that's
18 probably important, but that's the reason at the time the
19 legislation was passed, not what -- when was it passed, '14?

20 MR. JORDAN: '14, 2014.

21 THE COURT: Two years ago. Okay. Not two years after.

22 MR. JORDAN: Yes, sir.

23 THE COURT: Maybe ---

24 MR. JORDAN: No, I don't think we disagree.

25 THE COURT: Okay. I just wanted to make sure, but go

1 ahead and respond.. Okay?

2 MR. JORDAN: Yes, sir.

3 THE COURT: I gave him plenty of latitude and y'all
4 didn't object, so I'm gonna give you the same latitude. Don't
5 cut it short, okay?

6 MR. JORDAN: Yes, sir. Yes, sir.

7 THE COURT: All right.

8 BY MR. JORDAN:

9 Q: Let me ask you, Mr. Fails, in regard to -- we've had a
10 lot of testimony about the interstate portion of Darlington
11 and some of Florence that West Florence responds to. Are you
12 familiar with that area?

13 A: Yes, sir.

14 Q: How long, to your knowledge, has West Florence been
15 responsible for the portion of interstate we're talking about?
16 I think it's mile markers in the 160's?

17 A: As far as I can remember.

18 Q: And have you reviewed during your time at West Florence,
19 say the last four or five years, the responses that have been
20 made by West Florence?

21 A: Yes, so we cover between the 164 up to the 168 north and
22 southbound. We've responded twenty calls since January 1st of
23 2012 in that area.

24 Q: And I'm not an expert when it comes to what you do, but
25 we can agree probably that, you know, interstate call can be

1 anything from something simple to something catastrophic?

2 A: Yes, sir.

3 Q: Let me ask you about -- we've heard a lot of testimony
4 today about the dispatch response. For instance when a call
5 comes in to Darlington or Florence and how that call gets
6 routed. If a call comes in to, for instance, the Darlington
7 portion that West Florence covers, what's your understanding
8 of how that gets relayed to you?

9 A: We have been talking ---

10 THE COURT: Mr. Fails, can you speak up, I can barely
11 hear you ---

12 A: I'm sorry.

13 THE COURT: --- or lean forward to the microphone please,
14 sir.

15 A: I'm sorry, sir. We've been talking with Darlington
16 County they're gonna have one of our radios to be able to
17 dispatch us and let our dispatch know quicker, and also been
18 talking with their GIS so that way they can add those
19 properties into their CAD system.

20 Q: So, provisions have been attempted to be made in order to
21 make sure the appropriate dispatch goes to the appropriate
22 place?

23 A: Yes, sir.

24 Q: Okay. And in wrapping up, Mr. Fails, and I don't think
25 this has really come out much, but since the time West

1 Florence Fire District was created -- the new district was
2 created, what's the status of the -- again, how many stations
3 did you say there were?

4 A: Three.

5 Q: And does West Florence own those stations?

6 A: Yes, sir.

7 Q: Tell me about the Pine Needles property; how is that
8 dealt with?

9 A: Oh, we're currently acquiring that property from ESOB.

10 Q: ESOB owns that property?

11 A: Yes, sir.

12 Q: And has owned it for how long?

13 A: As long as we've been there.

14 Q: And how did that -- was that a lease or a ---

15 A: Yes, sir, it was a lease.

16 Q: And what steps has your Board taken to try and deal with
17 a long-term solution to that?

18 A: Oh, we've been in talks with ESOB and the realtor to be
19 able to secure that property.

20 Q: And that's something that hasn't been done prior to the
21 Board's creation; is that right?

22 A: Yes, sir.

23 Q: And you anticipate closing on that property?

24 A: Within the next week.

25 MR. JORDAN: Your Honor, that's all I have.

1 THE COURT: Don't cut it short because of our
2 conversation. Okay?

3 MR. JORDAN: Your Honor, I was trying ---

4 THE COURT: I gave him latitude and I want to give you
5 the same latitude.

6 MR. JORDAN: Your Honor, I was just trying to go over and
7 clean up some of the prior facts that were established.

8 THE COURT: Okay. Thank you very much.
9 Redirect?

10 MR. MCEACHIN: Thank you, Your Honor.

11 THE COURT: I'm sorry, cross examination.

12 MR. MCEACHIN: Cross examination.

13 THE COURT: Excuse me.

14 CROSS EXAMINATION OF DUSTIN FAILS BY MR. MCEACHIN:

15 Q: Good morning, Mr. Fails?

16 A: Good morning, sir.

17 Q: In 2012 -- do you know Mr. Stratton?

18 A: Yes, sir.

19 Q: 2012, did he call you and say, Mr. Fails, we got some
20 problems we need y'all to try and help us cover this area off
21 Hoffmeyer Road?

22 A: No, sir, he did not call me.

23 Q: Did he call you or did Mr. Spivey call you and say, we
24 got some problems over here off McKiever Road, we need you to
25 help us get some better coverage over here?

1 A: No, sir.

2 Q: As far as you know, the coverage provided in those areas,
3 the other two Darlington Fire Districts was satisfactory?

4 A: I can't answer that.

5 Q: You don't have any information or knowledge if there was
6 a problem, do you?

7 A: I have no information from them.

8 Q: The -- now the dispatch issue you were asked about, in,
9 in 2013, Darlington couldn't dispatch West Florence to a site
10 on I95?

11 A: No, sir.

12 Q: 2014, Darlington couldn't dispatch West Florence to a
13 site on I95?

14 A: No, sir, because those calls were ---

15 Q: Still, still had you working them, though?

16 A: Yes, sir.

17 Q: All right. That's all I have.

18 THE COURT: Okay. Redirect?

19 MR. JORDAN: No, sir.

20 THE COURT: You may step -- I just have one question.

21 A: Yes, sir.

22 BY THE COURT:

23 THE COURT: What was the millage rate when West Florence
24 was enacted in 2014?

25 A: With the new commission it was 12.8 mils.

1 THE COURT: How much?

2 A: 12.8 mils.

3 THE COURT: 12.8 mils when the statute was enacted?

4 A: Yes, sir.

5 THE COURT: What is it now?

6 A: That's what it is now. Before the ---

7 THE COURT: What was it in '14, the same thing?

8 A: It would have been 12.8 when the board was created.

9 Before that, it was 8 mils.

10 THE COURT: All right. So, it was 8 mils in 2014?

11 A: Yes, sir, before the legislation went through.

12 THE COURT: And it's presently 12.8?

13 A: Yes, sir.

14 THE COURT: Okay. Thank you very much.

15 Mr. Fails?

16 A: Yes, sir.

17 THE COURT: Can you come around? I want to ask you one
18 more question please, sir or maybe two.

19 A: Yes, sir.

20 THE COURT: If I -- you can just stand right there. If
21 my math is correct, if it was 8 mils in 2014 when the
22 Legislature enacted in Florence -- West Florence Tax Fire
23 District, and you said it's now 12.8, that's an increase of
24 4.8 mils. Was that done in one year or has that been done in
25 the two years?

1 A: That was done in one year.

2 THE COURT: What year was it raised?

3 A: After the County abolished the special districts and then
4 once the legislation went through to set the Board of
5 Commissioners and they were elected, our first meeting we went
6 in and set the millage.

7 THE COURT: Okay. So it was raised when the Commission
8 was first set up ---

9 A: Yes, sir.

10 THE COURT: --- by statute?

11 A: Yes, sir.

12 THE COURT: Okay. Thank you so very much.

13 A: You're welcome, sir.

14 THE COURT: Call your next witness.

15 MR. JORDAN: Judge, may I ask Mr. Fails one question
16 based on what you asked?

17 THE COURT: Yeah. Yeah, I'm sorry. I'm sorry I didn't
18 give you that opportunity. Mr. Fails, you're getting some
19 exercise. Come on back around. We're gonna run you all over
20 the courthouse.

21 A: I need it.

22 THE COURT: You can just stand right there if you want.

23 Yes, sir. Either party that wants to ask question based
24 upon my questions, feel free to do that.

25 REDIRECT EXAMINATION OF DUSTIN FAILS BY MR. JORDAN:

1 Q: You testified that the millage rate for the creation of
2 district -- that would be West Florence 8; is that right?

3 A: Yes, sir.

4 Q: And then upon creation of the new district the Commission
5 raised it to 12.5?

6 A: 12.8.

7 Q: 12.8?

8 A: Yes, sir.

9 Q: If the district didn't exist, the Commission didn't exist
10 and the new district hadn't been created, what would the West
11 Florence millage rate be today?

12 A: Assuming we didn't go in the unified district it would
13 still be 8 mils.

14 Q: What would it be had you gone into the unified district?

15 A: Whatever the County Council would have set up.

16 Q: So, somewhere in the 20's I think it is?

17 A: Yes, sir.

18 Q: That's it. That's all, Judge.

19 THE COURT: What did he say, 27?

20 MR. JORDAN: I think he didn't -- he just said in the
21 20's.

22 THE COURT: Somewhere in the 20's, you know ---

23 A: Whatever County Council would set.

24 THE COURT: Okay.

25 A: Yes, sir.

1 THE COURT: Well, what is it set now; I guess you can't
2 compare it because you don't have West Florence in it.

3 A: Yes, sir.

4 All right. Thank you. Thank you so very much.

5 MR. MCEACHIN: Judge, can I ask a question?

6 THE COURT: Yes, sir.

7 RECROSS EXAMINATION OF DUSTIN FAILS BY MR. MCEACHIN:

8 Q: Do you know that the millage in the unified district in
9 Florence is 19.5 mils at the present time?

10 A: Yes, sir, I know there's some mills on top of that as
11 well, yes.

12 Q: Thank you. That's all I have.

13 THE COURT: Thank you very much.

14 A: Thank you, sir.

15 BY THE COURT:

16 THE COURT: You want to call your next witness?

17 MR. NICHOLS: Judge, I know this will break your heart,
18 but I think we're done and we rest except for Representative
19 Lowe, who we've all agreed to get by video and submit that
20 deposition.

21 THE COURT: I understand his discovery deposition has
22 already been marked as an exhibit, right?

23 MR. NICHOLS: Yes, sir, and we stipulated, Mr. Matthews
24 has, and that is in evidence. His discovery deposition and
25 the exhibits.

1 THE COURT: I assume you didn't ask any questions at that
2 deposition?

3 MR. MCEACHIN: I don't think we did.

4 MR. NICHOLS: We did not cross.

5 THE COURT: That's what I was wondering.

6 MR. NICHOLS: As I recall.

7 THE COURT: I'm just wondering why you're doing another
8 deposition if you did some cross, but apparently you didn't.

9 MR. NICHOLS: We didn't.

10 THE COURT: Okay. All right. That's fine.

11 MR. NICHOLS: Judge, honestly ---

12 THE COURT: Are you going -- are we -- Mr. Matthews, you
13 plan on rehashing what's in this deposition?

14 MR. MATTHEWS: No, Your Honor.

15 THE COURT: The only thing I would ask, put your case up
16 and don't rehash -- your -- the deposition is already in the
17 record if you don't mind.

18 MR. MATTHEWS: Agreed, Your Honor.

19 MR. NICHOLS: And, Judge, we'll try not to plow new
20 ground.

21 THE COURT: I would appreciate it. That would be nice if
22 you can handle that; okay?

23 MR. NICHOLS: We'll make our best effort and I'm sure Mr.
24 Matthews will.

25 THE COURT: All right. Is there anything else that we

1 need to deal with? When do you think you'll -- you're gonna
2 do the deposition. How long do you think it will take to get
3 the transcription? You say you're gonna do it by video?

4 MR. NICHOLS: Yes, sir, and we'll provide you with both
5 the video and the transcript if you like.

6 THE COURT: Okay. How much time ---

7 MR. MATTHEWS: Do we have a date yet?

8 MR. JORDAN: I've been asked to coordinate that and we
9 don't have a hard date yet.

10 THE COURT: Well, let me do this, okay. Once you get the
11 transcription of the deposition, how much -- what I would like
12 for you to do in lieu of closing arguments, I would like to
13 get a proposed order from both sides. How much time do you
14 need to do that after you take his deposition; that is my
15 question?

16 MR. MATTHEWS: If I could respond to the question. If we
17 could go ahead and get the transcript from this part of it in
18 process so that we would have that and then once we have that,
19 I would think two weeks, four weeks; I ---

20 THE COURT: So, once you have the transcription from this
21 hearing and ---

22 MR. NICHOLS: And the deposition.

23 THE COURT: --- how long do you think it would take to
24 get the deposition from this day and a half hearing?

25 (REPORTER'S NOTE: Off the record discussion on scheduling

1 matters.)

2 MR. SMITH: I wanted to clarify a few things, if I might,
3 as to the State's role here. First of all it's kind of -- as
4 was said I believe in the opening and in the pretrial brief,
5 we defer to Your Honor's application of the law and the facts
6 here. We have not introduced any exhibits or put up any
7 witnesses for the State itself, but we're relying on the
8 exhibits and the testimony that are in the record. Let -- I
9 wonder because of the State's role in this matter if rather
10 than submitting a proposed order to you since we are deferring
11 to Your Honor's application of the law and the facts that --
12 well, let me -- before I say that, are you going to give the
13 parties an opportunity to react to each other's proposed
14 orders?

15 THE COURT: No, sir, I'm not planning on it. I'm gonna
16 react to it, but I'm not give y'all an opportunity to react.
17 Okay? I plan on reacting to it, but I'm not gonna give them
18 the chance to -- yeah, yeah, back and forth about the orders.;
19 Okay?

20 MR. NICHOLS: We'll react, but not to you, Judge.

21 THE COURT: Y'all can react between each other if you
22 want to, but don't include me in the emails. Okay?

23 MR. SMITH: Right. When the State's -- when they ---

24 THE COURT: Let me do this. Once y'all get it prepared,
25 send it to the other parties and y'all can email each other

1 and complain to each other for ten days before you send it to
2 me, but don't include me in those emails.

3 MR. SMITH: Your Honor, may the State be relieved from
4 having to submit a proposed order?

5 THE COURT: Yes, sir. Yes, sir.

6 MR. SMITH: If we decide that we want to take a more
7 affirmative, offensive position on an issue, may we then
8 include that in an order or memorandum?

9 THE COURT: You can do it -- it would probably be better
10 for you to do a short memorandum, wouldn't you say?

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: Because they gonna cover a lot of the issues
13 that you're probably not interested in.

14 MR. SMITH: We would reserve the right to take a position
15 on an issue but more than likely, it will still be deferring
16 to Your Honor and you'll be making the decision anyway, of
17 course.

18 THE COURT: Well, I must make a decision so somebody can
19 get on the railroad to Columbia. You know, because I assume
20 that's where it's headed.

21 MR. SMITH: Yes, sir.

22 THE COURT: Either way. So I'm just sort of the conduit
23 to Columbia.

24 MR. SMITH: I know you'll give it a very thoughtful ---

25 THE COURT: Well, I mean, that doesn't mean I'm not going

1 to try to do what I think is correct under the law. Okay? I
2 didn't mean to insinuate that at all.

3 MR. SMITH: No, I didn't understand it that way, Your
4 Honor. We appreciate your patience with this trial and
5 hearing all this testimony and accommodating us on our
6 schedules today.

7 THE COURT: All right. Anything else?

8 MR. MATTHEWS: Nothing from the Plaintiffs, Your Honor.

9 MR. MCEACHIN: No, sir.

10 THE COURT: All right. Thank y'all very much. I do
11 appreciate all of you being prepared and calling your
12 witnesses and doing an outstanding job in preparation and
13 presenting the case. It makes my job a lot easier. Judge's
14 job gets horrible when you've got bad lawyers in the
15 courtroom. When you got good lawyers it makes my job easy. I
16 want to thank y'all very much.

17 MR. MATTHEWS: Thank you, Your Honor.

18 MR. JORDAN: Thank you, Your Honor.

19 THE COURT: Thank you very much.

20 (ADJOURNED - 11:13 A.M.)

21 STATE'S EXHIBITS 17A AND 19A

22 ADMITTED INTO EVIDENCE

23

24

25