A Long Way from Home: Slow Progress Toward "Home Rule" in South Carolina and a Path to Full Implementation

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A LONG WAY FROM HOME:
SLOW PROGRESS TOWARD “HOME RULE” IN SOUTH CAROLINA
AND A PATH TO FULL IMPLEMENTATION

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I. INTRODUCTION

Local governments in South Carolina have only recently become an important part of the state’s political structure. South Carolina has long been a centralized state, with the General Assembly wielding enormous power on both the state and local level. Today, municipal and county governments have the

1. This Note focuses on county government, while sporadically mentioning municipal government. In South Carolina, county government has been less developed than municipal government. See 2 JAMES LOWELL UNDERWOOD, THE CONSTITUTION OF SOUTH CAROLINA, VOLUME II: THE JOURNEY TOWARD LOCAL SELF-GOVERNMENT 1 (1989) (noting that state government has closely controlled its counties, in particular).

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autonomy to provide numerous services to their constituents. However, the General Assembly has not completely relinquished its grip over local governments. Remnants of South Carolina’s “legislative state” remain, creating a lack of accountability and transparency in government.

For most of South Carolina’s history, the General Assembly controlled local government, especially the counties. A county’s legislative delegation passed an annual “supply bill” and other local laws in the General Assembly to operate the county. Thus, representatives served a dual role as state legislators on statewide issues and as local legislators for their counties. By the 1970s, legislative rule over local government was increasingly inefficient and ineffective. Therefore, there was growing demand for what is commonly known as “home rule,” a term of art used to describe local government autonomy.

South Carolina responded by amending the state constitution in 1973 (Home Rule Amendments) and passing the Home Rule Act in 1975,
which created stronger local governments with significant independence from the state legislature.\textsuperscript{15} The goals of these changes were to remove legislative control of local government and to allow municipal and county governments to assume more responsibility.\textsuperscript{16}

To ensure independence for the local governments, new article VIII, section 7 prohibited the General Assembly from passing laws specific to one county, thereby ending the practice of controlling local government from the State House.\textsuperscript{17} However, the South Carolina Supreme Court’s strict interpretation of section 7 prevents legislation giving local governments the independence and influence sought by home rule.\textsuperscript{18} As a result, the vehicle driving home rule in South Carolina is stuck in neutral. Therefore, to effectuate the spirit of home rule and the desires of South Carolinians, the South Carolina Supreme Court should return to its original interpretation of article VIII, section 7\textsuperscript{19} and allow the General Assembly to pass local laws that promote home rule by empowering local government.

Part II of this Note discusses the historical development of county government in South Carolina and the reasons underlying the addition of revised article VIII to the South Carolina Constitution. Part III provides an analysis of the South Carolina Supreme Court’s interpretations of article VIII, section 7 and demonstrates the problems with the court’s reasoning. Part IV charts a course for the court to provide a more effective government by the people and for the people of South Carolina. Part V concludes this Note.

\section*{II. Development of County Government in South Carolina}

\textit{A. Local Government Before Home Rule Under the Constitutions of 1868 and 1895}

A brief chronicle of local-government development in South Carolina is valuable to understanding the home rule movement. Prior to the Civil War, local governments in this state were mostly insignificant.\textsuperscript{20} The General Assembly


\textsuperscript{16} See Knight v. Salisbury, 262 S.C. 565, 569, 206 S.E.2d 875, 876 (1974) ("Article VIII reflects a serious effort upon the part of the electorate and the General Assembly to restore local government to the county level.").

\textsuperscript{17} See S.C. CONST, art. VIII, § 7.


\textsuperscript{19} See Duncan, 267 S.C. at 345, 228 S.E.2d at 100.

\textsuperscript{20} See COLUMBUS ANDREWS, ADMINISTRATIVE COUNTY GOVERNMENT IN SOUTH CAROLINA 5 (1933).
dominated government at all levels.\textsuperscript{21} It controlled various committees and agencies that carried out administrative functions at the local level.\textsuperscript{22} At that time, the term “county” was primarily used to reference land ownership,\textsuperscript{23} and road commissioners, Anglican parishes, and various courts governed the rural areas of the state.\textsuperscript{24} The General Assembly incorporated some of the more populated areas as cities.\textsuperscript{25} The governing boards of these cities were given some independent authority, but legislative influence was still present.\textsuperscript{26}

The South Carolina Constitution of 1868 dealt with local government in a surprisingly contemporary fashion.\textsuperscript{27} That document designated the state’s political subdivisions as counties\textsuperscript{28} and established a Board of County Commissioners for each.\textsuperscript{29} Each board had some independent responsibility and was directly elected by the citizens.\textsuperscript{30} Although this local-government structure was a step forward for counties, many legislative restrictions reigned in the boards’ authority and empowered the General Assembly to act in local matters.\textsuperscript{31} In addition, the constitution of 1868 had powerful, vocal opponents who criticized the government structure for being too elaborate and for fostering corruption.\textsuperscript{32} Ultimately, the General Assembly repealed these provisions in 1890.\textsuperscript{33}

From 1895 until 1973, local governments operated under the framework provided in the South Carolina Constitution of 1895.\textsuperscript{34} The local-government provisions of the constitution were a reaction to the supposed abuses of power and inefficiencies that the 1868 constitution created.\textsuperscript{35} The constitution allowed for the formation of new, smaller counties\textsuperscript{36} and severely limited their fiscal autonomy.\textsuperscript{37} Significantly, the constitution was silent on county governing

\begin{thebibliography}{10}
\bibitem{21} See Key, supra note 6, at 150–52.
\bibitem{22} See Underwood, supra note 1, at 12.
\bibitem{23} Graham & Moore, supra note 2, at 200.
\bibitem{24} See Underwood, supra note 1, at 12.
\bibitem{25} See Graham & Moore, supra note 2, at 204–05.
\bibitem{26} See Underwood, supra note 1, at 34–35.
\bibitem{27} The South Carolina Constitution of 1868 was a byproduct of Congressional Reconstruction. Therefore, the document was unconventional in many respects. See Underwood, supra note 1, at 46–48 (citations omitted).
\bibitem{28} See S.C. Const. of 1868, art. II, § 3.
\bibitem{29} See S.C. Const. of 1868, art. IV, § 19.
\bibitem{30} See id.
\bibitem{31} See Underwood, supra note 1, at 62–65 (citations omitted).
\bibitem{32} See id. at 50–54 (citations omitted) (outlining generally the allegations of local governments abusing their power).
\bibitem{33} See 1890 S.C. Acts 649.
\bibitem{34} See S.C. Const. art. VIII.
\bibitem{35} See Underwood, supra note 1, at 67 (citations omitted). See generally S.C. Const. art. VIII (providing the local government provisions of the constitution).
\bibitem{36} See S.C. Const. art. VII, § 1.
\bibitem{37} See Underwood, supra note 1, at 75–83 (citations omitted) (discussing the limitations on local government fiscal powers).
\end{thebibliography}
boards.\textsuperscript{38} Not surprisingly, the legislative delegations assumed the responsibility to govern the county.\textsuperscript{39}

General Assembly control of county government led to excessive variation from county to county across the state.\textsuperscript{40} The legislative delegation governed the county by enacting an annual "supply bill" as local legislation in the General Assembly.\textsuperscript{41} Although such legislation required enactment by the entire legislature, the other members deferred to each county's delegation.\textsuperscript{42} Though subject to criticism, local government by legislative delegation proved to be a fairly effective mode of governance for many years.\textsuperscript{43} However, as the next Section explores, societal changes highlighted problems and brought about the need for reform.\textsuperscript{44}

\textbf{B. Changes in South Carolina and Growing Demand for a New System}

Two major developments in the middle of the twentieth century challenged the effectiveness of the so-called "legislative state" and triggered statewide local-government reform.\textsuperscript{45} First, after World War II, economic and demographic changes transformed South Carolina, and the constitution of 1895 was not suited for the new changes.\textsuperscript{46} Second, reapportionment created a practical obstacle for the custom of operating local government through the legislative delegation.\textsuperscript{47}

Local-government rule by legislative delegation had been possible in part because each county in South Carolina represented one election district.\textsuperscript{48} Therefore, a delegation represented one entire county and could legislate according to the needs of that county.\textsuperscript{49} However, in 1964, in the landmark case \textit{Reynolds v. Sims},\textsuperscript{50} the United States Supreme Court held that all state legislators were required to represent more or less an equal number of people.\textsuperscript{51} As a result, election districts crossed county lines to achieve proportional representation.\textsuperscript{52} The new election districts compromised the General Assembly's practice of

\begin{itemize}
\item \textsuperscript{38} See \textit{id.} at 93 (citing S.C. \textit{ Const.} of 1868, art. IV, § 19) (comparing the 1868 and 1895 constitutions).
\item \textsuperscript{39} See \textit{id.}.
\item \textsuperscript{40} See \textit{id.} (citing ANDREWS, supra note 20, at 37).
\item \textsuperscript{41} KEY, supra note 6, at 151.
\item \textsuperscript{42} See Duncan v. Cnty. of York, 267 S.C. 327, 334, 228 S.E.2d 92, 95 (1976).
\item \textsuperscript{43} See UNDERWOOD, supra note 1, at 103.
\item \textsuperscript{44} See \textit{id.} at 105.
\item \textsuperscript{45} See GRAHAM & MOORE, supra note 2, at 203–04 (citations omitted); UNDERWOOD, supra note 1, at 105.
\item \textsuperscript{46} See UNDERWOOD, supra note 1, at 105; GRAHAM & MOORE, supra note 2, at 203–04 (citations omitted).
\item \textsuperscript{47} See Duncan, 267 S.C. at 334–35, 228 S.E.2d at 95.
\item \textsuperscript{48} See \textit{id.} at 334, 228 S.E.2d at 95.
\item \textsuperscript{49} See \textit{id.}.
\item \textsuperscript{50} 377 U.S. 533 (1964).
\item \textsuperscript{51} \textit{Id.} at 568.
\item \textsuperscript{52} See Duncan, 267 S.C. at 334–35, 228 S.E.2d at 95.
\end{itemize}
passing local bills at the State House to run the counties.\textsuperscript{53} Local bills now involved more than one delegation with occasionally competing interests.\textsuperscript{54}

Even before reapportionment challenged legislative rule, the constitution of 1895 began to show its age.\textsuperscript{55} The constitution’s archaic model of operating county government at the State House represented an outdated view of the state.\textsuperscript{56} Rural population growth and the shift from an agrarian-based economy to a more industrial economy demanded many new government services.\textsuperscript{57} As a result, certain counties began to experiment with creating stronger county governments.\textsuperscript{58} One such experiment in Charleston County proved successful and provided an impetus for statewide reform.\textsuperscript{59}

A detailed report—the “Ricketts Report”—prepared for the Charleston County legislative delegation summarized the problems that South Carolina’s local-government structure posed for Charleston.\textsuperscript{60} The Ricketts Report detailed the fragmentation of authority among the abundant local agencies and commissions.\textsuperscript{61} The legislative delegations often lacked control of the numerous local entities.\textsuperscript{62} The Ricketts Report noted that “[t]here is no local legislative body . . . [to] take prompt legislative action with respect to local situations.”\textsuperscript{63}

In response to the Ricketts Report, Charleston County citizens voted to establish a county council with extensive home rule powers.\textsuperscript{64} The experiment was a success, and other counties soon followed suit.\textsuperscript{65} Still, the constitution of 1895 presented significant impediments to these new county governments.\textsuperscript{66} It became apparent that constitutional reforms were needed to establish governments for each county and to grant home rule authority to those governments.\textsuperscript{67} In 1969, the General Assembly created the Committee to Make a Study of the South Carolina Constitution of 1895 (West Committee), charged with examining all phases of the constitution and recommending revisions.\textsuperscript{68}

\begin{thebibliography}{99}
\bibitem{53} See \textit{id}.
\bibitem{54} See \textit{id}.
\bibitem{55} See \textit{UNDERWOOD}, \textit{supra} note 1, at 116.
\bibitem{56} See \textit{id}.
\bibitem{57} See \textit{generally JONES}, \textit{supra} note 3, at 266–74 (discussing economic and demographic changes across the state 1940–1978).
\bibitem{59} See \textit{id}.
\bibitem{60} See \textit{PUB. ADMIN. SERV., SURVEY OF CHARLESTON COUNTY GOVERNMENT 1–4} (1945) (available at the South Caroliniana Library, University of South Carolina, Columbia, S.C.).
\bibitem{61} See \textit{id} at 2–3.
\bibitem{62} See \textit{id}.
\bibitem{63} See \textit{id} at 3.
\bibitem{64} See \textit{Knight}, 262 S.C. at 571, 206 S.E.2d at 877 (citing 1948 S.C. Acts 1873).
\bibitem{65} See \textit{id}. (“[A]t this writing there are perhaps 18 counties whose governments are patterned after the fashion of the Charleston County Council Act.”).
\bibitem{66} See \textit{UNDERWOOD}, \textit{supra} note 1, at 115.
\bibitem{67} See \textit{id} at 116.
\end{thebibliography}
C. The Home Rule Amendments and Implementing Legislation

The West Committee’s deliberations concerning local government revolved around one fundamental question: how much control should the state have over its political subdivisions?69 Ultimately, the West Committee recommended stronger self-government powers for counties and less state control over the counties throughout the state.70

Upon the recommendation of the West Committee, revised article VIII was added to the constitution.71 Section 7 is the crucial provision and it has two important parts.72 First, it requires the General Assembly (1) to provide by general law for the structure and responsibilities of counties and (2) to create no more than five alternative forms of government from among which the voters can choose.73 Second, section 7 prohibits the General Assembly from enacting laws for a specific county.74 The prohibition on local laws forced the General Assembly to grant self-government authority to the counties.75 Article VIII was not self-executing, but it rather operated as a mandate to the General Assembly.76 Therefore, the General Assembly had to enact implementing legislation to determine the structure and authority of the new governments.77

The Home Rule Act (the Act) that went into effect on June 25, 1975, dealt with the issues left to the General Assembly under the constitutional amendments.78 The first portion of the Act allows the electorate in a county to choose by referendum a form of government that best meets the needs of that county.79 The second portion of the Act outlines the basic powers that the new county governments possess and can exercise.80 The General Assembly granted the counties substantial powers, including, but not limited to, those powers previously contained in the “county purpose doctrine.”81 greater fiscal and

69. See UNDERWOOD, supra note 1, at 117.
70. See WEST COMM. FINAL REPORT, supra note 68, at 84–93.
71. See S.C. CONST. art. VIII; WEST COMM. FINAL REPORT, supra note 68, at 84–93.
73. Id.
74. Id.
75. See WEST COMM. FINAL REPORT, supra note 68, at 87.
76. UNDERWOOD, supra note 1, at 152.
77. See id. at 124.
79. See id. at 693–94.
80. See id. at 695–700.
81. The “county purpose doctrine,” existing prior to the Home Rule Act, meant that counties may only exercise those powers specifically granted to them in the constitution. See GRAHAM & MOORE, supra note 2, at 199 (citing W. HARDY WICKWAR, THE POLITICAL THEORY OF LOCAL GOVERNMENT 27–29 (1970)).
regulatory flexibility, certain taxing power, and authority to create subsidiary
government agencies.\textsuperscript{82}

The Home Rule Amendments and resulting legislation ushered in a new era
of government in South Carolina. Substantial power shifted away from the State
House to the new county governments. However, as discussed below in Part III,
many issues were yet to be resolved. In the years following 1975, the South
Carolina Supreme Court’s decisions halted the full shift to county-government
autonomy, challenging the purpose of the Home Rule Amendments and assuring
the General Assembly’s continued dominance in South Carolina.\textsuperscript{83}

III. SOUTH CAROLINA SUPREME COURT’S INTERPRETATION OF HOME RULE

A. Implementation of Home Rule Through Special Legislation: The “One-
Shot” Approach

The first major opportunity for the South Carolina Supreme Court to
construe the Home Rule Amendments and Act occurred in 1976.\textsuperscript{84} In Duncan, a
group of York County taxpayers challenged the constitutionality of part of the
Act and two laws implementing home rule in York County.\textsuperscript{85} Plaintiffs first
argued that “Form 5”—the option in the Act that permitted counties to continue
to operate under the direction of the legislative delegation—was inconsistent
with new article VIII.\textsuperscript{86} A majority of the court agreed, holding that Form 5
forces a county to continue the status quo, which the constitution no longer
allows.\textsuperscript{87} The court reasoned that a county operating under Form 5 must rely on
the delegation to pass local laws for that specific county, which are now clearly
prohibited.\textsuperscript{88}

Plaintiffs also challenged Act 448 of 1975 and Act 467 of 1976.\textsuperscript{89} Act 448
provided for a referendum date in York County to select a form of county
government as permitted by article VIII, section 7.\textsuperscript{90} Act 467 geographically
defined the election districts for the county council.\textsuperscript{91} Plaintiffs argued that,
because each Act only applied to York County, both violated section 7’s

\textsuperscript{82} See 1975 S.C. Acts 695–700.
(citations omitted); Horry Cnty. v. Cooke, 275 S.C. 19, 23–25, 267 S.E.2d 82, 84–85 (1980)
(citations omitted).
\textsuperscript{84} See Duncan v. Cnty. of York, 267 S.C. 327, 228 S.E.2d 92 (1976).
\textsuperscript{85} Id. at 333, 228 S.E.2d at 94.
\textsuperscript{86} Id. at 340, 228 S.E.2d at 97–98.
\textsuperscript{87} See id. at 341, 228 S.E.2d at 98.
\textsuperscript{88} See id.
\textsuperscript{89} See id. at 344–46, 228 S.E.2d at 100–01 (citing 1975 S.C. Acts 1168; 1976 S.C. Acts
2535 (this Act is now listed as No. 903 in the Acts and Joints Resolutions, although the case says
Act No. 467)).
\textsuperscript{90} See id. at 344, 228 S.E.2d at 100 (citing 1975 S.C. Acts 1168).
\textsuperscript{91} See id. at 346, 228 S.E.2d at 101 (citing 1976 S.C. Acts 2535).
prohibition on legislation specific to one county. Although each act clearly violated the prohibition on laws specific to one county, the court nevertheless upheld both. In discussing its reasoning, the court established the so-called “one-shot proposition.”

As the court explained, the “one-shot proposition” means that the General Assembly may pass legislation specific to local governments “to the point necessary to place [a]rticle VIII fully into operation,” even though that particular legislation technically violates the very constitutional provision it is seeking to implement. The court reached this conclusion by interpreting article VIII, section 1. The relevant portion of that section provides, “The powers possessed by all counties... at the effective date of this [c]onstitution shall continue until changed in a manner provided by law.” The court interpreted that language to indicate that article VIII envisioned that the General Assembly would pass local laws to implement home rule. This determination was crucial for local governments because additional legislation was needed to achieve the home rule powers that article VIII contemplated. The court also needed to preserve section 7’s purpose of preventing legislative delegations from continued involvement in local issues by passing local laws. To that end, the court limited the “one-shot” exception to section 7’s prohibition on local laws by holding that “such authority is a temporary nature and extends only to the point necessary to place [a]rticle VIII fully into operation.”

The inevitable conflict that arose following Duncan concerned how to determine what constitutes “one-shot” legislation. The General Assembly struggled to find ways to enact legislation that devolved power to the local governments without violating the restriction against local legislation. The General Assembly continued to pass local laws implementing home rule, presumably with the intention not to go beyond the “one-shot” exception allowed in Duncan. However, the South Carolina Supreme Court inhibited

92. See id. at 344–45, 228 S.E.2d at 100.
93. See id. at 345–46, 228 S.E.2d at 100–01.
94. See id.
95. See id. at 345, 228 S.E.2d at 100.
96. See id. (citing S.C. CONST. art. VIII, § 1).
97. S.C. CONST. art. VIII, § 1 (emphasis added).
98. See Duncan, 267 S.C. at 345, 228 S.E.2d at 100.
99. See UNDERWOOD, supra note 1, at 183 (“A new regime of local government could not be introduced by abruptly putting the brakes on every aspect of General Assembly control of local government. An orderly transition must occur.”).
100. See id. (“A pattern of continued General Assembly involvement in the affairs of individual counties was not permissible.”).
101. Duncan, 267 S.C. at 345, 228 S.E.2d at 100.
102. See UNDERWOOD, supra note 1, at 184.
103. See id. at 200.
104. See id.
the General Assembly’s authority to enact local legislation in subsequent cases by limiting the *Duncan* exception.\textsuperscript{105}

**B. Limiting the Duncan Exception**

In its home rule jurisprudence, the court continually limited the *Duncan* holding, thereby leaving the General Assembly almost no leeway to enact laws for one county and stalling further home rule legislation.\textsuperscript{106} In *Horry County v. Cooke*,\textsuperscript{107} the court held that “[t]he transition to home rule is a ‘one-shot’ process and once a legally constituted government becomes functional the Duncan case exception ends, thereby precluding any further special legislation.”\textsuperscript{108} This holding signaled that once a county government was established, the General Assembly could no longer enact local legislation applicable to that county.\textsuperscript{109} Even a law clearly consistent with the purpose of home rule would be struck down because of section 7’s prohibition on local bills.\textsuperscript{110}

*Hamm v. Cromer*\textsuperscript{111} provides an example of a good faith attempt to grant more extensive home rule power to a county government.\textsuperscript{112} In *Hamm*, plaintiffs challenged the constitutionality of a law granting the Newberry County Council the power to appoint the board of the Newberry County Water and Sewer Authority, upon approval by the Governor.\textsuperscript{113} Prior to that law, the Governor had appointed the board upon the recommendation of the Newberry County Legislative Delegation.\textsuperscript{114} The court noted that the law was a good faith effort to promote home rule, but it held that the law ran afoul of the prohibition on local legislation.\textsuperscript{115} The court recognized that such legislation, clearly intended to


\textsuperscript{106} See *Horry Cnty.*, 275 S.C. at 23–24, 267 S.E.2d at 84; *Van Fore*, 273 S.C. at 139, 255 S.E.2d at 340; see also Richardson v. McCutchen, 278 S.C. 117, 120, 292 S.E.2d 787, 788 (1982) (noting that the standard for the *Duncan* exception is whether the legislation is reasonably related to establishing the initial form of government).


\textsuperscript{108} *Cooke*, 275 S.C. at 24–25, 267 S.E.2d at 85 (emphasis added).

\textsuperscript{109} See id.

\textsuperscript{110} See id.; see also *Hamm*, 305 S.C. at 309, 408 S.E.2d at 229 (“While Act No. 784 may well have been a good-faith attempt to promote home rule . . . it still constitutes impermissible special legislation . . . ”).

\textsuperscript{111} 305 S.C. 305, 408 S.E.2d 277.

\textsuperscript{112} See id. at 306, 408 S.E.2d at 227–28.

\textsuperscript{113} See id. at 306–07, 408 S.E.2d at 228.

\textsuperscript{114} See id. at 306, 408 S.E.2d at 227.

\textsuperscript{115} See id. at 309, 408 S.E.2d at 229.
promote home rule, had an admirable end.\textsuperscript{116} However, the court took issue with the means taken to achieve that end.\textsuperscript{117}

The court recognized the implications of this holding: to grant more self-rule power to a county council, the General Assembly is restricted to drafting general legislation applicable to all counties, which the court acknowledged is an “arduous task.”\textsuperscript{118} Nevertheless, the court urged the General Assembly to “exercise its authority and its responsibility in promoting home rule... by devolving such powers on all individual counties.”\textsuperscript{119}

In \textit{Davis v. Richland County Council},\textsuperscript{120} the South Carolina Supreme Court affirmed its reasoning and the result in \textit{Hamm},\textsuperscript{121} bringing us to where we are today. In sharply worded dissents in both \textit{Hamm} and \textit{Davis}, Chief Justice Toal emphasized the problem with the majority’s reasoning and the court’s home rule jurisprudence.\textsuperscript{122} Chief Justice Toal would have upheld the laws in \textit{Hamm} and \textit{Davis} as constitutional under the “one-shot proposition” espoused in \textit{Duncan}.\textsuperscript{123} Acknowledging the \textit{Cooke} limitation to the “one-shot proposition,” Chief Justice Toal argued that because the Newberry County Council never had legal control over the Water and Sewer Authority, the transfer of control to the county council fell within the \textit{Cooke} exception of establishing initial county government.\textsuperscript{124}

In \textit{Hamm}, Chief Justice Toal argued that the majority focused too heavily on the Act’s “form over its function.”\textsuperscript{125} Chief Justice Toal—a former member of the General Assembly—noted the “onerous, if not impossible, task of crafting general legislation that would place control of the [Water and Sewer] Authority in the hands of the Newberry County Council.”\textsuperscript{126} In \textit{Davis}, Chief Justice Toal’s dissent, in which Justice Pleicones joined, was even more critical of the court’s opinion, and she asserted that the majority “continues to ignore the essential purpose and intent” of home rule.\textsuperscript{127}

The approach taken by Chief Justice Toal in \textit{Hamm} and \textit{Davis} is certainly more consistent with the intent and purpose of the Home Rule Amendments. In both cases, she argued for a broad interpretation of the \textit{Cooke} limitation on the

\textsuperscript{116} See \textit{id}.
\textsuperscript{117} See \textit{id}.
\textsuperscript{118} See \textit{id}.
\textsuperscript{119} \textit{Id}.
\textsuperscript{120} 372 S.C. 497, 642 S.E.2d 740 (2007).
\textsuperscript{121} See \textit{id} at 503, 642 S.E.2d at 743 (citing \textit{Hamm}, 305 S.C. at 307–09, 408 S.E.2d at 228–29).
\textsuperscript{122} See \textit{id} at 504, 642 S.E.2d at 743–44 (Toal, C.J., dissenting); \textit{Hamm}, 305 S.C. at 309–10, 408 S.E.2d at 229–30 (Toal, J., dissenting) (citing Duncan v. Cnty. of York, 267 S.C. 327, 345, 228 S.E.2d 92, 100 (1976)).
\textsuperscript{123} See \textit{Davis}, 372 S.C. at 504, 642 S.E.2d at 744 (Toal, C.J., dissenting); \textit{Hamm}, 305 S.C. at 310, 408 S.E.2d at 230 (Toal, J., dissenting) (citing \textit{Duncan}, 267 S.C. at 345, 228 S.E.2d at 106).
\textsuperscript{124} See \textit{Hamm}, 305 S.C. at 310, 408 S.E.2d at 230 (Toal, J., dissenting) (citing Horry Cnty. v. Cooke, 275 S.C. 19, 23–25, 267 S.E.2d 82, 84–85 (1980)).
\textsuperscript{125} \textit{Id}.
\textsuperscript{126} \textit{Id}.
\textsuperscript{127} \textit{Davis}, 372 S.C. at 504, 642 S.E.2d at 743 (Toal, C.J., dissenting)..
Duncan holding by focusing on function over form and reading section 7’s prohibition in light of article VIII as a whole.  

The Chief Justice read the Cooke limitation to mean that certain local laws fall within the establishment of initial county government if the county government never before had the power that the local law grants to it.

IV. A WAY FORWARD

Local government in South Carolina looks much different than it did before 1973. County governments now have many of the powers held by municipal governments and have authority to act without legislative approval. However, as the South Carolina Supreme Court’s home rule jurisprudence demonstrates, South Carolina has a long way to go to achieve actual home rule. Legislative control over local fiscal issues and over certain local boards continues to create a disconnect between citizens and their local governments. Therefore, to eliminate that situation, the South Carolina Supreme Court should return to the original construction of article VIII, section 7 applied in Duncan and allow limited local legislation to completely implement home rule. By doing so, the court can relieve the General Assembly of the near-impossible task of drafting general legislation devolving all power concerning local issues to local governments.

A. Responsibility of the Courts

In theory, the onus is on the General Assembly to enact laws, applicable to all counties, that transfer greater self-rule to the county councils. In reality, the responsibility to achieve true home rule in South Carolina lies with the South Carolina Supreme Court. The theoretical approach seems like a “no-brainer” solution. After all, the constitution instructs the General Assembly to provide by

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129. See Davis, 372 S.C. at 504, 642 S.E.2d at 744 (Toal, C.J., dissenting).
130. See GRAHAM & MOORE, supra note 2, at 199–200 (“Today, a county has the potential to deliver a full range of municipal services through the powers and duties authorized under the updated state constitution.”).
131. See id.
132. See Davis, 372 S.C. at 503, 642 S.E.2d at 743; Hamm, 305 S.C. at 309, 408 S.E.2d at 229.
133. See GRAHAM & MOORE, supra note 2, at 200; Scope, supra note 5, at D2.
135. See Hamm, 305 S.C. at 309, 408 S.E.2d at 229 (noting the difficulty of passing general legislation devolving power to county councils).
136. See id. (instructing the General Assembly to draft general legislation to achieve true home rule).
137. See id. at 310, 408 S.E.2d at 230 (Toal, J., dissenting) (arguing that she would relieve the General Assembly from drafting general legislation).
general law for “the structure, organization, powers, duties, functions, and the responsibilities of counties.” However, the difficulty of enacting such legislation is palpable. The probability of securing a sufficient number of votes from members of the General Assembly for a law that takes away their own power in a wholesale fashion is low. It is much simpler to garner support for such legislation when enacted on a piecemeal, county by county basis.

If a county delegation decides to grant more extensive home rule powers to a local governing board, the South Carolina Supreme Court should not prevent it. Certain delegations understandably wish to free themselves of the burden of acting as local legislators because voters elect them to be their representatives on statewide issues. By removing themselves from matters of local government, legislators can devote more time to issues facing the state as a whole, creating a more effective government at the state level. Members of other delegations, unaffected by legislation pertaining to other counties, should have no problem agreeing to these laws.

To this day, the General Assembly continues to enact local legislation without regard to the constitutional prohibition and judicial precedent. Often, these local laws are vetoed once they reach the Governor’s desk. If the General Assembly overrides the veto, the legislation becomes law anyway. Having the General Assembly enact local legislation can lead to extensive and costly litigation.

139. See Hamm, 305 S.C. at 309, 408 S.E.2d at 229.
140. Examples of efforts to grant home rule powers to local governments on a piecemeal basis are abundant. See, e.g., Davis v. Richland Cnty. Council, 372 S.C. 497, 499, 642 S.E.2d 740, 741 (2007) (invoking an Act providing that the authority to appoint members of the Richland County Recreation Commission was devolved from the county’s legislative delegation to the governing body of the county); Hamm, 305 S.C. at 306–07, 408 S.E.2d 227–28 (invoking a good faith attempt to grant more extensive home rule power to a county government by granting Newberry County Council the power to appoint the board of the Newberry County Water and Sewer Authority, upon approval by the Governor).
141. But see Scoppe, supra note 5, at D2 (“Fortunately, legislators have given up their power to appoint most state boards. Unfortunately, they have clung to their appointments to governing boards in their home counties.”).
142. See id. (stating that focusing on local appointments “distract[s] legislators from their jobs of overseeing state government”).
146. See S.C. CONST. art. IV, § 21.
147. A recent example is the result of a 2007 law, passed by overriding a gubernatorial veto by a vote of 12-to-0 in the House, which increased the membership and changed the composition of the Charleston County Aviation Authority. 2007 S.C. Acts 310; [2007] 4 S.C. HOUSE J. 3905. The South Carolina Public Interest Foundation and Charleston attorney Waring Howe filed suit against a number of state officials arguing, inter alia, that the legislation, as enacted by the General Assembly, was unconstitutional local legislation. The litigation is still ongoing. See Warren Lance
Perhaps more importantly, the citizens of South Carolina have rejected this outdated form of governance.\textsuperscript{148} Legislative rule of local government proved ineffective, and the citizens demanded a change.\textsuperscript{149} Government is more responsible when there is a clear division of authority at the state and local levels.\textsuperscript{150} The issues facing South Carolina statewide are more than sufficient to occupy the attention of the members of the General Assembly and the legislative calendar.\textsuperscript{151} The citizens of South Carolina are better served by a system that allows for state representatives to legislate on statewide issues, while local governments attend to local issues.

B. A Clear Standard: A Limited Exception to Article VIII, Section 7

To achieve home rule and realize the goal of truly independent local governments, the South Carolina Supreme Court should allow for local laws, at least up to a point. A complete disregard of article VIII, section 7 by the court would obviously lead to further legislative control and a substantial increase in local legislation. Therefore, a narrow exception that preserves the purpose of section 7 is the best solution.

The Duncan approach accomplishes this objective.\textsuperscript{152} Yet, this approach, by itself, would not provide a clear directive for the General Assembly.\textsuperscript{153} Thus, the court should adopt the Duncan analysis, as clarified by Chief Justice Toal’s positions in Hamm and Davis.\textsuperscript{154} By using this standard, the court can spur the development of home rule, while maintaining section 7’s intent to remove local legislation from the State House.\textsuperscript{155}

The gist of the modified Duncan standard can be summarized as follows: the South Carolina Supreme Court should allow local laws narrowly tailored to

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\textsuperscript{148} See, e.g., Knight v. Salisbury, 262 S.C. 565, 569, 206 S.E.2d 875, 876 (1974) ("Article VIII reflects a serious effort upon the part of the electorate and the General Assembly to restore local government to the county level.").
\textsuperscript{149} See, e.g., Duncan v. Cnty. of York, 267 S.C. 327, 341, 228 S.E.2d 92, 98 (1976) (declaring that the people of South Carolina “mandated a change” to the constitution).
\textsuperscript{150} See Scoppe, supra note 6, at D2.
\textsuperscript{152} See Duncan, 267 S.C. at 345, 228 S.E.2d at 100.
\textsuperscript{153} See UNDERWOOD, supra note 1, at 184 (citing Duncan, 267 S.C. at 344–45, 228 S.E.2d at 100) (noting that the General Assembly struggled to find ways to enact local laws in the wake of Duncan).
\textsuperscript{154} See supra text accompanying notes 122–29; see also Duncan, 267 S.C. at 345, 228 S.E.2d at 100 (laying down the analysis that Chief Justice Toal would clarify and adopt).
\textsuperscript{155} See Davis, 372 S.C. at 504, 642 S.E.2d at 744 (Toal, C.J., dissenting) (stating the intent of section 7 is to “diminish legislative interaction in local government”).
\end{flushleft}
implement home rule by shifting control from the General Assembly to the local governments as exceptions to section 7’s prohibition against local laws.\textsuperscript{156} This rule is consistent with the court’s original application of section 7 in Duncan.\textsuperscript{157} Therefore, it is not a radical departure from precedent. It would, however, require a reevaluation and overruling of the court’s hardline holdings in Cooke, Hamm, and Davis.\textsuperscript{158}

The adoption of this standard would raise concerns that the operation of article VIII, section 7 will become meaningless.\textsuperscript{159} Critics may argue that such an exception to section 7’s prohibition on local laws will open a Pandora’s box of local laws meant to circumscribe local-government authority. However, that need not, and should not, be the result.\textsuperscript{160} Section 7’s prohibition on local legislation is vital to the operation of home rule.\textsuperscript{161} The prohibition serves the same purpose as that which underlies the Home Rule Amendments as a whole—to remove legislative interference from peculiarly local issues.\textsuperscript{162} Therefore, the prohibition on local legislation should not be read in isolation. Rather, it should be considered in light of article VIII as a whole.\textsuperscript{163} The modified Duncan approach, as advocated here, accomplishes this broader framework by taking heed of the history and the additional provisions of article VIII.\textsuperscript{164}

The modified Duncan approach will not lead to further legislative interference and control of local government because the approach contains definite boundaries.\textsuperscript{165} As modified in Cooke, the Duncan exception applies only to the formation of initial county government.\textsuperscript{166} Therefore, a local law that does not establish initial county government by giving the county initial or new

\begin{footnotes}
\item 156. Compare Duncan, 267 S.C. at 345, 228 S.E.2d at 100 (“one-shot” proposition), with Hamm, 305 S.C. at 309–10, 408 S.E.2d at 229–30 (Toal, J., dissenting) (stating that the “transfer of control . . . constitutes the establishment of initial county government”), and Davis, 372 S.C. at 504, 642 S.E.2d at 743–44 (Toal, C.J., dissenting) (stating that the “transfer of authority . . . constitutes the establishment of initial county government”).

\item 157. See Duncan, 267 S.C. at 345, 228 S.E.2d at 100.

\item 158. See supra text accompanying notes 108–10, 115–18, 121.

\item 159. See Van Fore v. Cooke, 273 S.C. 136, 139, 255 S.E.2d 339, 340 (1979) (noting that section 7 does not allow continued legislative meddling in local affairs).

\item 160. See Davis, 372 S.C. at 504, 642 S.E.2d at 744 (Toal, C.J., dissenting) (agreeing the intent of section 7 is to “diminish legislative interaction in local government”).

\item 161. See, e.g., id. at 504, 642 S.E.2d at 743 (arguing that “the majority continues to ignore the essential purpose and intent of the constitutional provisions enacted to aid in ‘home rule’”).

\item 162. See Hamm, 305 S.C. at 309–10, 408 S.E.2d at 229–30 (Toal, J., dissenting).

\item 163. See Davis, 372 S.C. at 504, 642 S.E.2d at 743–44 (Toal, C.J., dissenting); Hamm, 305 S.C. at 309–310, 408 S.E.2d at 229–30 (Toal, J., dissenting).

\item 164. See generally S.C. CONST. art. VIII (provisions dealing with “local government”); WEST COMM. FINAL REPORT, supra note 68 (providing legislative history on changes to the South Carolina Constitution).

\item 165. See Duncan v. Cnty. of York, 267 S.C. 327, 345, 228 S.E.2d 92, 100 (1976) (stating that the authority to enact local laws “is [of a temporary nature and extends only to the point necessary to place [a]article VIII fully into operation”).

\item 166. See Horry Cnty. v. Cooke, 275 S.C. 19, 24, 267 S.E.2d 82, 84–85 (1980).
\end{footnotes}
powers violates the prohibition.\textsuperscript{167} This limitation on the exception prevents the General Assembly from “repeatedly inject[ing] its will into the operation of county government.”\textsuperscript{168}

C. An Opportunity for the Court

There are two significant problems that exist in South Carolina as a result of the currently stalled development of home rule. The first is continued legislative involvement in appointing members to local boards and commissions.\textsuperscript{169} The second is the abundance of special-purpose districts that are stuck in limbo.\textsuperscript{170} While these two issues are separate, they often become intertwined because legislative delegations are charged with appointing members to govern special-purpose districts.\textsuperscript{171}

1. Richland County Election Nightmare

The recent election fiasco in Richland County serves as an important reminder that legislative control over local governments continues to exist.\textsuperscript{172} In 2011, the Richland County Legislative Delegation introduced legislation combining the county’s election and voter registration agencies.\textsuperscript{173} The Act was constitutionally suspect considering the court’s current precedent, but it became law nonetheless.\textsuperscript{174} Not surprisingly, under the law, the delegation retained the power to appoint the county election commission’s members.\textsuperscript{175} The delegation’s power to appoint members to a local agency is not an anomaly.\textsuperscript{176} Across the state, legislators continue to control local affairs by exercising appointment power.\textsuperscript{177}

\begin{itemize}
\item 167. See id.
\item 169. See Scoppe, supra note 5, at D2.
\item 172. See Scoppe, supra note 7, at A6.
\item 176. See Scoppe, supra note 5, at D2.
\item 177. See id.
\end{itemize}
The aftermath of the poorly managed election highlights the problem with the delegation’s control of the commission. The law allowed the delegation to appoint the first director of the commission, but it gave no one clear authority to fire the director. Although the commission is responsible for hiring and firing subsequent directors, the commission itself is not accountable to the angry voters who waited at the polls for hours or who left the polls without casting their ballots because of excessive delays. Richland County residents, who are in the best position to assess the performance of the election commission, have no authority to elect the members that control the management of the process by which they vote. An easy solution is to allow the county council to appoint the members of the election commission. However, to grant the county council this responsibility, a local law must be passed.

If Richland County’s delegation takes legislative action to transfer the appointment power for the county election commission to the county council, it may present the South Carolina Supreme Court with an opportunity to overrule its post-Duncan decisions and return to the original interpretation that Duncan provided. Such a bill would further the implementation of home rule and would not allow the General Assembly to “repeatedly inject its will into the operation of county government.” In fact, as Chief Justice Toal noted in Davis, striking down such legislation preserves continued legislative involvement in local affairs, as seen in the Richland County example.

2. The Problem with Special-Purpose Districts

Another problem resulting from the home rule stalemate is the existence of special-purpose districts. Before the enactment of the Home Rule Amendments, the General Assembly created special-purpose districts to perform local functions that the counties were not able to perform under the South

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181. See Bolton, supra note 178, at A14.
182. See Scoppe, supra note 7, at A6.
183. See Scoppe, supra note 6, at D2.
184. See Scoppe, supra note 7, at A6 (discussing the possibility of the Richland County delegation giving the Richland County Council control over the election commission).
187. See Scoppe, supra note 170, at A8. See generally GRAHAM & MOORE, supra note 2, at 209 (detailing the form and function of special-purpose districts).
Carolina Constitution of 1895. For example, many of the districts were created to provide water and sewer services to citizens in rural areas.

The General Assembly can no longer create new special-purpose districts, but many districts that were created before the Home Rule Amendments still exist. In Spartanburg Sanitary Sewer District v. City of Spartanburg, the South Carolina Supreme Court held that article VIII, section 7 applies to local legislation affecting special-purpose districts. However, special-purpose districts that cross county lines, or are operated by more than one county, are within the General Assembly's jurisdiction. Many of the special-purpose districts in existence are simply no longer necessary. Counties are now capable of providing the services that special-purpose districts have traditionally provided. As a result, there is a conflict of governance at the local level. For instance, a county can provide water and sewer services, but it cannot provide such services within a special-purpose district created for that function.

Both issues—appointment power and special-purpose districts—were before the South Carolina Supreme Court in Hamm. The conflict remains unresolved, and it is likely that the issue will return to the court. A local law that allows a county to assume responsibility held by a special-purpose district, or a law transferring appointment power to the county council, is an example of a law that fits nicely within the modified Duncan approach. Such laws relinquish legislative involvement in local government and grant initial powers to county government.

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188. See Scoppe, supra note 170, at A8.
191. See Scoppe, supra note 170, at A8 (noting that more than 500 special-purpose districts exist in South Carolina).
193. See id. at 81, 321 S.E.2d at 266.
195. See Scoppe, supra note 170, at A8.
196. See GRAHAM & MOORE, supra note 2, at 216.
197. See Scoppe, supra note 170, at A8.
199. See supra text accompanying notes 112–17.
V. CONCLUSION

South Carolina’s struggle to achieve true home rule can be attributed to a disinclination to move away from a top-down system of government characterized by preeminent General Assembly power. In addition, the South Carolina Supreme Court’s interpretation of the Home Rule Amendments has discouraged, if not prevented, a clean break from the past. As a result, various remnants of an outdated governing structure remain to this day.

The current composition of the South Carolina Supreme Court provides hope that it will reconsider its precedent. Two of the five members, Chief Justice Toal and Justice Pleicones, dissented in Davis. The other three current Justices were not on the court at the time of Hamm or Davis.

As South Carolina looks to the future, the state must decide how best to deal with these problems. Perhaps, the system in place today is the best solution going forward. Maybe numerous governing bodies all exercising substantial control is not a perfect system. Tight legislative control over political subdivisions certainly consolidates authority. These macro questions about the most effective way to govern a state are beyond the scope of this Note. Regardless, recent history demonstrates that South Carolinians prefer a system that allows local governments to exercise certain functions without control or restraint from the State House. There may be many different ways to empower our local governments going forward. The solution outlined in this Note is one in which the South Carolina Supreme Court takes the lead. Whatever the answer may be, South Carolinians deserve a government, at every level, that is both responsive and accountable to the people.

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202. See Graham & Moore, supra note 2, at 216 (“The present local governments reflect the historical perspective of the state . . . .”).
203. See supra text accompanying notes 115–21.
204. See Underwood, supra note 1, at 245–49 (citations omitted) (detailing how the General Assembly continues to control local government); Scoppe, supra note 5, at D2; Scoppe supra note 6, at D2.
207. See Graham & Moore, supra note 2, at 225 (“Today, some critics assail a governmental structure that is so decentralized that one official literally does not know what another is doing.”).
208. See Knight v. Salisbury, 262 S.C. 565, 569, 206 S.E.2d 875, 876 (1974) (“Article VIII reflects a serious effort upon the part of the electorate and the General Assembly to restore local government to the county level.”).