THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W Dickson, Circuit Court Judge

Case No 2009-CP-18-2674

The Home Builders Association of South Carolina and
the Charleston-Trident Home Builders Association, Inc — Appellants,

v

School District No 2 of Dorchester County and
the Board of Trustees for Dorchester School District No 2 — Respondents

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REPLY BRIEF OF APPELLANTS

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I The Lower Court's Application of Bradley Is Misplaced

Respondents argue that the lower court was correct in its application of Bradley v Cherokee , 322 S C 181, 470 S E 2d 570 (1996) to the facts at hand (Respondents' Initial Brief, at 4-8) Respondents and the lower court fail to recognize significant differences between the Act in Bradley and Act No 99, 2009 S C Acts 1024 ("Act 99") which render their proposition untenable In applying the facts of Bradley, the lower court disregarded the fact that the Bradley decision is specifically limited to local taxation—a local option sales tax, which, as the Bradley court discussed at length, had been approved by voters in a referendum 322 S C 181, at 184, 470 S E 2d 570, at 571 No such referendum took place in the current case

Act 99 does not contemplate taxation, rather the Act expressly imposes a development impact fee Development impact fees are comprehensively governed by the regime under the Development Impact Fee Act, S C Code Ann §§ 6-1-910, et seq (1999) ("Impact Fee Act"), an Act of statewide applicability from which the legislature has deliberately excluded school districts Finally, the lower court ignored that the local option sales tax, once approved by voters, is a legally viable option for funding education, whereas school districts have no authority to impose impact fees

Charleston County School District v Harrell, 393 S C 552, 713 S E 2d 604 (2011) is more on point than Bradley on one crucial principle In both Harrell and the current case, a general existing statute precluded Respondents from achieving their desired relief, thus, special legislation was enacted to circumvent the general law and provide an exclusive exemption for one school district This is not to say that our

legislature cannot create exceptions to a general law, but again, our constitution and case law require the existence of unique circumstances to validate the exception

Respondents correctly point out that the Supreme Court in Harrell overturned the lower court's decision partly based on the latter's reliance on facts not alleged in the complaint (Respondents' Brief, p 2) However, one needs to consider why the trial court in Harrell introduced the extraneous facts at all It did so in an attempt to distinguish Charleston County from other counties and thereby provide a rational basis for the special legislation As previously stated, no distinguishing factor has been introduced by Respondents, nor can any be found within Act 99 itself (Appellants' Brief, pp 7-9)

II Respondents' Reliance on the Dissenting Opinion in Fairfield County Lacks Sound Basis

Respondents also cite the dissent in Sch Dist of Fairfield County v State, Op No 27035 (S C Sup Ct filed August 29, 2011) (Shearouse Adv Sh No 29 at 48, 63) for the proposition that Acts involving education enjoy special protection from constitutional scrutiny because of the legislative duty to fund education (Respondents' Brief, p 4) However, McElveen v Stokes, 240 S C 1, 124 S E 2d 352 (1962), the foundation of the dissent's position, provides Respondents no support On the contrary, McElveen explicitly refutes this argument and warns, *not even in school cases* is the power of the General Assembly always broad enough to insure that an act pertaining to school matters is not in contravention of Article, Section 34, Subsection IX " Id at 10, emphasis added

Indeed, Respondents' position is repudiated in all respects by McElveen The McElveen court found the Act before it unconstitutional, "clear[ly] and beyond a reasonable doubt There being, in effect, an applicable general law and there being no showing in the record before us of any sufficient distinction " Id, at 597 McElveen, Med Soc'y of S C v Med Univ of S C , 334 S C 270, 513 S E 2d 352 (1999) and Harrell, 392 S C 552, 713 S E 2d 604 all stand for one principle—the legislature has numerous constitutional duties and if, in carrying out those responsibilities, it creates conflicting legislation for the sole benefit of one educational institution it must have a sufficiently unique reason for doing so

The concurring opinion in Fairfield County specifically rejects the Act before it as unjustified special legislation, stating, "there is no evidence in the record of this case that distinguishes the Board of Trustees of the School District of Fairfield County from the majority of school district governing bodies in this state, all are susceptible to fiscal mismanagement Assuming that Act 308 is efficacious, its tenets could prove beneficial to the entire state, not just Fairfield County " Op No 27035 (Shearouse Adv Sh No 29, at 48, 58) The same could be said of the case at hand, an amendment to the Impact Fee Act could provide relief statewide since many South Carolina school districts face identical fiscal constraints described in Act 99

III The Lower Court Failed to Apply the Correct Rule 12(c), SCRCP Standard to Dismiss the Complaint

The lower court did not attempt to reconcile the body of case law demanding a detailed analysis of unique exigencies, instead, it relied primarily on one precedent, distinguishable on issues of fact and law, as the basis for dismissing the complaint at the

pretrial stage Respondents argue that the lower court had applied the proper standard (Respondents' Brief, pp 1-2) However, the constitutional presumption and the "clear and beyond reasonable doubt" standard of review advanced by Respondents properly belong to the judgment of the court at the trial level None of the cases challenging special legislation cited by Respondents involve a SCRCP Rule 12(c) or Rule 12(b) dismissal In all of these instances, including Bradley, the merits of the constitutional challenge had already been fully adjudicated by a lower court

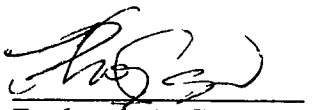
While Rosenthal v Unarco Indus , Inc , 278 S C 420, 297 S E 2d 638 (1982) (Respondents' Brief, pp 1-2) involved a constitutional challenge, that court dismissed the complaint under Rule 12(c) on the preliminary issues of jurisdiction and standing The Rosenthal court specifically found the defendants were "entitled to judgment [on these issues] *regardless of the outcome of any disputed facts* " Id at 422, 423, emphasis added In the case at hand, the factual determination of Respondents' uniqueness is pivotal to the outcome Here Appellants contend, as did the appellants in Harrell, that they have been wrongfully denied a significant procedural right to trial Under the standards established by Russell v City of Columbia, 305 S C 86, 89, 406 S E 2d 338, 339 (1991) for a SCRCP Rule 12(c) dismissal (Appellants' Brief, pp 3, 4, 13, 15), it is improper to dismiss the complaint at the preliminary stage, especially when compelling issues of fact and law remain unresolved

CONCLUSION

In light of the facts at hand, judgment for Respondents under Rule 12(c) SCRCP was inappropriate and the lower court's decision should be reversed

January 10, 2012
Columbia, SC

Respectfully Submitted,



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