



BETTER COMMUNITIES THROUGH  
SOUND GOVERNMENT

## VML BOARD OF DIRECTORS MEETING

Thursday August 19th – 9:00am

### Virtual Meeting

#### Agenda

- Only one person speak at a time and give the courtesy of listening to your colleague
- Start and end in a timely fashion
- Debate an item and move on, there is no need to rehash
- Stay on topic and be respectful
- Agree to disagree in a professional manner
- Seek to understand and be understood
- Know when to move on
- Don't monopolize the time
- Give everyone a chance to be heard

- I. Call to Order
  - a. Introductions
- II. Consideration of Minutes
  - a. Executive Board minutes for May
- III. Strategic Plan Update and Implementation Plan
- IV. Amicus Brief Request
  - a. *International Paper Company, A New York Corporation vs. County Isle of Wight*
- V. Review of Financials
- VI. Conference Discussion
- VII. Future Meetings:
  - a. Executive Committee Meeting October 3<sup>rd</sup> 11:30 - Leesburg
  - b. 2021 Annual Conference – Leesburg – Oct. 3-5<sup>th</sup>
  - c. 2022 Annual Conference – Richmond – Oct. 1-4<sup>th</sup>
- VIII. Adjournment

**MINUTES  
VML EXECUTIVE BOARD  
MAY MEETING  
COVID-19 VIRTUAL  
May 13, 2021**

**In attendance virtually:** Willie Greene, Bill Rush, A.D. “Chuckie” Reid, Jon Stehle, Kelly Burk, Phil Miskovic, Steve Trivett, Katie Cristol, Charlie Frye, Sean Polster, Derrick Wood (Michelle Gowdy, Roger Wiley and Sue Mellen were also in attendance)  
Jill Carson and Tommy Smigiel absent.

**Call to Order:** President Greene called the meeting to order at 9:06 am.

**Minutes:** Minutes from the Executive Board March meeting were approved without objection.

**Strategic Plan Update:** Sue Mellon went over the proposed metric to track metrics related to the strategic plan. There was general discussion about the strategic plan.

**American Rescue Plan:** Michelle Gowdy gave a general overview of the leagues outreach on this issue to include the work done by VML consultants.

**Financials and Budget:** Sue recapped the current financials providing an update on the financial situation for this fiscal year. She also reviewed the proposed budget which was approved without objection.

**Subcommittees:**

Executive Director Evaluation Subcommittee: Chairman Smigiel was not in attendance.

Constitution Subcommittee: Chairman Stehle reported the constitution’s proposed changes and a motion was made and approved to advertise the proposed changes to the members. Adding regional bodies to the associate membership was the major change.

Small Town Subcommittee: Michelle Gowdy and Roger Wiley reviewed guidelines for VML staff providing guidance to our localities and a motion was made and approved to advertise the guidance.

**COVID / Conference Discussion:** There was discussion about the conference and how COVID-19 will affect the conference turnout.

**Adjournment.** The meeting was adjourned at 9:57am.

Respectfully submitted,

Michelle Gowdy  
Executive Director

**From:** McRoberts, Andrew R. <[amcroberts@sandsanderson.com](mailto:amcroberts@sandsanderson.com)>  
**Sent:** Friday, July 16, 2021 8:49 AM  
**To:** Michelle Gowdy <[mgowdy@vml.org](mailto:mgowdy@vml.org)>  
**Cc:** Gerald Gwaltney <[ggwaltney@isleofwightus.net](mailto:ggwaltney@isleofwightus.net)>; Tait, David C. <[DTait@sandsanderson.com](mailto:DTait@sandsanderson.com)>; Turner, Cheri N. <[CTurner@sandsanderson.com](mailto:CTurner@sandsanderson.com)>  
**Subject:** VML Support for Amicus Brief

Michelle, I hope you're well.

I have an appeal to the Virginia Supreme Court which involves issues critical to local government and VML's members. My client Isle of Wight County suffered an erroneous ruling in circuit court recently we are taking on appeal and would like VML to authorize an Amicus brief.

The facts of the case are odd but are detailed in the recent Virginia Supreme Court opinion of International Paper v. Isle of Wight decided in September 2020. Link here: <https://law.justia.com/cases/virginia/supreme-court/2020/190542.html>.

Basically, Isle of Wight raised taxes to refill a general fund depleted by a necessary refund of taxes to the entire class of M&T taxpayers, and to prevent taxpayers from fleeing the County, authorized grants to taxpayers. The M&T taxpayers automatically qualified for these grants, which were calculated in part on the amount of refund they'd received, mostly paid out of the M&T tax increase and reflected as deductions on the face of their 2017 M&T tax bill. The Supreme Court and ultimately the trial court held the entire grant and tax process/plan/scheme was intertwined and unconstitutionally nonuniform since it resulted in the effect of IP paying a different rate after application of the grant deduction than other taxpayers.

On remand, the trial court followed the Supreme Court's lead and we say ignored the mandates of the presumption of constitutionality and constitutional avoidance and held that the grant program and the M&T tax were intertwined and one scheme and held them to be nonuniform and unconstitutional. We may appeal this.

But the remedy is really where the trial court most clearly erred. Despite clear evidence that IP had taxable M&T, the court refused to reverse the grant program which caused the nonuniform effect, but instead ordered a full refund, which would leave IP paying no M&T taxes whatsoever. The ordered refund including interest would exceed \$7 million.

We believe the trial court erred in granting a remedy to IP of a full refund. First, it clearly violates that Va. Const. Art. X Sec. 1 mandate that "all property shall be taxed." Next, it grants a de facto exemption from taxes without any constitutional or statutory provision allowing one. Third, it exceeds the authority of the trial court under [58.1-3987](#) in that the court did not "correct" the assessment (instead struck it), and in essence considered equitable factors such as avoiding punishing IP by a higher resulting tax rate once the grant is eliminated and wishing to reward IP by whistleblowing a constitutional violation to the third branch (judiciary). We believe the "throw out the entire thing" approach of the trial court violated the Supreme Court mandate in this case that on remand the court should look at each "step" of the tax process and judge uniformity at each step. The grant "step" alone caused the ill effect. Undoing it is all that is authorized or needed to "correct" the levy/assessment. There is more but this is the gist.

We argued that the proper remedy would have been to follow the Supreme Court's mandate to go step by step backwards to undo the nonuniform effect. By undoing/reversing the grant, the nonuniform effect would have been eliminated without a full refund needed or property being left untaxed. The judge, however, was concerned that this remedy would have had the effect of raising taxes on IP... leaving them to pay a \$4.24/\$100 M&T tax that no other taxpayer had to pay (since the others all qualified for grants). While this remedy may seemingly create more uniformity, it is the proper remedy as a matter of law. The court's role is to correct the assessment and leave the taxpayer with uniformity. Striking the grant and leaving the original May 2017 tax rate ordinance (which imposed all the tax rates for the year in a uniform fashion) in place would have done that. The concerns that led the trial court to refuse to do this and go to the other extreme in ordering a full refund were equitable in nature (fairness to taxpayer, not wishing to punish IP which had succeeded in its lawsuit and brought unconstitutionality to the attention of the judiciary) when an action under [58.1-3984](#) and its remedies are purely statutory in "an action at law" not equity. See [58.1-3984\(A\)](#)(declaring an erroneous assessment action to be "an action at law").

Isle of Wight would appreciate VML support, perhaps in conjunction with LGA and VACo, of an Amicus brief.

While normally amicus briefs might wait to see if a writ of certiorari is granted, we believe early intervention by amici at the petition stage would help the court to weigh in and take the appeal. Beyond the obvious importance of the case to Isle of Wight County, this case is important to all localities since it goes to the heart of taxation, the life blood of government. If this decision is the law, any taxpayer can sue under [58.1-3984](#) and have the prospect of paying no taxes if they win.

We are seeking amici support from all local government organizations which have an interest including VAAO, CORA, LGA, VML and VACo. We would appreciate your support.

If needed, I'd be glad to pass this onto whomever in your organization would be appropriate. Alternatively, please feel free to pass this onto others as needed. Happy to discuss.

Thanks very much,

Andrew

# IN THE SUPREME COURT OF VIRGINIA

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**Record No. 190542**

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**INTERNATIONAL PAPER COMPANY,  
A NEW YORK CORPORATION,**

*Appellant,*

**v.**

**COUNTY OF ISLE OF WIGHT,**

*Appellee.*

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**BRIEF AMICUS CURIAE OF  
THE LOCAL GOVERNMENT ATTORNEYS  
OF VIRGINIA, INC.**

**and**

**THE VIRGINIA ASSOCIATION OF COUNTIES**

**IN SUPPORT OF APPELLEE**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTEREST OF AMICI..... 1

STATEMENT OF THE CASE AND MATERIAL PROCEEDINGS  
BELOW ..... 3

STATEMENT OF FACTS ..... 3

SUMMARY OF ARGUMENT ..... 3

ARGUMENT ..... 4

    I. The applicable standard of review..... 4

    II. International Paper’s attacks on the County’s subjective  
    motivations pervade its arguments ..... 4

    III. The Court should reject International Paper’s implicit invitation to  
    base its decision on Isle of Wight County’s alleged motivations ..... 7

CONCLUSION..... 11

CERTIFICATE ..... 13

## TABLE OF AUTHORITIES

### CASES

<i>Ames v. Painter</i> , 239 Va. 343 (1990).....	10
<i>Blankenship v. City of Richmond</i> , 188 Va. 97 (1948) .....	9
<i>Board of Supervisors of Fluvanna County v. Davenport &amp; Co., LLC</i> , 285 Va. 580 (2013) .....	10
<i>Chesapeake &amp; Potomac Tel. Co. v. City of Newport News</i> , 196 Va. 627 (1955) .....	9
<i>City of Fredericksburg v. Sanitary Grocery Co., Inc.</i> , 168 Va. 57 (1937).....	9
<i>Corporate Executive Board Co. v. Virginia Dep't of Taxation</i> , 297 Va. 57 (2019) .....	3
<i>Elizabeth River Crossings OpCo, LLC v. Meeks</i> , 286 Va. 286 (2013) .....	11
<i>Hamilton v. Kentucky Distilleries</i> , 251 U.S. 146 (1919) .....	9
<i>Helmick v. Town of Warrenton</i> , 254 Va. 225 (1997).....	10-11
<i>Industrial Development Authority of City of Richmond v. La France Cleaners &amp; Laundry Corp.</i> , 216 Va. 277 (1975) .....	9
<i>Isaacs v. City of Richmond</i> , 90 Va. 30 (1893) .....	7
<i>Railway Company v. Llewellyn</i> , 156 Va. 258 (1931) .....	10
<i>Richmond Linen Supply Co. v. City of Lynchburg</i> , 160 Va. 644 (1933) .....	9-10
<i>Shenandoah Lime Co. v. Governor</i> , 115 Va. 865 (1913) .....	7-9
<i>Soon Hing v. Crowley</i> , 113 U.S. 703 (1885) .....	8
<i>State Board of Tax Commissioners of Indiana v. Jackson</i> , 283 U.S. 527 (1931).....	10

*W.S. Carnes, Inc. v. Board of Supervisors of Chesterfield County*,  
252 Va. 377 (1996) .....9

*Webb v. Virginian-Pilot Media Cos.*, 287 Va. 84 (2014) .....4

**STATUTES**

Va. Code § 15.2-1303 .....2

**OTHER AUTHORITIES**

36 Cyc. pp. 1137, 1138 .....8



The Local Government Attorneys of Virginia, Inc. (LGA) and the Virginia Association of Counties (VACo), collectively “Amici,” respectfully submit the following brief amicus curiae, with the consents of all parties.

### **INTEREST OF AMICI**

The LGA is a nonprofit professional corporation created to promote the continuing legal education of local government attorneys, furnish information to local government attorneys and their offices that will enable them to better perform their functions, offer a forum through which its members may meet and exchange ideas of import to Virginia local government attorneys, and initiate, support, or oppose litigation that, in the judgment of the LGA, is significant to Virginia’s local governments. The LGA was founded in 1975, and its 815 public and private attorney members represent 66 counties, 30 cities, and 43 towns of the Commonwealth and a variety of authorities and other special units of local government. The LGA regularly is asked by the Virginia General Assembly and agencies of the Commonwealth to offer legal advice on matters of state policy and to recommend knowledgeable attorneys to serve on legislative study committees and commissions.

As an organization of attorneys charged with the responsibility of protecting the legal interests of Virginia’s local governments, the LGA is well qualified to recognize matters of general importance impacting local government law that may

be presented to this Court. The LGA therefore is well situated to provide assistance to the Court with respect to local government issues that may impact not only the present litigants but all Virginia local governments and their citizens. The LGA has previously filed briefs *amicus curiae* in cases before this Court that implicate issues of special importance to Virginia's local governments.

VACo is a non-profit, non-partisan, statewide association organized in 1934, in the depths of the Great Depression, to support county officials and to represent, promote and protect the interests of counties in order to better serve the people of Virginia. VACo is an instrumentality of its member counties, formed and maintained pursuant to § 15.2-1303 of the Code of Virginia. Its membership comprises 94 of the 95 counties in Virginia.

VACo is rooted from four pillars – advocacy, education, membership engagement, and business development. It has become a voice of Virginia's counties in the General Assembly and a supporter of counties in the Commonwealth and throughout the country. VACo is well situated to provide assistance to the Court with respect to local government issues that may impact not only the present litigants but Virginia counties and their citizens. VACo has

previously filed briefs *amicus curiae* in cases before this Court that implicate issues of special importance to its member governments.<sup>1</sup>

## **STATEMENT OF THE CASE AND MATERIAL PROCEEDINGS BELOW**

Amici adopt the procedural descriptions of the proceedings below in Appellee Isle of Wight County's Counter Statement of the Case.

### **STATEMENT OF FACTS**

Amici adopt Isle of Wight County's Counter Statement of Facts.

### **SUMMARY OF ARGUMENT**

International Paper gives lip service to the proposition that a determination of the validity of legislation must be based only on “its natural and reasonable effect” (*Corporate Executive Board Co. v. Virginia Dep't of Taxation*, 297 Va. 57, 70 (2019), *quoted in* Appellant's Brief at 26 n.84), as opposed to the motivations of the legislators. But its arguments – and especially its lengthy factual statement – pervasively impugn the motives of Isle of Wight County's Commissioner of Revenue and Board of Supervisors and implicitly invite the Court to discover in those motives a reason to decide the case in its favor.

The Court should reject that invitation. It should instead treat this case as an opportunity to reaffirm the settled rule that a court may not inquire into a

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<sup>1</sup> No party's counsel authored this brief, either in whole or in part, and no person other than the LGA and VACo provided any funding for its preparation.

legislature’s or legislator’s subjective motivations. The issue for the judiciary, addressing a challenge to the validity or application of a legislative enactment, is simply whether the legislators have acted within the scope of their constitutional or statutory authority.

## **ARGUMENT**

### **I. The applicable standard of review.**

The issue addressed in this Brief is a question of law, reviewable de novo. *E.g., Webb v. Virginian-Pilot Media Cos.*, 287 Va. 84, 88 (2014).

### **II. International Paper’s attacks on the County’s subjective motivations pervade its arguments.**

International Paper states and argues that:

The trial court “bless[ed the County’s] transparent attempt to nullify a tax refund and evade all taxing limits ....” Opening Brief of the Appellant (“Appellant’s Brief”) at 3.

“Isle of Wight, and Mr. Gwaltney, never forgot nor forgave IP for the tax revenue lost when the Franklin Mill closed.” *Id.* at 6. “Isle of Wight used its legislative power to claw back all of IP’s Refund after it had vested through a final judgment.” *Id.* at 43.

“***Mr. Gwaltney Schemed to Launder Refunds Through Taxpayers.***” *Id.* at 9 (caption).

“Mr. Gwaltney revealed his purposes ....” *Id.* at 10.

The County acted to “avoid any political blowback ....” *Id.* at 3.

The County “plays the shell game of calling the foregone taxes ‘grants.’” *Id.*  
at 4.

“Isle of Wight ... sought to recover old taxes, which were ‘constitutionally required’ to be paid IP by the Court-Ordered Refund and 2015 Refund.” *Id.* at 45.

The Commissioner, upset at IP, wrote an email to himself, charging that “[t]his is the worst case of corporate greed in the county that I have ever seen,” that IP “does not care about their employees or their community” or “the budget cuts the county will be forced to make,” and that IP is “now driven by corporate greed” alone. On the stand, Mr. Gwaltney affirmed “that he felt that way then,” when he wrote the email, and testified at trial that he “feel[s] that way today.” ... The Commissioner rejected the suggestion that he was stating his “feelings,” and asserted that he was “simply stating a fact”; for Gwaltney, this was “fact, not opinion.”

*Id.* at 7-8 (citations and footnotes omitted).

“The Commissioner suspected even before the Refund Action’s filing that his ‘methodology ... was actually wrong’ and so not in ‘compliance with the constitution.’ Yet he was ‘fully involved’ in its defense ....” *Id.* at 8.

“Mr. Gwaltney was not only trying to determine which rate would generate revenue equivalent to refunds caused by the M&T Corrections, making them ‘revenue neutral,’ but also exact those same ‘constitutionally required’ refunds *from the same taxpayers who received the refunds* during 2017. Put another way, Mr. Gwaltney was trying to make sure ‘that no taxpayer would be harmed’ by the

proposed tax increase ‘[o]r benefitted’ by the projected refunds.” *Id.* at 11 (footnotes omitted).

The Commissioner “ultimately settled on” a tax rate “which he modeled to be just high enough to get back all of IP’s projected refund, but not all taxpayers’ projected refunds ....” *Id.* at 13. “As intended and expected, [the “M&T Tax Strategy”] deprived IP of its special damages ... making the M&T Tax Strategy impair a final judgment, setting aside IP’s Refund and setting at naught the Tax Refund Regime.” *Id.* at 48. The “M&T Tax Strategy ... accomplish[es] indirectly what Isle of Wight cannot do directly.” *Id.*

“While no authority suggests that *mens rea* is required to violate vested rights or the separation of powers or to exceed statutory authority, were it needed, Isle of Wight had it.” *Id.* at 47; *see id.* at 47-48 (International Paper’s arguments in favor of that conclusion).

International Paper also makes clear its belief that the Commissioner’s motivations were the Board of Supervisors’ as well. *See id.* at 9 (“The Board followed his recommendation”), 15-16 and 20 (discussing the Board’s deliberations and decisions), 48 (the Commissioner “told the Board what the M&T Tax Strategy would do, and they adopted it.”). *See also id.* at 16 (“the Commissioner served as Isle of Wight’s corporate designee and sole witness”).

**III. The Court should reject International Paper’s implicit invitation to base its decision on Isle of Wight County’s alleged motivations.**

International Paper’s Brief pervasively characterizes the County’s motivations, always in pejorative terms, as discussed above; but it relegates to a footnote (note 84, on page 26 of the Brief) its partial and seemingly begrudging acknowledgment of the settled rule that the validity of legislation must be determined on the basis of its effects. It omits entirely any reference to the equally settled rule that legislators’ motivations are off limits to judicial inquiry.

That is a rule of long standing, dating back well over a century. Thus in *Isaacs v. City of Richmond*, 90 Va. 30, 32 (1893), this Court recited “the general rule” – which was not disputed – “that the legislative intent must be gathered from the language used by the legislature, and that the validity of a statute unobjectionable on its face cannot be made to depend upon the result of a judicial inquiry into the motives of the legislature.”

The Court articulated and explained the rule at greater length 20 years later in *Shenandoah Lime Co. v. Governor*, 115 Va. 865 (1913), where its application and reach were genuinely at issue. Shenandoah Lime challenged the constitutionality of a statute which provided for State operation of a lime grinding plant, utilizing convict labor, to provide materials for highway construction. Its attack was predicated in part on an argument that “the real motive of the Legislature was to embark the State in private business in competition with

appellants and other private manufacturers.” *Id.* at 870. The Court upheld the statute, holding it “sufficient to say that the motives, purposes, or intentions of the legislature have no existence in law where its enactment is plain and unambiguous on its face, except as those motives may be disclosed on the face of the act itself.” *Id.* “The intention of the legislature, to which effect must be given, is that expressed in the statute, and the courts will not inquire into the motives which influenced the legislature or individual members, in voting for its passage, nor indeed as to the intention of the draftsman, or of the legislature, so far as it has not been expressed in the act.” *Id.* (quoting 36 Cyc. pp. 1137, 1138).

The *Shenandoah Lime Co.* Court continued by quoting as follows from *Soon Hing v. Crowley*, 113 U. S. 703, 710 (1885):

And the rule is general with reference to the enactments of all legislative bodies, that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferable from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments.

115 Va. at 870-71. It concluded that “[t]he effect of the contention under consideration is that the legislature had adroitly conceived and passed the act in question in a valid form, by suppressing or concealing some supposed unconstitutional motive or purpose which it wished to subserve by the legislation.



There is nothing in the record to warrant this suggestion, but *if there was it would not avail appellants.*” *Id.* at 871 (emphasis added).

Many other cases support that proposition. *E.g., W.S. Carnes, Inc. v. Board of Supervisors of Chesterfield County*, 252 Va. 377, 385 (1996) (“Generally, evidence of the Board’s intent or motive in enacting ordinances is irrelevant to our consideration whether they are valid laws.... ‘Bad motives might inspire a law which appeared on its face and proved valid and beneficial, while a bad and invalid law might be, and sometimes is, passed with good intent and the best of motives.’”) (quoting *Blankenship v. City of Richmond*, 188 Va. 97, 104-05 (1948)); *Industrial Development Authority of City of Richmond v. La France Cleaners & Laundry Corp.*, 216 Va. 277, 282 (1975) (“‘Courts are not concerned with the motives which actuate members of a legislative body in enacting a law’”) (also quoting *Blankenship*, 188 Va. at 105); *Chesapeake & Potomac Tel. Co. v. City of Newport News*, 196 Va. 627, 639-40 (1955) (quoting, *inter alia*, *Hamilton v. Kentucky Distilleries*, 251 U.S. 146, 161 (1919) (“‘No principle of our constitution is more firmly established than that this court may not, in passing upon the validity of a statute, inquire into the motives of Congress.’”); *City of Fredericksburg v. Sanitary Grocery Co., Inc.*, 168 Va. 57, 68 (1937) (“Collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial inquiry.”) (citation omitted); *Richmond Linen*

*Supply Co. v. City of Lynchburg*, 160 Va. 644, 648 (1933) (quoting *State Board of Tax Commissioners of Indiana v. Jackson*, 283 U.S. 527, 537 (1931)); *Railway Company v. Llewellyn*, 156 Va. 258, 276 (1931) .

The rule is one of current application as well as ancient vintage. In *Board of Supervisors of Fluvanna County v. Davenport & Co., LLC*, 285 Va. 580 (2013), for example, this Court held that “principles of separation of powers generally ‘preclude[ ] judicial inquiry into the motives of legislative bodies elected by the people.’” *Id.* at 587 (quoting *Ames v. Painter*, 239 Va. 343, 349 (1990)).

“[M]embers of a board of supervisors, legislators of a municipality, are outside the scope of both federal and state Constitutional legislative immunity provisions”; but “state and local legislators have nevertheless been found to be protected because ‘common law legislative immunity ... protect[s] the integrity of the legislative process by [e]nsuring the independence of individual legislators.’” *Id.* at 588 (citations omitted).

*Helmick v. Town of Warrenton*, 254 Va. 225, 231 (1997), specifically compels judicial disregard of International Paper’s argument that the County retaliated against International Paper for closing the Franklin Mill or for successfully challenging the County’s 2012-2014 tax assessments. *See* Appellant’s Brief at 6, 7. In *Helmick*, landowners challenged the Town of Warrenton’s refusal to consent to the vacation of a subdivision plat and alleged, in part, “that the Town

refused to consent to the vacation of the plat ‘plainly to harass’ the Helmicks because of previous litigation brought by the Helmicks against the Town.” 254 Va. at 231. The Court rejected that argument out of hand, on the ground that “[i]n considering whether a legislative act is reasonable ... generally the motives of the governing body in undertaking the act are immaterial.” *Id.*

### CONCLUSION

The Court should take the opportunity presented by this case to reiterate the settled rule of law that compels judicial disregard for attacks on the motives of legislators, at all levels of government. The task of the judiciary is simply to ascertain whether the legislators “have acted within the constitutional boundaries that limit the exercise of their governmental power.” *Elizabeth River Crossings OpCo, LLC v. Meeks*, 286 Va. 286, 309-10 (2013) (citation omitted).

Respectfully submitted,

The Local Government Attorneys of  
Virginia, Inc.

and

The Virginia Association of Counties

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## Certificate

I hereby certify that this brief amicus curiae complies with Rule 5:26 and that true copies of this brief, in Portable Document Format (PDF) format, were filed with the Clerk of this Court and served on counsel for all parties, named below, on February 21, 2020:

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**VIRGINIA:**

**IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY**

<b>INTERNATIONAL PAPER COMPANY,</b>	)	
<b>A NEW YORK</b>	)	
<b>CORPORATION,</b>	)	
	)	
<b>Applicant,</b>	)	
	)	
	)	
<b>v.</b>	)	<b>Civil Action No. CL17000704-00</b>
	)	<b>On Remand from the</b>
	)	<b>Supreme Court of Virginia</b>
<b>COUNTY OF ISLE OF WIGHT,</b>	)	<b>Record No. 190542</b>
	)	
<b>Defendant.</b>	)	
	)	

**FINAL ORDER**

This case returns to conclude the trial begun on November 26, 2018, on remand from the Supreme Court of Virginia following its opinion in *International Paper Company v. Company of Isle of Wight*, 299 Va. 150 (2020), in which the Supreme Court upheld this Court’s striking of Counts 1, 2, and 3 of International Paper Company’s Application for Correction of its 2017 machinery and tools tax assessment (“Application”) and reversed this Court’s decision to strike Counts 4 and 5 of International Paper Company’s Application.

As to Counts 4 and 5 of International Paper Company’s (“IP”) Application, the Supreme Court of Virginia established first, that “[t]he County’s taxation upon M&T . . . is required to be uniform among all M&T taxpayers in the County.” *International Paper Company*, at 299 Va. at 178 (2020). Having reviewed IP’s evidence, the Supreme Court held it to be a prima facie case that IP’s “2017 M&T tax assessment was non-uniform, invalid, and illegal,” Isle of Wight having broken “the promise of equality of treatment among members of a tax class during the taxation class.” *Id.* at 178, 190. For “uniformity applies to all ‘steps’ of determining property tax liability,” *Id.* at 179, and “[a]ny act that ‘has the effect’ of allowing one taxpayer to pay ‘less than another [taxpayer] similarly situated might be required to pay’ offends uniformity, no matter how the different treatment is effected.” *Id.* at 182. The Supreme Court remanded the case back to this Court for further trial proceedings in accordance with the Supreme Court’s opinion.

The parties, IP and the County of Isle of Wight (the “County”), appeared for the remand trial of IP’s Application on June 24, 2021, whereupon it was then submitted to this Court for decision pursuant to Virginia Code § 58.1-3987.

Upon consideration of the evidence therein submitted, and the arguments of counsel, the Court is satisfied for the reasons stated herein and **FINDS, CONCLUDES AND HOLDS** as follows.

The Supreme Court established by its opinion, which this Court absolutely accepts, that IP established a prima facie case at the conclusion of its evidence on November 28, 2018, that, in fact, that the machinery and tools tax scheme by the County for the 2017 tax year was unconstitutional.

Even after applying the doctrine of constitutional avoidance, as well as the presumption of constitutionality as to the County's actions, while evaluating all of the evidence presented in the trial of this matter, this Court finds that IP has established by a preponderance of the evidence that there was clear linkage between the tax rate established, and the economic development retention grant program established by the County and that these two legislative acts produced an unconstitutional effect, regardless of the name attached to the acts, or how the acts may be framed. The practical operation of the clear linkage between the tax rate established and the grant program established is the production of nonuniformity in its ultimate effect to IP, which is the only taxpayer before this Court.

The Court finds an unconstitutional taxation by the County on IP and this Court holds the County's 2017 machinery and tools tax assessment to be unconstitutional and erroneous. -

The Court further finds that IP paid the first half of its 2017 machinery and tools tax assessment in the amount of \$2,742,740.91 on August 7, 2017 and paid the second half of the 2017 tax assessment on December 5, 2017 in the amount of \$2,742,740.90 for a total 2017 machinery and tools taxes paid by IP in the amount of \$5,485,481.81.

Under Virginia Code § 58.1-3987, when a finding that a tax assessment is erroneous is made by the Court, and that the Court having found that IP paid the tax assessed by the County on this erroneous tax assessment in full, the Court holds section 58.1-3987 requires all taxes paid by IP to be refunded in their entirety. Given that the tax rate and grant relief program led to an unconstitutional tax, the County has no authority to retain IP's tax payments as the County made an unconstitutional demand to pay the 2017 machinery and tools tax assessed on IP.

The Court further finds that the County must pay interest on the taxes to be refunded to IP, with interest accruing on these two tax payments at the rate of ten percent per annum, in accordance with Isle of Wight County Code of Ordinances section 15-2. Interest shall accrue on the first half tax payment of \$2,742,740.91 from the date of IP's payment on August 7, 2017, through the date of refund thereof by the County; and interest shall accrue on the second half tax payment of \$2,742,740.90 from the date of payment on December 5, 2017, through the date of refund by the County.

The Court finds that the County's argument that the economic relief grant should be considered separately from IP's 2017 machinery and tools tax assessment and repaid to the County as the proper remedy on its unconstitutional and erroneous assessment would lead to an absurd result in this case. The Court further finds that *Torphy* ~~is not the law in Virginia and~~ does not appear to require the Court to conduct a step-by-step analysis backward. The County engaged in an illegal and unconstitutional act. To then have the Court punish IP for having brought the matter to the attention of the judiciary through its Application only to require IP to pay the County additional money on the County's erroneous assessment, for which the County is not entitled to retain any of the tax payments already paid by IP on this erroneous assessment, is not a proper remedy under Virginia Code § 58.1-3987.

The clerk shall forthwith cause a true and correct copy of the order of exoneration to be served on Ms. Judith C. Wells, Treasurer of Isle of Wight County, who shall refund to IP the amount specified in this order, pursuant to Virginia Code § 58.1-3988.

And it is further **ORDERED, ADJUDGED AND DECREED** that this matter be stricken from the docket and placed among the ended causes.

Let the Clerk send an entered order to counsel of record.

**IT IS SO ORDERED.**

ENTERED this \_\_\_\_ day of July, 2021

By: \_\_\_\_\_  
Circuit Court Judge

Seen and agreed to:

\_\_\_\_\_  
Craig D. Bell (VSB No. 30909)  
Alec V. Sauble (VSB No. 94980)  
McGUIREWOODS LLP  
800 East Canal Street  
Richmond, Virginia 23219-3916  
(804) 775-1179 Direct  
(804) 698-2160 Facsimile  
cdbell@mcguirewoods.com

*Counsel for International Paper Company*



Seen and objected to for all of the reasons appearing in the record, including, but not limited to the reasons stated in the attached objections.

---

Andrew R. McRoberts (VSB No. 31882)  
David C. Tait (VSB No. 82710)  
SANDS ANDERSON PC  
Bank of America Plaza  
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amroberts@sandsanderson.com

*Counsel for County of Isle of Wight*

## COUNTY OF ISLE OF WIGHT'S OBJECTIONS

The Defendant, Isle of Wight County, Virginia, objects to the Final Order entered against it, and to all other adverse rulings against it, on all grounds stated in the record, including the briefs and oral argument presented in this case. Without waiving those objections, Isle of Wight county hereby states the specific objections to the Final Order:

1. The Trial Court erred in finding a linkage between the tax rate ordinance and the grant program. This is plainly wrong and contrary to the record given the presumption of constitutionality and the doctrine of constitutional avoidance.
2. The Trial Court erred in finding that IP's evidence overcame the presumption of constitutionality that is afforded to the County's action.
3. The Trial Court erred in finding that IP had proved manifest error necessary to overcome the presumption of correctness inherent in the assessment.
4. The Trial Court erred in finding that the tax rate and the grant program produced an unconstitutional, nonuniform effect on IP's tax rate.
5. The Trial Court erred in granting IP's requested relief—a full refund of its 2017 M&T taxes—because in doing so it granted IP an exemption from paying any taxes in violation of the Virginia Constitution Article X, Section 1 (“all property...shall be taxed”).
6. The Trial Court erred in granting IP's requested relief—a full refund of its 2017 M&T Taxes—because in doing so the Court's purported remedy creates additional nonuniformity and clear constitutional violations.
7. The Trial Court erred by finding that Isle of Wight's tax ordinance setting the rate of M&T taxation at \$4.24 was unconstitutional.
8. The Trial Court erred in finding that the Economic Development Retention Grant Program was unconstitutional.
9. The Trial Court erred by failing to strike only the elements of the County's enactments that the Trial County found violated nonuniformity.
10. The Trial Court erred by disregarding the Supreme Court of Virginia's mandate in *International Paper Company v. County of Isle of Wight*, 299 Va. 150 (2020), by not applying the alleged uniformity at each step of the process for purpose of determining any nonuniformity needing to be corrected pursuant to Section 58.1-3987.
11. The Trial Court erred in its application of Virginia Code § 58.1-3987. The Trial Court found that if that under Virginia Code § 58.1-3987, when a finding is made that an assessment is erroneous, then all taxes remitted to the County are required to be repaid.

Sec. 58.1-3987, however, only permits the Court to correct the portion of the assessment that is erroneous. The Trial Court's improper reading of § 58.1-3987 caused the remedy granted to be in excess of the authority conferred upon the Court by § 58.1-3987.

12. The Trial Court erred by failing to correct the assessment and instead striking it by refunding the entire levy. The Court's remedy exceeded its authority under § 58.1-3987.
13. The Trial Court erred by granting a full refund resulting in IP paying no machinery and tools tax despite the fact that IP had taxable M&T for tax year 2017, as admitted by IP during trial.
14. The Trial Court erred in differentiating between a proper remedy in a declaratory judgment action and an as applied constitutional challenge. The remedies available under each, as related to correcting the assessment are substantially the same. The Trial Court failed to apply, and in fact ignored, Supreme Court of Virginia precedent in fashioning its remedy.
15. The Trial Court erred in providing to IP an equitable remedy. This action, brought under Section 58.1-3984, is an action solely at law. Va. Code § 58.1-3984(A). Any application of equitable remedies related to the absurdity doctrine which impacts taxpayers with a remedy at law under Section 58.1-3987 is clear error.

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1 that was presented to this case at the end of  
2 November 2018.

3 IP is asking, the County argued, I'm on  
4 remedies here, that IP is asking the County to  
5 change its tax rate, and it wants an exemption.  
6 No, we want our money back. You cooked up a  
7 scheme that was unconstitutional, not you,  
8 Judge, and now you're complaining that the  
9 remedy is to give the money back, and go figure  
10 it out and do it again proper the next time.

11 And, you know, it's not the appropriate  
12 remedy to vivisect those steps, but you have to  
13 look at them all together because they were  
14 part of a plan. And, based on that, the  
15 Supreme Court's prima facie evidence and  
16 findings is what this Court's actual evidence  
17 of findings should be, that it's a nonuniform,  
18 unconstitutional assessment that IP has  
19 suffered, and that the remedy is they get their  
20 money back.

21 Thank you, Your Honor.

22 THE COURT: Thank you, Mr. Bell.

23 The starting point, at least for me, is at  
24 this point all the evidence, obviously, is in,  
25 and the test is whether or not IP has

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1 established by a preponderance of the evidence  
2 whether or not there was nonuniformity in the  
3 effects of the 2017 machinery and tax,  
4 machinery and tools tax ordinance and  
5 assessments, or assessment, I guess it's two of  
6 them, I guess, against IP, for that year. And,  
7 again, a preponderance of the evidence is what  
8 IP has to reach at this point.

9 The Supreme Court, of course, established  
10 by its opinion, which I absolutely accept, that  
11 IP established a prima facie case at the  
12 conclusion of its evidence back almost two  
13 years ago, that, in fact, that scheme by Isle  
14 of Wight was, that tax scheme as such was  
15 unconstitutional.

16 The practical issue for me to determine  
17 whether or not IP has now met its burden of  
18 proof in the trial of this matter, is to look  
19 at all the evidence. And, applying, as the  
20 County has argued, the presumption of  
21 constitutionality to their actions, and that  
22 really does just go in looking at the actions  
23 itself.

24 I find that, with that test, that IP has  
25 established a preponderance of the evidence

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1           that there was clear linkage between the tax  
2           rate established, and the grant program  
3           established. It was all part and parcel of a  
4           tax bill. I find, by preponderance to the  
5           evidence is more than just in the light most  
6           favorable to IP that they have established a  
7           prima facie case at this.

8           The only other evidence that's come before  
9           me is some request for admissions, that's the  
10          thing, only other thing I can consider at this  
11          point, as I have to follow the mandates under  
12          remand from the Supreme Court.

13          And even applying the doctrine of the  
14          presumption of constitutionality by the  
15          doctrine of correctness of constitutionality of  
16          avoiding any determinations of  
17          unconstitutionality if possible, when the law  
18          was applied, and just looking at some of the  
19          language used by the Supreme Court in their  
20          ruling that remanded this down here is, I have  
21          to determine whether the legislative act  
22          produces an unconstitutional effect regardless  
23          of the name attached to the act, or how it may  
24          be framed.

25                 I'm only to be concerned with its

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1 practical operation, and not its definition of  
2 what precise form of descriptive words which  
3 may be applied to it. And, when I do that,  
4 clearly there's evidence of nonuniformity in  
5 its ultimate effect on the various taxpayer,  
6 machinery and tools taxpayers here in the  
7 County, and specifically, the only one before  
8 me was IP. That it was not uniform in its  
9 application as to them. So it is, I find, an  
10 unconstitutional taxation by the County. And  
11 then the question is the remedy.

12 And, under 58.1-3987, I'm finding that the  
13 assessment is erroneous. And I think there's  
14 case law, and I believe IP quoted it in one of  
15 their briefs, and maybe in the reply brief.  
16 I'm not sure it was fully argued, but it may  
17 have been touched on by Mr. Bell at least.

18 But that phrase in 3987 that, if the  
19 assessment is erroneous, includes a finding of  
20 the illegality, or invalid. And, since I'm  
21 finding that the assessment is  
22 unconstitutional, therefore under the statute  
23 is erroneous, and having found that IP has paid  
24 the tax, that section says the Court shall  
25 order it be refunded to the taxpayer.

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1 I don't think I go by any step-by-step  
2 analysis, because I have said that that  
3 ordinance is unconstitutional. And I'm not  
4 convinced that Torphy requires me to go on a  
5 step-by-step analysis backwards, here in  
6 Virginia at least, to say, well, just throw out  
7 the grant program credit. And IP has an  
8 adequate remedy at law, and that is, if they  
9 have to pay the entire tax that was imposed  
10 upon them. I'm finding that the ordinance was  
11 unconstitutional to begin with. And,  
12 therefore, no matter what the County may have  
13 told IP it had to pay, it didn't have the  
14 authority to do it. It was an unconstitutional  
15 demand.

16 Let's not lose sight, and this is what, in  
17 all candor, I've been thinking about it, and  
18 I'm going to put this on the record and say it,  
19 it's not often that these issues come before a  
20 circuit court here in the Commonwealth of  
21 Virginia where, at least from my observation,  
22 it affects really, the very heart and  
23 foundation of our forms of government.

24 The governing bodies, the legislature and  
25 the executive branch, even the judicial branch,

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1 but I'm really focusing on the other two  
2 branches not the judicial right at this moment,  
3 they're there by the consent of the government.  
4 They're not entitled to anything, they, the  
5 government, is not entitled to anything, unless  
6 they are given that power. And they're given  
7 that power by the constitution, and it trickles  
8 down, obviously, through the legislative  
9 branches to pass statutes and ordinances.

10 And, if the government body takes an act  
11 that's unconstitutional, they don't have the  
12 authority to do it. It's as simple as that.  
13 It is not their right, it's not the right of  
14 the governing body to do those things for which  
15 they have no authority provided by the  
16 government.

17 And I'm not trying to be too flowery here,  
18 but that's what has happened in this case. The  
19 County of Isle of Wight, my native county, I'm  
20 a native of Isle of Wight, born and bred here.  
21 But they have taken an unconstitutional act  
22 with this.

23 And I understand why they did it, that's  
24 not the issue. And I don't think it was any  
25 ill will in what was trying to be done. I

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1 fully understand the economic and financial  
2 implications of what was occurring. But the  
3 County has created these problems, no one else,  
4 not IP, not the Courts, the County has created  
5 these problems. And, frankly, it was created  
6 before 2017 when this ordinance was passed, it  
7 was created with the prior litigation of not  
8 following the constitution and assessing  
9 machinery and tools at acquisition cost, and  
10 that fair mark value is what was required to be  
11 done.

12           Therein is where the problems lie in this  
13 particular matter, and I think I understand why  
14 the County was taking those steps when they  
15 were taking them over the last decade, or two  
16 decades, or however long that process was going  
17 on, and it's almost surprising that that issue  
18 didn't percolate way before 2013 when IP first  
19 filed the first suit, I think it was in 2013,  
20 but I may be wrong.

21           But, be that as it may, the County has  
22 created these problems. And, trust me, I have  
23 struggled ever since the remand and started  
24 thinking about these issues as to what's, if I  
25 was to rule like I just ruled, what was the

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1 proper remedy for International Paper.

2 And I understand the logic behind the  
3 County's argument that, well, just throw out  
4 the grant and make IP pay more than they  
5 actually had to pay in 2017. And that is an  
6 adequate remedy at law. And I followed the  
7 argument that adequate doesn't mean you're  
8 happy with it.

9 But, if the Court can find an adequate  
10 remedy then so be it and the chips fall where  
11 they may. But that would lead to an absurd  
12 result in this case; for the County to have  
13 engaged in an illegal act, unconstitutional  
14 act, as it relates to the 2017 machinery and  
15 tools tax plan, or scheme, and then, when they  
16 get called on it by a taxpayer, that somehow or  
17 another the taxpayer is truly punished for  
18 having done that, for having brought to the  
19 attention of the third branch of government  
20 that there's been an unconstitutional action  
21 taken by the government that, again, supposed  
22 to act for the benefit of the citizens.

23 And, again, it's not suggesting any ill  
24 will was engaged in this, but it is suggesting  
25 that there are consequences for acts. And I

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1 say this more times than not in criminal case  
2 dockets much more than any civil case docket,  
3 almost weekly, but there are consequences for  
4 actions. And this is the unfortunate  
5 consequences that I find that has resulted to  
6 Isle of Wight County that stems back, again,  
7 far before 2017 it appears to me, but  
8 ultimately that's the only issue before me  
9 today.

10 So the remedy the general assembly has  
11 stated that, if the Court finds the assessment  
12 is erroneous, I've done so, that the Court  
13 shall order that it, that the tax, if paid, and  
14 I find that the tax has been paid by IP, is to  
15 be refunded to IP.

16 It bothered me a little bit as I was  
17 determining what would be a potential, the  
18 proper remedy if I was to rule on the merits as  
19 I have just done, that it would, by doing that,  
20 that it would certainly be nonuniform.

21 I asked Mr. Bell about this two and a half  
22 hours ago probably, nonuniform result because  
23 all of the sudden IP doesn't have any tax  
24 obligation for 2017, and all the other M&T  
25 people do for 2017, and that's nonuniform,

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1 nonuniformity it would seem to me. But I don't  
2 think I have any power to do anything else.

3 And I pressed both counsel, because I  
4 respect y'all's intelligence on these areas  
5 greatly, and I pressed both of you to give me  
6 some feedback, some idea, some path, that I  
7 could go down that was perhaps even more  
8 appropriate. I don't see any other path that  
9 the judicial branch of government has at this  
10 point.

11 And I'm, I feel badly for that, as the  
12 presiding judge in this matter, but I also  
13 conclude that the Court was put in this  
14 position by the County's actions and not by  
15 anyone else's. And I think the County is the  
16 one left now with having to resolve the  
17 problems. And it's up to them to resolve how  
18 that problem is ultimately addressed.

19 I didn't actually state the dollar amount,  
20 and, Mr. Bell, I'm still, perhaps, a little bit  
21 confused by your actual demand at this point as  
22 to whether or not you're seeking that the  
23 County refund, and we'll get the exact amount  
24 in a minute, 5.9 million or 5.4 million,  
25 because it seems to me you only paid out 5.4

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1 million.

2 MR. BELL: Yes, Your Honor, we are asking,  
3 we didn't know if the grant would be ordered to  
4 be refunded, then it would be 5.9, if they get  
5 the economic benefit of the grant, they  
6 actually paid 5.4 --

7 THE COURT: Well, you only, but the order  
8 says if the tax has been paid --

9 MR. BELL: Yes.

10 THE COURT: -- the Court should order that  
11 it be refunded, it meaning the amount paid.

12 MR. BELL: That's correct.

13 THE COURT: You only paid the 5.4, it  
14 seems to me.

15 MR. BELL: That's correct.

16 THE COURT: So that's what I am ordering  
17 to be refunded. Now, let's get it on the  
18 record, and I can dig through my documents I've  
19 got in front of me, or you can give me that  
20 number again, and we'll see if Mr. McRoberts  
21 disagrees with the amount. I know it's in  
22 here, but I would have to dig through a series  
23 of documents to find it.

24 Because your amended application did ask  
25 for the 5.9.

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1 MR. BELL: That's right. The correct --

2 THE COURT: Be refunded.

3 MR. BELL: The number as we understand it,  
4 the amount would be, 5,485,481.90.

5 THE COURT: And I actually do have those  
6 numbers all in front of me.

7 Mr. McRoberts, I'll certainly be happy to  
8 hear from you to see whether or not, we're just  
9 talking about the math issue.

10 MR. BELL: 81 cents, I'm sorry.

11 MR. McROBERTS: Yeah, we get 5,485,481.81.

12 MR. BELL: That's correct. We're also  
13 asking for interest at the County's --

14 THE COURT: Yes, sir, I'll get to that in  
15 just a minute.

16 So I'm ordering a refund of 5,485,481.81,  
17 with interest at the rate set by the County. I  
18 have not looked that up. You had argued, Mr.  
19 Bell, that it's ten percent under the County's  
20 ordinance.

21 MR. BELL: I believe that's correct --

22 THE COURT: That's referenced in  
23 58.1-3987.

24 Mr. McRoberts, do you agree or disagree  
25 that's the interest rate, I have not looked it

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1 up.

2 MR. McROBERTS: I believe that's correct,  
3 I haven't looked that up either.

4 THE COURT: If you find it to be  
5 different, and y'all can agree on what that  
6 rate is, put a phone call in to me, we'll  
7 resolve it, but I will order that the interest  
8 rate as provided for under 3987.

9 Mr. Bell, if you'll prepare that order for  
10 circulation and endorsement, and objections to  
11 Mr. McRoberts, and get it up to me promptly for  
12 entry, I will do so.

13 MR. BELL: Thank you.

14 THE COURT: Anything further, Mr. Bell?

15 MR. BELL: Not from International Paper.

16 THE COURT: Anything further, Mr.

17 McRoberts?

18 MR. McROBERTS: No, sir.

19 THE COURT: Thank you, Counsel.

20

21 (The hearing concluded at 1:15 p.m.)

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REPORTER'S CERTIFICATE

I certify the foregoing is a true and  
correct transcription of my shorthand notes.

---

Beverly S. Lukowsky  
Shorthand Reporter

CHANDLER & HALASZ, INC.