No. 391PA15 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

CITY OF ASHEVILLE, a municipal corporation, Plaintiff, v. THE STATE OF NORTH CAROLINA and the METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, NORTH CAROLINA, Defendants.	)	From Wake County

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NEW BRIEF OF THE DEFENDANT-APPELLEE STATE OF NORTH CAROLINA

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ISSUES PRESENTED

I. DID THE COURT OF APPEALS ERR BY HOLDING THAT THE ACT IS NOT A LOCAL LAW "RELATING TO" HEALTH AND SANITATION UNDER ARTICLE II, SECTION 24 OF THE STATE CONSTITUTION?

II. DID THE COURT OF APPEALS ERR BY HOLDING THAT THE ACT DOES NOT EFFECT AN UNCONSTITUTIONAL TAKING OF THE CITY'S PRIVATE PROPERTY?

III. DID THE CITY WAIVE AND/OR ABANDON ITS PUTATIVE CLAIMS THAT WERE NOT PRESENTED TO THE COURT OF APPEALS?

STATEMENT OF THE FACTS

By its lawsuit against the State, the City sought a declaration that 2013 N.C. Sess. Laws 50, 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," is unconstitutional under the State and federal constitutions. (R pp 59, 71-79) In the alternative, the City sought a declaration that, if implemented, the Act would effect a taking of the City's private property for which it would be entitled to compensation. (R pp 79-80) The "private" property to which the City's lawsuit referred is a public water system operated by the City.

The trial court held that 2013 N.C. Sess. Laws 50 (hereinafter sometimes referred to as the "Act") is unconstitutional on various grounds. (R pp 157, 162-64) But it expressly declined to rule on the City's claims that the Act unlawfully impairs the City's contractual obligations with its bondholders who provided financing for the water system at issue in violation of article I, section 10 of the

United States Constitution, article I, section 19 of the State Constitution and/or N.C. Gen. Stat. §159-93. (R pp 157, 164-65)

The City made a series of arguments to the Court of Appeals in support of the trial court's holding; however, the City elected not to argue as an alternative basis on which the trial court's judgment and injunction might be upheld that the Act unlawfully impairs the City's contractual obligations to its bondholders in violation of either article I, section 10 of the United States Constitution, article I, section 19 of the State Constitution or N.C. Gen. Stat. §159-93. *City of Asheville v. State of North Carolina*, __ N.C. App. __, __, 777 S.E.2d 92, 95, n. 2, 102-03.

On 6 October 2015, the Court of Appeals issued a decision reversing the trial court's judgment. *Id.* at 93-94, 102-03. In addition, the Court of Appeals held that, by failing to present any argument regarding article I, section 10 of the United States Constitution, article I, section 19 of the State Constitution or N.C. Gen. Stat. §159-93 as one or more alternative bases for upholding the judgment of the trial court, the City had waived these three claims and issues and had failed to preserve them for appeal. 777 S.E.2d at 95 n. 2, 102-03.

ARGUMENT

The Applicable Standard of Review

Review by the Supreme Court after a determination by the Court of Appeals, whether by appeal of right or discretionary review, is to determine whether there is error of law in the decision of the Court of Appeals. N.C. R. App. P. 16(a).

The City has the burden of establishing the Act's unconstitutionality. *E.g.*, *State of North Carolina v. Mello*, 200 N.C. App. 561, 564, 684 S.E.2d 477, 479 (2009), *aff'd*, 364 N.C. 421, 700 S.E.2d 224 (2010). In addition, it is well-established that the Courts of this State recognize "every presumption in favor of the constitutionality of a statute" and that they may declare a statute to be unconstitutional only when its unconstitutionality appears "plainly and clearly." "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." *E.g.*, *Garner v. Reidsville*, 269 N.C. 581, 594, 153 S.E.2d 39, 150 (1967); *see also In re Spivey*, 345 N.C. 404, 413, 480 S.E.2d 693, 698 (1997) ("[T]his Court gives acts of the General Assembly great deference …").

Furthermore, in passing upon a claim that a statute is unconstitutional, this Court has recognized that it is not the role of the courts to pass judgment upon the wisdom and expediency of the statute:

> Members of the General Assembly are the representatives of the people. The wisdom and expediency of a statute are for the

> legislative department, when acting entirely within constitutional limits.

McIntire v. Clarkson, 254 N.C. 510, 515, 119 S.E.2d 888, 891-92 (1961).

Finally, the courts of this State and the federal courts recognize that a court will find a challenged statute constitutional if there is *any* reading of the statute's purpose or intent that would render it constitutional. *See, e.g., Heller v. Doe*, 509 U.S. 312, 320, 113 S. Ct. 2637, 2643, 125 L. Ed. 2d 257, 270 (1993); *In Re R.L.C.*, 361 N.C. 287, 295, 643 S.E.2d 920, 924 (2007).

The Specific Context in Which the Act Arose

An understanding of the specific factual and historical context which gave rise to the Act is critical to an understanding of what purpose the General Assembly sought to achieve in enacting this law. That context is described and explained below.

The Water System at Issue in This Case

The City operates a water treatment and distribution system for the treatment and supply of water and for the operation of sanitary disposal systems for individuals and entities within its corporate limits, as well as for individuals and entities residing outside its corporate limits. *City of Asheville v. State of North Carolina*, 192 N.C. App. 1, 4, 665 S.E.2d 103, 109 (2008), *appeal dismissed and review denied*, 363 N.C. 123, 672 S.E.2d 685 (2009) [hereinafter referred to as "*Asheville 2008*"]. This water system serves approximately 124,000 of the State's

citizens. (City's Br. at 6) It serves the City, approximately 60% of Buncombe County and part of Henderson County. Thus, the water system serves the State's citizens living in the Asheville-Buncombe-Henderson region. In addition, the water system serves millions of other North Carolina citizens who do not reside in the Asheville-Buncombe-Henderson region, but who travel and spend time there every year.

As the City acknowledges, the water system has been paid for by many people other than just its own residents. The City's Court of Appeals brief stated that "[t]he Water System has been built and maintained … using a combination of taxes, service fees, connection charges, bonded debt, various federal and state grants, contributions from Buncombe County and conveyance by dedication or deed from property owners and developers. (City's Court of Appeals Brief at page 3) In addition, the water system has been financed through tax-exempt bonds, a form of financing that is subsidized by all the taxpayers of this State.

A more detailed description of the extent of the financial contributions made to the construction and maintenance of this water system by the people living outside the City is contained in this Court's decision in *Candler v. City of Asheville,* 247 N.C. 398, 101 S.E.2d 470 (1958), the first major lawsuit challenging the City's governance practices as regards the water system, and by the Court of Appeals in *Asheville 2008*, the second such major lawsuit. In *Candler,* this Court

stated that:

> It is clear, …, that every purchaser of water in these … water and sewer districts[] from the City of Asheville[] …, [is] paying as much of the debt service and interest, as well as the cost of operating, repairing, and maintaining the water and sewer systems of the City of Asheville[] as any resident of the City who purchases a like amount of water. Moreover, … the persons, firms, and corporations in these … water and sewer districts are being taxed to pay the debt service, including interest on bonds issued to construct the … water and sewer system in these respective districts, as well as taxing themselves for the repair and maintenance of such … water and sewer system. Asheville contributed nothing to the construction of these systems, neither does it contribute anything to the cost of repairing and maintaining them. Asheville renders no service except to pump the water into the water systems, read the meters, which it did not furnish and does not service, and to bill the consumers.

Id. at 410-11, 101 S.E.2d at 479; *see also Asheville 2008*, 192 N.C. App. at 29-30, 665 S.E.2d at 124.

Fifty years after *Candler*, when the Court of Appeals dealt with the very same governance disputes concerning the City's operation of the water system, it noted that, from July 1973 through June 1998, Buncombe County's residents "contributed $26,435,201.00 towards the construction, upkeep and other costs of the Asheville Buncombe Water System." *Asheville 2008*, 192 N.C. App. at 9-10, 665 S.E.2d at 112-13. Parts of the water system are owned by Buncombe County. *Id.* Practically all, if not all, of the cost of the system's waterlines serving Buncombe County (outside the corporate limits of the City) has been paid by the

people of Buncombe County, by the various water and sewer districts of Buncombe County, by the Asheville/Buncombe Water Authority pursuant to its duties to Buncombe County and by private developers and landowners desiring water service in these areas. *Id.* at 28, 30-31, 665 S.E.2d at 123-24, 125. After 1981, Buncombe County paid the City in excess of $37,000,000.00 pursuant to a water agreement entered into between the City and the County. *Id.*

The Metropolitan Sewerage District of Buncombe County

Like the City, the MSDBC is a political subdivision of the State. It is authorized by the General Assembly and organized pursuant to N.C. Gen. Stat. §§162-64, *et seq*. It was established well over half a century ago to construct and operate facilities for the treatment and disposal of sewage generated by the political subdivisions comprising the MSDBC. *See* http://www.msdbc.org/aboutus.php. The MSDBC treats and disposes of sewerage generated by the City and the following 15 other political subdivisions located in Buncombe County:

Town of Montreat
Beaverdam Water & Sewer District
Enka-Candler Water & Sewer District
Town of Biltmore Forest
Fairview Sanitary Sewer District
Town of Black Mountain
Skyland Sanitary Sewer District
Busbee Sanitary Sewer District
Swannanoa Water & Sewer District
Caney Valley Sanitary Sewer District

Woodfin Sanitary Water & Sewer District
Crescent Hill Sanitary Sewer District
Town of Weaverville
Venable Sanitary District
Town of Woodfin

Id.

The MSDBC's governing board consists of twelve members, three of whom are from Buncombe County, three of whom are from the City, one of whom is from the Woodfin Sanitary Water & Sewer District and one of whom is from each of the Towns of Biltmore Forest, Black Mountain, Montreat, Weaverville and Woodfin. *Id.*

The MSDBC operates and maintains a 40-million gallon per day wastewater treatment plant to treat raw sewage and industrial wastewater collected in a network of collector sewers. *Id.* It also operates and maintains approximately 60 miles of interceptor sewers that connect such sewers to the treatment plant. *Id*. The MSDBC covers approximately 180 square miles and serves over 50,000 billed customers and an estimated population of 125,000 people. *See* http://www.msdbc.org/documents/SPAR2013.pdf. The MSDBC's collection system includes 991 miles of public sanitary sewer lines. *Id.* In 2013, the MSDBC's Wastewater Reclamation Facility treated approximately 8 billion gallons of wastewater. *Id.*

The Impact of Events in Asheville-Buncombe County on the People of North Carolina Generally

What happens in Asheville-Buncombe-Henderson does not just affect the people who live there. According to the City, in 2014, almost 10 million people visited and spent time in Asheville-Buncombe County. *See* http://www.ashevillecvb.com/wp-content/uploads/2015/06/2014-Visitor-Profile-Presentation-6.2015-for-partner-forum.pdf. More than 24% of those visitors – that is, 2,352,000 people – are citizens of this State. *See* http://www.ashevillecvb.com/wp-content/uploads/2015/06/Asheville-NC-Tourism-Impacts-SPB-PARTNER-FORUM-VERSION.pdf. Thus, almost a quarter of the State's entire population visits and spends time in Asheville-Buncombe County every year.[1]

According to the Department of Commerce, Buncombe County ranked fifth among all of the State's 100 counties in tourism. *See* https://www.nccommerce.com/tourism/research/economic-impact/teim. In addition, in 2014, visitors to Asheville-Buncombe County contributed $2.6 billion to the State's economy, with an average of 27,000 people visiting every day and spending $4.7 million daily. These visitors were also responsible for $143.5 million in taxes paid. *See* http://www.ashevillecvb.com/wp-content/uploads/2015/06/2014-Visitor-Profile-Presentation-6.2015-for-partner-

[1] According to the U.S. Census Bureau, the population of North Carolina as of 2015 was 9,535,483. *See http://www.census.gov/popest/data/national/totals/2015/files/NST-EST2015-alldata.csv*.

forum.pdf and http://www.ashevillecvb.com/wp-content/uploads/2015/06/Asheville-NC-Tourism-Impacts-SPB-PARTNER-FORUM-VERSION.pdf.

The Act

The Act recognizes that "regional water and sewer systems provide reliable, cost-effective, high-quality water and sewer services to a wide range of residential and institutional customers." It further recognizes that "regional solutions" to problems relating to large public water and sewer systems are valuable to the effort to ensure that the citizens and businesses of this State have access to the highest quality services. (Rule 9(d) Documentary Exhibits ["DE"], 221-27)

In furtherance of these aims, the Act creates a new type of political subdivision, known as a metropolitan water and sewerage district (hereinafter referred to as an "MWSD").

Section 1(a) of the Act, referred to by the Court of Appeals as the Act's "transfer provision," provides that:

> All assets, real and personal, tangible and intangible, *and all outstanding debts* of any public water system meeting all of the following criteria 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:

> (1) The public water system is owned and operated by a municipality located in a county where a metropolitan sewerage district is operating.
>
> (2) The public water system has not been issued a certificate for an interbasin transfer.[2]
>
> (3) The public water system serves a population greater than 120,000 people, according to data submitted pursuant to G.S. 143-355(l).

(Emphasis supplied)

Thus, under section 1(a) of the Act, the assets *and* liabilities of the publicly owned water system now being operated by the City will be transferred by operation of law from the City, a political subdivision of the State, to the Metropolitan Sewerage District of Buncombe County, another political subdivision of the State. The Metropolitan Sewerage District of Buncombe County will then become the Metropolitan Water *and* Sewerage District of Buncombe County (hereinafter sometimes referred to as the "MWSDBC"). After this transfer, the water system will continue to be publicly owned and operated just as it is now. The City's residents will continue to be served in exactly the same way as they have been previously and as they are now by exactly the same water system. Hence, the City's residents will not be required by reason of the Act's transfer provision to construct or pay for any replacement or new water (or sewerage)

[2] The interbasin transfer provision of the Act (section 1(a)(2)) was subsequently repealed by 2013 N.C. Sess. Laws 388.

system. As explained below, the recipient of the water system – the MWSDBC – will be a local governmental entity that has been in existence and operation for well over a half century and which has a bond credit rating that is higher than the City's.

What will change following the transfer of the water system to the MWSDBC will be the governance of that system. The MSDBC will become a metropolitan water and sewerage district. This MWSD will be governed by a district board that will be representative not only of the residents of the municipality that formerly operated the water system, but also of the residents living in the other municipalities located in the water system's service area, as well as the Buncombe and Henderson county residents living within the water system's service area. N.C. Gen. Stat. §162A-85.3, as revised by the Act.

The Act gives the members of this MWSD district board, who will be broadly selected from the water system's entire service area, control over the rates to be charged for water and sewer services and the rates and charges for services within the newly established MWSD. N.C. Gen. Stat. §§162A-85.9 and 85.13, as revised by the Act. The Act also strictly forbids price discrimination against customers who reside outside the territorial boundaries of the MWSD but who receive services from the MWSD. *Id.* Furthermore, in light of the structural reforms to the governance of the water system provided in section 2 of the Act,

once the Act is implemented, one community within the water system's service area will not be able to appropriate system-wide water service revenues and use them for the benefit of that particular community to the detriment of all others in the system's service area.

The Water System Refunding Revenue Bonds, Series 2005

The bonds issued by the City and covering the water system are revenue bonds. Thus, the debt arising out of these bonds is secured solely by the revenues generated by the water system's operation, not by the City itself or any of the City's property. *See* DE, 148, *et seq.*

The Trust Indenture Agreement relating to this bond issuance between the City and the bondholders' Trustee (DE, 151) makes clear that the City and the Trustee, acting for the bondholders, expressly contemplated that the General Assembly might transfer ownership and control of the water system from the City to another political subdivision of the State and that this would not constitute an event of default under the agreement. (DE, 127) The Trust Agreement provides a series of transitional steps that must be taken prior to any such transfer. (DE, 127) By their nature, all of these transitional steps can be accomplished in a short period of time.

The Alleged Risks Posed to the Water System's Bondholders by the Act

In its Notice of Appeal and PDR, the City stated as fact, without citation to

anything, that the Act is causing uncertainty and increased financial risks for municipalities, taxpayers and capital markets. It seems obvious to the State that the surest way to ascertain the actual level of uncertainty and risk that the Act poses to taxpayers, investors and the capital markets is to review how the private capital markets have actually reacted to the Act. On the date the Act was enacted (14 May 2013), the 2005 Series Asheville, North Carolina Water System Revenue Bonds carried a credit rating of Aa2 from Moody's and AA from Standard & Poor's. (R p 11 [Complaint, ¶ 24])

An online search of Moody's and Standard & Poor's bond credit rating services since the date the Act became law reveals no downgrade in either of these credit ratings. *See* https://www.moodys.com/page/search.aspx?rd=&ed=&tb=1&sb=&sd=0&po=0&ps=10&std=&end=&rk=0&lang=en&cy=global&ibo=&spk=&kw=Asheville%2c+North+Carolina+Water+System+Revenue+Bonds%2c+Series+2005 and ftp://ftp.ashevillenc.gov/Water/Asheville-Moffitt-HB-925-Info-Request/01-Financial%20Stability/SPReport-2007WaterSystemBonds.pdf.

Until recently, the MSDBC's own bond credit rating was equal to the City's. Thus, on 26 March 2013, the private capital markets assigned a credit rating of "AA+; Outlook Stable" to the MSDBC's outstanding bonds. *See* http://www.marketwatch.com/story/fitch-rates-metro-sewerage-dist-of-buncombe-

cty-nc; and http://www.businesswire.com/news/home/20130326006390/en/Fitch-Rates-Metro-Sewerage-Dist-Buncombe. And on 28 March 2013, Moody's assigned an Aa2 credit rating to the MSDBC's $30.105 million Sewer System Revenue Refunding Bonds, Series 2013. *See* http://www.municipalbonds.com/bonds/issue/120532JG2.

On 7 December 2015, well after the Court of Appeals had upheld the constitutionality of the Act, Moody's *upgraded* the MSDBC's bond credit rating from Aa2, which is the City's bond credit rating, to Aa1, a higher bond credit rating than the City's. *See* https://www.moodys.com/credit-ratings/Buncombe-County-Metro-Sewer-District-NC-credit-ratings-600033381.

Perhaps even more telling of the actual level of risk posed by the Act to private bond investors, municipalities, taxpayers and the private capital markets is the fact that, at no time since the passage of the Act or the inception of this litigation has the Trustee for the City's water system revenue bonds, who has a strict fiduciary duty to protect the interests of the bondholders, ever expressed to the court *any* concern about *any* alleged risks posed to the bondholders or anyone else by the Act. In addition, he has *never* attempted to intervene in this litigation, play any role in this litigation, communicate with the court or even take a side in this litigation.

In addition, if the City actually believed that the Act posed a threat to its

ability to finance public enterprises through the sale of tax-exempt revenue bonds, one would expect that it would have actively appealed and vigorously argued concerning the trial court's refusal to rule on the issue whether the Act's transfer provision unlawfully impairs its contractual obligations to its bondholders in violation of article I, section 10 of the United States Constitution, article I, section 19 of the State Constitution and N.C. Gen. Stat. §159-93. As noted above, however, the City filed no such appeal and did not even argue these issues to the Court of Appeals as an alternative basis for upholding the trial court's injunction. 777 S.E.2d at 95 n. 102-03.

The General Assembly's Past Failed Attempts to Restrain the City From Acts of Misgovernance Concerning the Water System and Prior Lawsuits Challenging the City's Governance Practices Regarding the Water System

There has been an ongoing and persistent dispute between the City and its county water customers for over 70 years concerning the City's operation and use of the water system. This dispute has included, but is not limited to, complaints that the City charges substantially higher prices for water to county customers than to City customers, despite the fact that county taxpayers helped finance significant parts of the water system, and complaints that the City was taking monies from its operation of the water system and spending them on projects that benefitted the City only, rather than reinvesting those monies in the water system so as to benefit all of its customers. *See Asheville 2008*, 192 N.C. App. at 30-31, 665 S.E.2d at

124.

This persistent and long-standing dispute has prompted the General Assembly on three occasions to enact attempted reform legislation designed to restrain the City from engaging in these and other, similar practices regarding its operation of the water system. *See generally Asheville 2008,* 192 N.C. App. at 4-5, 665 S.E.2d at 109. These legislative enactments took the form of three laws (hereinafter collectively referred to as "the Sullivan Acts"): (i) House Bill 931, Chapter 399 of the 1933 Public-Local Laws ("Sullivan I"); (ii) 2005 N.C. Sess. Laws 140 ("Sullivan II"); and (iii) 2005 N.C. Sess. Laws 139 ("Sullivan III"). *Asheville 2008,* 192 N.C. App. at 4-5, 665 S.E.2d at 109.

Sullivan I, entitled "An Act to Regulate Charges Made by the City of Asheville for Water Consumed in Buncombe County Water Districts," sought to prevent the City from charging higher water rates to county customers than to City customers where the water mains leading to the county customers had been paid for and were maintained with county tax monies. In essence, Sullivan I was a legislative attempt to prevent the City from using its control over the water system to discriminate against county residents.

When this regional dispute persisted 72 years after the passage of Sullivan I, the General Assembly enacted Sullivan II, entitled "An Act Regarding Water Rates in Buncombe County," which represented another legislative attempt to deal with

the City's discrimination against residents of Buncombe and Henderson counties.

Finally, Sullivan III, entitled "An Act Regarding the Operation of Public Enterprises by the City of Asheville," modified N.C. Gen. Stat. §§160A-312, 160A-31(a) and 160A-58.1(c). That portion of Sullivan III which modified N.C. Gen. Stat. §160A-312 represented yet another legislative attempt to curtail discrimination by the City against county residents. It also attempted to deal with the complaint that the City was taking money from the operation of the water system and spending it on projects that benefitted the City at the expense of county residents.

The City's response to all three of the Sullivan Acts was to challenge them in court by claiming that they were unconstitutional. The first such lawsuit was *Candler*, where the City challenged the constitutionality of Sullivan I. 247 N.C. at 399, 101 S.E.2d at 471. In that case, this Court unanimously upheld the constitutionality of that law. *Id*. at 411, 101 S.E.2d at 479.

The second such lawsuit was *Asheville 2008*, where the City attempted to re-litigate the constitutionality of Sullivan I while also challenging the constitutionality of Sullivan II and Sullivan III. 192 N.C. App. at 4-7, 12, 665 S.E.2d at 109-11, 114. In that case, the Court of Appeals upheld the constitutionality of all three acts. This Court thereafter declined to review the Court of Appeals' decision in *Asheville 2008*. 363 N.C. 123, 672 S.E.2d 685

(2009).

I. THE ACT IS A GENERAL, NOT A LOCAL, LAW AND, AS SUCH, IT IS NOT SUBJECT TO THE STRICTURES OF ARTICLE II, SECTION 24 OF THE STATE CONSTITUTION; HOWEVER, EVEN IF IT WERE A LOCAL LAW, THE ACT DOES NOT "RELAT[E] TO" HEALTH AND SANITATION.

The Court of Appeals was correct in its ruling that the Act is constitutional under article II, section 24 of the State Constitution and its ruling should be upheld. First, the Act is not a local law, but a general law. Accordingly, the Act is not subject to the strictures of article II, section 24. And second, the Act does not "relat[e] to" health and sanitation as the term "relating to" is used in article II, section 24.

Introduction: Constitutional Attempts to
Regulate Local Legislation Generally

As Professor Ferrell observed in his exhaustive and influential article chronicling and analyzing local legislation and the constitutional attempts in this State to regulate it, legislation minutely regulating the affairs of individual local governments is a long established tradition in this State, with the overwhelming majority of bills passed into law by the General Assembly applying to only one or a few of the State's political subdivisions. Ferrell, *Local Legislation in the North Carolina General Assembly*, 45 N.C.L. REV. 340 (1967) [hereinafter referred to as "*Ferrell*"]. Professor Ferrell concluded that all efforts to change or reform this

tradition have met with little success, due largely to a lack of support for them from either the members of the General Assembly or local government officials. *Id.* at 340, 342. And he added that a review of the decided cases on constitutional restrictions on local legislation shows that courts in this country tend to interpret those restrictions as narrowly as possible where individual rights are not immediately involved. *Id.*at 360.

Significantly, this case does not involve any individual rights. More particularly, it does not involve any of the fundamental rights or freedoms protected by the First, Fourth, Fifth, Sixth or Fourteenth Amendments to the United States Constitution, or the corresponding parts of the Law of the Land contained in the North Carolina Constitution. In fact, the City has abandoned its claim that the Act violates its (or anyone else's) due process rights. (City's Br. at 20n.3) It asserts – albeit only at the tail end of its Brief – that the Act threatens to take its "private" property without just compensation; however, as demonstrated below, the reality is that the property at issue in this case was purchased and paid for by the citizens of this State, not by the City government of Asheville. That property is beneficially owned by the citizens of this State, and it is only held by the City and its officials in trust for the citizens of this State. Furthermore, the transfer of the water system from one political subdivision of the State – the City – to another political subdivision of the State – the MWSDBC – will not "take"

anything away from the citizens of this State who paid for and use the water system daily. Those same citizens who have used the water system in the past and who use it at the present time will continue, after its transfer to the MWSDBC, to use the same water system in exactly the same way. And the City's Brief nowhere argues that the General Assembly could not have accomplished what the Act seeks to accomplish by enacting a general law.

The Tests Devised by This Court to Determine Whether a Law is General or Local

The distinction between general and local laws cannot be made based on geographic scope alone. "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." *High Point Surplus Co. v. Pleasants*, 264 N.C. 650, 656, 142 S.E.2d 697, 702 (1965); *see Ferrell*, 45 N.C.L. REV. at 391. Ultimately, the question whether legislation is local or general depends on the facts of each individual case. *McIntyre*, 254 N.C. at 517, 119 S.E.2d at 893.

Nevertheless, this Court has developed general tests or modes of analysis to determine whether a given law is local or general. Under the reasonable classification test, first applied in *McIntyre*, the determining issue is whether '"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. Dep't of N.E.R. and Everett v. Dep't of*

N.E.R., 295 N.C. 683, 691, 249 S.E.2d 402, 407 (1978) (quoting *Ferrell* at 340, 391 (1967)). The act is general if a rational basis exists and it applies uniformly to those in the separated class; if not, it is local. *See Adams*, 295 N.C. at 690-91, 249 S.E.2d at 407.

In *Adams*, the challenged statute, an environmental law, established a cooperative program of coastal area management between the State Government and local governments in 20 coastal counties. *Id.*, PRIOR HISTORY at *** 1- *** 7. The stated purpose of the statute was to preserve and enhance the State's coastal area. *Id.* The statute did not apply to all of the State's coastal counties. *Id.* The plaintiffs claimed that the General Assembly could not reasonably distinguish between the State's coastal counties and the rest of the State when enacting environmental legislation. *Id.* at 691, 249 S.E.2d at 407. They also argued that, even if the coast could be dealt with separately, the 20 counties covered by the statute did not embrace the entire area necessary for the purposes of the statute. *Id*.

This Court held the statute to be general under the reasonable classification test because its purpose was to preserve and enhance the coastal area of the State and its creation of a classification of 20 coastal counties was rationally related to that legislative objective. *Id.* at 693-96, 249 S.E.2d at 408-10. In reaching this holding, this Court noted the "extremely high recreational and esthetic value" of the State's coastal area and stated that "the nature of the coastal zone and its

significance to the public welfare … justify the reasonableness of special legislative treatment." *Id.* at 692-93, 249 S.E.2d at 407-08.[3] And this Court also held that the 20-county, less-than-complete classification created by the statute was reasonably related to the statute's objective, noting that the "constitutional prohibition against local legislation does not require a perfect fit; rather, it requires only that the legislative definition be reasonably related to the purpose of the Act." *Id.* at 694, 249 S.E.2d at 409.

A different test developed by this Court to determine whether a statute is general or local applies where the legislative purpose or concern giving rise to the statute is, by its nature, site-specific and limited to but one place. Thus, in *Town of Emerald Isle v. State of North Carolina,* 320 N.C. 640, 360 S.E.2d 756 (1987), this Court analyzed a statute which provided for the establishment of public pedestrian beach access facilities, parking areas, pedestrian walkways and restrooms in the vicinity of Bogue Point, Carteret County, and nowhere else in the State. *Id.* at 643, 651-52, 360 S.E.2d at 758-59, 762-63. This Court concluded that the reasonable classification test that it applied in *Adams* was ill-suited to the general law-local law question presented in the different factual context of *Emerald Isle*. *Id.* at 650, 360 S.E.2d at 762. Noting that its decision in *Adams* had been largely based on the

[3] This Court has long recognized that it is appropriate in determining whether a statute is local or general to consider facts outside the statute. *E.g., North Carolina Turnpike Auth. v. Pine Island, Inc.,* 265 N.C. 109, 118-20, 143 S.E.2d 319, 326-27 (1965).

fact that "the coastal areas of the State are among the State's most valuable resources," and that "the need [as stated in the act at issue in *Adams*] to preserve and enhance the enormous recreational and esthetic value of the coastal area was of such significance to the public welfare [that the Court found in *Adams* that it] justif[ied] special legislative treatment," *id*. at 651, 360 S.E.2d at 763, this Court in *Emerald Isle* stated and held that:

> [T]he ocean front and inlet beaches within the Town of Emerald Isle are frequented on a regular basis by numerous sport fishermen operating vehicles on the beaches. These beach areas adjacent to Bogue Inlet in particular are noted for excellent fishing, and annually attract numerous fishermen. Because no parking is available within two miles of the vehicle access ramp in this area, many of the fishermen are forced to drive along the beaches in order to gain access to the fishing areas.
>
> Chapter 539, however, created a public facility in the vicinity of Bogue Inlet. By directing the establishment of public pedestrian beach access facilities including parking areas, pedestrian walkways, and restroom facilities, the legislature by this act has sought to promote the general public welfare by preserving the beach area for general public pedestrian use.

Id. at 651-52, 360 S.E.2d at 763.

Thus, in *Emerald Isle*, this Court held that a law whose primary purpose or concern is, by definition, site-specific and limited to a single place may nevertheless be general, provided that the General Assembly sought by enacting the law to promote the general welfare of the State's people. *Id*. at 652, 360 S.E.2d at 763.

A. The Act is a General, Not a Local, Law and, as Such, Is Not Subject to the Strictures of Article II, Section 24 of the State Constitution.

Under both the reasonable classification test of *Adams* and the general public welfare test of *Emerald Isle*, the Act is a general law. As viewed through the lens of the reasonable classification test, if the Court can identify *any* rational basis for the particular classification created by a particular statute, then the statute is general so long as the rational basis is reasonably related to the objective of the statute. *E.g., Adams,* 295 N.C. at 690-91, 249 S.E.2d at 407; *see also Ferrell*, 45 N.C.L. REV. at 340, 391.

Assuming, as the City argues, that the Act creates a classification which, at least for now, includes only the Asheville-Buncombe-Henderson region and excludes all other units of local government in the State, the unique facts and specific context of this case reasonably support a conclusion that, in passing the Act, the General Assembly defined a class which reasonably warrants special legislative attention. *See, e.g., C.C. Walker Grading & Hauling, Inc. v. S.R.F. Management Corp.*, 311 N.C. 170, 179-80, 316 S.E.2d 298, 303-04 (1984) (in ascertaining the meaning of a term, context matters); *King v. Burwell*, __ U.S. __, 135 S. Ct. 2480, 2497, 192 L. Ed. 2d 483, 503 (2015) (Scalia, J., dissenting) ("context always matters").

The documented historical record in this case demonstrates that the General

Assembly's actual, though unstated, purpose in passing the Act could have been to bring structural reform to and finally correct what it saw as a chronic, persistent and serious breakdown in local governance in the Asheville-Buncombe-Henderson region which has defied 70-plus years (since the passage of Sullivan I in 1933) of piecemeal legislative attempts at resolution and almost 60 years (since *Candler* in 1958) of efforts through litigation to deal with this problem. *Cf. F.C.C. v. Beach Commc'ns, Inc.,* 508 U.S. 307, 314-15, 113 S. Ct. 2096, 124 L. Ed. 2d 211, 222 (1993) ("[W]e never require a legislature to articulate its reasons for enacting a statute, …").

The General Assembly could have concluded that this prolonged history of conflict between the government of the City and the residents of the two counties who depend on the water system – characterized by charges of discrimination and the misuse of public monies and other resources – 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. The history of this region and the water system for the past 70-plus years and the fact that the Act's provisions are almost exclusively aimed at restructuring the governance of the water system and ensuring that all of its users have meaningful representation in the governance and operation of the water system strongly point to the possibility that it was these perceived fundamental and serious governance

problems that the General Assembly could have been attempting to reform when it passed the Act.

And it is a certainty that the General Assembly knew when it passed the Act that the water system in Asheville-Buncombe-Henderson, as well as the open and public expressions of mistrust in local governance which have grown out of the water system's history of conflict, affect not only the 125,000 North Carolina citizens who actually live in the water system's service area, but also the 2.3 million-plus North Carolina citizens who travel to that area and spend time there every year. These other North Carolina citizens also use the water system when they travel to this area. Moreover, the General Assembly could reasonably have concluded in passing the Act that an atmosphere of conflict in this region characterized by open, public and persistent charges of misconduct by government officials, discrimination and abuse of power could tarnish the reputation of this region in the eyes of the public generally and thereby threaten, 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. In *Adams* and *Emerald Isle*, this Court found that places in this State which have important recreational value and which support a large local tourist industry can, for those reasons alone, be a proper subject for special legislative attention designed to protect, preserve and enhance those valuable resources. The statute challenged in *Emerald Isle* focused on

Carteret County's importance as a travel and tourism center. *See* 320 N.C. at 651, 360 S.E.2d at 763. And Carteret County's tourism industry *is* tremendous, ranking 14th in the State, but it is far behind Buncombe County's, which ranks *fifth* in the State in this regard. *See* https://www.nccommerce.com/tourism/research/economic-impact/teim.

Given the history of the water system, it is entirely reasonable to infer that the General Assembly's purpose in passing the Act could have been to accomplish what the three Sullivan Acts had failed to accomplish: to finally "fix" this chronic local governance problem. The classification created by the Act is Asheville-Buncombe-Henderson, the service area of the water system. The General Assembly had a rational basis for creating this particular classification. Given the reasons identified above, it could have concluded that this region was suffering from serious, structural local governance problems relating to the operation of the public water system and that these problems affect nearly a quarter of the State's entire population. This rational basis is reasonably related to what seems almost certain to be the objective of the Act. The Act applies to all members of this classification equally. Therefore, under the reasonable classification test, the Act is general, not local, and article II, section 24 does not apply to it.

The Act is also a general law when viewed under the general public welfare test. In *Emerald Isle*, the classification created by the General Assembly was a

function of geography. A pedestrian walkway facility opening up the valuable tourism beach areas of Bogue Sound to sport fishermen and other tourists *had* to be located in the vicinity of Bogue Sound. In other words, Bogue Point was uniquely the situs of the General Assembly's legislative concern, even though that concern had a significant effect on the people of this State, since the pedestrian walkway at Bogus Point would open up the beachfront areas of Bogue Sound to the people of this State who wish to travel there and enjoy the local beaches. Under these circumstances, this Court concluded that the statute at issue in *Emerald Isle* was a general law even though it only applied to a single place. 320 N.C. at 650-51, 652, 360 S.E.2d at 762-63.

Here, the General Assembly could reasonably have concluded that there is no other place in the State besides Asheville-Buncombe-Henderson which: (i) has an enormous local tourism industry that is tremendously important to all the people of this State; and (ii) has a history of chronic and serious local governance problems relating to the operation of the local public water system; and (iii) is visited by nearly a quarter of the State's entire population every year.

In passing the Act, the General Assembly focused its attention on the place where this problem exists. In doing so, it created a classification whose membership is the result of both geography – since Asheville-Buncombe-Henderson is where the problem is – and history – since the unique history of

chronic and serious governance problems in this region demanded special legislative attention. Viewed in this light, the Act is a general law under the general public welfare test of *Emerald Isle* because a legislative resolution of the Asheville-Buncombe-Henderson region's chronic local governance problems will serve to protect and enhance an extraordinarily valuable local industry which, in turn, affects and benefits all of the State's citizens.

B. Even If the Act Were Deemed to Be Local, It Is Constitutional Under Article II, Section 24.

Even if the Act were deemed to be local, it does not violate article II, section 24 because, as shown below, it does not "relat[e] to" health and sanitation.[4]

The Court of Appeals Correctly Decided That the Act Does Not "Relat[e] to" Health and Sanitation.

According to the City, the Court of Appeals' holding that the Act does not "relat[e] to" health and sanitation "strays from this Court's precedents," "narrow[s] the '[r]elating to' [s]tandard in article II, section 24" by improperly adopting a "regulating test" and a "prioritizing test," "violates [the] plain meaning" of the term "relating to" and "ignores the purposes of" article II, section 24. (City's Br. at 24; *see also* 24-36) A careful reading of the Court of Appeals' decision and this Court's precedents demonstrates that each of these arguments is unfounded.

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[4] In its appeal, the City has abandoned its argument that the Act relates to non-navigable streams in violation of article II, section 24(1)(e) of the State Constitution. (City's Br. at 20n.3)

Before the Court of Appeals embarked upon the analysis which led it to conclude that it is "not *plain and clear* and *beyond reasonable doubt* that the [Act's] [t]ransfer [p]rovision falls within the ambit of" a law relating to health and sanitation, 777 S.E.2d at 97 (emphasis in original), it noted that, in 2008, it had grappled with the very same issue in *Asheville 2008*, a case involving the same parties and a constitutional challenge to three statutes regulating the water system in Asheville. 777 S.E.2d at 97. The court observed that, in *Asheville 2008*, the City had argued – just as it argues now – that every law which concerns a water or sewer system "*necessarily* relat[es] to health and sanitation," but that former Court of Appeals Chief Judge John Martin, writing for the court, had rejected that argument, holding 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." 777 S.E.2d at 97 (quoting *Asheville 2008*, 192 N.C. App. at 37, 665 S.E.2d at 129). The Court of Appeals stated in its decision below that, in *Asheville 2008*, then Chief Judge Martin had concluded that:

> our Supreme Court precedent instructs that a local law is not deemed to be one 'relating to health and 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 a] careful perusal of the entire act.'

777 S.E.2d at 97-98 (quoting *Asheville 2008*, 192 N.C. App. at 33, 665 S.E.2d at

126 (emphasis and underscoring in original), which, in turn, cited and quoted *Reed v. Howerton Eng'g Co.*, 188 N.C. 39, 44, 123 S.E. 479, 481 (1924)). In its decision below, the Court of Appeals stated 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." 777 S.E.2d at 98 (quoting *Asheville 2008*, 192 N.C. App. at 37, 665 S.E.2d at 129 and this Court's decision in *State of North Carolina ex rel. Comm'r of Ins. v. Rate Bureau,* 300 N.C. 381, 399, 269 S.E.2d 547, 561 (1980)).

The Court of Appeals then began its analysis of whether the Act "relat[es] to" health and sanitation by reviewing the Act's stated purpose in order to determine whether it is to regulate health or sanitation. The court correctly concluded that this is not the stated purpose of the Act. It concluded that the Act's stated purpose is instead to address concerns regarding the quality of the service provided to customers of public water and sewer systems. 777 S.E.2d at 98. The Court of Appeals reached this conclusion about the stated purpose of the Act after studying the two recital paragraphs preceding the text of the Act, which provide 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;

777 S.E.2d at 98 (quoting, in pertinent part, 2013 N.C. Sess. Laws 50) (emphasis supplied by the Court of Appeals).

The Court of Appeals then read the entire Act to determine whether it is plain and clear and beyond reasonable doubt that the Act's purpose is to regulate health and sanitation. In answering this question in the negative, the Court of Appeals found that "there are no provisions in the Act which 'contemplate[] … prioritizing the [water system]'s health or sanitary condition" and that the Act's provisions appear to prioritize concerns regarding the governance over water and sewer systems and the quality of the services rendered. 777 S.E.2d at 98 (citing N.C. Gen. Stat. §§162A-85.1, *et seq.*).

Utilizing this mode of analysis, the Court of Appeals held that it is "not *plain and clear* and *beyond reasonable doubt* that the [Act's] [t]ransfer [p]rovision falls within the ambit of" a law relating to health and sanitation. 777 S.E.2d at 97 (emphasis in original). The precedents supporting the court's holding were *Reed* and *Asheville 2008*. 777 S.E.2d at 98 ("Following *Reed* and our 2008 case, …").

As demonstrated below, each of the City's criticisms of the Court of Appeals' decision is without basis in fact or law.

> Contrary to the City's Assertions, the Court of Appeals' Holding Is Firmly Grounded in This Court's Precedents.

The City argues that the Court of Appeals' holding "strays from this Court's precedents." (City's Br. at 24, 34-36) But far from straying from this Court's precedents, the Court of Appeals' holding is firmly grounded in those precedents. In fact, the Court of Appeals not only looked to and relied upon a decision of this Court to guide it in its analysis and to confirm it in its holding, but it chose exactly the right Supreme Court precedent for the purpose, *Reed*. In focusing upon *Reed*, the Court of Appeals looked to a decision of this Court which dealt with and made a holding on the very question at issue here and in an almost identical context. Thus, unlike all but one of the cases cited by the City in its Brief, the "relating to health and sanitation" issue presented in *Reed* arose out of a law dealing with a water-sewer system.

More particularly, the law under challenge in *Reed* established a sanitary sewer district in Buncombe County and authorized that district to build a sanitary sewer system. *Reed*, 1924 N.C. LEXIS 4 at * 1- * 3. The challenge to the legislation was that it "relat[ed] to … health and sanitation." *Id*. at * 4. In dealing with this question, *Reed* does several significant things that no other water system or sewer system "relating to" case cited by the City does: (i) it makes and clearly articulates an actual *holding* on the question whether the act under challenge "relat[es] to" health and sanitation; (ii) it explains why the act does or does not "relat[e] to" health and sanitation; and (iii) it describes what test or other mode of

analysis should be employed in making a determination of the "relating to" issue in this context.

Specifically, the *Reed* Court said that, in determining whether a statute "relat[es] to… health and sanitation," the reviewing court should: (i) read and consider the entirety of the statute; (ii) determine whether the statute's stated purpose is to "regulate sanitary matters, or to regulate health;" (iii) identify the General Assembly's "main purpose" in enacting the statute; and (iv) determine whether the General Assembly's main purpose in enacting the statute was something other than "health and sanitation." 188 N.C. at 44, 123 S.E. at 481.

Employing this mode of analysis, the *Reed* Court clearly and unambiguously held that the statute under challenge there was "not a local … [law] relating to health and sanitation …." *Id.* at 44, 123 S.E. at 481. In so holding, the *Reed* Court gave recognition to the principle that the mere implication of water or a sewer system in a statute does not necessitate a conclusion that it "relat[es] to" health and sanitation. *See id.* at 44, 123 S.E. at 481 ("While the act may use the words 'sanitary district,' yet when taken as a whole it is not a local … act relating to health and sanitation …"). *Id.* at 44, 123 S.E. at 481.

The City criticizes the Court of Appeals for relying upon *Reed* and for not following *Drysdale v. Prudden*, 195 N.C. 722, 143 S.E. 530 (1928), decided four years after *Reed*. The Court of Appeals did consider and carefully analyze

Drysdale, *see* 777 S.E.2d at 98-99, but, after doing so, it correctly concluded that "*Reed* is more instructive than *Drysdale* in determining whether a statute 'relat[es] to health and sanitation.'"

The Court of Appeals noted that, at first blush, *Drysdale* appears to stand for the proposition that an act which establishes a sanitary district (to provide public water/sewer service) is a local law *and* relates to health and sanitation, but the Court of Appeals observed that, on closer inspection, *Drysdale* only bases its ruling on the fact that the act at issue in that case was a local law. In other words, the *Drysdale* Court never made any determination or holding regarding which of the 14 prohibited subjects was implicated by the act under challenge in that case. 777 S.E.2d at 98.

Turning to *Reed*, the Court of Appeals said:

> Like *Drysdale*, *Reed* is a 1920's case in which our Supreme Court addresses the constitutionality of a statute creating sanitary districts. [Citation omitted] However, unlike *Drysdale*, the Court in *Reed* held that the act in question, …, was constitutional. [Citation omitted] Specifically, the Court addressed the issue of whether the act was one 'relating to health and sanitation,' holding that *it was not*, because the language in the act did not suggest this to be the act's purpose, but rather the act merely sought to create political subdivisions through which sanitary sewer service could be provided. [Citation omitted]

777 S.E.2d at 98-99 (emphasis in original).

Ultimately, the Court of Appeals concluded that *Reed* is more instructive

than *Drysdale* in determining whether a statute relates to health and sanitation because the Court in *Reed* took the "relating to" issue "head-on" and made a decision, while the Court in *Drysdale* never actually addressed and answered the "relating to health and sanitation" question. 777 S.E.2d at 99.

A plain reading of *Drysdale* demonstrates that the Court of Appeals was correct in this assessment. At the outset of its decision, the *Drysdale* Court noted that the "first material question" for decision was whether the law under challenge was "a local … act … and therefore void," 195 N.C. at 726, second paragraph, 143 S.E. at 532, because it was a law "relating to [among other topics] … health [and] sanitation …; [or a law] regulating labor, trade, mining, or manufacturing." 195 N.C. at 726, sixth paragraph, 143 S.E. 532. The Court then briefly quoted from the law under challenge, noting that it "create[d] in Henderson County a *special sanitary* and maintenance district" …, that the law empowered this district "[t]o negotiate and enter into agreement[s] with the owners of existing water supplies, sewerage system[s]" and that the law empowered the district "[t]o repair and generally to maintain in good and satisfactory working condition a sewer system." 195 N.C. at 726, fourth and fifth paragraphs, 143 S.E. at 532 (emphasis in original).

Beyond reciting what the law sought to do – *i.e.*, create a special sanitary and maintenance district – and beyond noting that the law purported to empower

the newly created district to enter into agreements with owners of existing water supplies and sewer systems and to repair and maintain a sewer system, *Drysdale* says absolutely nothing about and it contains no holding on the issues: (i) whether the act under challenge in that case "relat[es] to" health and sanitation (as opposed to one of the other constitutionally prohibited topics); (ii) if the act did relate to health and sanitation, *why* it did; or (iii) what test or other mode of analysis should be employed by the courts in making a determination of the "relating to" issue. In view of these facts, the Court of Appeals was correct in turning to *Reed* for guidance on the issue whether the Act "relat[es] to health and sanitation."

The City disputes this and claims that this Court has "abandoned" the "relating to health and sanitation" holding and analysis of *Reed*. (City's Br. at 34) As alleged support for this statement, the City cites *Drysdale* and claims that "it 'limited' *Reed* to the conclusion that the statute in *Reed* was not a local act." (City's Br. at 34) Thus, according to the City, the rest of *Reed* is jurisprudentially "gone."

These statements are not factual. No decision of this Court has ever "abandoned," "limited," "reversed," "overruled" or "overturned" *Reed.* And, contrary to the City's implication that Professor Ferrell stated that *Drysdale* "limited" *Reed*, Professor Ferrell actually stated that *Drysdale* did *not* overrule *Reed*. *Ferrell,* 45 N.C.L. REV. at 368. As to *Drysdale*'s "treatment" of *Reed*, a

plain reading of *Drysdale* demonstrates that the *Drysdale* Court did not "limit" *Reed* or suggest that it was no longer good law. The *Drysdale* Court simply "distinguished" *Reed* from the case before it in *Drysdale*. *Drysdale,* 195 N.C. at 727-28, 143 S.E. at 533 ("*Reed* … is distinguishable"). Distinguishing a case is a far cry from stating that the Court "abandons" it or is "limiting" its holding.

That the City's statement about this Court's "abandonment" and "limitation" of *Reed* is not true is demonstrated beyond doubt by this Court's decision in *Town of Kenilworth v. Hyder*, 197 N.C. 85, 147 S.E. 736 (1929), a decision made a year *after* this Court decided *Drysdale*. In *Kenilworth*, this Court endorsed and cited *Reed*'s "relating to… health and sanitation" analysis and holding with unambiguous approval. 197 N.C. at 88-90, 147 S.E. at 737.

Thus, the Court of Appeals' holding that the Act does not "relat[e] to" health and sanitation is supported by *Reed* and *Kenilworth*, both of which are decisions of this Court. And *Lamb v. Bd. of Educ.*, 235 N.C. 377, 70 S.E.2d 201 (1952), provides additional support for the proposition from *Reed* and *Kenilworth* that the purpose of a statute is relevant in determining whether the statute "relat[es] to" health and sanitation. *Lamb* is fully discussed at pages 54-57 of this Brief. Suffice it to say here, however, that this Court in *Lamb* expressly stated that, where the General Assembly enacts a law which, when viewed literally, touches upon, legislates, regulates, deals with or affects water and sewer systems, but where the

evidence supports the view that the General Assembly's actual *purpose* in enacting the law was something *other than* or *in addition to* water and sewer systems, such a law may not be one "relating to" health and sanitation.

Specifically, in ruling that the law under challenge in *Lamb* "relat[ed] to" health and sanitation, this Court was careful to say that it "relat[ed] to" the prohibited topics only "since its *sole purpose* is to prescribe provisions with respect to sewer and water service for local school children …." 235 N.C. at 379, 70 S.E.2d at 203. (Emphasis supplied) In other words, the Court explicitly left open the possibility that, where a law has some purpose *other than* or *in addition to* dealing with or affecting the topics of water and sewer service, the Court would have to take that other purpose into account in determining whether the statute "relat[es] to" health and sanitation.

Accordingly, the Court of Appeals' "relating to health and sanitation" holding was amply grounded in the decisions of this Court.

The Court of Appeals' Use of the Term "Regulating" Derives From the Decisions of This Court and Does Not Alter, Narrow or Engraft a New Meaning on the Constitutional Term "Relating to."

The City also asserts that the Court of Appeals' holding "narrow[s] the '[r]elating to' [s]tandard" by improperly adopting a "regulating test" and a "prioritizing test" and by not giving the term "relating to" its plain meaning – by which the City means the most literal meaning conceivable. (City's Br. at 24, 30-34) This argument lacks merit.

The Court of Appeals' statement that the text of the Act does not reveal a legislative purpose "to regulate" health or sanitation, 777 S.E.2d at 98, is fully grounded in this Court's precedents. In fact, this is exactly what this Court said in *Reed*, a decision that this Court unambiguously reaffirmed just a few years later in *Kenilworth*. And this mode of constitutional analysis which this Court announced in *Reed* in determining whether an act "relat[es] to" health and sanitation is entirely sensible. It recognizes the principle that a crucial factor in deciding whether a statute is constitutional ought to be the General Assembly's *purpose* in enacting the statute, not just whether the statute contains one or more magical words, such as "water" or "health." It seems obvious that the most sensible way to determine whether a statute "relat[es] to" health and sanitation is to read the statute in its entirety and determine whether the legislative purpose underlying the statute is to regulate – meaning, to "legislate concerning" – health and sanitation or something

different.[5] This is exactly what the Court of Appeals did when it noted that a review of the Act as a whole reveals that its purpose is something other than health and sanitation because the Act does not "contemplate[] … prioritizing the [water system's] health or sanitary condition." 777 S.E.2d at 98. In other words, the Court of Appeals concluded that, because the underlying purpose of the Act is not focused on or directed at the water system's health or sanitary condition, it is reasonable to infer that its purpose is something else. The Court of Appeals concluded that this "something else" was "the *governance* over water and sewer systems …." *Id*. (emphasis supplied).

This analysis is solidly grounded in this Court's holding in *Reed*, as reaffirmed by this Court in *Kenilworth*. Moreover, it *is* an analysis, not merely a simplistic and superficial search for one or more magical words. And it takes account of legislative purposes and intentions, which should be central to the determination of any statute's constitutionality.

For all of these reasons, the Court of Appeals "relating to" decision was correct and should be upheld.

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[5] *Cf. Ferrell*, 45 N.C.L. REV. at 401, 408 (where Professor Ferrell himself routinely uses the term "regulate" in place of the term "relates to" when discussing article II, section 24(1)(a)).

The Court of Appeals' Decision Is Not Contrary to the Purposes of Article II, Section 24.

The City also asserts that the Court of Appeals' holding "ignores the purposes of" article II, section 24. (City's Br. at 24; *see also* 24-29) This assertion is untrue.

The City contends that the purposes of article II, section 24 are: (i) to ensure that the General Assembly focuses on laws of statewide importance; (ii) to promote uniformity in the law; (iii) to strengthen local self-governance; and (iv) to prevent the General Assembly from changing key policies through statutes that receive inadequate scrutiny. (City's Br. at 24)

As to the first of these purposes, as demonstrated above, the specific factual context of this case supports the conclusion that the General Assembly's purpose in passing the Act could have been to address, reform and finally correct a long-standing and fundamental breakdown in local governance in the Asheville-Buncombe-Henderson region affecting not only the 125,000 citizens of this State who live there, but also over 2.3 million of this State's citizens who travel to and spend time in this region every year. Manifestly, this is a legislative goal of statewide importance.

As to the second purpose of article II, section 24, uniformity in the law cannot take precedence over the need to address and remedy a prolonged, persistent and serious breakdown in local governance that manifests itself in

governmental acts of widespread discrimination against entire classes of the State's citizens, as well as the misuse of public resources and governmental power.

As to the third goal of article II, section 24, the Act does not weaken local self-government. It merely transfers a local water system from one local political subdivision of the State (the City) to another local political subdivision of the State (the MSDBC). The water system will continue to be operated by a unit of local government in the Asheville-Buncombe-Henderson region that will be representative of and answerable to the people who live there (indeed, far more so than is currently the case).

Finally, the City implies that the Act was passed hurriedly and without adequate legislative scrutiny, but, as the party with the burden of proof on this issue, it offers no facts or evidence supporting this claim.

As demonstrated above, the Act is an important piece of legislation designed to directly confront and finally deal what the General Assembly could have concluded is a serious problem affecting the important interests of the people of this State as a whole. As such, it is not inconsistent with the purposes of article II, section 24.

The Court of Appeals' Decision Does Not Clash With the Prior Decisions of This Court Cited by the City.

The City asserts that the Court of Appeals' decision "clashes with three lines of this Court's decisions that apply the 'relating to' standard in article II, section 24." (City's Br. at 23) This assertion is untrue.

The first such line of cases to which the City cites this Court is composed of *Drysdale*; *Lamb*; *City of New Bern v. New Bern-Craven Cty. Bd. of Educ.*, 338 N.C. 430, 450 S.E.2d 735 (1994); and *State of North Carolina ex rel. Utilities Comm. v. Public Staff,* 317 N.C. 26, 343 S.E.2d 898 (1986) [hereinafter referred to as "*Utilities Comm*."]. (City's Br. at 23, 36-40)

The second such line of cases to which the City cites this Court is composed of *New Bern*; *Idol v. Street,* 233 N.C. 730, 65 S.E.2d 313 (1951); *Bd. of Health v. Bd. of Comm'rs*, 220 N.C. 140, 16 S.E.2d 677 (1941); and *Sams v. Bd. of Comm'rs*, 217 N.C. 284, 7 S.E.2d 540 (1940).

The third line of cases to which the City cites this Court is composed of *New Bern* and *Williams v. Blue Cross Blue Shield of North Carolina*, 357 N.C. 170, 581 S.E.2d 415 (2003).

As demonstrated below, none of these decisions is in conflict with the Court of Appeals' decision in this case.

The First Line of Cases Cited by the City: *Drysdale*, *Lamb*, *New Bern* and *Utilities Comm*.

The City states categorically that these four "decisions *hold*[] that water and sewer services are inherently related to health and sanitation" (City's Br. at 23) (emphasis supplied) and that they also hold that, irrespective of the particular facts or the specific context of a particular local law, any law "that *affect[s]* water and sewer services [is] *inherently* related to health and sanitation." (City's Br. at 36) (Emphasis supplied)

In fact, as a careful reading of these cases makes clear, not one of these decisions even states, much less holds, that "water and sewer services are inherently related to health and sanitation." In addition, not one of them establishes a one-size-fits-all, hard and fast rule that, irrespective of the factual or historical context of a particular law, if that law "affects" water and sewer services, it necessarily "relat[es] to" health and sanitation. Furthermore, each of these decisions is distinguishable from the instant case in one or more decisive ways.

In support of its assertion that this Court has repeatedly held that water and sewer services are *inherently* "relat[ed] to" health and sanitation, the City asserts that "[t]his Court first invalidated a local law on water service in *Drysdale*," and then quotes the *Drysdale* Court as saying that "pure water is nature's natural beverage—life and health giving," 195 N.C. at 733, 143 S.E. at 535, adding that the *Drysdale* Court "stressed" that water service "involves the very life and health

of a community" and "promot[es] the public health and welfare." *Id.* at 732-33, 143 S.E. at 535. (City's Br. at 37) The City adds that *Drysdale* is an example of how "[t]his Court's decisions under article II, section 24(1)(a) are based on the overall health-promoting function of water service." (City's Br. at 40)

The City's characterization of *Drysdale* makes it appear as if the *Drysdale* Court held that the law at issue there "relat[ed] to" health and sanitation because of "the overall health-promoting function of water service" and because: (i) "pure water is nature's natural beverage—life and health giving;" (ii) water service "involves the very life and health of a community;" and (iii) water service "promot[es] the public health and welfare." In fact, a plain reading of *Drysdale* demonstrates that this is *not* a factual portrayal of this Court's ruling in *Drysdale* at all.

As demonstrated in detail at pages 38-40 above, the Court in *Drysdale* initially dealt with what it termed the "first material question" for decision, namely, whether the law under challenge in that case was "a local … act in violation of section 29, Article II," 195 N.C. at 726, second paragraph, 143 S.E. at 532, because it was a law "relating to [among other topics] … health [and] sanitation …; [or a law] regulating labor, trade, mining, or manufacturing." 195 N.C. at 726, sixth paragraph, 143 S.E. at 532. In its discussion of this "first material question," the *Drysdale* Court never stated or held whether the law under

challenge in that case "relat[ed] to" health and sanitation (as opposed to another of the prohibited topics).

The *Drysdale* Court's entire discussion and analysis of what it identified as this "first material question" was focused solely on the issue whether the act under challenge in that case was a local law, not whether that law "relat[ed] to" health and sanitation. And the *Drysdale* Court said nothing whatsoever in its discussion of the "relating to" or local law issue about "the overall health-promoting function of water service" or how: (i) "pure water is nature's natural beverage—life and health giving;" (ii) water service "involves the very life and health of a community;" and/or (iii) water service "promot[es] the public health and welfare."

In addition, the *Drysdale* Court said nothing whatsoever in its discussion of the "relating to" or local law issue (the "first material question") about how "water and sewer services are inherently related to health and sanitation" and it made no *holding* of any kind to this effect. Furthermore, the *Drysdale* Court said nothing to the effect that any law that "affects" water and sewer services is inherently related to health and sanitation.

As a plain reading of the *Drysdale* decision reveals, this Court discussed the importance and virtues of water, public water services and public sewerage services in connection with its analysis of a *completely different* issue presented for review in that case, not the issue whether the act under challenge "relat[ed] to"

health and sanitation. Immediately following the last sentence of its local law analysis and decision (195 N.C. at 728, 143 S.E. at 533), the *Drysdale* Court moved on to a completely different issue, which it referred to as "The second material question." That question dealt with a *different* act of the General Assembly, an act which this Court stated was a general, not a local, law. This law provided, among other things, for the creation, government, maintenance and operation of sanitary districts generally. 195 N.C. at 728, 143 S.E. at 533.

The issues presented in this second part of the *Drysdale* Court's decision were whether a tax authorized by this second (general) law was (i) "a special assessment and limited to an amount not in substantial excess of the benefits accruing to the property taxed;" and (ii) unconstitutional "because it d[id] not authorize the State Board of Health to exclude from a sanitary district property which will not be benefited by the proposed improvements." 195 N.C. at 729-30, 143 S.E. at 534.

In support of their argument that this second, general law was unconstitutional, the property owner-appellants in *Drysdale* cited this Court to a United States Supreme Court decision stating that "[w]here a … district is created …, and there was no legislative determination that any included property would be benefitted by the improvement, notice to property owners and an opportunity to be heard are essential to the due process of law in the taxing of the assessment." 195

N.C. at 729-30, 143 S.E. at 534 (citing *Browning v. Hooper,* 269 U.S. 396, 46 S. Ct. 141, 70 L. Ed 330 (1926)).

It was in response to *this* argument by the appellants in *Drysdale* – and their implication that their properties would not be benefitted by a tax designed to require all property owners to share the cost of building water and sewer systems – that the Court in *Drysdale* stated that "[i]t has long been decided that water and sewer are 'necessary expenses,' within the meaning of section 7, Article VII, Constitution of North Carolina …." 195 N.C. at 730, 143 S.E. at 534. Later in the *Drysdale* decision, this Court again sought to refute the appellant-landowners' argument that the tax would not benefit all property owners. It was only here, not in the previous part of its decision which dealt with the "relating to health and sanitation" issue, that the *Drysdale* Court stated that: (i) "a sanitary matter, such as this, involves the very life and health of a community," *id.* at 732, 143 S.E. at 535; (ii) "the act is carefully drawn for the purpose of promoting the public health and welfare …," *id.* at 732, 143 S.E. at 535; and (iii) "pure water is nature's natural beverage—life and health giving." *Id.* at 733, 143 S.E. at 535.

In other words, the *Drysdale* Court's references to the virtues and importance of water and sanitary services had absolutely nothing to do with its decision as to whether the local act in that case "relat[ed] to" health and sanitation, but rather with a totally different constitutional subject and issue. Hence, *Drysdale*

does not stand for the proposition that any law dealing with or affecting water and sanitary services necessarily or inherently "relat[es] to" health and sanitation simply because of the importance of water to human life.

And *Drysdale* likewise does not stand for the proposition that the constitutional term "relating to" must always be interpreted, defined and applied in an absolute and inflexibly literal manner, so that any law dealing with or affecting water and sanitary services must always be found to "relat[e] to" health and sanitation, irrespective of the law's purpose or its specific context. The *Drysdale* Court never said this – and it never said that water and sewer services are "inherently" "relat[ed] to" health and sanitation. In fact, the *Drysdale* Court did not even disclose its mode of analysis regarding the "relating to health and sanitation" issue and it did not articulate *any* test which future courts should apply in determining this issue. Indeed, it is not even clear from the reported decision in *Drysdale* why the *Drysdale* Court held the local law at issue there to be unconstitutional – whether it was because the Court believed that the law "relat[ed] to" health and sanitation or because it believed that the law "regulat[ed] labor, trade, mining, or manufacturing."

Finally, *Drysdale* is distinguishable from the instant case in an obvious and decisive way. None of the litigants in *Drysdale* even argued, much less presented facts supporting the argument, that, in enacting the law under challenge in that

case, the General Assembly had some purpose in mind other than or in addition to "creat[ing] in Henderson County a special sanitary and maintenance district," to empower the district "[t]o negotiate and enter into agreement[s] with the owners of existing water supplies, sewerage system[s]," and "[t]o repair and generally to maintain in good and satisfactory working condition a sewer system." 195 N.C. at 726, 143 S.E. at 532. Thus, none of the litigants in *Drysdale* argued that the historical record or some other specific contextual data concerning the law under challenge in that case or the particular community mentioned in that law gave rise to a reasonable inference that the General Assembly's actual purpose in enacting the law was something entirely different from merely providing for a sanitary district with powers to purchase or build a water supply or a sewerage system.

In the case now before this Court, the well-documented and undeniable historical record demonstrates that the General Assembly's actual purpose in passing the Act may not have been to provide for or improve a water system, but rather to address what it may have seen as a 70-year old-plus chronic and serious breakdown in governance in the Asheville-Buncombe-Henderson region, to bring about systemic governance reform to that region and to thereby address a serious problem that undermines public trust and confidence in local government among not only the 125,000 North Carolina citizens who permanently live in that region and are served by the water system daily, but the over 2.3 million other North

Carolina citizens who travel to and spend time there every year.

The City next cites *Lamb* as another alleged example of a "decision[] *holding* that water and sewer services are inherently related to health and sanitation" (City's Br. at 23) (emphasis supplied) and that, irrespective of the particular facts or the specific context of a local law, any law "that *affect[s]* water and sewer services [is] inherently related to health and sanitation." (City's Br. at 36) (Emphasis supplied)

As was the case with *Drysdale*, however, *Lamb* does not hold any of these things, does not articulate or endorse a one-size-fits-all, hard and fast rule on the meaning of the term "relating to" and nowhere holds or implies that the term "relating to" should be given an absolute, literal and inflexible meaning. In addition, like *Drysdale*, *Lamb* is decisively distinguishable from the case now before this Court and, in fact, supports the State's argument in this case.

The law under challenge in *Lamb* purported to prohibit the Randolph County Board of Education from spending "in excess of $2,000 [on] 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," unless approved by the voters at a special election. The issue addressed by the Court was whether this local law "relat[ed] to health [and] sanitation …." This Court held that the law violated article II, section 24, stating that: "[i]t relates to

health and sanitation, since its sole purpose is to prescribe provisions with respect to sewer and water service for local school children ….” 235 N.C. at 379, 70 S.E.2d at 203.

That is *all* the Court said in *Lamb* concerning article II, section 24 and the term “relating to.” The *Lamb* Court said nothing in its discussion of the “relating to” issue about how water and sewer services are *inherently* related to health and sanitation and it made no *holding* of any kind to this effect. In addition, the *Lamb* Court said nothing to the effect that any law which “affects” water and sewer services is *inherently* related to health and sanitation.

Moreover, like *Drysdale*, the *Lamb* decision does not state or hold that the constitutional term “relating to” must always be interpreted, defined and applied in an absolute, literal manner, so that any law which in any way touches upon, deals with or affects water and sanitary services must always be found to “relat[e] to” health and sanitation.

Finally, and also like *Drysdale*, the *Lamb* case is fundamentally distinguishable from the instant case. Unlike the instant case, none of the litigants in *Lamb* even argued, much less presented facts supporting the argument, that, in enacting the law under challenge in that case, the General Assembly had some purpose in mind other than to “prescribe provisions with respect to sewer and water service for local school children ….” 235 N.C. at 379, 70 S.E.2d at 203.

Thus, unlike the instant case, none of the litigants in *Lamb* argued that the historical record or some other specific contextual data concerning the law under challenge in that case or the particular community mentioned in that law gave rise to a reasonable inference that the General Assembly's actual purpose in enacting the law was something entirely different from or in addition to "prescrib[ing] provisions with respect to sewer and water service for local school children …." *Id.*

And importantly, the *Lamb* Court made it clear that, where the General Assembly enacts a law which, when viewed literally, touches upon or otherwise deals with or affects water and sewer systems, but where the evidence supports the view that the General Assembly's purpose in enacting the law was something *other than* or *in addition to* water and sewer systems, such a law may not be one "relating to" health and sanitation. In ruling that the law under challenge in *Lamb* "relat[ed] to" health and sanitation, the Court was careful to say that it "relat[ed] to" the prohibited topics "since its *sole purpose* is to prescribe provisions with respect to sewer and water service for local school children …." 235 N.C. at 379, 70 S.E.2d at 203 (emphasis supplied). In other words, the Court left open the possibility that, where a law has some purpose *other than* or *in addition to* dealing with or affecting the topics of water and sewer service, the Court would have to take that other purpose into account in determining whether the law "relat[es] to"

health and sanitation.

Accordingly, far from supporting the City's argument or confirming the City's characterization of what *Lamb* holds and stands for, *Lamb* actually supports the State's argument that the Act does not "relat[e] to" health and sanitation because its sole purpose is *not* to "prescribe provisions with respect to sewer and water service" in Asheville-Buncombe-Henderson, but rather to address much deeper and more important problems of persistent and systemic local misgovernance affecting not only the people of that region, but millions of other North Carolinians.

The City next cites *New Bern* as another alleged example of a "decision[] *holding* that water and sewer services are inherently related to health and sanitation" (City's Br. at 23) (emphasis supplied) and that, irrespective of the particular facts or the specific context of a particular local law, any law "that *affect[s]* water and sewer services [is] inherently related to health and sanitation." (City's Br. at 36) (Emphasis supplied)

As was the case with *Drysdale* and *Lamb*, however, *New Bern* does not hold any of these things, does not articulate or endorse a one-size-fits-all, hard and fast rule on the meaning of the term "relating to" and nowhere holds or implies that the term "relating to" should be given an absolute, literal meaning. In addition, like *Drysdale* and *Lamb*, *New Bern* is decisively distinguishable from the case now

before this Court.

The three laws under challenge in *New Bern* purported to partially repeal an existing general law that applied uniformly across the State and provided that municipalities shall have exclusive jurisdiction for the administration and enforcement of all laws, statutes, code requirements and other regulations promulgated by the State or any city respecting building, construction, fire and safety codes. The effect of these laws was to take from the City of New Bern the authority to perform building inspections on certain buildings located within the City and to give that authority to Craven County. 338 N.C. at 433-34, 450 S.E.2d at 737.

After holding that these laws were local in nature, 338 N.C. at 438, 450 S.E.2d at 740, the *New Bern* Court framed the first issue to be decided as "whether inspections pursuant to the North Carolina State Building Code … affect any of the prohibited subjects of health and sanitation, …." 338 N.C. at 439, 450 S.E.2d at 740. The Court noted that "[t]he [General Assembly] empowered the Building Code Council to prepare and adopt a North Carolina State Building Code [citation omitted] and provided that 'all regulations contained in the … Code *shall have a reasonable and substantial connection with the public health, safety*, …, and their provisions shall be construed liberally to those ends,'" 338 N.C. at 439, 450 S.E.2d at 740-41 (emphasis supplied), adding, among other things, that the Code

created by the Building Code Council *expressly* stated that its purpose is "to *provide [for] the public safety[and] health* …." After further noting that the subjects dealt with by the Code, such as fire prevention and plumbing, including "the basic sanitary and safety principles of plumbing," "evince an intent to *protect the health of the general public*," the *New Bern* Court stated that "[w]e find the conclusion that inspections pursuant to the Code affect health and sanitation inescapable." 338 N.C. at 439-40, 450 S.E.2d at 740-41 (emphasis supplied).

In other words, the *New Bern* Court reached the not-very-startling conclusion that a local law partially repealing the State-wide administrative and enforcement laws concerning a State-wide building code, which had been created at the direction of the General Assembly itself and which, as mandated by the General Assembly itself, was expressly designed to have a "substantial connection" with and to "provide [for]" the public health and safety, was a law "relating to" health and sanitation. Although the Court concluded that the law under challenge "affect[ed]" health and sanitation," it nowhere stated or suggested that *any* law "affecting" public health and sanitation is necessarily and by definition a law "relating to" health and sanitation, irrespective of context or specific facts, the General Assembly's purpose in enacting the law and other potentially relevant factors. In addition, contrary to the City's contention, the *New Bern* Court said nothing in its discussion of the "relating to" issue about how water

and sewer services are *inherently* related to health and sanitation and it made no *holding* of any kind to this effect.

Furthermore, like *Drysdale* and *Lamb*, the *New Bern* decision does not state or hold that the term "relating to" must always be interpreted, defined and applied in an absolute, literal manner, so that any law which in any way touches upon, deals with or affects water and sanitary services must always be found to "relat[e] to" health and sanitation.

Finally, like *Drysdale* and *Lamb*, the *New Bern* decision is decisively distinguishable from the instant case. None of the litigants in *New Bern* even argued, much less presented facts supporting the argument, that, in enacting the law under challenge in that case, the General Assembly had some purpose in mind other than to alter the laws relating to the administration and enforcement of State-wide building codes which were expressly designed to protect public health and safety. Thus, none of the litigants in *Lamb* argued that the historical record or some other specific contextual data concerning the law under challenge in that case or the particular community mentioned in that law gave rise to a reasonable inference that the General Assembly's actual purpose in enacting the law was something entirely different from or in addition to altering the laws relating to the administration and enforcement of State-wide building codes designed to protect public health and safety.

In addition, the *New Bern* decision is clearly and decisively distinguishable from the instant case for the additional reasons explained at pages 63-68 below.

As its fourth and final alleged example of a "decision[] *holding* that water and sewer services are inherently related to health and sanitation" (City's Br. at 23) (emphasis supplied) and that, irrespective of the facts or the specific context of a particular local law, any law "that *affect[s]* water and sewer services [is] inherently related to health and sanitation" (City's Br. at 36) (emphasis supplied), the City cites *Utilities Comm.* But *Utilities Comm.* was not even a case involving article II, section 24 and it did not even purport to adjudicate the question whether any particular law "relat[ed] to" health and sanitation. Instead, *Utilities Comm.* was a case in which the Public Staff of the Utilities Commission and the Attorney General appealed to this Court a decision of the Utilities Commission adjudicating a franchised public utility's application for a rate increase. 317 N.C. at 27, 343 S.E.2d at __, 1986 N.C. LEXIS 2399 at *** 1. This Court held that the Utilities Commission's decision to grant the franchise utility a 14.52% rate increase was supported by competent, material and substantial evidence. 317 N.C. at 36, 343 S.E.2d at 905.

The City asserts that this Court found in *Utilities Comm.* that there is a close relationship between the quality of water service and "health [and] sanitation" (City's Br. at 38), presumably meaning "health [and] sanitation" as that term is

used in article II, section 24; however, the *Utilities Comm.* decision nowhere holds, states or even implies this – indeed, that issue was not even before the Court in *Utilities Comm.* Thus, anything that this Court stated in *Utilities Comm.* about the quality of water service arose from an entirely different context and analysis.

The City next asserts that the *Utilities Comm*. Court used the term "poor water service" to refer to poor water quality, and that this Court cited as examples of poor water service discolored water, sediment in the water, improper chlorination, bacterial contamination and noncompliance with State health regulations (citing to 317 N.C. at 26, 31-32, 343 S.E.2d at 901, 902). (City's Br. at 38) But it was *not* this Court that used the term "poor [actually, "inadequate"] water … service" in the *Utilities Comm.* decision. Rather, it was the Utilities Commission which, in its order from which the appeal was taken, stated that the franchise utility in that case had provided "inadequate water quality and service" and added that there was evidence of, among other things, "bacteria contamination," "discolored water," "sediments in the water," "improper chlorination of the water" and "contaminated water." 317 N.C. at 36, 343 S.E.2d at 905.

In addition, like *Drysdale*, *Lamb* and *New Bern*, the *Utilities Comm.* Court said nothing about how water and sewer services are *inherently* related to health and sanitation and it made no *holding* of any kind to this effect.

Furthermore, also like *Drysdale*, *Lamb* and *New Bern*, the *Utilities Comm.* decision does not state, hold or imply that the term "relating to" must always be interpreted, defined and applied in an absolute, literal manner, so that any law which in any way touches upon, deals with or affects water and sanitary services must always be found to "relat[e] to" health and sanitation. Again, *Utilities Comm.* does not even deal with this issue and is thus entirely distinguishable from and inapplicable to the case now before this Court.

The Second Line of Cases Cited by the City: *New Bern*, *Idol*; *Bd. of Health*; and *Sams*

The second line of this Court's decisions applying the "relating to" standard which the City asserts clashes with the Court of Appeals' decision below (City's Br. at 23) is composed of *New Bern*; *Idol*; *Bd. of Health*; and *Sams*. (City's Br. at 43-44) The City asserts that this Court "recognized [in each of these cases] that the governance of health-related services affects health and sanitation" (City's Br. at 43) (underscore in original), thereby suggesting that a local law dealing with the governance of any public services which, in turn, have an effect on human health or sanitation "relat[es] to" health and sanitation.

In fact, a careful reading of each of these cases demonstrates that: (i) not one of them is in conflict with the Court of Appeals' decision below or with the State's argument that the Act is constitutional; (ii) not one of them holds, states or suggests that a local law dealing with the governance of public services which have

an effect on human health and/or sanitation is unconstitutional; and (iii) all of these decisions are distinguishable from the case now before this Court in a number of crucial ways.

As this Court observed in *New Bern*, this Court's decisions in *Sams*, *Idol* and *Bd. of Health* all dealt with local laws that purported to change the ways various general laws provided for "the selection of officers to whom is given the duty of administering *the health laws*." 338 N.C. at 441-42, 450 S.E.2d at 742 (emphasis supplied). For example, the local law in *Sams* dealt with the way a "county physician and quarantine officer," whose duty it was to inspect the county's institutions and ensure "that each [was] kept in a sanitary condition," was selected by the county board of health. 217 N.C. at 285-86, 7 S.E.2d at 541. Likewise, the local law in *Idol* dealt with the way city and county "health officers" were selected. 233 N.C. at 732-33, 65 S.E.2d at 315. Finally, the local law in *Bd. of Health* dealt with and purported to alter the process of appointment of a "health officer" for Nash County who was "intimately charged with the administration of" the health laws. 220 N.C. at 143, 16 S.E.2d at 679.

Significantly, after discussing *Sams* and *Idol* at length, this Court in *Bd. of Health* explicitly cabined the scope of its rulings in all three of these cases by stating that this Court was "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.'" 220 N.C. at 143, 16 S.E.2d at 679 (emphasis supplied).

An equally careful reading of *New Bern* demonstrates that it did not depart from or expand the scope of the Court's earlier decisions in *Sams*, *Idol* or *Bd. of Health*. The three local laws under challenge in *New Bern* purported to repeal an existing general law providing that municipalities shall have exclusive jurisdiction for the administration and enforcement of all laws respecting building, construction, fire and safety codes. The effect of these local laws was to take from the City of New Bern the authority to perform building inspections on certain buildings located within the City and to give that authority to Craven County. 338 N.C. at 433-34, 450 S.E.2d at 737.

Before analyzing the issue whether these local laws "relat[e] to" health and sanitation, the Court in *New Bern* went to noticeably great and explicit lengths to demonstrate just how directly connected the State's building codes and building inspections are to public health and safety. 338 N.C. at 439, 440, 450 S.E.2d at 740-41 (emphasis supplied). In light of all the public health, sanitation and safety goals that the Court noted were at the heart of and had been explicitly built into the General Assembly's enabling legislation and the State Building Code, the Court then made clear that inspections made pursuant to building codes are instrumental in assuring and protecting the public health, sanitation and safety. 338 N.C. at 440, 450 S.E.2d at 741.

The Court then surveyed the case law – *Sams*, *Idol* and *Bd. of Health* – in an effort to determine whether the local acts in question "relat[ed] to" health and sanitation because they purported to alter general legislation directing who was to perform building inspections under the State Building Code. Quoting its earlier statement in *Bd. of Health* that "[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,'" 220 N.C. at 143, 16 S.E.2d at 679, this Court stated in *New Bern* that "We remain committed to *that* proposition. The acts before us, like those in *Sams* and *Board of Health,* are in conflict with the general laws regulating the selection of personnel to enforce the Code, the enforcement of which unquestionably affects health and sanitation." 338 N.C. at 442, 450 S.E.2d at 742 (emphasis supplied).

The *New Bern* Court thus came to the common sense conclusion that building code inspectors are just another species of health law officers like those involved in *Sams*, *Idol* and *Bd. of Health.* In other words, the Court in *New Bern* concluded that there is no meaningful difference, where it comes to the subjects of health and sanitation, between "officers to whom is given the duty of administering the *health laws*," *Bd. of Health,* 220 N.C. at 143, 16 S.E.2d at 679 (emphasis supplied), and officers to whom is given the duty of administering and enforcing the State Building Code, which, as the Court went to great lengths to demonstrate,

was laden with goals and objectives expressly designed to preserve and protect the public health.

Thus, a more accurate statement of this Court's holdings in *Sams*, *Idol*, *Bd. of Health* and *New Bern* is that "a [local] law affecting the selection of officers to whom is given the duty of administering the health laws is a law 'relating to health" for purposes of article II, Section 24. *Bd. of Health,* 220 N.C. at 143, 16 S.E.2d at 679. If this Court had intended its decisions in *Sams*, *Idol*, *Bd. of Health* and/or *New Bern* to be so expansive as to be able to reach and strike down any local law dealing with the governance of any public services which, in turn, have an effect on human health or sanitation, it could easily have accomplished that objective by simply saying so in *Bd. of Health* and/or *New Bern* – or it could have simply used more explicitly expansive language in those decisions instead of the carefully crafted and narrowly limited language it did use. It did not do so.

The Court's actual holdings in *Sams*, *Idol*, *Bd. of Health* and *New Bern* do not conflict in any way with the Court of Appeals' decision below or with the State's argument that the Act is constitutional. Under any reasonable reading of the Act and the facts of this case, the Act does not purport to affect the selection of public officers to whom is given the duty of administering or enforcing the health laws of this State, including public health, sanitation and safety laws that are analogous to building codes.

Sams, Idol, Bd. of Health and *New Bern* Are All Distinguishable From the Case Now Before This Court.

Sams, Idol, Bd. of Health and *New Bern* are also significantly distinguishable from the case now before this Court. Not one of the statutes under challenge in any of those cases had as its purpose to remedy and reform a decades-old, persistent and serious breakdown in local governance which had defied repeated legislative attempts at resolution over a period of 70-plus years.

The Third Line of Cases Cited by the City: *New Bern* and *Williams v. Blue Cross*

The City asserts that there is a third line of this Court's decisions that allegedly clashes with the Court of Appeals' decision. The City claims that this third line of decisions applies the "relating to" standard and "hold[s] that the practical effect of a statute, *not* its stated purpose, is the key consideration under article II, section 24." (City's Br. at 23) (Emphasis supplied) According to the City, this line of decisions is comprised of *New Bern* and *Williams v. Blue Cross*. (City's Br. at 45-47)

As an initial matter, the State does not dispute the basic proposition that, in evaluating a statute under the "relating to" standard of article II, section 24, courts should consider the practical effect(s), among many other factors, of a statute. Indeed, the State is itself arguing that the Court should look to the fact that the most important practical (and intended) effect of the Act will be to bring about

governance reform to a region that has been plagued for over 70 years by intractable disputes concerning the misgovernance of a water system that serves the people of an entire region, a problem affecting them and, as noted above, millions of other North Carolinians.

But the State does dispute the City's claim that the practical effect of a statute is the only or the most important factor that courts should consider in determining whether the statute "relat[es] to" health and sanitation. Neither *New Bern*, *Williams* nor any other decision of this Court states or holds this.

In addition, the City's assertion that the practical effects of a statute are the preeminent factor to be considered by courts in determining the constitutionality of a statute under article II, section 24 ignores those decisions of this Court which turned on factors *other than* the practical effects of a statute – decisions in cases which, like the instant case and unlike *New Bern* and *Williams*, actually dealt with water/sewer systems.

For example, in *Reed*, a case in which there was a challenge to the constitutionality of a statute creating a sanitary district in Buncombe County on the ground that the statute related to health and sanitation, the Court considered the text of the statute "as a whole," the stated purpose of the statute and the purpose of the statute as revealed by a careful reading of the entire statute. 188 N.C. at 44, 123 S.E. at 481.

This Court's "relating to … health [and] sanitation" decision four years later in *Drysdale*, another sewer-water system case, purported to distinguish *Reed*, but nowhere in the *Drysdale* decision did this Court suggest that *Reed* was not still good law. In fact, this Court endorsed and cited *Reed*'s "relating to… health [and] sanitation" analysis and decision with unambiguous approval one year after the *Drysdale* decision. *Kenilworth,* 197 N.C. at 88-90, 147 S.E. at 737. No other decision of this Court since *Drysdale* or *Kenilworth* has ever overruled or cast doubt upon the continued validity and vitality of *Reed*.

Yet other decisions of this Court likewise demonstrate that it is entirely proper for courts to consider factors other than the "practical effects" of a statute in determining whether it violates article II, section 24. *E.g., Gallimore v. Town of Thomasville*, 191 N.C. 648, 653, 132 S.E. 657, 660 (1926) (Court looked to the text of the statute); *see also McIntyre,* 254 N.C. at 517, 526, 119 S.E.2d at 893, 899 ("regard must be had to *the terms and purpose of the statute* in question") (emphasis supplied).

Finally, the City's argument about the alleged practical effect of the Act does not advance the City's ultimate contention that the Act violates article II, section 24. The ultimate logic and purpose of the City's argument about the practical effect of a statute is to attempt to persuade the Court that *New Bern* applies to this case and that it mandates the reversal of the Court of Appeals'

decision. The City argues that the practical effect of the Act is to "shift[] control over water service in Asheville—a service that [according to the City] is inherently related to health and sanitation." (City's Br. at 46) The City argues that shifting control of a public service that is allegedly inherently related to health and sanitation "unquestionably affect[s] health and sanitation" (City's Br. at 46), citing and relying on *New Bern*, 338 N.C. at 442, 450 S.E.2d at 742.

But, as demonstrated above, the *New Bern* decision does not avail the City in its ultimate argument. *New Bern* is not a controlling precedent in this case. In addition to being distinguishable from this case in other decisive ways, as described more fully above, the Court in *New Bern* expressly and carefully limited the reach and application of its holding in that case (as well as in *Sams*, *Idol* and *Bd. of Health*) to laws affecting the selection of officers who have the duty of administering and enforcing the *health* laws of this State (including those charged with administering and enforcing the building code laws). This is not such a case.

II. THE COURT OF APPEALS CORRECTLY HELD THAT THE ACT DOES NOT EFFECT AN UNCONSTITUTIONAL TAKING OF THE CITY'S PRIVATE PROPERTY.

At the tail end of its Brief, the City asserts that the transfer provision of the Act effects a "taking" of its private property and that, in finding against the City on this issue, the Court of Appeals "purported to repeal" the constitutional "right to be free from uncompensated takings" of private property. (City's Appeal and PDR at

22) In making this argument, the City relies on *Asbury v. Town of Albemarle*, 162 N.C. 247, 78 S.E. 146 (1913), and *State Highway Comm. v. Greensboro City Bd. of Educ.*, 265 N.C. 35, 143 S.E.2d 87 (1965). As demonstrated below: (i) the Act's transfer provision does not effect a taking of the City's private property at all, much less one for which the payment of compensation would be appropriate; (ii) nothing in *Asbury*, *Greensboro City Bd. of Educ.* or any other decision of this Court conflicts in any way with the Court of Appeals' decision on this alleged "takings" issue; (iii) the Court of Appeals correctly relied upon *Brockenbrough v. Bd. of Water Comm'rs of Charlotte*, 134 N.C. 1, 46 S.E. 28 (1903), in reaching its decision; and (iv) the Court of Appeals acted correctly in looking to the common law decided elsewhere, in addition to *Brockenbrough* (among other things), on the issue whether the transfer of the water system in this case constitutes a compensable "taking" of private property.

The Act's Transfer Provision Does Not Effect a "Taking" of the City's Private Property, Whether Compensable or Otherwise.

The water system is not the "private" property of the government of the City of Asheville. That water system is held by the City *in trust* for, among other persons, the residents of the City, and it is operated by the City as a water system for the use of those residents, as well as the people who live in Buncombe County and Henderson County.

In recognition of the fact that a regional water and sewer system would better serve the interests of all the people who live in the Asheville-Buncombe-Henderson region, and in recognition of the fact that the people who live in that region would be better served if the *governance* of the water and sewer systems was meaningfully reformed, the General Assembly adopted the Act in order to transfer operating control – by transferring ownership – of the water system to the MSDBC. Importantly, the water system will not be moved or destroyed and it will not be repurposed as a result of the implementation of the Act. Instead, it will continue to serve the residents of the City, as well as the people who live in Buncombe County and Henderson County, with water just as before, only more fairly. In other words, the residents of the City will not lose or lose the use of the existing water system.

Furthermore, the City and its residents will not have to use tax dollars to acquire or construct another water system, since the existing water system will not be destroyed or repurposed by the Act's transfer provision. Rather, the existing water system will continue to serve the residents of Asheville, among others, in the future, just as it does now.

Manifestly, this is not a "taking" of the water system from those who own it – the people of this State. Indeed, given that: (i) the City's residents will continue to have full and uninterrupted access to the water system and will continue to use it

just as they always have; and (ii) the residents of the City will not have to spend money building a new water system, *any* compensation paid to the City or its residents on account of the water system's transfer to the MSDBC would, by definition, constitute unjust enrichment and a double recovery.

Nothing in Any Decision of This Court Conflicts With the Court of Appeals' Decision on the Alleged "Takings" Issue Raised by the City.

The City claims that the alleged "takings" issue in this case is controlled by *Asbury*, and that the Court of Appeals' holding that the Act's transfer provision does not give rise to a taking of the water system conflicts with *Asbury*. (City's Br. at 57) These assertions are untrue.

Asbury dealt with the issue what constitutes a proprietary function of a municipality. It did not deal with a situation in which a law enacted by the General Assembly transfers ownership and control of a municipal water system (or some other municipal facility) from one political subdivision of the State to another political subdivision of the State so that it will be used by the transferee political subdivision in exactly the same way and for the benefit of exactly the same people as before. Hence, on this takings issue, *Asbury* is not controlling or even relevant.[6]

In its Notice of Appeal and PDR, the City also cited *Greensboro Bd. of Educ.* for the proposition that the transfer provision of the Act effects a taking of

[6] The same is true of *Candler*, which the City also cites. (City's Br. at 58n.11)

its private property. (City's Notice of Appeal and PDR at 24) This claim, too, is untrue. Indeed, the *Greensboro Bd. of Educ.* decision illustrates clearly why the transfer of the water system at issue in this case is *not* a taking.

In *Greensboro Bd. of Educ.*, the Department of Transportation condemned land belonging to the Greensboro public school system which was then being used for a public school. The purpose of the condemnation was to enable the State to construct a road. But, unlike the transfer provision at issue in this case, the building of this road by the State necessarily *repurposed* the school system's land and thus required that the school system spend money to replace the school. 265 N.C. at 40, 143 S.E.2d at 91; *see id.*, "Prior History."

This is exactly the opposite of the instant case. If the Court in *Greensboro Bd. of Educ.* had not treated the State's condemnation as a taking, the school system would have lost one of its existing schools and could have replaced that school only by spending its own money to build a new school, all without compensation by the State.

By contrast, in the instant case, the Act's transfer provision will not require the City to build a new water system, because that system is not being destroyed, moved or repurposed by the Act. It will continue to be used by the same members of the public for the same purpose as before. Thus, *Greensboro Bd. of Educ.* is distinguishable from and inapplicable to this case and it is not in conflict with the

Court of Appeals' decision.

The Court of Appeals Correctly Relied Upon *Brockenbrough* in Reaching its Decision.

The City criticizes the Court of Appeals for its citation to and reliance on *Brockenbrough*. According to the City, the statute at issue in that case did not mandate an *involuntary* transfer of Charlotte's water system to another political subdivision of the State, as does the Act in the instant case. Instead, the City argues that the statute at issue in *Brockenbrough* effected a *voluntary* transfer of Charlotte's water system to this other political subdivision for and in the name of Charlotte. Based on this assertion, the City claims that *Brockenbrough* is inapplicable to this case. (City's Br. at 62)

This, too, is untrue. As a careful reading of *Brockenbrough* makes clear, the legislative act at issue there created a board of water commissioners and empowered it "to take … the land, real estate, … and property of every kind now owned by [the] board of aldermen [of the City of Charlotte] … for the purpose of operating and maintaining a system of waterworks for the said city …." 134 N.C. at 3-4, 46 S.E. at 28. In other words, the *Brockenbrough* legislation *mandated* that Charlotte transfer its water works property to another political subdivision of the State. This Court's decision makes clear that the City of Charlotte did turn its waterworks property over to this other political subdivision and that it did so without protest or dispute, *id*. at 4, 46 S.E. at 29; however, that fact does not render

the transfer mandated by the statute "voluntary." It merely means that the city complied with the law and chose not to challenge it in court. Thus, the Court of Appeals was correct in relying upon *Brockenbrough*, a decision that is directly applicable to the instant case.

> The Court of Appeals Acted Correctly in Looking to Persuasive Decisions From Other Jurisdictions, in Addition to *Brockenbrough* and Other Precedents.

The City claims that the Court of Appeals relied on federal and other out-of-state authorities to "abrogate" *Asbury*. (City's Appeal and PDR at 25; City's Br. at 63-65) This claim is likewise untrue. First, as demonstrated above, the Court of Appeals' decision does not even conflict with *Asbury*, much less abrogate it or create a "new rule." Second, the Court of Appeals can hardly be faulted for considering the persuasive decisions of the United States Supreme Court and other jurisdictions – in addition to *Brockenbrough* – on the takings issue raised by the City, or in noting that there is persuasive precedent from other jurisdictions concluding that the type of transfer at issue in this case is not a taking at all. *See also, e.g.*, *State of Florida v. Tampa Sports Auth.*, 188 So.2d 795, 798 (Fla. 1996) (where the Florida Supreme Court upheld the legislature's uncompensated conveyance of a city-owned stadium to a newly-created administrative agency, noting that, both before and after the transfer, the stadium was "held for the use and benefit of the public" and holding that, under such circumstances, the

legislature had "full authority to transfer [the stadium] from one creature of the legislature to another without … compensation.").

III. THE CITY WAIVED AND ABANDONED ITS PUTATIVE CLAIMS THAT WERE NOT PRESENTED TO THE COURT OF APPEALS.

As noted above, the City sought a declaration from the trial court that, among other things, the Act unlawfully impairs its contractual obligations to its bondholders in violation of article I, section 10 of the United States Constitution, article I, section 19 of the State Constitution and N.C. Gen. Stat. §159-93. (R pp 60-61, 76-79, 81) Based on these claims, the City sought to enjoin the implementation of the Act. (R pp 80-82)

The trial court expressly refused to rule on or to otherwise adjudicate any of these claims. (R pp 157, 164-65) The City did not brief or argue these issues to the Court of Appeals as an alternative basis for upholding the trial court's injunction, though it could have done so. N.C. R. App. P. 10(c).

The fact that the Rules of Appellate Procedure expressly permit a litigant to put before an appellate court claims and issues not ruled upon by the trial court but which could be the basis for upholding the trial court's judgment mandate that litigants take advantage of this rule or else waive the claims and issues which they elect not to put before the appellate court. N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's brief … will be taken as abandoned."); N.C. R. App. P. 16

(limiting this Court's review to "whether there is error of law in the decision of the Court of Appeals"). Any other result would permit – indeed, encourage – a litigant to force piecemeal appeals and piecemeal litigation on the courts and on opposing parties, who would be powerless to stop it.

CONCLUSION

For each of the foregoing reasons, the State of North Carolina respectfully prays that this Court dismiss the City's appeal; dismiss the City's Petition for Discretionary Review as improvidently granted; and affirm the judgment of the Court of Appeals.

Respectfully submitted this 15th day of April 2016.

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CERTIFICATE OF FILING AND SERVICE

This is to certify that, on the 15th day of April 2016, the undersigned caused the original of the State of North Carolina's New Brief in this appeal to be filed electronically with the Office of the Clerk of Court of the North Carolina Supreme Court, pursuant to the North Carolina Rules of Appellate Procedure.

This is to further certify that, on the 15th day of April 2016, the undersigned caused a copy of the State of North Carolina's New Brief in this appeal to be served upon counsel for the Plaintiff-Appellee in this matter, Matthew W. Sawchak, Esquire, Paul M. Cox, Esquire and Emily E. Erixson, Esquire, Ellis & Winters LLP, Post Office Box 33550, Raleigh, North Carolina 27636 [matt.sawchak@elliswinters.com, paul.cox@elliswinters.com and emily.erixson@elliswinters.com], Robert F. Orr, Esquire, Campbell Shatley, PLLC, 674 Merrimon Avenue, Suite 210, Asheville, North Carolina 28804 [bob@csedlaw.com], Robert B. Long, Jr, Esquire, Long, Parker, Warren, Anderson & Payne, P.A., 14 South Pack Square, Suite 600, Asheville, North Carolina 28802 [fran@longparker.com], Robin T. Currin, Esquire, Office of the City Attorney, City of Asheville, Post Office Box 7148, Asheville, North Carolina 28802 [rcurrin@ashevillenc.gov], Daniel G. Clodfelter, Esquire, Parker Poe Adams & Bernstein LLP, Three Wells Fargo Center, 401 South Tryon Street, Suite 3000, Charlotte, North Carolina 28202 [danclodfelter@parkerpoe.com], T. Randolph Perkins, Esquire, Moore & Van Allen PLLC, 100 North Tryon Street, 47th Floor, Charlotte, North Carolina 28202 and Jonathan M. Watkins, Esquire, Moore & Van Allen PLLC, 100 North Tryon Street, 47th Floor, Charlotte, North Carolina 28202 [randyperkins@mvalaw.com and jonathanwatkins@mvalaw.com], by First-Class United States Mail.

This is to further certify that, on the 15th day of April 2016, the undersigned caused a copy of the State of North Carolina's New Brief in this appeal to be served upon counsel for the Metropolitan Sewerage District of Buncombe County, North Carolina, William Clarke, Esquire, Roberts & Stevens, P.A., Post Office Box 7647, Asheville, North Carolina 28802 [bclarke@roberts-stevens.com], and Stephen W. Petersen, Esquire, Smith Moore Leatherwood, LLP, 434 Fayetteville Street, Suite 2800, Raleigh, North Carolina 27601 [steve.petersen@smithmoorelaw.com], by First-Class United States Mail.

This is to further certify that, on the 15th day of April 2016, the undersigned caused a copy of the State of North Carolina's New Brief in this appeal to be served upon Allegra Collins, Esquire, Allegra Collins Law, 225 Hillsborough

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Finally, this is to certify that, on the 15th day of April 2016, the undersigned transmitted a courtesy copy of the State of North Carolina's New Brief in this appeal to each of the above-listed counsel by means of electronic mail at the email addresses listed above.

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