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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.

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Beverly S. Lukowsky  
Shorthand Reporter

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