THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM JASPER COUNTY
Court of Common Pleas

J. Ernest Kinard, Circuit Court Judge

Case No. 2013-CP-27-00322
Appellate Case No. 2018-000048

George M. Hood, ...Petitioner,

v.

Jasper County, ...Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondent Jasper County would restate the questions as:

I. Are there any special and important reasons to review the unpublished *per curiam* decision of the Court of Appeals affirming the Trial Court's denial of declaratory judgment as to the elimination of Respondent's position as deputy county administrator?

II. Did the Court of Appeals err in holding Article I Section 8 of the South Carolina Constitution does not apply to counties?

III. Did the Court of Appeals err in applying rules of statutory construction to find that the County Council had the authority to eliminate funding and thus abolish Petitioner's position after he had been hired by the county administrator?

IV. Did the Court of Appeals err in holding that, when funds have already been appropriated to a County department pursuant to a budget ordinance, County Council can amend the ordinance to limit or restrict expenditure of those appropriated funds?

Pursuant to Rule 242, SCACR, Jasper County (the "County") submits this Return in opposition to Petitioner's Petition for Writ of Certiorari. The County respectfully requests the Court to deny Petitioner's petition for the reasons set forth herein.

STATEMENT OF THE CASE

Petitioner Dr. George M. Hood is the former chairman of County Council and, most recently, deputy administrator of Jasper County. In its fiscal year 2011-2012 budget, Jasper County Council approved funding for a deputy county administrator position. That position was filled by Petitioner in December 2011. Following the seating of newly elected council members in January 2013, County Council voted to amend its 2012-2013 budget to remove funding for and to abolish the deputy county administrator position. Following the third reading of the ordinance, Petitioner's employment was terminated on January 28, 2013.

Petitioner sued the County seeking a declaratory judgment that Council's actions abolishing his position violated the S.C. Constitution's requirement of separation of powers and the Home Rule Act's grant of authority to county councils. At the trial of the matter on December 1, 2014, and prior to taking any testimony, the parties agreed that the facts could be stipulated and the matter submitted to the trial judge for decision. The parties filed their Joint Stipulation of Facts on January 2, 2015, and provided the trial court argument and analysis in the form of proposed orders submitted on December 31, 2014. Judge Kinard issued his Order in favor of the County, which was filed January 30, 2015, and served on Petitioner on February 9, 2015.

Petitioner then submitted a Notice of Appeal to the Court of Appeals, and the parties submitted their briefs. The Court of Appeals held oral argument on May 1, 2017. In an unpublished *per curiam* opinion issued September 6, 2017, the Court of Appeals upheld the trial

court's denial of declaratory judgment. *Hood v. Jasper County*, Op. No. 17-UP-355 (S.C. Ct. App. Filed September 6, 2017). Petitioner filed a Petition for Rehearing which the Court of Appeals denied December 14, 2017.

STATEMENT OF THE FACTS

Because the parties agreed on the facts and exhibits which form the basis for the circuit court's decision, a stipulation of facts was entered for the circuit court's consideration. (R. pp. 43-74). The Court of Appeals thus relied upon the same stipulated facts. The following facts, taken from the parties' stipulation submitted to the circuit court, are pertinent to the issues at hand:

Petitioner Dr. Hood is the former deputy county administrator for Jasper County. (R. p. 44, ¶ 9, p. 47, ¶ 20) Jasper County operates under the council-administrator form of government. (R. p. 43, ¶ 3) Council voted in June 2011 to approve a budget that included funding for a deputy county administrator position in its Fiscal Year ("FY") 2011-2012 budget. (R. p. 43, ¶ 4) Both public opinion and Council were divided over whether the position should have been included in the budget, and the budget passed by a 3-to-2 vote. (R. p. 44, ¶ 7) Council elections were held in June 2012. (R. p. 45, ¶11) As a result of the elections, two new councilmembers were seated who had not voted on the budget that included the deputy county administrator position. (R. p. 44, ¶ 7, p. 45, ¶ 11) Councilmembers Blackshear and Gregory were replaced by councilmembers Clark and Johnson, who were seated in January 2013. (R. p. 45, ¶ 11)

After the new councilmembers were seated in January 2013, Council passed an ordinance amending its FY 2012-2013 budget to remove funding for and eliminate the deputy county administrator position. (R. p. 45, ¶ 12) The ordinance reads in relevant part:

> **BE IT ORDAINED** by the Jasper County Council in council duly assembled and by the authority of the same:

> 1. The FY 2012-2013 Budget of Jasper County is hereby amended so as to reduce from Department 051 – Administration – all funding for salary and wages, FICA – Employer, SC Retirement, Medical, for the position of Deputy County Administrator not committed for services provided through the effective date hereof; provided however, nothing herein shall be construed so as to prohibit the Finance Director from disbursing sums authorized to be disbursed pursuant to Section 14 of the Jasper County Personnel Policies and Procedures Manual for the position of Deputy County Administrator.
>
> 2. It is hereby ordered that the job description of the Deputy County Administrator shall be and it is strickened [sic] from the approved list of job descriptions for Jasper County.

(R. p. 63) The ordinance was approved on January 28, 2013, by a vote of 4 to 1, with Councilmembers Etheridge, Sauls, Clark and Johnson voting for, and Councilmember Drayton voting against. (R. p. 45, ¶ 13) Following Council's vote, the County Administrator notified Petitioner that his employment was terminated. (R. p. 47, ¶ 20)

ARGUMENT

I. There are no special or important reasons to review the unanimous per curiam decision of the Court of Appeals decision denying declaratory judgment.

The considerations governing review of the Court of Appeals' per curium decision are set forth in Rule 242, SCACR:

> (b) Considerations Governing Review. A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:
>
> (1) Where there are novel questions of law.
>
> (2) Where there is a dissent in the decision of the Court of Appeals.
>
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

The County respectfully submits that there is no special or important reason to review the decision of the Court of Appeals affirming the Trial Court's ruling because it is well supported by established precedent and by thoughtful application of the principles of statutory interpretation.

Each of the issues Petitioner asserts have been raised and ruled upon at the Trial Court and Court of Appeals, and Petitioner has presented no novel questions of law in his Petition for Certorari. The *per curium* Court of Appeals decision does not conflict with a prior decision of this Court, and no substantial constitutional issues are directly involved. The ruling of the Court of Appeals does not present the significant or far-reaching issues contemplated by Rule 242(b). Because there is no special or important reason for a writ of certiorari to be granted, the Petition should be denied.

II. The Court of Appeals did not err in upholding the Circuit Court's order that the separation of powers doctrine does not apply to counties.

The separation of powers doctrine is established in the South Carolina Constitution at Article I, section 8:

> In the government *of this State*, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

S.C. Const. Art. I, § 8 (emphasis added). In *Gaud v. Walker*, 214 S.C. 451, 477, 53 S.E.2d 316, 328 (1949), the South Carolina Supreme Court held that the separation of powers doctrine applies to state, not local, government. In *Gaud*, a taxpayer challenged legislation that allowed the voters of Charleston County to select among two plans for county government, called "Plan

A" and "Plan B." Among the challenges was that the proposed plans would combine executive and legislative functions into one governing body. The Supreme Court rejected this argument and held:

> It is next contended that Plan A conflicts with Article 1, Section 14[1] of the Constitution, in that it seeks to combine in the County Council both legislative and executive functions. It has been held that this section of the Constitution refers to the government of the State and to State officers, and not to the government of municipal corporations.

Id. Accordingly, the alleged exercise of executive authority by County Council does not violate the Constitution's guarantee of separation of powers.

The Home Rule Act, passed in 1975, further supports this Court's precedent that the separation of powers doctrine does not apply to county governments. The Home Rule Act allowed counties to choose their form of government among the plans set forth by statute. S.C. Code § 4-9-10 *et seq.* The legislature enacted the Act pursuant to the state Constitution's specific authorization to provide for county government in this state. S.C. Const Art. VIII, § 7; *see also, Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) ("[B]y enacting the Home Rule Act, . . . , the legislature intended to ... restore autonomy to local government.").[2] The Act allowed counties to choose their form of governance, including, the council form of government which explicitly *combines* the legislative and executive duties into a county council. S.C. Code § 4-9-20, § 4-9-310. By combining legislative and executive duties into one governing form, the council form of government under the Home Rule Act further illustrates that the separation of powers doctrine established in the state constitution simply does not apply to local government.

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[1] The language now found at Article I, § 8 was previously found at Article I, § 14.

[2] *Williams* dealt with the analogous provisions of the Home Rule Act that apply to cities and towns.

Petitioner's argument that the Supreme Court's decision in *Gaud* is no longer valid due to passage of the Home Rule Act is without merit. The Home Rule Act and the provisions of Article VIII of the Constitution that authorized it support the holding in *Gaud.* Article VIII specifically authorized the legislature to design local government structures. Further, the General Assembly ratified Article VIII's home rule provisions in 1973 and passed the Home Rule Act, S.C. Code §§ 4-9-10, *et seq.*, in 1975,[3] well after the 1949 decision in *Gaud* (which itself relied on cases going back to 1910). *Gaud*, 214 S.C. at 477, 53 S.E.2d at 328 (*citing City of Spartanburg v. Parris*, 85 S.C. 227, 67 S.E. 246 (1910); *City of Greenville v. Pridmore*, 86 S.C. 442, 68 S.E. 636 (1910)). Accordingly, the legislature passed the Home Rule Act fully cognizant of the Supreme Court's *Gaud* decision. If the General Assembly believed the decision had been wrongly decided, it could have expressly overruled the decision when it passed home rule, but it did not. *See e.g.*, S.C. Code § 15-78-10 (*overruling McCall v. Batso*n, 285 S.C. 243, 329 S.E.2d 741 (1985)). *Gaud* remains valid and is the law of this state until overruled by a decision of the Supreme Court or passage of legislation by the General Assembly. It does not conflict with the Home Rule Act, and the Trial Court's reliance on it is not grounds for granting Petitioner's Petition for Certiorari.

III. The Court of Appeals did not err in holding that County Council had the authority to eliminate funding and thus abolish Petitioner's position even though he had been hired by the county administrator.

County Council's authority and power is set forth by statute, and this is therefore essentially a matter of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Lambries v. Saluda County Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014). "Where the statute's language is plain and unambiguous,

[3] The Home Rule Act took effect July 1, 1976.

and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.*, at 10-11, 760 S.E.2d at 790. However, if the statute is ambiguous, "the court must construe its terms." *Id.* at 10, 760 S.E.2d at 789. "Further, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014).

The words of Title 4, Chapter 9 delineating County Council's authority are plain and unambiguous. It is clear from a simple reading of the statute that County Council has the power to "establish...positions in the county...and to abolish any such positions...except as otherwise provided in this title." S.C. Code § 4-9-30(6). Council acted pursuant to this statute and pursuant to its budgetary authority when it stripped funding for and consequently eliminated the deputy county administrator position. The Act provides for the county administrator's authority, as well, including that he is "responsible for employment and discharge of personnel...***subject to the appropriation of funds by the council*** for that purpose." S.C. Code § 4-9-630(8) (emphasis added). When examining a statute, Courts will apply an interpretation that gives effect to all parts of a statute rather than one that does not. *Nucor Steel v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 545, 426 S.E.2d 319, 323 (1993) ("The well-settled rule in South Carolina is that, where possible, all provisions of a statute must be given full force and effect."); *see also Anderson v. S.C. Elec. Com'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 707 (2012) ("Unless there is something in the statute requiring a different interpretation, the words used in the statute must be given their ordinary meaning.") As the Trial Court held, when S.C. Code §§ 4-9-30(6) and 4-9-630(8) are read together and both given effect as written, they provide that County Council establishes, funds and abolishes positions and that the county administrator hires and discharges the

individuals in those positions.[4] See *Anderson, supra*, ("In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect.").

Petitioner argues that Council can only establish those jobs that are "necessary and proper to provide services of local concern for public purposes." S.C. Code § 4-9-30(6). However, this interpretation would essentially render the word "position" meaningless. If the legislature had intended Council's authority to create and abolish to be limited to those categories of public services, it could have specifically included that as part of the statute's language. *See Anderson*, 397 S.C. at 556, 725 S.E.2d at 707 (finding that words of a statute must be given their ordinary meaning).

County Council had authority to abolish the deputy county administrator position under S.C. Code §§ 4-9-30(6) and 4-9-630(8). Reading the statutes together shows that Council establishes positions and the county administrator employs and discharges the people who fill those positions. This interpretation gives meaning to all provisions of the statute when read as a whole. *Anderson, supra.* The Court of Appeals and Trial Court both cited these statutes and properly applied the rules of statutory interpretation to find that County Council had the authority to eliminate funding and thus abolish Petitioner's position as deputy county administrator.

IV. The Court of Appeals did not err in holding that when funds have already been appropriated by County Council, it can subsequently amend the budget ordinance to dictate to the County Administrator how he should spend the appropriated funds.

[4] In fact, if the county administrator had continued to employ Petitioner as deputy county administrator despite the funds for the position being eliminated, he would have been in violation of section 4-9-630(8), which states that the county administrator's personnel authority is "subject to the appropriation of funds by the council for that purpose." S.C. Code § 4-9-630(8).

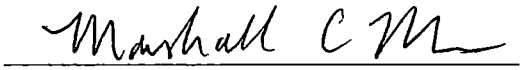
When County Council has appropriated funds to a County department pursuant to a budget ordinance, it has the authority to subsequently amend the budget ordinance and effectively change how the County Administrator can spend the appropriated funds, including as to personnel. Pursuant to S.C. Code § 4-9-140, County Council has the authority to set its own budget. That statute also dictates that "[t]he provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the annual budget for purposes other than as specified in such annual budget when such transfers are approved by the council." S.C. Code § 4-9-140.

County Council made a decision to reduce the budget for the deputy county administrator position. A court cannot subsequently review the wisdom of political decisions such as Council's appropriations. *S.C. Pub. Interest Found. v. Jud. Merit Selection Com'n*, 369 S.C. 139, 143, 632 S.E.2d 277, 278 (2006) ("[T]he courts will not rule upon questions which are exclusively or predominately political in nature rather than judicial."); *see also Japan Whaling Ass'n v. Am. Cetacean Soc.*, 478 U.S. 221, 230, 106 S.Ct. 2860, 2866 (1986) ("The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of another branch of government.") Thus, a court cannot question the wisdom of a council's budgetary decision.

CONCLUSION

There is no special or important reason to issue a writ of certiorari to review the Court of Appeals' *per curium* decision in this appeal. The Trial Court and the Court of Appeals correctly found that County Council had the authority to revise its budget so as to eliminate funding for Petitioner's position and effectively eliminate his job. Thus, the Petition should be denied.

Respectfully submitted,



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I, L. Marshall Coleman Newton, Esquire, certify that on February 8, 2018, I served a copy of the **Return to Petition for Writ of Certiorari** via First Class Mail by placing a copy of said document in the United States mail with sufficient postage thereon to the following:

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