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CLIENT SECURITY FUND; JUDICIAL STANDARDS

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

JULY 5, 2017

MAILING ADDRESS: The Judicial Department
P. O. Box 2170, Raleigh, N. C. 27602-2170

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OF
NORTH CAROLINA

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Evenly divided Supreme Court—Court of Appeals ruling stands—no precedential authority—The decision of an evenly divided Supreme Court left intact the ruling of the Court of Appeals on whether certain defenses were sufficiently alleged in the complaint, although the Court of Appeals opinion was without precedential authority. **Commscope Credit Union v. Butler & Burke, LLP, 48.**

Preservation of issues—failure to object below—failure to raise on appeal—The decision of the Court of Appeals on an evidence question in a criminal prosecution was affirmed by the Supreme Court where defendant did not raise the issue at trial and so did not preserve it for appeal. The decision of the Court of Appeals on the remaining issue was not affected. **State v. Collins, 60.**

CITIES AND TOWNS

Water and sewer impact fee ordinances—for future use and expansion—invalid—The Town of Carthage exceeded its municipal authority under the Public Enterprise Statutes by adopting water and sewer "impact fee" ordinances that, upon approval of any subdivision of real property, triggered immediate charges for future

water and sewer system expansion. These fees were assessed regardless of the property owner's actual use of the systems or whether Carthage actually expanded its systems. The plain language of the statute empowered the Town to charge for contemporaneous use of water and sewer services, not to collect fees for future discretionary spending. **Quality Built Homes Inc. v. Town of Carthage, 15.**

CONSTITUTIONAL LAW

Cruel and unusual punishment—life without parole—defendant younger than 18—A seventeen-year-old's sentence of life without parole for first-degree murder was prohibited by the Eighth Amendment to the United States Constitution as interpreted in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012). Although N.C.G.S. § 15A-1380.5 might have increased the chance that defendant's sentence would be altered or commuted, it did not provide a sufficiently meaningful opportunity to reduce the severity of the sentence to constitute something less that life imprisonment without the possibility of parole. **State v. Young, 118.**

North Carolina—prohibited local act—health and sanitation—water and sewage system—Where the General Assembly passed legislation that effectively required the City of Asheville to involuntarily transfer the assets it used to operate a public water system to a new metropolitan water and sewerage district, the Supreme Court held that the legislation was a prohibited local act relating to health and sanitation, in violation of Article II, Section 24(1)(a) of the state constitution. First, the legislation was crafted such that the involuntary transfer provision would apply only to the City of Asheville, and this classification bore no reasonable relationship to the stated justification of the legislation. Second, in light of its stated purpose and practical effect regarding public water and sewer services, the legislation had a material connection to issues involving health, sanitation, and the abatement of nuisances. **City of Asheville v. State of N.C., 80.**

FIDUCIARY RELATIONSHIP

Auditor—duties to third parties—not a fiduciary relationship—The trial court erred by allowing a motion to dismiss under Rule 12(b)(6) and for judgment on the pleadings under Rule 12(c) in an action for breach of fiduciary duty and other claims arising from an auditor's failure to discover that plaintiff's General Manager had not filed required tax returns for plaintiff (which was exempt from federal tax) for several years. Independent auditors often have significant obligations to third parties or to the public at large that would prevent them from acting solely in their audit clients' best interests, and a fiduciary relationship therefore does not arise as a matter of law, although it may exist in fact. **Commscope Credit Union v. Butler & Burke, LLP, 48.**

JURISDICTION

Subject matter—writ of certiorari—issued by Court of Appeals—review of sua sponte motion for appropriate relief—Where the trial court accepted defendant's guilty plea and immediately thereafter granted its own motion for appropriate relief, vacated the judgment and the mandatory 300-month sentence, and sentenced defendant to 144 to 233 months, the Court of Appeals had subject matter jurisdiction to issue a writ of certiorari. Pursuant to the state constitution, the General Assembly

has the power to define the jurisdiction of the Court of Appeals. N.C.G.S. § 7A-32(c) empowers the Court of Appeals to review trial court rulings on motions for appropriate relief by writ of certiorari, and this default rule controls unless a more specific statute restricts jurisdiction. Here, if the trial court's sua sponte motion was pursuant to subsection 15A-1415(b), the holding in *State v. Stubbs*, 368 N.C. 40 (2015), controlled and the Court of Appeals had jurisdiction. And if the motion was pursuant to subsection 15A-1420(d), the Court of Appeals had jurisdiction because nothing in the General Statutes revoked the jurisdiction conferred by subsection 7A-32(c). **State v. Thomsen, 22.**

LANDLORD AND TENANT

Public housing—drug activity—ejectment—exercise of discretion by landlord—Summary ejectment was inappropriate in a case involving drug activity in federally subsidized housing where plaintiff-Housing Authority did not exercise discretion before pursuing defendant's eviction, as required by federal law. **E. Carolina Reg'l Housing Auth. v. Lofton, 8.**

STATUTES OF LIMITATIONS AND REPOSE

Easement—utility—relief for encroachment—recovery of land—In an action by a utility to recover the use of its easement, the applicable statute of limitations was the twenty-year statute for real estate found in N.C.G.S. § 1-40 rather than the six-year statute of limitations for incorporeal hereditaments found in N.C.G.S. § 1-50(a)(3). Although easements are incorporeal hereditaments, plaintiff was seeking full use of its easement. Because the easement is real property, the claim is for the recovery of real property. *Pottle v. Link*, 187 N.C. App. 746 (2007), was overruled insofar as it deemed N.C.G.S. § 1-40 inapplicable to actions involving encroachments on easements. Moreover, the state is criss-crossed with utility facilities, and their accompanying easements are not always readily subject to routine inspection by the owning utility. The drafters of N.C.G.S. § 1-50(a)(3) did not intend that a utility's right to maintain such easements could be successfully challenged in a time as short as six years. **Duke Energy Carolinas v. Gray, 1.**

ZONING

Extraterritorial jurisdiction—withdrawal by legislature—An act by the legislature withdrawing extraterritorial jurisdiction from the Town of Boone was squarely within the legislature's general power as described in the first clause of Article VII, Section 1 of the state constitution. Local jurisdictional reorganization is precisely the type of "organization and government and fixing of boundaries" contemplated by the first clause of Article VII, Section 1 and historically approved by the Supreme Court of North Carolina. **Town of Boone v. State of N.C., 126.**

SCHEDULE FOR HEARING APPEALS DURING 2017

NORTH CAROLINA SUPREME COURT

Appeals will be called for hearing on the following dates, which are subject to change.

February 13, 14, 15
March 20, 21, 22
April 10, 11, 12
May 9
August 28, 29, 30, 31
October 9, 10, 11, 12
November 6, 7, 8
December 11, 12, 13

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

AT

RALEIGH

DUKE ENERGY CAROLINAS, LLC, PLAINTIFF
v.
HERBERT A. GRAY, DEFENDANT/THIRD-PARTY PLAINTIFF
v.
JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., THIRD-PARTY DEFENDANT;
AND
BUILDER SUPPORT SERVICES OF THE CAROLINAS, INC. F/K/A JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC., FOURTH-PARTY PLAINTIFF
v.
YARBROUGH-WILLIAMS & HOULE, INC., LUCAS-FORMAN, INC., AND CARTER LAND SURVEYORS & PLANNERS, INC., FOURTH-PARTY DEFENDANTS

No. 108PA14-2

Filed 19 August 2016

Statutes of Limitations and Repose—easement—utility—relief for encroachment—recovery of land

In an action by a utility to recover the use of its easement, the applicable statute of limitations was the twenty-year statute for real estate found in N.C.G.S. § 1-40 rather than the six-year statute of limitations for incorporeal hereditaments found in N.C.G.S. § 1-50(a)(3). Although easements are incorporeal hereditaments, plaintiff was seeking full use of its easement. Because the easement is real property, the claim is for the recovery of real property. *Pottle v. Link*, 187 N.C. App. 746 (2007), was overruled insofar as it deemed N.C.G.S. § 1-40 inapplicable to actions involving encroachments on easements. Moreover, the state is criss-crossed with utility facilities, and their accompanying easements are not always readily subject to routine inspection by the owning utility. The drafters of N.C.G.S.

§ 1-50(a)(3) did not intend that a utility's right to maintain such easements could be successfully challenged in a time as short as six years.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 766 S.E.2d 354 (2014), affirming an order of summary judgment entered on 1 November 2013 by Judge Richard D. Boner in Superior Court, Mecklenburg County. On 10 June 2015, the Supreme Court allowed defendants' conditional petition for discretionary review as to additional issues. Heard in the Supreme Court on 6 October 2015.

Womble Carlyle Sandridge & Rice, LLP, by Debbie W. Harden, Meredith J. McKee, and Jackson R. Price, for plaintiff–appellant/appellee.

James, McElroy & Diehl, P.A., by Preston O. Odom, III and John R. Buric, for defendant/third-party plaintiff–appellee/appellant Herbert A. Gray; DeVore, Acton & Stafford, PA, by Fred W. DeVore, III and Derek P. Adler, for third-party defendant/fourth-party plaintiff–appellee/appellant John Wieland Homes and Neighborhoods of the Carolinas, Inc.; and Hamilton Stephens Steele & Martin, PLLC, by Erik M. Rosenwood and Mark R. Kutny, for fourth-party defendant–appellee/appellant Yarbrough-Williams & Houle, Inc.

Nelson Mullins Riley & Scarborough LLP, by Joseph W. Eason and D. Martin Warf, for North Carolina Electric Membership Corporation and North Carolina Association of Electric Cooperatives, amici curiae.

Kimberly S. Hibbard, General Counsel, and Gregory F. Schwitzgebel, III, Associate General Counsel, North Carolina League of Municipalities; and Daniel F. McLawhorn, City of Raleigh Associate City Attorney, for North Carolina League of Municipalities, amicus curiae.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Matthew D. Rhoad, for Public Service Company of North Carolina, Inc. d/b/a PSNC Energy; and Piedmont Natural Gas Company, Inc., amici curiae.

EDMUNDS, Justice.

Defendant Herbert A. Gray (defendant) owns real property located in Huntersville, North Carolina. Plaintiff Duke Energy Carolinas, LLC (plaintiff or Duke) owns an easement allowing construction of and access to its power lines. A portion of defendant's property encroaches on plaintiff's easement and defendant has failed to remove the encroachment upon plaintiff's request. We consider whether plaintiff has a right to eject defendant's encroachment from the easement. Defendant contends that N.C.G.S. § 1-50(a)(3), which establishes a six-year statute of limitations for injury to any incorporeal hereditament, bars plaintiff's claim. We conclude that removal of the encroachment is a recovery of real property lying outside the scope of subdivision 1-50(a)(3). As a result, this action falls within the twenty-year statute of limitations set out in N.C.G.S. § 1-40. Accordingly, we reverse the decision of the Court of Appeals.

J.L. and Pearl D. Wallace, defendant's predecessors in title, executed a duly recorded easement agreement with Duke Power Company, now plaintiff Duke Energy Carolinas, LLC, on 18 May 1951. The agreement granted plaintiff certain rights in a two hundred-foot-wide strip of land, including "the right to enter said strip . . . and to construct, maintain and operate within the limits of same, poles, towers, wires, lines, apparatus and appliances for the purpose of transmitting electric power and for telephone purposes," and "the right to keep said strip of land free and clear of any or all structures . . . except those placed in or upon same by said Power Company." The agreement also stated that "[t]he right of way and easements hereby granted shall be binding upon and shall inure to the parties hereto, their successors, heirs and assigns." Plaintiff thereafter constructed an overhead 100,000 volt electrical transmission line within the easement in 1951. A 230,000 volt transmission line was constructed in 1957 and 1958.

In September 2005, Yarbrough-Williams & Houle, Inc. (Yarbrough-Williams), a corporation specializing in professional land surveying, created a plat titled "Skybrook Phase 8 Map 1" and recorded it in Mecklenburg County. At the same time, Yarbrough-Williams physically staked out the boundaries of the surveyed property, including the boundaries of Lot 533, the property at issue. The following month, John Wieland Homes and Neighborhoods of the Carolinas, Inc. (Wieland), now Builder Support Services of the Carolinas, Inc., purchased the Skybrook development, including Lot 533. In December 2005, Wieland contracted with Lucas-Forman, Inc. (Lucas-Forman), another corporation specializing in land surveying, to plot and stake the location of the building footprint for Lot 533. In January and February 2006, Wieland

dug the footings and poured the foundation for a house on the Lot. On 16 February 2006, Wieland contracted with Carter Land Surveyors & Planners, Inc. (Carter Land Surveyors), yet another company specializing in land surveying, to conduct a foundation survey of Lot 533. The purpose of this week-long foundation survey was to confirm that no setback, easement, right-of-way, or boundary violations existed.

Thereafter, Wieland completed construction of the house in question on Lot 533, and the county issued a certificate of occupancy on 11 October 2006. In early 2007, defendant purchased the house and lot from Wieland for $608,667.00. During the process, Wieland provided defendant a copy of the foundation survey. Defendant remains the owner of Lot 533, which now bears the address of 14440 Salem Ridge Road, Huntersville, North Carolina.

Three years later, around 17 February 2010, defendant received a letter from Duke alleging that a portion of his home was encroaching on Duke's right-of-way and asking defendant to remove the encroachment. When defendant did not comply, plaintiff filed suit in Superior Court, Mecklenburg County, on 12 December 2012, seeking injunctive and other relief. On 3 January 2013, defendant filed an answer and counterclaim, adding a third-party complaint against Wieland. Plaintiff replied to the counterclaim and third-party complaint on 13 February 2013. Wieland answered the third-party complaint and filed both a motion to dismiss and a fourth-party complaint against Yarbrough-Williams, Lucas-Forman, and Carter Land Surveyors on 8 March 2013. On 7 May 2013, Yarbrough-Williams filed a motion to dismiss the fourth-party complaint. This filing also included Yarbrough-Williams's answer and affirmative defenses. Lucas-Forman filed an answer to and motion to dismiss the fourth-party complaint on 13 May. Finally, Carter Land Surveyors filed a motion to dismiss the fourth-party complaint on 21 June. The trial court denied Yarbrough-Williams's and Lucas-Forman's motions to dismiss on 6 September, and Carter Land Surveyors' motion to dismiss on 13 September 2013.

Wieland filed a motion seeking partial summary judgment on 10 September 2013, and defendant followed with a motion for summary judgment on 2 October 2013. Both argued that the six-year statute of limitations for an injury to an incorporeal hereditament set out in N.C.G.S. § 1-50(a)(3) had run and that, as a result, plaintiff had no legal remedy. After conducting a hearing, the trial court on 1 November 2013 granted the motions for summary judgment filed by defendant and by Wieland, finding that plaintiff's claims were barred by the six-year statute of limitations pertaining to incorporeal hereditaments. The court further found

that the limitations periods set out in N.C.G.S. §§ 1-40 and 1-47(2) did not apply.

Plaintiff appealed, and the Court of Appeals affirmed the trial court's grant of summary judgment. *Duke Energy Carolinas, LLC v. Gray*, ___ N.C. App. ___, 766 S.E.2d 354 (2014). The Court of Appeals concluded that an easement constitutes an incorporeal hereditament and, based on the plain language of N.C.G.S. § 1-50(a)(3), an action for injury to an incorporeal hereditament must be brought within six years. *Id.* at ___, 766 S.E.2d at 358. In its analysis, the Court of Appeals found itself bound by its holding in *Pottle v. Link*, 187 N.C. App. 746, 654 S.E.2d 64 (2007), *appeal dismissed*, 362 N.C. 509, 668 S.E.2d 31 (2008), in which that court concluded that an action by the owner of a dominant estate for injunctive relief against the servient estate owner's encroachment constituted an action for injury to an incorporeal hereditament governed by subdivision 1-50(a)(3). *Duke Energy Carolinas*, ___ N.C. App. at ___, 766 S.E.2d at 361.

The Court of Appeals further held that the statute of limitations for a claim based on injury to an incorporal hereditament begins to run "from the time that the claim accrues, even if a plaintiff is not aware of the injury at that time." *Id.* at ___, 766 S.E.2d at 359. The court determined that plaintiff should have been aware of the encroachment when the certificate of occupancy was issued on 11 October 2006, denoting the completion of construction, and thus was required to file suit against defendant by 11 October 2012 to avoid running afoul of the statute of limitations. *Id.* at ___, 766 S.E.2d at 359. Accordingly, the Court of Appeals concluded that the statute of limitations had expired when plaintiff filed its complaint on 12 December 2012. *Id.* at ___, 766 S.E.2d at 358. On 10 June 2015, this Court allowed plaintiff's petition for discretionary review and a conditional petition for discretionary review filed by defendant, Wieland, and Yarbrough-Williams.

The key issue before us is whether the trial court and the Court of Appeals erred in identifying the applicable statute of limitations. We review determinations by the Court of Appeals for errors of law. N.C. R. App. P. 16(a). The Court of Appeals affirmed the trial court's grant of summary judgment in favor of defendant and Weiland on the grounds that the six-year statute of limitations barred plaintiff's claims. To prevail on a motion for summary judgment, the moving party must first show that, when viewed in the light most favorable to the nonmoving party, no genuine issues of material fact exist. N.C. R. Civ. P. 56(c); *Beverage Sys. of the Carolinas, LLC v. Associated Beverage Repair, LLC*, ___ N.C. ___, ___, 784 S.E.2d 457, 460 (2016). Allowing a defendant's motion

for summary judgment on the basis of the statute of limitations is appropriate only when all the facts necessary to establish the limitation are alleged or admitted by the plaintiff, with the plaintiff receiving the benefit of all relevant inferences. *City of Reidsville v. Burton*, 269 N.C. 206, 210, 152 S.E.2d 147, 150 (1967) (citations omitted).

Defendant argues that the appropriate limitation period is the six years set out in N.C.G.S. § 1-50(a)(3), while plaintiff contends that the twenty-year statute of limitations found in N.C.G.S. § 1-40 is proper. The former, set out in Chapter 1, Article 5 ("Limitations, Other Than Real Property"), applies to actions for "injury to any incorporeal hereditament." N.C.G.S. § 1-50(a)(3) (2015). The latter, set out in Chapter 1, Article 4 ("Limitations, Real Property"), applies to "action[s] for the recovery or possession of real property." *Id.* § 1-40 (2015). As a result, we must determine whether this action involves injury to an incorporeal hereditament or recovery of real property.

We begin our analysis by considering the characteristics of an incorporeal hereditament, which has been defined as "[a]n intangible right in land, such as an easement." *Incorporeal Hereditament*, *Black's Law Dictionary* (10th ed. 2014); *see also Davis v. Robinson*, 189 N.C. 589, 598, 127 S.E. 697, 702 (1925) ("An easement is an incorporeal hereditament, and is an interest in the servient estate." (citations omitted)). Consistent with this definition, we have observed that "[a]n easement always implies an interest in the land. It is real property, and it is created by grant." *Davis*, 189 N.C. at 600, 127 S.E. at 703 (citations omitted) (quoting *Atl. & Pac. R.R. v. Lesueur*, 2 Ariz. 428, 430, 19 P. 157, 158-59 (1888)); *see also Real Property*, *Black's Law Dictionary* (10th ed. 2014) ("Real property can be either corporeal (soil and buildings) or incorporeal (easements)."). Accordingly, the easement in this case, while an incorporeal hereditament, is also real property.

Next, we review the nature of plaintiff's action. Plaintiff's easement gives plaintiff a property right to a degree of control over the use of an identified swath of land, specifically including "the right to keep said strip of land free and clear of any or all structures." Plaintiff alleges that the encroachment of defendant's home into that strip interferes with and invades its rights over that tract. While plaintiff has alleged an injury to its rights as possessor of the easement, the remedy plaintiff pursues is not damages for any injury to the easement. Instead, plaintiff wishes to regain control over the part of its easement now occupied by defendant's house. Because plaintiff seeks to recover full use of its easement, and because the easement is real property, we conclude that this action is for the recovery of real property. By definition, the statutes of limitation

in Chapter 1, Article 5 do not apply to the recovery of real property. *See* N.C.G.S. § 1-46 (2015) (stating that the limitations periods found in Article 5 are for "actions, other than for the recovery of real property"). Consequently, we conclude that plaintiff's claim is subject to the section 1-40 twenty-year statute of limitations. For similar reasons, the ten-year statute of limitations for sealed instruments found in N.C.G.S. § 1-47(2) is inapplicable because it too is contained in Chapter 1, Article 5 of the General Statutes.

Not only do we conclude that this result is dictated by the language found in the applicable statutes and cases, we acknowledge that utility facilities crisscross the state above, on, and beneath the ground. Their accompanying easements are not always readily subject to routine inspection by the owning utility. We do not believe that the drafters of N.C.G.S. § 1-50(a)(3) intended that a utility's right to maintain such easements could be successfully challenged in a time as short as six years.

We reverse the decision of the Court of Appeals and conclude that the trial court erred in granting summary judgment in favor of defendant and Wieland upon finding that Duke's claims were barred by N.C.G.S. § 1-50(a)(3). In addition, we overrule the decision of the Court of Appeals in *Pottle v. Link*, 187 N.C. App. 746, 654 S.E.2d 64 (2007), insofar as that opinion deemed section 1-40 inapplicable to actions involving encroachments on easements. Defendant's pending claims against other parties are unaffected by this result.

Defendant, Weiland, and Yarbrough-Williams raised several additional issues in their conditional petition to this Court. The first issue is whether plaintiff failed to assert that the encroachment materially interferes with its use of the easement. The second issue is whether the doctrine of laches applies if plaintiff knew or should have known of the alleged encroachment more than six years preceding the filing of this action. As to both of those issues we hold that discretionary review was improvidently allowed. Furthermore, we do not reach the remaining issues raised in the parties' petitions for discretionary review because we have determined that Chapter 1, Article 5 does not apply to this case.

For the forgoing reasons, the decision of the Court of Appeals is reversed, and this case is remanded to that court for remand to the trial court for proceedings not inconsistent with this opinion.

REVERSED AND REMANDED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED IN PART.

EASTERN CAROLINA REGIONAL HOUSING AUTHORITY
v.
SHERBREDA LOFTON

No. 32PA15

Filed 19 August 2016

Landlord and Tenant—public housing—drug activity—ejectment—exercise of discretion by landlord

Summary ejectment was inappropriate in a case involving drug activity in federally subsidized housing where plaintiff-Housing Authority did not exercise discretion before pursuing defendant's eviction, as required by federal law.

Justice ERVIN did not participate in the consideration or decision of this case.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 767 S.E.2d 63 (2014), affirming an order and judgment entered on 29 August 2013 by Judge David B. Brantley in District Court, Wayne County. Heard in the Supreme Court on 16 November 2015.

Ward and Smith, P.A., by Michael J. Parrish and E. Bradley Evans, for plaintiff-appellant.

Robinson, Bradshaw & Hinson, P.A., by John R. Wester, Thomas Holderness, and Erik Randall Zimmerman, pro hac vice; and Legal Aid of North Carolina, Inc., by John Keller, Theodore O. Fillette, III, Peter Gilbert, and Andrew Cogdell, for defendant-appellee.

Brownlee Law Firm, PLLC, by William K. Brownlee, for Apartment Association of North Carolina, amicus curiae.

John R. Rittelmeyer and Yasmin Farahi for Disability Rights North Carolina, amicus curiae.

Francis Law Firm, PLLC, by Charles T. Francis and Ruth Sheehan, for Housing Authority of the City of Raleigh, amicus curiae.

NEWBY, Justice.

In this case we consider whether public housing authorities must exercise discretion when pursuing evictions that are not otherwise mandated by federal law. Recognizing that public housing is the housing of last resort, Congress intended public housing authorities to exercise discretion in certain eviction proceedings, such as the lease violation at issue here arising from the actions of a third party. The trial court's findings establish that plaintiff failed to exercise its discretion before pursuing defendant's eviction. Accordingly, plaintiff has not established its right to summary ejectment. Nonetheless, because the Court of Appeals erred by imposing an unconscionability analysis, we modify and affirm the decision of that court.

Defendant is a tenant in Brookside Manor, which is owned and operated by plaintiff, a federally subsidized housing authority. The tenancy is governed by a signed lease that contains various provisions required by federal law.[1] Relevant here, the lease prohibits "[a]ny drug-related criminal activity on or off the premises" and provides that plaintiff "may terminate . . . the Lease and the tenancy" for any such activity "by Tenant, any of Tenant's household members, any guest of Tenant, or another person under Tenant's control."[2] Plaintiff's "Resident Handbook" and "Admission and Continued Occupancy Policy," both incorporated into the lease, restate the same, characterizing "[d]rug-related criminal activity engaged in on or off the premises by a tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control, [a]s grounds to terminate tenancy."

Defendant often asked Cory Smith to baby-sit her children while she worked at night. On 26 April 2013, Smith arrived at defendant's apartment to watch the children while defendant slept before work and later while she worked. While defendant slept, law enforcement entered the apartment and arrested Smith for outstanding child support warrants. Officers searched Smith incident to his arrest and found four small bags of marijuana in his pocket.

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1. The operation and management of public housing authorities, including lease terms and procedures, are governed by the United States Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888 (codified as amended in scattered sections of 42 U.S.C.), and its regulations, *see* 24 C.F.R. §§ 966.1 to 966.57 (2016).

2. The lease defines a "guest" as "a person temporarily staying in the unit with the consent of Tenant or other member of the household with authority to consent on behalf of Tenant." The lease defines a "person under Tenant's control" as "a person not staying as a guest in the dwelling unit, but [one who] is or was present on the premises at the time of the activity in question because of an invitation from Tenant."

Defendant consented to a search of her apartment, during which officers discovered a partially prepared "marijuana blunt" in plain sight, marijuana in plain sight on the kitchen counter, plastic bags for packaging marijuana for sale, and fourteen more bags of marijuana behind a pan on the kitchen counter. Smith admitted that the marijuana belonged to him, and he was charged with felony possession with intent to sell and deliver a controlled substance. Defendant was not charged.

On 22 May 2013, plaintiff notified defendant in writing that she had breached the lease because of the drug-related activity that had occurred in her apartment by Smith, a person under her control. Plaintiff stated it had terminated defendant's lease and ordered her to vacate her apartment. When defendant failed to comply, plaintiff sought summary ejectment. Following a hearing, the magistrate entered judgment for plaintiff, entitling plaintiff to take possession.[3]

Upon appeal to the District Court, Wayne County, for a trial de novo, defendant admitted that Smith placed marijuana in various places in the apartment, that Smith was under her control, and that her lease made her "responsible for the conduct of her guests or persons under her control." Plaintiff's manager testified that she believed any drug-related criminal activity required eviction. In its order the trial court noted defendant's acknowledgement that "drug-related criminal activity" occurred in her apartment and that such activity would "authorize Plaintiff to evict her from her apartment" despite "her lack of knowledge of" the criminal activity. Nonetheless, the trial court found in part:

> 8. Plaintiff did not produce evidence that it considered any mitigating factors or used any discretion in making its decision to terminate Defendant's lease. The only decision Plaintiff considered was whether Defendant met the criteria for having a person under her control who engaged in drug-related criminal activity.
>
> 9. It did not appear that Plaintiff, through its two witnesses, understood that it even had the authority or duty

3. In the initial complaint, plaintiff appears to have elected to pursue defendant's eviction under N.C.G.S. § 42-63 (2015), which allows for eviction as a result of certain criminal activity. Nonetheless, the complaint also described the specific lease terms violated by defendant. On 8 July 2013, the parties stipulated to amend the complaint "as though Plaintiff had selected the additional ground for eviction 'the defendant breached the condition of the lease described below for which re-entry is specified.' " Thereafter, both parties proceeded solely under the lease violation theory. Thus, any argument pursuant to the statutory provision is not before this Court.

> to consider other factors other than whether Defendant met the criteria for lease termination.

The trial court denied plaintiff's request to evict defendant, concluding that federal law required plaintiff to exercise discretion in making its decision. Plaintiff appealed the trial court's order to the Court of Appeals.

The Court of Appeals affirmed the decision of the trial court on a different basis, concluding that plaintiff must prove that evicting defendant was not unconscionable under North Carolina law. *E. Carolina Reg'l Hous. Auth. v. Lofton*, ___ N.C. App. ___, 767 S.E.2d 63 (2014). We allowed plaintiff's petition for discretionary review.

Contrary to the Court of Appeals' decision, the equitable defense of unconscionability is not a consideration in summary ejectment proceedings. To prevail in a summary ejectment proceeding under North Carolina law, a landlord must establish by a preponderance of the evidence that a tenant breached the lease. *See* N.C.G.S. §§ 42-26(a)(2), -30 (2015); *see also Durham Hosiery Mill Ltd. P'ship v. Morris*, 217 N.C. App. 590, 593, 720 S.E.2d 426, 428 (2011) ("A tenant may be removed in a summary ejectment action when the tenant has 'done or omitted any act by which, according to the stipulations of his lease, his estate has ceased.' " (quoting N.C.G.S. § 42-26(a)(2) (2009)); *id.* at 595-96, 720 S.E.2d at 429 (rejecting as "clearly *dicta*" the language in *Morris v. Austraw*, 269 N.C. 218, 223, 152 S.E.2d 155, 159 (1967), perceived as requiring an unconscionability analysis).

If the lease at issue related to a private landlord–tenant relationship, our analysis would end here. When the government is the landlord, however, certain duties arise under applicable law. Federal statutes and regulations govern federally subsidized public housing and require public housing authorities to incorporate certain provisions into their leases. In its role as the final forum for review of government housing decisions, the Court is not to second-guess or replace plaintiff's discretionary decisions but to ensure procedural and substantive compliance with the federal statutory framework. *See Charlotte Hous. Auth. v. Patterson*, 120 N.C. App. 552, 555, 464 S.E.2d 68, 71 (1995) ("In federally subsidized housing cases, the court decides whether applicable rules and regulations have been followed, and whether termination of the lease is permissible." (citation omitted)). "A trial court's findings of fact are binding on appeal if supported by competent evidence." *Durham Hosiery*, 217 N.C. App. at 592, 720 S.E.2d at 427 (citation omitted). The trial court found that plaintiff, believing Smith's drug-related activity mandated defendant's eviction, did not exercise discretion. Thus,

the sole remaining question is whether under federal law plaintiff was required to exercise some degree of discretion in its eviction decision.

Federally subsidized public housing is a safety net designed to provide homes to those least able to afford other housing options. Like everyone else, individuals who live in federally subsidized housing are entitled to be free from "any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises." 42 U.S.C. § 1437d(*l*)(6) (2012); *see also* N.C. Const. art. I, § 1 ("We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness."); *The Declaration of Independence* para. 2 (U.S. 1776) ("We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."). Recognizing the devastating effect of illegal drugs in public housing, Congress adopted the Public Housing Drug Elimination Act of 1988, Pub. L. No. 100-690, § 5122, 102 Stat. 4181, 4301 (codified as amended at 42 U.S.C. § 11901 (2012)). The Act requires leases to include language granting public housing authorities broad discretion to terminate leases to ensure that the housing is "decent, safe, and free from illegal drugs." 42 U.S.C. § 11901(1).

Under federal law, public housing leases must "allow the agency . . . to terminate the tenancy," *id.* § 13662(a) (2012), for any household member "who . . . is illegally using a controlled substance," *id.* § 13662(a)(1), or whose drug abuse "interfere[s] with the health, safety, or right to peaceful enjoyment of the premises by other residents," *id.* § 13662(a)(2). The lease must prohibit not only household members from engaging in drug-related activity but also forbid any guest or person under a tenant's control from engaging in such activity. *Id.* § 1437d(*l*)(6) ("Each public housing agency shall utilize leases which . . . provide that . . . any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy[.]"); 24 C.F.R. § 966.4(f)(12)(i), (ii) (2016); Public Housing Lease and Grievance Procedures, 56 Fed. Reg. 51,560, 51,567 (Oct. 11, 1991). Violation of these provisions "shall be cause for termination of tenancy" as determined by the local public housing authority in its discretion. 42 U.S.C. § 1437d(*l*)(6); *see* 24 C.F.R. § 966.4(l)(5)(vii)(B) (When terminating a tenancy for drug-related criminal activity, the housing authority "may consider all circumstances relevant to a particular case.").

In the seminal case interpreting public housing law, *Department of Housing & Urban Development v. Rucker*, 535 U.S. 125, 122 S. Ct. 1230, 152 L. Ed. 2d 258 (2002), some tenants questioned the extent of agency officials' authority to evict residents from public housing. The Supreme Court of the United States held that a housing authority could evict a tenant and her family as a result of a guest's illegal activity even when the tenant was unaware of the activity and had no reason to suspect it. *Id.* at 136, 122 S. Ct. at 1236, 152 L. Ed. 2d at 270; *see also id.* at 131, 122 S. Ct. at 1234, 152 L. Ed. 2d at 267 ("[T]he plain language of § 1437d(*l*)(6) requires leases that grant public housing authorities the discretion to terminate tenancy without regard to the tenant's knowledge of the drug-related criminal activity.").

The decision in *Rucker*, however, emphasizes the importance of housing officials exercising discretion before pursuing these "no-fault" evictions. *Id.* at 134-36, 122 S. Ct. at 1235-36, 152 L. Ed. 2d at 268-70. In particular,

> [t]he statute does not *require* the eviction of any tenant who violated the lease provision. Instead, it entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from "rampant drug-related or violent crime," "the seriousness of the offending action," and "the extent to which the leaseholder has . . . taken all reasonable steps to prevent or mitigate the offending action." [A] local housing authority may sometimes evict a tenant who had no knowledge of the drug-related activity.

Id. at 133-34, 122 S. Ct. at 1235, 152 L. Ed. 2d at 268 (first alteration in original) (quoting 42 U.S.C. § 11901(2) (1994 & Supp. V) and Screening and Eviction for Drug Abuse and Other Criminal Activity, 66 Fed. Reg. 28,776, 28,803 (May 24, 2001)). Congress thus "afford[ed] local public housing authorities the discretion to conduct no-fault evictions for drug-related crime," *id.* at 135, 122 S. Ct. at 1236, 152 L. Ed. 2d at 269 (citation omitted), by "requir[ing] lease terms that give local public housing authorities the discretion to terminate the lease," *id.* at 136, 122 S. Ct. at 1236, 152 L. Ed. 2d at 270. *See also id.* at 130, 122 S. Ct. at 1233, 152 L. Ed. 2d at 266 (holding that 42 U.S.C. § 1437d(*l*)(6) "unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of . . . guests"). In sum, while a public housing authority may conduct no-fault evictions, it must exercise discretion in doing so.

Shortly after the decision in *Rucker*, the federal Department of Housing and Urban Development (HUD) described the discretion given to public housing authorities to seek no-fault evictions based upon the actions of third parties. While characterizing the power as "a strong tool," HUD emphasized that no-fault evictions "should be applied responsibly." Letter from Mel Martinez, Sec'y, U.S. Dep't of Hous. & Urban Dev., to Pub. Hous. Dirs. (Apr. 16, 2002). Moreover, HUD directed that enforcement of the clause be "left to the discretion of each public housing agency . . . to be guided by compassion and common sense," with eviction as "the last option explored." *Id.* Shortly thereafter, HUD reiterated that *Rucker* "made it clear both that the lease provision gives PHAs [Public Housing Authorities] such authority and that PHAs are not required to evict an entire household—or, for that matter, anyone—every time a violation of the lease clause occurs." Letter from Michael M. Liu, Assistant Sec'y, U.S. Dep't of Hous. & Urban Dev., to Pub. Hous. Dirs. (June 6, 2002). Instead, HUD explained, "PHAs are in the best position to determine what lease enforcement policy will most appropriately serve the statutory interest of protecting the welfare of the entire tenant population." *Id.* Accordingly, HUD "urge[d]" PHAs, when making an ultimate decision, "to consider a wide range of factors" and to "balance them against the competing policy interests that support the eviction of the entire household." *Id.*; *see also* 24 C.F.R. § 966.4(*l*)(5)(vii)(B).

Discretion "involve[s] an exercise of judgment and choice, not an implementation of a hard-and-fast rule exercisable at one's own will or judgment." *Discretionary*, *Black's Law Dictionary* (10th ed. 2014). Here the trial court concluded that plaintiff failed to exercise its discretion before seeking defendant's eviction. The trial court found that plaintiff was unaware of its responsibility to exercise discretion; therefore, plaintiff only considered whether the facts permitted eviction, thereby omitting the critical step of determining whether eviction should occur in this case. Neither the federal statutory framework nor plaintiff's lease or policies compel eviction; they only delineate the grounds or cause for eviction. Though the decision to evict lies in plaintiff's discretion, which courts will not second-guess, plaintiff does not exercise discretion when it is unaware it has a choice. *See Hous. Auth. of Covington v. Turner*, 295 S.W.3d 123, 129 (Ky. Ct. App. 2009) (Moore, J., concurring) ("[D]iscretion must be exercised, rather than a blind application of the law because 42 U.S.C. § 1437d(*l*)(6) does not *require* evictions.").

While we affirm the outcome of the Court of Appeals' decision, namely that summary ejectment was inappropriate in this case, we do so for a different reason. We hold that plaintiff failed to exercise its

discretion as required by federal law before pursuing defendant's eviction. Accordingly, we modify and affirm the decision of that court.

MODIFIED AND AFFIRMED.

Justice ERVIN did not participate in the consideration or decision of this case.

QUALITY BUILT HOMES INCORPORATED AND STAFFORD LAND COMPANY, INC.
v.
TOWN OF CARTHAGE

No. 315PA15

Filed 19 August 2016

Cities and Towns—water and sewer impact fee ordinances—for future use and expansion—invalid

The Town of Carthage exceeded its municipal authority under the Public Enterprise Statutes by adopting water and sewer "impact fee" ordinances that, upon approval of any subdivision of real property, triggered immediate charges for future water and sewer system expansion. These fees were assessed regardless of the property owner's actual use of the systems or whether Carthage actually expanded its systems. The plain language of the statute empowered the Town to charge for contemporaneous use of water and sewer services, not to collect fees for future discretionary spending.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, ___ N.C. App. ___, 776 S.E.2d 897 (2015), affirming an order allowing summary judgment entered on 17 October 2014 by Judge James M. Webb in Superior Court, Moore County. On 5 November 2015, the Supreme Court allowed defendant's conditional petition for discretionary review as to additional issues. Heard in the Supreme Court on 17 May 2016 in session in the Old Burke County Courthouse in the City of Morganton pursuant to N.C.G.S. § 7A-10(a).

Ferguson, Hayes, Hawkins & DeMay, PLLC, by James R. DeMay; and Scarbrough & Scarbrough, PLLC, by James E. Scarbrough, for plaintiff-appellants/appellees.

Cranfill Sumner & Hartzog LLP, by Susan K. Burkhart, for defendant-appellant/appellee.

Law Office of John T. Benjamin, Jr., P.A., by John T. Benjamin, Jr. and William E. Hubbard, for Leading Builders of America, amicus curiae.

Robinson, Bradshaw & Hinson, P.A., by Edward F. Hennessey; and J. Michael Carpenter, General Counsel, for North Carolina Home Builders Association, Inc., amicus curiae.

Ellis & Winters LLP, by Matthew W. Sawchak and Paul M. Cox; and F. Paul Calamita for North Carolina Water Quality Association, amicus curiae.

NEWBY, Justice.

In this case we consider whether the Town of Carthage exceeded its municipal authority under the Public Enterprise Statutes, N.C.G.S. §§ 160A-311 to -338 (2015), by adopting certain water and sewer "impact fee" ordinances. Upon approval of a subdivision of real property, the ordinances trigger immediate charges for future water and sewer system expansion, regardless of whether the landowner ever connects to the system or whether Carthage ever expands the system. As creations of the legislature, municipalities have only those powers delegated to them by the General Assembly. When Carthage adopted the ordinances at issue here, it exercised power that it had not been granted. The impact fee ordinances are therefore invalid and, accordingly, we reverse the decision of the Court of Appeals.

In 2003, following a period of rapid population growth, Carthage adopted two similar impact fee ordinances: one pertaining to its water system, and the other pertaining to its sewer system. In their current form, the ordinances state that the impact fees "shall be used to cover the costs of expanding the [water and sewer] system[s]." Carthage, N.C., Code §§ 51.076(F) (water), 51.096(H) (sewer) (2015). These costs include "water treatment plant expansion, elevated storage expansion, and transmission mains" for the water system, *id.* § 51.076(F), and "gravity mains, force mains, and lift stations" for the sewer system, *id.* § 51.096(H).

Under both ordinances, a landowner who seeks to subdivide property and receives "final plat approval," *id.* §§ 51.076(C)(1), 51.096(B),

must pay water and sewer impact fees "based on water meter size according to the town's fee schedule," *id.* §§ 51.076(B), 51.096(A), in amounts ranging from $1,000 to $30,000 per connection. Carthage, N.C., Fee and Rate Schedule 4 (July 1, 2016). "If a [property] has received its final plat, then the entire [water and sewer] impact fee[s] shall be paid at the earliest or next occurrence of . . . [the] (a) Tap fee; or (b) Development permit." *Id.* §§ 51.076(C)(2), 51.096(C); *see also* Fee and Rate Schedule 4 ("Water/Sewer Impact Fees are due upon final plat approval for new subdivisions (major or minor) or upon application for building permit, whichever occurs first."). Tap fees cover Carthage's costs "to 'tap' or access" the "water and/or sewer line that exists in front of the property," whereas "impact fees offset . . . costs to expand the system to accommodate development."

Impact fees are assessed "in addition to the regular water and sewer tap fees," and the monthly service charges to water and sewer customers. If a property owner does not pay the impact fees, Carthage "will refuse" to issue building permits. Certain exceptions exist "for temporary or emergency service," *id.* § 51.076(A)(2)(b), and any service solely for "fire protection," *id.* §§ 51.076(E), 51.096(G), but in all instances, impact fees are assessed regardless of the property owner's actual use of the systems or whether Carthage actually expands the systems. In 2014 Carthage's Town Manager reported that the Town had "neglected to make needed improvements to its water and sewer systems for many years."

Plaintiffs are North Carolina corporations engaged in residential homebuilding. At the time of filing their action, plaintiffs had paid Carthage a total of $123,000 in water and sewer impact fees.

On 28 October 2013, plaintiffs filed their complaint seeking, *inter alia*, a declaratory judgment and monetary damages.[1] Plaintiffs allege that "Carthage has acted outside the scope of its legal authority" by "charging" the impact fees "without a specific delegation of authority from the General Assembly" and that, accordingly, plaintiffs are entitled to a return of all impact fees paid, plus interest and attorneys' fees.

Carthage timely answered the complaint, contending that "the water and sewer fees imposed by Defendant were authorized by North Carolina's Public Enterprise Statute" and asserting various affirmative defenses, including, *inter alia*, the statute of limitations and estoppel.

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1. Not at issue here, on 23 June 2014, plaintiffs amended their complaint to, *inter alia*, add equal protection and due process claims.

All parties moved for summary judgment. On 17 October 2014, the trial court entered an order granting summary judgment for Carthage. Plaintiffs appealed the summary judgment order to the Court of Appeals.

The Court of Appeals affirmed the trial court's grant of summary judgment in favor of Carthage. *Quality Built Homes Inc. v. Town of Carthage*, ___ N.C. App. ___, 776 S.E.2d 897, 2015 WL 4620404 (2015) (unpublished). Applying "broad construction" interpretation principles under N.C.G.S. § 160A-4, the Court of Appeals concluded that Carthage acted within its delegated municipal authority to impose and collect the impact fees under the Public Enterprise Statutes, *Quality Built Homes*, 2015 WL 4620404, at *4-5 (citing, *inter alia*, N.C.G.S. § 160A-4 (2013); *Homebuilders Ass'n of Charlotte v. City of Charlotte*, 336 N.C. 37, 43-44, 442 S.E.2d 45, 50 (1994); and *Town of Spring Hope v. Bissette*, 305 N.C. 248, 252, 287 S.E.2d 851, 854 (1982)), which enable municipalities to "establish and revise . . . schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise," N.C.G.S. § 160A-314(a).[2]

We allowed both plaintiffs' petition and defendant's conditional petition for discretionary review. We review matters of statutory interpretation de novo, *In re Ernst & Young, LLP*, 363 N.C. 612, 616, 684 S.E.2d 151, 154 (2009) (citations omitted), as well as orders granting summary judgment, viewing the allegations as true and "the presented evidence in a light most favorable to the nonmoving party," *Dalton v. Camp*, 353 N.C. 647, 651, 548 S.E.2d 704, 707 (2001) (citation omitted).

From the very formation of our State government, municipalities, in their various forms, have been considered "creatures of the legislative will, and are subject to its control." *Lutterloh v. City of Fayetteville*, 149 N.C. 65, 69, 62 S.E. 758, 760 (1908); *see King v. Chapel Hill*, 367 N.C. 400, 405, 758 S.E.2d 364, 369 (2014); *Bd. of Trs. of Youngsville Twp. v. Webb*, 155 N.C. 379, 384-85, 71 S.E. 520, 522 (1911). Fundamental to our system is the legislature's ability to confer upon municipalities certain authority needed to effectuate the purposes of government. N.C. Const. art. VII, § 1 ("The General Assembly shall provide for the organization and government . . . of counties, cities and towns, and . . . may give such powers and duties to . . . [them] as it may deem advisable."); *White v. Comm'rs of Chowan Cty.*, 90 N.C. 437, 438 (1884) ("[Municipalities]

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2. Because of its resolution of the matter, the Court of Appeals did not reach the statute of limitations or estoppel issues. *Quality Built Homes*, 2015 WL 4620404 at *5. Moreover, the court overruled plaintiffs' argument that they are entitled to recover attorneys' fees and costs. *Id.* at *6.

contribute largely to the life-principle of American liberty, and are . . . invested with appropriate corporate functions . . . [which] may be enlarged, abridged or modified at the will of the legislature . . . ."); *see also* 1 William Blackstone, *Commentaries* *470 ("[Municipalities] are erected for the good government of a town or particular district . . . .")

The General Assembly delegates express power to municipalities by adopting an enabling statute, which includes "implied powers . . . essential to the exercise of those which are expressly conferred." *O'Neal v. Wake County*, 196 N.C. 184, 187, 145 S.E. 28, 29 (1928); *see Lanvale Props., LLC v. County of Cabarrus*, 366 N.C. 142, 150, 731 S.E.2d 800, 807 (2012); *Town of Saluda v. County of Polk*, 207 N.C. 180, 186, 176 S.E. 298, 301-02 (1934). "All acts beyond the scope of the powers granted to a municipality are [invalid]." *City of Asheville v. Herbert*, 190 N.C. 732, 735, 130 S.E. 861, 863 (1925) (citations omitted).

When determining the extent of legislative power conferred upon a municipality, the plain language of the enabling statute governs. *Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805, 811, 517 S.E.2d 874, 878 (1999) (citation omitted). If the "language of [the enabling] statute is clear and unambiguous, there is no room for judicial construction, and the courts must give it its plain and definite meaning." *Id.* at 811, 517 S.E.2d at 878 (quoting *Lemons v. Old Hickory Council, BSA*, 322 N.C. 271, 276, 367 S.E.2d 655, 658 (1988)). "[A] statute clear on its face must be enforced as written." *Bowers v. City of High Point*, 339 N.C. 413, 419-20, 451 S.E.2d 284, 289 (1994) (citation omitted).

If the enabling statute is ambiguous, the "legislation 'shall be broadly construed . . . to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect.' " *King*, 367 N.C. at 405, 758 S.E.2d at 369 (citation omitted) (quoting N.C.G.S. § 160A-4). The "broad construction" mandate of section 160A-4 is "a rule of statutory construction rather than a general directive," *Lanvale Props.*, 366 N.C. at 154, 731 S.E.2d at 809, and, as such, is inoperative when the enabling statute is clear and unambiguous on its face, *see id.* at 154-55, 731 S.E.2d at 809-10 (citations omitted).

Carthage asserts that under the Public Enterprise Statutes it has broad authority to "collect monies" for the "operation, maintenance and expansion" of its water and sewer systems, and that such authority extends to the collection of impact fees. Carthage claims that "impact fees" fall squarely within its "authority to charge 'fees' or 'charges' " under N.C.G.S. § 160A-314. We disagree. While the enabling statutes allow Carthage to charge for the contemporaneous use of its water and sewer

systems, the plain language of the Public Enterprise Statutes clearly fails to empower the Town to impose impact fees for future services.

The enabling statutes at issue here provide, in pertinent part, that "[a] city may establish and revise . . . rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise," N.C.G.S. § 160A-314(a), that "[a] city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises . . . to furnish services," *id.* § 160A-312(a), and that "a city shall have full authority to finance the cost of any public enterprise by levying taxes, borrowing money, and appropriating any other revenues therefor," *id.* § 160A-313.

These enabling statutes clearly and unambiguously empower Carthage to charge for the contemporaneous use of water and sewer services—not to collect fees for future discretionary spending. *See Smith Chapel*, 350 N.C. at 811, 517 S.E.2d at 878 (finding that the "plain language" of N.C.G.S. § 160A-314 is "clear and unambiguous"). A municipality's ability to "establish and revise" its various "fees" is limited to "the use of" or "the services furnished by" the enterprise, which provisions are operative in the present tense. *See Dunn v. Pac. Emp'rs Ins. Co.*, 332 N.C. 129, 134, 418 S.E.2d 645, 648 (1992) ("Ordinary rules of grammar apply when ascertaining the meaning of a statute . . . ." (citations omitted)).

Though the enabling statutes allow municipalities to charge for "services furnished," unlike similar county water and sewer district enabling statutes, the language at issue here fails to authorize Carthage to charge for services "*to be* furnished." *See McNeill v. Harnett County*, 327 N.C. 552, 570, 398 S.E.2d 475, 485 (1990) (holding that the latter part of the enabling phrase "services furnished or *to be furnished*," N.C.G.S. § 162A-88 (1987) (emphasis added) (governing county water and sewer districts), plainly allowed the charge for prospective services, which are "*not* limited to the financing of maintenance and improvements of *existing* customers").[3] Since 1982 this Court has cautioned that municipalities may lack the power to charge for prospective services absent

3. Enabling statutes pertaining to other entities employ the same "to be furnished" prospective language, which section 160A-314(a) does not. *E.g.*, N.C.G.S. § 162A-9 (2015) (enabling water and sewer authorities to "establish and revise a schedule of rates . . . for the services furnished or to be furnished"); *id.* § 162A-14(3) (enabling certain "governing bod[ies]" to "fix . . . charges . . . for the services furnished or to be furnished by any water system or sewer system of the authority"); *id.* § 162A-49 (2015) (same for district boards of metropolitan water districts). *Accord id.* §§ 162A-53(3), -72, -73(3), -85.13(a), -85.19(a)(3) (2015).

the essential "to be" language. *Bissette*, 305 N.C. at 251, 287 S.E.2d at 853 (dictum) ("[W]e agree that under [N.C.G.S. § 160A-314(a)] a municipality may not charge for services 'to be furnished.' "). We simply cannot read language into a statute where it does not exist. *N.C. Dep't of Corr. v. N.C. Med. Bd.*, 363 N.C. 189, 201, 675 S.E.2d 641, 649 (2009) (We "presum[e] that the legislature carefully chose each word used." (citation omitted)); *Carlyle v. State Highway Comm'n*, 193 N.C. 36, 47, 136 S.E. 612, 619 (1927) ("If the courts attempt to read into the law words of their own . . . , then this would amount to erecting a legislative despotism of five men . . . .").

The language of the impact fee ordinances plainly points to future services, thus requiring Carthage to invoke prospective charging power. Both ordinances contemplate "expanding" the systems, including "plant" and "storage expansion," and the water impact fee is assessed on property that is "*to be* served" by the water system. The fees are not assessed at the time of actual use, but are payable in full at the time of "final [subdivision] plat approval"—a time when water, sewer, or other infrastructure might not have been built and only a recorded plat exists. Moreover, Carthage charges the impact fees in addition to tap fees, which are assessed when a property owner actually connects to the system. Indeed, plaintiffs were required to pay some impact fees before improving or establishing a need for services on their property. *Cf. Bissette*, 305 N.C. at 251-52, 287 S.E.2d at 853 (concluding that an increased rate on all customers to fund a new treatment plant "did not reflect any services yet to be furnished, but merely the same service which had previously been furnished").

Municipalities routinely seek and obtain enabling legislation from the General Assembly to assess impact fees. *E.g.*, Act of June 28, 1988, ch. 996, sec. 1, 1987 N.C. Sess. Law (Reg. Sess. 1988) 178, 178 (enabling Rolesville to "provide by ordinance for a system of impact fees"); Act of June 23, 1987, ch. 460, sec. 13, 1987 N.C. Sess. Laws 609, 613 (same for Pittsboro); Act of July 8, 1986, ch. 936, sec. 1, 1985 N.C. Sess. Laws (Reg. Sess. 1986) 221, 221 (same for Chapel Hill); *see also Mills v. Bd. of Comm'rs of Iredell Cty.*, 175 N.C. 215, 218, 95 S.E. 481, 482 (1918) (noting that county demands for additional authority, such as "raising of proper funds . . . for improvements in some fixed place or in restricted territory . . . can only be conferred by legislative enactment" (citations omitted)). Yet it appears that Carthage has elected not to pursue such legislation.

Furthermore, Carthage has the authority to charge tap fees and to establish water and sewer rates to fund necessary improvements and

maintain services to its inhabitants, which is sufficient to address its expansion needs. *See Bissette*, 305 N.C. at 251-52, 287 S.E.2d at 853 (concluding that the town validly increased rates on all customers to pay for "a necessary improvement to the already existing sewer system without which the Town could not continue to provide sewer service").

While the Public Enterprise Statutes at issue here enable Carthage to charge for the contemporaneous use of its water and sewer systems, the statutes clearly and unambiguously fail to give Carthage the essential prospective charging power necessary to assess impact fees. Because the legislature alone controls the extension of municipal authority, the impact fee ordinances on their face exceed the powers delegated to the Town by the General Assembly, thus overstepping Carthage's rightful authority. *See Smith Chapel*, 350 N.C. at 812, 517 S.E.2d at 879 (holding that "the [town's] ordinance on its face exceeds the express limitation of the plain and unambiguous reading of" the applicable Public Enterprise Statutes).

The ordinances are therefore invalid and, accordingly, we reverse the decision of the Court of Appeals, which affirmed the trial court's grant of summary judgment for the Town of Carthage. We conclude that discretionary review was improvidently allowed as to the remaining issues on appeal and remand this case to the Court of Appeals for consideration of the unresolved issues.

REVERSED AND REMANDED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED IN PART.

STATE OF NORTH CAROLINA
v.
ZACHARY DAVID THOMSEN

No. 308A15

Filed 19 August 2016

1. Jurisdiction—subject matter—writ of certiorari—issued by Court of Appeals—review of sua sponte motion for appropriate relief

Where the trial court accepted defendant's guilty plea and immediately thereafter granted its own motion for appropriate relief, vacated the judgment and the mandatory 300-month sentence, and

sentenced defendant to 144 to 233 months, the Court of Appeals had subject matter jurisdiction to issue a writ of certiorari. Pursuant to the state constitution, the General Assembly has the power to define the jurisdiction of the Court of Appeals. N.C.G.S. § 7A-32(c) empowers the Court of Appeals to review trial court rulings on motions for appropriate relief by writ of certiorari, and this default rule controls unless a more specific statute restricts jurisdiction. Here, if the trial court's sua sponte motion was pursuant to subsection 15A-1415(b), the holding in *State v. Stubbs*, 368 N.C. 40 (2015), controlled and the Court of Appeals had jurisdiction. And if the motion was pursuant to subsection 15A-1420(d), the Court of Appeals had jurisdiction because nothing in the General Statutes revoked the jurisdiction conferred by subsection 7A-32(c).

2. Appeal and Error—additional issue on appeal—rendered moot by holding

Where the Court of Appeals issued a writ of certiorari to review the trial court's ruling on its sua sponte motion for appropriate relief, the Supreme Court did not consider the second issue raised by the parties on appeal: whether the decision by the Court of Appeals petition panel to issue the writ constituted a ruling on jurisdiction that bound the subsequent opinion panel. Because the Supreme Court addressed the underlying subject matter jurisdiction question de novo, this issue was moot.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 776 S.E.2d 41 (2015), vacating an order granting appropriate relief and judgments entered on 13 December 2013 by Judge James M. Webb in Superior Court, Moore County, and remanding for a new sentencing hearing. Heard in the Supreme Court on 22 March 2016.

Roy Cooper, Attorney General, by Anne M. Middleton, Assistant Attorney General, for the State.

Bruce T. Cunningham, Jr. for defendant-appellant.

MARTIN, Chief Justice.

Defendant Zachary David Thomsen pleaded guilty to rape of a child by an adult offender and to sexual offense with a child by an adult offender, both felonies with mandatory minimum sentences of 300 months. *See* N.C.G.S. §§ 14-27.2A, -27.4A (2013). Pursuant to a

plea arrangement, the trial court consolidated the convictions for judgment and imposed a single active sentence of 300 to 420 months. After imposing the sentence, the court immediately granted its own motion for appropriate relief and vacated the judgment and sentence. It concluded that, as applied to defendant, the mandatory sentence violated the Eighth Amendment to the United States Constitution. The court then sentenced defendant to 144 to 233 months, pursuant to the Structured Sentencing Act. *See id.* § 15A-1340.17(c), (f) (2015).

The State did not file a notice of appeal. Instead, it petitioned the Court of Appeals for a writ of certiorari to review the trial court's order granting defendant appropriate relief. Defendant filed a response arguing that the Court of Appeals had already decided in *State v. Starkey*, 177 N.C. App. 264, 628 S.E.2d 424, *cert. denied*, 636 S.E.2d 196 (2006), that it lacked subject-matter jurisdiction to review a trial court's sua sponte grant of appropriate relief, either by the State's appeal or by writ of certiorari. The Court of Appeals allowed the State's petition and issued the writ. In his merits brief before that court, defendant again argued that the court lacked jurisdiction. The State responded that, by issuing the writ, the court had already ruled that it had jurisdiction, and that it would violate the law of the case doctrine articulated in *North Carolina National Bank v. Virginia Carolina Builders*, 307 N.C. 563, 299 S.E.2d 629 (1983), if another Court of Appeals panel overruled that decision.

In a divided opinion, the Court of Appeals agreed with the State. *See State v. Thomsen*, ___ N.C. App. ___, ___, 776 S.E.2d 41, 48 (2015). The court held that it was bound by the petition panel's decision on jurisdiction and could not address it anew. *Id.* Addressing the merits, the court held that defendant's original sentence of 300 to 420 months did not violate the Eighth Amendment. *Id.* at ___, 776 S.E.2d at 50. The court then vacated defendant's sentence and the trial court's order granting appropriate relief, and remanded the case for a new sentencing hearing. *Id.* A dissenting opinion maintained that the opinion panel was not bound by the petition panel's decision on jurisdiction, and that the Court of Appeals did not have jurisdiction to issue the writ of certiorari that the State sought. *See generally id.* at ___, 776 S.E.2d at 50-55 (McGee, C.J., dissenting). Defendant appealed to this Court on the basis of the dissenting opinion.

We therefore must address whether the Court of Appeals has subject-matter jurisdiction to review, pursuant to the State's petition for writ of certiorari, a trial court's grant of its own motion for appropriate relief. "We review issues relating to subject matter jurisdiction de novo." *State v. Oates*, 366 N.C. 264, 266, 732 S.E.2d 571, 573 (2012).

[1] The North Carolina Constitution provides that "[t]he Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe." N.C. Const. art. IV, § 12(2). The General Assembly has exercised this constitutional authority in N.C.G.S. § 7A-32(c) by giving the Court of Appeals "jurisdiction . . . to issue the prerogative writs, including . . . certiorari, . . . to supervise and control the proceedings of any of the trial courts of the General Court of Justice." N.C.G.S. § 7A-32(c) (2015). This statute empowers the Court of Appeals to review trial court rulings on motions for appropriate relief by writ of certiorari unless some other statute restricts the jurisdiction that subsection 7A-32(c) grants. *See State v. Stubbs*, 368 N.C. 40, 42-43, 770 S.E.2d 74, 76 (2015). In other words, because the state constitution gives the General Assembly the power to define the jurisdiction of the Court of Appeals, only the General Assembly can take away the jurisdiction that it has conferred. Subsection 7A-32(c) thus creates a default rule that the Court of Appeals has jurisdiction to review a lower court judgment by writ of certiorari. The default rule will control unless a more specific statute restricts jurisdiction in the particular class of cases at issue.

In *State v. Stubbs*, we addressed whether the Court of Appeals has jurisdiction to review a trial court's grant of a defendant's motion for appropriate relief by writ of certiorari. *Id.* at 41, 770 S.E.2d at 75. The State filed a petition for writ of certiorari in the Court of Appeals, seeking review of the trial court's grant of appropriate relief for which the defendant had moved under N.C.G.S. § 15A-1415. *Id.* at 41-43, 770 S.E.2d at 75-76. We noted that another statute, N.C.G.S. § 15A-1422(c), specifically addresses review of trial court rulings on section 15A-1415 motions for appropriate relief. *Id.* at 42-43, 770 S.E.2d at 76. But subsection 15A-1422(c), we concluded, contains no "limiting language . . . regarding which party may appeal a ruling" on a motion for appropriate relief that would alter the "broad powers" of review by certiorari that subsection 7A-32(c) grants. *Id.* at 43, 770 S.E.2d at 76. Importantly, we were not concerned with whether subsection 15A-1422(c) provided an independent source of jurisdiction for the Court of Appeals to issue the writ. *See id.* Rather, we focused on the *absence* of language in subsection 15A-1422(c) that would *limit* the court's review. *See id.* Finding none, we held that the Court of Appeals had jurisdiction to issue the writ. *Id.*

The sole relevant difference between *Stubbs* and this case is that the trial court here granted appropriate relief on its own motion rather than on defendant's. *See Thomsen*, ___ N.C. App. at ___, 776 S.E.2d at 43. A defendant may move for appropriate relief under subsection 15A-1415(b)(4) if he "was convicted or sentenced under a statute

that was in violation of the Constitution of the United States or the Constitution of North Carolina." N.C.G.S. § 15A-1415(b)(4) (2015). We recognized in *Stubbs* that the State can seek review by certiorari from a "ruling on a motion for appropriate relief pursuant to G.S. 15A-1415." *Stubbs*, 368 N.C. at 43, 770 S.E.2d at 76 (quoting N.C.G.S. § 15A-1422(c) (2015)). N.C.G.S. § 15A-1420(d), in turn, provides that "[a]t any time that a defendant would be entitled to relief by motion for appropriate relief, the court may grant such relief upon its own motion." N.C.G.S. § 15A-1420(d) (2015). But section 15A-1422 does not mention review of relief granted "pursuant to" subsection 1420(d). So the parties disagree on whether the trial court's sua sponte motion was "pursuant to" subsection 15A-1415(b) or "pursuant to" subsection 15A-1420(d), as both were necessary here to give the trial court the authority to grant relief on its own motion.

We ultimately do not need to decide this question because, in either case, the Court of Appeals would have jurisdiction to issue the writ. If the trial court made its motion "pursuant to" subsection 15A-1415(b), then the holding in *Stubbs* directly controls. But even if the trial court made its motion "pursuant to" subsection 15A-1420(d), the Court of Appeals still has jurisdiction because nothing in the Criminal Procedure Act, or any other statute that defendant has referenced, revokes the jurisdiction in this specific context that subsection 7A-32(c) confers more generally.

Section 15A-1422 includes a number of provisions that address appellate review of rulings on motions for appropriate relief, but makes no mention of subsection 15A-1420(d) or sua sponte motions. In defendant's view, this means that the Court of Appeals lacks jurisdiction to review sua sponte grants of relief. But, as discussed above, just the opposite is true. The absence of "limiting language," *Stubbs*, 368 N.C. at 43, 770 S.E.2d at 76, regarding review of sua sponte motions means that the jurisdiction prescribed by subsection 7A-32(c) remains unchanged. We therefore hold that the Court of Appeals had subject-matter jurisdiction to issue a writ of certiorari in this case.

The presence of provisions in section 15A-1422 that limit the Court of Appeals' jurisdiction to review motions for appropriate relief in *other* contexts confirms that the General Assembly knows how to restrict that court's jurisdiction when it elects to do so. For example, subsection (b) states that "[t]he grant or denial of relief sought pursuant to G.S. 15A-1414 is subject to appellate review *only* in an appeal regularly taken." N.C.G.S. § 15A-1422(b) (2015) (emphasis added). Subsection (d) states that "[t]here is *no right to appeal* from the denial of a motion for appropriate relief when the movant is entitled to a trial de novo upon

appeal." *Id.* § 15A-1422(d) (2015) (emphasis added). And subsection (f) attempts to limit the jurisdiction of this Court, stating that "[d]ecisions of the Court of Appeals on motions for appropriate relief that embrace matter set forth in G.S. 15A-1415(b) are final and not subject to further review by appeal, certification, writ, motion, or otherwise." *Id.* § 15A-1422(f) (2015), *invalidated in part as stated in State v. Blackwell*, 359 N.C. 814, 618 S.E.2d 213 (2005), *vacated in part on other grounds by State v. Blackwell*, 361 N.C. 41, 638 S.E.2d 452 (2006), *cert. denied*, 550 U.S. 948 (2007). In contrast, the conspicuous absence of any mention in section 15A-1422 of either subsection 15A-1420(d) or sua sponte motions compels the conclusion that the Court of Appeals lawfully issued the writ of certiorari in this case.

Finally, defendant argues that the Court of Appeals was not authorized by Rule 21 of the North Carolina Rules of Appellate Procedure to issue the writ of certiorari in this case. But, as we explained in *Stubbs*, if a valid statute gives the Court of Appeals jurisdiction to issue a writ of certiorari, Rule 21 cannot take it away. *Stubbs*, 368 N.C. at 43-44, 770 S.E.2d at 76 (quoting N.C. R. App. P. 1(c) ("These rules shall not be construed to extend or limit the jurisdiction of the courts of the appellate division as that is established by law.")). To the extent that *State v. Starkey* holds otherwise, it is overruled.

[2] The parties have briefed a second issue—namely, whether the decision by the Court of Appeals petition panel to issue the writ constituted a ruling on jurisdiction that bound the subsequent opinion panel. Because we have addressed the underlying subject-matter jurisdiction question de novo, however, this additional issue is now moot. We also express no opinion on whether the State had a right pursuant to N.C.G.S. § 15A-1445(a)(3)(c) to appeal the trial court's grant of appropriate relief. In a footnote in its brief before the Court of Appeals, the State argued that it did, but it has abandoned that argument in this Court. In any event, the Court of Appeals had jurisdiction to issue the writ of certiorari that the State sought. We therefore affirm the decision of the Court of Appeals.

AFFIRMED.

STATE v. RICHARDSON

[369 N.C. 28 (2016)]

STATE OF NORTH CAROLINA	)	
	)	
v.	)	From Johnston County
	)	
JONATHAN DOUGLAS RICHARDSON	)	

No. 272A14

ORDER

The following order has been entered on the motion filed on the 4th of August 2016 by defendant and designated Motion for an Order or Orders Regarding Deadline for Transcript Preparation. The time for preparation of the transcripts is extended until 7 October 2016.

By order of the Court in Conference, this 8th day of August, 2016.

s/Ervin, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 8th day of August, 2016.

J. BRYAN BOYD
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

STATE OF NORTH CAROLINA v. DAVID MARTIN BEASLEY YOUNG	)	From Buncombe County
STATE OF NORTH CAROLINA v. DOMINIQUE JEVON PERRY	)	From Guilford County
STATE OF NORTH CAROLINA v. SETHY TONY SEAM	)	From Davidson County

No. 80A14
No. 81A14
No. 82A14

ORDER

The Court, on its own motion, ordered that the parties submit supplemental briefs on the effect of *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), on the proceedings in these cases.

The Court, on its own motion, now orders that these three cases are consolidated for oral argument. Pursuant to Rule 30(b), appellants will have a total of thirty minutes for oral argument and appellees will have a total of thirty minutes for oral argument.

By order of the Court in Conference, this the 18th day of August 2016.

s/Martin, C.J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 18th day of August 2016.

J. BRYAN BOYD
Clerk, Supreme Court
of North Carolina

s/M.C. Hackney
Assistant Clerk

Justice Ervin is recused in No. 82A14, State v. Sethy Tony Seam.

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013P11-3	State v. Tracy Lamont Clark	1. Def's *Pro Se* Petition for *Writ of Habeas Corpus* 2. Def's *Pro Se* Motion for Petition to a Constitutional Challenge	1. Denied **07/14/2016** 2. Dismissed
039P14-3	Robert S. Chamberlain v. D.W. Bray	1. Petitioner's *Pro Se* Motion for Petition/Grievance/Complaint 2. Petitioner's *Pro Se* Motion for Notice of Appeal	1. Dismissed 2. Dismissed **Ervin, J., recused**
039P16	State v. John David Watson	1. Def's Motion for Temporary Stay 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31 (COA15-715)	1. Allowed **02/09/2016** Dissolved **08/18/2016** 2. Denied 3. Denied
042P04-8	State v. Larry McLeod Pulley	Def's *Pro Se* Motion for PDR (COA15-91)	Dismissed
045P16	Montessori Children's House of Durham v. Philip Blizzard and Patricia Blizzard	Defs' PDR Under N.C.G.S. § 7A-31 (COA15-406)	Denied
046P16	In the Matter of Todd W. Short	1. Petitioner's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP16-40) 2. Petitioner's *Pro Se* Motion for ADA Accommodations 3. Petitioner's *Pro Se* PDR Prior to a Decision of COA (COA16-580) 4. Petitioner's *Pro Se* Motion for Expedited Consideration of Petition for *Writ of Certiorari* (COAP16-40) 5. Petitioner's *Pro Se* Motion for Expedited Consideration of PDR (COA16-580) 6. Petitioner's *Pro Se* Motion for Stay of Order Entered by COA (COA16-580) 7. Petitioner's *Pro Se* Motion for Leave to Amendment Certificate of Service on Petitioner's Motion for Expedited Consideration of Petitioner's *Writ of Certiorari, inter alia* Filed on 30 June 2016 8. Petitioner's *Pro Se* Motion to Strike	1. Denied **07/13/2016** 2. Dismissed as moot **07/13/2016** 3. Denied **07/13/2016** 4. Dismissed as moot **07/13/2016** 5. Dismissed as moot **07/13/2016** 6. Denied **07/05/2016** 7. Allowed **07/05/2016** 8. Denied **07/13/2016**

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		9. Petitioner's *Pro Se* Renewed Motion to Expedite Petitioner's *Writ of Certiorari* from Order of COA	9. Dismissed as moot **07/13/2016**
047P02-17	State v. George W. Baldwin	Def's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **06/28/2016** **Ervin, J., recused**
048P15-2	State v. Ronald Dewayne Deese, III	1. Def's *Pro Se* Motion for Notice of Appeal (COAP16-378) 2. Def's *Pro Se* Motion for PDR 3. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA	1. Dismissed *ex mero motu* 2. Dismissed 3. Dismissed
063P15-2	State v. Isidro Garcia Hernandez	1. Def's *Pro Se* Motion for PDR 2. Def's *Pro Se* Motion for Subpoena *Duces Tecum*	1. Dismissed 2. Dismissed **Ervin, J., recused**
064A16-2	In re Price	Def's *Pro Se* Motion to Reconsider	Dismissed
066A16	State v. Shamele Collins	Def's Motion for Leave to File Reply Brief Out of Time	Denied **07/01/2016**
066A16	State v. Shamele Collins	Def's Attorney's Motion to Withdraw as Counsel	Allowed 0**7/12/2016**
068P16	State v. Corey Demond Phillips	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-730)	Denied
078P16	State v. Terry Cherrelle Gray, Jr. and Charles Hezekiah Gilchrist, Jr.	1. Def's (Charles Hezekiah Gilchrist, Jr.) PDR Under N.C.G.S. § 7A-31 (COA15-500) 2. Def's (Terry Cherrelle Gray, Jr.) PDR Under N.C.G.S. § 7A-31	1. Denied 2. Denied
079P16	State v. Marko Stasiv	Def's PDR Under N.C.G.S. § 7A-31 (COA15-806)	Denied
080A14	State v. David Martin Beasley Young		Special Order **08/18/2016**
081A14	State v. Dominique Jevon Perry		Special Order **08/18/2016**
082A14	State v. Sethy Tony Seam		Special Order **08/18/2016** **Ervin, J., recused**

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085P16	State v. Kalvin Michael Smith	1. Def's Petition for *Writ of Certiorari* to Review Order of Superior Court, Forsyth County 2. State's Motion for Extension of Time to File Response to Petition for *Writ of Certiorari*	1. Dismissed 2. Allowed **03/24/2016**
086A16	In re Redmond	Johanna Schoen, Ph.D's Motion for Leave to File *Amicus* Brief	Denied **08/18/2016**
087A16	In re Hughes	Johanna Schoen, Ph.D's Motion for Leave to File *Amicus* Brief	Denied **08/18/2016**
088P15-3	State v. Mason W. Hyde	1. Def's *Pro Se* Motion for Notice in Advance 2. Def's *Pro Se* Motion for Notice of Request for Assistance 3. Def's *Pro Se* Petition for *Writ of Habeas Corpus* 4. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-1260) 5. Def's *Pro Se* Motion to Show Cause 6. Def's *Pro Se* Motion to Allow Applicant the Opportunity to Correct/ Amend Any Defects, Errors, Flaws in the Application	1. 2. 3. Denied **07/05/2016** 4. 5. Dismissed **07/19/2016** 6. Dismissed as moot **07/19/2016** **Ervin, J., recused**
088A16	In re Smith	Johanna Schoen, Ph.D's Motion for Leave to File *Amicus* Brief	Denied **08/18/2016**
103P16	Louis Cherry and Marsha Gordon v. Gail Wiesner, City of Raleigh, and Raleigh Board of Adjustment —————— City of Raleigh, a Municipal Corporation v. Raleigh Board of Adjustment, Louis W. Cherry, III, Marsha G. Gordon and Gail P. Wiesner	Respondent's (Gail Wiesner) PDR Under N.C.G.S. § 7A-31 (COA15-155)	Denied
104P16-2	State v. William Gerald Price	Def's *Pro Se* Motion to Reconsider	Dismissed

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114P16	State v. Larry Cook	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-278)	Denied
129P16	State v. Dwain Bell	1. Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus* 2. Petitioner's *Pro Se* Motion for Bill of Complaint 3. Petitioner's *Pro Se* Motion for Objection to Order of Bill of Complaint Dismissed	1. Denied 2. Dismissed 3. Dismissed
132P11-10	State v. Gregory Lynn Gordon	1. Def's *Pro Se* Petition for W*rit of Mandamus* 2. Def's *Pro Se* Motion for PDR (COAP15-180)	1. Denied 2. Denied
133P16	State v. William Gerald Price	1. Def's *Pro Se* Notice of Appeal Based Upon a Constitutional Question 2. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-1073)	1. Dismissed *ex mero motu* 2. Denied
138P12-2	State v. Dartanya Levon Eaton	Def's PDR Under N.C.G.S. § 7A-31 (COA15-255)	Denied
140P16	Timothy S. Boyd v. Gregory M. Rekuc, M.D., and Raleigh Adult Medicine, P.A.	Defs' PDR Under N.C.G.S. § 7A-31 (COA15-780)	Denied
144P16	State v. Anton Tolandis Smith	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-921) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
151P16	State v. James L. Johnson	1. State's Motion for Temporary Stay (COA15-793) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **04/22/2016** 2. Allowed 3. Allowed
154P16	State v. Justin Duane Hurd	Def's Petition for *Writ of Certiorari* to Review Decision of COA (COA15-588)	Denied **Ervin, J., recused**
158P06-8	State v. Derrick D. Boger	Def's *Pro Se* Motion to Appeal an Consolidation of Sentences (COAP16-234)	Dismissed
158P16-2	Larry Brandon Moore v. Judge Jesse B. Caldwell, III	Petitioner's *Pro Se* Motion for Order and Proposed Order	Dismissed

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159P16	State v. Ronald Perry, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA15-967)	Denied
160A16	Thomas A.E. Davis, Jr., Administrator of the Estate of Lisa Mary Davis (Deceased) v. Hulsing Enterprises, LLC, Hulsing Hotels NC Management Company, Hulsing Hotels North Carolina, Inc., Hulsing Hotels, Inc., d/b/a Crowne Plaza Tennis & Golf Resort Asheville and Mulligan's	1. Defs' Notice of Appeal Based Upon a Dissent (COA15-368) 2. Defs' PDR As to Additional Issues	1. --- 2. Allowed
165P16	State v. Simaron Demetrius Hill	1. Def's *Pro Se* Petition for *Writ of Mandamus* 2. Def's *Pro Se* Motion for Peremptory Setting	1. Dismissed 2. Dismissed as moot
166P16	State v. Jaahkii Quran Harris	1. State's Motion for Temporary Stay (COA15-770) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **05/09/2016** Dissolved **08/18/2016** 2. Denied 3. Denied
169P16	State v. Matthew Chad Beaver	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1179)	Denied
170P16	State v. Dennis Sherwood Lewis	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-191) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed

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171P16	In the Matter of the Appeal Of: Michelin North America, Inc. From the Decision of the Mecklenburg County Board of Equalization and Review Concerning the Discovery of Certain Business Personal Property and the Proposed Discovery Values for Tax Years 2006-2011	1. Mecklenburg County's PDR Under N.C.G.S. § 7A-31 (COA15-415) 2. Michelin North America, Inc.'s Conditional PDR Under N.C.G.S. § 7A-31 3. Wake County's Conditional Motion for Leave to File *Amicus* Brief	1. Denied 2. Dismissed as moot 3. Dismissed as moot
172P15-5	State v. Mohammed Nadder Jilani	1. Def's *Pro Se* Petition for *Writ of Mandamus* 2. Def's *Pro Se* Motion for Writ of Prohibition 3. Def's *Pro Se* Petition for *Writ of Mandamus*	1. Denied 2. Denied 3. Denied
173A16	State v. Morris Leavett Stith	1. Def's Motion to Extend Time to File Brief 2. Def's Motion to Deem Brief Timely Filed	1. Allowed 2. Allowed
174P16	State v. Travis Taylor Dail	1. State's Motion for Temporary Stay (COAP16-291) 2. State's Petition for *Writ of Supersedeas* 3. State's Petition for *Writ of Certiorari* to Review Order of COA	1. Allowed **05/11/2016** Dissolved **08/18/2016** 2. Denied 3. Denied
176P16	State v. Larry James Waters	Def's PDR Under N.C.G.S. § 7A-31 (COA15-686)	Denied
179A16	Peter Jerard Farrell v. United States Army Brigadier General, Retired, Kelly J. Thomas, Commissioner of N.C. Division of Motor Vehicles, in his Official Capacity	1. Petitioner's Notice of Appeal Based Upon a Dissent (COA15-257) 2. Petitioner's Notice of Appeal Based Upon a Constitutional Question 3. Respondent's Motion to Dismiss Appeal	1. --- 2. --- 3. Allowed

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181A93-4	State v. Rayford Lewis Burke (DEATH)	Def's Motion to Supplement the Printed Record on Appeal	Allowed **Ervin, J., recused**
181A16	Lawrence Piazza and Salvatore Lampuri v. David Kirkbride, Gregory Brannon, and Robert Rice	1. Def's (Gregory Brannon) Notice of Appeal Based Upon a Dissent (COA15-48) 2. Def's (Gregory Brannon) PDR as to Additional Issues	1. --- 2. Allowed
183P16	City of Charlotte, a Municipal Corporation v. University Financial Properties, LLC, a North Carolina Limited Liability Company f/k/a University Bank Properties Limited Partnership, a North Carolina Limited Partnership, et al.	1. Def's (University Financial Properties, LLC) PDR Under N.C.G.S. § 7A-31 (COA15-473) 2. Plt's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
185P16	Robert Samuel Chamberlain v. State	Petitioner's *Pro Se* Motion for Petition to Renounce Citizenship	Dismissed **Ervin, J., recused**
186P16	State v. Terry Thorne	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-404)	Denied
194A16	State v. Michael Antonio Bullock	1. State's Motion for Temporary Stay (COA15-731) 2. State's Petition for *Writ of Supersedeas* 3. State's Notice of Appeal Based Upon a Dissent	1. Allowed **05/23/2016** 2. Allowed **06/16/2016** 3. ---
195P16	State v. James David Williams	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1052)	Denied
199P16	State v. Joseph M. Romano	1. State's Motion for Temporary Stay (COA15-940) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **05/24/2016** 2. Allowed 3. Allowed 4. Allowed

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200P07-5	State v. Kenneth E. Robinson	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Halifax County	Dismissed
200P16-2	North Carolina State Bar v. Dianne Michele Carter El Bey v. State, et al.	Def's *Pro Se* Motion for Responsive Pleading Regarding Dismissal	Dismissed **Ervin, J., recused**
201P16	State v. Timothy Wiley, Jr.	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Jackson County	Dismissed
203P16	State v. Robert Lee Baker, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA15-723)	Denied
204P16	Matthew S. Lennon v. N.C. Department of Justice and the N.C. Department of Public Safety	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA15-660)	Denied
207P16	State v. Anthony Tyrone Brown	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-825) 2. Def's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
208P16	State v. Joshua Earl Holloman	1. State's Motion for Temporary Stay (COA15-1042) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **05/27/2016** 2. Allowed 3. Allowed
209P16	State v. Willie Bernard Melvin	Def's *Pro Se* Motion for PDR of the Order of COA (COAP16-139)	Dismissed
210P16	State v. Dale Patrick Martin	1. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-830) 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Denied 2. Allowed
214P16	State v. Robert Thomas Pole	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, New Hanover County 2. Def's *Pro Se* Motion for the Appointment of Counsel	1. Denied 2. Dismissed as moot

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215P16	State v. Mickey Gene Mellon	1. Def's PDR Under N.C.G.S. § 7A-31 (COA15-459) 2. State's Motion for Temporary Stay 3. State's Petition for *Writ of Supersedeas* 4. State's PDR Under N.C.G.S. § 7A-31	1. 2. Allowed **06/15/2016** 3. 4.
217P16	State v. Ali Mahamed Sheikh and Abdulkadir Sharif Ali	1. Def's (Abdulkadir Sharif Ali) PDR Under N.C.G.S. § 7A-31 (COA15-688) 2. Def's (Ali Mahamed Sheikh) PDR Under N.C.G.S. § 7A-31 3. Def's (Abdulkadir Sharif Ali) Motion to Amend PDR	1. Denied 2. Denied 3. Allowed
218P16	Mike Campbell, Rhonda Campbell, Gail Campbell, John Fox, Jr., Sylvia Fox, Alan Harpe, Robin Harpe, Bill Sherrill, Norma Jean Sherrill, Richard Gordon, Susanne Gordon, Joe Brown, Patty Hewitt, Larry Marlin, First RX Pharmacy, Beth Bush, Charles McNiel, Carol McNiel, Nga Amador, Jack Moore, Maria Moore, Jody Parlier, Cathy Parlier, David Lynch, Judith Lynch, Victor McIntyre, Louise McIntyre, Brian Fox, Carrie Norman, Charles Johnson, Mary Johnson Landrea, Rhyne, Tom Brandon, Sara Brandon, Michael Kepley, Sandy Kepley, Vince Cherry, James Fox Worthy, Sheila Fox Worthy, Chuck Dockery, Kim Dockery, Bill Murdock, Jeannie Murdock, Shirley Silva, Brent Warren, Michelle Warren, Jim Howard,	Petitioners' PDR Under N.C.G.S. § 7A-31 (COA15-329)	Denied

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	Janet Howard, HCRI North Carolina Properties III, LP DBA Brookdale Senior Living Center, Louise Gordon, Travis Blackwelder, Statesville Bovine and Equine Center, Jared Reimann, Aimee Reimann, Lee Shepard, Cecil Davis, Imogene Davis, John Strikeleather, III, Heritage Knitting Company, LLC, Judy Voelske, Voelske Automotive, Cooney Properties, LLC, and Dr. Chip Cooney v. The City of Statesville, North Carolina, Love's Travel Stops & Country Stores, Inc., and Roserock Holdings, L.L.C.		
220P16	State v. Julie Watkins	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1221)	Denied
222P16	State v. Jeffrey Castillo	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-855) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
223P16	North Carolina Department of Public Safety v. Chauncey John Ledford	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA15-595)	Allowed
225P16	Charles Anthony Ball v. James M. Ellis, Administrator of Estate	Plt's *Pro Se* Motion for PDR	Denied **06/30/2016**

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226P16	In re Foreclosure of Deed of Trust From Burman Howard Maine, Betty Farmer Maine and Brandon Travis Maine, Grantor, to PBRE, Inc., Trustee, Recorded in Book 405, Page 2169, in the Ashe County Public Registry by Morrison Trustee Services, LLC, Substitute Trustee	1. Petitioners' *Pro Se* Motion for Notice of Appeal 2. Petitioners' *Pro Se* Petition for *Writ of Mandamus* 3. Petitioners' *Pro Se* Motion for Notice of Appeal	1. Dismissed *ex mero motu* 2. Dismissed 3. Dismissed *ex mero motu*
230A16	Town of Beech Mountain v. Genesis Wildlife Sanctuary, Inc.	1. Def's Motion to Strike Issue II from Notice of Appeal Based on Dissent in COA (COA15-260; 15-517) 2. Plt's PDR Under N.C.G.S. § 7A-31 3. Plt's Petition in the Alternative for *Writ of Certiorari* to Review Decision of COA	1. Allowed **07/07/2016** 2. Dismissed **07/07/2016** 3. Allowed **07/07/2016**
230A16	Town of Beach Mountain v. Genesis Wildlife Sanctuary, Inc.	Plt's Motion to Amend New Brief (COA15-260; 15-517)	Allowed **08/16/2016**
232P01-3	State v. Michael Eugene Reed, II	Def's *Pro Se* Motion to Appoint Counsel	Denied **Hudson, J., recused**
232P16	State v. Jeremy Jerome Oliver	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied
233P16	State v. Alonzo Antonio Murrell	1. State's PDR Under N.C.G.S. § 7A-31 (COA15-1097) 2. State's Motion to Deem Petition Timely Filed 3. State's Petition in the Alternative for *Writ of Certiorari* to Review Decision of COA 4. State's Motion for Temporary Stay 5. State's Petition for *Writ of Supersedeas*	1. 2. 3. 4. Allowed **06/22/2016** 5.
234P16	State v. Willie James Steele, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA15-827)	Denied

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236P16	In the Matter of: C.N.H-P., M.S.N.P., A.D.S., M.C-N.H-P.	Respondent-Mother's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-1199)	Denied
237P16	Avery M. Riggsbee v. W. Baine Jones, Jr., Judge Government Employees	1. Plt's *Pro Se* Motion for Petition for Constitutional Violation 2. Plt's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Dismissed 2. Allowed
238P16	State v. Corey L. Hendricks-Bey	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied
239P16	State v. Chad Braxton Bumpers	1. State's Motion for Temporary Stay (COA16-1) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/24/2016** 2. 3.
241P16	Robert Samuel Chamberlain v. North Carolina Department of Public Safety, et al.	1. Petitioner's *Pro Se* Motion for Petition for Court Order to Receive Medical Care for Pretrial Detainees and Put a Stop to Pretrial Detainees Sick Calls Going Unanswered 2. Petitioner's *Pro Se* Motion for Petition to Seek a Court Order to Remove Locking Devices/Latches and Chains from Cell Doors	1. Dismissed 2. Dismissed **Ervin, J., recused**
242P16	State v. Greggory G. Mosher, Jr.	1. Def's *Pro Se* Motion for PDR 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
243P16	State v. Jimmy Lee Gann	1. State's Motion for Temporary Stay (COA15-1344) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **06/27/2016** 2.
244P16	State v. Sandra Meshell Brice	1. State's Motion for Temporary Stay (COA15-904) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/28/2016** 2. 3.
245P16	Triando M. Stroud v. Pate Dawson, Inc.	Petitioner's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-1066)	Denied

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246P16	Christopher Charles Friscia and Maria Adriana Friscia v. Nathan J. Taylor, et al. d.b.a. Nathan J. Taylor, McGuire Woods, et al. Law Firm	Petitioner's *Pro Se* Petition for *Writ of Mandamus*	Denied **07/13/2016**
247P16	State v. Jonathan Eugene Brunson	Def's *Pro Se* PDR	Dismissed
249P11-5	State v. Bobby Ray Grady	1. Def's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA15-433) 2. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 3. Def's *Pro Se* Motion to Procure Documents and Transcripts at the Government's Expense	1. Dismissed *ex mero motu* 2. Denied 3. Dismissed as moot
252PA14-2	State v. Thomas Craig Campbell	Def's Motion to Strike Section D of the State's Brief as Outside the Scope of this Court's Special Order Allowing the State's PDR in Part and Denying the State's PDR in Part	Denied 0**8/10/2016**
252PA15	In re D.L.W., D.L.N.W., V.A.W.	1. Respondent-Mother's *Pro Se* Petition for Rehearing 2. Respondent-Mother's *Pro Se* Motion to Stay the Mandate	1. Denied **06/29/2016** 2. Denied **06/29/2016**
257P16	William Gerald Price v. Pamela Barlow, et al., d.b.a. Clerk of Superior Court of Ashe, North Carolina	1. Petitioner's *Pro Se* Petition for *Writ of Mandamus* 2. Respondent's (Federal Mortgage Association a/k/a Fannie Mae) Motion for Sanctions	1. Denied 2. Dismissed without prejudice
258P16	State v. Richard Lee Nealen	Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **07/11/2016**
259P16	In the Matter of O.D.S.	Respondent-Father's PDR Under N.C.G.S. § 7A-31 (COA15-1153)	Denied
262P16	Ronald G. Keaton, Jr., Employee v. ERMC, III, Employer, New Hampshire Insurance Company, Carrier (Carl Warren & Company, Third-Party Administrator)	1. Def's Motion for Temporary Stay 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31 4. Def's Motion to Hold PDR in Abeyance	1. Allowed **07/13/2016** 2. 3. 4.

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265A16	State v. Jose Merlin Henriquez Portillo	1. Def's Notice of Appeal of Right Pursuant to N.C.G.S. § 7A-30(1) Raising Allegedly Substantial Constitutional Question 2. State's Motion to Dismiss Notice of Appeal	1. --- 2. Allowed
268P16	Owen D. Leavitt v. Willie Hargrove	1. Plt's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP16-351) 2. Plt's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Denied 2. Allowed
272A14	State v. Jonathan Douglas Richardson (DEATH)	Def's Motion for an Order or Orders Regarding Deadline for Transcript Preparation	Special Order **08/08/2016**
272P16	Jeffrey Lee McBride v. State	Def's *Pro Se* Motion for Complaint/Claim	Dismissed
273A16	State v. Jamison Christopher Goins	1. State's Motion for Temporary Stay (COA15-1183) 2. State's Petition for *Writ of Supersedeas* 3. State's Notice of Appeal Based Upon a Dissent	1. Allowed **07/22/2016** 2. Allowed **08/01/2016** 3. ---
274P16	Michael P. Long and Marie C. Long v. Currituck County, North Carolina and Elizabeth Letendre	1. Respondent's (Elizabeth Letendre) Motion for Temporary Stay (COA15-376) 2. Respondent's (Elizabeth Letendre) Petition for *Writ of Supersedeas* 3. Respondent's (Elizabeth Letendre) PDR Under N.C.G.S. § 7A-31	1. Allowed **07/28/2016** 2. 3.

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

18 August 2016

282P16	Jeremy Bruns and Jenny Bruns v. Rhonda Bryant, Dalton Bryant, Sr., Dalton Bryant, Jr., Pat McCrory, as Governor of North Carolina, Frank Perry, as Secretary of the North Carolina Department of Public Safety, Anthony Tata, as Secretary of the North Carolina Department of Transportation, Veronica McClain, USAA, and State of North Carolina	1. Plts' *Pro Se* PDR Prior to a Determination of COA (COA16-699) 2. Plts' *Pro Se* Petition for *Writ of Mandamus*	1. Denied **08/18/2016** 2. Denied **08/18/2016**
287P16	State v. Arvin Roscoe Hayes	1. State's Motion for Temporary Stay (COA16-207) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **08/05/2016** 2. 3.
289P15	United Community Bank (Georgia) v. Thomas L. Wolfe and Barbara J. Wolfe, Trustees of the Thomas L. Wolfe and Barbara J. Wolfe Irrevocable Trust, Thomas L. Wolfe, individually and Barbara J. Wolfe, individually	Plt's PDR Under N.C.G.S. § 7A-31 (COA14-1309)	Allowed
290P16	Michael Eugene Hunt v. Mr. Frank L. Perry, Secretary of N.C. Department of Public Safety	Petitioner's *Pro Se* Motion for PDR (COAP16-493)	Denied 0**8/12/2016**
291P16	State v. John Frede Sabbaghrabaiotti	1. State's Motion for Temporary Stay (COA15-1028) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **08/10/2016** 2. 3.

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

18 August 2016

307P15-2	The Kimberley Rice Kaestner 1992 Family Trust v. North Carolina Department of Revenue	1. State's Motion for Temporary Stay (COA15-896) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **07/25/2016** 2.
308A15	State v. Zachary David Thomsen	Def's Motion to Amend Brief	Allowed
326P15-2	Burl Anderson Howell v. N.C. Wayne County Department of Health and Human Services, by and through Reese Phelps; Lou Jones	1. Petitioner's *Pro Se* Petition for *Writ of Mandamus* (COAP16-339) 2. Petitioner's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Petitioner's *Pro Se* Petition for *Writ of Mandamus*	1. Denied **06/29/2016** 2. Allowed **06/29/2016** 3. Denied **06/29/2016**
339P15	State v. Terry Lyn Pegram	Def's PDR Under N.C.G.S. § 7A-31 (COA14-921)	Denied
368P12-4	Sherif A. Philips, M.D. v. Pitt County Memorial Hospital, Incorporated; Paul Bolin, M.D.; Ralph Whatley, M.D.; Sanjay Patel, M.D.; and Cynthia Brown, M.D.	1. Plt's *Pro Se* Motion for Petition for Reconsideration of Recusal Honorable Judge Richard L. Doughton 2. Plt's *Pro Se* Motion to Stay Execution of Judgment	1. Denied **07/22/2016** 2. Denied **07/22/2016**
379P10-5	State v. Ralph Franklin Fredrick	1. Def's *Pro Se* Motion for Notice of Appeal 2. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Rutherford County	1. Dismissed 2. Dismissed
382P15-2	State v. Richard Jackson Hall	Def's *Pro Se* Motion for Petition for Rehearing of Denial of Petition for *Writ of Certiorari*	Denied
407P15-2	State v. Larry Ricardo Tart	Def's *Pro Se* Motion for Certificate of Appealability	Dismissed
409PA15	Gregory P. Nies and Diane S. Nies v. Town of Emerald Isle, a North Carolina Municipality	*Amici Curiae*'s Motion to Withdraw and Substitute North Carolina Counsel	Allowed **06/22/2016**

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

18 August 2016

409PA15	Gregory P. Nies and Diane S. Nies v. Town of Emerald Isle, a North Carolina Municipality	Plts' Motion for Extension of Time to File Reply Brief	Allowed **08/10/2016**
429PA13	Morris v. Scenera Research, LLC, et al.	1. Plt's Motion for Attorneys' Fees and Expenses Incurred on Appeal 2. Plt's Motion in the Alternative to Issue a Mandate Remanding this Motion to the Trial Court for Further Proceedings	1. --- **06/30/2016** 2. Allowed **06/30/2016**
438A15	Hanesbrands, Inc. v. Kathleen Fowler	Def's Motion for Continuance of Oral Argument	Allowed **06/28/2016**
441P92-8	Johnnie L. Harrington v. Christie S. Cameron Roeder, Clerk of Court	Def's *Pro Se* Motion to Compel	Denied **Ervin, J., recused**
446A13	State v. Mario Andrette McNeill (DEATH)	Def's Motion to Amend Record on Appeal	Allowed
449P11-14	State v. Charles Everett Hinton	1. Def's *Pro Se* Motion for *Ex Parte* Inquiry into Restraints on Liberty by Judicial *Writ of Habeas Corpus* 2. Def's *Pro Se* Motion for Judicial Notice of Adjudicative Facts 3. Def's *Pro Se* Motion for Oral Hearing Opportunity to be Heard 4. Def's *Pro Se* Motion for Findings by the Court and Interrogatories to All Interested Persons, Individuals, and Third-Parties	1. Denied **08/18/2016** 2. Dismissed **08/18/2016** 3. Dismissed **08/18/2016** 4. Dismissed **08/18/2016** **Ervin, J., recused**
509P13-2	State v. Robert Lee Golden	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied **06/29/2016**
514P13-5	State v. Raymond Dakim Harris Joiner	Def's *Pro Se* Motion to Dismiss for Lack of Territorial Jurisdiction	Dismissed
579P01-3	Antorio Rice Smarr v. State	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Gaston County	Dismissed
669P03-3	State v. Tony Robert Jones	Def's *Pro Se* Motion for PDR *de novo* (COAP16-107)	Dismissed **Ervin, J., recused**

COMMSCOPE CREDIT UNION, Plaintiff
v.
BUTLER & BURKE, LLP, a North Carolina Limited Liability Partnership, Defendant and Third-Party Plaintiff
v.
BARRY D. GRAHAM, JAMES L. WRIGHT, ED DUTTON, FRANK GENTRY, GERAL HOLLAR, JOE CRESIMORE, MARK HONEYCUTT, ROSE SIPE, TODD POPE, JASON CUSHING, and SCOTT SAUNDERS, Third-Party Defendants

No. 5PA15

Filed 23 September 2016

1. Fiduciary Relationship—auditor—duties to third parties—not a fiduciary relationship

The trial court erred by allowing a motion to dismiss under Rule 12(b)(6) and for judgment on the pleadings under Rule 12(c) in an action for breach of fiduciary duty and other claims arising from an auditor's failure to discover that plaintiff's General Manager had not filed required tax returns for plaintiff (which was exempt from federal tax) for several years. Independent auditors often have significant obligations to third parties or to the public at large that would prevent them from acting solely in their audit clients' best interests, and a fiduciary relationship therefore does not arise as a matter of law, although it may exist in fact.

2. Appeal and Error—evenly divided Supreme Court—Court of Appeals ruling stands—no precedential authority

The decision of an evenly divided Supreme Court left intact the ruling of the Court of Appeals on whether certain defenses were sufficiently alleged in the complaint, although the Court of Appeals opinion was without precedential authority.

Justice BEASLEY did not participate in the consideration or decision of this case.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 237 N.C. App. 101, 764 S.E.2d 642 (2014), reversing an order entered on 26 September 2013 by Judge Richard L. Doughton in Superior Court, Catawba County. Heard in the Supreme Court on 1 September 2015.

Carlton Law PLLC, by Alfred P. Carlton, Jr. and Ian S. Richardson; and Patrick, Harper & Dixon, LLP, by L. Oliver Noble, Jr., for plaintiff-appellee.

Sharpless & Stavola, P.A., by Frederick K. Sharpless; and Wiley Rein LLP, by Richard A. Simpson, pro hac vice, and Ashley E. Eiler, pro hac vice, for defendant/third-party plaintiff-appellant.

Alston & Bird LLP, by Brian D. Boone, for Chamber of Commerce of the United States of America, amicus curiae.

Womble Carlyle Sandridge & Rice, LLP, by Brent F. Powell, C. Mark Wiley, and Michael R. Cashin, for Cherry Bekaert LLP, CliftonLarsonAllen LLP, and Dixon Hughes Goodman LLP, amici curiae.

Allen, Pinnix & Nichols, P.A., by Noel L. Allen and Nathan E. Standley, for National Association of State Boards of Accountancy, amicus curiae.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by J. Mitchell Armbruster, Michael W. Mitchell, and Lauren H. Bradley, for North Carolina Association of Certified Public Accountants, American Institute of Certified Public Accountants, and Center for Audit Quality, amici curiae.

Hedrick Gardner Kincheloe & Garofalo LLP, by Mel J. Garofalo, for North Carolina Chamber, amicus curiae.

MARTIN, Chief Justice.

Plaintiff CommScope Credit Union seeks damages from defendant Butler & Burke, LLP, the certified public accounting firm that plaintiff hired to conduct annual independent audits of its financial statements. We allowed discretionary review to address whether defendant owed a fiduciary duty to plaintiff and whether plaintiff's claims against defendant are barred by the doctrines of contributory negligence and *in pari delicto*.

I

Plaintiff is a North Carolina state-chartered credit union with its principal place of business in Catawba County. Defendant is the CPA

firm that plaintiff engaged to provide independent audit services from 2001 to 2010. Federal tax law required that plaintiff annually file Form 990, entitled "Return of Organization Exempt From Income Tax," with the Internal Revenue Service. *See* 26 U.S.C. § 6033(a)(1) (2006); *id.* § 6033(a)(1) (2000); *see also id.* § 501(a), (c)(14)(A) (2006); *id.* § 501(a), (c)(14)(A) (2000). Plaintiff filed a complaint in Superior Court, Catawba County, alleging that, in performing its annual audits, defendant had "fail[ed] to request and review Plaintiff's tax returns, and thereby fail[ed] to discover that Plaintiff's then[-]General Manager had not filed" Form 990 "from 2001 to 2009." Plaintiff alleged that defendant's inaction "resulted in the Internal Revenue Service's assessment of penalties upon Plaintiff in the . . . amount of . . . $374,200." Plaintiff asserted claims for breach of contract, negligence, breach of fiduciary duty, and professional malpractice.

Defendant answered the complaint and pleaded seven affirmative defenses, including contributory negligence and *in pari delicto*. Defendant subsequently moved to dismiss all of plaintiff's claims under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, and for judgment on the pleadings under Rule 12(c). The trial court granted defendant's motion and entered judgment for defendant. Plaintiff appealed.

The Court of Appeals reversed the trial court's decision. The court stated that the relationship between an independent auditor and its audit client may give rise to a fiduciary duty as a matter of law because that relationship "appears much more like that between attorney and client, [or] broker and principal, than that between mutually interdependent businesses." *CommScope Credit Union v. Butler & Burke, LLP*, 237 N.C. App. 101, 105, 764 S.E.2d 642, 647 (2014) (citations and internal quotations omitted). The court determined that, even if no fiduciary duty exists as a matter of law, the specific allegations in plaintiff's complaint were sufficient to state a claim for breach of fiduciary duty because the terms of the audit engagement letters discussed in the complaint "assur[ed] Plaintiff that [defendant] had the expertise to review financial statements to identify 'errors [and] fraud[,]' even by Plaintiff's own management and employees." *Id.* (third and fourth alterations in original). The court concluded that defendant had thus "sought and received 'special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence.' " *Id.* (quoting *Harrold v. Dowd*, 149 N.C. App. 777, 784, 561 S.E.2d 914, 919 (2002)).

Next, the Court of Appeals addressed defendant's motion to dismiss as applied to plaintiff's claims for breach of contract, negligence, and

professional malpractice. Defendant's motion had stated affirmative defenses based on the doctrines of *in pari delicto* and contributory negligence, and based on the terms of the engagement letters. The court concluded that defendant's affirmative defenses of *in pari delicto* and contributory negligence would not entitle defendant to dismissal at this stage because "nothing in the pleadings establishes either that [plaintiff's General Manager's] failure to file the tax returns was (1) negligent rather than intentional wrongdoing or excusable conduct or (2) imputed to Plaintiff as a matter of law." *Id.* at 110-11, 764 S.E.2d at 651. The court also concluded that the terms of the engagement letters were too ambiguous to warrant dismissal of plaintiff's claims based on the pleadings alone. *Id.* at 111-12, 764 S.E.2d at 651-52.

The court therefore reversed the trial court's order granting defendant's motion to dismiss and for judgment on the pleadings. *Id.* at 112, 764 S.E.2d at 652. We allowed defendant's petition for discretionary review and now affirm in part and reverse in part.

II

We review de novo the grant of a motion to dismiss under Rule 12(b)(6) and for judgment on the pleadings under Rule 12(c). *Bridges v. Parrish*, 366 N.C. 539, 541, 742 S.E.2d 794, 796 (2013); *Toomer v. Branch Banking & Tr. Co.*, 171 N.C. App. 58, 66, 614 S.E.2d 328, 335, *disc. rev. denied*, 360 N.C. 78, 623 S.E.2d 263 (2005).

In considering a motion to dismiss under Rule 12(b)(6), the Court must decide "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Bridges*, 366 N.C. at 541, 742 S.E.2d at 796 (quoting *Coley v. State*, 360 N.C. 493, 494, 631 S.E.2d 121, 123 (2006)).

On a motion for judgment on the pleadings, "[a]ll well pleaded factual allegations in the nonmoving party's pleadings are taken as true and all contravening assertions in the movant's pleadings are taken as false." *Daniels v. Montgomery Mut. Ins. Co.*, 320 N.C. 669, 682-83, 360 S.E.2d 772, 780 (1987) (quoting *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974)). As with a motion to dismiss, "[t]he trial court is required to view the facts and permissible inferences in the light most favorable to the nonmoving party." *Id.* at 682, 360 S.E.2d at 780 (quoting *Ragsdale*, 286 N.C. at 137, 209 S.E.2d at 499). A Rule 12(c) movant must show that "the complaint . . . fails to allege facts sufficient to state a cause of action or admits facts which constitute a complete legal bar" to a cause of action. *Jones v. Warren*, 274 N.C. 166, 169, 161 S.E.2d 467, 470

(1968) (quoting *Van Every v. Van Every*, 265 N.C. 506, 510, 144 S.E.2d 603, 606 (1965)).

[1] We now address whether the facts pleaded in plaintiff's complaint, if true, would establish that defendant owed a fiduciary duty to plaintiff when defendant performed its independent audits of plaintiff's financial statements. For a fiduciary duty to exist, there must be a fiduciary relationship between the parties. *Dalton v. Camp*, 353 N.C. 647, 651, 548 S.E.2d 704, 707 (2001). This Court has defined a fiduciary relationship as one in which "there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Green v. Freeman*, 367 N.C. 136, 141, 749 S.E.2d 262, 268 (2013) (quoting *Dalton*, 353 N.C. at 651, 548 S.E.2d at 707). All fiduciary relationships are characterized by "a heightened level of trust and the duty of the fiduciary to act in the best interests of the other party." *Dallaire v. Bank of Am., N.A.*, 367 N.C. 363, 367, 760 S.E.2d 263, 266 (2014).

The very nature of some relationships, such as the one between a trustee and the trust beneficiary, gives rise to a fiduciary relationship as a matter of law. *See, e.g.*, *Wachovia Bank & Tr. Co. v. Johnston*, 269 N.C. 701, 711, 153 S.E.2d 449, 457 (1967). The list of relationships that we have held to be fiduciary in their very nature is a limited one, *see Dallaire*, 367 N.C. at 367, 760 S.E.2d at 266 (listing categories), and we do not add to it lightly. We have not previously included the relationship of an independent auditor and its audit client in this list, and for good reason. Independent auditors often have significant obligations to third parties or to the public at large that would prevent them from acting solely in their audit clients' best interests. Though an auditor contracts to audit an individual client, the audit report is frequently intended to benefit and to be relied on by third parties such as investors or creditors. *Raritan River Steel Co. v. Cherry, Bekaert & Holland*, 322 N.C. 200, 211, 367 S.E.2d 609, 615 (1988). Because of this, we have held that an independent auditor owes a duty to avoid negligent misrepresentations not only to the auditor's client, but also "to any other person, or one of a group of persons, whom the accountant or his client intends the information to benefit." *Id.* at 210, 214, 367 S.E.2d at 614, 617 (summarizing and adopting Restatement (Second) of Torts § 552 (Am. Law Inst. 1977)).

The obligation to third parties is even more pronounced when a CPA firm audits the financial statements of a company that is subject to the reporting requirements of the Securities Exchange Act of 1934. *See* 15 U.S.C. § 78j–1 (2012). For instance, as amici point out, the

Sarbanes–Oxley Act of 2002 prohibits these auditors from providing additional services—such as investment advising or legal services—to their audit clients that could compromise their ability to act impartially and in the public interest. *Id.* § 78j–1(g)(7)-(8). Federal law also prohibits independent auditors who audit these companies from "[p]roviding an expert opinion or other expert service for an audit client." 17 C.F.R. § 210.2–01(c)(4)(x) (2016). And the United States Supreme Court has recognized that independent auditors "assume[ ] a *public* responsibility transcending any employment relationship with the client," and that they "owe[ ] ultimate allegiance to the [client's] creditors and stockholders, as well as to the investing public," rather than to the audit client. *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984). These federal requirements—whether or not they apply to audits of state-chartered credit unions—underscore why we cannot conclude that an independent auditor is always in a fiduciary relationship with its audit client.

Though no fiduciary relationship arises here as a matter of law, one may arise in fact. We have recognized that the existence of a fiduciary relationship "depends ultimately on the circumstances." *HAJMM Co. v. House of Raeford Farms, Inc.*, 328 N.C. 578, 588, 403 S.E.2d 483, 489 (1991). Specifically, a fiduciary relationship arises whenever "there is confidence reposed on one side, and resulting domination and influence on the other." *Abbitt v. Gregory*, 201 N.C. 577, 598, 160 S.E. 896, 906 (1931) (quoting 25 C. J. *Fiduciary* § 9 (1921)). Thus, we must determine whether the specific allegations in plaintiff's complaint could, if true, give rise to a fiduciary relationship in fact between plaintiff and defendant.

The complaint alleges that, each year from 2001 to 2009, defendant agreed to audit plaintiff's financial statements and other related records "in accordance with generally accepted auditing standards," also known as GAAS. As the complaint indicates, when a CPA firm performs an independent audit, North Carolina law defines GAAS as including the Statements on Auditing Standards issued by the American Institute of Certified Public Accountants (AICPA). 21 N.C. Admin. Code 08N .0403 (2016).

Under the AICPA Statements on Auditing Standards in effect when defendant conducted its audits, the object of a financial statement audit was to express an opinion on whether the financial statements fairly presented the financial position of the audit client. Codification of Accounting Standards and Procedures, Statement on Auditing Standards, AU § 110.01 (Am. Inst. of Certified Pub. Accountants 1972) [hereinafter "AU"]. The independent auditor had to "maintain independence in

mental attitude in all matters relating to the audit." *Id.* § 220.01 (Am. Inst. of Certified Pub. Accountants 2006); *accord id.* § 220.01 (Am. Inst. of Certified Pub. Accountants 1972). This required that the independent auditor be "without bias with respect to the client" and demonstrate "a judicial impartiality that recognizes an obligation for fairness not only to management and owners of a business but also to . . . those who may otherwise rely . . . upon the independent auditor's report." *Id.* § 220.02 (Am. Inst. of Certified Pub. Accountants 1972).

To protect the public's confidence in the independence of independent auditors, this standard required not only that an auditor "*be* independent," but that the auditor also "be *recognized* as independent." *Id.* § 220.03. To be recognized as independent, an auditor had to "be free from any obligation to . . . the client, its management, or its owners." *Id.* So under AICPA standards, and thus under the terms of the audit engagement, defendant had to maintain its independence from plaintiff and be free from obligations to or bias about plaintiff. Defendant was required to consider the interests of third parties who might rely on the audit, and to further those interests, even though they could conflict with the interests of the audit client. By contrast, a fiduciary must act in the best interests of its principal. *See Dallaire*, 367 N.C. at 367, 760 S.E.2d at 266. Defendant's commitment to audit plaintiff's financial statements in accordance with GAAS thus did not create a "fiduciary relationship . . . in fact." *Dalton*, 353 N.C. at 651, 548 S.E.2d at 708 (quoting *Abbitt*, 201 N.C. at 598, 160 S.E. at 906).

Nor does the complaint allege that defendant agreed to perform any additional services for plaintiff that could give rise to a fiduciary relationship in fact. In reaching the contrary conclusion below, the Court of Appeals relied on *Estate of Smith v. Underwood*, 127 N.C. App. 1, 487 S.E.2d 807, *disc. rev. denied*, 347 N.C. 398, 494 S.E.2d 410 (1997), "where the accountants were providing accounting and tax-related services," *CommScope*, 237 N.C. App. at 105, 764 S.E.2d at 647. Here, however, plaintiff's complaint does not allege that defendant provided tax-related services or, as we discuss below, agreed to do anything other than conduct an audit in accordance with GAAS.

The Court of Appeals reasoned that, under the facts pleaded in the complaint, defendant sought and received a special confidence from its audit client, through defendant's pledge to "plan and perform [ ]audit[s] to obtain reasonable assurance about whether the financial statements are free of material misstatements, whether from errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or government regulations that are attributable to . . . acts by management

or employees acting on behalf of" plaintiff. *CommScope*, 237 N.C. App. at 105-06, 764 S.E.2d at 648 (brackets in original). The Court of Appeals held that this pledge, read in the light most favorable to plaintiff, gave rise to a fiduciary duty. *Id.* at 106, 764 S.E.2d at 648. But defendant's pledge simply mirrored what the provisions of GAAS required. In *every* independent audit engagement that complied with GAAS, the auditor had to "plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud." AU § 110.02 (Am. Inst. of Certified Pub. Accountants 1997). In other words, defendant's pledge was well within the realm of what an independent auditor was obligated to do under GAAS in the first place. That pledge did not elevate defendant's relationship with plaintiff into a fiduciary one.

The complaint also alleges that plaintiff retained defendant to "notif[y] . . . appropriate credit union personnel of recommended improvement in administrative or accounting functions." Viewed in isolation, this allegation might be construed to mean that defendant agreed to provide accounting or consulting services outside the scope of an independent audit. But the rest of the complaint makes it clear that defendant did not, and that defendant's promises simply tracked what GAAS requires for an independent audit. According to the complaint, defendant specifically represented to plaintiff that the engagement would "include obtaining an understanding of internal control *sufficient to plan the audit* and to determine the nature, timing, and extent of audit procedures to be performed." (Emphasis added.) Defendant also agreed that "*[i]n the course of performing audit procedure*s, [it] would be alert to situations for which [it] could make recommendations for improvement in administrative or accounting functions" (emphasis added), and that it would "communicate those recommendations to the Supervisory Committee in a letter separate from [the] report on [plaintiff's] financial statements."

This is simply what defendant had to do when following the AICPA standards. When defendant first agreed to conduct independent audits of plaintiff's financial statements, GAAS Standard of Field Work No. 2 required an independent auditor to obtain a "sufficient understanding of internal control . . . to plan the audit and to determine the nature, timing, and extent of tests to be performed." AU § 150.02 (Am. Inst. of Certified Pub. Accountants 1972). Although later amended, this standard did not significantly change the nature of the auditor's responsibilities. *See id.* § 150.02 (Am. Inst. of Certified Pub. Accountants 2006). The auditor did not have to actively search for deficiencies in the audit client's internal

controls. *Id.* § 325.04 (Am. Inst. of Certified Pub. Accountants 2009); *id.* § 325.04 (Am. Inst. of Certified Pub. Accountants 2006); id. § 325.04 (Am. Inst. of Certified Pub. Accountants 1997). If the auditor became aware of sufficiently serious deficiencies during the course of the audit, however, it generally had to report them to the client. *Id.* § 325.17 (Am. Inst. of Certified Pub. Accountants 2009); *id.* § 325.20 (Am. Inst. of Certified Pub. Accountants 2006); *id.* § 325.02 (Am. Inst. of Certified Pub. Accountants 1997). But the audit's purpose was still "to report on the financial statements *and not to provide assurance on internal control.*" *Id.* § 325.11 (Am. Inst. of Certified Pub. Accountants 1989) (emphasis added); *accord id.* § 325.22 (Am. Inst. of Certified Pub. Accountants 2009); *id.* § 325.25 (Am. Inst. of Certified Pub. Accountants 2006). Defendant operated within this framework and agreed to find internal control deficiencies only to the extent necessary to perform its audits. Because defendant did not agree to affirmatively search for deficiencies outside of the performance of its audits, it did not agree to do anything beyond what an independent auditor normally does.

Thus, plaintiff's allegations, treated as true, do not establish that defendant owed it a fiduciary duty in fact. And as we have seen, the relationship between an independent auditor and its audit client does not categorically give rise to a fiduciary duty as a matter of law. The trial court correctly dismissed plaintiff's breach of fiduciary duty claim. We therefore reverse the decision of the Court of Appeals on this issue.

III

[2] Our disposition of plaintiff's breach of fiduciary duty claim leaves us with one other issue. As we have said, the Court of Appeals also held that plaintiff's complaint withstood defendant's motion to dismiss plaintiff's other claims. *See CommScope*, 237 N.C. App. at 112, 764 S.E.2d at 652. Defendant argued before the Court of Appeals, and again argues in this Court, that those claims are barred by the affirmative defenses of contributory negligence and *in pari delicto*. The members of the Court are equally divided, however, on whether the facts alleged in the complaint establish these defenses. The decision of the Court of Appeals on this issue is accordingly left undisturbed and stands without precedential value. *See, e.g.*, *State v. Long*, 365 N.C. 5, 705 S.E.2d 735 (2011) (per curiam); *State v. Greene*, 298 N.C. 268, 258 S.E.2d 71 (1979) (per curiam).

We therefore affirm the decision of the Court of Appeals in part and reverse it in part, and remand this case to the Court of Appeals for

further remand to the trial court for additional proceedings not inconsistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Justice BEASLEY did not participate in the consideration or decision of this case.

DANIEL AND LISA HOLT, ADMINISTRATORS OF THE ESTATE OF HUNTER DANIEL HOLT; STEVEN GRIER PRICE, INDIVIDUALLY; STEVEN GRIER PRICE, ADMINISTRATOR OF THE ESTATE OF MCALLISTER GRIER FURR PRICE; AND STEVEN GRIER PRICE, ADMINISTRATOR OF THE ESTATE OF CYNTHIA JEAN FURR

v.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

No. 76A16

Filed 23 September 2016

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 781 S.E.2d 697 (2016), affirming a decision and order filed on 29 December 2014 by the North Carolina Industrial Commission. Heard in the Supreme Court on 29 August 2016.

DeVore Acton & Stafford PA, by Fred W. DeVore, III, F. William DeVore IV, and Derek P. Adler, for Price plaintiff-appellees; and Rawls Scheer Foster & Mingo PLLC, by Amanda A. Mingo, for Holt plaintiff-appellees.

Roy Cooper, Attorney General, by Melody R. Hairston and Amar Majmundar, Special Deputy Attorneys General, for defendant-appellant.

PER CURIAM.

AFFIRMED.

IN THE MATTER OF C.L.S.

No. 54A16

Filed 23 September 2016

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 781 S.E.2d 680 (2016), affirming an order entered on 4 March 2015 by Judge J.H. Corpening, II in District Court, New Hanover County. Heard in the Supreme Court on 29 August 2016.

Jennifer G. Cooke for New Hanover County Department of Social Services, petitioner-appellee; and Ellis & Winters LLP, by Steven A. Scoggan, for appellee Guardian ad Litem.

David A. Perez for respondent-appellant father.

PER CURIAM.

AFFIRMED.

STATE OF NORTH CAROLINA
v.
APRIL JEAN ANDERSON

No. 432PA15

Filed 23 September 2016

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, ___ N.C. App. ___, 780 S.E.2d 758 (2015), finding no error after appeal from judgments entered on 16 July 2014 by Judge Linwood O. Foust in Superior Court, Catawba County. Heard in the Supreme Court on 31 August 2016.

Roy Cooper, Attorney General, by Kimberley A. D'Arruda, Special Deputy Attorney General, for the State.

James N. Freeman, Jr. for defendant-appellant.

PER CURIAM.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

STATE OF NORTH CAROLINA
v.
SHAMELE COLLINS

No. 66A16

Filed 23 September 2016

Appeal and Error—preservation of issues—failure to object below—failure to raise on appeal

The decision of the Court of Appeals on an evidence question in a criminal prosecution was affirmed by the Supreme Court where defendant did not raise the issue at trial and so did not preserve it for appeal. The decision of the Court of Appeals on the remaining issue was not affected.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 782 S.E.2d 350 (2016), finding no error in the trial court's denial of defendant's motion to suppress, but vacating the judgment entered on 8 September 2014 by Judge William Z. Wood in Superior Court, Forsyth County, and remanding for resentencing. Heard in the Supreme Court on 29 August 2016.

Roy Cooper, Attorney General, by Douglas W. Corkhill, Special Deputy Attorney General, for the State.

Erik R. Zimmerman for defendant-appellant.

PER CURIAM.

This matter is before the Court based upon a dissent at the Court of Appeals. *State v. Collins*, ___ N.C. App. ___, ___, 782 S.E.2d 350, 360-62 (2016). The majority at the Court of Appeals upheld the trial court's denial of defendant's motion to suppress evidence seized at the time of his arrest, concluding, *inter alia*, that "defendant failed to raise the timing of [the police officer's] observation of powder on the floor" before the trial court. *Id.* at ___, 782 S.E.2d at 358. We agree that defendant failed to preserve his timing argument for appeal because he did not raise this argument before the trial court. *See State v. Eason*, 328 N.C. 409, 420, 402 S.E.2d 809, 814 (1991) ("In order to preserve a question for appellate review, a party must have presented the trial court with a timely request, objection or motion, stating the specific grounds

for the ruling sought if the specific grounds are not apparent.” (citing N.C. R. App. P. 10(b) (recodified 2009 as N.C. R. App. P. 10(a)(1)). We therefore modify and affirm the decision of the Court of Appeals solely on this ground. The remaining issue addressed in the majority opinion of the Court of Appeals concerning defendant’s right to be present at sentencing is unchallenged and unaffected by our decision.

MODIFIED AND AFFIRMED.

STATE OF NORTH CAROLINA
v.
ARCHIMEDE NGADIENE NKIAM

No. 385PA15

Filed 23 September 2016

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 778 S.E.2d 863 (2015), reversing and remanding an order denying defendant’s motion for appropriate relief entered on 26 November 2013 by Judge Donald W. Stephens in Superior Court, Wake County. Heard in the Supreme Court on 29 August 2016.

Roy Cooper, Attorney General, by Joseph L. Hyde, Assistant Attorney General, for the State-appellant.

Hale Blau & Saad, by Daniel M. Blau and Robert H. Hale, Jr., for defendant-appellee.

PER CURIAM.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

Justice ERVIN did not participate in the consideration or decision of this case.

DEPARTMENT OF TRANSPORTATION)
)
v.) From Mecklenburg County
)
ADAMS OUTDOOR ADVERTISING OF)
CHARLOTTE LIMITED PARTNERSHIP)

No. 206P16

ORDER

The petition for discretionary review is allowed for the limited purpose of addressing the following issues as set forth in the petition:

> 1. Did the Court of Appeals err in failing to conclude that N.C. Gen. Stat. § 136-131 is the specific and controlling statute in this case involving the condemnation of a billboard location?
>
> 2. Did the Court of Appeals' decision violate the due process of law principles under the 14th Amendment to the United States Constitution and violate the law of the land clause of the Article 1, Section 19 of the North Carolina Constitution for denying Adams an effective and adequate remedy for just compensation?
>
> 7. Did the Court of Appeals err in concluding that the status of Adams' compliance with zoning and other land use laws and the effect of having in place a State permit for the use of the CHS Lot for outdoor advertising cannot be factors for the jury to consider in determining just compensation for the condemned lease?
>
> 8. Did the Court of Appeals err in concluding that a reasonable expectation of lease renewal cannot be considered by the jury as a factor in determining just compensation for the condemned lease?

The petition is denied as to any remaining issues.

By Order of the Court in Conference, this 22nd day of September, 2016.

s/Ervin, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of September, 2016.

J. BRYAN BOYD
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

STATE OF NORTH CAROLINA)
)
v.) From Rowan County
)
DONNA HELMS LEDBETTER)

No. 402P15

ORDER

Defendant's petition for discretionary review is allowed for the limited purpose of remanding to the Court of Appeals to reconsider its holding in light of *State v. Thomsen*, ___ N.C. ___, 789 S.E.2d 639 (2016), and *State v. Stubbs*, 368 N.C. 40, 770 S.E.2d 74 (2015). *See Thomsen*, ___ N.C. at ___, 789 S.E.2d at 642 (recognizing N.C.G.S. § 7A-32(c) "creates a default rule that the Court of Appeals has jurisdiction to review a lower court judgment by writ of certiorari"); *Stubbs*, 368 N.C. at 44, 770 S.E.2d at 76 (recognizing that Rule 21 of the North Carolina Rules of Appellate Procedure cannot take away jurisdiction given to the Court of Appeals by N.C.G.S. § 7A-32(c)).

By Order of the Court in Conference, this 22nd day of September, 2016.

s/Ervin, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of September, 2016.

J. BRYAN BOYD
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE C-BASS MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2006-RP2	)	
v.	)	From Forsyth County
WILLIE LEE PINKNEY, CLARA PINKNEY, SIDDCO, INC., AND POORE SUBSTITUTE TRUSTEE, LTD	)	

No. 229P16

ORDER

The petition for discretionary review is allowed for the purpose of addressing the issues set forth in the petition and the following additional issue: "Whether any provision of North Carolina law, including, but not limited to, N.C.G.S. §§ 25-3-203, -3-301 (2015), would preclude dismissal with prejudice of the claims asserted in plaintiff's complaint, including the claim for judicial foreclosure, despite the apparent absence of a complete chain of indorsements?"

By Order of the Court in Conference, this 22nd day of September, 2016.

s/Ervin, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of September, 2016.

J. BRYAN BOYD
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

22 September 2016

018A14-2	State v. Paris Jujuan Todd	1. State's Motion for Temporary Stay (COA15-670) 2. State's Petition for *Writ of Supersedeas* 3. State's Notice of Appeal Based Upon a Dissent	1. Allowed **09/02/2016** 2. Allowed 3. ---
063P10-3	State v. Myron Roderick Nunn	1. Def's *Pro Se* Motion for PDR Under N.C.G.S. § 7A-31 (COAP16-566) 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
067P16	The Assurance Group, Inc. v. Samuel Allen Bare and Deborah Lynn Bare, Marcheta Perry Sawyer, Timothy Mark Byrd, Gregory Todd Byrd, James Chandler Beck, Michael Wayne Anderson, Jeffrey A. Heybrock, Charles Bernard Moore, Jr.	Defs' PDR Under N.C.G.S. § 7A-31 (COA15-386)	Denied
077P16	Franklin Falin, Employee v. The Roberts Company Field Services, Inc., Employer Self-Insured (Key Risk Management Services, Inc., Third-Party Administrator)	Defs' PDR Under N.C.G.S. § 7A-31 (COA15-565)	Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

22 SEPTEMBER 2016

088P15-3	State v. Mason W. Hyde	1. Def's *Pro Se* Motion for Notice in Advance 2. Def's *Pro Se* Motion for Notice of Request for Assistance 3. Def's *Pro Se* Petition for *Writ of Habeas Corpus* 4. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-1260) 5. Def's *Pro Se* Motion to Show Cause 6. Def's *Pro Se* Motion to Allow Applicant the Opportunity to Correct/ Amend Any Defects, Errors, Flaws in the Application	1. Dismissed 2. Dismissed 3. Denied **07/05/2016** 4. Denied 5. Dismissed **07/19/2016** 6. Dismissed as moot **07/19/2016** **Ervin, J., recused**
102P16	Kenneth C. Adams v. The City of Raleigh	Plt's PDR Under N.C.G.S. § 7A-31 (COA15-782)	Denied
119P16	Freddie Wayne Huff, II v. N.C. Department of Public Safety	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA15-703)	Denied
131P01-13	State v. Anthony Dove	1. Def's *Pro Se* Petition for W*rit of Mandamus* 2. Def's *Pro Se* Motion for Impartial Jurist	1. Dismissed 2. Dismissed **Ervin, J., recused**
131P16-2	Somchoi Noonsab v. State of North Carolina Judge Paul Gessner	Petitioner's *Pro Se* Motion to Dismiss	Dismissed
141P16	Christenbury Eye Center, P.A. v. Medflow, Inc. and Dominic James Riggi	1. Plt's Petition for *Writ of Certiorari* to Review Order of Superior Court, Mecklenburg County 2. Plt's Petition in the Alternative for Discretionary Review Under N.C.G.S. § 7A-31 (COA15-1120)	1. Allowed 2. Dismissed as moot

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

22 September 2016

152P16	Catawba County, by and through its Child Support Agency, ex rel., Shawna Rackley v. Jason Loggins	1. Plt Catawba County's Motion for Temporary Stay (COA15-711) 2. Plt Catawba County's Petition for *Writ of Supersedeas* 3. Plt Catawba County's PDR Under N.C.G.S. § 7A-31 4. N.C. Department of Health and Human Services' Conditional Motion for Leave to File *Amicus* Brief	1. Allowed **04/25/2016** 2. Allowed 3. Allowed 4. Allowed
156P16	Polyfield Harris, William Harris, Tonya Barkley, Samantha Davis, and Patricia Perkins v. Myra H. Gilchrist, Valerie Harris, The Estate of Thomas Harris, Roosevelt Harris, Dorothy Morant, and Helen Howard	Plts' PDR Under N.C.G.S. § 7A-31 (COA15-437)	Denied
158P06-9	State v. Derrick Boger	Def's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **09/20/2016**
167P16	State v. William Edward Godwin, III	1. State's Motion for Temporary Stay (COA15-766) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **05/09/2016** 2. Allowed 3. Allowed 4. Allowed
168A16	Thomas A. Stokes, III v. Catherine C. Crumpton (formerly Stokes)	1. Plt's Notice of Appeal Based Upon a Dissent (COA14-1344) 2. Plt's PDR as to Additional Issues 3. Plt's Motion for Leave to Amend Notice of Appeal and PDR	1. --- 2. Allowed 3. Allowed **Edmunds, J., recused**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

22 SEPTEMBER 2016

172P16	Crystal Whicker, Employee v. Compass Group USA, Inc./ Crothall Services Group, Employer, Self-Insured (Gallagher Bassett Services, Inc., Administrator); and Novant Health, Inc., Alleged Joint Employer, Self-Insured	Plt's PDR Under N.C.G.S. § 7A-31 (COA15-1201)	Denied
181A93-4	State v. Rayford Lewis Burke (DEATH)	Petitioner-Appellant's Motion to Amend Petitioner-Appellant's Brief	Allowed **09/09/2016** **Ervin, J., recused**
182A16	Kimberly Ledford v. Ingles Markets, Inc., Employer, Self-Insured	1. Plt's Notice of Appeal Based Upon a Constitutional Question (COA15-522) 2. Def's Motion to Dismiss Appeal	1. --- 2. Allowed
184P16	Corey Scott Hart v. James Patrick Brienza and Gaston County	Def's (James Patrick Brienza) PDR Under N.C.G.S. § 7A-31 (COA15-1078)	Denied
187P16	Kornegay Family Farms, LLC, et al. v. Cross Creek Seed, Inc.	1. Def's Petition for *Writ of Certiorari* to Review Decision of the Business Court 2. N.C. Association of Defense Attorneys' Conditional Motion for Leave to File *Amicus* Brief	1. Allowed 2. Allowed
189P16	State v. Shawn Jarmine Murchison	Def's PDR Under N.C.G.S. § 7A-31 (COA15-563)	Denied
192P16-2	Owen D. Leavitt v. State	Petitioner's *Pro Se* Motion for *Certiorari*/Appeal Notice and Objection	Dismissed
196P16	State v. Jimmy Lee Williams, Jr.	1. Def's PDR Under N.C.G.S. § 7A-31 (COA15-826) 2. State's Motion to Dismiss Appeal	1. Denied 2. Allowed
197P16	State v. Javonta Marquez Ellis and Stephon Deandre Jennings	1. Def's (Ellis) PDR Under N.C.G.S. § 7A-31 (COA15-665) 2. Def's (Jennings) PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal of Defendant Ellis	1. Denied 2. Denied 3. Dismissed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

22 SEPTEMBER 2016

202P16	Odina Wesley and Norris Wesley, co-Administrators of the Estate of Hasani N'Namdi Wesley, Deceased v. Winston-Salem/ Forsyth County Board of Education and Billy Roger Bailey	Plts' PDR Under N.C.G.S. § 7A-31 (COA15-648)	Denied
205P16	State v. Robert Stanley Brown, Jr.	1. Def's NOA Based Upon a Constitutional Question (COA15-1192) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
206P16	Department of Transportation v. Adams Outdoor Advertising of Charlotte Limited Partnership	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-589) 2. Def's PDR Under N.C.G.S. § 7A-31 3. Plt's Motion to Dismiss Appeal	1. --- 2. Special Order 3. Allowed
208PA15	N.C. State Bar v. Tillett	Plt's Motion to Amend New Brief	Allowed **08/23/2016**
211P16	SED Holdings, LLC v. 3 Star Properties, LLC, James Johnson, TMPS LLC, Mark Hyland, and Home Servicing, LLC	Defs' PDR Under N.C.G.S. § 7A-31 (COA15-747)	Allowed
213P16	State v. Christopher Allen McKiver	1. State's Motion for Temporary Stay (COA15-1070) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/06/2016** 2. Allowed 3. Allowed
215P16	State v. Mickey Gene Mellon	1. Def's PDR Under N.C.G.S. § 7A-31 (COA15-459) 2. State's Motion for Temporary Stay 3. State's Petition for *Writ of Supersedeas* 4. State's PDR Under N.C.G.S. § 7A-31	1. Denied 2. Allowed **06/15/2016** Dissolved **09/22/2016** 3. Denied 4. Denied

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

22 September 2016

221P16	State v. Cornelius Demetric Griffin	Def's PDR Under N.C.G.S. § 7A-31 (COA15-492)	Denied
224P16	State v. James Michael Smith	Def's PDR Under N.C.G.S. § 7A-31 (COA15-614)	Denied
227P16	State v. Brandon Williams	1. Def's *Pro Se* Motion for Notice of Removal 2. Def's *Pro Se* Motion for Notice of Appeal	1. Dismissed 2. Dismissed
229P16	U.S. Bank National Association, as Trustee for the C-Bass Mortgage Loan Asset-Backed Certificates, Series 2006-RP2 v. Willie Lee Pinkney, Clara Pinkney, SIDDCO, Inc., and Poore Substitute Trustee, LTD	Plt's PDR Under N.C.G.S. § 7A-31 (COA15-797)	Special Order
231P16	Ervin Rainey, Employee v. City of Charlotte, Employer, and Self-Insured, Carrier	Plt's PDR Under N.C.G.S. § 7A-31 (COA15-953)	Denied
233P16	State v. Alonzo Antonio Murrell	1. State's PDR Under N.C.G.S. § 7A-31 (COA15-1097) 2. State's Motion to Deem Petition Timely Filed 3. State's Petition in the Alternative for *Writ of Certiorari* to Review Decision of COA 4. State's Motion for Temporary Stay 5. State's Petition for *Writ of Supersedeas*	1. Allowed 2. Allowed 3. Dismissed as moot 4. Allowed **06/22/2016** 5. Allowed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

22 SEPTEMBER 2016

235P16	CSX Transportation, Inc. v. City of Fayetteville and Public Works Commission of the City of Fayetteville, a/k/a Fayetteville Public Works Commission v. City of Fayetteville, Third Party Plaintiff v. Time Warner Cable Southeast, LLC, Third Party Defendant	Defs' PDR Under N.C.G.S. § 7A-31 (COA15-1286)	Denied
246P16-2	In the Matter of the Foreclosure of a Deed of Trust Executed by Christopher C. Friscia and Maria A. Friscia in the Original Amount of $161,600.00 Dated March 10, 2006, Recorded in Book 20146, Page 24, Mecklenburg County Registry	Petitioners' *Pro Se* Motion for Notice of Appeal	Dismissed
251P16	Kimarlo Ragland v. Nash-Rocky Mount Board of Education	1. Petitioner's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA15-862) 2. Petitioner's *Pro Se* PDR Under N.C.G.S. § 7A-31 3. Respondent's Motion to Dismiss Appeal 4. Petitioner's *Pro Se* Motion for Addendum to Notice of Appeal and PDR	1. --- 2. Denied 3. Allowed 4. Dismissed as moot
253P16	State v. Chalmers Gray Bohannon, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA15-389)	Denied

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

22 September 2016

256P16	State v. Jonathan James Newell	1. Def's *Pro Se* Motion to Disclose the Past and the Present Relationships, Associations, and Ties Between Defense Attorney and Victim's Father (COAP16-233) 2. Def's *Pro Se* Motion for Notice of Appeal 3. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA 4. Def's *Pro Se* Motion for *Nunc Pro Tunc* Order to Correct Judicial and Procedural Act on Subject Matter Jurisdiction 5. Def's *Pro Se* Motion for a Subpoena *Duces Tecum* 6. Def's *Pro Se* Motion to Grant Belated Appeal 7. Def's *Pro Se* Motion to Dismiss First Degree Murder Bill of Information 8. Def's *Pro Se* Motion to Plead to Lesser Degree or Offense 9. Def's *Pro Se* Motion to Proceed No Security for Costs in Criminal Appeal	1. Dismissed 2. Dismissed 3. Dismissed 4. Dismissed 5. Dismissed 6. Dismissed 7. Dismissed 8. Dismissed 9. Dismissed
260P16	Archie David Powell, Jr. v. State	Plt's *Pro Se* Motion for Complaint/Claim	Dismissed
261P16	State v. John Sinclair	Def's *Pro Se* Motion for Notice of Appeal	Dismissed
263P16	State v. Norman Johnson Oakley, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1126)	Denied
266P16	State v. Timothy Terrell Crandell	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-461) 2. Def's PDR Under N.C.G.S. § 7A-31 3. Def's Petition for *Writ of Certiorari* to Review Decision of COA 4. State's Motion to Dismiss Appeal	1. --- 2. Dismissed 3. Denied 4. Allowed

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

22 September 2016

274P16	Michael P. Long and Marie C. Long v. Currituck County, North Carolina and Elizabeth Letendre	1. Respondent's (Elizabeth Letendre) Motion for Temporary Stay (COA15-376) 2. Respondent's (Elizabeth Letendre) Petition for *Writ of Supersedeas* 3. Respondent's (Elizabeth Letendre) PDR Under N.C.G.S. § 7A-31 4. Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **07/28/2016** Dissolved **09/22/2016** 2. Denied 3. Denied 4. Dismissed as moot
276P16	In the Matter of the Estate of Richard Dixon Peacock Date of Death: 12/19/2013	Respondent's PDR Under N.C.G.S. § 7A-31 (COA15-1238)	Denied
278P16	State v. Michael Lawrence Klingler	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
281P16	State v. Dequonta McKinnon	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Wayne County 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
283P16	In re Alexander White	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied
285P97-2	State v. Darryl Anthony Howard	1. State's Motion for Temporary Stay 2. State's Petition for *Writ of Supersedeas*	1. Allowed **07/16/2014** Dissolved *ex mero motu nunc pro tunc* **08/31/2016** 2. Dismissed as moot **08/31/2016**
286P16	State v. Justin Kyle Mills	Def's PDR Under N.C.G.S. § 7A-31 (COA16-64)	Denied

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

22 September 2016

287P16	State v. Arvin Roscoe Hayes	1. State's Motion for Temporary Stay (COA16-207) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Motion to Modify Temporary Stay	1. Allowed **08/05/2016** Dissolved **08/31/2016** 2. Denied **08/31/2016** 3. Denied **08/31/2016** 4. Dismissed as moot **08/31/2016**
288P16	The Town of Beech Mountain v. John Milligan and wife, Sharon Milligan	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1267)	Denied
292P13-2	State v. Jose Ismael-Ruiz Zuniga	1. Def's *Pro Se* Motion for Petition for Writ of Error 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
299P16	State v. Robert Craig Barbee	1. Def's *Pro Se* Motion for PDR Under N.C.G.S. § 7A-31 (COAP16-542) 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
300P16	Ninti El Bey v. County of Mecklenburg, Register of Deeds David Granberry, Official and Individual Capacity	Petitioner's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Mecklenburg County	Dismissed
301P16	Michael Anthony Taylor v. Ola Mae Lewis, Senior Resident Superior Court Judge of Brunswick County	1. Petitioner's *Pro Se* Motion for Notice of Appeal (COAP16-462) 2. Petitioner's *Pro Se* Motion to Appoint Counsel	1. Dismissed *ex mero motu* **09/02/2016** 2. Dismissed as moot **09/02/2016**
308P16	State v. Robert William Ashworth	1. State's Motion for Temporary Stay (COA15-1279) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **08/22/2016** 2. 3.
315P16	State v. Rodney Maurice Lutz	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-1081)	Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

22 SEPTEMBER 2016

317PA14-2	State v. Rodney Nigee Pledger Taylor	Def's PDR Under N.C.G.S. § 7A-31 (COA14-21-2)	Denied
317P16	State v. Ronald Thompson Corbett	Def's *Pro Se* Motion for Writ of Prohibition	Dismissed **09/12/2016**
318P16	In the Matter of the Foreclosure of a Deed of Trust Executed by Donald R. Bagwell and Sylvia J. Bagwell Dated February 26, 2003 and Recorded in Book 2910 at Page 533 in the Orange County Public Registry, North Carolina, et al.	1. Petitioner's (Donald R. Bagwell) *Pro Se* Motion for Writ of Prohibition and/or Temporary Restraining Order 2. Petitioner's (Donald R. Bagwell) *Pro Se* Petition for *Writ of Mandamus*	1. Dismissed **08/30/2016** 2. Dismissed **08/30/2016**
318P16-2	In the Matter of the Foreclosure of a Deed of Trust Executed by Donald R. Bagwell and Sylvia J. Bagwell Dated February 26, 2003 and Recorded in Book 2910 at Page 533 in the Orange County Public Registry, North Carolina, et al.	1. Petitioner's *Pro Se* Motion for Writ of Prohibition and/or Temporary Restraining Order 2. Petitioner's *Pro Se* Petition for *Writ of Mandamus*	1. Dismissed **09/08/2016** 2. Dismissed **09/08/2016**
319P16	James E. Price v. Larry Smith, Interim Chief of Police, Durham Police Department, and Michael D. Andrews, Sheriff of Durham County, North Carolina	1. Petitioner's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Durham County (COAP16-290) 2. Petitioner's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Denied **08/29/2016** 2. Allowed **08/29/2016**
323P16	Danielle Star Maldonado-Reynolds v. Frank L. Perry, Secretary, N.C. Department of Public Safety	Petitioner's *Pro Se* Petition for *Writ of Mandamus*	Dismissed **09/01/2016**

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

22 September 2016

326P15-3	Burl Anderson Howell v. North Carolina Wayne County Department of Health and Human Services, By and Through, Reese Phelps; Lou Jones Petitioner's	Petitioner's *Pro Se* Motion for Appeal *In Forma Pauperis* (COAP16-339)	Dismissed
326P16	State v. Pedro Berrero	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied
328P16	Linwood Wilson v. Barbara Wilson	1. Plt's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COA15-1141) 2. Plt's *Pro Se* Motion for Temporary Stay 3. Plt's *Pro Se* Petition for *Writ of Supersedeas*	1. 2. Denied **09/06/2016** 3.
329P14-2	State v. Dwayne Demont Haizlip	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP16-617) 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Denied **09/19/2016** 2. Allowed **09/19/2016** 3. Dismissed as moot **09/19/2016** **Ervin, J., recused**
330A16	Allscripts Healthcare, LLC v. Etransmedia Technology, Inc.	Plt's Motion to File and Maintain Certain Documents from the Record on Appeal Under Seal	Allowed **09/06/2016**
331A16	State v. Amanda Gayle Reed	1. State's Motion for Temporary Stay (COA15-363) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **09/06/2016** 2.

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

22 September 2016

332P16	Sandra D. Snipes and William J. Snipes v. Britthaven, Inc., Principle Long Term Care, Inc., Spruce LTC Group, LLC d/b/a Richmond Pines Healthcare and Rehabilitation Center, and Fred McQueen, Jr., M.D.	1. Defs' (Britthaven, Inc., Principle Long Term Care, Inc., and Spruce LTC Group, LLC d/b/a Richmond Pines Healthcare and Rehabilitation Center) Motion for Temporary Stay (COA16-291) 2. Defs' (Britthaven, Inc., et al.) Petition for *Writ of Supersedeas* 3. Defs' (Britthaven, Inc., et al.) Petition for *Writ of Certiorari* to Review Order of COA	1. Allowed **09/07/2016** 2. 3.
338A95-2	State v. Keith Antonia Wagner	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied
345P16	State v. Dwayne Demont Haizlip	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP16-616) 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Denied **09/19/2016** 2. Allowed **09/19/2016** 3. Dismissed as moot **09/19/2016** **Ervin, J., recused**
346P16	Gurney B. Harris v. Southern Commercial Glass, Auto Owners Insurance, and Southeastern Installation, Inc., Cincinnati Insurance Company	1. Defs' (Southeastern Installation, Inc. and Cincinnati Insurance Company) Motion for Temporary Stay (COA15-1363) 2. Defs' (Southeastern Installation, Inc. and Cincinnati Insurance Company) *Writ of Supersedeas* 3. Defs' (Southeastern Installation, Inc. and Cincinnati Insurance Company) PDR Under N.C.G.S. § 7A-31 4. Defs' (Southeastern Installation, Inc. and Cincinnati Insurance Company) Motion to Hold PDR in Abeyance	1. Allowed **09/20/2016** 2. 3. 4.
362P15-2	State v. Bryant T. Dennings	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court of Cumberland County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

22 September 2016

402P15	State v. Donna Helms Ledbetter	1. Def's PDR Under N.C.G.S. § 7A-31 (COA15-414) 2. State's Motion to Strike Def's Reply to State's Response 3. Def's Motion to Hold PDR in Abeyance 4. Def's Motion for Temporary Stay 5. Def's Petition for *Writ of Supersedeas* 6. Def's Motion to Lift the Abeyance of the PDR	1. Special Order 2. Allowed 3. Allowed **04/13/2016** --- 4. Allowed **12/17/2015** --- 5. Dismissed as moot 6. Allowed
409PA15	Nies v. Town of Emerald Isle	Russell Walker's *Pro Se* Motion for Leave to File *Amicus* Brief (COA15-169)	Denied **09/01/2016**
451P07-2	Carl Wayne Moore, Sr. v. Superintendent Faye Daniels	Petitioner's Petition for a *Writ of Habeas Corpus*	Denied **09/12/2016**
532P11-2	State v. Douglas Harold McMickle	Def's *Pro Se* Motion to Appoint Counsel	Dismissed **Beasley, J., recused** **Ervin, J., recused**

CITY OF ASHEVILLE, A MUNICIPAL CORPORATION
v.
STATE OF NORTH CAROLINA AND THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY

No. 391PA15

Filed 21 December 2016

Constitutional Law—North Carolina—prohibited local act—health and sanitation—water and sewage system

Where the General Assembly passed legislation that effectively required the City of Asheville to involuntarily transfer the assets it used to operate a public water system to a new metropolitan water and sewerage district, the Supreme Court held that the legislation was a prohibited local act relating to health and sanitation, in violation of Article II, Section 24(1)(a) of the state constitution. First, the legislation was crafted such that the involuntary transfer provision would apply only to the City of Asheville, and this classification bore no reasonable relationship to the stated justification of the legislation. Second, in light of its stated purpose and practical effect regarding public water and sewer services, the legislation had a material connection to issues involving health, sanitation, and the abatement of nuisances.

Justice NEWBY dissenting.

Chief Justice MARTIN joins in this dissenting opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 and on appeal of right of a substantial constitutional question pursuant to N.C.G.S. § 7A-30(1) from a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 777 S.E.2d 92 (2015), affirming in part and reversing and remanding in part a summary judgment order entered on 9 June 2014, as clarified by means of a consent order entered on 3 July 2014, both by Judge Howard E. Manning, Jr. in Superior Court, Wake County. Heard in the Supreme Court on 17 May 2016 in session in the Old Burke County Courthouse in the City of Morganton pursuant to N.C.G.S. § 7A-10(a).

Ellis & Winters LLP, by Matthew W. Sawchak, Paul M. Cox, and Emily E. Erixson; Campbell Shatley, PLLC, by Robert F. Orr; Long, Parker, Warren, Anderson & Payne, P.A., by Robert B. Long, Jr.;

and City of Asheville City Attorney's Office, by Robin T. Currin, for plaintiff-appellant.

Roy Cooper, Attorney General, by I. Faison Hicks, Special Deputy Attorney General, for defendant-appellee State of North Carolina.

Cauley Pridgen, P.A., by James P. Cauley, III and Gabriel Du Sablon, for City of Wilson, amicus curiae.

Allegra Collins Law, by Allegra Collins, and Alexandra Davis, for International Municipal Lawyers Association, amicus curiae.

Kimberly S. Hibbard, General Counsel, and Gregory F. Schwitzgebel III, Associate General Counsel, for North Carolina League of Municipalities, amicus curiae.

ERVIN, Justice.

In 2013, the General Assembly enacted legislation that effectively required the City of Asheville to involuntarily transfer the assets that it uses to operate a public water system to a newly created metropolitan water and sewerage district. *See* Act of May 2, 2013, ch. 50, 2013 N.C. Sess. Laws 118, amended by Act of July 22, 2013, ch. 388, secs. 4-5, 2013 N.C. Sess. Laws 1605, 1618. Following the enactment of this legislation, the City sought a declaratory judgment and injunctive relief in Superior Court, Wake County. The trial court concluded that this involuntary transfer violated various provisions of the North Carolina Constitution, declared the relevant statutory provisions to be void and unenforceable, and permanently enjoined the State from enforcing the legislation. On appeal, the Court of Appeals reversed the trial court's order, in part, and directed the trial court to enter summary judgment in favor of the State. *City of Asheville v. State*, ___ N.C. App. ___, ___, 777 S.E.2d 92, 102 (2015). In view of our determination that the legislation in question constitutes a prohibited "[l]ocal . . . act . . . [r]elating to health[and] sanitation" in violation of Article II, Section 24(1)(a) of the North Carolina Constitution, we reverse the Court of Appeals' decision. N.C. Const. art. II, § 24(1)(a).

The City is a municipal corporation that is authorized, among other things, to own and acquire property. N.C.G.S. §§ 160A-1(2), -11 (2015). Pursuant to N.C.G.S. §§ 160A-311(2) and 160A-312, along with Chapter 399 of the 1933 Public-Local Laws, Chapter 140 of the 2005

Session Laws, and Chapter 139 of the 2005 Session Laws (the last three of which are referred to collectively as "the Sullivan Acts" and individually as "Sullivan I," "Sullivan II," and "Sullivan III," respectively, *see City of Asheville v. State*, 192 N.C. App. 1, 4-5, 665 S.E.2d 103, 109 (2008) (*Asheville I*), *appeal dismissed & disc. rev. denied*, 363 N.C. 123, 672 S.E.2d 685 (2009)), the City owns and operates a system for the supply, treatment, and distribution of water and for the operation of sanitary disposal systems serving individuals and entities both within and outside of its corporate limits.[1] *See* N.C.G.S. §§ 160A-311(2), -312 (2015); Act of Apr. 28, 1933 (Sullivan I), ch. 399, 1933 N.C. Pub.-Local Laws 376 (captioned "An Act to Regulate Charges Made by the City of Asheville for Water Consumed in Buncombe County Water Districts"); Act of June 29, 2005 (Sullivan III), ch. 139, 2005 N.C. Sess. Laws 243 (captioned "An Act Regarding the Operation of Public Enterprises by the City of Asheville"); Act of June 29, 2005 (Sullivan II), ch. 140, 2005 N.C. Sess. Laws 244 (captioned "An Act Regarding Water Rates in Buncombe County"). As of 29 August 2013, the City provided water service to approximately 124,000 customers, approximately 48,000 of whom received service outside the City's municipal limits. The City's water system has been built and maintained over the course of the past century using a combination of taxes, service fees, connection charges, bonded indebtedness, federal and state grants, contributions from Buncombe County, and donations from property owners and developers.[2]

Customers in Buncombe County served by the City's water system receive sewer service from the Metropolitan Sewerage District of Buncombe County,[3] a political subdivision that is authorized, among other things, to own, operate, and maintain a system for the treatment and disposal of sewerage in its assigned service area. *See* N.C.G.S.

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1. As of June 2014, the City's water system consisted of a sizeable watershed; two impoundments; three water treatment plants; 29 treated water storage reservoirs; 1,661 miles of transmission and distribution lines; at least 40 pump stations; and certain intangible assets, including, but not limited to, approximately 147 trained and certified employees, numerous licenses, wholesale water supply contracts, contracts for the supply of goods and services, and revenue accounts containing more than $2,218,000.00 that are held for the purpose of ensuring repayment of outstanding bonded indebtedness.

2. Although some of the assets of Asheville's water system were, at one time, owned by Buncombe County, the County conveyed its interest in those assets to the City on 15 May 2012.

3. Although the Metropolitan Sewerage District has been joined as a party defendant in this case, it has not taken a position with respect to the merits of any of the claims asserted in the City's pleadings.

§§ 162A-65(8), -69 (2015). The Metropolitan Sewerage District has never provided water service to any customer.

In May 2013, House Bill 488, which is entitled "An Act to Promote the Provision of Regional Water and Sewer Services by Transferring Ownership and Operation of Certain Public Water and Sewer Systems to a Metropolitan Water and Sewerage District," became law. Ch. 50, 2013 N.C. Sess. Laws 118. According to Section 2 of the legislation, two or more political subdivisions are authorized to voluntarily establish a new type of entity, to be known as a "metropolitan water and sewerage district," which is "authorized and empowered" to "exercise any power of a Metropolitan Water District under G.S. 162A-36, except subdivision (9) of that section"; to "exercise any power of a Metropolitan Sewer District under G.S. 162A-69, except subdivision (9) of that section"; and "[t]o do all acts and things necessary or convenient to carry out the powers granted by" the newly created Article 5A. *Id.*, sec. 2, at 119-24. Pursuant to Section 1(a) of the legislation, "[a]ll assets, real and personal, tangible and intangible, and all outstanding debts of any public water system" meeting certain statutorily specified criteria "are by operation of law transferred to the metropolitan sewerage district operating in the county where the public water system is located" regardless of whether the municipality in question consents to the required transfer.[4] *Id.*, sec. 1(a), at 118-19. Finally, Section 5.5 of the legislation provides that no metropolitan sewerage district can be created in any county which currently lacks such an entity without the consent of all the affected political subdivisions in the proposed district, *id.*, sec. 5.5, at 125, a provision that has the effect of preventing any involuntary transfers of the type required by Section 1 in the future.

On 14 May 2013, the City filed a complaint and a motion seeking temporary, preliminary, and permanent injunctive relief in which the City alleged that the involuntary transfer provisions of the legislation, which were specifically designed to apply to the City and to no other municipality in North Carolina, constituted an invalid local act "[r]elating to health, sanitation, and the abatement of nuisances" prohibited by Article II, Section 24(1)(a) of the North Carolina Constitution and "[r]elating to non-navigable streams" prohibited by Article II, Section 24(1)(e) of the North Carolina Constitution; violated the City's due process and equal protection rights as guaranteed by Article I, Section 19

4. The first six sentences of Chapter 50 of the 2013 North Carolina Session Laws are titled Sections 1(a) through 1(f). Chapter 388 of the 2013 Session Laws added Section 1(g). The parties regularly referred to these seven sections as simply "Section 1."

of the North Carolina Constitution; worked an unlawful taking of the City's property in violation of Article I, Sections 19 and 35 of the North Carolina Constitution; impaired the City's contracts with the holders of the bonds that had been issued to finance the construction of the City's water system in violation of Article I, Section 10 of the United States Constitution; impaired the City's obligations to its bondholders under N.C.G.S. § 159-93; and, in the alternative, took the City's property without just compensation in violation of Article I, Sections 19 and 35 of the North Carolina Constitution. Based upon these claims, the City sought a declaration that Section 1 of the legislation is unconstitutional; asked that the enforcement of Section 1 of the legislation be temporarily restrained and preliminarily and permanently enjoined; and requested that, in the alternative, the City be awarded monetary damages sufficient to indemnify the City from any loss that might result from the enactment of the legislation. On 14 May 2013, Judge Donald W. Stephens entered a temporary restraining order precluding the implementation or enforcement of Section 1 of the legislation.[5]

On 23 August 2013, the Governor signed Chapter 388 of the 2013 Session Laws, which had been enacted by the General Assembly on 22 July 2013 and which amended Section 1 of the Act in two ways. Ch. 388, secs. 4-5, 2013 N.C. Sess. Laws at 1618. More specifically, the newly enacted legislation repealed Section 1(a)(2) of Chapter 50 of the 2013 Session Laws so as to effectively eliminate one of the original criteria necessary to trigger an involuntary transfer of a covered municipality's water system, *id.*, sec. 4, at 1618 (stating that "Section 1(a)(2) of S.L. 2013-50 is repealed"), and added a new exemption from the existing involuntary transfer requirement, *id.*, sec. 5, at 1618 (amending "S.L. 2013-50 . . . by adding a new section" 1.(g)). As a result, the trial court entered a consent order providing, among other things, that the parties would be allowed to amend their pleadings to reflect these modifications to the legislation.

On 2 October 2013, the City filed an amended complaint in which it asserted the same substantive claims that had been raised in its initial pleading.[6] On 7 November 2013, the State filed a responsive pleading in which it alleged, among other things, that the City lacked the capacity

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5. The enforcement of Section 1 of the legislation has been enjoined throughout the course of this litigation.

6. The City predicated its amended impairment of contract claim upon both Article I, Section 10 of the United States Constitution and Article I, Section 19 of the North Carolina Constitution.

and standing to bring its claims against the State and denied the material allegations of the City's complaint. On 27 February 2014, the State and the City filed motions seeking summary judgment in their favor. On 9 June 2014, the trial court entered an order finding that there were no genuine issues of material fact and determining that the legislation (1) "was specifically drafted and amended to apply only to Asheville and the Asheville Water System," making it "a local act which relates to health and sanitation in violation of Article II, Section 24(1)(a) of the North Carolina Constitution" and "a local act relating to non-navigable streams . . . in violation of Article II, Section 24(1)(e) of the North Carolina Constitution"; (2) "is contrary to the law of the land in violation of Article I, Section 19 of the North Carolina Constitution as the means utilized to achieve what the legislation sought to obtain bears no relation, rational basis or otherwise, to the Act's stated purpose"; and (3) "is not a valid exercise of the sovereign power of the legislative branch of government (or the State of North Carolina) to take or condemn property for a public use" in violation of Article I, Sections 19 and 35 of the North Carolina Constitution. In the alternative, the trial court further determined that, in the event that the General Assembly had the authority to order the involuntary transfer of the City's water system, "Asheville, as the owner of the Asheville Water System, is entitled to be paid just compensation." In light of these determinations, the trial court permanently enjoined enforcement of the legislation. As a result of its decision to grant the relief that had been requested by the City on other grounds, the trial court "decline[d] to address" the claims that the City asserted pursuant to the state and federal contract clauses.[7] On 3 July 2014, the trial court entered a consent order indicating that it had declined to rule on the claims that the City had asserted pursuant to the contract clauses and N.C.G.S. § 159-93 on the grounds that they had "been rendered moot by the Court's ruling on the other claims." The State noted an appeal to the Court of Appeals from the trial court's orders.

Before the Court of Appeals, the State argued that the trial court had erred by concluding (1) that the City had the capacity and standing to bring its claims against the State; (2) that the Act is a "local[ ] . . . act" "[r]elating to health[and] sanitation," N.C. Const. art. II, § 24(1)(a), and "non-navigable streams," *id.* art. II, § 24(1)(e); (3) that Section 1 of the legislation violated the City's state equal protection and substantive due process rights; and (4) that Section 1 of the legislation effected an

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7. Although the trial court did not directly reference the City's claim pursuant to N.C.G.S. § 159-93, it did not address this claim either.

unlawful taking of the City's property and, alternatively, that the City would be entitled to just compensation in the event that the involuntary transfer of its water system was lawful. In response, the City asserted (1) that it "unquestionably has standing to challenge the constitutionality" of the Act; (2) that Section 1 of the legislation is an unconstitutional "local act" "relating to health and sanitation" in violation of Article II, Section 24(1)(a) and "relating to non-navigable streams" in violation of Article II, Section 24(1)(e); (3) that, although the Court of Appeals "need not reach the[se] issue[s,]" the legislation "violates both the takings element . . . and the due process and equal protection elements of" Article I, Section 19 of the North Carolina Constitution; and (4) that, if the Court of Appeals were to reverse the trial court, the City's bond-related claims "would remain for consideration" before the trial court.

After determining that the City had standing to challenge the constitutionality of the legislation "because it ha[d] not accepted any benefit from" the Act, *City of Asheville*, ___ N.C. App. at ___, 777 S.E.2d at 95 (citing *Town of Spruce Pine v. Avery County*, 346 N.C. 787, 790, 488 S.E.2d 144, 146 (1997)),[8] the Court of Appeals held that the trial court had erred by invalidating the legislation, *id.* at ___, 777 S.E.2d at 102. After assuming for purposes of argument that the legislation "constitute[d] a 'local law,' " the court held that "it is not *plain and clear* and *beyond reasonable doubt*" that Section 1 "falls within the ambit of" Article II, Section 24(1)(a) or Article II, Section 24(1)(e) of the North Carolina Constitution. *Id.* at ___, 777 S.E.2d at 97. Instead, the legislation "appear[s] to prioritize concerns regarding the governance over water and sewer systems and the quality of the services rendered." *Id.* at ___, 777 S.E.2d at 98 (citing ch. 50, sec. 2, 2013 N.C. Sess. Laws at 119-24 (codified at Article 5A in N.C.G.S. Chapter 162A)).[9] In addition, the Court of Appeals concluded that the legislation did not violate the City's right to equal protection under the state constitution, *id.* at ___, 777 S.E.2d at 99-101, effectuate a taking of Asheville's water system for an invalid purpose, *id.* at ___, 777 S.E.2d at 101, or result in a valid taking for which the City was entitled to just compensation, *id.* at ___, 777 S.E.2d at 101-02.[10]

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8. The State has not sought review of the Court of Appeals' decision with respect to the standing issue.

9. On the basis of a similar analysis, the Court of Appeals concluded that "[t]here is nothing in the . . . Act which suggests that its purpose is to address some concern regarding a non-navigable stream." *Id.* at ___, 777 S.E.2d at 98. The City has not requested review of this aspect of the Court of Appeals' decision.

10. The City has not sought review by this Court of the Court of Appeals' decision to reject its due process and equal protection claims

Finally, with respect to the claims that the City had asserted pursuant to the contract clauses and N.C.G.S. § 159-93, the Court of Appeals stated that, because the City had not argued that those claims constituted "an alternative basis in law for supporting" the relief sought, it had waived the right to assert those claims in the future. *Id.* at ___, 777 S.E.2d at 95 n.2 (quoting N.C. R. App. P. 10(c)); *id.* at ___, 777 S.E.2d at 102-03. As a result, the Court of Appeals reversed, in part, the trial court's order and remanded the case to the trial court for the entry of summary judgment in the State's favor. *Id.* at ___, 777 S.E.2d at 102. After the City unsuccessfully sought rehearing of the Court of Appeals' decision with respect to, among other things, the claims that the City had asserted in reliance upon the contract clauses and N.C.G.S. § 159-93, this Court retained jurisdiction over the City's notice of appeal and allowed the City's petition for discretionary review.

In seeking relief from this Court, the City argues that the Court of Appeals erred (1) by concluding that Section 1 of the legislation is not an unconstitutional local act relating to health and sanitation prohibited by Article II, Section 24(1)(a) of the North Carolina Constitution; (2) in holding that Section 1 of the legislation does not effectuate a taking for which Asheville is entitled to compensation pursuant to Article I, Section 19 of the North Carolina Constitution; and (3) by appearing to hold that the City had abandoned any right to assert its claims pursuant to the contract clauses and N.C.G.S. § 159-93 on remand by failing to raise them on appeal pursuant to Rule 10(c) of the North Carolina Rules of Appellate Procedure. For the reasons set forth below, the Court of Appeals' decision is reversed.[11]

> It is well settled in this State that the courts have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional—but it must be plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people.

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11. Although we need not reach the issue of whether the Court of Appeals erred by apparently holding that the City had waived the right to have the claims that it had asserted pursuant to the contract clauses and N.C.G.S. § 159-93 considered on remand by failing to assert those claims as an alternative basis for upholding the trial court's order pursuant to Rule 10(c) of the North Carolina Rules of Appellate Procedure, we disavow that holding in order to avoid confusion in subsequent cases. Simply put, nothing in the relevant provisions of the North Carolina Rules of Appellate Procedure or any of our prior cases requires an appellee to challenge legal decisions that the trial court declined to make on the grounds that the case could be fully resolved on some other basis on appeal pursuant to Rule 10(c) of the North Carolina Rules of Appellate Procedure at the risk of losing the right to assert those claims at a later time.

Glenn v. Bd. of Educ., 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936). In determining "the constitutionality of a legislative act it is not for this Court to judge its wisdom and expediency. These matters are the province of the General Assembly." *Adams v. N.C. Dep't of Nat. & Econ. Res.*, 295 N.C. 683, 690, 249 S.E.2d 402, 406 (1978). On the other hand, " '[i]f there is a conflict between a statute and the Constitution, this Court must determine the rights and liabilities or duties of the litigants before it in accordance with the Constitution, because the Constitution is the superior rule of law in that situation.' " *Id.* at 690, 249 S.E.2d at 406 (quoting *Nicholson v. State Educ. Assistance Auth.*, 275 N.C. 439, 447, 168 S.E.2d 401, 406 (1969) (citation omitted)).

Article II, Section 24 of the North Carolina Constitution, which expressly forbids the General Assembly from "enact[ing] any local, private, or special act or resolution" concerning fourteen "[p]rohibited subjects," N.C. Const. art. II, § 24(1), "is the fundamental law of the State and may not be ignored," *High Point Surplus Co. v. Pleasants*, 264 N.C. 650, 656, 142 S.E.2d 697, 702 (1965). More specifically, Article II, Section 24 of the North Carolina Constitution provides that:

> (1) Prohibited subjects. – The General Assembly shall not enact any local, private, or special act or resolution:
>
> (a) Relating to health, sanitation, and the abatement of nuisances;
>
> . . . .
>
> (3) Prohibited acts void. – Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

N.C. Const. art. II, § 24(1)(a), (3). Although the General Assembly shall not "enact any local, private, or special act" regarding any of the fourteen prohibited subjects listed in Article II, Section 24(1) "by the partial repeal of a general law," *id.* art. II, § 24(2), it "may . . . repeal local, private, or special laws enacted by it," *id.*, and "enact general laws regulating the matters set out" in the relevant constitutional provision, *id.* art. II, § 24(4).

As the history of Article II, Section 24 of the North Carolina Constitution[12] demonstrates:

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12. At the time of its original adoption, the language now contained in Article II, Section 24 appeared in Article II, Section 29.

> The organic law of the State was originally drafted and promulgated by a convention which met at Halifax in December, 1776. During the ensuing 140 years, the Legislature of North Carolina possessed virtually unlimited constitutional power to enact local, private, and special statutes. This legislative power was exercised with much liberality, and produced a plethora of local, private, and special enactments. As an inevitable consequence, the law of the State was frequently one thing in one locality, and quite different things in other localities. To minimize the resultant confusion, the people of North Carolina amended their Constitution at the general election of 1916 so as to deprive their Legislature of the power to enact local, private, or special acts or resolutions relating to many of the most common subjects of legislation.
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> . . . .
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> In thus amending their organic law, the people were motivated by the desire that the General Assembly should legislate for North Carolina in respect to the subjects specified as a single united commonwealth rather than as a conglomeration of innumerable discordant communities. To prevent this laudable desire from degenerating into a mere pious hope, they decreed in emphatic and express terms that "any local, private, or special act or resolution passed in violation of the provisions of this section shall be void [. . . .]"

Williams v. Blue Cross Blue Shield of N.C., 357 N.C. 170, 185-86, 581 S.E.2d 415, 426-27 (2003) (quoting *Idol v. Street*, 233 N.C. 730, 732-33, 65 S.E.2d 313, 314-15 (1951) (first alteration in original) (quoting N.C. Const. of 1868, art. II, § 29 (1917) (now art. II, § 24(3)))).

> It was the purpose of the amendment to free the General Assembly from the enormous amount of petty detail which had been occupying its attention, to enable it to devote more time and attention to general legislation of statewide interest and concern, to strengthen local self-government by providing for the delegation of local matters by *general laws* to local authorities, and to require uniform and coordinated action under general laws on matters related to the welfare of the whole State.

High Point Surplus Co., 264 N.C. at 656, 142 S.E.2d at 702. We are called upon to evaluate the constitutionality of Section 1 of the legislation against this historical backdrop.

"The first issue [that must be resolved in this case] is whether the Act is a *local act* prohibited by Article II, section 24 of the Constitution or is a *general law* which the General Assembly has the power to enact." *Adams*, 295 N.C. at 690, 249 S.E.2d at 406. "A statute is either 'general' or 'local'; there is no middle ground." *High Point Surplus Co.*, 264 N.C. at 656, 142 S.E.2d at 702. "[N]o exact rule or formula capable of constant application can be devised for determining in every case whether a law is local, private or special or whether [it is] general." *McIntyre v. Clarkson*, 254 N.C. 510, 517, 119 S.E.2d 888, 893 (1961). The primary test that this Court has employed for the purpose of differentiating between general and local acts for the past half-century has been the "reasonable classification" test adopted in *McIntyre*, *id.* at 517-19, 525-26, 119 S.E.2d at 893-95, 898-99. *See*, *e.g.*, *Williams*, 357 N.C. at 183-85, 581 S.E.2d at 425-26; *City of New Bern v. New Bern–Craven Cty. Bd. of Educ.*, 338 N.C. 430, 435-37, 450 S.E.2d 735, 738-39 (1994); *Adams*, 295 N.C. at 690-91, 249 S.E.2d at 406-07; *Treasure City of Fayetteville*, *Inc. v. Clark*, 261 N.C. 130, 133, 134 S.E.2d 97, 99 (1964). In applying this test, we must remember that "the number of counties included or excluded [from the ambit of an act] is not necessarily determinative." *High Point Surplus Co.*, 264 N.C. at 656, 142 S.E.2d at 702.

> Conceivably, a statute may be local if it excludes only one county. On the other hand, it may be general if it includes only one or a few counties. It is a matter of classification. For the purposes of legislating, the General Assembly may and does classify conditions, persons, places and things, and classification does not render a statute "local" if the classification is reasonable and based on rational difference of situation or condition; "[u]niversality is immaterial so long as those affected are reasonably different from those excluded and for the purpose of the [act] there is a logical basis for treating them in a different manner." A law is local "where, by force of an inherent limitation, it arbitrarily separates some places from others upon which, but for such limitation, it would operate, [ ] where it embraces less than the entire class of places to which such legislation would be necessary or appropriate having regard to the purpose for which the legislation was designed, and where [the] classification does not rest on circumstances distinguishing the places included from those excluded."

Id. at 656-57, 142 S.E.2d at 702 (first alteration in original) (quoting *McIntyre*, 254 N.C. at 518, 119 S.E.2d at 894) (citations omitted)). Put another way, a local law "discriminates between different localities without any real, proper, or reasonable basis or necessity a necessity springing from manifest peculiarities clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class separately that would be useless or detrimental to the others." *McIntyre*, 254 N.C. at 518, 119 S.E.2d at 894 (quoting 50 Am. Jur. *Statutes* § 8, at 25 (1944) (footnotes omitted)).

> On the other hand, a law is general " 'if it applies to and operates uniformly on all the members of any class of persons, places or things requiring legislation peculiar to itself in matters covered by the law.' [ ] Classification must be reasonable and germane to the law. It must be based on a reasonable and tangible distinction and operate the same on all parts of the [S]tate under the same conditions and circumstances. Classification must not be discriminatory, arbitrary or capricious."

High Point Surplus Co., 264 N.C. at 657, 142 S.E.2d at 702-03 (quoting *McIntyre*, 254 N.C. at 519, 119 S.E.2d at 894) (citation omitted)). As noted by a leading scholar cited with regularity by this Court, *e.g.*, *Adams*, 295 N.C. at 690-91, 249 S.E.2d at 407:

> In barest outline, a statutory classification is held to be "reasonable" if it satisfies the following five tests: (1) the classification must be based upon substantial distinctions which make one class really different from another; (2) the classification adopted must be germane to the purpose of the law; (3) the classification must not be based upon existing circumstances only; (4) to whatever class a law may apply, it must apply equally to each member thereof; and (5) if the classification meets these requirements, the number of members in a class is wholly immaterial.

Joseph S. Ferrell, *Local Legislation in the North Carolina General Assembly*, 45 N.C. L. Rev. 340, 391-92 (1967) [hereinafter Ferrell, *Local Legislation*] (footnotes omitted). The reasonable classification test utilized to distinguish between general and local legislation is not equivalent to the rational basis test utilized in due process and equal protection cases. *See id.* at 391-92 (footnotes omitted).

In *Town of Emerald Isle v. State*, 320 N.C. 640, 360 S.E.2d 756 (1987), this Court articulated a different test for determining whether an act is

general or local that focused on "the extent to which the act in question affects the general public interests and concerns," *id.* at 651, 360 S.E.2d at 763 (applying this test to legislation that provided for a specific public pedestrian beach access point and related facilities at Bogue Inlet in Carteret County), which we have not utilized in any subsequent case. We "departed from the reasonable classification method of analysis" in *Town of Emerald Isle* because it was " 'ill-suited to the question presented [there], since by definition a particular public pedestrian beach access facility must rest in but one location.' " *City of New Bern*, 338 N.C. at 436, 450 S.E.2d at 739 (quoting *Town of Emerald Isle*, 320 N.C. at 650, 360 S.E.2d at 762). The City contends that the legislation is a local law under either test while the State advances the opposite contention. We find the City's argument persuasive.

The legislation states that:

> Whereas, regional water and sewer systems provide reliable, cost-effective, high-quality water and sewer services to a wide range of residential and institutional customers; and
>
> Whereas, in an effort to ensure that the citizens and businesses of North Carolina are provided with the highest quality services, the State recognizes the value of regional solutions for public water and sewer for large public systems; Now, therefore,

Ch. 50, pmbl., 2013 N.C. Sess. Laws at 118. Simply put, the General Assembly stated that large, public regional water and sewer systems will better ensure that North Carolina citizens have access to higher quality, cost-effective water and sewer services and that the creation of regional water and sewer systems should be encouraged for that reason. In view of the fact that the stated purpose of the legislation contains no indication that it was site-specific in nature, we conclude that the reasonable classification test should be utilized in determining whether the legislation is local or general in nature. *See, e.g.*, *Williams*, 357 N.C. at 184-85, 581 S.E.2d at 426 (applying the "reasonable classification" test on the grounds that, while "the enabling legislation and the Ordinance allowing for the creation of a comprehensive civil rights ordinance apply only to Orange County, this legislation is not site-specific as in *Emerald Isle* because '[s]uch a legislated change could be effected as easily in [Orange County] as in any other [county] in the state' " (alterations in original) (quoting *City of New Bern*, 338 N.C. at 436, 450 S.E.2d at 739)).

According to Section 1 of the legislation, as amended, the involuntary transfer of a municipal water system to a metropolitan water and sewerage system is required if, and only if, (1) "[t]he public water system is owned and operated by a municipality located in a county where a metropolitan sewerage district is operating" and (2) "[t]he public water system serves a population of greater than 120,000 people." Ch. 50, sec. 1(a), 2013 N.C. Sess. Laws at 118-19, as amended by Ch. 388, sec. 4, 2013 N.C. Sess. Laws at 1618. In other words, the involuntary transfer provisions of Section 1 do not apply to any municipality that operates a water system unless that municipality serves more than 120,000 customers and is located in a county in which a metropolitan sewerage district provides sewer service pursuant to Article 5 of Chapter 162A of the North Carolina General Statutes, N.C.G.S. §§ 162A-64 to -81 (2015). Although the legislation appears to create a class of municipalities to which the involuntary transfer provisions of Section 1 apply, an examination of the criteria delineating the composition of that class demonstrates that the involuntary transfer provision has been crafted in such a manner that it does not and will not apply to any municipality other than the City.

According to the undisputed record evidence, there are only three metropolitan sewerage districts presently operating in North Carolina: the Metropolitan Sewerage District of Buncombe County, the Contentnea Metropolitan Sewerage District in Pitt County, and the Bay River Metropolitan Sewerage District in Pamlico County. The only municipal water system located in a county served by one of these three metropolitan sewerage districts that has over 120,000 customers is that owned and operated by the City. Although existing population growth trends create some possibility that the water system operated by the City of Greenville could reach the 120,000 person threshold in the foreseeable future,[13] the General Assembly took affirmative action to eliminate any risk that Greenville would ever have to involuntarily transfer its water system to the Contentnea Metropolitan Sewerage District.

As originally enacted, the legislation contained a third criterion that had to be met before an involuntary transfer was required, which was that "[t]he public water system has not been issued a certificate for an interbasin transfer." Ch. 50, sec. 1(a)(2), 2013 N.C. Sess. Laws at 119. In view of the fact that Greenville possessed an interbasin transfer

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13. The record clearly establishes that none of the municipal water systems located in the territory in which the Bay River Metropolitan Sewerage District operates have any prospect of serving the requisite number of customers in the foreseeable future.

certificate, it was exempt from the involuntary transfer requirement contained in the original version of the legislation. Although the enactment of Chapter 388, Section 4 of the 2013 Session Laws eliminated the interbasin transfer certificate exception from the involuntary transfer provision of the legislation, Section 5 of Chapter 388 of the 2013 Session Laws added Section 1(g), which provides that, "[f]or purposes of this section, a public water system shall not include any system that is operated simultaneously with a sewer system by the same public body, in conjunction with the provision of other utility services for its customers," to the legislation. Ch. 388, sec. 5, 2013 N.C. Sess. Laws at 1618. In view of the fact that Greenville provides both sewer and water service to its customers in conjunction with a system for the supply of electricity and natural gas, the enactment of Section 1(g) had the effect of preserving Greenville's exception from the involuntary transfer requirement.

In addition, we note that Section 5.5 of the legislation prohibits the creation of any new metropolitan sewerage districts without the consent of all relevant local governmental entities. Ch. 50, sec. 5.5, 2013 N.C. Sess. Laws at 125. The inclusion of Section 5.5 ensured that all of the other municipalities that currently operate water systems that serve more than 120,000 customers, such as Charlotte, Durham, Fayetteville, Greensboro, and Winston-Salem, or will operate such systems in the future will never be subjected to the involuntary transfer provisions of the legislation. Thus, the undisputed record evidence clearly shows that the City is the only entity that will ever be required to involuntarily transfer its water system to a metropolitan sewerage district under the legislation.

Although the fact that the City is the only municipality that will ever be subject to the involuntary transfer provisions of the legislation does not, standing alone, mean that the legislation is, per se, a "local" act, *see High Point Surplus Co.*, 264 N.C. at 656, 142 S.E.2d at 702 (stating that a statute "may be general if it includes only one or a few counties"), it does, however, indicate the existence of a serious question concerning the extent to which the classification contained in the legislation is "reasonable and germane to the law" and "based on a reasonable and tangible distinction," *id.* at 657, 142 S.E.2d at 702 (quoting *McIntyre*, 254 N.C. at 519, 119 S.E.2d 894 (citation omitted)). Nothing in the legislation in any way explains why every other municipality in North Carolina except the City should have the right to decide for itself whether to transfer its water system to a metropolitan water and sewerage district. Moreover, nothing in the legislation does anything to explain why the benefits that the General Assembly expects to result from the creation

of metropolitan water and sewerage districts should not be made available to the customers of every large municipal water system in North Carolina. The total absence of any justification for singling out the City's water system from other large municipally owned systems and the steps taken during the drafting process to ensure that the involuntary transfer provisions of the legislation did not apply to any municipality except the City demonstrate that the involuntary transfer provisions were never intended to apply to any municipal water system except that owned by the City. As a result, given the absence of any reasonable relationship between the stated justification underlying the legislation and the classification adopted by the General Assembly for the purpose of achieving its stated goal, the legislation is, without doubt, a local rather than a general law. *See*, *e.g.*, *Treasure City of Fayetteville*, 261 N.C. at 133-36, 134 S.E.2d at 99-101 (holding that a statute prohibiting sales of certain goods on Sunday that did not apply to all or portions of twenty-nine counties for the stated reason that the excluded territories were resort or tourist areas was a local, rather than a general, act given that the legislation did not apply to all of North Carolina's resort and tourist areas and given that some of the goods and services whose sale was prohibited by the legislation were of primary interest to permanent residents rather than tourists); *see also* Ferrell, *Local Legislation* 394 (noting the Court's holding that the statutory provision at issue in *Treasure City* was a local act given that the classification embodied in the challenged legislation was "a sham").

In spite of the absence of "any real, proper, or reasonable basis or . . . necessity springing from manifest peculiarities clearly distinguishing . . . and imperatively demanding" the involuntary transfer of the City's water system to a metropolitan water and sewerage district in the face of an apparent determination that similar treatment would be "useless or detrimental to [every] other[ ]" North Carolina municipality, *McIntyre*, 254 N.C. at 518, 119 S.E.2d at 894 (quoting 50 Am. Jur. *Statutes* § 8, at 25 (1944) (footnotes omitted)), the State hypothesizes that the General Assembly's decision to treat the City differently than all other North Carolina municipalities might hinge upon the "unique facts" and history of the "Asheville-Buncombe-Henderson region," which the State claims to consist of a "prolonged history of conflict between" the City and residents of Buncombe and Henderson Counties who are dependent on the City's water system that has been "characterized by charges of discrimination and the misuse of public monies and other resources" and has "engendered a toxically high level of public distrust and cynicism concerning local government in that region which itself makes

sound democratic governance there difficult to achieve." More specifically, the State asserts, as a purely hypothetical matter, that the General Assembly "could have" singled out the City's water system for involuntary transfer due to "fundamental and serious governance problems" that affect extraterritorial customers located in portions of Buncombe County outside the City's municipal limits and in Henderson County. In addition, the State hypothesizes that, given the area's status as a tourist destination, the General Assembly "could reasonably have concluded" that an involuntary transfer of the City's water system would prevent the "atmosphere of conflict in this region" from "tarnish[ing] . . . this region in the eyes of the public generally" and "threaten[ing], among other things, the vitality of a local tourist industry which is enormous and is of tremendous importance to all the citizens of this State." We do not find this argument persuasive.

At the outset, we note that this aspect of the State's defense of the legislation seems rooted in the rational basis test employed in the due process and equal protection context. *See, e.g.*, *In re R.L.C.*, 361 N.C. 287, 295, 643 S.E.2d 920, 924 (noting that, in the context of an as-applied due process challenge, evaluating "whether the law in question is rationally related to a legitimate government purpose" does not require "courts to determine the actual goal or purpose of the government action at issue" and allows the reviewing court to uphold the legislation on the basis of "any conceivable legitimate purpose" (citations omitted)), *cert. denied*, 552 U.S. 1024, 128 S. Ct. 615, 169 L. Ed. 2d 396 (2007). However, nothing in our Article II, Section 24 jurisprudence suggests that we should focus on a hypothetical, rather than the actual, justification for the challenged legislation in determining whether it should be deemed general or local in nature. Furthermore, a decision to approve the use of the hypothetical purpose approach suggested by the State would deprive Article II, Section 24 of the North Carolina Constitution of any meaningful effect by rendering it indistinguishable from the substantive due process provisions of Article I, Section 19 of the North Carolina Constitution. *Cf. District of Columbia v. Heller*, 554 U.S. 570, 628 n.27, 171 L. Ed. 2d 637, 679 n.27, 128 S. Ct. 2783, 2818 n.27 (2008) (rejecting such a result under the federal constitution and, more specifically, stating that, "[i]f all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect"). As a result, we will focus our analysis upon the extent, if any, to which there is record support for the State's argument to the effect that the legislation is a general, rather than a local, act.

Although the State has directed the Court's attention to "[t]he documented historical record" reflected in this Court's decision in *Candler v. City of Asheville*, 247 N.C. 398, 101 S.E.2d 470 (1958), and the Court of Appeals' 2008 decision in *City of Asheville*, these materials provide no support for the State's argument that the legislation is a general, rather than a local, law. Instead, we explicitly stated in *Candler* that "[t]here is nothing on this record which tends to show that the rate or rates to be charged" to extraterritorial customers "are unjust and confiscatory." *Id.* at 410, 101 S.E.2d at 479. Although the Court of Appeals did note the existence of "ample support in the record to justify the Legislature's findings that Asheville and Buncombe County have experienced a 'complicated pattern of dealings' with respect to the development and maintenance of its water distribution system" in *Asheville I*, 192 N.C. App. at 31-32, 665 S.E.2d at 125 (quoting Sullivan II, ch. 140, 2005 N.C. Sess. Laws at 246), the court also stated that (1) it was "not clear from the record that this history is one of 'manifest peculiarities clearly distinguishing' Asheville and Buncombe County from other municipalities and counties across the State," *id.* at 32, 665 S.E.2d at 125 (quoting *McIntyre*, 254 N.C. at 518, 119 S.E.2d at 894); (2) it was "not persuaded that the history of the development of the [Asheville] water distribution system" justified a decision to treat the City as unique for legislative classification purposes, *id.* at 32, 665 S.E.2d at 126; and (3) the statutory provisions at issue in *Asheville I* appeared to "embrace[ ] less than the entire class of places to which such legislation would be necessary or appropriate having regard to the purpose for which the legislation was designed," *id.* at 32, 665 S.E.2d at 126 (alteration in original) (quoting *Williams*, 357 N.C. at 184, 581 S.E.2d at 426 (quoting *McIntyre*, 254 N.C. at 518, 119 S.E.2d at 894)). Based upon these determinations, the court in *Asheville I* held that the challenged statutory provisions were "local acts." *Id.* at 32, 665 S.E.2d at 126. Moreover, the State conceded during oral argument that the present record contains no support for any assertion that the City continued to engage in abusive or discriminatory behavior after 2008. Finally, even if the legislation is intended to ensure the availability of better water service at a lower cost in Buncombe County by fostering the creation of a large, regional water and sewer system, the classification upon which the legislation relies "embraces less than the entire class of places to which such legislation would be necessary or appropriate having regard to the purpose for which the legislation was designed," *Williams*, 357 N.C. at 184, 581 S.E.2d at 426 (quoting *McIntyre*, 254 N.C. at 518, 119 S.E.2d at 894), given that none of the other public water systems owned and operated by Buncombe County municipalities receiving service from the Metropolitan Sewerage District, including Biltmore Forest, Black

Mountain, Montreat, Weaverville, and Woodfin, are subject to the statute's involuntary transfer provision despite the fact that several of those municipalities charge higher rates to extraterritorial customers than to municipal residents and given that the Town of Hendersonville, which is located in Henderson County, owns and operates a municipal water system that charges higher rates to extraterritorial customers than to municipal residents as well. Thus, for all these reasons, the State's effort to establish that the legislation is a general, rather than a local, act necessarily fails.

Having determined that Section 1 of the Act is a local law, we must next consider whether the legislation "[r]elat[es] to health[and] sanitation." N.C. Const. art. II, § 24(1)(a). In answering this question in the negative, the Court of Appeals began by noting that, in the 2008 *City of Asheville* case, it had concluded that "the mere implication of water or a water system in a legislative enactment does not necessitate a conclusion that it relates to health and sanitation in violation of the Constitution," *id.* at ___, 777 S.E.2d at 97 (quoting *Asheville I*, 192 N.C. App. at 37, 665 S.E.2d at 129); that this Court's precedent "instructs" that a local law does not relate to health or sanitation "*unless* (1) the law plainly 'state[s] that *its purpose is to regulate* [this prohibited subject],' *or* (2) the reviewing court is able to determine 'that the purpose of the act is to regulate [this prohibited subject after] careful perusal of the entire act,' " *id.* at ___, 777 S.E.2d at 97-98 (second and third alterations in original) (quoting *Asheville I*, 192 N.C. App. at 33, 665 S.E.2d at 126 (first alteration in original) (citing and quoting *Reed v. Howerton Eng'g Co.*, 188 N.C. 39, 44, 123 S.E. 479, 481 (1924))); and "that the best indications of the General Assembly's purpose are 'the language of the statute, the spirit of the act, and what the act seeks to accomplish,' " *id.* at ___, 777 S.E.2d at 98 (quoting *Asheville I*, 192 N.C. App. at 37, 665 S.E.2d at 129 (quoting *State ex rel. Comm'r of Ins. v. N.C. Rate Bureau*, 300 N.C. 381, 399, 269 S.E.2d 547, 561 (1980))). As a result, the Court of Appeals "first look[ed] to see if the . . . Act expressly states that its purpose is to regulate health or sanitation" and answered that question in the negative on the theory that the Act's "*stated* purpose," as reflected in its preamble, "is to address concerns regarding the quality of the service provided to the customers of public water and sewer systems." *Id.* at ___, 777 S.E.2d at 98. Secondly, the Court of Appeals "peruse[d] the entire . . . Act to determine whether it is plain and clear that the Act's purpose is to regulate health or sanitation" and determined that "there are no provisions in the Act which 'contemplate[ ] . . . prioritizing the [Asheville Water System's] health or sanitary condition[.]' " *Id.* at ___, 777 S.E.2d at 98 (alterations in original) (quoting *Asheville I*, 192 N.C.

App. at 36-37, 665 S.E.2d at 128). On the contrary, the fact that Section 2 of the legislation "allows for the 'denial or discontinuance of [water and sewer] service,' by [a metropolitan water and sewerage district] based on a customer's non-payment," *id.* at ___, 777 S.E.2d at 98 (first alteration in original) (quoting Ch. 50, sec. 2, 2013 N.C. Sess. Laws at 122 (codified at N.C.G.S. § 162A-85.13(c))), "belies Asheville's argument that the purpose of the Act relates to health and sanitation," *id.* at ___, 777 S.E.2d at 98 (citing *Asheville I*, 192 N.C. App. at 35, 665 S.E.2d at 127). As a result, the Court of Appeals concluded that the legislation "appear[s] to prioritize concerns regarding the governance over water and sewer systems and the quality of the services rendered," *id.* at ___, 777 S.E.2d at 98 (citing Ch. 50, sec. 2, 2013 N.C. Sess. Laws at 119-24), rather than health and sanitation.

In making this determination, the Court of Appeals distinguished several cases upon which the City relied before finding this Court's decision in *Reed v. Howerton Engineering Co.* controlling with respect to the health and sanitation issue. *Id.* at ___, 777 S.E.2d at 98-99. After noting that our decision in *Drysdale v. Prudden*, 195 N.C. 722, 143 S.E. 530 (1928), was "[t]he most compelling of" the cases cited in support of the City's position, the Court of Appeals stated that this Court "base[d] its ruling [in *Drysdale*] on the fact that the act [was] a local law" and did not make "any determination regarding which of the 14 'prohibited subjects' was implicated by the act" at issue in that case, *City of Asheville*, ___ N.C. App. at ___, 777 S.E.2d at 98. In addition, the Court of Appeals distinguished *City of New Bern*, 338 N.C. at 437-38, 450 S.E.2d at 739-40, *Idol*, 233 N.C. at 733, 65 S.E.2d at 315, and *Sams v. Board of County Commissioners*, 217 N.C. 284, 285, 7 S.E.2d 540, 541 (1940), on the grounds that they "deal[t] with legislation that empowers a political subdivision with authority *to enforce health regulations* in a county" while the legislation at issue in this case "does not empower anyone to enforce health regulations" or "impose any health regulations on the Asheville Water System," *City of Asheville*, ___ N.C. App. at ___, 777 S.E.2d at 99. Moreover, the Court of Appeals pointed to our decision in *Reed*, which rejected a challenge to legislation that "created sewer districts in Buncombe County," "because the language in the act did not suggest [that health or sanitation was] the act's purpose" and because the challenged act "merely sought to create political subdivisions through which sanitary sewer service could be provided." *Id.* at ___, 777 S.E.2d at 98-99 (citing *Reed*, 188 N.C. at 42-45, 123 S.E. at 479-82). Finally, the Court of Appeals concluded that our decision in *Lamb v. Board of Education*, 235 N.C. 377, 70 S.E.2d 201 (1952), which invalidated a statute that "imposed a duty on the Randolph County Board of

Education to provide 'a sewerage system and an adequate water supply' for its schools" because it "relat[ed] to health and sanitation" given "that 'its sole purpose' was to make sure that school children in Randolph County had access to 'healthful conditions' while at school," did not support the City's position given the directness with which the statute addressed health and sanitation issues.[14] *City of Asheville*, ___ N.C. App. at ___, 777 S.E.2d at 99 (quoting *Lamb*, 235 N.C. at 379, 70 S.E.2d at 203). Thus, the Court of Appeals concluded that its decision was fully consistent with this Court's precedent concerning the proper application of Article II, Section 24(a)(1) of the North Carolina Constitution.

The City claims that the Court of Appeals utilized an overly narrow construction of Article II, Section 24 of the North Carolina Constitution that conflicted with its purpose, ignored the distinction between "[r]elating to" and "regulat[ing]," and employed a " 'regulation' standard" stemming from our decision in *Reed* in preference to the approach utilized in our more recent decisions. In addition, the City asserts that the Court of Appeals' decision conflicts with three lines of decisions from this Court, including (1) a line of decisions, such as *Drysdale*, *City of New Bern*, and *Lamb*, that hold that water and sewer services are inherently related to health and sanitation; (2) a line of cases, such as *City of New Bern*, *Idol*, *Board of Health v. Board of Commissioners*, 220 N.C. 140, 16 S.E.2d 677 (1941), and *Sams*, that hold that local laws addressing the governance of health-related services relate to health and sanitation; and (3) a line of cases, such as *City of New Bern* and *Williams*, that indicate that the "practical effect" of challenged legislation must be considered in determining whether the act involves one of the prohibited subjects specified in Article II, Section 24(1). On the other hand, the State contends that the analysis employed by the Court of Appeals is firmly grounded in our decision in *Reed*, which remains good law, and that *Lamb* merely establishes that an act involving water and sewer services relates to health and sanitation if it does nothing other than to prescribe the manner in which sewer and water service is provided. In

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14. As the City points out, the law at issue in *Lamb* did not require the County Board of Education to provide water and sewer services to public school children and to ensure the provision of healthful conditions for Randolph County school children. Instead, the law "purport[ed] to limit the power of the County Board of Education to provide for sanitation and healthful conditions in the schools by means of a sewerage system and an adequate water supply," *Lamb*, 235 N.C. at 379, 70 S.E.2d at 203, by prohibiting the County Board of Education "from expending 'in excess of two thousand dollars ($2,000.00) under any one project or contract for the purpose of extending any public or private water or sewer system so that such extended system will serve any public school in Randolph County' " absent approval by a majority of voters at a special election, *id.* at 379, 70 S.E.2d at 203 (quoting Act of Apr. 14, 1951, ch. 1075, sec. 1, 1951 N.C. Sess. Laws 1079)

addition, the State contends that the Court of Appeals' decision, rather than impermissibly narrowing the term "[r]elating to," correctly focused upon the purpose of the Act, which, in the State's view, was intended to work a change in the governance of the City's water system. Once again, we find the City's argument persuasive.

In concluding that the legislation is not unconstitutional because it does not "expressly state[ ] that its purpose is to regulate health or sanitation" and because "it is [not] plain and clear," when viewing the Act as a whole, that its "purpose is to regulate health or sanitation," the Court of Appeals placed principal reliance upon our decision in *Reed*. *City of Asheville*, ___ N.C. App. at ___, 777 S.E.2d at 98. In *Reed*, we considered whether legislation that established a procedure pursuant to which the Buncombe County Board of Commissioners could create sanitary districts for the purpose of providing water and sewer service in rural areas of the county was a local act relating to health, sanitation, and the abatement of nuisances. 188 N.C. at 40-41, 44, 123 S.E. at 479-80, 481. Although this Court upheld the legislation because it was not a local law and did not relate to health and sanitation because it did "not state that its purpose [was] to regulate sanitary matters, or to regulate health or abate nuisances" and was, instead, intended "to provide districts in Buncombe County wherein sanitary sewers or sanitary measures may be provided in rural districts," *id.* at 44, 123 S.E. at 481, the second of these two holdings was substantially limited four years later in *Drysdale*, 195 N.C. at 726-28, 143 S.E. at 532-33, in which this Court invalidated a statute that created a single, special sanitary district in Henderson County as an impermissible local act.[15] In reaching this result, *Drysdale* distinguished *Reed* on the grounds that the legislation at issue in that case "*applied generally to the entire county of Buncombe*." Drysdale, 195 N.C. at 728, 143 S.E. at 533. While the State contends that this Court's decision in *Town of Kenilworth v. Hyder*, 197 N.C. 85, 147 S.E. 736 (1929), treats the "health and sanitation" holding in *Reed* "with unambiguous approval," we decline to read *Hyder* that expansively given that it did not utilize the regulation standard employed in *Reed*; looked to *Reed* for the primary purpose of noting that the relevant sanitary district had been established pursuant to the legislation that had been challenged in that earlier case;

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15. In spite of the fact that the Court of Appeals expressed uncertainty about the prohibited subject to which the statute at issue in *Drysdale* "related," it is clear from our opinion that the statute in question was deemed to impermissibly relate to health and sanitation, which is how subsequent opinions of this Court have understood that decision. *E.g.*, *Gaskill v. Costlow*, 270 N.C. 686, 688, 155 S.E.2d 148, 149 (1967); *Sams*, 217 N.C. at 285, 7 S.E.2d at 541.

and stated, in essence, that, since the legislation at issue in *Hyder* was little more than a continuation of the legislation at issue in *Reed* and since the legislation at issue in *Reed* had been upheld by this Court, there was "no convincing reason" for concluding that the legislation at issue in *Hyder* constituted a prohibited local act. *Id.* at 89, 147 S.E. at 738 (citations omitted). As a result, *Reed* provides no basis for a determination that the legislation does not relate to health and sanitation.

In addition, while the stated purpose of the legislation is undoubtedly relevant to the determination of whether a local law violates Article II, Section 24(a), our recent precedent clearly indicates that the practical effect of the legislation is pertinent to, and perhaps determinative of, the required constitutional inquiry. *E.g.*, *Williams*, 357 N.C. at 189, 581 S.E.2d at 429 (concluding that, while "the record demonstrates that . . . the intent of the enabling legislation and the Ordinance [enacted pursuant to the authority granted by the challenged legislation] is to prohibit discrimination in the workplace, the effect of these enactments is to govern the labor practices of [certain businesses] in Orange County"); *City of New Bern*, 338 N.C. at 434-42, 450 S.E.2d at 737-42 (concluding that the challenged legislation, which shifted the responsibility for enforcing the State Building Code with respect to certain buildings from the City of New Bern to Craven County, constituted unconstitutional local acts related to health and sanitation). As a result, the approach adopted by the Court of Appeals for determining whether the legislation constituted an impermissible local law relating to health and sanitation departs from that required by our precedents, properly understood.

Admittedly, this Court has not, to date, clearly indicated when a local act does and does not "relate" to a prohibited subject for purposes of Article II, Section 24. Although "related" can be defined as "[c]onnected in some way; having a relationship to or with something else," *Related*, *Black's Law Dictionary* (10th ed. 2014), we cannot conclude that the existence of a tangential or incidental connection between the challenged legislation and health and sanitation is sufficient to trigger the prohibition worked by Article II, Section 24(1)(a) of the North Carolina Constitution. On the other hand, we recognize that, as a purely textual matter, "relating to" is not equivalent to "regulating." *Compare* N.C. Const. art. II, § 24(1)(a) ("[r]elating to health, sanitation, and the abatement of nuisances"), *with id.* art. II, § 24(1)(j) ("[r]egulating labor, trade, mining, or manufacturing"); *see generally Williams*, 357 N.C. at 189, 581 S.E.2d at 429 (defining "regulate" as " 'to govern or direct according to rule[,] . . . to bring under [ ] control of law or constituted authority' " (quoting *State v. Gulledge*, 208 N.C. 204, 208, 179 S.E. 883, 886 (1935)

(ellipsis in original), (quoted in *Cheape v. Town of Chapel Hill*, 320 N.C. 549, 559, 359 S.E.2d 792, 798 (1987) (applying that definition of "regulate" to Article II, Section 24(1)(j))). As a result, in light of the relevant constitutional language and the import of our prior decisions interpreting and applying the prohibition set out in Article II, Section 24 of the North Carolina Constitution, the ultimate issue that we must decide in this case is whether, in light of its stated purpose and practical effect, the legislation has a material, but not exclusive or predominant, connection to issues involving health, sanitation, and the abatement of nuisances.

In view of the fact that "[p]ure water is the very life of a people," *Drysdale*, 195 N.C. at 732, 143 S.E. at 535, and the broad interpretation that this Court has given to Article II, Section 24(1)(a) since *Reed*,[16] we have no hesitation in concluding that the legislation impermissibly relates to health and sanitation. As an initial matter, we note that the stated purpose of the legislation is to "provide reliable, cost-effective, high-quality water and sewer services" to affected customers. Ch. 50, pmbl., 2013 N.C. Sess. Laws at 118. Although the State contends that the purpose-related language contained in the legislation implicates issues such as customer service rather than the healthfulness of the water that is provided to customers for cooking, cleaning, and personal consumption, the substantiality of the relationship between the purity of the water that customers receive and the quality of service provided to water customers is beyond serious dispute. Thus, the stated purpose for the enactment of the legislation demonstrates the existence of a material connection between the reason for its enactment and issues involving public health and sanitation.[17]

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16. The only time that this Court has rejected a claim that a local law impermissibly "related to" health and sanitation after *Reed* occurred in *Piedmont Ford Truck Sale, Inc. v. City of Greensboro*, 324 N.C. 499, 380 S.E.2d 107 (1989), in which we held that a local act obligating the City of Greensboro to provide solid waste collection to newly annexed areas did not relate to health and sanitation given that the "effect" of the local act was to make a general law of statewide application applicable to an annexation being effectuated by the adoption of a local act and given that the challenged legislation did not "subject the annexed area to a different treatment than" would have been the case if Greensboro "had annexed the area under the general annexation law." *Id.* at 505, 380 S.E.2d at 111.

17. Although the Court of Appeals reasoned, in reliance upon its 2008 decision in *Asheville I*, that a provision in the legislation at issue here allowing for the discontinuance of water and sewer services by a metropolitan water and sewerage district for nonpayment "belies [the City's] argument that the purpose of the [legislation] relates to health and sanitation," *City of Asheville*, ___ N.C. App. at ___, 777 S.E.2d at 98, we do not find this argument persuasive. A careful analysis of the Sullivan Acts reveals that each of them was intended to address economic, rather than health and sanitation, issues given that they prohibited the City from charging higher extraterritorial rates, required the City to place

An analysis of the practical effect of the legislation reinforces the strength of the connection between the issues addressed in the legislation and public health and sanitation. As an initial matter, we note that the City, in the course of operating its water system, is required to ensure compliance with the North Carolina Drinking Water Act, N.C.G.S. §§ 130A-311 to -329 (2015), which appears in a chapter of the General Statutes entitled "Public Health" (Chapter 130A) and which is intended "to regulate water systems within the State which supply drinking water that may affect the public health," *id.* § 130A-312. In view of the fact that the City's water system is a "public water system" for purposes of the North Carolina Drinking Water Act, *see id.* § 130A-313(10), the City must show compliance with the North Carolina Drinking Water Act and related regulations in order to obtain approval from the North Carolina Department of Environmental Quality for the construction, alteration, and additions to water system facilities, *see id.* § 130A-317 (c), (d); Asheville, N.C., Code of Ordinances, ch. 21 (2016). In addition, the City is required to ensure that its water treatment operators are certified pursuant to N.C.G.S. §§ 90A-20 to 90A-32 in order to "protect the public health and to conserve and protect the water resources of the State." N.C.G.S. § 90A-20 (2015). Finally, the City is required to provide annual reports concerning the source and quality of the water that it provides to its customers, including the existence of any identified risks to human health stemming from consumption of the water provided by its system. *See* 40 C.F.R. §§ 141.151–.155 (2016). As a result, consistent with its stated purpose, the legislation has material health and sanitation effects.

The fact that the legislation changes the governance of the City's water system does not operate to remove it from the prohibition worked by Article II, Section 24(1)(a) of the North Carolina Constitution. As we have clearly held, a local act that shifts responsibility for enforcing health and safety regulations from one entity to another clearly relates to health and sanitation. *E.g.*, *City of New Bern*, 338 N.C. at 440, 450 S.E.2d at 741 (invalidating local legislation that shifted responsibility for enforcing the State Building Code with respect to certain buildings from the City of New Bern to Craven County given that "the Building Code Council's stated purposes for the different inspections under the Code evince an intent to protect the health of the general public,"

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funds derived from its water system in a separate account, and precluded the City from transferring monies derived from the operation of the water system to any fund that was not related to the operation and maintenance of the system. *Asheville I*, 192 N.C. App. at 36-39, 665 S.E.2d at 127-30.

that "[t]he Code regulates plumbing in an effort to maintain sanitary conditions," and that "enforcement of the fire regulations protects lives from fire, explosion and health hazards"); *see also Idol*, 233 N.C. at 733, 65 S.E.2d at 315 (finding it clear "beyond peradventure" that legislation authorizing the consolidation of the Winston-Salem and Forsyth County health departments and providing for the appointment of a joint city-county board for administering the public health laws in the affected jurisdictions was a prohibited "local act relating to health"); *Bd. of Health v. Bd. of Comm'rs*, 220 N.C. at 143, 16 S.E.2d at 679 (emphasizing this Court's "commit[ment] to the proposition that a law affecting the selection of officers to whom is given the duty of administering the health laws is a law 'relating to health' " in the course of invalidating a local law requiring that the county health officer appointed by the county board of health be confirmed by the Nash County Board of Commissioners) (citing *Sams*, 217 N.C. 284, 7 S.E.2d at 540)). As a result, given the fact that the legislation works a change in the governance of the City's water system, our prior decisions reinforce, rather than undercut, our conclusion that the legislation impermissibly relates to health and sanitation in violation of Article II, Section 24(1)(a) of the North Carolina Constitution.

As the State and our dissenting colleague note, Article VII, Section 1 of the North Carolina Constitution provides, in pertinent part, that

> [t]he General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

N.C. Const. art. VII, § 1. Although North Carolina is not a home rule jurisdiction, and although our constitution, consistent with the language of this provision, gives the General Assembly exceedingly broad authority over the "powers and duties" delegated to local governments, *id.*, that authority is subject to limitations imposed by other constitutional provisions.[18] Aside from the fact that the legislation does not actually

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18. The legislation cannot be properly understood as nothing more than an exercise of the General Assembly's plenary authority to create new units of local government. Instead of simply creating a new unit of local government, the General Assembly took a number of actions in the legislation, including creating the Metropolitan Water and Sewerage District through a repurposing of the Metropolitan Sewerage District and effectively eliminating the City's ability to operate its existing water system. In similar instances, such as *Idol*,

prohibit the City from operating a water system, the General Assembly's authority over the "powers and duties" delegated to local governments is expressly subject to the limitations set out in Article II, Section 24, which "is the fundamental law of the State and may not be ignored." *High Point Surplus Co.*, 264 N.C. at 656, 142 S.E.2d at 702. As a result,[19] for all these reasons, we reverse the Court of Appeals' decision and instruct that court to reinstate the trial court's order granting summary judgment in favor of the City.[20]

REVERSED.

Justice NEWBY dissenting.

Throughout our history, when communities needed a governmental provision of water and sewer services, the General Assembly, by local act, would grant a local government unit the authority to act. Here the majority's holding ignores this historic constitutional understanding of the plenary authority of the General Assembly to oversee local government subdivisions and create new ones when necessary. Our history and our constitution recognize this plenary authority is necessary because the General Assembly is uniquely situated to oversee local government

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233 N.C. at 733, 65 S.E.2d at 315, which involved legislation creating a joint city-county board of health, and *Sams*, 217 N.C. at 285-86, 7 S.E.2d at 541, which involved legislation creating a county board of health, this Court invalidated the challenged legislation as impermissible local laws relating to health and sanitation even though the legislation at issue in those cases involved the creation of new units of local government like the one at issue here.

19. In view of our conclusion that the legislation is an unconstitutional local law relating to health and sanitation, we need not address the City's challenge to the Court of Appeals' holding that the legislation did not result in a compensable taking and express no opinion concerning its correctness.

20. Although the General Assembly has, in the past, enacted legislation authorizing various units of local government to operate systems for the provision of water service, we do not believe that our decision in this case in any way impairs the ability of the affected units of local government to operate their water systems in a lawful manner. Aside from the fact that we do not know whether such legislation could be properly characterized as local, rather than general, in nature or relates to health and sanitation under the test that we have deemed appropriate in this case and the fact that the legislation in question appears to have allowed the initial provision of water service rather than requiring the reallocation of the responsibility for providing water and sewer service from one entity of local government to another, the current effect of any such legislation would be to allow the affected unit of local government to do what has otherwise been authorized by general legislation, an outcome which this Court held did not result in a violation of Article II, Section 24 in *Piedmont Ford Truck Sale*, 324 N.C. at 502, 380 S.E.2d at 111.

and address changing needs. Now the Court brings uncertainty as to whether there are any lawfully established water or sewer districts in North Carolina. Even assuming the legislation at issue is a local act, the legislature first gave the City of Asheville, and countless other municipalities across our State, its water district by local act. If it is unlawful to modify that district by local act, then it was unlawful to establish it by local act initially. The majority's complicated analysis casts this Court in the ill-suited role of legislating which local governmental authorities shall govern various water and sewer services. Because the General Assembly exercises its plenary authority in creating a water and sewer district, its action is constitutional. Accordingly, I respectfully dissent.

This Court presumes that legislation is constitutional absent an express constitutional prohibition on the legislature's otherwise plenary police power and until its unconstitutionality is plainly and clearly demonstrated beyond a reasonable doubt. *E.g.*, *Hart v. State*, 368 N.C. 122, 126, 774 S.E.2d 281, 284 (2015); *see also Kornegay v. City of Goldsboro*, 180 N.C. 441, 445, 105 S.E. 187, 189 (1920) ("[C]ourts always presume[,] in the first place[,] that the act is constitutional . . . [and] that the Legislature acted with integrity and with an honest purpose to keep within the restrictions and limitations laid down by the Constitution." (quoting *Lowery v. Bd. of Graded Sch. Trs.*, 140 N.C. 33, 40, 52 S.E. 267, 269 (1905)). The presumptive constitutional power of the General Assembly to act is consistent with the principle that a restriction on the General Assembly is in fact a restriction on the people. *See Baker v. Martin*, 330 N.C. 331, 336-37, 410 S.E.2d 887, 890 (1991). Thus, this Court is powerless to review an act of the people through the General Assembly for its political propriety so long as it reasonably relates to the need sought to be remedied and falls within legislative discretion. *Greensboro-High Point Airport Auth. v. Johnson*, 226 N.C. 1, 8, 36 S.E.2d 803, 809 (1946).

The General Assembly has long enjoyed plenary power to create political subdivisions of local government,[1] and this authority has been

1. Before its express inclusion in the 1868 state constitution, this Court recognized the General Assembly's historic duty and plenary power to create and abolish political subdivisions of local government. *See, e.g.*, *White v. Comm'rs of Chowan Cty.*, 90 N.C. 437, 438 (1884) (County subdivisions "are indeed a necessary part and parcel of the subordinate instrumentalities employed in carrying out the general policy of the state in the administration of government . . . [and their functions] may be enlarged, abridged, or modified at the will of the legislature . . . [as] they are intended only to be essential aids and political agencies."); *see also Lilly v. Taylor*, 88 N.C. 489, 494-95 (1883) (affirming the legislature's creation and subsequent repeal of the charter of the Town of Fayetteville); *Mills v. Williams*, 33 N.C. (11 Ired.) 558, 563-64 (1850) (upholding the legislature's "power to create and abolish" Polk County).

reaffirmed with each adoption of our state constitution. N.C. Const. art. VII, § 1; N.C. Const. of 1868, Amends. of 1875, art. VII, § 14 ("The General Assembly shall have full power by statute to modify, change, or abrogate any and all of the provisions" pertaining to municipalities.); *id.*, art. VIII, § 4 ("It shall be the duty of the Legislature to provide for the organization of cities, towns and incorporated villages . . . ."); *see also Report of the North Carolina State Constitution Study Commission* 143 (1968) [hereinafter *1968 Constitution Commission Report*] (recognizing "the General Assembly['s] full power to revise or abolish the form and powers of county and township governments").

The General Assembly creates governmental subdivisions to facilitate local self-government, dividing governing authority between local governmental units that may otherwise compete for jurisdiction. *See Hailey v. City of Winston-Salem*, 196 N.C. 17, 22, 144 S.E. 377, 380 (1928) ("When a new governmental agency is established by the Legislature, such as a municipal corporation, it takes control of all the affairs over which it is given authority, to the exclusion of other governmental agencies."). Local governmental subdivisions are "parts and parcels of the State, organized for the convenience of local self-government," *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 222 (1875), which the General Assembly may create, organize, abolish, arrange, and rearrange to meet local needs. *See also Town of Boone v. State*, ___ N.C. ___, ___, ___ S.E.2d ___, ___ (2016) (No. 93A15-2); *Holmes v. City of Fayetteville*, 197 N.C. 740, 746, 150 S.E. 624, 627 (1929) (recognizing municipalities as "mere instrumentalities of the State for the more convenient administration of local government"), *appeal dismissed per curiam*, 281 U.S. 700, 50 S. Ct. 353, 74 L. Ed. 1126 (1930).

Moreover, the legislature can create "separate corporate agenc[ies] to serve [ ] particular governmental purposes" and "call upon them to perform such functions as the Legislature may deem best." *Johnson*, 226 N.C. at 9-10, 36 S.E.2d at 809 (citing *Brockenbrough v. Bd. of Water Comm'rs*, 134 N.C. 1, 17, 46 S.E. 28, 33 (1903)). "A municipality acting in its governmental capacity is an agency of the State for the better government of those residing within its corporate limits . . . ." *Candler v. City of Asheville*, 247 N.C. 398, 406, 101 S.E.2d 470, 476 (1958); *see also McCormac v. Commr's of Robeson Cty.*, 90 N.C. 441, 444 (1884) ("[I]t is within the power and is the province of the legislature to . . . invest the inhabitants . . . with corporate functions, more or less extensive and varied in their character, for the purposes of government . . . ."). The General Assembly is the political body designated to oversee local government and to make necessary modifications as local conditions

change. In organizing local government, and making necessary modifications, the General Assembly must weigh competing local interests and needs. Ultimately, the legislature alone must determine the propriety of changes in local government by exercising its political judgment.

This broad historic power of the General Assembly, acknowledged by our case law, has remained unchanged and is now expressly incorporated into Article VII, Section 1 of our current constitution, adopted in 1971:

> The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

N.C. Const. art. VII, § 1. As such, Article VII, Section 1 "is not a delegation of power to the General Assembly" but "a general description" and "merely a recognition" of "the General Assembly's power to provide for the organization and powers of local government," *1968 Constitution Commission Report* 85, as affirmed in the 1875 amendment, which "gave the General Assembly full power to revise or abolish the form and powers of county and township governments," *id.* at 143.

By its plain meaning, the text of the first clause, "[t]he General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions," mandates the statutory creation and structuring of local governmental subdivisions. *See State v. Webb*, 358 N.C. 92, 97, 591 S.E.2d 505, 510-11 (2004) (The constitution is construed for its plain meaning.); *see also Dunn v. Pac. Emp'rs Ins. Co.*, 332 N.C. 129, 134, 418 S.E.2d 645, 648 (1992) (Ordinary rules of grammar apply.). "Organization" means something "put together into an orderly, functional, [and] structured whole." *Organize*, *The American Heritage Dictionary* 926 (new coll. ed. 1979). "Government" is defined as "[t]he act or process of governing; especially, the administration of public policy in a political unit; political jurisdiction." *Government*, *id.* at 570. The "fixing of boundaries" means establishing borders or limits. *See Fix* and *Boundary*, *id.* at 497, 156. "Other governmental subdivisions" includes a "special-purpose district or authority," *Local Government*, *Black's Law Dictionary* (10th ed. 2014), such as an administrative water district, operated in compliance with principles, rules, and regulations, *see id.* (listing examples of local

government units). Thus, the plain meaning of the phrase "organization and government and the fixing of boundaries" embraces the creation, expansion, retraction, and dissolution of all forms of local government, including "other governmental subdivisions."[2]

Our case law has historically treated "other governmental subdivisions" similarly to traditional political subdivisions. *See Town of Saluda v. Polk County*, 207 N.C. 180, 186, 176 S.E. 298, 301-02 (1934) ("[T]he legislature alone can create, directly or indirectly, counties, townships, school districts, road districts, and the like subdivisions, . . . to effectuate the purposes of the government . . . . Such organizations are intended to be instrumentalities and agencies employed to aid in the administration of the government, and are always under the control of the power that created them, unless the same shall be restricted by some constitutional limitation." (quoting *McCormac*, 90 N.C. at 444-45)); *see also* N.C.G.S. § 162A-65 (2015) (defining "political subdivision" for purposes of water and sewer authorities as "any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision," *id.* § 162A-65(a)(8), and "governing body" as "the board, commission, council or other body . . . of a political subdivision in which the general legislative powers . . . of such political subdivision are exercised," *id.* § 162A-65(a)(6)). As such, the text of the first clause of Article VII, Section 1 contemplates the legislative creation of local governmental subdivisions, along with counties, cities, and towns, without constitutional limitation.

The second clause of Article VII, Section 1 concerns the authority of the General Assembly to confer specific "powers and duties" on local governmental units. Unlike the first clause, the second clause in Article VII, Section 1 includes an express limitation; namely, it prohibits any legislative delegation of "powers and duties" to local governmental units that is "otherwise prohibited by this Constitution." Only under the second clause, then, is the General Assembly's authority over local governments expressly subject to limitations imposed by other constitutional provisions, including the constraints on local acts listed in Article II, Section 24 first adopted in 1917. For example, under the Article II, Section 24 prohibition on certain local acts, the General Assembly cannot grant to one county the power to enact local employment legislation,

2. *See Town of Boone*, ___ N.C. at ___, ___ S.E.2d at ___ (Ervin, J., concurring in result) ("[T]he plain language in which the provision in question is couched suggests to me that 'organization and government' refers to the creation of units of local government and the manner in which those units of local government are governed . . . .").

see Williams v. Blue Cross Blue Shield of N.C., 357 N.C. 170, 191, 581 S.E.2d 415, 430 (2003), or remove a city's power to enforce certain ordinances regarding specific properties within its municipal limits, *see City of New Bern v. New Bern–Craven Cty. Bd. of Educ.*, 338 N.C. 430, 442, 450 S.E.2d 735, 742 (1994).[3] *See also Town of Boone*, ___ N.C. at ___, ___ S.E.2d at ___.

The question before this Court is whether the legislation at issue, Act of May 2, 2013, ch. 50, 2013 N.C. Sess. Laws 118 (the District Act), which creates a new regional district to govern water and sewer services within certain areas of Buncombe and Henderson Counties, is an exercise of the General Assembly's plenary authority to "provide for the organization and government and the fixing of boundaries" of local government under the first clause of Article VII, Section 1 or whether it confers specific "powers and duties" on a local governmental unit under the second clause. If the General Assembly's action creating the regional water and sewer district arises under its plenary authority recognized in the first clause of Article VII, Section 1, the analysis ends, and there is no need to address the application of the second clause and any restrictions imposed by Article II, Section 24.

As admitted by the City, the District Act creates a new political subdivision. Moreover, the statutory text of the District Act provides for

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3. This approach of conducting an Article II, Section 24 analysis only when the challenged statute specifies a specific "power" or "duty" is consistent with our prior decisions. In *Piedmont Ford Truck Sale, Inc. v. City of Greensboro*, the plaintiffs challenged a local act annexing certain land to the City of Greensboro. 324 N.C. 499, 501, 380 S.E.2d 107, 108 (1989). While the annexation clearly arose under the authority to "fix the boundaries of cities" acknowledged in Article VII, Section 1, *id.* at 503, 380 S.E.2d at 110, because the act also contained a specific "provision regarding solid waste collection," the plaintiffs argued the statute violated Article II, Section 24, *id.* at 504, 380 S.E.2d at 110. Because the statute specified a particular "power," this Court conducted an analysis under Article II. *Id.* at 504-06, 380 S.E.2d at 110-11. When viewed as a whole, the explicit grant of power was a "small part" of the legislation, *id.* at 506, 380 S.E.2d at 111, and this Court concluded that "[t]he provision . . . regarding solid waste collection" did not violate Article II, Section 24, *id.* at 506, 380 S.E.2d at 111. *See also, e.g.*, *Lamb v. Bd. of Educ.*, 235 N.C. 377, 379-80, 70 S.E.2d 201, 203 (1952) (concluding that an act expressly restricting certain express powers of the Randolph County Board of Education violated the Article II limitations on local acts); *Idol v. Street*, 233 N.C. 730, 733, 65 S.E.2d 313, 315 (1951) (concluding that an act that "confer[red] power upon the Board of Aldermen of the City of Winston-Salem and the Board of Commissioners of Forsyth County" to, *inter alia*, "name a joint city-county board of health," which varied from general law, "[wa]s a local act relating to health" in violation of the Article II limitations on local acts); *Bd. of Health v. Bd. of Comm'rs*, 220 N.C. 140, 143-44, 16 S.E.2d 677, 678-79 (1941) (concluding that an act removing from the Nash County Board of Health the power to appoint a county health officer was a local act relating to health in violation of the Article II limitations on local acts).

the organization and government of that new political subdivision. The stated purpose of the District Act is to enhance services to users by creating a regional water and sewer system to "provide reliable, cost-effective, high-quality water and sewer *services*." Ch. 50, 2013 N.C. Sess. Laws at 118 (emphasis added). Creating this type of local governmental subdivision to enhance water and sewer services falls squarely within the legislature's plenary power as described in the first clause of Article VII, Section 1, and thus the District Act is constitutional.

Initially established by local act in 1883, the City's public water "system currently serves approximately 124,000 customers, some 48,000 of whom are located outside Asheville's city limits" in portions of Buncombe and Henderson Counties. *See* N.C.G.S. § 160A-312(a) (2015) (authorizing a city to operate a water supply and distribution system inside and "outside its corporate limits, within reasonable limitations"). In 2013 the General Assembly created a new local governmental subdivision to provide regional water and sewer services to the City and those portions of Buncombe and Henderson Counties. Ch. 50, 2013 N.C. Sess. Laws 118 (captioned "An Act to Promote the Provision of Regional Water and Sewer Services by Transferring Ownership and Operation of Certain Public Water and Sewer Systems to a Metropolitan Water and Sewerage District.").

The "transfer provision" regionalizes water and sewer services by combining the City's public water system with the Metropolitan Sewerage District operating in the same county to form a new governmental subdivision. The transfer provision provides in part: "All assets, real and personal, tangible and intangible, and all outstanding debts . . . are by operation of law transferred to the metropolitan sewerage district operating in the county where the public water system is located, to be operated as a Metropolitan Water and Sewerage District . . . ." *Id.*, sec. 1(a), at 118. All assets and all outstanding debts of both the City's water system and the Metropolitan Sewerage District transfer to the new regional district. *Id.*, sec. 1(b)-(c), (f), at 119.[4] The transfer between the City and the Metropolitan Sewerage District occurs by operation of law[5] because both systems operate in the same county and meet certain criteria. *See id.*, sec. 1(a)-(f), at 118-19.

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4. "All necessary permits for operation" are also "transferred to the Metropolitan Water and Sewerage District . . . to ensure that no current and paid customer loses services due to the regionalization of water and sewer services." *Id.*, sec. 1(e), at 119. Moreover, the General Trust Indenture, which governs the bonds issued and secured by a pledge of "[a]ll Net Revenues of the Water System," contemplates a transfer "to another political subdivision or public agency in the State authorized by law to own and operate such systems." The trustee allows a transfer "if such political subdivision . . . assumes all of the

By its terms and stated purpose, the District Act creates a regional governance solution for water and sewer systems and defines a "metropolitan water and sewerage district" as a political subdivision and deems it "a public body . . . exercising . . . essential governmental functions to provide for the preservation and promotion of the public health and welfare." *Id.*, sec. 2, at 121.[6] The newly created regional district combines the authority of the previously separate water and sewer districts "[t]o do all acts and things necessary or convenient to carry out the powers granted by this Article." *Id.* at 122. Overall, the regional district operates with the same power as a city in enforcing its ordinances, and the district board may not privatize its water and sewer services. *See id.*

Likewise, the District Act amends N.C.G.S. § 162A-85.3 to provide for the organization and governance of metropolitan water and sewerage districts like the one created here, including a governing board with regional representation. *Id.* at 120-21.[7] The District Act requires

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obligations of the City under this Indenture" and if the transfer does not produce a "material adverse effect on the ability of the Water System to produce Revenues," on the bond rating, or with regard to tax treatment. These revenue bonds do not rely upon the City's taxing power. *See also* Ch. 50, sec. 2, 2013 N.C. Sess. Laws, at 122 (requiring that the rates and fees "pledged to the payment of revenue bonds" be sufficient to maintain the system).

5. Governing bodies of other political subdivisions may establish regional systems by joint resolution. *See* Ch. 50, sec. 5.5, 2013 N.C. Sess. Laws, at 125 (requiring consent from county commissioners and all municipal governing boards affected before creation of district).

6. The District Act amended the definitions of "unit of local government" and "municipality" to include "metropolitan water and sewerage districts" and added "metropolitan water and sewerage districts" to the list of political subdivisions that may borrow money and issue bonds. Ch. 50, sec. 2, 2013 N.C. Sess. Laws, at 119-20; *see also* N.C.G.S. § 159-44(4) (2015) (defining a "unit of local government"); *id.* § 159-48(e) (2015) (borrowing and bond issuing); *id.* § 159-81(1) (2015) (defining a "municipality"); *id.* § 159-81(3) (2015) (revenue-bond issuing).

7. Generally, the District Act requires that the apportionment of members on the district board be representative of the area serviced while considering population. *See* Ch. 50, sec. 2, 2013 N.C. Sess. Laws, at 120 (two from each county served); *id.* (one from each municipality served); *id.* (two from each municipality served with a population greater than 200,000); *id.* (one from each county served with a population greater than 200,000); *id.* ("One individual from a list submitted by the governing body of a county in which a watershed serving the district board is located in a municipality not served by the district . . . ."); *id.*, at 121 ("One individual by the governing body of any elected water and sewer district wholly contained within the boundaries of the district."). "[T]he district board may expand to include other political subdivisions if" the additional political subdivision "become[s] a participant in the district board." *Id.*

The District Act also sets terms for members and provides procedures for meetings, removal of members, filling vacancies on the district board, and the election and compensation of officers. *Id.* Until all appointments are made, the district board of the County's

the regional district board to work with local municipalities under its jurisdiction for the benefit of the district.[8] The district board performs administrative tasks such as fixing rates, fees, rents, and other charges for the services furnished or to be furnished by the district water and sewer system. *See id.* at 122 ("Such rates, fees, and charges may not apply differing treatment within and outside the corporate limits of any city or county within the jurisdiction of the district board" and "shall not be subject to supervision or regulation by any . . . agency of the State or of any political subdivision."). In sum, as admitted by the City, the act creates a new "governmental subdivision" and provides for the "organization and government" thereof.

The broad constitutional authority acknowledged in the text of the first clause of Article VII, Section 1 clearly affirms the legislature's ability to create and organize political subdivisions to meet changing needs, resolve disputes between local governments, and provide new governance solutions. The General Assembly's constitutional authority to do so remains even if its solution combines, divides, or regionalizes the political power of preexisting subdivisions that once governed local issues. Here it seems the General Assembly, in its discretion and in accordance with the District Act's stated purpose, finds regional governance over certain water systems will ensure high quality water and sewer services.

> The role of the legislature is to balance the weight to be afforded to disparate interests and to forge a workable compromise among those interests. The role of the Court is not to sit as a super legislature and second-guess the balance struck by the elected officials . . . [but] only to measure the balance struck by the legislature against the required minimum standards of the constitution.

Henry v. Edmisten, 315 N.C. 474, 491, 340 S.E.2d 720, 731 (1986). The General Assembly's policy decision here falls within legislative discretion and, as an exercise of legislative authority under the first clause of

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metropolitan sewerage district "shall function as the district board of the Metropolitan Water and Sewerage District." *Id.*, sec. 1(d), at 119.

8. The District Act outlines the permissible authority for the local governing bodies within the regional district's jurisdiction. *See, e.g.*, Ch. 50, sec. 2, 2013 N.C. Sess. Laws, at 122-23 (regulating the transfer of jurisdiction from smaller systems to the regional district system for the benefit of the district, contracting with the district, revising rates or collecting taxes to pay obligations to the district, and submitting to its electors agreements with the district). When possible, the district board must coordinate with the local municipalities when constructing any system improvements. *Id.* at 123.

Article VII, Section 1, does not implicate the constitutional constraints described in Article II, Section 24.

Assuming the District Act is a local act[9] as held by the majority, notably the legislature first created a water district for Asheville by local act.[10] When creating and organizing political subdivisions under its plenary power as recognized in the first clause of Article VII, Section 1, the

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9. The statutory definition of "local act" in reference to cities and towns "means an act of the General Assembly applying to one or more specific cities by name, or to all cities within one or more specifically named counties." N.C.G.S. § 160A-1(5) (2015). The District Act does not refer to the City of Asheville by name.

10. In 1883 the General Assembly appointed the Asheville Committee on Permanent Improvements as trustee to oversee a $20,000 fund provided for "water supply." Act of Feb. 28, 1883, ch. 66, sec. 2, 1883 N.C. Priv. [Sess.] Laws 752, 753. The legislature followed suit with other municipalities and subdivisions. *E.g.*, Act of Mar. 11, 1889, ch. 219, sec. 105, 1889 N.C. Priv. [Sess.] Laws 899, 924 (appointing the Board of Alderman for City of Greensboro to manage and regulate "water-works" which "may be established, or land on which water-pipes are run to and from said works"); *id.* sec. 107, at 924 (same for "system of sewerage"); Act of Dec. 20, 1815, ch. XVII, sec. II, 1815 N.C. [Sess.] Laws 18, 18 (empowering and appointing City of Charlotte board of commissioners to "erect pumps or wells").

The General Assembly revised the charter of the City of Asheville to provide for its water authority in 1901, conferring upon the Board of Alderman the power "[t]o provide a sufficient supply of pure water for said city, fix charges and rates therefor, and prescribe rules and regulations governing the use of same," Act of Mar. 13, 1901, ch. 100, sec. 30, 1901 N.C. Priv. [Sess.] Laws 222, 232, which included "construction, operation, repair and control of such water-works," *id.*, sec. 66, at 259. The legislature designated a separate subdivision of government, the Board of Health, to take "general charge and supervision of . . . the healthfulness of the water supply." *Id.*, sec. 32, at 234. In 1923 the General Assembly revised the charter and restructured the local government, empowering a Board of Commissioners to "build and construct" waterworks and sewerage systems, Act of Jan. 26, 1923, ch. 16, sec. 306, 1923 N.C. Priv. [Sess.] Laws 88, 154, both within the City limits and beyond, *id.*, sec. 353, at 167, as well as a Commissioner of Public Works to supervise the systems, *id.*, sec. 25, at 96.

In 1931 the legislature revised the charter again, which remains the charter today, subject to various amendments. Act of Mar. 30, 1931, ch. 121, 1931 N.C. Priv. [Sess.] Laws 154. Under this charter, the General Assembly created a Department of Finance to take charge of "the supervision and control of and over the water system and supply," *id.*, sec. 32, at 161, and to "collect for the use of water," *id.* at 163; *see also* Act of Apr. 6, 1951, ch. 618, 1951 N.C. Sess. Laws 554, 554 (allowing "the City of Asheville, Buncombe County and political units therein to contract" for the water system).

In 1981 the legislature expressly repealed these charter provisions related to the supervision and control of the water system, Act of Feb. 16, 1981, ch. 27, sec. 3, 1981 N.C. Sess. Laws 13, 14, removing control from the Department of Finance and appointing a new political subdivision to handle the authority. In 1981 the City and Buncombe County then entered into a comprehensive local agreement that established, *inter alia*, an agency to administer the jointly-owned water supply and distribution systems.

legislature often must address the local needs and competing political pressures of a geographic area. *See Town of Boone*, ___ N.C. at ___, ___ S.E.2d at ___. If, as the majority declares, creating and organizing a new water and sewer district is unconstitutional, would not the original act establishing Asheville's water district also be unconstitutional? The need to organize water and/or sewer systems arose in localities across the state at different times. The General Assembly authorized various units of local government or created new ones to meet those needs as they arose or changed. Under the majority's reasoning, all of the locally legislated and similarly empowered districts would have been illegally created.[11] If the creation of a local governmental subdivision, as in the District Act, is scrutinized under the second clause of Article VII, Section 1, all such water and sewer districts would receive the same review if challenged, and would be struck down as prohibited local acts. Moreover, the majority, in contravention of our heightened standard for reviewing the constitutionality of legislative acts, presumes the legislature enacted the District Act in bad faith and that its enactment will result in poor local governance. *See Kornegay*, 180 N.C. at 445, 105 S.E. at 189 (presuming "the Legislature acted with integrity and with an honest purpose to keep within the restrictions and limitations laid down by the Constitution").

The General Assembly is the only body politic with the oversight and authority to create and organize local political subdivisions in its discretion. It alone has the ability to resolve local governance disputes such as those undergirding the litigious past of the water system at issue.

Spanning almost a century, legislation and litigation chronicle the strained relationship between the City of Asheville's water system

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11. *See, e.g.*, Act of June 29, 1967, ch. 1019, sec. 1, 1967 N.C. Sess. Laws 1463, 1463 (permitting the Town of Taylorsville and Alexander County to purchase a water system); Act of Apr. 5, 1951, ch. 550, secs. 1, 2, 1951 N.C. Sess. Laws 461, 461 (appointing Town of Dunn as new entity to acquire, build, manage, and operate the "water and sewerage system" for the "unincorporated village of Erwin in Harnett County"); Act of Apr. 5, 1947, ch. 1040, sec. 3, 1947 N.C. Sess. Laws 1519, 1520 (creating a "Board of Power, Water and Airport Commissioners of the City of High Point . . . to construct, to improve, [and] to better . . . [the] water system"); Act of Jan. 30, 1945, ch. 24, sec. 1, 1945 N.C. Sess. Laws 37, 37 (moving all water-related property from the Board of Water Commissioners to the City of Charlotte, a separate corporation); Act of Jan. 18, 1939, ch. 1, sec. 1, 1939 N.C. Pub.-Local [Sess.] Laws 11, 11 (establishing "sanitary districts" in Forsyth County); Act of May 3, 1935, ch. 418, sec. 1, 1935 N.C. Pub.-Local [Sess.] Laws 378, 378 (establishing joint water and sewer systems for Haywood County municipalities); Act of Jan. 26, 1923, ch. 1, sec. 1, 1923 N.C. Priv. [Sess.] Laws 1, 1 (extending the "waterworks system" for the Town of Lenoir); Act of Jan. 1, 1917, ch. 71, sec. 2, 1917 N.C. Priv. [Sess.] Laws 134, 134 (establishing a separate entity, the Board of Water Commissioners, to "provide for the better management and proper operation of the . . . water-works system of the city of Durham").

and its County water customers. *See* Act of Apr. 28, 1933 (Sullivan I), ch. 399, 1933 N.C. Pub.-Local [Sess.] Laws 376 (captioned "An Act to Regulate Charges Made by the City of Asheville for Water Consumed in Buncombe County Water Districts"); *Candler*, 247 N.C. at 411, 101 S.E.2d at 479 (recognizing the legislature's power to prevent by statute the City of Asheville from charging certain county residents higher rates than it charged to city residents). After several amendments and reinstatements of the joint agreement between the City and the County that was first established in 1981, that agreement ended in 2004, ultimately leaving the City with ownership and control of the water system. Again, it seems the parties soon after resorted to the legislature and the courts. *See* Act of June 29, 2005 (Sullivan II), ch. 140, 2005 N.C. Sess. Laws 244 (captioned "An Act Regarding Water Rates in Buncombe County"); Act of June 29, 2005 (Sullivan III), ch. 130, 2005 N.C. Sess. Laws 243 (captioned "An Act Regarding the Operation of Public Enterprises by the City of Asheville"); *City of Asheville v. State*, 192 N.C. App. 1, 36-37, 665 S.E.2d 103, 128 (2008) (finding that a local act addressing equitable rates "principally contemplate[d]" and "relate[d] only to matters which are purely economic in nature . . . rather than prioritizing the system's health or sanitary conditions"), *appeal dismissed and disc. rev. denied*, 363 N.C. 123, 672 S.E.2d 685 (2009). The plenary power of the General allows it, not the courts, to craft a resolution of this matter.

As acknowledged in the first clause of Article VII, Section 1, the General Assembly has plenary authority to establish new subdivisions of local government. The General Assembly alone can consider the local competing interests and craft a solution. Such legislative action is not conditioned upon first providing a majority of this Court with satisfactory justification. *Johnson*, 226 N.C. at 8, 36 S.E.2d at 809 ("We have no power to review a statute with respect to its political propriety as long as it is within the legislative discretion and has a reasonable relation to the end sought to be accomplished."). The majority's holding that a new political subdivision addressing regional problems with the water system violates Article II, Section 24 simply because the legislation involves a water system erases the General Assembly's historic authority to establish convenient local governmental units acknowledged by the first clause of Article VII, Section 1. The General Assembly's creating a new local governmental subdivision does not offend the state constitution. This Court should not weigh the wisdom or expediency of a legislative act. Accordingly, I respectfully dissent.

Chief Justice MARTIN joins in this dissenting opinion.

STATE OF NORTH CAROLINA
v.
DAVID MARTIN BEASLEY YOUNG

No. 80A14

Filed 21 December 2016

Constitutional Law—cruel and unusual punishment—life without parole—defendant younger than 18

A seventeen-year-old's sentence of life without parole for first-degree murder was prohibited by the Eighth Amendment to the United States Constitution as interpreted in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012). Although N.C.G.S. § 15A-1380.5 might have increased the chance that defendant's sentence would be altered or commuted, it did not provide a sufficiently meaningful opportunity to reduce the severity of the sentence to constitute something less that life imprisonment without the possibility of parole.

On writ of certiorari to review an order on a motion for appropriate relief entered on 1 February 2013 by Judge Mark E. Powell in Superior Court, Buncombe County. On 5 April 2013, the Court of Appeals allowed the State's petition for writ of certiorari to review the order pursuant to N.C.G.S. § 7A-32(c). On 11 March 2014, the Supreme Court on its own initiative certified the case for review prior to determination in the Court of Appeals. Following oral argument on 6 May 2014, the Court on 28 January 2016 ordered supplemental briefing. Heard in the Supreme Court on 12 October 2016.

Roy Cooper, Attorney General, by Robert C. Montgomery, Senior Deputy Attorney General, for the State-appellant.

Glenn Gerding, Appellate Defender, by Barbara S. Blackman and Kathryn L. VandenBerg, Assistant Appellate Defenders, for defendant-appellee.

JACKSON, Justice.

In this case we consider whether the Superior Court, Buncombe County correctly ordered that defendant, who was sentenced to life imprisonment without the possibility of parole for a murder he committed at age seventeen, must be resentenced as a result of the decision

in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012). Because we conclude that defendant's sentence is prohibited by *Miller*, we affirm.

On 3 May 1999, following a capital trial, a jury found defendant guilty of first-degree murder pursuant to the felony murder rule based on attempted armed robbery and "sale of a counterfeit controlled substance with a deadly weapon." The jury also found defendant guilty of one count each of possession with intent to sell or deliver, sale of, and conspiracy to sell a counterfeit controlled substance. Defendant's convictions resulted from his involvement in a disputed drug-related transaction that escalated into a fatal shooting on 8 January 1997. *State v. Young*, 151 N.C. App. 601, 2002 WL 1543672, at *1 (2002) (unpublished). Defendant was seventeen years old on the date of the offenses. After considering whether defendant should receive a sentence of death or life imprisonment without the possibility of parole, the jury recommended life, and the trial court entered judgment accordingly.

In the wake of the Supreme Court's *Miller* decision, defendant filed a motion for appropriate relief in Superior Court, Buncombe County on 4 October 2012. The court conducted a hearing on 18 January 2013 and in an order filed on 1 February 2013, found that defendant "was under the age of 18 at the time of the commission of the crime" and that when "the crime was committed, North Carolina law required the mandatory imposition of life imprisonment without parole for all offenders convicted of first-degree murder." The court further explained that pursuant to *Miller*, "mandatory imposition of life without parole upon defendants who were under the age of 18 at the time of commission of their crimes constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution." Therefore, the court concluded that the 2012 *Miller* decision retroactively applied to defendant's 1999 sentence, vacated the sentence, and ordered a new sentencing hearing.

On 13 March 2013, the State filed a petition for writ of certiorari, petition for writ of supersedeas, and motion for temporary stay with the North Carolina Court of Appeals. The Court of Appeals allowed the petition for writ of certiorari and stayed the superior court's order pending disposition of the appeal. On 12 March 2014, this Court entered an order on its own initiative certifying the appeal for discretionary review prior to a determination by the Court of Appeals.

In a brief filed with the Court of Appeals, the State argued that the superior court erred by giving *Miller* retroactive effect and vacating defendant's sentence; however, on 25 January 2016, before this

appeal was decided, the United States Supreme Court filed an opinion in *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718 (2016). In pertinent part, the Supreme Court concluded that "[w]here state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge." *Id.* at ___, 136 S. Ct. at 731-32. The Supreme Court then held that "*Miller* announced a substantive rule of constitutional law." *Id.* at ___, 136 S. Ct. at 736. On 29 January 2016, shortly after *Montgomery* was decided, we ordered the parties to submit supplemental briefs.

In its supplemental brief the State acknowledges that "[t]he United States Supreme Court has now made clear [in *Montgomery*] that its holding in *Miller* applies retroactively to already final cases." Nevertheless, the State contends that defendant is not entitled to resentencing based upon *Miller* and *Montgomery*. The State asserts that "[e]ven though the General Assembly chose to call the sentence defendant received in this case 'life imprisonment without parole,' " defendant's sentence "is not really life imprisonment without parole but instead a sentence of life imprisonment with 'a meaningful opportunity to obtain release.' " Specifically, the State argues that N.C.G.S. § 15A-1380.5—which was enacted effective 1 May 1994 and repealed effective 1 December 1998—applies to the offenses that defendant committed on 8 January 1997. The State contends that section 15A-1380.5 thus provides a meaningful opportunity for release and therefore, defendant's sentence is not of the type addressed by the *Miller* decision. We disagree.[1]

In several recent cases, the United States Supreme Court has considered how the two gravest punishments imposed in the United States criminal justice system should apply to persons who committed crimes as minors. *See, e.g.*, *Graham v. Florida*, 560 U.S. 48, 69 (2010) (noting that life imprisonment without the possibility of parole is the second greatest punishment permitted by law); *Roper v. Simmons*, 543 U.S. 551, 568 (2005) ("Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force." (citing *Thompson v. Oklahoma*, 487 U.S. 815, 856 (1988) (O'Conner, J., concurring))). In this context, the Supreme Court has explained that "less culpability should attach to a crime committed by a juvenile than to a comparable crime

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1. The State acknowledges that it did not raise this issue at the hearing on defendant's motion for appropriate relief. We conclude that the State has not preserved this issue for appellate review. N.C. R. App. P. 10(a)(1). Nevertheless, we now consider the State's argument in order "to expedite decision in the public interest." *Id.* at R. 2.

committed by an adult." *Thompson*, 487 U.S. at 835 (plurality opinion). "Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult." *Id.* The Supreme Court has stated that relative to adults, minors may lack maturity, may have a lessened sense of responsibility, and may be more vulnerable to peer pressure and other outside influences. *Roper*, 543 U.S. at 569. Because of these differences, minors' "irresponsible conduct is not as morally reprehensible as that of an adult." *Id.* at 570 (quoting *Thompson*, 487 U.S. at 835).

Another consideration emphasized by the Supreme Court in its recent decisions is a minor offender's "capacity for change." *Graham*, 560 U.S. at 74. The Supreme Court has stated that minors "still struggle to define their identity" and are less likely than adults to be "irretrievably depraved." *Roper*, 543 U.S. at 570. Citing both its precedents and literature from the social sciences, the Supreme Court concluded that minors' personality traits "are more transitory, less fixed"; that specific traits such as "impetuousness and recklessness that may dominate in younger years can subside"; and that "[o]nly a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood." *Id.* (quoting *Johnson v. Texas*, 509 U.S. 350, 368 (1993), and Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003), and citing Erik H. Erikson, *Identity: Youth and Crisis* (1968)).

Most relevant to our analysis here are the decisions in *Graham* and *Miller*, which set limits on the power of the States to impose a sentence of life imprisonment without the possibility of parole on defendants who committed crimes before the age of eighteen. *Miller*, ___ U.S. at ___, 132 S. Ct. at 2469; *Graham*, 560 U.S. at 82. In *Graham* the Supreme Court held that the Eighth Amendment to the United States Constitution "prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." 560 U.S. at 82. In pertinent part, the Supreme Court reasoned that removing the possibility of parole makes a life sentence "far more severe." *Id.* at 70 (quoting *Solem v. Helm*, 463 U.S. 277, 297 (1983), *abrogated by Harmelin v. Michigan*, 501 U.S. 957 (1991)). Life imprisonment without the possibility of parole "deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence."

Id. at 69-70 (citing *Solem*, 463 U.S. at 300-01). In concluding that such a harsh sentence is never proportionate for a nonhomicide offense committed by a minor, the Supreme Court determined that establishing "a categorical rule [against life without the possibility of parole] gives all juvenile nonhomicide offenders a chance to demonstrate maturity and reform." *Id.* at 79. The Supreme Court stated:

> A State is not required to *guarantee* eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some *meaningful opportunity* to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. . . . The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does prohibit States from making the judgment at the outset that those offenders *never* will be fit to reenter society.

Id. at 75 (emphases added.)

In *Miller* the Court addressed these same considerations with respect to two defendants who were both convicted of a murder committed at the age of fourteen. ___ U.S. at ___, 132 S. Ct. at 2460. Relying upon *Graham*, the Court stated:

> [N]one of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific. . . .
>
> Most fundamentally, *Graham* insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole. In the circumstances there, juvenile status precluded a life-without-parole sentence, even though an adult could receive it for a similar crime. And in other contexts as well, the characteristics of youth, and the way they weaken rationales for punishment, can render a life-without-parole sentence disproportionate. . . .
>
> But the mandatory penalty schemes at issue here prevent the sentencer from taking account of these central considerations. By removing youth from the balance—by subjecting a juvenile to the same life-without-parole

> sentence applicable to an adult—these laws prohibit a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham*'s . . . foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children.

Id. at ___, 132 S. Ct. at 2465-66. The Court held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Id.* at ___, 132 S. Ct. at 2469. Although a sentencing court may find that a specific homicide justifies life imprisonment without the possibility of parole, the judge must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at ___, 132 S. Ct. at 2469.

Although *Miller* was decided in 2012, it must be given retroactive effect during certain state collateral review procedures. *Montgomery*, ___ U.S. at ___, 136 S. Ct. at 731-32. "Giving *Miller* retroactive effect . . . does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." *Id.* at ___, 136 S. Ct. at 736.

In this case, after a hearing on defendant's motion for appropriate relief, the superior court found that defendant was convicted of first-degree murder and that at the time of conviction, North Carolina law required that all sentences of life imprisonment be imposed without the possibility of parole. *See* N.C.G.S. § 14-17 (1997) (providing in part that "any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole"). Nevertheless, the State argues that defendant's sentence "is not really life imprisonment without parole" because defendant may be able to obtain release pursuant to N.C.G.S. § 15A-1380.5, which at the time of defendant's conviction stated:

> (a) For purposes of this Article the term "life imprisonment without parole" shall include a sentence imposed for "the remainder of the prisoner's natural life."
>
> (b) A defendant sentenced to life imprisonment without parole is entitled to review of that sentence by a resident superior court judge for the county in which the

> defendant was convicted after the defendant has served 25 years of imprisonment. The defendant's sentence shall be reviewed again every two years as provided by this section, unless the sentence is altered or commuted before that time.
>
> (c) In reviewing the sentence the judge shall consider the trial record and may review the defendant's record from the Department of Correction, the position of any members of the victim's immediate family, the health condition of the defendant, the degree of risk to society posed by the defendant, and any other information that the judge, in his or her discretion, deems appropriate.
>
> (d) After completing the review required by this section, the judge shall recommend to the Governor or to any executive agency or board designated by the Governor whether or not the sentence of the defendant should be altered or commuted. The decision of what to recommend is in the judge's discretion.
>
> (e) The Governor or an executive agency designated under this section shall consider the recommendation made by the judge.
>
> (f) The recommendation of a judge made in accordance with this section may be reviewed on appeal only for an abuse of discretion.

Id. § 15A-1380.5 (1995) (repealed 1998).

Although this section might increase the chance for a sentence to be "altered or commuted," *id.* § 15A-1380.5(d), after careful consideration of *Graham*, *Miller*, and *Montgomery*, we conclude that section 15A-1380.5 does not support the State's contention that defendant's sentence "is not really life imprisonment without parole." Section 15A-1380.5 states that a defendant "is entitled to review of [his or her] sentence by a resident superior court judge," but it guarantees no hearing, no notice, and no procedural rights. In addition, the statute provides minimal guidance as to what types of circumstances would support alteration or commutation of the sentence. The section requires only that the judge "consider the trial record" and notes that the judge "may" review other information "in his or her discretion." *Id.* § 15A-1380.5(c). Ultimately, "[t]he decision of what to recommend is in the judge's discretion," and the only effect of the judge's recommendation is that "[t]he Governor or

an executive agency designated under this section" must "consider" it. *Id.* § 15A-1380.5(e). Because of these provisions, the possibility of alteration or commutation pursuant to section 15A-1380.5 is deeply uncertain and is rooted in essentially unguided discretion. Accordingly, this section does not reduce to any meaningful degree the severity of a sentence of life imprisonment without the possibility of parole. *See Graham*, 560 U.S. at 69-70 (stating that life imprisonment without the possibility of parole "deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence").

Moreover, section 15A-1380.5 does not address the central concern of *Miller*—that a sentencing court cannot treat minors like adults when imposing a sentence of life imprisonment without the possibility of parole. ___ U.S. at ___, 132 S. Ct. at 2466. As the Supreme Court stated in *Montgomery*:

> A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. *See, e.g.*, Wyo. Stat. Ann. § 6–10–301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). *Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.*

___ U.S. at ___, 136 S. Ct. at 736 (emphasis added). This statement reflects the Supreme Court's foundational concern that at some point during the minor offender's term of imprisonment, a reviewing body will consider the possibility that he or she has matured. Nothing in section 15A-1380.5 requires consideration of this factor. In fact, after the judge's recommendation is submitted to "[t]he Governor or an executive agency designated under this section," N.C.G.S. § 15A-1380.5(e), nothing in section 15A-1380.5 gives any guidance to the final decision maker because this framework simply was not developed to address the concerns the Supreme Court raised in *Miller* and *Montgomery*.

Based upon his conviction for a crime that occurred when he was seventeen years old, defendant was sentenced to "imprisonment in the State's prison for life without parole" pursuant to a North Carolina statute that did not permit the sentencing court to consider a lesser punishment. *Id.* § 14-17 (1997). Although section 15A-1380.5 might increase the chance that this sentence will be altered or commuted, it does not

provide a sufficiently meaningful opportunity to reduce the severity of the sentence to constitute something less than life imprisonment without the possibility of parole. We hold that defendant's sentence is prohibited by the Eighth Amendment to the United States Constitution as interpreted in *Miller*. As a result, the trial court correctly vacated that sentence and ordered a new sentencing hearing. The court's order is affirmed and the case is remanded for resentencing.

AFFIRMED; REMANDED FOR RESENTENCING.

TOWN OF BOONE, PLAINTIFF
v.
STATE OF NORTH CAROLINA, DEFENDANT

COUNTY OF WATAUGA, INTERVENOR-DEFENDANT

No. 93A15-2

Filed 21 December 2016

Zoning—extraterritorial jurisdiction—withdrawal by legislature

An act by the legislature withdrawing extraterritorial jurisdiction from the Town of Boone was squarely within the legislature's general power as described in the first clause of Article VII, Section 1 of the state constitution. Local jurisdictional reorganization is precisely the type of "organization and government and fixing of boundaries" contemplated by the first clause of Article VII, Section 1 and historically approved by the Supreme Court of North Carolina.

Justice ERVIN concurring in the result.

Justice HUDSON joins in this concurring opinion.

Justice BEASLEY dissenting.

Appeal pursuant to N.C.G.S. § 7A-27(a1) from an order entered on 29 July 2015 by a three-judge panel of the Superior Court, Wake County, appointed by the Chief Justice under N.C.G.S. § 1-267.1. Heard in the Supreme Court on 22 March 2016.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F.E. Smith, Jim W. Phillips, Jr., and Julia C. Ambrose, for plaintiff-appellee.

Roy Cooper, Attorney General, by Lauren M. Clemmons, Special Deputy Attorney General, for defendant-appellant.

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NEWBY, Justice.

In this case we consider whether the General Assembly may withdraw the previous extension of a town's jurisdiction beyond its corporate limits and return governance to the county. The first clause of Article VII, Section 1 of our state constitution recognizes the historic plenary authority of the General Assembly to provide for the "organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions." This language acknowledges the legislative power to organize local government and fix the jurisdictional boundaries. Extraterritorial jurisdiction affects the organization of local governmental subdivisions by extending a town's jurisdiction into the county, thus shifting the political authority over certain subjects from one local government to another. Here, by withdrawing the Town of Boone's extraterritorial jurisdiction, the legislature restored the local jurisdictional boundaries as originally fixed, returning the governance of territory located outside of the Town limits to Watauga County. The limitations imposed by Article II, Section 24 do not apply to an action by the General Assembly establishing or modifying the jurisdictional boundaries of local governmental units. Because the legislative act withdrawing the Town's extraterritorial jurisdiction falls squarely within this plenary power, we hold that the act is constitutional, and we reverse the decision of the trial court.

Historically, the General Assembly established the governmental jurisdiction of a municipality by fixing the municipality's corporate limits. *See State v. Eason*, 114 N.C. 787, 795, 19 S.E. 88, 90 (1894) ("[T]he jurisdiction of a municipality does not extend beyond [its boundary], in the absence of some other language in the charter . . . ."). Beginning in the late 1800s, the General Assembly began to extend the jurisdiction of select municipalities beyond their corporate limits with regard to designated governmental functions. *See id.* at 792, 19 S.E. at 89 ("[T]he

legislature unquestionably ha[s] the power to extend the jurisdiction of the town, for police purposes . . . ."); *see also*, *e.g.*, Act of Jan. 17, 1911, ch. 2, sec. 27, 1911 N.C. Priv. [Sess.] Laws 3, 17 (extending the City of Greensboro's jurisdiction for sanitation and the protection of city property for one mile "outside of said city limits"). Each grant of extraterritorial authority was by local act on a city-by-city basis. Despite the growing usage of extraterritorial jurisdiction, the General Assembly precluded municipalities in Watauga County from governing extraterritorially. *E.g.*, Act of May 26, 1955, ch. 1334, 1955 N.C. Sess. Laws 1387 (authorizing municipalities to regulate the subdivision of land within one mile of the corporate limits but excluding Watauga County and fifty-two other counties); *see also* Act of June 19, 1959, ch. 1204, sec. 1, 1959 N.C. Sess. Laws 1354, 1354 (expressly precluding towns located within Watauga County from governing extraterritorially). In 1961 the General Assembly granted extraterritorial jurisdictional authority to certain municipalities located within Watauga County, including the Town of Boone, over territory not more than one mile beyond their corporate limits. Act of May 30, 1961, ch. 548, sec. 1¾, 1961 N.C. Sess. Laws 748, 748. Article 19 of Chapter 160A of the General Statutes includes the current codification of extraterritorial jurisdiction.

For twenty years, the Town did not attempt to govern within the extraterritorial area. In 1981 the Town "initiate[d] the steps necessary to extend extraterritorial [jurisdiction] to [the] one mile perimeter" surrounding the Town and also sought "permission from the Watauga County Board of Commissioners to extend this radius to two miles." *See* N.C.G.S. § 160A-360(a) (2015) (requiring approval from the county to extend jurisdiction beyond the one-mile perimeter).[1] When the County denied the Town's request to exercise jurisdiction beyond the one-mile extraterritorial area, the Town adopted Ordinance 82-11 to exercise "[e]xtraterritorial zoning jurisdiction pursuant to [N.C.G.S. §] 160A-360" for five specified areas located within the permitted one-mile perimeter outside the Town limits. Boone, N.C., Ordinance 82-11 (Aug. 26, 1982).[2]

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1. Even when a municipality wishes to exercise extraterritorial jurisdiction in an area within one mile of its corporate limits, county approval is required if the county is already enforcing zoning ordinances, subdivision regulations, and the State Building Code in that area. N.C.G.S. § 160A-360(e) (2015).

2. A municipality that wishes to exercise extraterritorial jurisdiction must specify by ordinance the areas to be included, defining the boundaries "to the extent feasible, in terms of geographical features identifiable on the ground." N.C.G.S. § 160A-360(b) (2015). These boundaries must "at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques." *Id.* A copy of this delineation must be

In 2014 the General Assembly withdrew extraterritorial jurisdiction from the Town and returned governance of the areas to the County. Act of June 26, 2014, ch. 33, sec. 1, 2013 N.C. Sess. Laws (Reg. Sess. 2014) 139, 140 (the Boone Act) ("Notwithstanding any other provision of law, the Town of Boone shall not exercise any powers of extraterritorial jurisdiction as provided in Article 19 of Chapter 160A of the General Statutes."). The Boone Act effectively reorganized the specified local governmental jurisdictions within Watauga County by confining the Town's jurisdictional reach to its corporate limits and restoring governance of the extraterritorial area to the County. *See* N.C.G.S. §§ 160A-360(a)-(b) (2015).

The Town filed its complaint, challenging the Boone Act as a facially unconstitutional local act prohibited by Article II, Section 24 of the North Carolina Constitution. The State unsuccessfully moved to dismiss the complaint and, in its answer, denied the Town's allegations regarding the applicability of Article II, Section 24.[3] The County intervened, asserting its "special interest" in the action as a "property owner" and "the duly elected governing body for the citizens and residents residing within the former extraterritorial jurisdiction."[4]

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filed with the Register of Deeds and, as is true of the delineation of the municipality's corporate boundaries, maintained in the office of the municipality's clerk. *Id.* §§ 160A-22 (2015), 360(b).

To establish its extraterritorial boundary, the Town adopted Ordinance 83-2, describing the extraterritorial area by metes and bounds and topographical features, Boone, N.C. Ordinance 83-2, § 1 (Mar. 31, 1983), and amended the zoning map to include the extraterritorial area, *id.* § 4. The Town later expanded its reach of extraterritorial jurisdiction into other specified areas located within the one-mile perimeter. *E.g.*, *id.* 83-5 (Apr. 7, 1983); *id.* 87-12 (Dec. 22, 1987); *id.* 92-03 (Sept. 3, 1992); *id.* 98-04 (Nov. 19, 1998); *id.* 99-02 (May 27, 1999). With each additional area, the Town amended its zoning map to reflect and describe the new boundaries. *E.g.*, *id.* 83-2, § 4; *id.* 83-5; *id.* 87-12, § 4; *id.* 92-03, § 4; *id.* 98-04, § 4; *id.* 99-02, § 4. County residents living within the added territory were then notified that the political body governing zoning and development had changed. *See* N.C.G.S. § 160A-360(a1) (2015).

3. The State contends that plaintiff's claims are barred by the doctrine of sovereign immunity, that "[p]laintiff lacks standing, as well as the capacity to sue, for the withdrawal of its extraterritorial jurisdictional powers," that reallocation of authority over planning and development within the extraterritorial jurisdiction "constitutes a legitimate exercise of legislative authority over [the legislature's] political subdivisions" and a non-justiciable . . . political question[ ] within the purview of the legislative branch of government," and that plaintiff fails to state a claim for relief under the state constitution. Because we resolve this case based on the General Assembly's plenary power acknowledged in the first clause of Article VII, Section 1, we do not address the other arguments.

4. Residents of extraterritorial jurisdiction areas are not allowed to vote in local government municipal elections; they remain county residents for voting purposes. *See* Ordinance 82-11; N.C.G.S. §§ 160A-360(a1), -362 (2015).

A three-judge panel heard oral arguments and granted summary judgment in favor of the Town, concluding "that the revocation of the Town of Boone's power of extraterritorial jurisdiction by [the Boone Act] is unconstitutional pursuant to the prohibition on local acts contained in Article II, Section 24" and enjoining its implementation. The State and the County appealed that decision under N.C.G.S. § 7A-27(a1).

The State and the County argue that, under Article VII, Section 1 of the constitution, the legislature delegates to municipalities the authority to govern a particular territory and retains plenary power to modify the governance of that geographic territory. To hold otherwise would allow Article II, Section 24 to impermissibly restrict the General Assembly's broad authority over municipalities as acknowledged by Article VII, Section 1. The Town responds that the Boone Act is a prohibited local act because it removes the authority of the Town to enforce its ordinances, some of which may "[r]elat[e] to health, sanitation, and the abatement of nuisances," N.C. Const. art. II, § 24(1)(a), or "[r]egulat[e] labor, trade, mining, or manufacturing," *id.* art. II, § 24(1)(j), and that the Act otherwise partially repeals N.C.G.S. § 160A-360, a general law, *see id.* art II, § 24(2).

The analytical framework for reviewing a facial constitutional challenge is well-established. Our "State Constitution is in no matter a grant of power," *Lassiter v. Northampton Cty. Bd. of Elections*, 248 N.C. 102, 112, 102 S.E.2d 853, 861 (1958), *aff'd*, 360 U.S. 45, 79 S. Ct. 985, 3 L. Ed. 2d 1072 (1959), and as such, "[a]ll power which is not limited by the Constitution inheres in the people, and an act of a State legislature is legal when the Constitution contains no prohibition against it," *id.* at 112, 102 S.E.2d at 861 (citation omitted). *See also State ex rel. Ewart v. Jones*, 116 N.C. 570, 570, 21 S.E. 787, 787 (1895) ("[P]ower resides with the people and is exercised by their representatives in the General Assembly."). "We seldom uphold facial challenges because it is the role of the legislature, rather than this Court, to balance disparate interests and find a workable compromise among them." *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm'rs*, 363 N.C. 500, 502, 681 S.E.2d 278, 280 (2009) (citation omitted). An act of the General Assembly will be declared unconstitutional only when "it [is] plainly and clearly the case," *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989) (quoting *Glenn v. Bd. of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936)), and its unconstitutionality must be demonstrated beyond reasonable doubt, *Baker v. Martin*, 330 N.C. 331, 334-35, 410 S.E.2d 887, 889 (1991) (citations omitted).

Though not expressly stated in our first constitution, the General Assembly has long enjoyed plenary power to create political subdivisions of local government, establish their jurisdictional boundaries, and invest them with certain powers, *see Quality Built Homes Inc. v. Town of Carthage*, ___ N.C. ___, ___, 789 S.E.2d 454, 457 (2016), which "may be enlarged, abridged or modified at the will of the legislature," *id.* at ___, 789 S.E.2d at 457 (quoting *White v. Comm'rs of Chowan Cty.*, 90 N.C. 437, 438 (1884)). Our Constitution of 1868 affirmed "the duty of the Legislature to provide for the organization of cities, towns, and incorporated villages." N.C. Const. of 1868, art. VIII, § 4. By 1876, following a brief suspension of "provisions relating to municipal[ities]" during Reconstruction, *see id.*, art. VII, § 12, the constitution reaffirmed that "[t]he General Assembly shall have full power by statute to modify, change, or abrogate any and all of the provisions" pertaining to municipalities, *id.*, Amends. of 1875, art. VII, § 14. *See Journal of the Constitutional Convention of the State of North Carolina* 162-63 (Raleigh, Josiah Turner 1875) (dismissing concerns that the 1875 amendment to Article VII would provide "unlimited control of the Legislature" over "the municipal government of cities, towns, &c.").

Local political subdivisions are "mere instrumentalities of the State for the more convenient administration of local government," *Holmes v. City of Fayetteville*, 197 N.C. 740, 746, 150 S.E. 624, 627 (1929), *appeal dismissed per curiam*, 281 U.S. 700, 50 S. Ct. 353, 74 L. Ed. 1126 (1930), whose territory and functions rest "in the absolute discretion of the state," *State ex rel. Dyer v. City of Leaksville*, 275 N.C. 41, 50, 165 S.E.2d 201, 207 (1969) (quoting *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178, 28 S. Ct. 40, 46, 52 L. Ed. 151, 159 (1907)); *accord Greensboro-High Point Airport Auth. v. Johnson*, 226 N.C. 1, 9-10, 36 S.E.2d 803, 809 (1946). Under its plenary power, the General Assembly may create, organize, and abolish these local governmental units, arranging and rearranging local government to best meet the specific local needs of the people. *See People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 222 (1875) (Political subdivisions "are parts and parcels of the State, organized for the convenience of local self-government."); *accord White*, 90 N.C. at 438. Each locality presents different challenges and needs for the arrangement of local governmental units. The General Assembly is the only branch of government equipped to organize local government and, through oversight, craft responses to the changing needs of local communities.

As acknowledged by the case law, this broad power of the General Assembly has remained unchanged throughout our history and is recognized in Article VII, Section 1 of our current constitution, adopted in 1971:

> The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

N.C. Const. art. VII, § 1. As such, Article VII, Section 1 "is not a delegation of power to the General Assembly" but "a general description" and "merely a recognition" of "the General Assembly's power to provide for the organization and powers of local government," *Report of the North Carolina State Constitution Study Commission* 85 (1968) [hereinafter *1968 Constitution Commission Report*], as affirmed in the 1875 amendment, which "gave the General Assembly full power to revise or abolish the form and powers of county and township governments," *id.* at 143.[5]

The text of the first clause of Article VII, Section 1, "[t]he General Assembly shall provide for the organization and government and the fixing of boundaries" of local governmental entities, mandates the statutory creation, structuring, restructuring, and defining of local governmental subdivisions and their jurisdictional boundaries. We look to the plain meaning of the phrase to ascertain its intent. *State v. Webb*, 358 N.C. 92, 97, 591 S.E.2d 505, 510-11 (2004) (The constitution is construed for its plain meaning.); *see also Dunn v. Pac. Emp'rs Ins. Co.*, 332 N.C. 129, 134, 418 S.E.2d 645, 648 (1992) (Ordinary rules of grammar apply.). Each word informs a proper understanding of the whole. "Organization" means something "put together into an orderly, functional, [and] structured whole." *Organize*, *The American Heritage Dictionary* 926 (new coll. ed. 1979). "Government" is defined as "[t]he act or process of governing; especially, the administration of public policy in a political unit;

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5. Significantly, the text of Article VII, Section 1, recognizing the General Assembly's historic duty to provide for local government, was adopted against the backdrop of Article II, Section 24 and the various court decisions describing its application. *See 1968 Constitution Commission Report* 85; *see also N.C. State Bar v. DuMont*, 304 N.C. 627, 635, 286 S.E.2d 89, 94 (1982) (relying on the *1968 Constitution Commission Report* to "ascertain[ ] the intent of the framers and adopters, [and] the object and purpose of the revision"). Following well-established principles of construction, one amendment cannot be read to eliminate the other, and the one more recent in time is given its full application. *In re Peoples*, 296 N.C. 109, 159, 250 S.E.2d 890, 919 (1978) (considering constitutional amendments "*in pari materia* with the other sections of our Constitution which it was intended to supplement" (citations omitted)), *cert. denied*, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979); *Perry v. Stancil*, 237 N.C. 442, 444, 75 S.E.2d 512, 514 (1953) ("Constitutional provisions should be construed in consonance with the objects and purposes in contemplation *at the time of their adoption*." (emphasis added)).

political jurisdiction." *Government*, *id.* at 570. The "fixing of boundaries" means establishing borders or limits. *See Fix* and *Boundary*, *id.* at 497, 156. Thus, the plain meaning of the phrase "organization and government and fixing of boundaries" includes the designation and realignment of the political jurisdictions of local governmental units.

The General Assembly alone has the oversight responsibility and authority to define, limit, and expand the otherwise competing jurisdictions of local political subdivisions. *See Hailey v. City of Winston-Salem*, 196 N.C. 17, 22-23, 144 S.E. 377, 380 (1928) ("When a new governmental agency is established by the Legislature, such as a municipal corporation, it takes control of all the affairs over which it is given authority, to the exclusion of other governmental agencies.").[6] Setting the jurisdictional boundaries of political subdivisions is left to legislative discretion.[7] Since the needs of each community differ, this Court has repeatedly acknowledged the practical reality that the General Assembly may exercise that discretion by local act.[8]

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6. Instances of creating, organizing, and reorganizing political subdivisions have met this Court's approval, both before and after the 1917 amendments that created the predecessor to Article II, Section 24. *See, e.g.*, *Bethania Town Lot Comm. v. City of Winston-Salem*, 348 N.C. 664, 668, 502 S.E.2d 360, 362 (1998) ("The General Assembly may, by special or local act, create municipalities and change the boundaries of municipalities." (citations omitted)); *Lilly v. Taylor*, 88 N.C. 489, 490-91, 494-95 (1883) (affirming the legislature's creation and subsequent repeal of the charter of the Town of Fayetteville); *Mills v. Williams*, 33 N.C. (11 Ired.) 558, 560, 563-64 (1850) (upholding the legislature's "power to create and abolish" Polk County); *see also In re Ordinance of Annexation No. 1977-4*, 296 N.C. 1, 16-17, 249 S.E.2d 698, 707 (1978) (Municipalities have no inherent constitutional right to their boundaries and derive authority only from the powers delegated by the legislature. (citations omitted)).

7. *See Piedmont Ford Truck Sale, Inc. v. City of Greensboro*, 324 N.C. 499, 502, 380 S.E.2d 107, 109 (1989) ("The extension of boundaries of cities has been held to be a political decision . . . ." (citations omitted)); *see also Texfi Indus., Inc. v. City of Fayetteville*, 44 N.C. App. 268, 273, 261 S.E.2d 21, 25 (1979) (recognizing the General Assembly's authority to create, destroy, or change the boundaries of any political subdivision), *aff'd*, 301 N.C. 1, 269 S.E.2d 142 (1980); *Jones v. Jeanette*, 34 N.C. App. 526, 532, 239 S.E.2d 293, 296 (1977) (stating that setting boundaries under Article VII, Section 1 is a "permissible legislative function" "left to legislative discretion" (citing, *inter alia*, *Hunter*, 207 U.S. at 178-79, 28 S. Ct. at 46, 52 L. Ed. at 159)).

8. *See Bethania Town Lot Comm.*, 348 N.C. at 668, 502 S.E.2d at 362; *Plemmer v. Matthewson*, 281 N.C. 722, 725, 190 S.E.2d 204, 206-07 (1972) (The legislature may create a municipality by special act and may provide procedures for annexation by special act.); *Town of Highlands v. City of Hickory*, 202 N.C. 167, 168, 162 S.E. 471, 471 (1932) (upholding a local act that extended the municipal limits of one town and repealed statutes under which adjacent towns were organized); *Holmes*, 197 N.C. at 748, 150 S.E. at 628 (The legislature may extend by special act extraterritorial jurisdiction and the authority of a municipality to provide services outside its corporate limits.); *State v. Rice*, 158 N.C. 635, 636, 74 S.E. 582, 582 (1912) (recognizing the legislature's authority to allow the exercise

The second clause of Article VII, Section 1 concerns the authority of the General Assembly to confer specific "powers and duties" on local governmental units. Unlike the first clause in Article VII, Section 1, the second clause includes an express limitation; namely, it prohibits any legislative delegation of "powers and duties" to local governmental units that is "otherwise prohibited by this Constitution." Only under the second clause, then, is the General Assembly's authority over local governments expressly subject to limitations imposed by other constitutional provisions, including the constraints on local acts in Article II, Section 24 first adopted in 1917. For example, under the Article II, Section 24 prohibition on certain local acts, the General Assembly cannot grant to one county the power to enact local employment legislation, *see Williams v. Blue Cross Blue Shield of N.C.*, 357 N.C. 170, 191, 581 S.E.2d 415, 430 (2003), or remove a city's power to enforce certain ordinances regarding specific properties within its municipal limits, *see City of New Bern v. New Bern–Craven Cty. Bd. of Educ.*, 338 N.C. 430, 442, 450 S.E.2d 735, 742 (1994).[9]

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of extraterritorial jurisdiction outside municipal limits by local act); *Lutterloh v. City of Fayetteville*, 149 N.C. 65, 69, 62 S.E. 758, 760 (1908) (recognizing validity of extension of corporate boundaries through annexation by local act); *see also In re City of Durham Annexation Ordinance*, 69 N.C. App. 77, 84, 316 S.E.2d 649, 654 ("Article VII, Section 1 is not a power of the General Assembly which must be carried out or enacted by general laws as defined in Article XIV, Section 3."), *appeal dismissed and disc. rev. denied*, 312 N.C. 493, 322 S.E.2d 553 (1984).

9. This approach of conducting an Article II, Section 24 analysis only when the challenged statute specifies a specific "power" or "duty" is consistent with our prior decisions. In *Piedmont Ford Truck Sale, Inc. v. City of Greensboro*, the plaintiffs challenged a local act annexing certain land to the City of Greensboro. 324 N.C. 499, 501, 380 S.E.2d 107, 108 (1989). While the annexation clearly arose under the authority to "fix the boundaries of cities" acknowledged in Article VII, Section 1, *id.* at 503, 380 S.E.2d at 110, because the act also contained a specific "provision regarding solid waste collection," the plaintiffs argued the statute violated Article II, Section 24, *id.* at 504, 380 S.E.2d at 110. Because the statute specified a particular "power," this Court conducted an analysis under Article II. *Id.* at 504-06, 380 S.E.2d at 110-11. When viewed as a whole, the explicit grant of power was a "small part" of the legislation, *id.* at 506, 380 S.E.2d at 111, and this Court concluded that "[t]he provision . . . regarding solid waste collection" did not violate Article II, Section 24, id. at 506, 380 S.E.2d at 111. *See also, e.g.*, *Lamb v. Bd. of Educ.*, 235 N.C. 377, 379-80, 70 S.E.2d 201, 203 (1952) (concluding that an act expressly restricting certain express powers of the Randolph County Board of Education violated the Article II limitations on local acts); *Idol v. Street*, 233 N.C. 730, 733, 65 S.E.2d 313, 315 (1951) (concluding that an act that "confer[red] power upon the Board of Aldermen of the City of Winston-Salem and the Board of Commissioners of Forsyth County" to, *inter alia*, "name a joint city-county board of health," which varied from general law, "[wa]s a local act relating to health" in violation of the Article II limitations on local acts); *Bd. of Health v. Bd. of Comm'rs*, 220 N.C. 140, 143-44, 16 S.E.2d 677, 678-79 (1941) (concluding that an act removing from the Nash County Board of Health the power to appoint a county health officer was a local act relating to health in violation of the Article II limitations on local acts).

Acting under its plenary authority, the General Assembly creates municipalities. Historically, the municipality's governmental authority ended at its corporate limits. The General Assembly first granted municipalities the authority to govern extraterritorially by amending municipal charters.[10] Even after the adoption of the restrictions on local acts, the legislature continued to delegate to select cities on an individual basis the authority to enforce more comprehensive zoning regulations within their one-mile perimeters.[11] Over time extraterritorial jurisdiction has become more common and the governmental authority expanded.[12]

At its essence, jurisdiction is "[a] government's general power to exercise authority over all persons and things within its territory" or the "geographic area within which political . . . authority may be exercised." *Jurisdiction*, *Black's Law Dictionary* (10th ed. 2014). Extraterritorial jurisdiction extends the Town's jurisdictional boundary, allowing the Town to impose certain ordinances—already applicable within its corporate limits—one mile into County territory without the County's approval, thus superseding any County regulations on those same subjects. *See* N.C.G.S. § 160A-360 (2015); *see also* Trey Allen, Univ. of N.C. Sch. of Gov't, *General Ordinance Authority*, *in County and Municipal Government in North Carolina* 77, 84 (Frayda S. Bluestein ed., 2d ed. 2014) ("A city may enforce zoning and other development ordinances inside its corporate limits and within its extraterritorial jurisdiction (ETJ). . . . When a city chooses to enforce development ordinances in its

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10. *See Rice*, 158 N.C. at 636, 640, 74 S.E. at 582, 584 (upholding a City of Greensboro ordinance regulating hog farming within one-fourth mile of the corporate limits, adopted pursuant to the 1911 statutory delegation of authority by charter amendment).

11. *E.g.*, Act of Apr. 23, 1949, ch. 1192, sec. 1, 1949 N.C. Sess. Laws 1521, 1521 (authorizing Town of Tarboro to exercise zoning powers within one mile beyond the Town's corporate limits); Act of Mar. 31, 1949, ch. 700, sec. 3, 1949 N.C. Sess. Laws 732, 733 (same for City of Gastonia); Act of Mar. 28, 1949, ch. 629, secs. 1, 2, 1949 N.C. Sess. Laws 640, 640-41 (same for Town of Chapel Hill); Act of Mar. 25, 1949, ch. 540, secs. 1, 4, 1949 N.C. Sess. Laws 541, 541-42, 543 (same for City of Raleigh); *see also Report of the Municipal Government Study Commission* 18 (1958) [hereinafter *Municipal Report*] ("A total of 19 cities have, by special act, been given authority to zone for one mile or more beyond their limits.").

12. Whether enforcing its ordinances inside its municipal limits or extraterritorially, a town receives the authority to govern territory from the legislature. *See Holmes*, 197 N.C. at 744, 150 S.E. at 626 ("The general rule is that a municipal corporation has no extraterritorial powers . . . ."); *Town of Lake Waccamaw v. Savage*, 86 N.C. App. 211, 213, 356 S.E.2d 810, 811 (recognizing that the General Assembly may by local act permit a town to exercise extraterritorial jurisdiction), *disc. rev. denied*, 320 N.C. 797, 361 S.E.2d 89 (1987).

ETJ, the county's development ordinances no longer apply there . . . ."). Extraterritorial jurisdiction remains extraordinary because it broadens a municipality's jurisdictional reach beyond its corporate limits. This extension of extraterritorial jurisdictional authority deprives the residents of the extraterritorial area of meaningful representation and the right to vote for local government representatives who shape policies affecting their property interests.[13] *See Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 535, 11 L. Ed. 2d 481, 492 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.").

The pivotal question before this Court is whether the Boone Act, which withdraws the Town's extraterritorial jurisdiction, is an exercise of the General Assembly's plenary authority to "provide for the organization and government and fixing of boundaries" of local government under the first clause of Article VII, Section 1. If so, our analysis ends, and there is no need to address the application of the second clause of Article VII, Section 1 and any restrictions imposed by Article II, Section 24.

Extraterritorial jurisdiction is inextricably tied to a municipality's authority to enforce its zoning and development ordinances within certain geographic boundaries. By retracting the Town's jurisdictional reach to its corporate limits, the Boone Act restores the local government boundaries within Watauga County as originally fixed. This local jurisdictional reorganization is precisely the type of "organization and government and fixing of boundaries" contemplated by the first clause of Article VII, Section 1 and historically approved by this Court. The Boone Act withdraws from the Town its extraterritorial jurisdiction and its governing authority to enforce certain ordinances within the one-mile perimeter and returns governance of that territory to the County and its residents. The General Assembly is the only body politic uniquely qualified to oversee local government and set the jurisdictional lines that divide the Town and the County.

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13. County citizens residing within the affected territory cannot vote for Town officials. Ordinance 82-11; *see* N.C.G.S. §§ 160A-360(a1), 362. While County residents subject to the Town's extraterritorial jurisdiction are represented on the Town's planning board and board of adjustment, Ordinance 82-11, these extraterritorial-jurisdiction appointees may only vote on matters involving the extraterritorial area, *see* N.C.G.S. §§ 160A-360(a1), 362; *see also Municipal Report* 18 ("[G]overnmental action affecting the use of property should originate in a governing board elected by persons subject to such action . . . [and] residents of the area affected should be given a voice . . . through the naming of outside residents to local planning boards and boards of adjustment.").

Because the state constitution authorizes the General Assembly to reduce the Town's jurisdictional reach, the removal of extraterritorial jurisdiction falls squarely within the legislature's general power as described in the first clause of Article VII, Section 1. For the reasons stated above, the decision of the three-judge panel finding the Act unconstitutional is reversed.

REVERSED.

Justice ERVIN concurring in the result.

Although I concur in the Court's determination that the Boone Act is not facially unconstitutional, I am unable to agree with the Court's determination to uphold the Boone Act pursuant to the first portion of the first paragraph of Article VII, Section 1 of the North Carolina Constitution, which recognizes the General Assembly's authority to provide for the "organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions" on the theory that the Boone Act effectuates a "reorganization" of the authority granted to Boone and Watauga County. N.C. Const. art. VII, § 1. Instead, I believe that a determination of the constitutionality of the Boone Act hinges upon the second part of the first paragraph of Article VII, Section 1, which recognizes the General Assembly's authority to "give such powers and duties to counties, cities and towns, and other governmental subdivisions as [the General Assembly] may deem advisable" so long as any legislation that is enacted pursuant to this provision is not "otherwise prohibited by [the North Carolina] Constitution." *Id.* For the reasons set forth below, while I believe that the General Assembly's decision to alter the Town's regulatory authority is subject to constitutional limitations, such as those contained in Article II, Section 24, I also believe that the Boone Act is not impermissibly connected to the subjects about which the General Assembly lacks the authority to enact local legislation. Moreover, even if the Boone Act does implicate "the organization and government and the fixing of boundaries" provision, that determination does not obviate the necessity for the Court to consider "any restrictions imposed by Article II, Section 24" given our decision in *Piedmont Ford Truck Sale, Inc. v. City of Greensboro*, 324 N.C. 499, 380 S.E.2d 111 (1989). As a result, while I concur in the result reached by the Court, I am unable to join its decision.

Although the Court believes that its decision to uphold the constitutionality of the Boone Act obviates the need to address the State's

sovereign immunity and standing arguments, I do not find that assertion convincing. Since both sovereign immunity and standing are threshold issues, they must be addressed in order for the Court to reach the merits of the constitutional claims that have been advanced for our consideration. For that reason, I will begin by addressing the sovereign immunity and standing arguments that the State has advanced in opposition to the Town's claims.

In seeking relief from the order of the three-judge panel of the Superior Court, Wake County, before this Court, the State argues that the panel erred by granting summary judgment in the Town's favor because (1) the Town's challenge to the Boone Act is barred by the doctrine of sovereign immunity; (2) the Town lacks standing to challenge the constitutionality of the Boone Act; and (3) the Town's challenge to the Boone Act in reliance upon Article II, Section 24 fails given that the Boone Act falls squarely within the General Assembly's authority regarding the "fixing of boundaries" pursuant to Article VII, Section 1 of the North Carolina Constitution.[1] With respect to the sovereign immunity issue, the State contends that the Town failed to specifically allege a waiver of sovereign immunity in its complaint; that nothing in the relevant statutory provisions authorizes a municipality to file suit against the State; and that the Town does not have a valid constitutional claim sufficient to support a direct action against the State. In response, the Town asserts that it was not required to do anything other than allege a reasonable basis for determining that its claim is not barred by sovereign immunity. Moreover, the State's argument directed to the substance of the Town's claim does not serve the purpose for which sovereign immunity exists, which is to obviate the necessity for the State to defend itself in litigation in the absence of consent. The lack of any valid basis for the State's sovereign immunity argument is bolstered by the substantial number of decisions stemming from challenges to legislation asserted in reliance upon Article II, Section 24, none of which has suggested that such claims are barred by sovereign immunity. I do not find the State's sovereign immunity argument to be persuasive.

"Sovereign immunity stands for the proposition that . . . 'the State cannot be sued except with its consent or upon its waiver of immunity.' " *Dawes v. Nash County*, 357 N.C. 442, 445, 584 S.E.2d 760, 762 (2003) (quoting *Paul L. Whitfield, P.A. v. Gilchrist*, 348 N.C. 39, 42, 497 S.E.2d 412, 414 (1998), and citing *Guthrie v. N.C. State Ports Auth.*, 307 N.C.

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1. The County echoes the State's substantive argument.

522, 534, 299 S.E.2d 618, 625 (1983)). "[S]overeign immunity . . . 'is an *immunity from suit* rather than a mere defense to liability . . . .' " *Craig v. New Hanover Cty. Bd. of Educ.*, 363 N.C. 334, 338, 678 S.E.2d 351, 354 (2009) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526, 86 L. Ed. 2d 411, 425 (1985)). "[T]he doctrine of sovereign immunity . . . is a common law theory or defense established by this Court," so that, "when there is a clash between . . . constitutional rights and sovereign immunity, the constitutional rights must prevail." *Corum v. Univ. of N.C.*, 330 N.C. 761, 786, 413 S.E.2d 276, 292, *cert. denied*, 506 U.S. 985, 121 L. Ed. 2d 431 (1992).

The State's argument in reliance upon the Town's failure to specifically plead a waiver of sovereign immunity relies exclusively upon *Vest v. Easley*, in which the Court of Appeals noted that "[i]t is well-established law that with no allegation of waiver [of sovereign immunity] in a plaintiff's complaint, the plaintiff is absolutely barred from suing the state and its public officials in their official capacities in an action for negligence." 145 N.C. App. 70, 74, 549 S.E.2d 568, 573 (2001) (citations omitted). Instead of asserting a negligence-based claim for monetary damages such as the claim at issue in Vest, however, the Town has sought a declaration concerning the constitutionality of the Boone Act. "A declaratory judgment may be used to determine the construction and validity of a statute," *Town of Emerald Isle v. State*, 320 N.C. 640, 646, 360 S.E.2d 756, 760 (1987) (citing *City of Raleigh v. Norfolk S. Ry. Co.*, 275 N.C. 454, 168 S.E.2d 389 (1969)), with "a municipality [being entitled to] have its rights and obligations determined in a declaratory judgment action," *id.* at 646, 360 S.E.2d at 760 (citing *Bd. of Managers v. City of Wilmington*, 237 N.C. 179, 74 S.E.2d 749 (1953)). In light of that fact, this Court has regularly entertained declaratory judgment actions against the State and its political subdivisions involving challenges to the constitutionality of legislation as violative of Article II, Section 24. *E.g.*, *id.* at 645-52, 360 S.E.2d at 759-63; *Bd. of Managers*, 237 N.C. at 186-90, 74 S.E.2d at 754-57. On the other hand, the State has failed to identify a single decision of this Court holding that the Town was required to plead a waiver of sovereign immunity as a prerequisite for challenging the constitutionality of the Boone Act under Article II, Section 24 or that the doctrine of sovereign immunity presents any obstacle to our consideration of the merits of the Town's constitutional challenge.[2]

2, Even if the Town was required to plead a waiver of sovereign immunity, I believe that it. complaint satisfies this requirement given that a waiver of sovereign immunity is inherent in the very constitutional challenge that the Town asserted in its complaint.

As previously noted, the State asserts that this Court's decisions under Article II, Section 24 have no bearing upon the sovereign immunity claim that it has advanced in this case because the constitutionality of the Boone Act is controlled by the boundary fixing provision of Article VII, Section 1, rather than Article II, Section 24. However, even when this Court has rejected constitutional claims predicated upon Article II, Section 24, those decisions rest upon substantive considerations rather than upon the doctrine of sovereign immunity, *see, e.g.*, *Town of Emerald Isle*, 320 N.C. at 648-52, 360 S.E.2d at 761-63; *Cheape v. Town of Chapel Hill*, 320 N.C. 549, 557-60, 359 S.E.2d 792, 797-99 (1987), with such results obtaining even in cases involving challenges to legislation related to annexation and the creation or alteration of municipal boundaries, *see, e.g.*, *Piedmont Ford Truck Sale*, 324 N.C. at 505, 380 S.E.2d at 111 (holding that a local act obligating the City of Greensboro to provide solid waste collection in newly annexed areas did not relate to health and sanitation for purposes of Article II, Section 24(1)(a), because it had the "effect" of making a general law of statewide application applicable to an annexation being effectuated by means of a local act and because the challenged legislation did not "subject the annexed area to a different treatment than" would have been the case if Greensboro "had annexed the area under the general annexation law"). As a result, our precedent indicates that the mere fact that a constitutional challenge to legislation advanced in reliance upon Article II, Section 24 proves unsuccessful does not establish that the underlying claim should have been dismissed on sovereign immunity grounds.

Aside from the fact that the Town was not required to allege or prove that a traditional cause of action exists under Article II, Section 24 in order to seek and obtain a declaration concerning the constitutionality of the Boone Act, *see Town of Emerald Isle*, 320 N.C. at 646, 360 S.E.2d at 760 (stating that a plaintiff seeking a judicial declaration "is not required to allege or prove that a traditional 'cause of action' exists against [a] defendant" (citing *Sharpe v. Park Newspapers of Lumberton, Inc.*, 317 N.C. 579, 588, 347 S.E.2d 25, 31-32 (1986))), this Court has "clearly establish[ed] the principle that sovereign immunity [cannot] operate to bar direct constitutional claims," particularly if the plaintiff is left with "no adequate remedy at state law," *Craig*, 363 N.C. at 340, 678 S.E.2d at 356 (citing *Corum*, 330 N.C. at 782-86, 413 S.E.2d at 289-92). Although this Court's decisions in *Corum*, 330 N.C. at 782-86, 413 S.E.2d at 289-92, and *Craig*, 363 N.C. at 338-42, 678 S.E.2d at 354-57, specifically mention the constitutional protections contained in the Declaration of Rights, no decision of this Court limits the applicability of the principle enunciated in those cases to the constitutional principles

enunciated in Article I of the North Carolina Constitution. On the contrary, this Court held in *Craig* that the plaintiff was entitled to obtain a decision on the merits with respect to a claim advanced in reliance upon Article IX, Section 1 of the North Carolina Constitution, which provides that "schools, libraries, and the means of education shall forever be encouraged," in addition to the claims that he asserted pursuant to Article I, Sections 15 and 19 of the North Carolina Constitution. *Craig*, 363 N.C. at 335, 342, 678 S.E.2d at 352, 357. The prohibition against local legislation addressing certain subjects contained in Article II, Section 24 is an integral part of our State's fundamental law and should not be treated as of lesser importance. As a result, the doctrine of sovereign immunity does not bar the Town from asserting a claim against the State pursuant to Article II, Section 24.

In support of its contention that the Town lacks standing to challenge the constitutionality of the Boone Act, the State places principal reliance upon *Wood v. City of Fayetteville*, 43 N.C. App. 410, 259 S.E.2d 581 (1979), *appeal dismissed and disc. rev. denied*, 299 N.C. 125, 261 S.E.2d 926-27 (1980), in which the Court of Appeals held that the City of Fayetteville lacked standing to challenge certain limitations that the General Assembly had imposed upon Fayetteville's annexation authority. According to the State, *Wood* and our decision in *In re Martin*, 286 N.C. 66, 209 S.E.2d 766 (1974), establish that a municipality, as a creature of the State, is only entitled to exercise those powers granted to it by the General Assembly and lacks the right to challenge the constitutionality of legislation enacted by the body that created it. Moreover, given that the ability of a municipality to exercise certain powers outside its corporate limits stems from a discretionary decision made by the General Assembly rather than from any vested right possessed by the municipality, any decision by the General Assembly to eliminate that municipality's authority to exercise extraterritorial jurisdiction cannot result in any injury to that municipality sufficient to give it standing to bring suit against the State. Finally, the State contends that there is no statutory support for the proposition that the Town has the authority to bring suit against the State on any basis.

After acknowledging that this Court has allowed municipalities to assert claims against it in the past, the State claims that these cases are distinguishable. For example, the State argues that, since this case is governed by the boundary fixing provision of Article VII, Section 1 rather than the limitations upon the enactment of local legislation contained in Article II, Section 24, it is clearly distinguishable from the cases in which municipalities have been allowed to challenge the constitutionality of

legislation, such as *Town of Spruce Pine v. Avery County*, 346 N.C. 787, 488 S.E.2d 144 (1997), and *Town of Emerald Isle*, each of which involved the imposition of a new obligation on a local government. Similarly, this case is deemed to be distinguishable from *City of New Bern v. New Bern–Craven County Board of Education*, 328 N.C. 557, 402 S.E.2d 623 (1991) (*New Bern I*), given that *New Bern I* did not stem from an action brought by a municipality against the State and given that the challenged legislation involved the removal of the city's authority to enforce the State Building Code within, rather than outside, its own municipal boundaries, coupled with a grant of authority to the county to enforce the building code within the municipal boundary contained in a local, rather than a general, law, *see* N.C.G.S. § 153A-320 (2015); *id.* § 160A-360(d) (2015). Finally, the State argues that, since there is no earlier decision of this Court arising from a challenge to the withdrawal of a municipality's extraterritorial jurisdiction, nothing forecloses the State's ability to challenge the Town's standing to prosecute the present litigation.

In response, the Town argues that *Wood* and *In re Martin* do not establish a standing rule of the breadth for which the State contends. Moreover, the Town contends that a series of decisions after *In re Martin*, including *Town of Emerald Isle*, *New Bern I*, and *Town of Spruce Pine*, fatally undermine the State's position. In the Town's view, these more recent decisions, especially *New Bern I*, demonstrate that a municipality has standing to challenge the constitutionality of legislation depriving it of the ability to exercise regulatory authority, that the General Assembly's authority to regulate municipal corporations is not without limit, and that allowing municipalities to challenge the constitutionality of legislation pursuant to Article II, Section 24 is of critical importance given that "they are the best positioned—indeed, they are often the only parties positioned—to do so." Finally, the Town contends that the Boone Act is primarily concerned with powers rather than with boundaries and that the Court has rejected similar boundary-related arguments in the past, as is evidenced by our decision to invalidate the legislation at issue in *City of New Bern v. New Bern–Craven County Board of Education*, 338 N.C. 430, 450 S.E.2d 735 (1994) (*New Bern II*).

As this Court has previously stated, "[t]he 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation[ ] of issues upon which the court so largely depends for illumination of difficult constitutional questions.' " *Stanley v. Dep't of Conservation & Dev.*, 284 N.C. 15, 28, 199 S.E.2d 641, 650 (1973) (quoting *Flast v. Cohen*, 392 U.S. 83, 99, 20

L. Ed. 2d 947, 961 (1968) (citation omitted)). According to N.C.G.S. § 1-254, "[a]ny person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder," N.C.G.S. § 1-254 (2015), in order "to settle and afford relief from uncertainty and insecurity, with respect to rights, status, and other legal relations," *Walker v. Phelps*, 202 N.C. 344, 349, 162 S.E. 727, 729 (1932).

"An action may not be maintained under the Declaratory Judgment Act . . . unless the action involves a present actual controversy between the parties." *Town of Emerald Isle*, 320 N.C. at 645-46, 360 S.E.2d at 760 (citing *City of Greensboro v. Wall*, 247 N.C. 516, 519, 101 S.E.2d 413, 416 (1958)); *see New Bern I*, 328 N.C. at 559, 402 S.E.2d at 624-25 (stating that, "in order to invoke the provisions of the Declaratory Judgment Act[,] there must be a justiciable controversy between the parties" (citations omitted)). "Although it is not necessary that one party have an actual right of action against another to satisfy the jurisdictional requirement of an actual controversy, it is necessary that litigation appear unavoidable." *Gaston Bd. of Realtors, Inc. v. Harrison*, 311 N.C. 230, 234, 316 S.E.2d 59, 61 (1984) (citation omitted). Litigation is unavoidable for declaratory judgment purposes in instances in which a "[c]ounty contends it has the right to enforce certain laws," and a "[c]ity says the [c]ounty does not have the right." *New Bern I*, 328 N.C at 561, 402 S.E.2d at 626. Thus, a municipality's challenge to the constitutionality of legislation affecting its legal position involves an actual or justiciable controversy cognizable under the Declaratory Judgment Act. *See, e.g.*, *N.C. Dep't of Corr. v. N.C. Med. Bd.*, 363 N.C. 189, 198-99, 675 S.E.2d 641, 647-48 (2009) (concluding that a justiciable controversy existed between two governmental entities and sufficed to confer standing to seek and obtain a declaration concerning the nature and extent of their disputed powers and duties); *see also Town of Spruce Pine*, 346 N.C. at 790, 488 S.E.2d at 146 (concluding that Avery County had standing to seek a declaration concerning the constitutionality of the Water Supply Watershed Protection Act in light of this Court's decisions in *New Bern I* and *Town of Emerald Isle*);[3] *Town of Emerald Isle*,

3. Although *Town of Spruce Pine* does not specifically state that the County's challenge to the constitutionality of the Water Supply Watershed Protection Act took the form of a declaratory judgment action, the Court of Appeals' decision clearly establishes that it did. 123 N.C. App. 704, 711, 475 S.E.2d 233, 237 (1996) (stating that, "[f]or standing in a declaratory judgment action, there must be a present, actual controversy at the time the pleading requesting declaratory relief is filed" (citing *Sharpe*, 317 N.C. at 584, 347 S.E.2d at 29)), *rev'd on other grounds*, 346 N.C. 787, 488 S.E.2d 144 (1997).

320 N.C. at 646, 360 S.E.2d at 760 (concluding that the Town had standing to seek a declaration concerning the constitutionality of legislation requiring the Town to maintain facilities providing pedestrian beach access because the action involved a present actual controversy between the parties (citation omitted)). As a result, the Town clearly has standing to seek a declaration concerning the constitutionality of the Boone Act.

The State's reliance upon *Wood* and *In re Martin* for standing-related purposes is misplaced. In *In re Martin*, this Court held, in the context of an administrative appeal, that a county lacked standing to challenge the constitutionality of a statute granting tax exemptions as violative of the uniform taxation provisions of Article V, Section 2 of the North Carolina Constitution. 286 N.C. at 71, 75-76, 209 S.E.2d at 770, 773. In the aftermath of *In re Martin*, this Court has allowed a municipality to challenge the constitutionality of a statute affecting its rights or status in a declaratory judgment action on multiple occasions. *E.g.*, *Town of Spruce Pine*, 346 N.C. at 790, 488 S.E.2d at 146; *New Bern I*, 328 N.C. at 558-61, 402 S.E.2d at 624-26; *Town of Emerald Isle*, 320 N.C. at 646, 360 S.E.2d at 760. *In re Martin* does not articulate a broad standing rule of the nature posited by the State. Instead, the Court's standing decision in *In re Martin* stemmed from the fact that, given that counties lack inherent taxing authority, they do not have a right to complain that the enabling legislation authorizing counties to tax personal property "is lacking in breadth," 286 N.C. at 74, 209 S.E.2d at 772; that the county, which was seeking to avail itself of the authority to tax personal property pursuant to the same legislation that it alleged to be unconstitutional, could "not accept the benefits of the taxing power conferred upon it by the statute and at the same time reject on constitutional grounds the statutory classification of property which 'shall not be assessed for taxation,' " *id.* at 75, 209 S.E.2d at 772 (citation omitted); and that the county was precluded from challenging the constitutionality of the statute in question because the "uniformity in taxation" requirement contained in Article V, Section 2 "relates to equality in the burden on the State's taxpayers" rather than the county's interest in collecting tax revenues, *id.* at 76, 209 S.E.2d at 773 (citation omitted). Thus, our decision in *In re Martin* rested on a number of factors, most of which provide no support for the State's position with respect to the standing issue.

Although the Court of Appeals focused its attention in *Wood* on the first of the three factors mentioned in *In re Martin*, 43 N.C. App. at 419, 259 S.E.2d at 586 (stating that, as was the case with Mecklenburg County in *In re Martin*, "the City of Fayetteville . . . is a creature of the legislature and an agency of the state" that "has no inherent power to annex"

and that, "[i]n light of *Martin*, . . . the City cannot question the limitations placed by the legislature on its power to annex" (internal citations omitted)), this Court is not bound by that decision.[4] Contrary to the approach adopted in *Wood*, we have interpreted *In re Martin* as holding that a local government lacks standing to challenge the constitutionality of a statute in the event that it has accepted benefits arising from the same statute that it seeks to challenge. *See*, *e.g.*, *Town of Spruce Pine*, 346 N.C. at 790, 488 S.E.2d at 146.[5] Consistent with that interpretation of *In re Martin*, in *New Bern I*, 328 N.C. at 559, 402 S.E.2d at 625, this Court rejected the argument that a unit of local government lacks standing to seek a declaration concerning the constitutionality of a statute divesting it of existing regulatory authority on the theory that the local government has no inherent or "vested right" to exercise that authority.

In my opinion, the standing issue before the Court in this case is remarkably similar to the one that we resolved in favor of the municipality in *New Bern I*. Like the powers at issue in this case, the inspection power at issue in *New Bern I* and *II* was a component of a bundle of regulatory powers that had been granted to municipalities by the General Assembly in Article 19 of Chapter 160A. *See* N.C.G.S. §§ 160A-360(a), -411 to -439 (2015). Prior to the enactment of the legislation at issue in *New Bern I* and *II*, the city had the authority to conduct inspections pursuant to N.C.G.S. § 160A-411 and had, in fact, performed them. *New Bern II*, 338 N.C. at 434, 450 S.E.2d at 738. Although this Court recognized that the General Assembly had the authority to confer building and fire and safety code enforcement responsibility upon municipal governments and that the municipality had no inherent or vested right to exercise that authority, we held that the City had the right to seek a declaration of the extent, if any, to which the challenged legislation violated Article II, Section 24 on the grounds that the city "had the right to enforce the codes prior to the action by the General Assembly" and that this "change in" an enforcement responsibility that had "previously belonged to" the city could be challenged "under the Declaratory Judgment Act." *New Bern I*, 328 N.C. at 559, 402 S.E.2d at 625 (citing *Bd. of Health v. Bd. of Comm'rs*, 220 N.C. 140, 142-44, 16 S.E.2d 677, 678-79 (1941) (holding that legislation allowing the Nash County Board

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4. The Court of Appeals has never cited *Wood* in any subsequent decision.

5. Although *Wood* does not mention the "acceptance of a benefit" theory, Fayetteville was challenging the constitutionality of certain limitations that the General Assembly had placed upon the exercise of authority contained in the same statute upon which Fayetteville predicated its claim to have a right to annex the affected area. As a result, the outcome reached in *Wood* is consistent with that compelled by the "acceptance of benefits" theory.

of Commissioners to veto the appointment of the county health officer by the county board of health and requiring that the appointment of the health officer be confirmed by the county commissioners was subject to constitutional challenge in a declaratory judgment action)). In addition, we rejected an argument that the city lacked standing to bring a declaratory judgment action for the purpose of challenging the constitutionality of the legislation in question on the grounds that no duty was being imposed on the city by the challenged legislation, stating "[t]hat is not the test," that the city's "status was changed by the acts of the General Assembly," and that the city "may challenge this change of status by an action for a declaratory judgment." *Id.* at 560, 402 S.E.2d at 625. Finally, this Court concluded in *New Bern I* that the parties' disagreement over the county's right to enforce the laws in question had no effect on the city's ability to maintain the present litigation. *Id.* at 561, 402 S.E.2d at 626. Thus, the fact that both the Town and the County claim the right to regulate land use in the Town's extraterritorial jurisdiction and the fact that the County has taken steps to resume exercising regulatory authority in the affected area establish that the Town and the County have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation[ ] of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Stanley*, 284 N.C. at 28, 199 S.E.2d at 650 (quoting *Flast* 392 U.S. at 99, 20 L. Ed. 2d at 961 (citation omitted)).

The State correctly notes that the facts at issue in *New Bern I* and *II* and the facts at issue here are different in that this case involves the removal of an entire bundle of powers, rather than a single power, from the authority that the General Assembly has delegated to the Town; that the enforcement authority at issue in this case, unlike the authority at issue in the *New Bern* cases, involves the exercise of regulatory authority in an area located outside of the municipality's corporate limits rather than inside those limits; that the legislation at issue in *New Bern I* and *II*, unlike the Boone Act, explicitly transferred enforcement authority from the municipality to the county; and that the Town, unlike the municipality in *New Bern I* and *II*, was required to and did enact ordinances defining the area in which it intended to exercise extraterritorial jurisdiction as a prerequisite for exerting regulatory authority there. However, while these distinctions implicate facts that are relevant to a determination of the merits of the Town's challenge to the constitutionality of the Boone Act, I am unable to see how they have any bearing on the proper resolution of the standing issue in this case. Thus, for all these reasons, I believe that the State's challenge to the Town's standing to maintain the present action lacks merit.

The ultimate issue before us in this case is whether the constitutionality of the Boone Act should be evaluated on the basis of the General Assembly's authority to "provide for the organization and government and the fixing of boundaries," N.C. Const. art. VII, § 1, or the General Assembly's authority to "give such powers and duties" to local governments "except as otherwise prohibited by this Constitution." As a result of the fact that Article II, Section 24 was enacted for the purpose of placing certain limits on the authority retained by the General Assembly, including at least a portion of the authority recognized in Article VII, Section 1, I believe that a proper resolution of the issue before us requires a consideration of Article VII, Section 1, Article II, Section 24, and the decisions of this Court discussing the reach of the limitations on the legislative power to enact local legislation worked by Article II, Section 24. After conducting what I believe to be the required analysis, I am unable to escape the conclusion that the logic adopted by the Court in upholding the Boone Act unduly enlarges the scope of the first portion of the first paragraph of Article VII, Section 1 and unduly narrows both the second part of the first paragraph of Article VII, Section 1 and the reach of the limitations on the scope of the legislative power set out in Article II, Section 24 in a manner that is not "in consonance with the objects and purposes in contemplation at the time of their adoption." *Perry v. Stancil*, 237 N.C. 442, 444, 75 S.E.2d 512, 514 (1953).

Since the adoption of our first constitution in 1776, the General Assembly has enjoyed considerable authority over units of local government. *See generally* John L. Sanders, *The Proposed Constitution of North Carolina: An Analysis*, 23 Popular Gov't 1, 9 (Feb. 1959) (noting that "North Carolina has a strong tradition of state legislative control and supervision of local government, both county and municipal," and that, "[f]rom 1776 until 1868, the Constitution left provision for and control of local government almost entirely in the hands of the General Assembly"). Although the delegates at the 1835 convention elected to propose constitutional amendments to prohibit "private laws" addressing a number of subjects, including the granting of requests for divorce, alimony, name changes, legitimation of individuals born out of wedlock, and restoration of citizenship rights of convicted felons, N.C. Const. of 1776, Amends. of 1835, art. I, §§ 3, 4, paras. 3-5, which were subsequently ratified by the voters, the delegates rejected a proposal that "[t]he General Assembly shall have no power to pass any private law to effect any object, that could be effected by a general law on the same subject." *Proceedings and Debates of the Convention of North-Carolina [1835]* 379, 382 (Raleigh, Joseph Gales & Son 1836).

The 1868 Constitution provided that "[i]t shall be the duty of the Legislature to provide for the organization of cities, towns, and incorporated villages," N.C. Const. of 1868, art. VIII, § 4, without requiring the adoption of uniform legislation addressing that subject. Although the framers of the 1868 Constitution limited the enactment of such legislation with respect to private businesses, those limitations did not apply to municipal and public corporations. *Id.*, art. VIII, § 1 (providing that "[c]orporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the object of the corporations cannot be attained under general laws," with "[a]ll general laws and special acts passed pursuant to this Section" being subject to "alter[ation] from time to time or repeal[ ]"). In 1875, the General Assembly's authority over local governments was expanded, with the changes by which this policy was effectuated including the adoption of an amendment to Article VII of the Constitution of 1868 adding new language providing that "[t]he General Assembly shall have full power by statute to modify, change or abrogate any and all of the provisions of this article and substitute others in their place, except sections seven, nine and thirteen." *Id.*, Amends. of 1875, art. VII, § 14; *see generally* John V. Orth & Paul Martin Newby, *The North Carolina State Constitution* 25-26 (2d ed. 2013) (stating that "[t]he principal aim" of these amendments "was to restore to the General Assembly more of the power it had lost" in 1868 and that "the General Assembly regained its former power over local government" by means of Article VII, § 14). The 1875 amendments to the constitutional provisions governing the relationship between the General Assembly and local government were adopted despite concerns that they would "abridg[e] the rights of the citizens by placing the government and organization of cities, towns, and &c., under the unlimited control of the Legislature." *Journal of the Constitutional Convention of the State of North Carolina* 162-63, 252 (Raleigh, Josiah Turner 1875).

The present version of the first paragraph of Article VII, Section 1 was recommended in the report of the North Carolina State Constitution Study Commission. *Report of the North Carolina State Constitution Study Commission* 33, 90 (1968). In support of this recommendation, the Commission noted that, given the version of Article VII adopted in 1875, the constitutional provisions governing the General Assembly's authority over local government, except for those relating to financial matters and providing for the office of Sheriff, were subject to modification by the General Assembly, which "ha[d] often exercised that power." *Id.* at 33. "In view of this fact," the Commission recommended eliminating the provisions contained in Article VII that prescribed the General

Assembly's authority over the organization and powers of local government to the extent that they were subject to modification by statute and inserting in their stead what is now the first paragraph of Article VII, Section 1, which the Commission depicted as "a general description of the General Assembly's power to provide for the organization and powers of local government" that, instead of constituting "a delegation of power to the General Assembly," "merely [recognizes] . . . the [General Assembly's] power in this regard." *Id.* The Commission's recommended modifications to the constitutional provisions relating to the General Assembly's authority over local governments were not "calculated . . . to bring about any fundamental change in the power of state and local government or the distribution of that power." *Id.* at 4. Those amendments were submitted for ratification by the voters, approved at the 1970 general election, and became effective on 1 July 1971, Act of July 2, 1969, ch. 1258, secs. 1, 2, 4, 1969 N.C. Sess. Laws 1461, 1479, 1484. As a result, the General Assembly's well-established and long-standing authority over the organization and powers of local government currently appears in, while antedating, Article VII, Section 1, which provides, in pertinent part, that:

> The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

N.C. Const. art. VII, § 1.

Article II, Section 24 expressly precludes the General Assembly from "enact[ing] any local, private, or special act or resolution" concerning fourteen "[p]rohibited subjects." Among other things, Article II, Section 24 provides that:

> (1) Prohibited subjects. – The General Assembly shall not enact any local, private, or special act or resolution:
>
> (a) Relating to health, sanitation, and the abatement of nuisances;
>
> . . . .
>
> (e) Relating to non-navigable steams;
>
> . . . .

> (j) Regulating labor, trade, mining, or manufacturing;
>
> . . . .
>
> (3) Prohibited acts void. – Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

N.C. Const. art. II, § 24(1)(a), (3). Although the General Assembly is prohibited from "enact[ing] any local, private, or special act" regarding any of the fourteen subjects listed in Article II, Section 24(1) "by the partial repeal of a general law," *id.* § 24(2), the General Assembly "may . . . repeal local, private, or special laws enacted by it," *id.*, and "enact general laws regulating the matters set out" in the relevant constitutional provision, *id.* art. II, § 24(4).

Article II, Section 24, which was Article II, Section 29 at the time of its original adoption, was one of three constitutional amendments seeking to curtail local, private, and special legislation that were submitted for ratification by the General Assembly in 1915, were ratified by the people on 7 November 1916, and became effective on 10 January 1917. *See* Act of Mar. 9, 1915, ch. 99, secs. 1, 8, 1915 N.C. Pub. [Sess.] Laws 148, 148-49, 151; *see also Kornegay v. City of Goldsboro*, 180 N.C. 441, 449, 105 S.E. 187, 191 (1920) (describing the adoption of former Article II, Section 29; Article VIII, Section 1; and former Article VIII, Section 4 as "a complete and comprehensive scheme" intended to "remedy" the "fully realized . . . evils of special, local, and private acts" and "to get rid of special legislation as far as practicable").[6] As the history of Article II, Section 24 demonstrates:

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6. Article VIII, Sections 1 and 4 provided, after the adoption of the 1916 amendments, that:

> Section 1. No corporation shall be created nor shall its charter be extended, altered, or amended by special act, except corporations, for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering and organization of all corporations, and for amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general laws and special acts may be altered from time to time or repealed; and the General Assembly may at any time by special act repeal the charter of any corporation.
>
> . . .
>
> [Section 4.] It shall be the duty of the Legislature to provide by general laws for the organization of cities, towns, and incorporated villages, and to restrict their power of taxation, assessment, borrowing money,

> The organic law of the State was originally drafted and promulgated by a convention which met at Halifax in December, 1776. During the ensuing 140 years, the Legislature of North Carolina possessed virtually unlimited constitutional power to enact local, private, and special statutes. This legislative power was exercised with much liberality, and produced a plethora of local, private, and special enactments. As an inevitable consequence, the law of the State was frequently one thing in one locality, and quite different things in other localities. To minimize the resultant confusion, the people of North Carolina amended their Constitution at the general election of 1916 so as to deprive their Legislature of the power to enact local, private, or special acts or resolutions relating to many of the most common subjects of legislation.
>
> . . . .
>
> In thus amending their organic law, the people were motivated by the desire that the General Assembly should legislate for North Carolina in respect to the subjects specified as a single united commonwealth rather than as a conglomeration of innumerable discordant communities. To prevent this laudable desire from degenerating into a mere pious hope, they decreed in emphatic and express terms that "any local, private, or special act or resolution passed in violation of the provisions of this section shall be void[.]"

Williams v. Blue Cross Blue Shield of N.C., 357 N.C. 170, 185-86, 581 S.E.2d 415, 426-27 (2003) (first alteration in original) (quoting *Idol v. Street*, 233 N.C. 730, 732-33, 65 S.E.2d 313, 314-15 (1951) (quoting N.C. Const. of 1868, art. II, § 29 (1917) (now art. II, § 24(3)))).

> contracting debts, and loaning their credit, so as to prevent abuses in assessment and in contracting debts by such municipal corporations.

Ch. 99, sec. 1, 1915 N.C. Pub. [Sess.] Laws at 149. This Court held, in a sharply divided opinion, that Article VIII, Section 1 only applied to "private or business corporations, and does not refer to public or *quasi*-public corporations acting as governmental agencies," *Kornegay*, 180 N.C. at 446, 105 S.E. at 189 (quoting *Mills v. Bd. of Comm'rs*, 175 N.C. 215, 219, 95 S.E. 481, 482 (1918)), and that, since the general law provision contained in Article VIII, Section 4 was directory, rather than mandatory, *id.* at 448, 105 S.E. at 190, it did not prevent the enactment of local or special legislation governing the organization and operation of municipal governments, *id.* at 448-50, 105 S.E. at 190-91. Article VIII, Section 4 was deleted from the North Carolina Constitution when Article VII, Section 1 was adopted. Ch. 1258, sec. 1, 1969 N.C. Sess. Laws at 1479.

> It was the purpose of the amendment to free the General Assembly from the enormous amount of petty detail which had been occupying its attention, to enable it to devote more time and attention to general legislation of statewide interest and concern, to strengthen local self-government by providing for the delegation of local matters by *general laws* to local authorities, and to require uniform and coordinated action under general laws on matters related to the welfare of the whole State.

High Point Surplus Co. v. Pleasants, 264 N.C. 650, 656, 142 S.E.2d 697, 702 (1965).

Although the majority posits that Article VII, Section 1 is more recent in time than Article II, Section 24 and, consequently, that the provisions in Article VII, Section 1 are to be given their "full application" to the extent there is any conflict between these two constitutional provisions, I am unable to agree with this logic. As was noted above, the modifications to Article VII that led to the enactment of the first paragraph of Article VII, Section 1 were not "calculated . . . to bring about any fundamental change in the power of state and local government or the distribution of that power." *Report of the North Carolina State Constitution Study Commission* 4. In other words, Article VII, Section 1 was not designed to effectuate any substantive change to the General Assembly's authority over units of local government and did nothing more than reflect the same legislative authority that existed when Article II, Section 24 was adopted, effectively making Article II, Section 24, rather than Article VII, Section 1, more recent in time. As a result, given that the enactment of Article VII, Section 1 did not have the effect of changing existing North Carolina law, Article II, Section 24 and this Court's decisions construing it remain critical to a proper resolution of this case.

As noted earlier, the State and County argue that the exercise of extraterritorial jurisdiction constitutes the "fixing of boundaries" for purposes of Article VII, Section 1, rendering the limitations on local legislation imposed by Article II, Section 24 inapplicable to the Boone Act, a proposition with which the Court appears to agree. Although the Town acknowledges that Article VII, Section 1 gives the General Assembly plenary authority over municipal boundaries, it contends that the "boundaries" referenced in the relevant constitutional provision are the municipal boundaries that are fixed at the time of initial incorporation or by means of subsequent charter amendments or annexations rather than the area within which a municipality is authorized to exercise extraterritorial jurisdiction; that extraterritorial jurisdiction relates to regulatory power

or authority rather than the establishment of municipal boundaries; that the establishment and exercise of extraterritorial jurisdiction is materially different from the initial establishment or subsequent alteration of municipal boundaries; and that any alteration in the regulatory authority that the Town is entitled to exercise is subject to constitutional limitations, such as those contained in Article II, Section 24, on the General Assembly's authority to "give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable," N.C. Const. art. VII, § 1. I find this interpretation of Article VII, Section 1 persuasive.

Neither the State, the County, nor the Court point to any cases holding that the exercise of extraterritorial land use regulatory authority constitutes the "fixing of boundaries" for purposes of Article VII, Section 1. The only reason that a municipality is required to define the area in which it is entitled to exercise extraterritorial jurisdiction is to specify the location or locations within which the municipality can take a limited number of actions that could not otherwise be taken there with respect to regulation of the planning, development, and use of land, including (1) the subdivision of land, N.C.G.S. §§ 160A-371 to -377 (2015); (2) zoning, *id.* §§ 160A-381 to -393 (2015); (3) historic districts and landmarks, *id.* §§ 160A-400.1 to -400.15 (2015); (4) private development agreements, *id.* §§ 160A-400.20 to -400.32 (2015); (5) wireless telecommunications facilities, *id.* §§ 160A-400.50 to -400.53 (2015); (6) the acquisition of open space, *id.* §§ 160A-401 to -407 (2015); (7) building inspections, *id.* § 160A-411 to -439 (2015); (8) minimum housing standards, *id.* §§ 160A-441 to -450 (2015); and (9) community appearance standards, *id.* §§ 160A-451 to -455 (2015), as well as certain other "[m]iscellaneous [p]owers" delineated in Part 8 of Article 19 of Chapter 160A, such as community development programs and activities, the acquisition and disposition of property for redevelopment, urban development action grants, and urban homesteading programs, *id.* §§ 160A-456 to -457.2 (2015); erosion and sedimentation control, *id.* § 160-458 (2015); floodway regulation, *id.* § 160A-458.1 (2015); mountain ridge protection, *id.* § 160A-458.2 (2015); downtown development projects, *id.* § 160A-458.3 (2015); designation of transportation corridor official maps, *id.* § 160A-458.4 (2015); stormwater control, *id.* § 160A-459 (2015); and programs to finance energy improvements, *id.* § 160A-459.1 (2015). *See* David W. Owens, Univ. of N.C. Sch. of Gov't, *Land Use Law in North Carolina* 31 & n.47 (2d ed. 2011) (stating that, "[w]hen a city adopts an extraterritorial boundary ordinance, the city acquires jurisdiction for all of its ordinances adopted under Article 19 of Chapter 160A of the General Statutes" (citing N.C.G.S. § 160A-360(a)); *see also id.* at 30 (discussing how concerns

about "chaotic" development "along the urban fringe, often in unregulated areas just outside of city corporate limits," resulted in the General Assembly's decision to authorize cities to implement " 'perimeter zoning,' which is now known as municipal extraterritorial jurisdiction"). On the other hand, the initial creation of municipal boundaries and the process of extending those boundaries through boundary extension legislation or annexation results in the identification of those individuals entitled to vote in municipal elections and receive municipal services and required to pay municipal taxes and to be subject to the full panoply of the municipality's authority. *See*, *e.g.*, N.C.G.S. § 160A-31 (2015) (annexation by petition); Frayda S. Bluestein, *Incorporation*, *Annexation*, *and City–County Consolidation*, *in County and Municipal Government in North Carolina* 15, 17-24 (Frayda S. Bluestein ed., 2d ed. 2014) [hereinafter *County and Municipal Government*] (discussing the various forms of statutorily authorized annexation, required provision of governmental services, and taxation of newly annexed property); Trey Allen, *General Ordinance Authority*, *in County and Municipal Government*, 77, 84 (stating that, "[f]or the most part, a city's police power ordinances apply only within the corporate limits and to any city-owned property or right-of-way outside the city," although "[a] city may enforce zoning and other development ordinances inside its corporate limits and within its extraterritorial jurisdiction" (citing N.C.G.S. § 160A-176 (2013)). Thus, even though a municipality must define the boundary within which it intends to exercise extraterritorial regulatory authority, the enforcement of those powers, rather than the establishment of a territorial boundary, is the defining characteristic of extraterritorial jurisdiction, rendering legislative decisions relating to the exercise of extraterritorial jurisdiction subject to constitutional limitations not applicable to legislation prescribing and governing the establishment of municipal boundaries. *New Bern II*, 338 N.C. at 438, 450 S.E.2d at 740 (rejecting the county's argument that local legislation removing the city's authority to conduct building code inspections relating to certain properties located within the city's corporate limits and shifting that authority to the county was within the General Assembly's "plenary powers to enact local laws pursuant to Article VII, Section 1" (citing *State ex rel. Martin v. Preston*, 325 N.C. 438, 448, 385 S.E.2d 473, 478 (1989))).

In addition, the Court holds that the Boone Act is not subject to the limitations upon the enactment of local legislation contained in Article II, Section 24 because extraterritorial jurisdiction implicates the "organization and government" of units of local government as authorized

by Article VII, Section 1,[7] and that the Boone Act "is an exercise of the General Assembly's plenary authority to 'provide for the organization and government and fixing of boundaries' of local government under the first clause of Article VII, Section 1." However, the Court has not cited any prior decisions of this Court holding that the limitations imposed by Article II, Section 24 do not apply to legislation, such as the Boone Act, effectuating what amounts to the reassignment of local government jurisdiction over particular subjects of regulation, or that the "powers and duties" which the General Assembly is authorized to delegate to local governments pursuant to Article VII, Section 1 are not subject to the limitations upon legislative authority imposed by Article II, Section 24, and I know of none. On the contrary, this Court has repeatedly invalidated local acts changing the existing assignment of regulatory authority among units of local government as violative of Article II, Section 24.

A careful review of this Court's decisions concerning Article II, Section 24 demonstrates that we have repeatedly held that the enactment of local legislation which had the effect of shifting, reassigning, or re-delegating the authority to regulate certain activities from one unit of local government to another violated Article II, Section 24 without ever stating that the analysis required by Article II, Section 24 is limited to instances involving the exercise of "power" separate and apart from the reassignment of regulatory jurisdiction. For example, we have held that local legislation transferring the authority to enforce health and safety regulations from one local government entity to another was invalid pursuant to Article II, Section 24. *See*, *e.g.*, *New Bern II*, 338 N.C. at 440, 450 S.E.2d at 741 (invalidating legislation that shifted responsibility for enforcing the State Building Code by expanding Craven County's jurisdiction to include certain properties located within New Bern's municipal corporate boundaries as impermissible local legislation relating to health and sanitation); *see also Idol*, 233 N.C. at 733, 65 S.E.2d at 315 (finding it "clear beyond peradventure" that legislation authorizing the consolidation of the Winston-Salem and Forsyth County health departments and providing for the appointment of a joint city-county board to administer the public health laws in the affected jurisdictions constituted a prohibited "local act relating to health"); *Bd. of Health v. Bd. of Comm'rs*, 220 N.C. at 143, 16 S.E.2d at 679 (emphasizing our "commit[ment] to the proposition that a law affecting the selection of officers to whom is given the duty of administering the health laws is a

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7. Neither the State nor the Town argued that the Boone Act involves the "organization and government" of local governments as provided for in Article VII, Section 1.

law 'relating to health' " while invalidating a local law requiring that the county health officer appointed by the county board of health be confirmed by the Nash County Board of Commissioners (citing *Sams v. Bd. of Cty. Comm'rs*, 217 N.C. 284, 285, 7 S.E.2d 540, 541 (1940))); *Sams*, 217 N.C. at 285-86, 7 S.E.2d at 541 (concluding that a local act "undertak[ing] to create for Madison County, alone, a county board of health and to name its members" "conflict[ed] with the constitutional restrictions upon the power of the General Assembly imposed by" Article II, Section 24). The Court's decision that the Boone Act is not subject to the limitations upon the enactment of local legislation spelled out in Article II, Section 24 conflicts with the clear import of these decisions.

As support for its broad interpretation of "organization and government" as used in the first part of the first paragraph of Article VII, Section 1, the Court conducts a plain language analysis focusing upon dictionary definitions of the relevant words. However, the plain language in which the provision in question is couched suggests to me that the phrase "organization and government" refers to the creation of units of local government and the manner in which those units of local government are governed rather than the powers that those units are entitled to exercise. My interpretation is fully consistent with the numerous decisions upon which the Court relies, almost all of which relate to the establishment of municipal boundaries or the creation or abolition of units of local government, rather than to the authority that units of local government are entitled to exercise. Unlike the majority's interpretation, this interpretation of "organization and government" also avoids overly narrowing or eviscerating the "powers and duties" language contained in the second part of the first paragraph of Article VII, Section 1, *see Bd. of Educ. v. Bd. of Comm'rs*, 137 N.C. 310, 312, 49 S.E. 353, 354 (1904) (stating that, "[i]f different portions [of the state constitution] seem to conflict, the courts must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory" (quoting Thomas M. Cooley, *Cooley's Constitutional Limitations* 92 (7th ed. 1903))); *see also Lacy v. Fid. Bank of Durham*, 183 N.C. 374, 380, 111 S.E. 612, 615 (1922) (stating that the constitution should be "construed so as to allow significance to each and every part of it if this can be done by any fair and reasonable intendment" (citation omitted)), and does not conflict with the numerous decisions invalidating local government reorganizations cited in the preceding paragraph. As a result, for all these reasons, I cannot agree that the Boone Act constitutes a valid exercise of the General Assembly's authority to provide for the "organization and government" of local governmental bodies.

Even if the enactment of local legislation eliminating the Town's authority to exercise extraterritorial jurisdiction constitutes the alteration of municipal corporate boundaries and the exercise of the General Assembly's authority over the "organization and government" of units of local government, our opinion in *Piedmont Ford Truck Sale* indicates that the limitations on the enactment of local legislation imposed by Article II, Section 24 remain relevant. In that case, the owners of recently annexed property challenged the validity of a local act authorizing the City of Greensboro to annex certain land contiguous to Greensboro's existing corporate limits, contending, among other things, that the challenged legislation constituted an impermissible local law relating to health and sanitation in violation of Article II, Section 24(1)(a).[8] 324 N.C. at 500, 380 S.E.2d at 108. In rejecting the property owners' challenge to the validity of the legislation in question, which, like the challenge advanced by the Town in this case, rested upon the powers or duties that the Greensboro would be required to exercise (or precluded from exercising) in the relevant area, we acknowledged that the alteration and extension of Greensboro's municipal corporate boundaries fell within the ambit of Article VII, Section 1. *Id.* at 501-02, 380 S.E.2d at 109. In spite of the fact that the legislation at issue in that case constituted "the fixing of boundaries" for purposes of Article VII, Section 1 and effectuated what the Court has labeled in this case as a restructuring of the regulatory jurisdiction made available to the City of Greensboro by subjecting the annexed territory and those persons living within it to the full panoply of rights, obligations, and regulations available to and imposed upon City residents, this Court did not refrain from conducting an Article II, Section 24 analysis, as consistency with the Court's decision in this case would seem to require. Instead, we proceeded to analyze the substance of the property owners' contention that the legislation in question, which required the City to provide solid waste collection service in the newly annexed territory, constituted impermissible local legislation relating to health and sanitation in violation of Article II, Section 24(1)(a). *Id.* at 504-05, 380 S.E.2d at 110-11. Although we ultimately held that the legislation in question did not violate Article II, Section 24(1)(a),

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8. The language quoted by the Court from *Piedmont Ford Truck Sale* does not appear in that portion of our opinion addressing the property owners' claim in reliance upon Article II, Section 24. 324 N.C. at 502, 380 S.E.2d at 109 (stating that "[t]he extension of boundaries of cities has been held to be a political decision which is not protected by the United States Constitution or the Constitution of North Carolina" in addressing the property owners' argument in reliance on the Fourteenth Amendment to the United States Constitution and Article I, Section 19 of the North Carolina Constitution (citations omitted)).

id. at 505-06, 380 S.E.2d at 110-11, the fact that we reached the merits of the property owners' claim under Article II, Section 24 suggests that a local act that alters local government jurisdictional boundaries and reorganizes units of local government is not immune from challenge under Article II, Section 24. Thus, even if the Boone Act amounted to a revision of municipal boundaries or the organization of local government, *Piedmont Ford Truck Sale* suggests that the limitations upon the enactment of local legislation enunciated in Article II, Section 24 remain applicable in the event that the legislation in question has the effect of altering the local government's powers or duties relating to prohibited subjects such as health, sanitation, and the abatement of nuisances. As a result, for all these reasons, I believe that we are required to address the merits of the Town's challenge to the Boone Act under Article II, Section 24.

The first step in determining whether the Boone Act violates Article II, Section 24 would ordinarily be for us to decide whether the Boone Act "is a *local act* prohibited by Article II, section 24 of the Constitution" or "a *general law* which the General Assembly has the power to enact." *Adams*, 295 N.C. at 690, 249 S.E.2d at 406. In this case, however, the State and the County have conceded that the Boone Act is a local act.[9] As a result, we need only determine whether the Boone Act "[r]elat[es] to health, sanitation, and the abatement of nuisances," N.C. Const. art. II, § 24(1)(a), "[r]elat[es] to non-navigable streams," *id.* § 24(1)(e), or "[r]egulat[es] labor, trade, mining, or manufacturing," *id.* § 24(1)(j).

Although the stated purpose of a local act and its substantive provisions are undoubtedly relevant to the determination of whether a local

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9. The parties have made conflicting assertions about the origin of the Town's authority to exercise extraterritorial jurisdiction. In 1959, the General Assembly authorized municipalities with populations of "2,500 or more" in eighty-one counties to "adopt[ ] zoning regulations" "extending for a distance of one mile beyond [their corporate] limits in all directions." Act of June 19, 1959, ch. 1204, sec. 1, 1959 N.C. Sess. Laws 1354, 1354-55 (codified at N.C.G.S. § 160-181.2 (1959)). However, municipalities located in eighteen counties, including Watauga, were specifically excluded from the coverage of this legislation. *Id.*, sec. 1, at 1355. In 1961, the General Assembly authorized municipalities with a population of 1,250 or more to exercise extraterritorial jurisdiction and eliminated the exclusion for municipalities located in Watauga County. Act of May 30, 1961, ch. 548, secs. 1, 1¾, 1961 N.C. Sess. Laws 748 (amending N.C.G.S. § 160A-181.2 (1959)). In view of the fact that an act "eliminating a county from a list of [counties] excepted" and "making the provisions of" a general law applicable to that county is "tantamount to a re-enactment of the general law making it applicable" to the county in question rather than a local law, *State v. Ballenger*, 247 N.C. 216, 217-18, 100 S.E.2d 351, 353 (1957), the 1961 Act appears to have been a general, rather than a local, law.

law violates Article II, Section 24(1), *City of Asheville v. State*, ___N.C. ___, ___, ___ S.E.2d ___, ___ (Dec. 21, 2016) (93A15-2), our recent precedent clearly indicates that the practical effect of the challenged legislation is pertinent to, and perhaps determinative of, the required constitutional inquiry, *e.g.*, *Williams*, 357 N.C. at 189, 581 S.E.2d at 429 (concluding that, while "the record demonstrates that . . . the intent of the enabling legislation and the Ordinance [enacted pursuant to the challenged legislation] is to prohibit discrimination in the workplace, the effect of these enactments is to govern the labor practices of [certain businesses] in Orange County"); *New Bern II*, 338 N.C. at 433-42, 450 S.E.2d at 737-42 (concluding that legislation shifting the responsibility for enforcing the State Building Code with respect to certain buildings from the City of New Bern to Craven County constituted unconstitutional local acts related to health and sanitation). Thus, we must determine the extent to which the Boone Act impermissibly impinges upon one of the subjects about which the General Assembly lacks the authority to enact local legislation by examining the stated purpose of the challenged legislation, the content of its substantive provisions, and the practical effect that the challenged legislation will have if it is allowed to go into effect.

As we noted in *City of Asheville*, this Court has not, to date, clearly indicated when a local act does and does not "relate" to a prohibited subject for purposes of Article II, Section 24. For the reasons set forth in that decision, the issue of whether a local law relates to one of the prohibited subjects enumerated in Article II, Section 24 requires us to consider whether, in light of its stated purpose and practical effect, the Boone Act has a material, but not exclusive or predominant, connection to one of those purposes. In undertaking the required analysis in a case, such as this one, which involves legislation implicating a broad range of issues rather than a single subject that has been subject to a facial, rather than an as-applied challenge, I believe that we are required to evaluate the challenged legislation as a whole and to ascertain the materiality of the relationship between the challenged legislation and the prohibited subjects delineated in Article II, Section 24 by determining whether the challenged legislation, considered in its entirety, has a material relationship to one or more of those prohibited subjects.[10] Any

10. The applicability of the analytical approach that I deem appropriate in this case hinges upon the fact that the General Assembly has treated the range of issues about which a municipality would ordinarily be entitled to exercise regulatory authority as a unified whole. In other words, the applicable legislation authorizes a municipality, in the exercise of its discretion, to do a number of different things in regulating land use in its extraterritorial jurisdiction without in any way indicating that the availability of these different types of regulatory authority should be treated as severable. A subject-by-subject

other approach will fail to honor the presumption of constitutionality to which legislation enacted by the General Assembly is entitled and result in a mistaken understanding of the genuine purpose for and practical effect of the challenged legislation.

Unlike the situation with respect to the legislation at issue in *City of Asheville*, the Boone Act lacks a statement of the purpose that motivated the General Assembly's decision to eliminate the Town's ability to exercise extraterritorial jurisdiction. However, the clear effect of the General Assembly's decision to enact the Boone Act is to prevent the Town from regulating certain activities in the existing extraterritorial area and to preclude the Town from exercising such authority in additional areas in the future. Although the Boone Act does not explicitly "undo" the designation of the extraterritorial areas in which the Town was entitled to exercise regulatory jurisdiction, *see* Act of June 26, 2014, ch. 33, sec. 1, 2013 N.C. Sess. Laws (Reg. Sess. 2014) 139, 140 (stating that "the Town of Boone shall not exercise any powers of extraterritorial jurisdiction as provided in Article 19 of Chapter 160A of the General Statutes"), I am not convinced that the General Assembly intended to create a zone in which no local governmental entity has the ability to exercise regulatory authority. For that reason, I see no basis for believing that the General Assembly intended to do anything other than to transfer regulatory authority with respect to the affected area from the Town to the County. *See* N.C.G.S. § 153A-320 (stating that "[e]ach of the powers granted to counties by this Article and by Article 19 of Chapter 160A of the General Statutes may be exercised throughout the county except as otherwise provided in G.S. 160A-360); *id.* § 160A-360(f1) (2015) (stating that, "[w]hen a city relinquishes jurisdiction over an area that it is regulating under this Article to a county, the city regulations and powers of enforcement shall remain in effect until (i) the county has adopted this regulation or (ii) a period of 60 days has elapsed following the action by which the city relinquished jurisdiction"); *cf. id.* § 160A-360(d) (stating that, in the event that "a city fails to adopt an ordinance specifying the boundaries of its extraterritorial jurisdiction, the county of which it is a part shall be authorized to exercise the powers granted by [Article 19] in any area beyond the city's corporate limits"). As a result, this Court must evaluate the extent to which the entire bundle of powers removed from the Town and transferred to the County has a material connection to one of the prohibited purposes set out in Article II, Section 24, rather than

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approach would, of course, be perfectly permissible in the event that the challenged legislation addressed a number of discrete issues that the General Assembly has not linked together.

the extent to which any isolated power which the Town is prevented from exercising by the Boone Act relates to a prohibited purpose.

In seeking to persuade this Court that the Boone Act relates to health, sanitation, and the abatement of nuisances, the Town relies upon a number of statutory provisions, including N.C.G.S. § 160A-381 (granting zoning authority to municipalities "[f]or the purpose of promoting health, safety, morals, or the general welfare of the community" and authorizing municipalities to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lots that may be occupied; the size of yards, courts, and other open spaces; population densities; and the location and use of buildings, structures and land); *id.* § 160A-383 (providing that "[z]oning regulations shall be designed to promote the public health, safety, and general welfare" and may address issues such as the provision of "adequate light and air"; the prevention of "overcrowding of land"; avoiding undue population concentration; lessening street congestion; securing "safety from fire, panic, and dangers"; and facilitating the "provision of transportation, water, sewerage, schools, parks, and other public requirements"); *id.* § 160A-383.4 (authorizing regulations seeking to reduce the amount of energy consumption through the use of measures like density bonuses and similar incentives); *id.* § 160A-412(a) (providing for the enforcement of state laws and local ordinances relating to the "construction of buildings and other structures"; the installation of facilities such as plumbing, electrical, and air-conditioning systems; the "safe, sanitary, and healthful" "maintenance of buildings and other structures"; and other issues specified by the city council); *id.* § 160A-424(a) (providing that "[t]he inspection department may make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction"); *id.* § 160A-426(b) (providing that "an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if" it "appears . . . to be vacant or abandoned" and "appears . . . to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance"); *id.* § 160A-432(c) (stating that "[n]othing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise"); *id.* § 160A-439(a) (authorizing the adoption of ordinances providing for the repair, closing, and demolition of nonresidential buildings or structures "that fail to meet minimum standards of

maintenance, sanitation, and safety established by the governing body"); and *id.* § 160A-441 (finding "that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people" and "that a public necessity exists for the repair, closing or demolition of such dwellings"). Although the statutory provisions upon which the Town relies clearly implicate issues relating to health, sanitation, and the abatement of nuisances, I do not believe the Boone Act, when considered as an integrated whole, has a material relation to health, sanitation, and the abatement of nuisances.

As an initial matter, many of the statutory provisions to which the Town has directed our attention essentially amount to assertions that the statute in question has been enacted pursuant to the State's police power. *City of Raleigh v. Norfolk S. Ry. Co.*, 275 N.C. at 460-61, 168 S.E.2d at 394 (stating that "[t]he General Assembly may delegate to a municipality, as an agency of the State, authority to enact ordinances in the exercise of the police power" (citation omitted)); *State v. Ballance*, 229 N.C. 764, 769, 51 S.E.2d 731, 734-35 (1949) (stating that the "police power" authorizes the "enact[ment of] laws, within constitutional limits, to protect or promote the health, morals, order, safety, and general welfare of society" and that, for "a statute . . . to be sustained as a legitimate exercise of the police power, it must have a rational, real, or substantial relation to the public health, morals, order, or safety, or the general welfare" (citations omitted)). Although the presence of language invoking the police power is certainly relevant to the inquiry that must be conducted pursuant to Article II, Section 24(1)(a), *New Bern II*, 338 N.C. at 439-40, 450 S.E.2d at 740-41, the ubiquity with which such language appears in the General Statutes makes it difficult for me to treat its presence as determinative for the purpose of ascertaining whether a particular piece of legislation relates to any prohibited subjects listed. As noted by a leading scholar cited with regularity by this Court, *see, e.g.*, *Adams*, 295 N.C. at 690-91, 249 S.E.2d at 407, using "[t]he recital of legislative intent in" a statute that simply reflects "standard boiler plate language used to invoke the exercise of the police power of the state in the protection of the public health, safety and morals" to bring an act within the coverage of Article II, Section 24 "would cast doubt on the validity of any exercise of the police power in less than all the counties should the General Assembly employ" words such as " 'health' in the usual descriptive formula." Joseph S. Ferrell, *Local Legislation in the North Carolina General Assembly*, 45 N.C. L. Rev. 340, 396 (1967) (noting this Court's reliance upon such language in *State ex rel. Carringer v. Alverson*, 254 N.C. 204, 207, 118 S.E.2d 408, 410 (1961), to support a

determination that legislation allowing municipalities with a population of 500 or more in fourteen named counties to create a housing authority related to health and sanitation for purposes of what is now Article II, Section 24(1)(a) and stating that "[a]n extension of *Carringer* would cast doubt on the validity of any exercise of the police power in less than all the counties should the General Assembly employ the word 'health' in the usual descriptive formula").[11] Thus, the fact that the statutory provisions that a municipality is entitled to enforce while exercising extraterritorial jurisdiction were enacted pursuant to the police power should not obscure our obligation to examine the Boone Act in its entirety.

Upon examining the practical effect of the Boone Act in its entirety, one cannot escape the conclusion that, while portions of the zoning, building code, housing quality, and urban development regulations that the Town enforces in its extraterritorial jurisdiction clearly implicate health, sanitation, and the abatement of nuisances, the other powers that the Town is entitled to exercise on an extraterritorial basis do not have such a clear relationship to those subjects. For example, it is not clear to me that extraterritorial regulation of subdivisions, N.C.G.S. §§ 160A-371 to -377; historic districts and landmarks, *id.* §§ 160A-400.1 to -400.15; private development agreements, *id.* §§ 160A-400.20 to -400.32; wireless communications facilities, *id.* §§ 160A-400.50 to -400.53; open spaces, *id.* §§ 160A-401 to -407; community appearance commissions, *id.* §§ 160A-451 to -455; mountain ridges, *id.* § 160A-458.2; transportation corridor maps, *id.* § 160A-458.4; downtown development, *id.* § 160A-458.3; and energy improvements, *id.* § 160A-459.1 have much, if anything, to do with health, sanitation, and the abatement of nuisances. In addition, municipalities exercise zoning, building code enforcement, and housing quality regulations for a number of different purposes, including, but not limited to, the avoidance of unsightly, but not necessarily unsanitary, conditions; the protection of property values; and the development of needed infrastructure. Consistent with my understanding of the reasoning underlying the regulatory authority that the Town exercises in its extraterritorial jurisdiction, the Town's Unified Development Ordinance sets out twenty-five "goals" that the Town seeks to achieve through its land use policies, the vast majority of which do not appear to have any substantial bearing on health, sanitation, and the abatement of nuisances. Boone, N.C., Unified Dev. Ordinance, art. I, § 1.04.01 (Jan.

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11. The statement from *State ex rel. Carringer* discussed in the text constituted mere dicta given our holding that the trial court should have dismissed the plaintiff's action based upon his failure to establish standing to challenge the constitutionality of the legislation in question. 254 N.C. at 208, 118 S.E.2d at 410-11.

1, 2014).[12] As a result, when the challenged legislation is considered as a whole, I am not satisfied that the General Assembly's decision to eliminate the Town's ability to exercise extraterritorial jurisdiction has a material relation to health, sanitation, and the abatement of nuisances.

Although the Town has not made any effort to define a "non-navigable stream" for purposes of Article II, Section 24(1)(e), the obverse of the term in question is well established for purposes of our State's common law regarding riparian rights, in which it is typically understood to refer to streams that are passable by watercraft. *Gwathmey v. State*, 342 N.C. 287, 300-01, 464 S.E.2d 674, 682 (1995) (stating that "all watercourses are regarded as navigable in law that are navigable in fact" (quoting *State v. Baum*, 128 N.C. 600, 604, 38 S.E. 900, 901 (1901)), and that, "if a body of water in its natural condition can be navigated by watercraft, it is navigable in fact and, therefore, navigable in law, even if it has not been used for such purpose"). For that reason, I believe that a non-navigable stream for purposes of Article II, Section 24(1)(e) is a body of water over which watercraft cannot ordinarily travel. Unlike the prohibition against the adoption of local legislation relating to health, sanitation, and the abatement of nuisances set out in Article II, Section 24(1)(a), this Court has never had the occasion to construe the prohibition against the enactment of local legislation relating to non-navigable streams contained in Article II, Section 24(1)(e). However, given the fact that both of these constitutional provisions utilize identical "[r]elating

12. More specifically, the Town's goals of "[p]rotect[ing] water quality," "[p]rotect[ing] designated water supply watersheds," and "[s]upport[ing] public health through provision of convenient exercise opportunities" appear to have a material relationship to health, sanitation, and the abatement of nuisances, while "preserv[ing] and protect[ing] areas and landmarks of historic significance," "[p]reventing degradation of natural drainage areas," "[m]inimiz[ing] public and private losses due to flood conditions," "[m]inimiz[ing] public and private losses due to slope failure caused by land disturbance of steep and very steep slopes," "[p]reserv[ing] and protect[ing] the scenic beauty and natural environment of the Town's hillside areas," "[p]reserv[ing] and protect[ing] the overall quality of life for residents and visitors," "[p]reserv[ing] and protect[ing] the character of established residential neighborhoods," "[m]aintain[ing] economically vibrant as well as attractive business and commercial areas," "[e]ncourag[ing] signage that maintains, enhances, and is compatible with the beauty and unique character of the Town," "[f]acilitat[ing] the creation of an attractive environment," "[r]etain[ing] and expand[ing] the Town's employment base," "[f]acilitat[ing] safe and efficient movement of motorists, pedestrians and cyclists," "[e]ncourag[ing] public transit," "[e]ncourag[ing] walkability and bikeability," "[m]aintain[ing] orderly and compatible land-use and development patterns," "[e]ncourag[ing] environmentally responsible development practices," "[p]romot[ing] rehabilitation and reuse of older buildings," "[m]aintain[ing] a range of housing choices and options," "[e]stablishing clear and efficient development review and approval procedures," "[p]rotect[ing] community property values," "[p]rotect[ing] and balanc[ing] private property rights," and "[b]ring[ing] about [the] eventual improvement or elimination of non-conformities" do not. *Id.*

to" language, I believe that the same "materiality" test that this Court adopted in *City of Asheville*, ___ N.C. at ___, ___ S.E.2d at ___, for purposes of determining whether a particular local law relates to health, sanitation, and the abatement of nuisances should be deemed applicable to the prohibition against the enactment of local legislation relating to non-navigable streams.

In seeking to persuade this Court that the Boone Act constitutes an impermissible local law relating to non-navigable streams, the Town points to N.C.G.S. §§ 160A-458, 160A-458.1, and 160A-459(a). Section 160A-458 provides that "[a]ny city may enact and enforce erosion and sedimentation control ordinances as authorized by Article 4 of Chapter 113A of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Article 4." N.C.G.S. § 160A-458. In addition, we note that N.C.G.S. § 113A-51, which serves as the "Preamble" to Article 4 of Chapter 113A, provides that "[t]he sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem," that "[c]ontrol of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare," and that "the purpose of" Article 4 is "to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation." *Id.* § 113A-51 (2015). Similarly, section 160A-458.1 provides that "[a]ny city may enact and enforce floodway regulation ordinances as authorized" and in compliance with "Part 6 of Article 21 of Chapter 143 of the General Statutes," *id.* § 160A-458.1, with the purposes of floodplain regulation being to "[m]inimize the extent of floods by preventing obstructions that inhibit water flow and increase flood height and damage," "[p]revent and minimize loss of life, injuries, property damage, and other losses in flood hazard areas," and "[p]romote the public health, safety, and welfare of citizens of North Carolina in flood hazard areas," *id.* § 143-215.51 (2015). Finally, section 160A-459 provides that "[a] city may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity." *Id.* § 160A-459. Once again, while the bundle of powers that a municipality has the authority to exercise in its extraterritorial jurisdiction includes authority that is relevant to issues relating to non-navigable streams, along with other water-related subjects, I am unable to say, when the Boone Act is considered in its entirety, that the apparent purpose or practical effect of the withdrawal of the Town's authority to exercise extraterritorial jurisdiction upon non-navigable streams is a material one.

Finally, the Town has failed to make a detailed argument to the effect that the Boone Act impermissibly regulates trade. As we have previously held, "trade," for purposes of Article II, Section 24(1)(j), consists of "a business venture for profit and includes any employment or business embarked in for gain or profit." *Cheape*, 320 N.C. at 558-59, 359 S.E.2d at 798 (quoting *Smith v. County of Mecklenburg*, 280 N.C. 497, 508, 187 S.E.2d 67, 74 (1972), and citing *Pleasants*, 264 N.C. at 655-56, 142 S.E.2d at 702)). In other words, "*[p]rivate profit*" is "an inherent element of the concept of trade as used in" Article II, Section 24(1)(j). *Smith*, 280 N.C. at 510, 187 S.E.2d at 75 (citing *Gardner v. City of Reidsville*, 269 N.C. 581, 591-92, 153 S.E.2d 139, 148 (1967)). "[R]egulate" for purposes of Article II, Section 24(1)(j), means "to govern or direct according to rule[,] . . . to bring under [ ] control of law or constituted authority." *Williams*, 357 N.C. at 189, 581 S.E.2d at 429 (quoting *State v. Gulledge*, 208 N.C. 204, 208, 179 S.E. 883, 886 (1935) (ellipsis in original), *quoted in Cheape*, 320 N.C. at 559, 359 S.E.2d at 798 (using the stated definition of "regulate" in applying Article II, Section 24(1)(j)). In instances where the aim or practical effect of the challenged legislation is the complete prohibition of a certain type of activity "without regard to whether profit or other compensation [is] involved," this Court has concluded that the legislation does not regulate trade or labor. *Smith*, 280 N.C. at 510, 187 S.E.2d at 76 (citing *State v. Chestnutt*, 241 N.C. 401, 403-04, 85 S.E.2d 297, 299 (1955)); *see Williams*, 357 N.C. at 189-90, 581 S.E.2d at 429 (concluding that the legislation in question and the related ordinance "regulate[d] labor" because "the effect of these enactments [was] to govern labor practices of 'person[s] engaged in an industry affecting commerce who has 15 or more employees' " and "regulate[d] trade" because "[m]ost of the employers affected by the [o]rdinance [were] businesses operated for gain or profit," such that "[r]egulation of these employers ha[d] the practical effect of regulating trade" (citations omitted)). Although the withdrawal of the Town's extraterritorial jurisdiction would have an impact on the business of exchanging real property for a profit, that fact does not justify a decision to invalidate the Boone Act as an impermissible attempt to regulate trade in violation of Article II, Section 24(1)(j) given that the relevant regulations affect all land use-related activities instead of being limited to those founded upon a desire for profit. Thus, I am not persuaded by this aspect of the Town's challenge to the Boone Act as well.

As a result, for all these reasons, while I believe that the Town has standing to challenge the constitutionality of the Boone Act as violative of Article II, Section 24, and that the Town's claim is not barred by sovereign immunity considerations, I am unable, in light of the presumption

of constitutionality and the breadth of the issues addressed in the Boone Act, to conclude that the challenged legislation constitutes local legislation relating to one of the prohibited subjects listed in Article II, Section 24. Although I agree with the result that the Court deems appropriate, I am unable to agree that the Boone Act implicates the General Assembly's powers over the organization, government, and boundaries of local governments and that the limitations on the enactment of local legislation set out in Article II, Section 24 have no bearing on the proper resolution of this case. As a result, I concur in the result reached by the Court without concurring in its opinion.

Justice HUDSON joins in this concurring opinion.

Justice BEASLEY dissenting.

Because I disagree with the majority's holding that the Boone Act does not violate Article II, Section 24, I would affirm the decision of the three-judge panel of the Superior Court, Wake County, that the revocation of the extraterritorial jurisdiction powers of the Town of Boone (Town) violated "the prohibition on local acts contained in Article II, Section 24 of the North Carolina Constitution." Therefore, I respectfully dissent.

The first issue before us is to determine whether the facial challenge passes constitutional muster. The party bringing forth a facial challenge "must show that there are no circumstances under which the statute might be constitutional." *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm'rs*, 363 N.C. 500, 502, 681 S.E.2d 278, 280 (2009) (citation omitted). This Court "seldom uphold[s] facial challenges because it is the role of the legislature, rather than this Court, to balance disparate interests and find a workable compromise among them." *Id.* at 502, 681 S.E.2d at 280. This Court has consistently stated that a facial challenge is "the most difficult challenge to mount successfully." *State v. Bryant*, 359 N.C. 554, 564, 614 S.E.2d 479, 485 (2005) (quoting *United States v. Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 2100, 95 L.Ed.2d 697, 707 (1987)). However, this Court's analysis does not end there. This Court must also "measure the balance struck by the legislature against the minimum standards of the constitution." *Id.* at 565, 614 S.E.2d at 486 (quoting *Henry v. Edmisten*, 315 N.C. 474, 491, 349 S.E.2d 720, 731 (1986)). "The best way for the Court to discharge this function is for it to enunciate a workable principle as to what process the law of the land minimally requires." *Henry*, 315 N.C. at 491, 340 S.E.2d at 731. Here those minimum standards require that the General Assembly not enact local

laws that relate to the prohibited subjects enumerated within Article II, Section 24. The Boone Act grants the General Assembly the authority to withdraw certain powers from the Town that relate to the constitutionally prohibited subjects listed in Article II, Section 24; therefore, the act cannot survive a facial challenge.

The General Assembly has broad powers; however, it was never the intent of the drafters of the constitution that the General Assembly be granted unbridled powers. Hence, Article II, Section 24 of the North Carolina Constitution (the Local Act Prohibition) provides instances in which the General Assembly is prohibited from enacting statutes that directly impact the welfare and services of local governments. Under the Local Act Prohibition, the North Carolina Constitution bars the General Assembly from enacting local laws, rather than general laws, affecting fourteen enumerated subjects. N.C. Const. art. II, § 24. In relevant part, the Local Act Prohibition provides that:

> (1) Prohibited subjects. – The General Assembly shall not enact any local, private, or special act or resolution:
>
> (a) Relating to health, sanitation, and the abatement of nuisances;
>
> . . . .
>
> (e) Relating to non-navigable streams;
>
> . . . .
>
> (j) Regulating labor, trade, mining, or manufacturing.

Id. art. II, § 24(1). The Local Act Prohibition further provides that "[a]ny local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void." *Id.* art. II § 24(3).

This Court has acknowledged that in enacting the Local Act Prohibition "the people were motivated by the desire that the General Assembly should legislate for North Carolina in respect to the subjects specified as a single united commonwealth rather than as a conglomeration of innumerable discordant communities." *Idol v. Street*, 233 N.C. 730, 732-33, 65 S.E.2d 313, 315 (1951). Further, this Court has stated that the purpose behind adopting the Local Act Prohibition was to

> free the General Assembly from the enormous amount of petty detail which had been occupying its attention, to enable it to devote more time and attention to general legislation of statewide interest and concern, to strengthen

> local self-government by providing for the delegation of local matters by *general laws* to local authorities, and to require uniform and coordinated action under general laws on matters related to the welfare of the whole State.

Williams v. Blue Cross and Blue Shield of N.C., 357 N.C. 170, 188, 581 S.E.2d 415, 428 (2003) (emphasis in original) (quoting *High Point Surplus Co. v. Pleasants*, 264 N.C. 650, 656, 142 S.E.2d 697, 702 (1965)). Therefore, if the General Assembly aims to address one of the subjects in the Local Act Prohibition, it must do so by enacting statewide laws of general applicability rather than local acts. *See Williams*, 357 N.C. at 188-89, 581 S.E.2d at 428 (concluding that if the General Assembly decided "to address employment discrimination by means of a state statute, Article II, Section 24 requires that it enact either a statewide law applicable to employers and their employees . . . or a general law that makes reasonable classifications based upon rational differences of circumstances").

The Local Act Prohibition provides express restrictions on the General Assembly's authority in order to safeguard against an abuse of legislative power. *See* N.C. Const. art. II, § 24 (limiting certain local, private, or special acts). As previously stated, the General Assembly is prohibited from enacting local, private, or special acts relating to one of the enumerated subjects. *Id.* art. II, § 24(1). Additionally, the Local Act Prohibition prevents the General Assembly from circumventing the prohibitions in subsection (1) by also preventing the "enact[ment] [of] any such local, private, or special act by the partial repeal of a general law." *Id.* art. II § 24(2). As a disincentive for the General Assembly to overstep its powers, the Local Act Prohibition states that "[a]ny local, private, or special act or resolution enacted in violation of the provisions of this Section *shall be void*." *Id.* art. II § 24(3) (emphasis added).

In addition to the constitutional limitations, this Court must determine through judicial review, whether the General Assembly has abused or overstepped its legislative power or authority, thereby assessing the constitutionality of legislative acts. *State ex rel. McCrory v. Berger*, 368 N.C. 633, 635, 781 S.E.2d 248, 250 (2016) (citing *Bayard v. Singleton*, 1 N.C. (Mart.) 5, 6-7 (1787)). Thus, this Court is required to ensure that the General Assembly is acting within its powers and that its actions do not violate direct prohibitions of our constitution.

The Boone Act, which was enacted in 2014 by the General Assembly, withdrew the extraterritorial jurisdiction from the Town and returned regulatory control of the extraterritorial area to the County of Watauga.

Act of June 26, 2014, ch. 33, sec. 1, 2013 N.C. Sess. Laws (Reg. Sess. 2014) 139, 140 (the Boone Act) ("Notwithstanding any other provision of law, the Town of Boone shall not exercise any powers of extraterritorial jurisdiction as provided in Article 19 of Chapter 160A of the General Statutes."). The issue here is whether the Boone Act violates the Local Acts Prohibition of Article II, Section 24 of the state constitution.[1] It is well settled law that courts in North Carolina

> have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional—but it must be plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people.

Glenn v. Bd. of Educ., 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936).

The majority is convinced that because Article VII, Section 1 grants plenary power to the legislature, its analysis ends as it concludes that the General Assembly has the constitutional authority to enact the Boone Act. The majority concludes that Article II, Section 24 does not apply here. According to Article VII, Section 1:

> The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

N.C. Const. art. VII, § 1. The majority concludes that of the two clauses in paragraph one of Article VII, Section 1, it is only under the second clause that "the General Assembly's authority over local governments [is] expressly subject[ed] to limitations imposed by other constitutional provisions, including the constraints on local acts in Article II, Section 24." Assuming that the qualification contained within Article VII, Section 1 only applies to the second clause, I disagree with the majority's conclusion that the Boone Act falls exclusively within the first clause. As stated in the concurring opinion, the provisions in Article VII, Section 1 relate

1. Along with the issue of whether the Boone Act violates the Local Act Prohibition, this Court is presented with issues of sovereign immunity and standing. I agree with the analysis in the concurring opinion regarding these issues, as well as the procedural history of this case.

to both municipal boundaries (clause 1) and municipal powers (clause 2). As the concurring opinion correctly states, "extraterritorial jurisdiction relates to regulatory power or authority rather than the establishment of municipal boundaries" and therefore, the Boone Act is more properly interpreted as relating to the municipal powers in the second clause. As such, the Boone Act is subject to Article VII, Section 1's limiting language, including the limitations imposed by Article II, Section 24. The concurring opinion also correctly states that determining the constitutionality of the Boone Act requires an analysis of Article II, Section 24's prohibitions; the analysis does not stop at Article VII, Section 1, as argued by the majority. Additionally, while I agree with most of the discussion set forth in the concurring opinion regarding Article II, Section 24 and the test to be applied under it, I disagree with the application of that test proffered in the concurring opinion to the facts of this case. Specifically, in regards to whether the Boone Act violates the constitutional limitations imposed by the Local Act Prohibition, I believe that this Court's decisions in *City of New Bern v. New Bern–Craven County Board of Education*, 338 N.C. 430, 450 S.E.2d 735 (1994), and *Williams*, 357 N.C. 170, 581 S.E.2d 415, guide our analysis.

To determine whether legislation violates the Local Act Prohibition we must determine whether an act is local or general. This Court follows the "reasonable classification" test to determine whether a law is general or local. *See McIntyre v. Clarkson*, 254 N.C. 510, 518-19, 119 S.E.2d 888, 894-95 (1961). An act is deemed local if it "discriminates between different localities without any real, proper, or reasonable basis or necessity–a necessity springing from manifest peculiarities clearly distinguishing those of one class from each of the other classes, and imperatively demanding legislation for each class separately that would be useless or detrimental to the others." *McIntyre*, 254 N.C. at 518, 119 S.E.2d at 894 (citation omitted). Conversely, a law is general if "any rational basis reasonably related to the objective of the legislation can be identified which justifies the separation of units of local government into included and excluded categories." *Adams v. N.C. Dep't. of Nat. & Econ. Res.*, 295 N.C. 683, 691, 249 S.E.2d 402, 407 (1978) (quoting Joseph S. Ferrell, *Local Legislation in the North Carolina General Assembly*, 45 N.C. L. Rev. 340, 391 (1967)). Here the parties are in agreement that the Boone Act is a local act. Therefore, the Boone Act discriminates against the Town without "any real, proper, or reasonable basis." *McIntyre*, 254 N.C at 518, 119 S.E.2d at 894 (citation omitted).

In *City of New Bern*, this Court analyzed the constitutionality of legislation that withdrew the City of New Bern's inspection and

enforcement authority related to building, construction, fire, and safety codes for specific properties located within the city limits and reassigned those responsibilities to Craven County. *City of New Bern*, 338 N.C. at 433-44, 450 S.E.2d at 737-38. The City brought a challenge under Article II, Section 24. The legislation challenged in *City of New Bern* effectively shifted the responsibility of enforcing the building code, a power assigned to the city pursuant to N.C.G.S. § 160A-411, from the city to the county.[2] *Id.* at 437, 450 S.E.2d at 739-40. After concluding that the challenged acts were local acts, rather than general, this Court addressed whether the removal of the city's power to exercise inspection and enforcement authority pursuant to N.C.G.S. § 160A-411 related to "health, sanitation, or the abatement of nuisances." *Id.* at 439, 450 S.E.2d at 740. This Court reviewed the legislature's purpose for creating the building code and held that inspections pursuant to the building code affect health and sanitation. *Id.* at 439-40, 450 S.E.2d at 740-41. This Court concluded that by "alter[ing] the selection process of those who will enforce the [c]ode," the legislation affected health and sanitation and was prohibited by the Local Act Prohibition. *Id.* at 442, 450 S.E.2d at 742.

The Court's reasoning in *City of New Bern*, that a law altering who is charged with enforcing health and sanitation laws is a law related to health and sanitation, has been consistently applied to similar local legislation brought before this Court. *See Idol*, 233 N.C. at 732-33, 65 S.E.2d at 314-15 (holding unconstitutional a local act authorizing the board of aldermen and board of commissioners to create a joint city-county board of health); *Bd. of Health v. Bd. of Comm'rs*, 220 N.C. 140, 142-44, 16 S.E.2d 677, 678-79 (1941) (holding that local statutes that affected the process of appointment of a health officer were unconstitutional because they related to health); *Sams v. Bd. of Cty. Comm'rs*, 217 N.C. 284, 7 S.E.2d 540 (1940) (holding that legislation shifting the responsibility for enforcement of laws affecting the health of the public was barred by Article II, Section 29 (now Article II, Section 24)). Similarly, in the present case the Boone Act directly impacts the enforcement of laws, which themselves affect health and sanitation, by removing the Town's power to enforce the building code, fire code, and plumbing code, and other like regulations within the extraterritorial jurisdiction area. This

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2. Pursuant to N.C.G.S. § 160A-411, the General Assembly authorizes cities to inspect and enforce the North Carolina Building Code within their planning jurisdictions. This statute also appears within Article 19 of Chapter 160A; thus, it is among the powers that the Boone Act withdraws from the Town of Boone.

Court in *City of New Bern* held that shifting the responsibility of enforcing the building code away from the City inescapably related to health and sanitation, because the

> Code regulates plumbing in an effort to maintain sanitary conditions in the buildings and structures of this state and thus directly involves sanitation, and consequently the protection of the health of those who use the buildings. The enforcement of the fire regulations protects lives from fire, explosion and health hazards.

City of New Bern, 338 N.C. at 440, 450 S.E.2d at 741. This same reasoning must be applied here in that the Boone Act shifts the responsibility for enforcement of laws that affect health and sanitation—mainly, the building code, fire code, and plumbing code—from the Town to the County of Watauga. The effect on the enforcement of the building, fire, and plumbing codes in the present case is similar to that in *City of New Bern*, because the Boone Act has "alter[ed] the selection process of those who will enforce" those laws. *Id.* at 442, 450 S.E.2d at 742. As noted in the concurring opinion and our recent decision in *City of Asheville v. State*, ___ N.C. ___, ___, ___ S.E.2d ___, ___ (2016), our current test focuses on whether, in light of its stated purpose and practical effect, the Boone Act has a material, but not exclusive or predominant, connection to one of the prohibited subjects. Thus, I would hold that shifting the responsibility for enforcement of the building code, fire code, and plumbing code would have a material connection to health and sanitation and thus, is a violation of the Local Act Prohibition of the North Carolina Constitution.[3]

Moreover, this Court's decision in *Williams* lends further support for the conclusion that the Boone Act violates the Local Act Prohibition. In *Williams* the challenged legislation authorized Orange County to adopt an antidiscrimination ordinance that made it unlawful for an employer "[t]o fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to that individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, or veteran status." 357 N.C. at 175, 581 S.E.2d at 420. After concluding that the challenged legislation was a local act, this

3. The concurring opinion correctly notes that the facts at issue in this case differ from the facts at issue in *City of New Bern* because *City of New Bern* involved the removal of a single power, rather than a "bundle of powers" as is the case here. However, the principles espoused in *City of New Bern*—specifically the interpretation of whether the act relates to health and sanitation—are instructive.

Court considered whether the legislation regulated any of the subjects listed in the Local Act Prohibition. Specifically, the Court in *Williams* sought to determine whether the legislation "regulate[d] labor or trade." *Id.* at 189, 581 S.E.2d at 429; see N.C. Const. art. II, § 24(1)(j).

In considering whether the challenged legislation regulated labor or trade, this Court rejected the argument that the legislation related only the acts of discrimination and did not involve labor or trade. *Williams*, 357 N.C. at 189, 581 S.E.2d at 429. Rather, this Court concluded that "while the intent of the enabling legislation and the Ordinance is to prohibit discrimination in the workplace, the *effect* of these enactments is to govern the labor practices of 'person[s] engaged in an industry affecting commerce [that] has 15 or more employees' in Orange County." *Id.* at 189, 581 S.E.2d at 429 (first alteration in original) (emphasis added). Thus, the Court focused on the practical effect of the legislation, and not its intended purpose, in determining that the legislation violated the Local Act Prohibition. As demonstrated by *Williams*, this Court's analysis is not limited to the legislative purpose or intent of an enactment. Rather, the analysis also considers the legislation's practical effect, *see id.* at 189-90, 581 S.E.2d at 429 (concluding that while the intent of the legislation was to prohibit discrimination, the legislation had the "practical effect of regulating trade"), and whether it has a material connection to the prohibited subjects of the Local Act Prohibition, as noted in the concurring opinion and our recent decision in *City of Asheville*, ___ N.C. at ___, ___ S.E.2d at ___.

Considering the practical effect of the Boone Act, I would hold that the Act violates the Local Act Prohibition. The Boone Act removes power from the Town of Boone to act within the extraterritorial jurisdiction area one mile outside of the town limits. The practical effect of removing this power is that the Town of Boone cannot enforce its ordinances within the one-mile extraterritorial jurisdiction area, including those ordinances that relate to health and sanitation, N.C. Const. art. II, § 24(1)(a), relate to non-navigable streams, *id.* art. II § 24(1)(e), and regulate labor, trade, mining, or manufacturing, *id.* art. II § 24(1)(j). According to the Town's Unified Development Ordinance (UDO), the purposes and goals of the UDO include "[p]romot[ing] the health, safety, and general welfare within the Town of Boone and its environs," "[p]rotect[ing] water quality," "[p]rotect[ing] designated water supply watersheds," "[p]revent[ing] degradation of natural drainage areas," and "[s]triv[ing] to minimize public and private losses due to slope failure caused by land disturbance of steep and very steep slopes." Boone, N.C., Unified Dev. Ordinance, art. 1, §§ 1.03.01, 1.04.01 (Jan. 1 2014).

Because these ordinances themselves relate to health, sanitation, and the abatement of nuisances, as well as other prohibited subjects, legislation that shifts the responsibility of their enforcement by removing the Town's ability to enforce those ordinances also relates to health, sanitation, and the abatement of nuisances, and thereby violates the Local Act Prohibition. *See City of New Bern*, 338 N.C. at 442, 450 S.E.2d at 742 (holding that the shifting of responsibility for enforcement of the building code affects health and sanitation, and thus, is prohibited by the Local Acts Prohibition); *Bd. of Health v. Bd. of Comm'rs*, 220 N.C. at 143, 16 S.E.2d at 679 (concluding that two local statutes that affected the process of appointment of a health officer for Nash County were unconstitutional because "[t]his Court is . . . committed to the proposition that a law affecting the selection of officers to whom is given the duty of administering the health laws is a law 'relating to health' "). Thus, by determining that the practical effect of the Boone Act relates to health, sanitation, and the abatement of nuisances, I would conclude that there is a material connection between the Boone Act and the subjects listed in the Local Act Prohibition.

As stated above, while I agree with the general discussion in the concurring opinion, I disagree with the result that the Boone Act does not violate the Local Act Prohibition. After analyzing individually each of the subjects in the Local Act Prohibition that the Town alleged the Boone Act violated, the concurring opinion concluded that the Boone Act does not materially connect to either "health, sanitation, and the abatement of nuisances," N.C. Const. art. II, § 24(1)(a),[4] "non-navigable streams,"

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4. As quoted verbatim from the concurring opinion, the following statutory provisions removed from the Town implicate issues relating to health, sanitation, and the abatement of nuisances: N.C.G.S. § 160A-381 (2015) (granting zoning authority to municipalities "[f]or the purpose of promoting health, safety, morals, or the general welfare of the community" and authorizing municipalities to regulate and restrict the height, number of stories and size of buildings and other structures; the percentage of lots that may be occupied; the size of yards, courts and other open spaces; population densities; and the location and use of buildings, structures and land); N.C.G.S. § 160A-383 (2015) (providing that "[z]oning regulations shall be designed to promote the public health, safety, and general welfare" and may address issues such as the provision of adequate light and air; the prevention of overcrowding; avoiding undue population concentration; lessening street congestion; securing safety from fire, panic, and dangers; and facilitating the provision of transportation, water, sewerage, schools, parks, and other public requirements); N.C.G.S. § 160A-383.4 (2015) (authorizing regulations seeking to reduce the amount of energy consumption through the use of measures like density bonuses and similar incentives); N.C.G.S. § 160A-412(a) (2015) (providing for the enforcement of state laws and local ordinances relating to the construction of buildings and other structures; the installation of facilities such as plumbing, electrical, and air-conditioning systems; the safe, sanitary, and healthful maintenance of buildings and other structures; and other issues specified by the city council); N.C.G.S. § 160A-424(a) (2015) (providing that "[t]he inspection department

id. art. II § 24(1)(e),[5] or "labor, trade, mining, or manufacturing," *id.* art. II § 24(1)(j).[6] However, this Court should not analyze each of the enumerated subjects in isolation. In determining if the Boone Act violates the Local Act Prohibition, this Court should view the entire Local Act Prohibition. Thus, if this Court views all of the statutes within Article 19 of Chapter 160A that relate to "health, sanitation, and the abatement of

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may make periodic inspections, subject to the council's discretion, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction"); N.C.G.S. § 160A-426(b) (2015) (providing that "an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if" it "appears . . . to be vacant or abandoned" or "appears . . . to be in such dilapidated conditions as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance"); N.C.G.S. § 160A-432(c) (2015) (stating that "[n]othing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise"); N.C.G.S. § 160A-439 (2015) (authorizing the adoption of ordinances providing for the repair, closing, and demolition of nonresidential buildings or structures "that fail to meet minimum standards of maintenance, sanitation, and safety established by the governing body"); and N.C.G.S. § 160A-441 (2015) (finding "that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people" and "that a public necessity exists for the repair, closing or demolition of such dwellings").

5. As quoted verbatim from the concurring opinion that notes that the following statutory provisions removed from the Town implicate issues relating to non-navigable streams: N.C.G.S. § 160A-458 provides that "[a]ny city may enact and enforce erosion and sedimentation control ordinances as authorized by Article 4 of Chapter 113A of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Article 4." In addition, N.C.G.S. § 113A-51 provides that "[t]he sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem," that "control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare," and that "the purpose of" Article 4 is "to provide for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation." N.C.G.S. § 113A-51 (2015); N.C.G.S. § 160A-458.1 provides that "[a]ny city may enact and enforce floodway regulation ordinances as authorized" and in compliance with "Part 6 of Article 21 of Chapter 143 of the General Statutes," N.C.G.S. § 160A-458.1, with the purposes of floodplain regulation being to "[m]inimize the extent of floods by preventing obstructions that inhibit water flow and increase flood height and damage," "[p]revent and minimize loss of life, injuries, property damage, and other losses in the flood hazard areas," and "[p]romote the public health, safety, and welfare of citizens of North Carolina in flood hazard areas," N.C.G.S. § 143-215.51 (2015). N.C.G.S. § 160A-459 provides that "[a] city may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity." N.C.G.S. § 160A-459 (2015).

6. The Town fails to point to any statutory provisions in support of the argument that the Boone Act relates to "labor, trade, mining, or manufacturing."

nuisances," "non-navigable streams," and "labor, trade, mining, or manufacturing" as a whole, then the Boone Act clearly has a material connection to the prohibited subjects enumerated in the Local Act Prohibition.

Because I disagree with the majority's holding that the Boone Act does not violate Article II, Section 24, I would affirm the decision of the three-judge panel of the Superior Court, Wake County that the revocation of the Town's powers of extraterritorial jurisdiction violated "the prohibition on local acts contained in Article II, Section 24 of the North Carolina Constitution." Therefore, I respectfully dissent.

SED HOLDINGS, LLC	)	
	)	
v.	)	From Durham County
	)	
3 STAR PROPERTIES, LLC, ET AL.		

No. 211PA16

ORDER

The following order was entered:

Defendants' motion to appear, filed on 20 October 2016, is allowed. This case is stayed by virtue of the automatic stay arising from the bankruptcy proceeding against defendant 3 Star Properties, LLC in the United States Bankruptcy Court for the Southern District of Texas in Case 16-34815. Plaintiff's motion to be permitted to proceed now in the trial court against the remaining defendants, filed on 27 October 2016, also appears to be subject to the automatic stay.

By order of the Court in Conference, this 1st day of November, 2016.

s/Ervin, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 1st day of November, 2016.

J. BRYAN BOYD
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

SOUND RIVERS AND NORTH CAROLINA COASTAL FEDERATION	)	
v.	)	From Beaufort County
N.C. DEPARTMENT OF ENVIRONMENTAL AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES	)	
MARTIN MARIETTA MATERIALS, INC., INTERVENOR	)	

No. 57P16

ORDER

Intervenor Martin Marietta Materials has filed a Petition for Writ of Certiorari to review order of N.C. Court of Appeals (29 December 2015) and a Petition for Writ of Certiorari to review order of Superior Court of Beaufort County (13 November 2015). Intervenor's petitions are allowed for the limited purpose of striking the provision of the trial court's order retaining jurisdiction for itself. Otherwise, the petitions are denied.

By Order of the Court in Conference, this 8th day of December, 2016.

s/Ervin, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 9th day of December, 2016.

J. BRYAN BOYD
Clerk of the Supreme Court

s/M.C. Hackney
Assistant Clerk

STATE v. TODD

[369 N.C. 180 (2016)]

STATE OF NORTH CAROLINA	)	
	)	
v.	)	Wake County
	)	
PARIS JUJUAN TODD	)	

No. 18A14-2

ORDER

In the exercise of its supervisory authority, this Court, on its own motion, allows review as follows: The Court orders the parties to brief and argue the following issues, with the State treated as the appellant and defendant treated as the appellee:

I. Did the Court of Appeals err in reversing and remanding the trial court's judgment?

II. Does this Court have jurisdiction to hear and decide an appeal taken from a decision of the Court of Appeals arising from a trial court ruling granting or denying a motion for appropriate relief pursuant to N.C.G.S. § 7A-30(2), in light of the provisions of N.C.G.S. § 7A-28(a) and N.C.G.S. § 15A-1422(f)?

By order of the Court in Conference, this 8th day of December, 2016.

s/Ervin, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 9th day of December, 2016.

J. BRYAN BOYD
Clerk, Supreme Court of
North Carolina

s/M.C. Hackney
Assistant Clerk, Supreme
Court of North Carolina

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

8 DECEMBER 2016

002P13-2	State v. Jason C. Johnson	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Swain County 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot **Ervin, J., recused**
015P15-2	State v. Jaired Antonio Jones	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-995)	Denied
018A14-2	State v. Paris Jujuan Todd	1. State's Motion for Temporary Stay (COA15-670) 2. State's Petition for *Writ of Supersedeas* 3. State's Notice of Appeal Based Upon a Dissent 4. Def's Motion to Dismiss Appeal 5. Court's Order	1. Allowed **09/02/2016** 2. Allowed 3. --- 4. --- 5. Special Order *ex mero motu*
019P15-2	State v. Henry Ford Adkins	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP16-720)	Dismissed
046P16-2	In the Matter of Todd W. Short	Petitioner's *Pro Se* Motion for Extension of Time to File Petition for *Writ of Certiorari* to the Supreme Court of North Carolina	Dismissed as moot **10/21/2016**
052P16	David Easter-Rozzelle, Employee v. City of Charlotte, Employer, Self-Insured	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA15-594) 2. Plt's Motion for Leave to File PDR Out of Time 3. Plt's Petition in the Alternative for *Writ of Certiorari* to Review Decision of COA	1. Dismissed 2. Denied 3. Allowed
057P16	Sound Rivers and North Carolina Coastal Federation v. N.C. Department of Environmental and Natural Resources, Division of Water Resources, Martin Marietta Materials, Inc., Intervenor	1. Intervenor's Petition for *Writ of Certiorari* to Review Order of COA (COAP15-925) 2. Intervenor's Petition for *Writ of Certiorari* to Review Order of Superior Court, Beaufort County	1. Special Order 2. Special Order

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

8 December 2016

070PA16-2	State v. Nicolas Olivares Pineda	Def's PDR Under N.C.G.S. § 7A-31 (COA15-800-2)	Denied
081P16	In the Matter of A.B., J.B.	Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA15-910)	Denied
084P15-4	State v. Curtis Louis Sangster	Def's *Pro Se* Petition for *Writ of Mandamus*	Dismissed
086A16	In re Redmond	State's Motion for Withdrawal and Substitution of Counsel	Allowed **10/21/2016**
087A16	In re Hughes	State's Motion for Withdrawal and Substitution of Counsel	Allowed **10/21/2016**
088P15-4	State v. Mason W. Hyde	1. Def's *Pro Se* Motion for Objection 2. Def's *Pro Se* Motion for Petition for Writ of Error	1. Dismissed 2. Dismissed **Ervin, J., recused**
088A16	In re Smith	State's Motion for Withdrawal and Substitution of Counsel	Allowed **10/21/2016**
104P11-8	State v. Titus Batts	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA	Dismissed **Ervin, J., recused**
107P98-5	State v. Randolph Wilson	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Warren County 2. Def's *Pro Se* Motion for *De Novo* Review	1. Denied 2. Denied **Ervin, J., recused**
118P15-2	State v. Victor Adrian Gutierrez	1. Def's *Pro Se* Motion for PDR (COAP15-65) 2. Def's *Pro Se* Motion for Subpoena *Duces Tecum*	1. Dismissed 2. Dismissed as moot
121P16-2	State v. Damario Montreal Coxton	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-575-2) 2. Def's PDR Under N.C.G.S. § 7A-31 3. Def's Motion to Deem PDR Timely Filed 4. Def's Petition in the Alternative for *Writ of Certiorari* to Review Decision of COA	1. Dismissed *ex mero motu* 2. Denied 3. Allowed 4. Dismissed as moot

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

8 December 2016

124A16	Jillian Murray v. University of North Carolina at Chapel Hill	1. Def's Motion for Judicial Notice (COA15-375) 2. State's Motion for Withdrawal of Counsel	1. 2. Allowed **12/08/2016**
131P16-3	Somchoi Noorsob v. Supreme Court of North Carolina	Petitioner's *Pro Se* Motion for Notice to Appeal and Request for Certificate of Appealability	Dismissed **10/17/2016**
133P16-2	State v. William Gerald Price	Def's *Pro Se* Motion for Request to Clarify (COAP15-1073)	Dismissed
138P16	Brad R. Johnson v. James R. Prevatte, Jr., Prevatte & Prevatte, PLLC	1. Plt's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP15-667) 2. Plt's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA	1. Denied 2. Denied
151P14-4	Kimberly Shreve v. North Carolina Department of Justice, Kristen Fetter, Colon Willoughby, and Tina Hoagland Byrd	1. Plt's *Pro Se* Motion for Opposition to Motion to Dismiss 2. Plt's *Pro Se* Motion for Leave to File Amended Complaint 3. Plt's *Pro Se* Motion for Opposition to Gatekeeper Order	1. Dismissed 2. Dismissed 3. Dismissed
175P16	N.C. Department of Health and Human Services, Division of Medical Assistance v. Parker Home Care, LLC Division of Medical Assistance, N.C. Department of Health and Human Services v. Parker Home Care, LLC	1. State's Motion for Temporary Stay (COA15-1026; COA15-1033) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Cardinal Innovations Healthcare Solutions, et al. Motion for Leave to File *Amicus* Brief	1. Allowed **05/11/2016** Dissolved **12/08/2016** 2. Denied 3. Denied 4. Dismissed as moot
187PA16	Kornegay Family Farms, LLC, et al. v. Cross Creek Seed, Inc.	Def's Motion for Leave to File Record on Appeal	Allowed **11/08/2016**
193P16	State v. Calvin Renard Carter	1. State's Motion for Temporary Stay (COA15-1234) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Motion to Deem as Timely Filed the Response to PDR	1. Allowed **05/24/2016** 2. Allowed 3. Allowed 4. Denied

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

8 December 2016

198P16	State v. Miguel Melo Nolasco	Def's PDR Under N.C.G.S. § 7A-31 (COA15-972)	Denied
211PA16	SED Holdings, LLC v. 3 Star Properties, LLC, et al.	1. Defs' Motion to Appear 2. Plt's Motion to Stay Proceedings Against 3 Star Properties, LLC, Because it is in Bankruptcy 3. Plt's Motion that Plaintiff be Permitted to Proceed Now in the Trial Court Against the Remaining Defendants	1. Allowed **11/01/2016** 2. Special Order **11/01/2016** 3. Special Order **11/01/2016**
226P16-2	In re Foreclosure of Deed of Trust from Burman Howard Maine, Betty Farmer Maine and Brandon Travis Maine, Grantor, to PBRE, Inc., Trustee, Recorded in Book 405, Page 2169, in the Ashe County Public Registry by Morrison Trustee Services, LLC, Substitute Trustee	Petitioners' *Pro Se* Motion for Request to Clarify	Dismissed
226P16-3	Betty F. Maine and Brandon Maine v. Keith B. Nichols, et al.	Petitioners' *Pro Se* Petition for *Writ of Mandamus*	Denied
228P16	State v. Derrick Dewayne Wallace	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-783) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion for Response to PDR to be Deemed Timely Filed	1. Dismissed *ex mero motu* 2. Denied 3. Dismissed as moot
239P16	State v. Chad Braxton Bumpers	1. State's Motion for Temporary Stay (COA16-1) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/24/2016** Dissolved **12/08/2016** 2. Denied 3. Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

8 DECEMBER 2016

244P16	State v. Sandra Meshell Brice	1. State's Motion for Temporary Stay (COA15-904) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/28/2016** 2. Allowed 3. Allowed
246P16-3	State v. Christopher Charles Friscia, The Trust, and Maria Adriana Friscia, The Trust	Defs' *Pro Se* Motion to Reconsider	Dismissed
248P16	Friday Investments, LLC as Successor in Interest to Tisano Realty, Inc. v. Bally Total Fitness of the Mid-Atlantic, Inc. f/k/a Bally Total Fitness of the Southeast, Inc. f/k/a Holiday Health Clubs of the Southeast, Inc. as Successor in Interest to Bally Fitness Corporation; and Bally Total Fitness Holding Corporation	1. Defs' PDR Under N.C.G.S. § 7A-31 (COA15-680) 2. Defs' Motion to Amend PDR	1. Allowed 2. Allowed
249P16	Kevin Gerity v. North Carolina Department of Health and Human Services	1. Petitioner's PDR Under N.C.G.S. § 7A-31 (COA15-843) 2. Petitioner's Petition for *Writ of Certiorari* to Review Decision of COA	1. Denied 2. Denied
256P16-2	State v. Jonathan James Newell	1. Def's *Pro Se* Motion for Appeal (COAP16-233) 2. Def's *Pro Se* Petition for *Writ of Mandamus* 3. Def's *Pro Se* Second Petition for *Writ of Mandamus*	1. Dismissed 2. Denied 3. Denied

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

8 December 2016

257P16-2	Federal National Mortgage Association a/k/a Fannie Mae v. William Gerald Price, the Trust, and William Gerald Price	1. Petitioner's *Pro Se* Motion for Notice of Appeal 2. Respondent's Motion to Dismiss Appeal 3. Respondent's Motion for Sanctions 4. Petitioner's *Pro Se* Motion for Certified Certificate of Registration Pursuant to F.A.R.A., U.S.C. 22, § 611	1. --- 2. Allowed 3. Dismissed without prejudice 4. Dismissed
262P16	Ronald G. Keaton, Jr., Employee v. ERMC, III, Employer, New Hampshire Insurance Company, Carrier, Carl Warren & Company, Third-Party Administrator	1. Defs' Motion for Temporary Stay (COA15-1108) 2. Defs' Petition for *Writ of Supersedeas* 3. Defs' PDR Under N.C.G.S. § 7A-31 4. Defs' Motion to Hold PDR in Abeyance 5. Defs' Motion to Withdraw PDR	1. Allowed **07/13/2016** 2. --- 3. --- 4. --- 5. Allowed
267P16	Robert V. Powell v. P2Enterprises, LLC and Robert Henry Powell	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA15-542) 2. Plt's Petition for *Writ of Certiorari* to Review Decision of COA	1. Dismissed 2. Denied
268P16-2	Owen D. Leavitt v. Willie Hargrove	Plt's *Pro Se* Motion for Notice of Appeal	Dismissed *ex mero motu*
269P16	State v. Shameil Dontel Smith	1. Def's *Pro Se* Motion for Adversary Preliminary Hearing 2. Def's *Pro Se* Motion for Notice of Discovery and Specific Demand for Information 3. Def's *Pro Se* Motion to Transport 4. Def's *Pro Se* Motion to Activate Indictment Information	1. Dismissed 2. Dismissed 3. Dismissed 4. Dismissed
270P16	Matthew Nereim v. Ryan Cummins; City Chevrolet Automotive Company; Hendrick Luxury Collision Center, LLC; National General Insurance Company; and each of them	Plt's PDR Under N.C.G.S. § 7A-31 (COA15-1253)	Denied

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<table>
<tr><td>271A16</td><td>Latwang Janell Reid v. State</td><td>Plt's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA15-1059)</td><td>Dismissed ex mero motu

Ervin, J., recused</td></tr>
<tr><td>275A16</td><td>Colleen Blondell v. Shakil Ahmed, Shabana Ahmed, Michael Fekete and Susan Elizabeth Fekete, Individually</td><td>1. Defs' (Shakil Ahmed and Shabana Ahmed) Notice of Appeal Based Upon a Dissent (COA15-796)

2. Defs' (Shakil Ahmed and Shabana Ahmed) PDR as to Additional Issues</td><td>1. ---

2. Denied</td></tr>
<tr><td>279P16</td><td>In the Matter of M.A.W.</td><td>1. Petitioner's PDR Under N.C.G.S. § 7A-31 (COA15-1153)

2. Petitioner's Motion to Deem PDR Timely Filed

3. Petitioner's Petition for Writ of Certiorari to Review Decision of COA</td><td>1. Dismissed

2. Denied

3. Allowed</td></tr>
<tr><td>280P15</td><td>In re Foreclosure of Real Property Under Deed of Trust from Michael D. Gutowski and Mary Anne Gutowski, in the Original Amount of $286,000, Dated November 9, 2006 and Recorded on November 15, 2006 in Book 4367 at Page 502, Union County Registry; Trustee Services of Carolina, LLC, Substitute Trustee</td><td>1. Respondents' Pro Se Notice of Appeal Based Upon a Constitutional Question (COA14-881)

2. Respondents' Pro Se PDR Under N.C.G.S. § 7A-31

3. Respondents' Pro Se Motion for Stay of Foreclosure Sale

4. Respondents' Pro Se Motion to Enjoin All Other State Actions

5. Petitioner's Motion to Dismiss Appeal

6. Respondents' Pro Se Motion for Stay in Light of Bankruptcy Filing</td><td>1. ---

2. Denied

3. Denied 08/25/2015

4. Dismissed as moot

5. Allowed

6. Dismissed as moot</td></tr>
<tr><td>280P16</td><td>Patricia B. Hoover v. George Barry Hoover</td><td>Plt's PDR Under N.C.G.S. § 7A-31 (COA15-1396)</td><td>Denied</td></tr>
</table>

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282P16-2	Jeremy Bruns and Jenny Bruns v. Rhonda Bryant, Dalton Bryant, Sr., Dalton Bryant, Jr., Pat McCrory, as Governor of North Carolina, Frank Perry, as Secretary of the North Carolina Department of Public Safety, Anthony Tata, as Secretary of the North Carolina Department of Transportation, Veronica McClain, USAA, and State of North Carolina	Plts' *Pro Se* Motion to Reconsider PDR Under N.C.G.S. § 7A-31(a) and *Writ of Mandamus* Under Rule 22	Denied
284P16	State v. Jaronta Raynor	Def's *Pro Se* Motion of Dismissal	Dismissed
285P16	State v. Ceasar Jones	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of the COA (COAP13-558)	Dismissed
289P16	State v. Brian Jack Frazier	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1089)	Denied
291P16	State v. John Frede Sabbaghrabaiotti	1. State's Motion for Temporary Stay (COA15-1028) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **08/10/2016** Dissolved **12/08/2016** 2. Denied 3. Denied 4. Dismissed as moot
292P16	State v. Ramon A. Black	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1283)	Denied
293P16	Sammie Ray Usher, Jr. v. The Charlotte-Mecklenburg Hospital Authority	Plt's PDR Under N.C.G.S. § 7A-31 (COA15-880)	Denied
294P16	State v. Dragan Blazevic	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1343)	Denied

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295P16	State v. Christopher Shawn Frione	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-1143)	Denied
296P16	Caron Associates, Inc. v. Southside Manufacturing Corp. and Crown Financial, LLC	Def's (Crown Financial, LLC) PDR Under N.C.G.S. § 7A-31 (COA15-1376)	Denied
298P16	State v. James Stanley Daye	Def's PDR Under N.C.G.S. § 7A-31 (COA16-74)	Denied
302P16	State v. Marshall Tristan Shaw (DEATH)	1. Def's Petition for *Writ of Certiorari* to Review Order of Superior Court, Moore County 2. State's Motion for Extension of Time to File Response	1. Dismissed 2. Dismissed as moot
303P16	James K. Sanderford v. Duplin Land Development, Inc.	Def's Petition for *Writ of Certiorari* to Review Decision of COA (COA15-1214)	Denied
304P16	State v. Michael Ray Pigford	State's PDR Under N.C.G.S. § 7A-31 (COA15-1047)	Denied
305P16	State v. Jeremy Daniel Russom	Def's *Pro Se* Motion for PDR (COAP14-359)	Dismissed
306P16	John T. Turchin and Susan Turchin v. ENBE, LLC	Plts' PDR Under N.C.G.S. § 7A-31 (COA15-1236)	Denied
307P15-2	The Kimberley Rice Kaestner 1992 Family Trust v. North Carolina Department of Revenue	1. State's Motion for Temporary Stay (COA15-896) 2. State's Petition for *Writ of Supersedeas* 3. State's Notice of Appeal Based Upon a Constitutional Question 4. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **07/25/2016** 2. Allowed 3. Dismissed *ex mero motu* 4. Allowed
307P16	State v. Dejerod Thomas Clapp	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-1079) 2. Def's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied

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308P16	State v. Robert William Ashworth	1. State's Motion for Temporary Stay (COA15-1279) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **08/22/2016** Dissolved **12/08/2016** 2. Denied 3. Denied 4. Dismissed as moot
309A16	State v. Rico Lamar Barnes	Def's Notice of Appeal Based Upon a Constitutional Question (COA15-1173)	Dismissed *ex mero motu*
310A16	Worley, et al. v. Moore, et al.	Defs' Motion to File Corrected Brief	Allowed **10/31/2016** **Ervin, J., recused**
310A16	Worley, et al. v. Moore, et al.	Def's Motion for Extension of Time to File Reply Brief	Allowed as to the 5 Days Extension Only **11/23/2016** **Ervin, J., recused**
311P16	Gary Dellinger, Virginia Dellinger, and Timothy S. Dellinger, Petitioners v. Lincoln County, Lincoln County Board of Commissioners, and Strata Solar, LLC, Respondents and Timothy P. Mooney, Martha McLean, and The Sailview Owners Association, Intervenor Respondents	Intervenor Respondents' PDR Under N.C.G.S. § 7A-31 (COA15-1370)	Denied
312P16	Pittsboro Matters, Inc., et al. v. Town of Pittsboro v. Chatham Park Investors, LLC	Intervenor's PDR Under N.C.G.S. § 7A-31 (COA16-28)	Denied
316P16	State v. Nathan Lorenzo Holden	Def's *Pro Se* Motion for Writ of Prohibition	Denied

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317P16-2	Ronald Thompson Corbett v. Pat McCrory, Governor	Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **09/23/2016**
320P16	State v. Janely Higuera Cardenas	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1012)	Denied
321P16	State v. Clayton James	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-853)	Denied
322P16	State v. Tishekka Nicole Cain	1. Def's PDR Under N.C.G.S. § 7A-31 (COA15-1208) 2. Def's Motion to Deem PDR Timely Filed 3. Def's Motion in the Alternative to Treat PDR as a Petition for *Writ of Certiorar*i	1. Denied 2. Denied 3. Allowed
325P16	State v. Christopher Roger Cole, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1291)	Denied
327P16	Eugene Elliott McKenzie v. Daniel M. Horne, Jr.	1. Petitioner's *Pro Se* Motion for Petition for Mandate 2. Petitioner's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Petitioner's *Pro Se* Motion to Appoint Counsel	1. Denied 2. Allowed 3. Dismissed as moot
328P16	Linwood Wilson v. Barbara Wilson	1. Plt's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COA15-1141) 2. Plt's *Pro Se* Motion for Temporary Stay 3. Plt's *Pro Se* Petition for *Writ of Supersedeas*	1. Denied 2. Denied **09/06/2016** 3. Denied
331A16	State v. Amanda Gayle Reed	1. State's Motion for Temporary Stay (COA15-363) 2. State's Petition for *Writ of Supersedeas* 3. State's Notice of Appeal Based Upon a Dissent	1. Allowed **09/06/2016** 2. Allowed **10/20/2016** 3. ---

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332P16	Sandra D. Snipes and William J. Snipes v. Britthaven, Inc., Principle Long Term Care, Inc., Spruce LTC Group, LLC d/b/a Richmond Pines Healthcare and Rehabilitation Center, and Fred McQueen, Jr., M.D.	1. Defs' (Britthaven, Inc., Principle Long Term Care, Inc., and Spruce LTC Group, LLC d/b/a Richmond Pines Healthcare and Rehabilitation Center) Motion for Temporary Stay (COA16-291) 2. Defs' (Britthaven, Inc., et al.) Petition for *Writ of Supersedeas* 3. Defs' (Britthaven, Inc., et al.) Petition for *Writ of Certiorari* to Review Order of COA	1. Allowed **09/07/2016** Dissolved **12/08/2016** 2. Denied 3. Denied
333P16	State of North Carolina *ex rel.* Commissioner of Insurance v. North Carolina Rate Bureau In the Matter of the Filing Dated January 3, 2014 by the North Carolina Rate Bureau for Revised Homeowners' Insurance Rates and Homeowners' Insurance Territory Definitions	1. N.C. Rate Bureau's Notice of Appeal Based Upon a Constitutional Question (COA15-402) 2. N.C. Rate Bureau's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
336P16	WIDENI77 v. North Carolina DOT, I-77 Mobility Partners LLC and State of North Carolina	Plt's PDR Prior to Determination by COA	Denied
337P00-2	State v. Waverly Orlando Harshaw, Jr.	1. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Catawba County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot **Edmunds, J., recused**
339P16	State v. Silvestre Alvarado Chaves	Def's Petition for *Writ of Certiorari* to Review Order of Superior Court	Dismissed
340A95-5	State v. William Morganherring, IV (DEATH)	Def's *Pro Se* Motion for Appeal of Denial of Motion for Supplemental Post-Conviction Discovery	Dismissed
340P16	State v. Alfred Lee Cooper	Def's *Pro Se* Motion for PDR (COAP16-192)	Dismissed

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341P16	State v. Joe Terry Wright	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of COA (COAP16-589)	Dismissed
342P16	State v. Antravis Quanealious Briggs	Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-767)	Denied
343P16	John M. Huff, Jr. v. William Hoyt Paramore, III	Plt's *Pro Se* Motion for Hearing	Dismissed
345P16-2	State v. Dwayne Demont Haizlip	1. Def's *Pro Se* Petition for *Writ of Mandamus* 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis*	1. Denied **09/29/2016** 2. Allowed **09/29/2016**
348A16	Kevin J. Tully v. City of Wilmington	Plt's Motion for Withdrawal of Appearance and for Substitution of Counsel	Allowed **11/09/2016**
351P16	State v. Matthew Ryan Hoover	Def's Petition for *Writ of Certiorari* to Review Order of Superior Court, Iredell County	Dismissed
352P16	State v. Jeral Thomas Ore, Jr.	1. State's Motion for Temporary Stay (COA16-100) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **09/29/2016** 2. 3.
353P16	State v. Camellia Brown	1. Def's *Pro Se* Motion for Appropriate Relief 2. Def's *Pro Se* Motion for Preparation of Stenographic Transcript 3. Def's *Pro Se* Petition for *Writ of Habeas Corpus* 4. Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Wake County 5. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 6. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed without prejudice 2. Dismissed as moot 3. Denied **09/26/2016** 4. Dismissed 5. Allowed 6. Dismissed as moot

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354P16	Catrina Jarrett v. William Andrew Jarrett	1. Def's Motion for Temporary Stay (COA15-1346) 2. Def's Petition for *Writ of Supersedeas* 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **09/27/2016** Dissolved **10/28/2016** 2. Denied **10/28/2016** 3. Denied **10/28/2016**
355P15	State v. Derrick Aundra Huey	1. State's Motion for Temporary Stay (COA15-100) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **10/26/2015** 2. Allowed 3. Allowed
358P15-2	State v. Shawn Louis Goodman	Def's *Pro Se* Petition for *Writ of Certiorari* to Review Order of Superior Court, Rowan County (COAP14-917)	Dismissed
359P16	State v. Joseph Maurice Craig	Def's Petition for *Writ of Certiorari* to Review Order of COA (COAP16-105)	Dismissed
360P16	State v. Thomas J. Valentine	Def's *Pro Se* Motion for PDR (COAP16-266)	Dismissed
362P16	Aleta Alston-Toure v. Yehudit Toure and Nkrumah Jennings	Plt's *Pro Se* Motion for Notice of Appeal	Dismissed
363P16	State v. Credrick D. Washington	1. Def's Pro Se Petition for *Writ of Certiorari* to Review Order of Superior Court, Cabarrus County 2. Def's *Pro Se* Motion to Proceed *In Forma Pauperis* 3. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Allowed 3. Dismissed as moot
364P16	State v. Bryan Lane Lanier	Def's *Pro Se* Motion to Subpoena Defense Witnesses	Dismissed **10/21/2016**
365A16	State v. David Michael Reed	1. State's Motion for Temporary Stay (COA16-33) 2. State's Petition for *Writ of Supersedeas* 3. State's Notice of Appeal Based Upon a Dissent	1. Allowed **10/05/2016** 2. Allowed **11/02/2016** 3. ---
366P16	State v. Angelo Applewhite	Def's *Pro Se* Motion for PDR Under N.C.G.S. § 7A-31 (COAP16-651)	Dismissed

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367P16	State v. Rahmil Ingram	1. State's Motion for Temporary Stay (COA16-120) 2. State's Petition for *Writ of Supersedeas* 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **10/05/2016** Dissolved **12/08/2016** 2. Denied 3. Denied
368P16	Azige, et al. v. Holy Trinity Ethiopian Orthodox Tewahdo Church, et al.	Defs' Motion to Withdraw and for Substitution of Counsel	Allowed **11/22/2016** **Ervin, J., recused**
369P16	Jacqueline Clark v. North Carolina Department of Public Safety	Respondent's PDR Under N.C.G.S. § 7A-31 (COA15-624)	Denied
370P04-15	State v. Anthony Leon Hoover	1. Def's *Pro Se* Motion for Writ of Error 2. Def's *Pro Se* Petition for *Writ of Mandamus* (COAP15-913)	1. Denied **10/07/2016** 2. Denied **10/07/2016** **Hudson, J., recused**
371P16	Linwood Wilson v. Joe Curtis	1. Plt's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA16-194) 2. Plt's *Pro Se* PDR Under N.C.G.S. § 7A-31 3. Plt's *Pro Se* Amended PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied 3. Denied
372A16	State v. William Clifton Crabtree, Sr.	1. Def's Notice of Appeal Based Upon a Dissent (COA15-1124) 2. Def's Notice of Appeal Based Upon a Constitutional Question 3. Def's PDR as to Additional Issues 4. State's Motion to Dismiss Appeal Based Upon a Constitutional Question 5. State's Motion to Deem Motion to Dismiss Notice of Appeal Based Upon a Constitutional Question and Response to PDR Timely Filed	1. --- 2. --- 3. Denied 4. Allowed 5. Allowed
373P16	State v. Eric Alan Sanchez	Def's PDR Under N.C.G.S. § 7A-31 (COA16-249)	Denied

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374P13-7	State v. Marvin Wade Millsaps	1. Def's *Pro Se* Motion for Notice of Appeal (COAP16-531; COAP16-774) 2. Def's *Pro Se* Petition for *Writ of Mandamus*	1. Dismissed 2. Dismissed **Ervin, J., recused**
374A16	Tatita M. Sanchez v. Cobblestone Homeowners Association of Clayton, Inc., a North Carolina non-profit corporation	1. Def's Notice of Appeal Based Upon a Dissent (COA15-1281) 2. Def's Motion to Consolidate Appeals	1. --- **10/13/2016** 2. Allowed **10/13/2016**
375A16	Frank Christopher v. Cobblestone Homeowners Association of Clayton, Inc., a North Carolina non-profit corporation	1. Def's Notice of Appeal Based Upon a Dissent (COA15-1282) 2. Def's Motion to Consolidate Appeals	1. --- **10/13/2016** 2. Allowed **10/13/2016**
376P02-6	State v. Robert Wayne Stanley	1. State's Motion for Temporary Stay (COA16-436) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **11/17/2016** 2. **Ervin, J., recused**
376A16	Vincent Franks, Jr. v. Cobblestone Homeowners Association of Clayton, Inc., a North Carolina non-profit corporation	1. Def's Notice of Appeal Based Upon a Dissent (COA15-1303) 2. Def's Motion to Consolidate Appeals	1. --- **10/13/2016** 2. Allowed **10/13/2016**
377A16	Robert Sain and Jennifer Sain v. Cobblestone Homeowners Association of Clayton, Inc., a North Carolina non-profit corporation	1. Def's Notice of Appeal Based Upon a Dissent (COA15-1302) 2. Def's Motion to Consolidate Appeals	1. --- **10/13/2016** 2. Allowed **10/13/2016**

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378A16	Dennis Draughon and Megan Draughon v. Cobblestone Homeowners Association of Clayton, Inc., a North Carolina non-profit corporation	1. Def's Notice of Appeal Based Upon a Dissent (COA15-1280) 2. Def's Motion to Consolidate Appeals	1. --- **10/13/2016** 2. Allowed **10/13/2016**
379P16	State v. Henry Datwane Hunt	Def's PDR Under N.C.G.S. § 7A-31 (COA16-143)	Denied
380P16	State v. Jackson Cain Whisenant	Def's PDR Under N.C.G.S. § 7A-31 (COA16-82)	Denied
383P16	State v. Marvin Hakeem Johnson	Def's PDR Under N.C.G.S. § 7A-31 (COA15-732)	Denied
384P16	State v. Phillip Wayne Broyal	Def's PDR Under N.C.G.S. § 7A-31 (COA16-21)	Denied
386P16	State v. Quentin Lee Dick	1. State's Motion for Temporary Stay (COA15-1400) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **10/14/2016** 2.
387P16	Tony A. Hawkins v. Ernest R. Sutton, Superintendent	Petitioner's *Pro Se* Petition for *Writ of Mandamus*	Denied
389A15-2	State v. Tae Kwon Hammonds	Def's Motion for Revision of Briefing Deadlines	Allowed **10/13/2016**
389P16	People of North Carolina, *ex rel.* Christopher Charles Friscia and Maria Andriena Friscia v. Nathan J. Taylor, et al.	Petitioners' *Pro Se* Petition for *Writ of Mandamus*	Dismissed
390P16	State v. Linda Beth Chekanow and Robert David Bishop	1. State's Motion for Temporary Stay (COA15-1294) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **10/19/2016** 2.
391A16	Next Advisor Continued, Inc. v. Lendingtree, Inc. and Lendingtree LLC	Defs' Motion to Submit Appellate Filings Under Seal	Allowed **10/19/2016**

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391A16	Next Advisor Continued, Inc. v. Lendingtree, Inc., et al.	Def's Motion to Amend Certificate of Service of Brief	Allowed **12/01/2016**
391A16	Next Advisor Continued, Inc. v. Lendingtree, Inc., et al.	1. Defs' Motion for Temporary Stay 2. Defs' Petition for *Writ of Supersedeas* 3. Defs' Petition in the Alternative for *Writ of Certiorari* to Review Decision of N.C. Business Court 4. Defs' Motion to Amend and Supplement Record on Appeal	1. Denied 2. Denied 3. Denied 4. Dismissed as moot
392A16	The Fidelity Bank v. N.C. Department of Revenue	Petitioner's Motion to Hold Appeal in Abeyance Pending Determination of PDR in Companion Case	Allowed **10/28/2016**
393P16	The Fidelity Bank v. N.C. Department of Revenue	Petitioner's PDR Prior to a Determination of COA (COA16-1051)	Allowed
394P16	State v. Daniel Scott Best	Def's PDR Under N.C.G.S. § 7A-31 (COA16-27)	Denied
396P16	Teresa Thompson v. Evergreen Baptist Church	Plt's PDR Under N.C.G.S. § 7A-31 (COA15-1031)	Denied
397A16	State v. Adam Robert Jackson	1. Def's Motion for Removal of Current Appellate Counsel and Reappointment of the Office of the Appellate Defender 2. Def's Motion for Current Appellate Counsel to Deliver Entire File to the Office of the Appellate Defender	1. Allowed **11/07/2016** 2. Allowed **11/07/2016**
398P16	State v. Eric Lamar Lindsey	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA15-1188) 2. Def's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
400P16	State v. Clairy Kanyinda Mbaya	Def's PDR Under N.C.G.S. § 7A-31 (COA16-364)	Denied
402P16	State v. Jermuis Erell Andrews	1. Def's *Pro Se* Notice of Appeal Based Upon a Constitutional Question (COA16-253) 2. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
403P16	Ricky Turner v. Cherry Hospital	Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **10/31/2016**

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404P16	State v. Samson Jamarco Coleman	Petitioner's *Pro Se* Motion for PDR (COAP16-719)	Denied
405P16	State v. Antonio Freeman	Def's Petition for *Writ of Certiorari* to Review Order of Superior Court, Northampton County	Denied
406P16	State v. Michael A. Sorbello	1. Def's *Pro Se* Motion for PDR (COAP16-721) 2. Def's *Pro Se* Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
407P16	James Cummings v. State of North Carolina	1. Def's *Pro Se* Motion for Discretionary Review (COAP16-706) 2. Def's *Pro Se* Motion for Appeal	1. Dismissed 2. Dismissed
408P16	State v. Lowell Thomas Manring	Def's PDR Under N.C.G.S. § 7A-31 (COA16-130)	Denied
410P16	State v. Joshua Sanchez	1. State's Motion for Temporary Stay (COA15-1401) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **11/07/2016** 2.
411P16	Union County v. Town of Marshville	1. Def's Motion for Temporary Stay 2. Def's Petition for *Writ of Supersedeas*	1. Denied **11/15/2016** 2. **Ervin, J., recused**
413P16	State v. Wesley Patterson	Def's PDR Under N.C.G.S. § 7A-31 (COA15-1145)	Denied
416P16	State v. Jeremy Rossco Bishop	Def's PDR Under N.C.G.S. § 7A-31 (COA16-276)	Denied
417P16	State v. Andrew Young	1. Def's *Pro Se* PDR Under N.C.G.S. § 7A-31 (COA15-1003) 2. State's Motion to Dismiss Def's Appeal	1. Dismissed 2. Dismissed as moot
424P16	Corey D. Greene v. Susan White	Petitioner's *Pro Se* Motion for Notice of Appeal (COAP16-828)	Denied **12/02/2016**
426P06-2	State v. Billy Thomas Pearson	Def's *Pro Se* Motion for PDR (COAP16-716)	Dismissed
430P16	Brian Reavis v. State of North Carolina	Petitioner's *Pro Se* Petition for *Writ of Habeas Corpus*	Denied **11/23/2016**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

8 DECEMBER 2016

436P16	State v. Howard Franklin Eubanks	1. Def's Motion for Temporary Stay 2. Def's Petition for *Writ of Certiorari*	1. Allowed **12/05/2016** 2.
440P16	State v. Christopher Glenn Turner	1. State's Motion for Temporary Stay (COA16-656) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **12/06/2016** 2
441P16	State v. Marian Olivia Curtis	1. State's Motion for Temporary Stay (COA16-458) 2. State's Petition for *Writ of Supersedeas*	1. Allowed **12/06/2016** 2.
444P08-2	State v. Rickey Nelson Spencer	Def's *Pro Se* Motion for Order to Exhaust Defendant Arguments	Dismissed
459P00-6	State v. William M. Huggins	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied
510P04-3	State v. Jose Luis Macias	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied **10/31/2016**
579P01-4	State v. Antorio Rice Smarr	Def's *Pro Se* Petition for *Writ of Mandamus*	Denied
618P02-2	State v. Michael Ray Trull	Def's Petition for *Writ of Certiorari* to Review Order of Superior Court, Cabarrus County	Dismissed
669P03-4	State v. Tony Robert Jones	1. Def's *Pro Se* Motion for Rehearing 2. Def's *Pro Se* Motion to Dismiss 3. Def's *Pro Se* Motion for Petition to Show Just Cause Under Common Law	1. Dismissed 2. Dismissed 3. Dismissed **Ervin, J., recused**

Disposition of Petitions for Discretionary Review Under G.S. 7A-31

20 December 2016

080A14-1	State v. David Martin Beasley Young	1. Motion Requesting Court to Take Judicial Notice (COA13-646) 2. Addendum to Motion Requesting Court to Take Judicial Notice 3. State's Response to Motion Requesting Court to Take Judicial Notice 4. Addendum to Motion Requesting Court to Take Judicial Notice	1. Dismissed as moot 2. Dismissed as moot 3. Dismissed as moot 4. Dismissed as moot
369A15	State v. John Joseph Carvalho, II	State's Motion to Amend the Record on Appeal	Dismissed as moot
374A14	Fisher, et al. v. Flue-Cured Tobacco Cooperative Stabilization Corporation	1. Plts' Memorandum of Additional Authority 2. Def's Motion for Leave to Respond to Memorandum of Additional Authority	1. --- 2. Dismissed as moot

CLIENT SECURITY FUND

IN RE CLIENT SECURITY FUND OF)
THE NORTH CAROLINA STATE BAR)

ORDER

This matter came on to be considered before the Supreme Court of North Carolina in conference duly assembled on the 18th day of November 2016 upon request of the North Carolina State Bar, and it appearing from information provided by the State Bar that the balance of the Client Security Fund has fallen below the minimum balance of $1,000,000 prescribed by the Court when the Fund was established, and that to restore the required minimum balance and accomplish the purpose of the Fund during 2017, it will be necessary to increase the amount of the annual assessment previously imposed by the Court in its continuing order of 2007 from Twenty-five ($25) to Fifty Dollars ($50);

Now, therefore, it is hereby ordered that the continuing order of 2007 be superseded and that for the purposes of 2017, each active member of the North Carolina State Bar be assessed the sum of Fifty Dollars ($50) in support of the Client Security Fund, it being understood that for the purposes of 2018 and all succeeding years, the amount of the assessment shall again be Twenty-five Dollars ($25), unless and until the Court enters another superseding order.

This the 18th day of November 2016.

s/Ervin, J.
JUSTICE, FOR THE COURT

WITNESS my hand and the Seal of the Supreme Court of North Carolina, this the 21st day of November 2016.

s/J. Bryan Boyd
J. Bryan Boyd
Clerk of the Supreme Court

JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2016-01

November 18, 2016

QUESTIONS:

The Judicial Standards Commission issues this Formal Advisory Opinion with respect to two questions relating to ethical limits on the conduct of district court judges presiding over certain domestic matters involving self-represented litigants:

1) Is it ethically permissible for a judge to question a witness regarding the statutory factors in an uncontested divorce involving only *pro se* parties?

2) Is it ethically permissible for a judge to question a witness in a child custody determination involving only *pro se* parties if necessary to allow the judge to consider the relevant statutory factors to determine the best interests of the child?

CONCLUSION:

These questions relate to the limits on a trial judge's discretion to question witnesses during hearings to grant an uncontested divorce or make a child custody determination in cases involving only self-represented (*pro se*) litigants. This opinion does not address what additional ethical duties may apply in cases where only one party is proceeding *pro se* and the other is represented. Rule 614(b) of the North Carolina Rules of Evidence allows judges to engage in such questioning, and provides that the "court may interrogate witnesses, whether called by itself or by a party." The Commission advises that a judge may ethically question witnesses under Rule 614(b) in both uncontested divorce cases and custody determinations involving only *pro se* parties, so long as it is done so (1) in order to render a full and fair decision based on adequate, reliable and credible evidence (Canon 3A(1) and (4)); (2) the questions and method of questioning are neutral and do not reasonably call into question the integrity or impartiality of the judge (Canon 2A and Canon 3); and (3) in asking the questions, the judge is "patient, dignified and courteous" (Canon 3A(3)). In addition, and as a general matter, use of Rule 614(b) may be beneficial to discharge the judge's other ethical duties to maintain order and decorum in the courtroom (Canon 3A(2)) and to dispose promptly of the business of the court (Canon 3A(5)).

<u>DISCUSSION:</u>

Under North Carolina law, the trial judge must at times make findings of fact supported by the evidence in child custody determinations and divorce cases. N.C.G.S. Section 50-13.2(a) identifies the relevant factors in custody awards and provides that "[a]n order for custody must include written findings of fact that reflect the consideration of each of these factors and that support the determination of what is in the best interest of the child." A trial judge also must make certain factual findings in divorce cases under N.C.G.S. Section 50-6 (divorce after separation for one year) and N.C.G.S. Section 50-10 (requiring certain findings by the trial judge). In divorce and custody determinations involving only *pro se* parties, there is the risk that the evidence presented can either be confusing or fail to address each required statutory factor that must be considered by the trial judge. Under these circumstances, therefore, a judge may properly use the Rule 614(b) authority to fulfill his or her obligations under Canon 3A(1), which requires a judge to be faithful to the law, and Canon 3A(4), which requires the judge to accord each litigant a full opportunity to be heard according to law.

Despite the benefits of exercising Rule 614(b) authority to fulfill the judge's duties under Canon 3A in these circumstances, there are several important limitations on questioning of witnesses in uncontested divorce cases and child custody cases involving only *pro se* parties. First, the judge in an effort to determine necessary facts should not offer legal assistance or advocacy on behalf of any self-represented party in violation of Canon 5F, which prohibits judges from practicing law. Second, the judge should not ask the questions in a manner that creates the appearance of bias in favor of a particular party in violation of Canon 2A and Canon 3, which both require the judge to conduct himself or herself in a manner that promotes impartiality in judicial decision-making. When judges are engaged in questioning of witnesses in these circumstances, therefore, judges must be vigilant in ensuring that the questions are neutral and fair and do not indicate a desire to provide legal assistance to or otherwise benefit a particular party. An explanation to the self-represented litigants as to why the judge must ask such questions is also permissible.

References:

North Carolina Code of Judicial Conduct Canon 1, Canon 2A, Canon 3A(1)-(5), Canon 5F

North Carolina Rule of Evidence 614(b)

N.C.G.S. Section 50-6

N.C.G.S. Section 50-10

N.C.G.S. Section 50-13.2(a)

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