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Town of Emerald Isle v. State of North Carolina: A New Test for Distinguishing between General Laws and Local Legislation

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Town of Emerald Isle v. State of North Carolina: A New Test for Distinguishing Between General Laws and Local Legislation

Municipalities in the United States are generally subject to the complete control of state legislatures except as limited by state constitutions.[1] One area in which the vast majority of states have constitutionally limited legislative power is the area of special or local legislation.[2] Article II, section 24 of the North Carolina Constitution prohibits the general assembly from enacting "local, private, or special acts" that pertain to fourteen specified subjects.[3] Since it became effective in 1917, this provision has been the source of a great deal of litigation, much of it concerned with distinguishing between those acts which are "local" and thus unconstitutional and those which are "general" and permissible under Article II, section 24.[4] Until recently, an invalid local act has been defined as

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1. C. ANTIEU, MUNICIPAL CORPORATION LAW § 2.00 (1987).

2. Special or local legislation has been defined as legislation that only deals with one or a few political subdivisions or individuals in a state. Ferrell, *Local Legislation in the North Carolina General Assembly*, 45 N.C.L. REV. 340, 342 (1967). Today there are only ten states that have not adopted constitutional amendments that contain some type of detailed restraints on the ability of the legislature to enact special legislation. The states are Alaska, Connecticut, Delaware, Hawaii, Illinois, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. 2 J. SUTHERLAND, STATUTORY CONSTRUCTION § 40.01 (4th ed. 1972).

3. Article II, section 24 reads:

(1) *Prohibited subjects.* The General Assembly shall not enact any local, private, or special act or resolution:

(a) Relating to health, sanitation, and the abatement of nuisances;

(b) Changing the names of cities, towns, and townships;

(c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;

(d) Relating to ferries or bridges;

(e) Relating to non-navigable streams;

(f) Relating to cemeteries;

(g) Relating to the pay of jurors;

(h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;

(i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;

(j) Regulating labor, trade, mining, or manufacturing;

(k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;

(l) Giving effect to informal wills and deeds;

(m) Granting a divorce or securing alimony in any individual case;

(n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) *Repeals.* Nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) *Prohibited acts void.* Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) *General Laws.* The General Assembly may enact general laws regulating the matters set out in this section.

N.C. CONST. art. II, § 24.

4. The significance of whether a legislative act is defined as a local or a general law involves the interplay of Article II, § 24 and Article XIV, § 3 of the North Carolina Constitution. The relevant part of Article XIV, § 3 reads: "Whenever the General Assembly is directed or authorized

one which arbitrarily singles out a class for special legislative attention or is not uniformly applied to all members of a reasonably determined class.[5]

In *Town of Emerald Isle v. State of North Carolina*[6] the North Carolina Supreme Court abandoned the "reasonable classification" criterion and created a new test for determining when a legislative act is a local law. The new test focuses on the extent to which a legislative act affects the "general public interests and concerns."[7] This Note analyzes the reasoning underlying the supreme court's holding in *Emerald Isle* in light of the policy considerations behind the constitutional limitations on local legislation, and in light of the court's past decisions on local versus general legislation. The Note concludes that although there are valid justifications for departing from the reasonable classification test for defining a general law, the court's general public interest test is too broad to adequately preserve the intent and purpose behind Article II, section 24 and may reduce the significance of the provision on acts of the general assembly.

The Town of Emerald Isle is located in Carteret County and fronts both the Atlantic Ocean and Bogue Sound.[8] The Town occupies the western half of Bogue Banks, a barrier island separated from the mainland by Bogue Sound. Inlet Drive is a subdivision street in Emerald Isle that was shown on the subdivision plats for Blocks 51, 52, and 53 when the plats were recorded in the Carteret County Registry of Deeds.[9] The street has been accepted and maintained as part of the town's street system pursuant to North Carolina law.[10]

In 1982 the Town obtained a permit from the State and constructed a vehicular ramp at the western end of Inlet Drive within the extended bounds of the right-of-way of the street.[11] The ramp provided vehicle and pedestrian access to the ocean beach areas within Blocks 53 and 54.[12] Emerald Isle has a Beach Access Ordinance that regulates where vehicles are allowed to enter and travel on the beach within the city limits.[13]

The North Carolina General Assembly enacted Chapter 539 of the 1983

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by this Constitution to enact general laws . . . no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws . . . ." N.C. CONST. art. XIV, § 3. Article II, § 24 requires general laws to be enacted concerning fourteen enumerated subjects. *See supra* note 3. If a legislative act is found to be a general law under Article XIV, § 3, there is no need for a court to determine if the subject matter of the act is included in Article II, § 24.

Article II, § 24 was originally numbered as Article II, § 29 when it was enacted in 1917. The Constitution of North Carolina was revised by a vote of the people on November 3, 1970, and became effective July 1, 1971. Many of the cases cited in this Note were decided when the provision was titled Article II, § 29. The provision will be referred to as Article II, § 24 throughout this Note for consistency.

5. Adams v. Dep't of Natural & Economic Resources, 295 N.C. 683, 690-91, 249 S.E.2d 402, 407 (1978).

6. 320 N.C. 640, 360 S.E.2d 756 (1987).

7. *Id.* at 651, 360 S.E.2d at 763.

8. *Id.* at 642, 360 S.E.2d at 758.

9. *Id.*

10. *See* N.C. GEN. STAT. § 136-66.1(2) (1986).

11. *Emerald Isle*, 320 N.C. at 642, 360 S.E.2d at 758.

12. *Id.*

13. *Id.*

Session Laws on June 16, 1983.[14] The Act requires the Department of Natural Resources and Community Development to acquire property around the vehicle access ramp on Inlet Drive and convert the ramp into a pedestrian beach access facility. The Act further requires the Town to maintain the facility once it is constructed, and prohibits vehicle use of the access ramp and the four blocks of beach adjacent to the facility.[15]

A declaratory judgment action was brought by the Town and four individual property owners and taxpayers of the Town, seeking a declaration that Chapter 539 was an unconstitutional local law.[16] Both parties moved for summary judgment. The trial court granted plaintiffs' motion and held that Chapter 539 was unconstitutional on several grounds, one of which was that it violated Article II, section 24's prohibition against local acts involving the "laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys."[17] The North Carolina Court of Appeals, by a two to one vote, affirmed the trial court's determination that Chapter 539 was a local act.[18]

The North Carolina Supreme Court reversed the lower courts and held that Chapter 539 was a general law and therefore did not violate constitutional provisions concerning local and general laws.[19] In order to find that Chapter 539 was

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14. Section 1 of the Act provides:

> The Department of Natural Resources and Community Development, in cooperation with the Town of Emerald Isle, is hereby directed to acquire real property by purchase or condemnation, make improvement for and maintain facilities for the provision of public pedestrian beach access in the vicinity of Bogue Inlet. The town shall not be required to expend local funds to acquire real property, but shall be responsible for maintaining the facility. Public beach access facilities in the vicinity of Bogue Inlet shall include parking areas, pedestrian walkways, and rest room facilities, and may include any other public beach support facilities. Insofar as is feasible, said facility shall include all lands inletward of the dune adjacent to the terminus of Inlet Drive and the adjacent portion of Bogue Court, as well as such adjacent properties necessary to provide adequate parking and support facilities. Notwithstanding any other law or authority to the contrary, beach access facilities in the vicinity of Bogue Inlet after the installation of said public pedestrian beach access facility shall not include facilities for vehicular access to the beach, including but not limited to the use of the Inlet Drive right-of-way for vehicular access; provided that such prohibition shall not apply until the pedestrian beach access facility is opened; after the installation of said public pedestrian beach access facility, motor vehicles are hereby prohibited from being operated on the ocean beaches and dunes adjacent to and within Blocks 51, 52, 53 and 54 of Emerald Isle; provided that this vehicular access prohibition shall not apply to reasonable access by public service, police, fire, rescue or other emergency vehicles.

Act of Jun. 16, 1983, ch. 539, § 21, 1983 N.C. Sess. Laws 458.

15. *Emerald Isle*, 320 N.C. at 642, 360 S.E.2d at 758.

16. *Id.* at 644, 360 S.E.2d at 759.

17. N.C. CONST. art. II, § 24(1)(c). The trial court held that Chapter 539 also violated the following provisions of the North Carolina Constitution: (1) Article XIV, § 3 which forbids the enactment of special or local laws concerning "subject matter directed or authorized to be accomplished by general or uniformly applicable laws . . . ;" (2) Article I, § 32 which states that "[n]o person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services;" (3) Article I, § 19 which states that "no person shall be . . . deprived of his life, liberty, or property, but by the law of the land." *Emerald Isle*, 320 N.C. at 644, 360 S.E.2d at 759.

18. *Emerald Isle*, 78 N.C. App. 736, 740, 338 S.E.2d 581, 583 (1986), *rev'd*, 320 N.C. 640, 360 S.E.2d 756 (1987). See *supra* note 3 for the text of Article II, § 24. The Court of Appeals did not rule on whether the Act violated any other provisions of the North Carolina Constitution. *Id.*

19. *Emerald Isle*, 320 N.C at 652, 360 S.E.2d at 763. Because Article II, § 24 requires general laws to be enacted concerning the enumerated subjects, the court did not have to address this provi-

a general law the court had to abandon the reasonable classification test it had used since 1961 to decide whether a legislative act was a general law or an invalid local act.[20] This test, as most recently applied, defines a general law as one that designates a class which "reasonably warrants special legislative attention and applies uniformly to everyone in the class," while a local act arbitrarily singles out a class for special legislative attention or is not uniformly applied to all members of a reasonably determined class.[21] The supreme court held in *Emerald Isle* that this test could not be applied because "a particular public pedestrian beach access facility" can only be in one location.[22]

The court then announced a new test to be used for determining when an act passed by the general assembly is a general law. The new test involves a determination of whether the act seeks to promote "the general public interests and concerns."[23] Applying this test to Chapter 539, the court first stated that the coastal areas of the state are very valuable resources and the need to protect them is of such significance to the public welfare that special legislative treatment is justified.[24] The court then held that under this test Chapter 539 was a general law.[25]

In a vigorous dissent, Justice Meyer argued that Chapter 539 was a local act by all standards previously used by the court, and to hold otherwise was to hold that no act could ever again be designated as local.[26] After stating that Chapter 539 was a local act in violation of Article XIV, section 3, Justice Meyer held that the act violated Article II, section 24 of the North Carolina Constitution.[27]

The court's holding in *Emerald Isle* can best be analyzed by answering three basic questions: (1) What is the function of the local legislation prohibition embodied in Article II, section 24?; (2) What type of test should the court use to decide whether legislation is general or local?; and (3) How should the proper test be applied to best preserve the function of the constitutional provision and at the same time allow the legislature to respond to changing circumstances and

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sion once it determined that Chapter 539 was a general law. *See supra* note 4. The court ruled on two other constitutional issues in *Emerald Isle*. The court held that Chapter 539 did not violate Article I, § 32 of the North Carolina Constitution which provides that "[n]o person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public service." *Emerald Isle*, 320 N.C. at 652-55, 360 S.E.2d at 763-65. The court also ruled that the Act did not deprive the Town of its vested property rights in the beach access ramp without due process of law in violation of Article I, § 19 of the North Carolina Constitution. *Id.* at 655-57, 360 S.E.2d at 765-66.

20. *See infra* notes 46-49 and accompanying text.

21. Adams v. Dep't of Natural & Economic Resources, 295 N.C. 683, 690-91, 249 S.E.2d 402, 407 (1978).

22. *Emerald Isle*, 320 N.C. at 650, 360 S.E.2d at 762.

23. *Id.* at 651, 360 S.E.2d at 763.

24. *Id.*

25. *Id.* at 652, 360 S.E.2d at 763.

26. *Id.* at 660-61, 360 S.E.2d at 768 (Meyer, J., dissenting).

27. *Id.* at 664, 668, 360 S.E.2d at 769, 770 (Meyer, J., dissenting). Article II, § 24(1)(c) prohibits local acts "authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys." N.C. CONST. art. II, § 24. Justice Meyer also held that Chapter 539 violated Article XIV, § 5 which requires "the State and its political subdivisions to acquire and preserve park, recreational, and scenic areas . . . by general law." N.C. CONST. art. XIV, § 5.

concerns within the state? An analysis of these issues provides a framework for understanding the court's reasons for adopting a new test for general laws in *Emerald Isle*.

To address the issue of the function of Article II, section 24, it is first necessary to understand the history behind its enactment. Restraints on legislative power began to arise in state constitutions in the 1840's as a result of corruption in the legislatures of many states.[28] This corruption was often in the form of special legislation which dealt with particular political subdivisions or specific individuals in a state.[29] As special legislation began to occupy more and more of the legislature's time, states began to enact constitutional amendments to curb its abuse.

In North Carolina, amendments to the constitution prohibiting the legislature from enacting specific local government laws were approved by the voters in 1916 and became effective on January 10, 1917.[30] According to a pamphlet published in 1913 in support of the proposed amendments, the purpose of the amendments was twofold: "(1) having many of these matters referred to boards of county commissioners and the governing bodies of our towns; (2) . . . affording the General Assembly liberty to engage in the consideration of matters of State-wide importance."[31] The pamphlet went on to state that the amendment would free the general assembly "from its present bondage of local and special legislation and endow it with liberty to attend to matters of interest to all the people."[32]

After the adoption of Article II, section 24, numerous challenges were made to acts passed by the general assembly, and the supreme court's response in interpreting the function of the amendment has changed over time. The early cases decided by the court stressed that the intent of Article II, section 24 was to conserve legislative time and not to limit the general assembly's power to regulate the financial activities of local government.[33] Many of these early cases concerned acts which were admitted by both parties to be local acts, and the only question was whether the acts involved any of the fourteen subjects enumerated in Article II, section 24.[34] These early decisions tended to uphold any legislative act that dealt with the financing of local government, regardless of

28. Ferrell, *supra* note 2, at 343.

29. Ferrell, *supra* note 2, at 342.

30. Ferrell, *supra* note 2, at 356. Ferrell notes that in 1911 nearly 90% of the acts passed by the General Assembly were classified as "public-local" or "private." *Id.* at 352. Public-local laws were defined as "laws of a public nature but of only local application," and private laws were defined as "all charters and laws in relation to cities and towns." *Id.* at 351.

31. Ferrell, *supra* note 2, at 358-59 (quoting THE PROPOSED AMENDMENTS TO THE CONSTITUTION OF NORTH CAROLINA: AN ADDRESS TO THE VOTERS (1913)).

32. Ferrell, *supra* note 2, at 359.

33. Ferrell, *supra* note 2, at 371-72.

34. *See, e.g.*, Martin County v. Wachovia Bank & Trust, 178 N.C. 26, 100 S.E. 134 (1919) (upholding a local act authorizing the boards of commissioners of Martin and Bertie counties to build a bridge over the Roanoke River); Mills v. Board of Comm'rs, 175 N.C. 215, 95 S.E. 481 (1918) (upholding local act authorizing the commissioners of Iredell County to issue bonds for the purpose of building bridges over the Catawba River jointly with the county of Catawba); Brown v. Road Comm'rs., 173 N.C. 598, 92 S.E. 502 (1917) (upholding local act which authorized the board of commissioners of McDowell County to issue bonds for road purposes in North Cove Township).

whether the act dealt with a subject that had been included in the constitutional amendment prohibiting local acts.[35] As one commentator has explained, the local acts that related to road and school taxes were necessary at the time due to constitutional restraints on tax rates, and the court's awareness of the financial problems of local governments was a factor in its treatment of Article II, section 24.[36]

The court's attitude toward the function of Article II, section 24 began to change in the 1930's as the state began to adopt uniform policies for the operation of roads and schools.[37] In *State v. Dixon*[38] Justice Clarkson expressed the opinion that when "the General Assembly has, by a general act of State-wide application, adopted a specific licensing policy to be applied uniformly throughout the State . . . subordinate aims where inconsistent must yield to primary intent and local wishes must yield to general, State-wide policies."[39] This judicial view of the function of Article II, section 24 was affirmed by Justice Ervin twelve years later in *Idol v. Street*[40] when he stated that the constitutional amendment prohibiting certain local laws was "motivated by the desire that the General Assembly should legislate for North Carolina in respect to the subjects specified as a single united commonwealth rather than a conglomeration of innumerable discordant communities."[41]

The most recent comprehensive statement by the court concerning the purpose of Article II, section 24 can be found in *High Point Surplus Co. v. Pleasants*[42] in which the court stated that the purpose of the constitutional amendment restricting local laws was

> to free the General Assembly from the enormous amount of petty detail which had been occupying its attention, to enable it to devote more time and attention to general legislation of statewide interest and concern, to strengthen local self-government by providing for the delegation of local matters by *general laws* to local authorities, and to require uniform and coordinated action under general laws on matters related to the welfare of the whole State.[43]

As the supreme court has expanded its view of the intended function of Article II, section 24 over the years, the court has also changed its test for distinguishing a local law from a general law. The first case in which the court had to determine whether an act was local or general was *In re Harris*.[44] The court held that the Recorder's Act of 1919 was a general law, basing its decision on

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For a list of the fourteen specified subjects of local legislation that are prohibited by the North Carolina Constitution, see *supra* note 3.

35. Ferrell, *supra* note 2, at 378.
36. Ferrell, *supra* note 2, at 371-78.
37. Ferrell, *supra* note 2, at 378-79.
38. 215 N.C. 161, 1 S.E.2d 521 (1939).
39. *Id.* at 167, 1 S.E.2d at 524.
40. 233 N.C. 730, 65 S.E.2d 313 (1951).
41. *Id.* at 732, 65 S.E.2d at 315.
42. 264 N.C. 650, 142 S.E.2d 697 (1965).
43. *Id.* at 656, 142 S.E.2d at 702.
44. 183 N.C. 633, 112 S.E. 425 (1922).

the fact that the Act applied to more than half of the state's counties.[45] This holding produced the first test used by the court to determine whether a legislative act was general or local: the number of counties affected by the law. The court reiterated the majority county rule seventeen years later when it held that an act establishing an occupational licensing board for real estate brokers was a local act because it applied to only thirty-six of the state's 100 counties.[46]

The supreme court continued to use the majority county rule until 1961 when the court adopted the reasonable classification test in *McIntyre v. Clarkson.*[47] This test had been used by nearly all the states having constitutional prohibitions against local and special acts for a considerable time before North Carolina recognized it.[48] *McIntyre* involved an act passed by the general assembly in 1949 that authorized county commissioners to establish various requirements for justices of the peace.[49] The Act was challenged as being a local act in violation of Article II, section 29 on the grounds that it applied to fewer than half of the counties in the state.[50]

In holding that the Act was unconstitutional the court declared that it would no longer consider the number of local units included in an act as decisive of its constitutionality, but would consider whether "the classification is reasonable and whether it embraces all of the class to which it relates."[51] Under this new reasonable classification test, the court defined an invalid local law as one that

> in fact, if not in form, is confined within territorial limits other than that of the whole state, or applies to any political subdivision or subdivisions of the state less than the whole, or to the property and persons of a limited portion of the state, or to a comparatively small portion of the state, or is directed to a specific locality or spot, as distinguished from a law which operates generally throughout the state.[52]

The reasonable classification test continued to be the standard for determining local legislation until the *Emerald Isle* decision. The test was most recently applied in the 1978 case of *Adams v. North Carolina Department of Natural and Economic Resources.*[53] *Adams* involved a challenge to the constitutionality of the Coastal Area Management Act of 1974[54] on several grounds, one of which was that the Act was a prohibited local act under Article II, section 24 of the

45. *Id.* at 636, 112 S.E. at 426.

46. *Dixon*, 215 N.C. 161, 1 S.E.2d 521 (1939).

47. 254 N.C. 510, 119 S.E.2d 888 (1961).

48. Ferrell, *supra* note 2, at 391.

49. *See* Act of Apr. 21, 1949, ch. 1091, 1949 N.C. Sess. Laws 1269 (codified at N.C. GEN STAT. §§ 7-120.1 to -120.11 (1953) (repealed 1967)).

50. *McIntyre*, 254 N.C. at 515, 119 S.E.2d at 892. No explanation is provided in the Act itself or in *McIntyre* as to why 73 counties were exempted from the Act. There were, however, four existing methods of selecting justices of the peace which were statewide in application. *Id.* at 514, 119 S.E.2d at 891.

51. *Id.* at 519, 119 S.E.2d at 894.

52. *Id.* at 518, 119 S.E.2d at 893 (quoting 50 AM. JUR. *Statutes* § 8 (1944)).

53. 295 N.C. 683, 249 S.E.2d 402 (1978).

54. Act of Apr. 11, 1974, ch. 1284, 1973 N.C. Sess. Laws 463 (codified at N.C. GEN. STAT. §§ 113A-100 to -134 (1974)).

North Carolina Constitution.[55] Plaintiffs argued that there was no reasonable distinction between the coast and the remainder of the state for the purpose of environmental legislation, and that the twenty counties covered by the act exempted some of the area that should be included in the legislation for it to have uniform application.[56]

The court, declaring the Act a general law, expanded somewhat on the rule established in *McIntyre*. The court held that a statute would only be voided as a local act if the classification was "unreasonable or under-inclusive," and stated that the constitutional prohibition against local acts requires the general assembly to "make rational distinctions among units of local government which are reasonably related to the purpose of the legislation."[57]

In *Adams* the court developed a two prong analysis for applying the reasonable classification test to a legislative act. The first prong involved a consideration of the purpose of the Coastal Area Management Act.[58] The court noted that the statement of legislative findings and goals contained within the Act indicated that it was enacted to provide a system of comprehensive and coordinated management for the coastal area, an area of the state which is in danger of having its most valuable resources destroyed because of intense development pressure.[59] The court concluded that the coastal counties were a "valid legislative class for the purpose of addressing the special and urgent environmental problems found in the coastal zone."[60]

The court then addressed the second prong of the reasonable classification test—whether the class derived by the legislature was reasonably related to the purposes of the Act.[61] The court concluded that the legislative definition of the coastal area included all the counties which substantially impact the quality of estuarine waters, and held that the Act was therefore a general law.[62]

The *Emerald Isle* decision introduces a third era of judicial interpretation of the proper standard for distinguishing a general law from local legislation. In *Emerald Isle* the court first stated that a classification test could not work under the facts presented because "a particular public pedestrian beach access facility must rest in but one location."[63] This is consistent with a general principle of statutory construction, which includes a requirement that a legislative classification must allow future admissibility into the class in order to be valid.[64] By specifically identifying a town and a named street within that town, the general

55. *Adams*, 295 N.C. at 685, 249 S.E.2d at 404. The Coastal Area Management Act was also challenged as being an unconstitutional delegation of authority to the Coastal Resource Commission to develop and adopt "state guidelines" for the coastal area. *Id.* at 689, 249 S.E.2d at 406.

56. *Id.* at 691, 249 S.E.2d at 407.

57. *Id.* at 690-91, 249 S.E.2d at 407.

58. *Id.* at 691, 249 S.E.2d at 407.

59. *Id.* at 691-93, 249 S.E.2d at 407-08.

60. *Id.* at 693, 249 S.E.2d at 408.

61. *Id.* at 693-94, 249 S.E.2d at 408.

62. *Id.* at 696, 249 S.E.2d at 410.

63. *Emerald Isle*, 320 N.C. at 650, 360 S.E.2d at 762.

64. 2 J. SUTHERLAND, STATUTORY CONSTRUCTION § 40.06 (4th ed. 1972).

assembly eliminated the possibility of any other locations being drawn into the legislation at a future date.

The court did not pretend that Chapter 539 could be dealt with by applying the reasonable classification test and instead determined that the circumstances required a new look at both the function of Article II, section 24, and the test used to interpret it. The court justified its abandonment of the reasonable classification test by stating that as long as the legislature had the authority to establish beach access facilities, it was "unnecessary to require it to do so by crafting tortured classifications."[65]

The court looked to the function of Article II, section 24 in establishing a new test for defining a general law.[66] The court stated that the primary purpose of the provision is to allow the general assembly to spend more time on legislation that is of statewide concern.[67] The emphasis placed on this function of Article II, section 24 led the court to devise a test that only focuses on the "extent to which the act in question affects the general public interests and concerns."[68]

The new test created by the supreme court suggests that there are situations which may intrude on the specified subjects in Article II, section 24 and yet be of such importance to the state as a whole that site-specific legislation involving these subjects should result in general rather than local laws. An examination of changes that have occurred in the state's attitude toward certain resources supports this assumption.

The protective attitude of the court toward the coastal areas of the state was indicated earlier in *Adams* and is justified by an increasing awareness on the part of the general population of the value of coastal resources.[69] The development of the Coastal Area Management Act illustrates a change in public policy concerning the protection and preservation of coastal resources.[70] Until 1959 the state's policy concerning wetlands was to reclaim and utilize these areas.[71] In 1959 the State Lands Act[72] announced that a new goal of the state was to preserve these wetlands for the people.[73] While this policy was announced in 1959, it was not fully implemented until the Coastal Area Management Act was passed in 1974.[74] This legislation reflects a relatively recent policy of the state—one that was only beginning to surface when the court adopted the reasonable classification test in 1961.

Another example of an area where state policy has significantly changed

65. *Emerald Isle*, 320 N.C. at 650, 360 S.E.2d at 762.

66. *Id.*

67. *Id.*

68. *Id.* at 651, 360 S.E.2d at 763.

69. *Adams*, 295 N.C. at 691-93, 249 S.E.2d at 407-08.

70. Schoenbaum, *The Management of Land and Water Use in the Coastal Zone: A New Law is Enacted in North Carolina*, 53 N.C.L. REV. 275, 279-82 (1974).

71. *Id.* at 280.

72. Act of June 2, 1959, ch. 683, 1959 N.C. Sess. Laws 612 (codified at N.C. GEN. STAT. §§ 146-1 to -84 and various other places).

73. Schoenbaum, *supra* note 70, at 280.

74. *Id.* at 282.

since *McIntyre* is in the field of historic preservation. In 1967 North Carolina rewrote its historic preservation statutes to reflect a growing awareness of the importance of preserving cultural resources.[75] In the 1970's there were several revisions to this chapter that further indicated the importance the state has placed on historic preservation as a statewide policy.[76]

The examples of historic preservation and protection of coastal resources serve to illustrate areas in which the state's policy has changed since the *McIntyre* decision to reflect growing concern and interest in these subjects on a statewide level. These policy changes lend support to the supreme court's new test for defining a general law as set forth in *Emerald Isle*. The court noted in *Emerald Isle* that no exact rule could be devised which would apply to all cases involving the question of whether an act was local legislation or a general law.[77] The court was presented with a fact situation in *Emerald Isle* that it felt warranted a new test which would place added emphasis on the public interest served by a legislative act. When viewed in light of the policy changes that have occurred in the state since *McIntyre*,[78] this change appears to be consistent with the court's earlier change in attitude concerning Article II, section 24 that occurred when state policies concerning school and road financing were revised.[79]

While the adoption of a new test by the supreme court appears justified in light of changes in statewide goals and concerns, the application of this new test to the *Emerald Isle* facts suggests that the court did not provide adequate standards for applying the test. This lack of standards is due in part to the failure of the court to consider some of the functions of Article II, section 24 on which it had elaborated in earlier cases.[80] The concerns of local autonomy and "legislative preoccupation with petty detail" that were implicit in an earlier statement by the court concerning the intent of Article II, section 24[81] are missing in *Emerald Isle* and leave room for potential abuses of the new test that could subvert the purposes of the constitutional provision.

Chapter 539 contains no statement of purpose and no statement of legislative findings.[82] The supreme court stated that the Act established public beach access facilities in order to "promote the general public welfare by preserving the beach area for general public use."[83] However, this language of promoting the general public welfare does not appear in the language of the law itself. The court also stated that there was no evidence presented which indicated the lack

75. *See* N.C. GEN. STAT. §§ 121-1 to -42 (1986 & Supp. 1987). For more information on the history of historic preservation legislation in North Carolina, see Stipe, *A Decade of Preservation and Preservation Law*, 11 N.C. CENT. L.J. 214, 220-33 (1980); Johnston, *Legal Issues of Historic Preservation for Local Government*, 17 WAKE FOREST L. REV. 707, 711-43 (1981).

76. Stipe, *supra* note 75, at 220.

77. *Emerald Isle*, 320 N.C. at 650, 360 S.E.2d at 762.

78. *See supra* notes 70-76 and accompanying text.

79. *See supra* notes 37-40 and accompanying text.

80. *See supra* notes 33-42 and accompanying text.

81. *High Point Supply Co. v. Pleasant*, 264 N.C. 650, 656, 142 S.E.2d 697, 702 (1965). See *supra* note 43 and accompanying text for a quote of the court's statement of the purpose of Article II, § 24.

82. *See supra* note 14.

83. *Emerald Isle*, 320 N.C. at 652, 360 S.E.2d at 763.

of a rational basis for the selection of this facility, or evidence indicating the site was chosen improperly or arbitrarily.[84] The court, therefore, presumes that site-specific legislation involving a subject enumerated in Article II, section 24 will be valid, placing the burden of proof on the plaintiff to prove irrationality or arbitrariness on the part of the general assembly.

The reasonable classification test in *McIntyre* required that classification be based on a "reasonable and tangible distinction and operate the same on all parts of the state under the same conditions and circumstances."[85] This requirement served to assure that the legislation had a rational basis and the area affected by the legislation was not chosen arbitrarily. The court's application of the reasonable classification test in *Adams* involved a detailed look at the stated purposes of the Act and an inquiry into whether there was a reasonable relationship between the affected areas and the purposes of the Act.[86] The court went to considerable length in examining the legislative findings of the Coastal Area Management Act and noted that these findings were confirmed by the trial record.[87] The court's analysis in applying the reasonable classification test provided a method by which the interests of the general assembly could be balanced against the intended functions of Article II, section 24.

This careful analysis is missing in the *Emerald Isle* decision and results in a standard for general laws that is broad enough to encompass a large amount of site-specific legislation that caters to the concerns of a limited number of legislators.[88] Applying its new test to Chapter 539, the court found that the establishment of a public beach access facility within the Town of Emerald Isle and the closing of a local street and four blocks of the beach to vehicular traffic was not a local act.[89] The Town of Emerald Isle, however, operates under the same circumstances and conditions as any other coastal town in the state. In order for a statute affecting a four block area and closing a named street in Emerald Isle to be valid, the reasonable classification test would have required the court to find that this four block segment of Emerald Isle was "sufficiently unique to warrant special legislative attention."[90] As Justice Meyer pointed out in his dissent in *Emerald Isle*, "the choice of four blocks within the Town of Emerald Isle, as opposed to the entire balance of the state, or even to the coastal area, as the law's target was clearly not reasonable."[91] The majority justified its holding on the grounds that the beaches within the Town of Emerald Isle are very popular for

84. *Id.*

85. *McIntyre*, 254 N.C. at 519, 119 S.E.2d at 894.

86. *Adams*, 295 N.C. at 691-96, 249 S.E.2d at 407-10.

87. *Id.* at 693, 249 S.E.2d at 408.

88. It is interesting to note that one of the original sponsors of Chapter 539 was Rep. J. Allen Adams, D-Wake, co-chairman of the House appropriations committee, whose wife owns a cottage at Emerald Isle. "An optional, more drastic plan to deal with the vehicle access problem was proposed by Senate majority leader Kenneth C. Royall Jr., D-Durham, who also owns a cottage at the resort. Royall proposed to split off the western part of Emerald Isle into a separate town, where vehicles would be banned from the beaches. But he also supported the House approach, which sailed through the Senate." Raleigh News and Observer, Jun. 16, 1983, at 26, col. 5.

89. *Emerald Isle*, 320 N.C. at 652, 249 S.E.2d at 763.

90. *Adams*, 295 N.C. at 693, 249 S.E.2d at 408.

91. *Emerald Isle*, 320 N.C. at 663, 360 S.E.2d at 769 (Meyer, J., dissenting).

fishing, and the lack of parking in the area forces the fishermen to drive on the beaches to reach the good fishing spots.[92] While this may be true, these findings do not appear in the Act itself and do not on their face distinguish Emerald Isle from other popular fishing spots on the coast.

The court's willingness to accept Chapter 539 as a general law absent any justification within the Act itself concerning its necessity or purpose avoids the question of whether this beach facility was chosen arbitrarily. Chapter 539 directly infringes on a subject area in which local legislation is prohibited by Article II, section 24.[93] The court should provide additional standards for applying its new test in order to assure that the intent and purposes of Article II, section 24 are not forgotten when a legislative act is challenged as violating this provision.

The court could provide some protection to the purposes of this constitutional provision by establishing a presumption of arbitrariness and irrationality for a legislative act challenged under this provision. This would require the general assembly to justify its legislation by providing a statement of the *reasons for* and *purposes behind* any act infringing on a subject included in Article II, section 24. The general assembly should also be required to include a statement of why the act is of statewide concern and how the act relates to the general public welfare. Requiring the general assembly to justify any site-specific legislation infringing on a subject matter covered by Article II, section 24 would provide a satisfactory solution to the problem of balancing the general assembly's need for flexibility in areas of interest to the general public with the concern of local autonomy that was expressed when the constitutional amendment was enacted.[94]

Applying this requirement of legislative justification to the *Emerald Isle* facts would result in Chapter 539 being invalidated because of its lack of any explanation on the part of the general assembly as to its purpose or necessity, and the lack of any discussion as to its importance to the state as a whole. If Chapter 539 is actually an act of statewide concern that promotes the general public interest, the general assembly could rewrite the Act to state its findings concerning the importance of the legislation to the state and its impact on the general public welfare.

While it is doubtful that Chapter 539 could be rewritten and upheld as a general law if the proposed standards were used in applying the court's new test, there are situations in which this test would work on site-specific legislation. For example, Article II, section 24 prohibits local legislation relating to cemeteries,[95] and a situation can be imagined in which an ancient Indian cemetery is discovered within a town's limits, or even within the boundaries of a modern local cemetery. Given the importance that the state has placed on historic pres-

92. *Emerald Isle*, 320 N.C. at 651, 360 S.E.2d at 763.

93. The relevant part of Article II, § 24 reads: "The General Assembly shall not enact any local, private, or special act . . . authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys . . . ." N.C. CONST. art. II, § 24.

94. *See supra* notes 30-32 and accompanying text.

95. *See supra* note 3.

ervation of cultural resources,[96] it is reasonable to assume that legislation enacted to preserve this cemetery would be seen as promoting state-wide interests and concerns. The court's new test will address these types of situations, while the reasonable classification test could not address this issue since there is no classification involved in the hypothesized legislation.

Another example involves a recent decision by the North Carolina Court of Appeals involving a violation of Article II, section 24. In *Chem-Security Systems v. Morrow*[97] the court invalidated an act regulating the disposal of hazardous waste and radioactive material in a single county.[98] The court noted that improper disposal of hazardous waste would result in "devastating and immediate and long-term effects on the environment, including crop damage, soil contamination, and loss of wildlife."[99] Although the extent to which this Act affected the general public interest is obvious, the appellants conceded that it was a local act before the appeal.[100] The preamble to this Act explained that the disposal of hazardous wastes in certain areas of Anson County would be a detriment to the wildlife in the area and interfere with agriculture and recreation activities which are essential to the economy of the county.[101] Because of the importance of the hazardous waste disposal issue to the state as a whole, this Act would most likely have survived the supreme court's new test.

The North Carolina Supreme Court's new test for defining a general law abandons a test long-recognized by the majority of courts and by scholars as the most logical approach to defining a general law.[102] This new test addresses problems and concerns that were not seen as important issues when the reasonable classification test was adopted, and provides a way to deal with site-specific legislation that is of concern to the entire state. The court's new "general public interest" test, however, is extremely broad and without additional guidance concerning its proper application, the test invites favoritism and special interests in the general assembly. The court should adopt standards for applying its new test that will assure that the purposes for which Article II, section 24 was enacted are not ignored.[103]

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96. *See supra* notes 75-76 and accompanying test.

97. 61 N.C. App. 147, 300 S.E.2d 393, *appeal dismissed*, 308 N.C. 386, 302 S.E.2d 249 (1983).

98. Act of June 29, 1981, ch 718, 1981 N.C. Sess. Laws 1057.

99. *Chem-Security Systems*, 61 N.C. App. at 150, 300 S.E.2d at 395.

100. *Id.* at 149, 300 S.E.2d at 394. The issue in *Chem-Security* was whether the local act was an act relating to "health, sanitation, or the abatement of nuisances" and therefore a violation of Article II, § 24. *Id.*

101. The preamble of the Act reads: "An Act to Regulate The Disposal of Hazardous Wastes and Radioactive Material in Anson County." Act of Jun. 29, 1981, ch. 718, 1981 N.C. Sess. Laws 1057.

102. *See supra* notes 48, 85-86 and accompanying text.

103. *See supra* text accompanying notes 28-32, 93.