SCV: Submitted on 01-24-2017 15:28:29 EST for filing on 01-24-2017

IN THE

Supreme Court of Virginia

RECORD NO. 160979

CITY OF DANVILLE,

Appellant,

v.

JACQUELINE GARRETT,

Appellee.

OPENING BRIEF OF APPELLANT

James A. L. Daniel, Esq. (VSB 03881)
Maggy L. Gregory, Esq. (VSB 80418)
DANIEL, MEDLEY & KIRBY, P.C.
Post Office Box 720
Danville, Virginia 24543-0720
Telephone: (434) 792-3911
Facsimile: (434) 793-5724
jdaniel@dmklawfirm.com
mgregory@dmklawfirm.com

Counsel for Appellant

LANTAGNE LEGAL PRINTING 801 East Main Street Suite 100 Richmond, Virginia 23219 (804) 644-0477
A Division of Lantagne Duplicating Services

TABLE OF CONTENTS

Table of Contents ii

Table of Authorities iii

Statement of the Case 1

Material Facts and Proceedings Below 1

Assignments of Error 3

Standard of Review 4

Argument 4

Conclusion 22

Certificate 24

TABLE OF AUTHORITIES

Cases

Advanced Towing Co., LLC v. Fairfax County Bd. of Supervisors, 280 Va. 187, 193, 694 S.E.2d 621, 624 (2010) 6

Ainslie v. Inman, 265 Va. 347, 352, 577 S.E.2d 246, 248 (2003) 4

Ambrogi v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982) 14

Arlington County Bd. v. White, 259 Va. 708, 710 n.1, 712, 528 S.E.2d 706, 707 n.1, 708 (2000) 6

Belew v. Commonwealth, 284 Va. 173, 177, 726 S.E.2d 257, 259 (2012) 4

Board of Supervisors v. King Land Corp., 238 Va. 97, 103, 380 S.E.2d 895, 897 (1989) 5

City of Virginia Beach v. Hay, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999) 6

Colbert v. Commonwealth, 47 Va. App. 390, 394, 624 S.E.2d 108, 110 (2006) 7

Commonwealth v. Arlington County Bd., 217 Va. 558, 573-74, 232 S.E.2d 30, 40 (1977) 6

Commonwealth v. Zamani, 256 Va. 391, 395, 507 S.E.2d 608, 609 (1998) 15

Crawford v. Haddock, 270 Va. 524, 528, 621 S.E.2d 127, 129 (2005) 4

Hubbard v. Henrico Ltd. Pshp., 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998) 15

King v. County of Arlington, 195 Va. 1084,1091, 81 S.E.2d 587, 591 (1954) 18

Marshall v. Commonwealth, 58 Va. App. 210, 215,
708 S.E.2d 253, 255 (2011) 7, 12, 20

Mattaponi Indian Tribe v. Commonwealth
Dep't of Envtl. Quality ex rel. State Water Control Bd.,
43 Va. App. 690, 704, 601 S.E.2d 667, 675 (2004) 12, 14

Melanson v. Commonwealth, 261 Va. 178, 183,
539 S.E.2d 433, 435 (2001) 15

Sarafin v. Commonwealth, 288 Va. 320, 325, 764 S.E.2d 71, 74 (2014) 4

Shackelford v. Shackelford, 181 Va. 869, 877, 27 S.E.2d 354, 358 (1943)
..... 5

Smith v. Commonwealth, 66 Va. App. 382, 388-89,
785 S.E.2d 500, 503 (2016) 12

Statutes and Ordinances

Section 51.1-157 of the Code of Virginia of 1950, as amended 18, 19

Section 51.1-800 of the Code of Virginia of 1950, as amended 7, 12, 19

Section 51.1-807 of the Code of Virginia of 1950, as amended 12, 16

Section 51.1-807 through 819 of the Code of Virginia of 1950, as amended.
..... 8

Section 51.1-807 through 821 of the Code of Virginia of 1950, as amended.
..... 9

Section 51.1-808 of the Code of Virginia of 1950, as amended 16

Section 51.1-810 of the Code of Virginia of 1950, as amended 16

Section 51.1-813 of the Code of Virginia of 1950, as amended
..... *passim*

Section 51.1-818 of the Code of Virginia of 1950, as amended 16

Section 51.1-819 of the Code of Virginia of 1950, as amended .....*passim*

Section 51.1-820 of the Code of Virginia of 1950, as amended 9, 12, 15, 22

City of Danville Code of Ordinances, Ordinance 1-1 6

City of Danville Code of Ordinances, Chapter 32 2

STATEMENT OF THE CASE

This case arises out of a dispute between the City of Danville, Virginia and Jacqueline Garrett (hereinafter "Garrett"), a former police officer who was previously employed by the City of Danville (hereinafter "City"), involving the calculation of Garrett's disability retirement benefits. The City's position was that Garrett's disability retirement benefits should be calculated based upon the formula set forth in the City's lawfully enacted Ordinances, as the City has an independent local retirement system set out in accordance with the Commonwealth's statutory scheme. Garrett's position was that her disability retirement benefits should be calculated based upon the formula set forth by Section 51.1-813 of the Code of Virginia of 1950 (hereinafter "the Code"), as amended. The trial court ruled that Section 51.1-813 of the Code applied, nullifying the City's ordinances. It is respectfully submitted that the trial court's ruling was in error.

MATERIAL FACTS AND PROCEEDINGS BELOW

The material facts were stipulated at trial by the parties and are not in dispute. Garrett was previously employed as a police officer with the City of Danville, Virginia. Appendix (hereinafter App.) at 1. On February 24,

2008, Garrett was involved in a motor vehicle accident on a one-way street within the City of Danville (hereinafter "the City") limits. App. at 1. Garrett returned to her position as a police officer with the City on April 9, 2008. App. at 1, 6. Garrett was separated from her employment with the City on October 1, 2012 as a result of her disability. The City has a lawfully enacted employee retirement, disability, and benefit plan, which is set forth in Chapter 32 of the City's Code of Ordinances. App. at 121. The City of Danville does not have, and has never had, a separate police pension and retirement board. App. at 125. The City began to promptly pay Garrett her disability benefits in accordance with the City's Ordinances. Garrett filed suit in the Circuit Court of the City of Danville on March 5, 2013, alleging that she was entitled to additional benefits beyond those the City's retirement and disability plan provided. During a bench trial on December 11, 2015, the parties stipulated as to the facts at issue in the case and submitted argument regarding the question of law presented below, i.e. whether the City's ordinances or Section 51.1-813 of the Code determined the amount of Garrett's benefits. The trial court requested written briefs in support of the parties' respective positions. On March 25, 2016, the trial court issued an Order finding that the City's Ordinances regarding retirement and disability calculations were invalid and the City was

instructed to recalculate the disability benefit payable to Garrett in accordance with "the provisions of Section 51.1-813 of the Code of Virginia (1950), as amended." App. at 172. The City timely noted this appeal.

ASSIGNMENTS OF ERROR

1. The trial court erred as a matter of law in its statutory interpretation of Section 51.1-813 of the Code of Virginia of 1950, as amended, construing Section 51.1-813 in isolation and out of context of the statutory scheme. App. at 171.

2. The trial court erred as a matter of law in construing the provisions of Section 51.1-813 of the Code of Virginia of 1950, as amended, relative to the applicability of a police officers' pension and retirement board. App. at 171.

3. The trial court erred as a matter of law by applying the statutory scheme of Section 51.1-813 of the Code of Virginia of 1950, as amended, to the City of Danville's independent retirement system, thus improperly rendering the City's Ordinances relative thereto a nullity. App. at 171.

STANDARD OF REVIEW

The City has appealed the trial court's statutory interpretation of several provisions of the Code of Virginia of 1950, as amended, as well as the City of Danville's Code of Ordinances. All of the facts relevant to both the trial court's determinations as well as this appeal were stipulated to at trial by the parties and are not in dispute. Therefore, this appeal presents pure questions of law and statutory interpretation. "Questions of statutory interpretation are reviewed *de novo*." Sarafin v. Commonwealth, 288 Va. 320, 325, 764 S.E.2d 71, 74 (2014), *citing* Belew v. Commonwealth, 284 Va. 173, 177, 726 S.E.2d 257, 259 (2012). "Under well-established principles, an issue of statutory interpretation is a pure question of law which we review *de novo*." Crawford v. Haddock, 270 Va. 524, 528, 621 S.E.2d 127, 129 (2005), *see also* Ainslie v. Inman, 265 Va. 347, 352, 577 S.E.2d 246, 248 (2003). The City's appeal is subject to *de novo* review by this court.

ARGUMENT AND AUTHORITIES

Section 51.1-813 of the Code of Virginia of 1950, as amended, is part of Article 2 of Chapter 8 of Title 51.1 of the Code of Virginia of 1950, as amended, addressing pensions, benefits, and retirement. While Article 1 of Chapter 8 applies to the City of Danville, the provisions of Article 2,

including Section 51.1-813, do not apply to the City of Danville because the City has neither taken steps to adopt Article 2, nor is the City included in any additional legislative direction mandating compliance with Article 2. The trial court's interpretation of Section 51.1-813 of the Code, which results in fundamental, irreconcilable inconsistencies with multiple other statutes throughout Chapter 8 of Title 51.1 of the Code of Virginia, and renders City of Danville's retirement Ordinance nonfunctional, is in error.

The trial court erred as a matter of law in its statutory interpretation of Section 51.1-813 of the Code of Virginia of 1950, as amended by construing Section 51.1-813 in isolation and out of context of the statutory scheme.

"The ultimate purpose of all rules of construction is to ascertain the intention of the legislature, which, absent constitutional infirmity, must always prevail. All rules are subservient to that intent." Board of Supervisors v. King Land Corp., 238 Va. 97, 103, 380 S.E.2d 895, 897 (1989), *citing* Shackelford v. Shackelford, 181 Va. 869, 877, 27 S.E.2d 354, 358 (1943). Section 51.1-813 of the Code of Virginia of 1950, as amended is one code section in a complex and lengthy legislative plan crafted in order to address the myriad needs of a variety of local government entities

and their employees across the Commonwealth. Virginia is governed by "Dillon's Rule, [which] stipulates that municipal corporations have only those powers expressly granted by statute, those necessarily implied therefrom, and those that are essential and indispensable to the exercise of those expressly granted." Advanced Towing Co., LLC v. Fairfax County Bd. of Supervisors, 280 Va. 187, 193, 694 S.E.2d 621, 624 (2010), *see also* Arlington County Bd. v. White, 259 Va. 708, 710 n.1, 712, 528 S.E.2d 706, 707 n.1, 708 (2000); City of Virginia Beach v. Hay, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999); Commonwealth v. Arlington County Bd., 217 Va. 558, 573-74, 232 S.E.2d 30, 40 (1977), City of Danville Ordinance Chapter 1, Section 1-1.

The greater legislative scheme or plan for state and local government employee benefits is set forth through the organization of Title 51.1 of the Code of Virginia, which is aptly titled "Pensions, Benefits and Retirement". There are fourteen Chapters comprising Title 51.1 of the Code. Each of those chapters addresses a different aspect of benefits, pensions, retirement, and insurance for various categories of state and local government employees. Chapter 8 of Title 51.1 addresses and is indeed titled "Local Retirement Systems". Chapter 8 is itself comprised of three Articles. The first Article (comprised of Sections 51.1-800 through 51.1-806

of the Code) addresses independent local retirement systems. The City has enacted just such an independent local retirement system, and it is this Article which governs the present case.

First and foremost, Section 51.1-800 of the Code provides that any municipality "having a population of 5,000 or more shall provide a retirement system...either by establishing and maintaining a local retirement system...or by participating directly in the Virginia Retirement System." Indeed, Section 51.1-800 of the Code expressly anticipates that a municipality which has an independent local retirement system may have different benefits, including lesser benefits, than the benefits provided by the Virginia Retirement System (hereinafter "VRS"), and sets forth a minimum floor, much less than the minimum of VRS, which an independent retirement system must meet in order to be valid. In interpreting the meaning of a statute, it is the role of the courts to “search out and follow the true intent of the legislature, and to adopt that sense of the words which harmonizes best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature.” Marshall v. Commonwealth, 58 Va. App. 210, 215, 708 S.E.2d 253, 255 (2011), *citing* Colbert v. Commonwealth, 47 Va. App. 390, 394, 624 S.E.2d 108, 110 (2006). Had the General Assembly meant for local governments with

independent retirement systems to provide benefits which expressly mirrored the VRS, the legislature would have used such language and not used language which instead expressly authorizes different formulas for benefits in different localities. A reading of the statute that any benefits provided under a local government's independent retirement system must mirror those provided under the state retirement system undermines the entire, fundamental premise of having a local, independent retirement system. The General Assembly has expressly anticipated and legislated that different localities may provide different plans and levels of benefits to their employees, including police officers such as Garrett. The City of Danville is subject to, and fully complies with, the provisions of Article 1 of Chapter 8 of Title 51.1 of the Code because those provisions are applicable to the City of Danville as a municipality, having a population of 5,000 or more, which has established and maintained a local retirement system.

While the provisions of Article 1 of Chapter 8 of Title 51.1 expressly provide they are applicable to all local governments with independent retirement systems, the provisions of Article 2, comprising Sections 51.1-807 through 51.1-819, state in plain language that they are not applicable, but merely optional, unless certain conditions are met. The specific action

which is required by the governing body of a municipality in order to adopt Article II is explicitly set forth in the Article itself, providing:

> Any county, city, or town in this Commonwealth having a police department may adopt the provisions of this Article and establish a police officers' pension and retirement board if the governing body of the county, city, or town adopts a resolution provided by a majority of all the members thereof, by a recorded yea or nay vote.
> Upon adoption of a resolution and establishment of the police officers' pension and retirement board, the board shall be vested with all the powers, authority, and duties established under this Article. Section 51.1-819 of the Code of Virginia of 1950, as amended.

In addition to the explicit condition precedent provided above, there are certain limited circumstances by which a local government entity may be subject to the "powers under this Article [2]" in the absence of a recorded majority vote by the governing body of that local government. Section 51.1-820 of the Code provides that "all of the provisions of this Article, including all of the authorizations and all of the requirements, shall apply to all counties having the county manager plan of government, except Arlington County." The "provisions of this Article" apply to Article 2 as organized by the legislature which encompasses Sections 51.1-807 through 51.1-821. As a matter of clear and plain language, the "provisions of this Article" include Section 51.1-813 of the Code, the provision at issue in this appeal. The City of Danville is not a county with the county manager

form of government. Neither has the City chosen to adopt Article 2 through a majority vote. An interpretation of 51.1-813 outside of the context of Article 2 as a whole renders both of these code sections without meaning.

Section 51.1-813 of the Code creates yet another exception by exempting the City of Richmond, even though the City of Richmond does have a separate pension board for police officers. Garrett's argument to the trial court alleged that it was 'illogical' for the City of Danville, which does not have a police pension and retirement board, to be exempt from Section 51.1-813 of the Code. Yet the legislature provided an express directive allowing the City of Richmond an exemption from Section 51.1-813 and enabling the City of Richmond's police officers to receive benefits different from those in surrounding jurisdictions. Such directive is no more 'illogical' than the legislature's provisions making the adoption of Article 2 optional for those local governments which, like the City of Danville, have no police pension and retirement board.

The legislature has enacted statutes that provide, in clear and unambiguous terms, that the provisions of Article 2, including Code Section 51.1-813, apply only if a municipality either (1) explicitly adopts the Article through a majority recorded vote; or (2) is a county which has the county manager plan of government. The legislature did not include independent

cities, or any local municipality which has a form of governance other than the county manager plan. To hold, as the trial court did, that the provisions of Article 2, including Virginia Code 51.1-813, apply to all local governments, renders the legislature's inclusion of language in both other statutes as to when the provisions would apply utterly meaningless and illogical. Moreover, such an interpretation becomes strained even further when specific exclusions, such as the exclusion of Arlington County, are set forth. It strains logic to reconcile the direct language of Section 51.1-820 with the interpretation offered by Garrett.

Notably, the General Assembly did not place Virginia Code 51.1-813 in Article 1 of Chapter 8 where it would be applicable to all local governments which have established an independent local retirement system, whether or not they had a separate police pension and retirement board. Had the legislature done so, Garrett's interpretation of the law would be more appropriate:

> A court construes statutes to ascertain and give effect to the intention of the General Assembly. The court must give effect to the legislature's intention as expressed by the language used unless a literal interpretation of the language would result in a manifest absurdity. Accordingly, the plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction. Where the legislature has used words of a plain and definite import the courts cannot put upon them a construction which amounts to holding the legislature did not mean what it has actually expressed.

Smith v. Commonwealth, 66 Va. App. 382, 388-89, 785 S.E.2d 500, 503 (2016)(internal citations omitted). Moreover,

> "In legal codes, as in ordinary conversation, a word is known by the company it keeps. The same can be said of a statutory phrase. Statutory provisions which have the same general or common purpose or are parts of the same general plan are also ordinarily considered as *in pari* material. As a result, courts consider the entire body of legislation and the statutory scheme to determine the true intention of each part. And when a controversy involves a number of related statutes, courts construe them together in order to give full meaning, force, and effect to each."

Mattaponi Indian Tribe v. Commonwealth Dep't of Env'tl. Quality ex rel. State Water Control Bd., 43 Va. App. 690, 704, 601 S.E.2d 667, 675 (2004). Even disregarding the effect on the City of Danville individually, the trial court's interpretation of Section 51.1-813 of the Code is an improper interpretation that causes irreconcilable inconsistencies with the clear meaning of Section 51.1-800, 51.1-807, 51.1-819, and 51.1-820 of the Code of Virginia of 1950, as amended. Should the trial court's interpretation of Section 51.1-813 of the Code be allowed to stand, the application of Article 2 as a whole becomes beset with a level of confusion that statutory interpretation must strive to avoid rather than "that sense of the words which harmonizes best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature." Marshall,

supra, at 215. Because the trial court erred as a matter of law in its statutory interpretation of Section 51.1-813 of the Code, construing Section 51.1-813 in isolation and out of context of the statutory scheme, with an interpretation which has resulted in irreconcilable inconsistencies with the remaining provisions of the Article in question, the trial court's decision must be overturned.

The trial court erred as a matter of law in construing the provisions of Section 51.1-813 of the Code of Virginia of 1950, as amended, relative to the applicability of a police officers' pension and retirement board.

The trial court's application of Section 51.1-813 of the Code to the City of Danville's benefits calculation relies on the fact that the language of that Section refers to "a member of a police department of a county, city, or town…which has a pension plan." The trial court's ruling appears based on the premise that the language "a pension plan" means any local government with an independent retirement system, regardless of whether or not that local government has established a police officers' pension and retirement board. The trial court erred in reaching that conclusion for two reasons.

"Where the language of a statute is clear and unambiguous rules of statutory construction are not required. However, [the statute] must be read as a part of the entire Act rather than as an independent statute." Ambrogi v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982). "When a controversy involves a number of related statutes, courts construe them together in order to give full meaning, force, and effect to each." Mattaponi Indian Tribe, *supra*, at 704, 601 S.E.2d 675. As discussed above, the trial court's interpretation of Section 51.1-813 results in an irreconcilable inconsistency with multiple other provisions within Article 2. Section 51.1-819 of the Code explicitly states that "any county, city or town in this Commonwealth having a police department *may* adopt the provisions of this Article"(emphasis added). Accordingly, the opposite is true – that a county, city, or town may elect *not* to adopt the provisions of this Article. The City's course of action reflects an intentional choice not to adopt the provisions of Article 2. The legislative scheme requires an affirmative act of adoption on the part of the governing body of the locality, an action the City has not taken. Specifically, it is only "upon adoption of a resolution and establishment of the police officers' pension board [that] the board shall be vested with all the powers, authority and duties established under this Article." *See* Section 51.1-819 of the Code of Virginia of 1950, as

amended. The adoption of a resolution and establishment of a police officers' pension board is a prerequisite to the imposition of the "powers, authority, and duty" to comply with the statutory provisions that comprise Article 2. "The primary objective of statutory construction is to ascertain and give effect to legislative intent. The plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction." Melanson v. Commonwealth, 261 Va. 178, 183, 539 S.E.2d 433, 435 (2001), *citing* Commonwealth v. Zamani, 256 Va. 391, 395, 507 S.E.2d 608, 609 (1998). Again, under the trial court's interpretation, the provisions of Sections 51.1-819 and 51.1-820 are rendered meaningless. "Every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary." Hubbard v. Henrico Ltd. Pshp., 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998). The trial court's interpretation is illogical and inconsistent with the basic tenets of statutory construction.

In addition to the express inconsistencies that the trial court's interpretation creates with the other provisions of Article 2 of Chapter 8, there is no support in the law or statutory scheme for the trial court's interpretation. The legislature does not intend for the words "pension" and "retirement" to be used interchangeably. Indeed, the legislature specifically

titles the statutory creation of Article 2 as the "pension and retirement board." *See* Sections 51.1-807, 51.1-808, 51.1-810, 51.1-818, and 51.1-819 of the Code of Virginia of 1950, as amended. To suggest that the General Assembly meant these words interchangeably is akin to suggesting that a board be titled the "woman and lady board" or the "man and gentleman board." Where two words have an interchangeable meaning, using both words as well as the conjunction 'and' in the title becomes illogical. In the same manner, to hold that a "pension plan" is identical to a "local retirement system" is similarly illogical based upon the legislature's use of these terms.

When the meaning of words or phrases in a statute can have more than one potential meaning, it is appropriate to look to the greater statutory context in order to glean the appropriate interpretation. Neither "pension" nor "pension plan" is defined in Article 2, Article 1, or anywhere within Chapter 8 of Title 51.1. of the Code. In fact, the City is unaware of any instance in which the term "pension" is defined in any chapter of Title 51.1 as a whole. Even if the court found that for some reason 51.1-813 could be applicable without reference to the rest of the "provisions of this Article [2]", the review of the legislature's use of "pension plan" still renders illogical a determination that 51.1-813 would apply to a local government with an

independent retirement system, when the legislature chose to use “pension plan” rather than “local retirement system”, given the context of the surrounding statutes.

The trial court's interpretation of Section 51.1-813 of the Code, holding that the statute applies even without the adoption of a police officers’ pension and retirement board as a condition precedent causes an irreconcilable conflict with other provisions within Article 2. Moreover, such an interpretation is at odds with the language used in Article 1 of the chapter, which does apply to the City of Danville, and such interpretation is at odds with the language used throughout the remainder of Title 51.1. In contrast, an interpretation of 51.1-813 within the context of the legislative plan as a whole supports a finding that the enactment of a police officers’ pension and retirement board by a locality is a condition precedent to all the provisions of Article 2, including the provisions of 51.1-813, results in a harmonious reading of the Articles, the chapter, and the title as a whole. The trial court erred as a matter of law in construing the provisions of Section 51.1-813 of the Code, by finding that enactment of a police officers' pension and retirement board was not a condition precedent, and the trial court’s decision must be reversed.

The trial court erred as a matter of law by applying the statutory scheme of Section 51.1-813 of the Code of Virginia of 1950, as amended, to the City of Danville's independent retirement system, thus improperly rendering the City's Ordinance relative thereto a nullity.

The trial court's ruling has expressly rendered the City of Danville's specific Ordinances invalid. Not only does the trial court's ruling contradict the directive to interpret statutes in such a way to provide harmony with the legislative intent as a whole, but the trial court's ruling is in contravention to the rule set forth by this Court in King v. County of Arlington, 195 Va. 1084,1091, 81 S.E.2d 587, 591 (1954), holding where "both a state statute and a local ordinance regulating the same subject matter can stand together and be given effect, it is the duty of the courts to harmonize them and not nullify the ordinance."

Moreover, Garrett's argument presented to the trial court relied on the provisions of Section 51.1-157 of the Code, which states that for a VRS member who takes disability retirement under certain conditions, retirement will be "sixty-six and two-thirds percent of the member's average final compensation" where the member does not receive payments through other sources. Section 51.1-157(B) of the Code of Virginia of 1950, as

amended. Of course, Section 51.1-157 of the Code is not applicable to the present case directly, as it deals with members of the Virginia Retirement System, rather than local retirement systems. However, this statute reflects a key flaw in Garrett's argument and, as a result, the trial court's ruling. Garrett's position has been that it is "illogical" to have local government employees receive different benefit rates in different jurisdictions simply based upon whether or not they are members of VRS or have a local retirement system. Yet, this is exactly what the legislature has authorized. The legislature explicitly authorized that in certain circumstances local governments with independent retirement plans have a 'floor' or base level of benefits which must be provided. Under the limited floor provisions, a local government must provide benefits that are at least "two-thirds" of what "the employee would have been entitled to had the allowance been computed under the provisions of the Virginia Retirement System." *See* Section 51.1-800 of the Code of Virginia of 1950, as amended. Garrett's argument that on a claim of equity, benefits provided by local governments with independent retirement systems must be the equivalent of VRS benefits is contradicted by the express language of the law stating only that local government benefits must be at least two-thirds

of VRS benefits. A ruling based upon this argument fails as a matter of law.

The Virginia legislature has laid out a comprehensive statutory scheme integral to the proper administration of local government employee benefits under the Dillon Rule form of government that Virginia continues to utilize. This statutory scheme must be read as a harmonious whole so that all parts, where possible, work together. Marshall, *supra,* at 215. The City of Danville, one of numerous local government entities with local retirement systems, has properly relied on the statutory scheme set forth in properly enacting and operating its own retirement and benefit plan, including the Ordinances at issue in this case.

The legislature, in granting both specific authority to enact independent retirement and employee benefit plans as well as enabling certain localities to choose whether or not to adopt additional, more specific provisions, has realized that officials at the local government level are best suited to determine the appropriate combinations of income and benefits in order to attract the ideal quantity and quality of employees for local government service, including the police force. Moreover, unlike most private employers, the City, like all municipalities, makes all of its information about employee benefits, including disability and retirement

benefits, available to the public at any time both in print and on the Internet. This is not a case where the City changed or modified the policy to Garrett's detriment during her employment or subsequent to her disability; the City's Ordinance was in effect throughout Garrett's employment and for years prior. Forcing all local governments with independent local retirement and benefit systems to change the calculations for benefits risks several substantially adverse consequences for local government employees, specifically including police officers, and the communities they serve.

It is certainly foreseeable, if not predictable, that under Garrett's interpretation, local governments, serving as a fiduciary with regard to independent retirement system funds, will be forced to modify police officer base salaries and other benefits in order to continue to have a retirement system which is financially sound from an actuarial perspective.[1] Additionally, interpreting Section 51.1-813 of the Code to apply to every local government with a retirement system was error as a matter of law. Because such interpretation essentially renders the language of Sections

[1] Such salary modification to reflect the differing benefit rates is arguably already in place between and among different local municipalities. As Garrett has noted in pleadings throughout this case, the adjoining Pittsylvania County has a higher disability benefit; Garrett failed to include any information regarding salary disparity.

51.1-819 and 51.1-820 of the Code without legal effect, it will leave local government systems across the Commonwealth that have independent local retirement systems with uncertainty as to which additional provisions of Title 51.1, Chapter 8, Article 2 may apply to them as well. The trial court's ruling was in error.

CONCLUSION

Section 51.1-813 of the Code of Virginia of 1950, as amended, is part of Article 2 of Chapter 8 of Title 51.1 of the Code of Virginia of 1950, as amended, addressing pensions, benefits, and retirement. While Article 1 of Chapter 8 applies to the City of Danville, the provisions of Article 2, including Section 51.1-813, do not apply to the City of Danville because the City has neither taken steps to adopt Article 2, nor is the City included in any additional legislative direction mandating compliance with Article 2. The trial court’s interpretation of Section 51.1-813 results in fundamental, irreconcilable inconsistencies with multiple other statutes throughout Chapter 8 of Title 51.1 of the Code as well as a finding that the City of Danville’s retirement Ordinances are invalid and cannot stand. In contrast, the City of Danville's correct interpretation of the statutory scheme results in a harmonious interpretation of all of the relevant statutes as well as the

Ordinances of the City of Danville, and provides clear and continuing guidance to the City of Danville, other municipalities with a local retirement system, and the local government employees who have depended upon provisions of those local retirement systems in making their own employment decisions. The City of Danville's interpretation of the Code of Virginia, adoption of the City Ordinances including the Ordinances related to retirement and benefit calculations, and calculations of the benefits payable to Garrett are correct as a matter of law.

For these reasons, your Appellant, the City of Danville, respectfully requests that this Honorable Court reverse the decision of the trial court and find that the City of Danville's Ordinances are valid and that the City of Danville's payments of benefits to Appellee Jacqueline Garrett have been correctly calculated as a matter of law.

CITY OF DANVILLE, VIRGINIA

By Counsel

Counsel:

/s/ James A.L. Daniel

James A. L. Daniel, Esq. (VSB #03881)
Maggy L. Gregory, Esq. (VSB #80418)
Counsel for Appellant
DANIEL, MEDLEY & KIRBY, P.C.
P. O. Box 720

Danville, Virginia 24543-0720
(434) 792-3911 Telephone
(434) 793-5724 Facsimile
jdaniel@dmklawfirm.com
mgregory@dmklawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that Rule 5:26(e) of the Supreme Court of Virginia has been complied with and pursuant to the Rule, ten (10) copies of this Opening Brief of Appellant, and one electronic copy (via VACES) has been filed with the Clerk of the Supreme Court of Virginia and one (1) copy has been mailed postage prepaid and emailed to Michael A. Kernbach, Esq., counsel for Appellee, on this 24th day of January, 2017.

I also certify compliance with the word count in that this brief contains 5,044 words, exclusive of those parts that by rule do not count toward the word limit.

Counsel:

/s/ James A.L. Daniel

James A. L. Daniel, Esq. (VSB #03881)
Maggy L. Gregory, Esq. (VSB #80418)
Counsel for Appellant
DANIEL, MEDLEY & KIRBY, P.C.
P. O. Box 720
Danville, Virginia 24543-0720
(434) 792-3911 Telephone
(434) 793-5724 Facsimile
jdaniel@dmklawfirm.com
mgregory@dmklawfirm.com