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IN 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-40-0988
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 RESPONDENT RECREATION DISTRICT AND RECREATION COMMISSION OF RICHLAND COUNTY

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II. **Did the circuit court err in holding that Appellant failed to demonstrate beyond a reasonable doubt that § 6-11-271 constitutes unconstitutional special legislation in violation of Art. III, § 34(IX) and Art. VIII, § 7 of the South Carolina Constitution?**

III. **Did the circuit court err in holding that the Home Rule Act, § 4-9-10, et seq., placed no limitation on the authority of the General Assembly to enact § 6-11-271?**

IV. **Are provisions of the Act not affecting the tax imposed on Weaver, §§ 6-11-70(c), -271(E)(1), severable and not the subject of any ripe controversy?**

STATEMENT OF THE CASE

On February 22, 2017, Appellant Don Weaver ("Weaver") brought this action seeking judicial declaration that Act 397 of 1998 ("the Act"), and specifically the provision for levy of taxes under S.C. Code Ann. § 6-11-271, is unconstitutional. (R. p. 16, Complaint). Respondent Recreation Commission of Richland County ("Recreation Commission") answered denying Weaver's claims (R. p. 24, Answer). Respondents Paul Brawley, as Auditor of Richland County, and David A. Adams, as Treasurer of Richland County, answered but took no position as to the constitutionality of the Act (R. p. 29, Cty. Answer).

On October 12, 2017, the case was tried non-jury before the Honorable L. Casey Manning. The parties filed a joint Stipulation of Facts on November 21, 2017. (R. p. 31, Stip. Facts). On May 7, 2019, Judge Manning issued an Order finding Weaver had failed to demonstrate any constitutional infirmity in the Act and denying the requested relief in full. (R. p. 1, Order). Weaver initiated this appeal on June 4, 2019, with the filing and service of a Notice of Appeal.

STANDARD OF REVIEW

"In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The judge's findings are equivalent to a jury's findings in a law action." Columbia Venture, LLC v. Richland Cty., 413 S.C. 423, 442, 776 S.E.2d 900, 910 (2015) (internal citations omitted).

"This Court has a very limited scope of review in cases involving a constitutional challenge to a statute." Joytime Distributors & Amusement Co. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). "[S]tatutes are presumed constitutional, and the party challenging them

must prove their infirmity beyond a reasonable doubt." Cabiness v. Town of James Island, 393 S.C. 176, 189, 712 S.E.2d 416, 423 (2011). "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 a provision of the constitution." Joytime, supra. "[I]t is a grave matter to overturn and to declare an enactment of the General Assembly to be unconstitutional." McElveen v. Stokes, 240 S.C. 1, 6, 124 S.E.2d 592, 594 (1962) (recognized as superseded on other grounds in Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty., 405 S.C. 458, 748 S.E.2d 230 (2013)).

As the Court has explained,

> All presumptions are in favor of the power of that body to enact the law. All considerations involving the wisdom, the policy, or the expediency of the act are addressed exclusively to that branch of the state government. Its power to enact the law is the sole question addressed to this court. So long as doubts concerning this power remain, it is our plain duty to resolve them in favor of the validity of the act.

Id. at 6, 124 S.E.2d at 594 (quoting Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539, 545 (1938)).

"All sections of the Constitution must be considered together and harmonized, if possible." Gaud v. Walker, 214 S.C. 451, 476, 53 S.E.2d 316, 327 (1949). "It is the duty of the Court to synchronize and not to nullify provisions in the Constitution." Ruggles v. Padgett, 240 S.C. 494, 509, 126 S.E.2d 553, 560 (1962). Pursuant to Article VIII, § 17, laws concerning local government are "to be liberally construed and . . . presumed constitutional if reasonably possible." Horry Cty. v. Cooke, 275 S.C. 19, 24, 267 S.E.2d 82, 84 (1980).

FACTS

Act No. 873 of 1960 established the Richland County Rural Recreation District, a special purpose district governed by an appointed commission and empowered to provide recreational

facilities within the entirety of Richland County outside the city limits of Columbia. (R. p. 36, Act 873) In 1969, Act No. 317 changed the name of the district to the Recreation District of Richland County, and changed the name of the appointed governing body to the Recreation Commission of Richland County. (R. p. 43, Act 317). Act No. 317 also empowered the Commission to levy a property tax of up to five mills per annum within the district to fund its operations. (R. p. 43, Act 317).

In 1997, this Court held that, by authorizing an unelected special purpose district to levy taxes, Act No. 317 constituted taxation without representation in violation of Article X, § 5 of the S.C. Constitution. Weaver v. Recreation Dist., 328 S.C. 83, 492 S.E.2d 79 (1997).[1] The effect of the ruling was to leave unelected special purpose districts throughout South Carolina without any mechanism to fund their operations. In its opinion, the Court acknowledged "the disruptive effect today's holding could have on the financial operation of numerous special purpose districts, local commissions and boards throughout this state". Id. at 87–88, 492 S.E.2d at 82. Accordingly, the Court specified that, "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." Id.

In response, the General Assembly passed Act No. 397 of 1998 ("the Act") (R. p. 44, Act 397). Section 4 of the Act directly addressed the tax revenue issue resulting from Weaver by adding § 6-11-271 to the S.C. Code of Laws. Under § 6-11-271, the General Assembly directly levied taxes for the operations of unelected special purpose districts, instead of authorizing appointed commission to determine and impose taxes themselves. With regard to the amount of the levy, § 6-11-271 provides that, beginning in fiscal year 1999 and until adjusted by procedures

[1] Appellant Weaver was also a plaintiff in the civil action leading to the 1997 Weaver opinion. (R. p. 32, Stip. Facts. ¶ 7).

set forth in the statute, the levy would be equal to the millage that had been imposed in each affected special purpose district for operations and maintenance for fiscal year 1998. § 6-11-271(B)(2), (C)(2). Additionally, Section 2 of the Act established a procedure for voters to initiate and by majority vote approve a referendum to establish an elected board to govern a special purpose district. § 6-11-350, et seq.

There are currently at least 33 unelected special purpose districts, operating in at least 12 counties, that are funded under § 6-11-271. (R. p. 8, Order p. 8; R. p. 60-61, Supplement and Exhibit E to Recreation Commission Trial Brief). These entities provide public services including fire and rescue services, sewer and water services, street lighting, aging services and recreation. (Id.).

ARGUMENTS

The circuit court correctly held that Weaver demonstrated no violation of Article X, § 5 (regarding taxation without representation), Article III, § 34 (regarding special legislation) or Article VIII, § 7 (regarding county Home Rule) of the S.C. Constitution. Section 6-11-271 is a carefully crafted statute of general application which provides a sound mechanism to raise revenue for unelected special purpose districts throughout South Carolina. Special purpose districts provide important services to the public they serve, such as recreation, sanitary sewer infrastructure, and fire protection, all across the state. (R. p. 8, Order p. 8). The legislation that Weaver now challenges is essential to provide the funding needed so these special purpose districts can operate.

As set forth in his Complaint, Weaver would prefer that Richland County Council, and not the General Assembly, be responsible for levying taxes for the Recreation Commission's operations. (R. p. 22, Prayer for Relief ¶ 2). That, however, is a political preference, and not the

basis for a constitutional challenge. For the reasons set forth herein, the Court should affirm the circuit court's finding that Weaver has demonstrated no constitutional violation.

I. Act No. 397 Does Not Constitute Taxation Without Representation

Act No. 397 of 1998, which established the tax complained of in this matter, was enacted by the duly elected representatives of Weaver and his fellow taxpayers. Article X, Section 5 of the South Carolina Constitution provides, in pertinent part, that "[n]o 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." S.C. Const. art. X, § 5.

a. The tax at issue was directly imposed by the General Assembly

The Act was not a delegation to unelected special purpose districts of the authority to levy taxes or determine tax rates, but instead a direct legislative creation of the tax. See Campbell v. Hilton Head No. 1 Pub. Serv. Dist., 354 S.C. 190, 192, 580 S.E.2d 137, 138 (2003) (the Act "removed the taxing power from appointed bodies such as the District's commission"); Lawyer v. Hilton Head Pub. Serv. Dist. No. 1, 220 F.3d 298, 300 (4th Cir. 2000) ("the South Carolina General Assembly passed legislation that took all discretionary taxing power out of the hands of appointed bodies such as the District's governing board . . . In its place, the General Assembly exercises its own taxing power to finance the operations of such entities."). Accordingly, Weaver's argument regarding "taxation without representation" turns on the issue of whether the General Assembly qualifies as a body of "representatives lawfully assembled". This is not a difficult issue to resolve.

As the Court has made perfectly clear, "[t]he representatives lawfully assembled are the Legislature with its plenary power." Dial v. Watts, 138 S.C. 468, 136 S.E. 891, 892 (1927). "The power of taxation is a legislative power, and knows no limitations, except those imposed

expressly or by plain implication in the State or Federal Constitution." Trustees of Wofford Coll. v. City of Spartanburg, 201 S.C. 315, 23 S.E.2d 9, 11 (1942). "The legislative power of the people of the State of South Carolina is vested in the General Assembly." Id. "It cannot be doubted that the Legislature has the power to make the levy itself." Evans v. Beattie, 137 S.C. 496, 135 S.E. 538, 546 (1926) (overruled in part on other grounds by Weaver at 87, 492 S.E.2d at 82).

"The taxing power is one of the highest prerogatives of the General Assembly. Members of this body are chosen by the people to exercise the power in a conscientious and deliberate manner. If this power is abused, the people could, at least, prevent a recurrence of the wrong at the polls." Crow v. McAlpine, 277 S.C. 240, 244, 285 S.E.2d 355, 358 (1981). "It is well recognized that the Legislature has full power in matters of taxation subject to express constitutional limitations, and that a statute will if possible be construed so as to render it valid, and will not be declared unconstitutional unless its invalidity is clear and beyond reasonable doubt, every presumption being made in favor of its constitutionality." Ward v. Cobb, 204 S.C. 275, 28 S.E.2d 850, 853 (1944).

It is also recognized under South Carolina law that the word "levy" refers to two distinct and separable aspects of the taxation process: first, the legislative process of creating the tax and establishing the tax rate and, second, the ministerial process of collecting the tax, as is done through county assessment and treasury offices.

> The word "levy," as hereinbefore shown, is frequently used in more than one sense, and its meaning in a particular instance is to be determined by resort to the context. It is sometimes used for the purpose of conferring all the powers incident to the creation and collection of a tax, as when "corporate authorities are vested with power to assess and collect taxes for corporate purposes," while again it is only intended to confer administrative powers in the collection of the tax, without reference to its creation . . . .

S. Ry. Co. v. Kay, 62 S.C. 28, 39 S.E. 785, 787 (1901) (overruled in part on other grounds by Weaver at 87, 492 S.E.2d at 82). Constitutional limitations on the levy of taxes relate to the legislative creation of the tax and determination of the tax rate, and not to the ministerial act of collection. Milster v. City of Spartanburg, 68 S.C. 26, 46 S.E. 539, 541 (1903) (a tax is "levied" in the constitutional sense when it is "ordained or created"). To state the obvious, elected representatives voting to establish a tax also consent by necessity to its collection.

In the case at hand, it is beyond question that it was the General Assembly, and not the Recreation Commission, that created the tax and established the tax rate. References in the statute to additional steps in the "levying" process at the local level relate merely to the ministerial acts of assessing and collecting the tax. Accordingly, with regard to Article X, Section 5 of the South Carolina Constitution, the challenged legislation represents nothing more than an exercise of the General Assembly's plenary authority, as the duly elected legislative branch of the state government, to establish a tax.

b. The Act's direct legislative levy was constitutional

The passage of Act 397 was entirely consistent with Article X, Section 5 and Weaver. "A statutory provision should be given a reasonable construction consistent with the purpose and policy expressed in the statute." Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997). The reference in § 6-11-271(B)(1) to unelected special purpose districts "presently authorized by law to levy for operations" was clearly nothing more than a reasonable means to identify the class of entities affected by the opinion. These districts had previously been legislatively authorized to levy millage, and the prospective application of Weaver had not yet taken effect when the statute was enacted. The Weaver opinion itself used similar language,

stating that "Act No. 317 authorizes the Recreation Commission, in pertinent part . . . [t]o levy upon all the taxable property in the District a tax." Weaver at 85, 492 S.E.2d at 80.

Likewise, the procedure set forth in the statute allowing for temporary modification of millage rates with approval of an unelected district's governing body is constitutional because any modification also requires the consent of an elected county council. § 6-11-271(E)(1).[2] While that subsection does provide unelected governing bodies a limited procedural role in decisions to temporarily modify millage rates, per the statute this can only be done with the approval of the elected governing body of the county in which the district is located. In other words, any increase in the rate must be approved by the county council initially and then again on a recurring annual basis. An unelected special purpose district has no power to unilaterally increase the rate or preserve such an increase without the consent of county council.

The Court has held that similar restricted involvement by non-representative bodies in setting tax rates does not constitute unconstitutional taxation without representation. Burriss v. Anderson Cty. Bd. of Educ., 369 S.C. 443, 458, 633 S.E.2d 482, 490 (2006) (upholding two-tiered school governance system that gave the County Board of Education authority to set separate tax millage rates for five school districts, with rates in each district being determined in part by Board members elected from outside the district); Bradley v. Cherokee Sch. Dist. No. One of Cherokee Cty., 322 S.C. 181, 184, 470 S.E.2d 570, 571 (1996) (upholding enactment authorizing school board to initiate referendum to approve temporary imposition of a one percent sales tax for entire county, including areas outside school district), *overruled on other grounds by* Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty., 405 S.C. 458, 748 S.E.2d 230 (2013).

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[2] Nonetheless, as discussed in Section IV of this brief, the millage rate modification subsection is severable from the tax levy provisions and provides no ripe basis for adjudication.

The same authorities also make it clear that there is no constitutional infirmity in the fact that the tax at issue in this case was imposed by the General Assembly, and not by some body that was elected exclusively by the constituents of the Recreation District. In Burriss, for example, the Court upheld an enactment authorizing the County Board of Education to set different tax millage rates for each of five school districts in the county, over an objection that the Board's membership came from different single-member Board districts within the county and, therefore, "does not directly, i.e. exclusively, represent just a single [school] district." Burriss at 458, 633 S.E.2d at 489. Rejecting this as irrelevant to the constitutional analysis, the Court cited with approval the conclusion of the circuit court that "[t]he mere fact that voters in the individual school districts directly elect fewer than all of the Board members who make decisions affecting those districts does not subject those voters to taxation without representation." Id. at 459, 633 S.E.2d at 490. "[T]he consent of the people means the vote of all the people using the ballot." Dial v. Watts, 138 S.C. 468, 136 S.E. 891, 892 (1927). There is simply no constitutional requirement of representational exclusivity in the Article X, § 5 analysis.

The cases cited by Weaver are distinguishable. In Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355 (1981), the Court struck down legislation that delegated unrestricted taxation authority to a school board composed of members appointed by the Governor to five-year terms. Unlike the case at hand, Crow did not involve a requirement for approval by some elected body. Similarly, Stone v. Traynham, 278 S.C. 407, 297 S.E.2d 420 (1982), includes dicta to the effect that an unelected county board of education had been deemed constitutionally ineligible to levy taxes. However, as with Crow, this dicta relates to an unrestricted power to levy taxes. By

contrast, in the case at hand the millage rate modification procedure set forth in the Act requires annual approval by county council of any rate modification.

c. Recreation District taxpayers have political recourse

Finally, taxpayers of the Recreation Commission and other unelected entities receiving funding under the Act do have clear means of political recourse if dissatisfied. Section 6-11-350 allows voters to initiate and by majority vote approve a referendum to establish an elected board to govern a special purpose district. In other words, Weaver and other constituents of the Recreation District have a direct means of political recourse to take it out of the hands of an appointed board. In addition to the facts that the challenged tax is a direct legislative levy and requires county council approval of any annual modifications, the referendum statute provides a further means of electoral redress.

II. Act No. 397 Is Not Unconstitutional Special Legislation

a. The Act is a general law applying to a constitutionally proper class of special purpose districts

Article III, Section 34(IX) of the South Carolina Constitution provides, in pertinent part, that "where a general law can be made applicable, no special law shall be enacted." Likewise, Article VIII, § 7 provides that "[t]he 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. . . . 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."

"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." Bd. of Trustees for Fairfield Cty. Sch. Dist. v. State, 409 S.C. 119, 125, 761 S.E.2d 241, 244–45 (2014) (quoting Charleston Cty. Sch. Dist. v. Harrell, 393 S.C. 552, 558, 713 S.E.2d 604, 608 (2011)). Weaver argues that §§ 6-11-271(B)(1) and (C)(1) are unconstitutional because the provisions "only apply to a certain class of special purposes districts within the State." (App. Brief, p.12). Accordingly, the specific issue before the Court is whether the class of entities to which the relevant provisions of the Act apply, unelected special purpose districts previously authorized to levy taxes, is defined by a constitutionally proper classification.

This Court has explained that, in determining a "proper class" subject to general legislation,

> The Legislature may classify, for the purpose of legislation, if some intrinsic reason exists why the law should operate upon some and not upon all, or should affect some differently from others, but this classification must be based upon differences which are either defined by the Constitution, or are natural or intrinsic, and which suggest a reason that may rationally be held to justify the diversity in the legislation. It must not be arbitrary, for the mere purpose of classification. The class must be characterized by some substantial qualities or attributes, which render such legislation necessary or appropriate for the individuals of the class.

Sansing v. Cherokee Cty. Tourist Camp Bd., 195 S.C. 7, 10 S.E.2d 157, 158–59 (1940).

In the case at hand, the challenged statute is based on delineation of a proper class of special purpose districts. Specifically, the statute applies to unelected special purpose districts previously authorized to establish tax millage levels, whether at capped or unlimited rates. § 6-11-271(B)(1), -(C)(1). As to each category, the statute then levies, beginning in fiscal year 1999 and until adjusted by uniform procedures set forth in the statute, ad valorem property tax millage in the amount equal to the millage levy imposed in each such special purpose district for operations and maintenance for fiscal year 1998. § 6-11-271(B)(2), (C)(2).

The class of special purpose districts drawn in § 6-11-271 is based on a common sense, pragmatic taxonomy of the diverse special purpose districts created prior to the constitutional mandate of home rule. Per the statute, for all unelected special purpose districts previously authorized to levy taxes, millage was established at 1998 rates for operations and maintenance until properly adjusted by uniformly applicable procedures. It is true that, as a practical matter, subsections (B) and (C) utilize slightly different wording to apply this uniform rule to different special purpose districts depending on whether each district's prior millage authority was capped or unlimited. However, this merely illustrates that § 6-11-271, far from being special legislation, was a thoughtfully drafted enactment that brought more uniformity, not less, to the laws applicable to unelected special purpose districts.

Unelected special purpose districts previously authorized to levy taxes are clearly a proper class subject to the enactment of uniformly applicable general legislation. In the wake of Weaver, *supra*, elected special purpose districts, unlike unelected districts such as the Recreation Commission, retained constitutional authority to levy taxes on duly represented constituents. The court in Weaver held that there is in fact a constitutional distinction, based on Article X, § 5, between elected and unelected special purpose districts. The constitutional restriction on special legislation is not so blunt an instrument as to prohibit legislative action based on that same distinction.

This is a clear example of a classification "defined by the Constitution . . . that may rationally be held to justify the diversity in the legislation." Sansing, 195 S.C. 7, 10 S.E.2d at 158–59. By prevailing in Weaver, Appellant helped establish that unelected special purpose districts are indeed an intrinsically distinct class under the State Constitution. The object sought

to be obtained by the Act, levying millage to fund operations of districts that could no longer do so directly following Weaver, is clearly and directly related to this classification.

By way of analogy, the General Assembly clearly has constitutional authority to pass legislation amending statutory provisions governing municipalities operating under, for example, the mayor-council form of government, addressing some rationally defined need specific to that governance form. *See* S.C. Code Ann. § 5-9-10, et seq. Such legislation would be uniformly applicable to a proper class (i.e., "strong mayor" municipalities), and would not be special legislation merely because it would apply to the City of Charleston but not, for example, to the City of Columbia or City of Greenville, both of which operate under the council-manager form. § 5-13-10, et seq. *See also* City of Charleston Ord. § 2-1; City of Columbia Ord. § 2-1; City of Greenville Ord. § 2-1. Likewise, § 6-11-271 is uniformly applicable to unelected special purpose districts previously authorized to establish millage levels, a proper, constitutionally distinct class, and is not special legislation based on its inapplicability to the fundamentally distinct class of elected special purpose districts.

Furthermore, a law may be general even where it contains "special provisions". Article III, Section 34 provides that, "nothing contained in this section shall prohibit the General Assembly from enacting special provisions in general laws." S.C. Const. art. III, § 34(X). "'[S]pecial provisions in general laws' . . . mean provisions in general laws, which, while having a limited application, must not be so inconsistent with the general scheme or purpose of the statute as to prevent substantial uniformity of operation throughout the state." State v. Burns, 73 S.C. 194, 52 S.E. 960, 961 (1906). Analysis of special provisions is based on deference to "legislative determination of necessity for special provisions in the general laws." Brown v. Moseley, 222 S.C. 1, 9, 71 S.E.2d 591, 594 (1952).

In the case at hand, S.C. Code § 6-11-271 applies generally to all unelected special purpose districts previously authorized to levy their own ad valorem taxes. The 1998 statutory scheme for the levy of taxes for these districts was a logical remedy to the impending tax revenue crisis following Weaver v. Recreation District, and the Act applies with uniformity across the state. Clearly, the unusual circumstances leading up to the General Assembly's passage of the Act would have fully supported any legislative determination of necessity for special provisions in the general law. Accordingly, although Respondent asserts that § 6-11-271 was straightforward general legislation, even if it is determined to constitute or contain a special provision there would be no constitutional violation.

b. Act No. 397 was remedial legislation justified by the exigencies unelected special purpose districts faced in the wake of *Weaver v. Recreation District*

Furthermore, even assuming for the sake of argument that § 6-11-271 was not general legislation, it would nonetheless be constitutional as remedial legislation. The General Assembly has constitutional authority to enact transitional or remedial legislation to ensure the continuous operation of local government entities. As the Court has explained,

> This court has recognized an exception to the outright prohibition against laws for a specific county as stated in Article VIII s 7. By reading Sections 1, 7, and 17 of Article VIII together, the court in Duncan v. York County, 267 S.C. 327, 228 S.E.2d 92 (1976), reasoned that specific legislation necessary to bring about an orderly transition to home rule is constitutionally permissible. The court stated that such authority is temporary in nature as a "one-shot" proposition and extends only to the point necessary to place Article VIII fully into operation.

Horry County v. Cooke, 275 S.C. 19, 23, 267 S.E.2d 82, 84 (1980).[3] However, "by 'one-shot proposition' the court was referring not merely to a single legislative enactment but rather to that

[3] Article VIII, § 1 provides that "[t]he powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a

process whereby the initial, home-rule county government becomes fully operational." Id. at 23–24, 267 S.E.2d at 84. The test is whether "a legally constituted government has become functional[.]" Davis v. Richland Cty. Council, 372 S.C. 497, 503, 642 S.E.2d 740, 743 (2007).

One type of constitutional "transitional" legislation is remedial legislation. Hamm v. Cromer, 305 S.C. 305, 308, 408 S.E.2d 227, 229 (1991). Legislation is remedial, and therefore constitutional, if it serves to restore "continuous and successful operation" of an existing local government entity. *See* id. The Court has found such transitional legislation to be constitutional where it "accommodates legal contingencies not originally foreseen but does not press beyond the Duncan case exception allowing the legislature to establish a legal county government." Cooke, 275 S.C. at 25, 267 S.E.2d at 85 (addressing successive attempts to establish county government complying with the Voting Rights Act of 1965).

In the matter at hand, the State of South Carolina faced the difficult task of providing a mechanism for funding the operations of an entire class of its political subdivisions, unelected special purpose districts. These legally constituted units of local government, established for decades and providing important services including recreation, sanitary sewer operation, and fire protection, were suddenly left without any secure means to raise revenue in the wake of the Court's opinion in Weaver. In the opinion, the Court acknowledged the critical need for remedial legislation as a result of its constitutional holding:

> 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

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manner provided by law." Article VIII, § 17 provides that "[t]he provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution."

> to address this problem, we hold this decision shall be applied prospectively beginning December 31, 1999.

Weaver, 328 S.C. at 87–88, 492 S.E.2d at 82 (decided October 13, 1997). As the Court has also made clear, "[t]he existence of special purpose districts is protected, even under home rule, until they are dissolved by the General Assembly." Hagley Homeowners Ass'n, Inc. v. Hagley Water, Sewer, & Fire Auth., 326 S.C. 67, 485 S.E.2d 92, 95 (1997).

In passing Act 397 of 1998, the General Assembly took the Supreme Court up on its invitation to remedy a constitutional crisis that could have otherwise resulted in the complete operational default of numerous special purpose districts throughout South Carolina. The Act was clearly based on a need to accommodate "legal contingencies not originally foreseen", Cooke, supra, and to prevent the collapse of the "continuous and successful operation", Hamm, supra, of recreation, sewer and fire districts across the state. In doing so, the Act furthered the policy of "orderly transition to home rule", Cooke, supra, by preventing a severe failure of local government services while at the same time establishing, in Section 2, a new procedure for constituents to initiate and by majority vote approve a referendum to convert an unelected district to elected board governance. § 6-11-350, et seq. Accordingly, Act 397 was remedial, transitional legislation and therefore constitutionally sound.

Likewise, "where a special law will best meet the exigencies of a particular situation, it is not unconstitutional." Bd. of Trustees for Fairfield Cty. Sch. Dist. v. State, 409 S.C. 119, 125-26, 761 S.E.2d 241, 245 (2014) (citing Charleston Cty. Sch. Dist. v. Harrell, 393 S.C. 558, 558, 713 S.E.2d 604, 608 (2011)). "[T]he constitutional prohibition against special legislation operates similarly to our equal protection guarantee in that it prohibits unreasonable and arbitrary classifications. A classification is arbitrary, and therefore unconstitutional, if there is no reasonable hypothesis to support it." Id., at 125, 761 S.E.2d a 244–45. "Restated, special

legislation will survive a constitutional challenge where there is a logical basis and sound reason for resorting to such legislation." Id. at 125–26, 761 S.E.2d at 245. The burden is on the challenger to show the lack of such "logical basis or sound reason". Id. at 126, 761 S.E.2d at 245.

As discussed above, the millage provisions of Act 397 are clearly a reasonable attempt to provide a mechanism for funding unelected special purposes districts in the wake of the Weaver ruling. The Court in Weaver specifically identified a logical basis and sound reason for such legislation, recognizing "the disruptive effect today's holding could have on the financial operation of numerous special purpose districts, local commissions and boards throughout this state" and delaying application of its ruling to provide the General Assembly sufficient time to act. Weaver, 328 S.C. at 87–88, 492 S.E.2d at 82. Accordingly, even assuming for the sake of argument that § 6-11-271 was somehow not general law, its enactment as part of Act No. 397 of 1998 was constitutional remedial legislation based on a logical classification of special purpose districts. As a practical matter, the type of unusual circumstances leading to passage of the Act are unlikely to recur, and a ruling affirming the circuit court's order would not extend beyond the particular facts of this unique case.

III. The Home Rule Act (S.C. Code § 4-9-10, et seq.) Does Not Restrict Generally Applicable Legislation Regarding Special Purpose Districts

Finally, Act No. 285 of 1975, referred to as the Home Rule Act and codified at S.C. Code Ann. §§ 4-9-10 through 4-9-1230, does not restrict the power of the General Assembly to enact general laws governing existing special purpose districts. The Home Rule legislation was enacted following 1973 constitutional amendments designed to transfer control over local policymaking and administration away from county legislative delegations and instead to elected county bodies, as "[c]hanneling local government decisions through a statewide legislative body [had become] increasingly more cumbersome . . . [as] the economies and the needs of different

parts of the state became more varied." J. L. Underwood, THE CONSTITUTION OF SOUTH CAROLINA, VOL. II: THE JOURNEY TOWARD LOCAL SELF-GOVERNMENT 3 (1989).

The Home Rule Act serves to designate the "structure, organization, powers, duties, functions and responsibilities of county government", but does not purport to restrict general legislation regarding special purpose districts. S.C. Code Ann. § 4-9-310.[4] To the contrary, the Home Rule Act specifically states that it does *not* change the functions of existing special purpose districts or the authority of the General Assembly to pass legislation affecting such entities:

> The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public service districts, special purpose districts, water and sewer authorities, or other political subdivisions by whatever name designated, (which are in existence on the date one of the forms of government provided for in this chapter becomes effective in a particular county) and such political subdivisions *shall continue to perform their statutory functions* prescribed in laws creating such districts or authorities *except as they may be modified by act of the General Assembly* . . . .

S.C. Code Ann. § 4-9-80 (emphasis added).

The functions and powers of special purpose districts are addressed in detail in other portions of the S.C. Code, including but not limited to Title 6, Chapter 11 (§ 6-11-10, et seq., "Special Purpose or Public Service Districts Generally"). In the legislation challenged in this case, codified in relevant part at § 6-11-271, the General Assembly merely enacted another general law regarding this form of local government. The Home Rule Act simply does not affect the legislature's authority to enact constitutionally sound laws affecting special purpose districts.

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[4] Any such attempt at restricting future legislation would have been ineffective. See Chris J. Yahnis Coastal, Inc. v. Stroh Brewery Co., 295 S.C. 243, 247, 368 S.E.2d 64, 66 (1988).

Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986), cited by Appellant, stands for the proposition that the Home Rule Act did not apply retrospectively to abolish all prior special legislation. Id. at 168, 345 S.E.2d at 719. Dicta in the case to the effect that the Home Rule Act "prevent[s] the General Assembly from enacting 'special legislation' and void[s] any 'special legislation' which contradicts the general law", id., was merely a recognition that under Art. VIII, Section 7 of the South Carolina Constitution, a particular county cannot be singled out for exemption from the general law set forth in that enactment. As set forth above, the Home Rule Act does not prevent general legislation relating to previously existing special purpose districts.

IV. The Constitutionality Of The Tax Levied By The Act Is Not Affected By Severable Statutory Provisions Not Relevant To The Tax Imposed On Weaver

Finally, Weaver argues that provisions of the Act relating to procedures for modification of millage rates, § 6-11-271(E)(1), and scheduling election dates for elected special purpose districts, § 6-11-70(C), somehow bear on the constitutionality of the tax imposed on Richland County taxpayers under § 6-11-271(B). These provisions are not relevant to the issues on appeal for at least two reasons.

a. Challenges to provisions of the Act unrelated to imposition of the tax are not ripe for adjudication

Weaver has not argued, and there is no evidence in the record to indicate, that Recreation District taxpayers have been subject to any tax rate modification under § 6-11-271(E)(1) or to election date scheduling affected by § 6-11-70(C). Accordingly, consideration of the constitutionality of the Act as a whole based on these provisions is a merely hypothetical exercise and not properly before the Court for adjudication. "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." Waters v. S.C. Land Res.

Conservation Comm'n, 321 S.C. 219, 227, 467 S.E.2d 913, 917–18 (1996). "The courts generally decline to pronounce a declaration in a suit wherein the rights of the plaintiff are contingent upon the happening of some event which cannot be forecast and which may never take place." Park v. Safeco Ins. Co. of Am., 251 S.C. 410, 414, 162 S.E.2d 709, 711 (1968). A hypothetical impact on Weaver by some future action under one of these provisions is unfit for review, and withholding judicial consideration of some speculative future harm would impose no hardship. Waters, supra.

b. Provisions of the Act unrelated to imposition of the tax are severable

The provisions pertaining to rate modification, § 6-11-271(E)(1), and election date scheduling, § 6-11-70(C), although included within Sections 4 and 1 of the Act,[5] are severable from the relevant subsection 6-11-271(B). As this Court has explained, "[a]lthough we are hesitant to declare any portion of a statute unconstitutional, we may invalidate a separable part without impairing the remainder." Stone v. Traynham, 278 S.C. 407, 409, 297 S.E.2d 420, 422 (1982). "The test for severability is whether the constitutional portion of the statute remains complete in itself, wholly independent of that which is rejected, and is of such a character that it may fairly be presumed the legislature would have passed it independent of that which conflicts with the constitution." Joytime Distributors & Amusement Co. v. State, 338 S.C. 634, 648–49, 528 S.E.2d 647, 654 (1999). "When the residue of an Act, *sans* that portion found to be unconstitutional, is capable of being executed in accordance with the Legislative intent, independent of the rejected portion, the Act as a whole should not be stricken as being in violation of a Constitutional Provision." Id. at 649 (quoting Dean v. Timmerman, 234 S.C. 35, 43, 106 S.E.2d 665, 669 (1959)).

[5] Appellant's Brief also refers on page 10 to § 6-11-70(A), but this subsection was not enacted or amended by the Act.

The challenged tax levy provision in Section 6-11-271(B) would remain independently operative even in the absence of the fundamentally distinct subject matter included in Sections 6-11-271(E)(1) and 6-11-70(C). The levy would still be imposed, which was self-evidently the primary intent of the General Assembly in light of the looming Weaver deadline at the time the Act was approved, and the legislature would retain its authority to make future modifications to the levy. The General Assembly faced an impending revenue crisis in relation to unelected special purpose districts throughout the state, and it may fairly be presumed it would have passed the levy statute independent of the severable provisions cited by Weaver.

Finally, the circuit court specifically found that Section 6-11-70 is severable from the tax millage provisions in Section 4 of the Act. (R. p. 10-11, Order p. 10-11). This finding was not challenged at the trial stage or on appeal, and is therefore the law of the case. Biales v. Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal.").

CONCLUSION

The challenged tax levy statute has funded dozens of special purpose districts across the state for approximately 20 years. Appellant has not met his burden to demonstrate beyond a reasonable doubt that his disapproval of the levy amounts to more than a disagreement with the General Assembly's policy determination. If Recreation Commission taxpayers are dissatisfied, they have electoral recourse to convert the Commission to a popularly elected board. For the reasons set forth herein, the Court should affirm the judgment of the circuit court.

[Signature block to follow]

Respectfully submitted,

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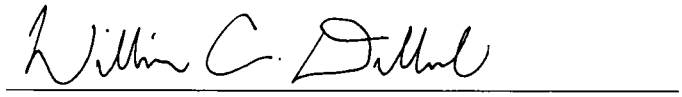

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November 4, 2019

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In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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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.

CERTIFICATE OF COUNSEL

I certify that this Final Brief of Respondent Recreation District, Recreation Commission of Richland County complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent Recreation District and Recreation Commission of Richland County by depositing a copy of it in the United States Mail, postage prepaid, on November 5, 2019, addressed to its attorneys of record as listed below.

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