THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2017-CP-40-00988
Appellate Case No. 2019-00920

Don Weaver ..... Appellant,

vs.

Recreation District, Recreation Commission of Richland County, Paul Brawley, as Auditor of Richland County, David A. Adams as Treasurer of Richland County ... Respondents.

FINAL BRIEF OF APPELLANT

John E. Schmidt, III
Melissa J. Copeland
SCHMIDT & COPELAND LLC
1201 Main Street, Suite 1100
Columbia, SC 29201
803.748.1342 (phone)
803.748.1210 (fax)
John@SchmidtCopeland.com
Missy@SchmidtCopeland.com

ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. **Did the Circuit Court err in finding that S.C. Code Ann. § 6-11-271 was constitutional where it levied an amount equal to the 1998 funding level for certain special purpose districts – those not elected and authorized to levy millage "up to and not exceeding a given amount" when no elected body supervises or oversees the use of these taxes and the legislation setting these taxes in 1998 was "special legislation" and violates Home Rule?**

STATEMENT OF THE CASE

This case was initiated by the filing of a Summons and Complaint on February 22, 2017. The parties appeared before The Honorable Casey Manning on October 12, 2017 for a non-jury trial. Thereafter, the parties submitted a Stipulation of Facts and proposed orders. On May 7, 2019, Judge Manning issued his Order in the case finding that Plaintiff had not met his burden of proof regarding the constitutionality of the legislation at issue. On June 4, 2019, Appellant timely filed his Notice of Appeal in this matter.

STATEMENT OF FACTS

In 1953, Act No. 359 created the Richland County Physical Education Commission, predecessor to the Recreation District of Richland County. In 1960, Act No. 873 repealed Act No. 359 and established the Rural Recreation District of Richland County, the immediate predecessor to the Recreation District. In 1965, Act No. 317 granted the governing body of the Rural Recreation District, the Rural Recreation Commission, the power to levy a tax not exceeding one-half mill per annum. In 1967, Act No. 310 broadened this power by authorizing the levying of taxes not to exceed one and one-half mill per annum. Act 310 further provided the Rural Recreation Commission was to be comprised of seven resident electors of the Rural Recreation District, appointed by the Governor upon recommendation by a majority of the members of the Richland County Legislative Delegation. Act No. 317 of 1969 changed the name of the Rural Recreation District and the Rural Recreation Commission to Recreation District and Recreation Commission of Richland County. Act 317 also further empowered the Commission:

> [t]o levy upon all taxable property in the District a tax not exceeding five mills per annum to meet the cost of operating and maintaining parks, playgrounds and recreational facilities under its jurisdiction. Such tax shall be levied by the county auditor and

> collected by the county treasurer who shall keep it in a separate fund applicable solely to the purpose for which it is levied.

Don Weaver ("Appellant"), is a property owner in the unincorporated area of Richland County, South Carolina (herein after referred to as the "County") and taxpayer of the Recreation District with standing to assert the claims raised in the Summons and Complaint filed in the lower court. (R. at 16 and 31; Complaint and Stipulation of Facts, ¶ 1). Weaver brought a case against the Recreation District in 1994 alleging that Act No. 317 violated the "taxation without representation" provision of the South Carolina Constitution found in Article X, section 5. (R. at 32; Stipulation of Facts, ¶ 7). In 1997, the Supreme Court, in *Weaver I* ruled in favor of Weaver holding:

> Here, Act No. 317 gives the Recreation Commission the complete discretion to determine its annual budget, and to levy anywhere from one to five mills taxes to meet its budget. We find such a delegation impermissible under our holding in *Crow*, *Traynham*, and *Bradley*. Accordingly, insofar as Act No. 317 permits such a delegation, it violates *Article X, Section 5 of the South Carolina Constitution* and may not stand.
>
> We are cognizant, however, of the disruptive effect today's holding could have on the financial operation of numerous special purpose districts, local commissions and boards throughout this state. Accordingly, in order to give the General Assembly an opportunity to address this problem, we hold this decision shall be applied prospectively beginning December 31, 1999.

Weaver v. Recreation Dist., 328 S.C. 83, 87-88, 492 S.E.2d 79, 81-82 (1997).

In response to *Weaver*, the General Assembly passed Act No. 397 of 1998 which provided as follows:

> **SECTION 6-11-271.** Millage levy for special purpose district.
>
> (A) For purposes of this section, "special purpose district" means any special purpose district or public service authority, however named, created prior to March 7, 1973, by or pursuant to an act of the General Assembly of this State.

(B)(1) This subsection applies only to those special purpose districts the governing bodies of which are not elected but are presently authorized by law to levy for operations and maintenance in each year millage up to or not exceeding a given amount and did impose this levy in fiscal year 1997-98.

(2) There must be levied annually in each special purpose district described in item (1) of this subsection, beginning with the levy for fiscal year 1999, ad valorem property tax millage in the amount equal to the millage levy imposed in fiscal year 1998.

(C)(1) This subsection applies only to those special purpose districts, the governing bodies of which are not elected but are presently authorized by law to levy for operations and maintenance in each year millage without limit as to amount.

(2) There must be levied annually in each special purpose district described in item (1) of this subsection, beginning with the levy for fiscal year 1999, ad valorem property tax millage in the amount equal to the millage levy imposed in that special purpose district for operations and maintenance for fiscal year 1998.

(D) Notwithstanding any other provision of law, any special purpose district within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, may request the commissioners of election of the county in which the special purpose district is located to conduct a referendum to propose a modification in the tax millage of the district. Upon receipt of such request, the commissioners of election shall schedule and conduct the requested referendum on a date specified by the governing body of the district. If approved by referendum, such modification in tax millage shall remain effective until changed in a manner provided by law.

(E)(1) All special purpose districts located wholly within a single county and within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, are authorized to modify their respective millage limitations, provided the same is first approved by the governing body of the district and by the governing body of the county in which the district is located by resolutions duly adopted. Any increase in millage effectuated pursuant to this subsection is effective for only one year.

> (2) Any millage increase levied pursuant to the provisions of item (1) of this subsection must be levied and collected by the appropriate county auditor and county treasurer.

(R. at 32-34; Stipulation of Facts, ¶ 9).

STANDARD OF REVIEW

"In an action at law, on appeal of a case tried without a jury, the Court views the trial court's findings of fact as equivalent to a jury's findings in a law action, and will not disturb the findings unless the Court views the trial court's findings to be without reasonable evidentiary support. Thus, this Court's review generally extends merely to corrections of errors of law." *Abbeville Cty. Sch. Dist. v. State*, 410 S.C. 619, 629, 767 S.E.2d 157, 162 (2014) (internal citations omitted).

ARGUMENT

I. THE RECREATION DISTRICT IS IN VIOLATION OF ARTICLE X, SECTION 5, TAXATION WITHOUT REPRESENTATION, OF THE SOUTH CAROLINA CONSTITUTION.

Article X, Section 5 of the South Carolina Constitution provides:

> No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.

S.C. Const. Art. X, Section 5 (emphasis added).

A. Taxes to support the Recreation Commission are still levied pursuant to the funding mechanism which the Supreme Court declared unconstitutional in Weaver I.

In *Crow v. McAlpine*, 277 S.C. 240, 285 S.E.2d 355 (1981), the Court invalidated legislative delegation of authority to the Marlboro County Board of Education, an appointed board, to levy and collect tax millage to meet the school district's operating budget, finding that:

> The unlimited power of taxation attempted to be conferred by the Act under consideration is itself a forcible reminder that the power to fix and levy a tax should only be conferred upon a body which stands as the direct representative of the people, to the end that an abuse of power may be directly corrected by those who must carry the burden of the tax.... [t]he General Assembly may not, consistent with Article X, Section 5, delegate the unrestricted power of taxation to an appointive body.

Id. In *Stone v. Traynham*, 278 S.C. 407, 297 S.E.2d 420 (1982), the Court struck down as unconstitutional an amendment to S.C. Code Ann. § 4-9-70, allowing the Orangeburg County Board of Education to establish school tax millages. Citing *Crow*, that "participation by an appointed board...in the budgeting process...constituted taxation without representation," *Id.* at 408, 297 S.E.2d at 421, the Court invalidated this impermissible delegation of taxing power.

The above decisions are consistent with the holding in *Weaver I.* In Footnote 2 of the *Weaver I* opinion, the court invalidated the claim made by the Commission that in setting the maximum millage rate to five mills that the Legislature had actually levied the tax. The Commission further asserted that the implication of the Legislature levying the tax meant the Commission was merely acting in a ministerial capacity. However, the Court invalidated both this contention and the sources cited by the Commission and declared them inapplicable. Finally, the Court stated all opinions inconsistent with its opinion in *Weaver I* were overruled.

The Legislature's response of passing 6-11-271 is inconsistent in part with *Weaver I* and should be invalidated as such. S.C. Code Ann. § 6-11-271 (1998). Section 6-11-271(B)(1) references unelected bodies that "are presently authorized by law to levy (millage) for operations and maintenance in each year." S.C. Code Ann § 6-11-271(B)(1) (1998). However, under *Weaver I*, unelected bodies are not authorized to levy taxes. Therefore, the Legislature's response to *Weaver I* of passing Act No. 397 of 1998 did not correct the taxation without representation

issue of Act No. 317 of 1969 and instead reiterated and relied on the very provisions that were struck by the Court as unconstitutional.

While S.C. Code Ann. § 6-11-271(E)(2) states that millage must be levied and collect by the county auditor and county treasurer, simply stating the mechanical activities of tax collection does not have any bearing on what entity the Act states is authorized to set the millage. Section 6-11-271(B)(2) further causes issues along with 6-11-271(C)(2) as both provisions initially appear to have millage rates set by statute and, consequently, by the General Assembly, which uses language that fixes such amounts at a rate corresponding to an arbitrary fiscal year. However, these provisions provide that "there must be levied annually in each special purpose district...ad valorem property tax millage in the amount equal to the millage levy imposed in fiscal year 1998" which provides that the millage is still set by the Commission as that is the body that was levying taxes in 1998 prior to the effects of *Weaver* taking place. Therefore, the taxation without representation by the Commission is made permanent by statute.

Beyond the codification of millage amounts originally set by unelected bodies, in the totality of the statute and its consequences, one must also consider subsection 6-11-271(E)(1), which provides:

> All special purpose districts located wholly within a single county and within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, are authorized to modify their respective millage limitations, provided the same is first approved by the governing body of the district and by the governing body of the county in which the district is located by resolutions duly adopted. Any increase in millage effectuated pursuant to this subsection is effective for only one year.

S.C. Code Ann. § 6-11-271(E)(1) (1998) (emphasis added). Section 6-11-271(E)(1) therefore provides that the unelected bodies previously setting millage rates are kept in a position of

authority as to require that these unelected bodies first approve any change in millage rates. This makes the authorized, governing body of a district directly responsible to the very unelected bodies that are not authorized to set millage rates due to such being a violation of taxation without representation. The governing bodies should not be required to carry out the responsibilities assigned to them only when allowed to by a body not meant to have any say in the matter affirmed both by state constitution and precedent. *See* S.C. Const. Art. X, Section 5; *Weaver I,* 328 S.C. 83, 492 S.E.2d 79; *Crow,* 277 S.C. 240, 285 S.E.2d 355; *Stone*, 278 S.C. 407, 297 S.E.2d 420. This is an improper delegation of power to the governing body of each district where the body is not comprised of elected officials. As such, 6-11-271(E)(1) is not a legislative fix to discontinue taxation without representation as *Weaver I* requires, but instead is an expansion of the unconstitutional millage setting process by allowing for a change to the millage to be initiated only by the unelected special purpose district body in question.

B. Neither the taxpayers of Richland County nor their representatives lawfully assembled have consented to the tax levied to support the Recreation Commission.

Because Section 6-11-271 seeks to continue an unconstitutional levy of taxes and apply them to all of a certain sub-set of special purpose districts, no taxpayer of Richland County or their representatives have approved of such taxes which violates the Constitution. Stated another way, every member of the legislature elected by Richland County taxpayers could have voted against Section 6-11-271 and it would have passed, thus taxes for Richland County taxpayers would have been fixed by legislators elected by taxpayers from counties other than Richland County. If Richland County residents have problems with the taxes levied or services provided by the Recreation District, they have no recourse. The special legislation continues the current finding rate to infinity. The affected taxpayers have no recourse to seek to reduce this funding

and they have no public, elected body to seek redress for grievances related to the use of those levied funds.

II. SECTION 6-11-271 DOES NOT AFFECT ALL COUNTIES EQUALLY AND IS THEREFORE, "SPECIAL" LEGISLATION INSTEAD OF THE REQUIRED "GENERAL" LAW.

Special legislation is prohibited under Article III, Section 34 (IX) of the South Carolina Constitution which provides that "... where a general law can be made applicable, no special law shall be enacted." S.C. Const., Art. III, § 34(IX). In order that a law may be general, it must be of force in every county in the State. A law is general when it applies to the whole State, and local when it applies to only a part of the State. In *John T. Henry, Jr. v. Horry County,* 334 S.C. 461, 514 S.E.2d 122 (1999), the South Carolina Supreme Court observed:

> Since 1905, the South Carolina Constitution has contained a restriction on the General Assembly enacting "special" laws that affect one county as opposed to "general" laws for the entire state. Prior to March 1973, an exception to the restriction existed under S.C. Const. art. VII, § 11 for the structure of county governments. However, this exception to the general prohibition on special legislation had always been limited by the rule that such special legislation, even where permitted, could not conflict with the general law of the state.

Id. at 464, 514 S.E,2d at 123 (Emphasis added; internal citations omitted).

In 2011, the Court noted:

> We outlined the framework to determine whether special legislation exists in *Kizer v. Clark,* 360 S.C. 86, 600 S.E.2d 529 (2004). "A law is general when it applies uniformly to all persons or things within a proper class, and special when it applies to only one or more individuals or things belonging to that same class." *Id.* at 92, 600 S.E.2d at 532. If the legislation does not apply uniformly, the inquiry then becomes whether the legislation creates an unlawful classification. *Id.* at 93, 600 S.E.2d at 532.

Charleston Cty. Sch. Dist. v. Harrell, 393 S.C. 552, 558, 713 S.E.2d 604, 608 (2011) (Emphasis added).

Critically, in this regard the Court has held:

> In other words, the General Assembly must have a "logical basis and sound reason" for resorting to special legislation.

Horry County v. Horry Cty Higher Ed., 306 S.C. 416, 419, 412 S.E.2d 421, 423 (1991) (citation omitted).

Act 397 of 1998, codified as S.C. Code Ann. §§ 6-11-70 *et seq.*, provides in relevant part at § 6-11-70:

> (A) When a special purpose district elects its board members, the board members must be elected in the November general election held in an even-numbered year. To implement the provisions of this section, the governing body of a county shall by ordinance or resolution extend terms, for necessary periods, of persons to be elected to permit the persons to be elected in accordance with the provisions of this section, but no elected term may be shortened for that purpose.
>
> ****
>
> (C) The provisions of subsection (A) do not apply to districts in counties that have adopted, by ordinance, uniform election dates for districts within those counties before the effective date of this section. The provisions of subsections (A) and (B) do not apply to districts in which the commissioners are elected pursuant to a petition and referendum provided for in Article 2 of Chapter 11 of Title 6. (Emphasis added).

S.C. Code Ann. § 6-11-70 (emphases added).

S.C. Code Ann. § 6-11-271 (B)(1) provides in part:

> This subsection applies only to those special purpose districts the governing bodies of which are not elected but are presently authorized by law to levy for operations and maintenance in each year millage up to or not exceeding a given amount and did impose this levy in fiscal year 1997-98.

S.C. Code Ann. § 6-11-271 (B)(1)(Emphasis added).

Similarly, S.C. Code Ann. § 6-11-271 (C)(1) provides in part:

> This subsection applies only to those special purpose districts, the governing bodies of which are not elected but are presently

> authorized by law to levy for operations and maintenance in each year millage without limit as to amount.

S.C. Code Ann. § 6-11-271(C)(1)(Emphasis added).

In 1991, the South Carolina Supreme Court held special legislation is in violation of the South Carolina Constitution. *Hamm et al. v. Cromer et al.*, 305 S.C. 305, 408 S.E.2d 227 (1991). The Court reiterated, "the General Assembly was prohibited from enacting laws for a specific county or municipality." *Id.* The Supreme Court further held:

> In *Kleckley v. Pulliam*, 265 S.C. 177, 217 S.E. (2d) 217 (1975) this Court held that the prohibition against special legislation contained in Article VIII, meant that no law could be passed concerning a specific county which related to those powers, duties, functions, and responsibilities, which under the mandated systems of government, were set aside for counties. *See also, Richardson v. McCutcheon*, 278 S.C. 117, 292 S.E. (2d) 787 (1982). The prohibition of Section 7 is applicable to special legislation dealing with districts created prior to the ratification of Article VIII or the amendment of prior special legislation. *Id.* Because Act No. 784 amended prior special legislation which created the Authority, the prohibition of Section 7 of Article VIII applies. The enactment of Act No. 784 is exactly the type of special legislation which is prohibited by Sections 1 and 7 of Article VIII of the South Carolina Constitution as it was not intended that after the ratification of the constitutional amendment, the General Assembly could repeatedly inject itself into local affairs.

Id. at 307-308, 408 S.E.2d at 228-229 (Emphasis added). While the Appellants in *Hamm* argued that even if the Act was special legislation that it was immune from the general prohibition as it was transitional or remedial, the Court disagreed. The Supreme Court previously held in *Duncan v. York County*, 267 S.C. 327, 228 S.E.2d 92 (1976), that Section 1 of Article VIII allowed the General Assembly to legislate to bring about an orderly transition to local home rule government, but that such authority was temporary and extended only so far as necessary to place Article VIII fully into operation. *Richardson v. McCutcheon*, 278 S.C. 117, 292 S.E. 2d 787 (1982) (emphasis added). Limited transitional legislation is meant to be a one-time

proposition as to safeguard from the General Assembly injecting its will into the operation of county and local government. *Id.*

In *Horry County v. Cooke*, 275 S.C. 19, 267 S.E. 2d 82 (1980), this Court went a step further and stated that once a legally constituted government has become functional, the *Duncan* exception ends, thereby precluding any further special legislation. *See, Richardson v. McCutchen supra. (emphasis added).* The Court has consistently held that special legislation is constitutional only when it has a rational basis in treating government entities differently. *E.g., U.S. Fidelity & Guar. Co. v. City of Columbia*, 252 S.C. 55, 165 S.E.2d 272 (1969) (license fee for city populations in excess of 90,000); *Town of Forest Acres v. Town of Forest Lake*, 226 S.C. 349, 85 S.E.2d 192 (1954) (annexation rules for county populations in excess of 85,000); *State v. Ferri*, 111 S.C. 219, 97 S.E. 512 (1918) (law prohibiting traffic in seed cotton applying only to counties containing cities of 50,000 or more).

As §§ 6-11-271(B)(1) and (C)(1) only apply to a certain class of special purpose districts within the State, it is unconstitutional special legislation.

III. THE LEVYING OF TAXES BY THE RECREATION DISTRICT COMMISSION IS IN VIOLATION OF HOME RULE.

In 1975, the General Assembly adopted the Home Rule Act (No. 283), set forth in §§ 4-9-10 *et seq.* (1976), in furtherance of South Carolina Constitution, Article VIII, Section 7 provides:

> The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided. Alternate forms of government, not to exceed five, shall be established. 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, Section 7. Under Home Rule, counties act through their governing bodies in the exercise of those powers prescribed in, *inter alia,* S.C. Code Ann. § 4-9-30, which includes the power:

> (5)(a) to assess property and levy ad valorem property taxes and uniform service charges...

S.C. Code Ann. 4-9-30(5)(a).

Although the South Carolina Supreme Court has stated that the Home Rule Act's prohibition on "special legislation" does not operate retroactively to abolish all "special legislation" which was in effect in South Carolina prior to the enactment of the Home Rule Act, it does void special legislation passed thereafter. *See Graham v. Creel*, 289 S.C. 165, 168, 345 S.E.2d 717, 719 (1986). Therefore, Act No. 397 of 1998 is in violation of the Home Rule Act, unconstitutional, and void. Pursuant to the Home Rule Act, the governing and taxing power for Richland County is to be found in the elected members of the Richland County Council, not decided in special legislation that affects only a specific county.

CONCLUSION

For the foregoing reasons, this Court should reverse the Circuit Court's Order.

SCHMIDT & COPELAND, LLC

By: Melissa J. Copeland

John E. Schmidt, III
Melissa J. Copeland
1201 Main Street, Suite 1100
Columbia, SC 29201
(803) 748-1342 (phone)
(803) 748-1210 (fax)

ATTORNEYS FOR APPELLANT

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CERTIFICATE OF COUNSEL

I certify that the Appellant's Final Brief complies with Rule 211(b), SCACR.

SCHMIDT & COPELAND LLC

Melissa J. Copeland

John E. Schmidt, III
Melissa J. Copeland
1201 Main Street, Suite 1100
Columbia, SC 29201
803.748.1342 (phone)
803.748.1210 (fax)
John@SchmidtCopeland.com
Missy@SchmidtCopeland.com
Attorneys for Appellant

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PROOF OF SERVICE

I certify that I served a copy of the Appellant's Final Brief in the above-captioned case on the following persons by United States Mail with sufficient First Class postage affixed, addressed as follows:

Bradley T. Farrar, Esquire
Chief Deputy County Attorney
Richland County Attorney's Office
2020 Hampton Street, Room 4018
Post Office Box 192
Columbia, South Carolina 29202

William C. Dillard, Jr., Esquire
Belser & Belser
1235 Park Street, Suite 300
P.O. Box. 96
Columbia, South Carolina 29202

South Carolina Attorney General
The Honorable Alan Wilson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

SCHMIDT & COPELAND LLC

Melissa J. Copeland

John E. Schmidt, III
Melissa J. Copeland
1201 Main Street, Suite 1100
Columbia, SC 29201
803.748.1342 (phone)
803.748.1210 (fax)
John@SchmidtCopeland.com
Missy@SchmidtCopeland.com

Attorneys for Appellant

Columbia, South Carolina
November 12, 2019