THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Edgar W. Dickson, Circuit Court Judge

Case No. 2018-000395

Gerard E. Ziegler; Brenda Barrington III; James Stephen Green, Jr.; William A. Harbeson; David Messinger; South Carolina Public Interest Foundation; and Dorchester County Taxpayers Association, individually, and on behalf of all others similarly situated..................... Appellants,

v.

Dorchester County; Dorchester County Council; Charles D. Chinnis, George H. Bailey, Sr., Jay Byars, Willie R. Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council, ... Respondents.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR IN GRANTING JUDGMENT ON THE PLEADINGS WHEN DECIDING WHETHER A PARTICULAR BOND REFERENDUM QUESTION COULD BE MISLEADING OR COULD DISTORT THE VOTING RESULTS IS A FACTUAL DETERMINATION?

II. DID THE CIRCUIT COURT ERR IN RENDERING A JUDGMENT ON THE PLEADINGS THAT THE SOUTH CAROLINA CONSTITUTION GIVES THE DORCHESTER COUNTY COUNCIL THE AUTHORITY TO COMBINE MULTIPLE SEPARATE ISSUES FOR BOND ISSUANCE INTO ONE REFERENDUM QUESTION?

III. DID THE CIRCUIT COURT ERR IN RENDERING A JUDGMENT ON THE PLEADINGS THAT SOUTH CAROLINA STATUTES GIVE DORCHESTER COUNTY COUNCIL THE AUTHORITY TO COMBINE SEPARATE ISSUES FOR BOND ISSUANCE INTO ONE REFERENDUM QUESTION?

IV. DID THE CIRCUIT COURT ERR IN RENDERING A JUDGMENT ON THE PLEADIGNS WHEN MAJORITY SUPPORT OR NON-SUPPORT FOR ONE ISSUE COULD CAUSE MAJORITY SUPPORT ON NON-SUPPORT FOR ANOTHER ISSUE THAT WOULD NOT HAVE RECEIVED MAJORITY SUPPORT OR NON-SUPPORT STANDING ALONE?

V. DID THE CIRCUIT COURT ERR IN RENDERING A JUDGMENT ON THE PLEADINGS WHEN THE PRECEDENT OF ALLOWING TWO ISSUES TO BE COMBINED INTO ONE REFERENDUM QUESTION WOULD ALLOW MULTIPLE ADDITIONAL ISSUES, UNLIMITED IN NUMBER, TO BE COMBINED INTO ONE REFERENDUM QUESTION?

STATEMENT OF THE CASE

On October 13, 2016, Appellants filed a complaint against Respondents, alleging causes of action for declaratory and injunctive relief challenging Dorchester County's placement in a referendum a single ballot question containing two different issues. (Complaint).

On December 12, 2016, the Respondents filed their answer to the complaint. (Answer).

On June 16, 2017, the Respondents filed a Motion for Judgment on the Pleadings. (Motion for Judgment on the Pleadings). On December 11, 2017, the Honorable Edgar W. Dickson granted Judgment on the Pleadings. (Order, filed December 11, 2017). The Appellants

filed a Motion to Alter or Amend the Court's Order on December 20, 2017. (Plaintiffs' Motion to Alter or Amend filed December 20, 2017). On February 7, 2018, the Circuit Court issued an Order denying the Plaintiff's Motion to Alter or Amend the Court's Order (Order, filed February 7, 2018).

Appellants filed a Notice of Appeal on March 5, 2018. (Notice of Appeal).

FACTS

On July 18, 2016 Dorchester County Council passed an ordinance requiring that a referendum be held on November 8, 2016 on the question of whether Dorchester County should issue bonds for two different purposes and amounts: one for $30 million for the library system and another for $13 million for the park system, all contained within only one question. Complaint ¶33.

State Senator Paul Thurmond sent a letter dated September 8, 2016 to the Attorney General of South Carolina asking for an opinion about whether Dorchester County's combining authorization for a library bond issue with one for parks, instead of stating them separately in the referendum question, would be "legally permissible." Complaint ¶34.

On September 30, 2016, the Attorney General of South Carolina issued an Opinion, attached and incorporated as part of the Complaint, stating in part the following regarding the legality of combining separate issues for bond issuance into one referendum question:

> It is for all of the above reasons we are in agreement with the concerns expressed in your letter and believe a court will likely determine neither the Constitution nor the General Assembly intended to give a county council the authority to combine multiple separate issues for bond issuance into one referendum question, that Article X, § 14(4) of the South Carolina Constitution authorizes a purpose in the singular on the ballot. Moreover . . . your concerns are further supported

> by our State's case law and general bond referendum case law expressed by McQuillin.

Complaint ¶32.

Attorneys for the Plaintiffs sent the Dorchester County Attorney a letter dated October 3, 2016, attached and incorporated as part of the Complaint, providing the County Attorney a copy of the Attorney General Opinion dated September 30, 2016, and asking that Dorchester County take corrective action either to separate the two issues concerning parks on the one hand and libraries on the other into two different questions to be voted on separately in the referendum or, alternatively, to cancel the referendum. Dorchester County refused to take any of the actions requested in the letter. Complaint ¶36.

STANDARD OF REVIEW

When considering a motion for judgment on the pleadings under Rule 12 (c), SCRCP, the court must regard all properly pleaded factual allegations as admitted. Russell v. Columbia, 305 S.C. 86, 87, 406 S.E.2d 338, 338 (1991). On review of the motion, the court may not consider matters outside the pleadings. Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990).

> A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. . .. When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. Russell, 305 S.C. at 89, 406 S.E.2d at 339 (citations omitted). Furthermore, "a judgment on the pleadings is considered to be a drastic procedure by our courts." *Id.*

Falk v. Sadler, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING JUDGMENT ON THE PLEADINGS WHEN DECIDING WHETHER A PARTICULAR BOND REFERENDUM QUESTION COULD BE MISLEADING OR COULD DISTORT THE VOTING RESULTS IS A FACTUAL DETERMINATION.

A judgment on the pleadings is only appropriate if there are no factual issues to be decided by the court and the allegations of the complaint and all inferences from those facts state no causes of action upon which the court could grant relief to the plaintiff. Russell, 305 S.C. at 89, 406 S.E.2d at 339.

As pointed out by the Attorney General's opinion attached to the Complaint, the questions in any ballot referendum challenge are (1) whether the language as stated may confuse or mislead the voter, see, Op. S.C. Atty.Gen., September 30, 2016, page 3, citing, e.g., Lowery v. Bright, 234 S.C. 279, 107 S.E.2d 769 (1959); Op. S.C.Atty.Gen., May 8, 2003), and (2) whether combining two issues into one question on a referendum ballot would deprive voters of the ability to vote on each issue separately and could cause support for one issue to cause passage of another issue that would not pass if the other issue were voted on alone. See, Op. S.C. Atty.Gen., September 30, 2016, pages 4-5, citing 15 McQuillin Mun. Corp. ¶ 40:9 (3d ed.), citing Wood v. Ross, 85 S.C. 309, 67 S.E. 449 (1910); McDaniel v. Bristol, 160 S.C. 408, 158 S.E. 804 (1931).

Throughout the Complaint, the referendum as stated was alleged to have "[caused] confusion and the making of each of those issues more or less likely to obtain or fail to obtain a majority by being voted on together than if they were voted on separately…" Complaint ¶¶ 39, 42, 45, 48, 51 and 54.

Given the allegations of the Complaint, including the issues raised in the Attorney General's opinion and other attachments, there are factual issues to be decided by this court and the trial court erred, under Rule 12(c), SCRCP, in rendering judgment on the pleadings.

II. THE CIRCUIT COURT ERRED IN RENDERING A JUDGMENT ON THE PLEADINGS THAT THE SOUTH CAROLINA CONSTITUTION GIVES THE DORCHESTER COUNTY COUNCIL THE AUTHORITY TO COMBINE MULTIPLE SEPARATE ISSUES FOR BOND ISSUANCE INTO ONE REFERENDUM QUESTION.

Article X, § 14 of the South Carolina Constitution authorizes a county to "incur bonded indebtedness . . . within the limitations set forth in this section and Section 12 of this article." S.C. Const. art. X, § 14(2). One of those constitutional limitations applicable in this case specifies that general obligation debt "may be incurred only for **a purpose** that is **a** public **purpose** and which is **a** corporate **purpose** . . .." S.C. Const. art. X, § 14(4) (emphasis added).

Thus, the South Carolina Constitution allows the issuance of bonds for general obligation debt[1] only for a purpose in the singular, not in the plural. S.C. Code Ann. 2-7-30's purporting to define that the use of "purpose" in the singular also means "purposes" in the plural cannot alter the meaning of S.C. Const. art. X, § 14(4)'s single purpose requirement that general obligation debt be incurred only for "a purpose" in the singular, as articulated throughout Op. S.C. Atty.Gen., September 30, 2016, and highlighted in the discussion in McQuillin Mun. Corp. § 40:9 (3d ed.) and the cases of, e.g., Johnson v Roddey, 83 S.C. 462, 65 S.E. 626 (1909) and Ross v Lipscomb, 83 S.C. 136, 65 S.E. 451 (1909), which remain in effect to this day.

The issuance of bonds in this case for libraries and for parks are two separate purposes in the plural, not one purpose in the singular.[2] The referendum question combining

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1 The indebtedness at issue in this case is general obligation bond debt. See Complaint ¶¶ 26, 38.
2 S.C. Code Ann. §§ 4-9-35(5), 4-9-35, 4-9-39 specify the duties of a county regarding the creation and funding of libraries. Complaint, ¶ 30. S.C. Code Ann. § 51-15-330 specifies the authority of a municipality to call for a referendum regarding the issuance of bonds for parks and recreation. Complaint, ¶ 31. Thus, as provided by the Legislature, the funding of libraries and the funding of parks

the issues of funding libraries and parks is not, and does not even purport to be, for one purpose, but clearly states two different questions for two different purposes, one for libraries and one for parks. Therefore, the referendum question combining two issues into one in this case is unconstitutional.

III. THE CIRCUIT COURT ERRED IN RENDERING A JUDGMENT ON THE PLEADINGS THAT SOUTH CAROLINA STATUTES GIVE DORCHESTER COUNTY COUNCIL THE AUTHORITY TO COMBINE SEPARATE ISSUES FOR BOND ISSUANCE INTO ONE REFERENDUM QUESTION.

The General Assembly has shown it knows how to promulgate statutes expressly authorizing funding for more than one purpose when it intends to do so. See, e.g., the Capital Project Sales Tax Act (S.C. Code § 4-10-300 et seq.)(authorizes a referendum "for a specific purpose or purposes." S.C. Code § 4-10-31O; Op. S.C. Att'y Gen., 2004 WL 1 182081 (S.C.A.G. May 20, 2004)(emphasis added)); S.C. Code § 4-37-30 (authorizes a referendum for the "project or projects for which the proceeds of the tax are to be used." (emphasis added)).

Moreover, South Carolina Code § 7-13-400 specifies the form for the ballot for the issuance of bonds. The form uses the language "in favor of the question or issue (as the case may be)" and "opposed to the question or issue (as the case may be)." Thus, the legislative intent from the plain language of the ballot as required by this statute has each "question" or "issue" listed separately when multiple questions or issues are in a bond referendum. S.C. Code § 7-13-400.

South Carolina courts have held that certain utility bond issues could be voted on in one bond referendum question only when expressly allowed by statute and when the questions combined are naturally related. Thus, Waits v. Town of Ninety-Six, 154 S.C. 350, 151 S.E. 576,

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and recreation are separate issues.

578 (1930) allowed the purposes of funding sewer, water and lighting with bonds to be combined into one question only because a statute specifically authorized those naturally related issues to be combined. However, and in contrast, the South Carolina Supreme Court previously had struck down a referendum question combining those three items before a statute was passed allowing those items to be combined into one question. Ross v. Lipscomb, 83 S.C. 136, 65 S.E. 451 (1909).

In this case, no statute allows the combining of the questions of whether to authorize bonds for the two different purposes of parks and for libraries into one referendum issue. On the contrary, the General Assembly has passed legislation regarding the funding of libraries and parks separately,[3] thereby indicating its intent for the funding of libraries and parks to be separate issues.

Specifically, the General Assembly passed legislation authorizing a bond referendum for a library pursuant to S.C. Code Ann. § 4-9-39, but nowhere therein or elsewhere indicates that the issue of funding parks or any other matter can be combined with the issue of funding libraries. Similarly, the General Assembly passed legislation specifically authorizing a bond referendum for a public park pursuant to S.C. Code Ann. § 51-15-330, but nowhere therein or elsewhere indicates that the issue of funding libraries or any other matter can be combined with the issue of funding parks. If the Legislature had intended that libraries and parks could be combined as one issue in a bond referendum, it would have said so, as it has allowed combining referendum issues as one question in other statutes as referenced above.

3 See footnote 2, supra.

The defendants cite S.C. Code Ann. § 2-7-30, a rule of construction for statutory language, as stating that the Constitutional provision can be read in the plural. The defendants also argue that other statutes interpret singular language as plural. That argument is flawed for two reasons.

First, the statute does not control interpretation of the Constitution. Only a constitutional provision can dictate the interpretation and construction of the Constitution.

Second, the argument does not challenge in any way the validity of the single purpose rule, articulated throughout the Attorney General's Opinion, and highlighted in the discussion of McQuillin Mun. Corp. § 40:9 (3d ed.) and the cases of, e.g., Johnson v Roddey, 83 S.C. 462, 65 S.E. 626 (1909) and Ross v Lipscomb, 83 S.C. 136, 65 S.E. 451 (1909), which remain in effect to this day.

In fact, though the defendants argue that the passage of Home Rule, in 1973, somehow changed or invalidated the single-purpose rule, there is no decision or statute cited that contradicts this rule or the principle behind it that, absent constitutional or statutory authorization to the contrary, multiple issues may not be combined on the same bond referendum ballot without specific statutory authority to do so, but must be stated separately, even if they are on the same ballot. See, Op.S.C.Atty.Gen., September 30, 2016, page 4-5, citing McQuillin Mun. Corp. § 40:9 (3d ed.) and various citations therein.

IV. THE CIRCUIT COURT ERRED IN RENDERING A JUDGMENT ON THE PLEADINGS WHEN MAJORITY SUPPORT OR NON-SUPPORT FOR ONE ISSUE COULD CAUSE MAJORITY SUPPORT ON NON-SUPPORT FOR ANOTHER ISSUE THAT WOULD NOT HAVE RECEIVED MAJORITY SUPPORT OR NON-SUPPORT STANDING ALONE.

It may be impossible to determine factually whether majority support to fund the libraries caused majority support to fund the parks, or the parks, the libraries. However, no factual determination that majority or non-majority support for one issue caused majority support or non-support for the other issue is necessary to invalidate a referendum combining two issues into one question. The mere fact that majority support or non-support of one issue could have caused majority support or non-support of the other issue, standing alone, requires invalidation of the referendum that combined two issues into one question. That is true because combining the two issues into one question could have prevented voters from voting on each issue on its individual merits and inherently created uncertainty and confusion about whether a majority voted for or against each issue on its individual merits, and voters opposing one issue could be prejudiced by that issue receiving a majority vote because of its linkage with the other issue receiving a majority vote, instead of that first issue receiving a non-majority vote on its own merits. See Op. S.C. Atty.Gen., September 30, 2016, pages 4-5, citing 15'McQuillin Mun. Corp. ¶ 40:9 (3d ed.) (citing Wood v. Ross, 85 S.C. 309, 67 S.E. 449 (1910); McDaniel v. Bristol, 160 S.C. 408, 158 S.E. 804 (1931)).

Article X, § 14(4) of the South Carolina Constitution supports the principle that "the purpose of a bond referendum [is] to 'determine the will of the voters upon the assumption of public debt to the amount of and for **the object** proposed.'" Op.S.C.Atty.Gen., September 30, 2016, page 3, citing Op.S.C.Atty.Gen., May 8, 2003 and Fairfax County Taxpayers Alliance v. Bd. Of County Supervisors of Fairfax, 202 Va. 462, 117 S.E. 2d 753 (1961) (emphasis added). By allowing multiple issues to be combined into one question on a ballot, it is impossible to know which singular issue the voters may approve or disapprove on their individual merits and is likely to lead to voter confusion on whether the bond issues are somehow related or separate and on

whether multiple issues that passed did so on each of its own merits or because, instead, merely because the passage of one popular issue caused passage of one or more other less popular issues.

V. THE CIRCUIT COURT ERRED IN RENDERING A JUDGMENT ON THE PLEADINGS WHEN THE PRECEDENT OF ALLOWING TWO ISSUES TO BE COMBINED INTO ONE REFERENDUM QUESTION WOULD ALLOW MULTIPLE ADDITIONAL ISSUES, UNLIMITED IN NUMBER, TO BE COMBINED INTO ONE REFERENDUM QUESTION.

If the Court allows the two separate issues of bond funding of parks and libraries to be combined into one referendum question, nothing would prevent local governments in South Carolina in the future from "loading up" multiple unpopular referendum issues with one or more popular referendum issues into one question, calculating that the popular issue or issues would cause passage of the unpopular issue or issues. Indeed, if two separate issues can be combined into one referendum question, then twenty, two hundred or any number of issues could be combined into one referendum ballot question. Unpopular issues that would not pass on their own merits could be passed solely due to their linkage to popular issues that do pass on their own merits. Uncertainty and confusion could result as to whether particular issues passed due to their merits or merely due to linkage with other issues that passed because they were popular. That is inherently unfair to the citizens and voters and clearly is not good policy or what the South Carolina Constitution or the General Assembly intended or permits.

CONCLUSION

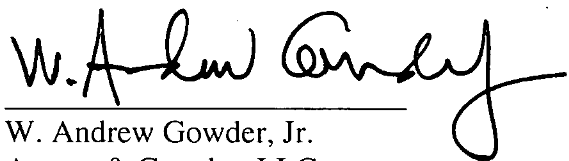
The allegations of the complaint, together with the authorities cited herein and the attachments including the S.C. Attorney General's opinion, demonstrate that the Dorchester County ballot which combined two separate and unrelated issues in a single question is invalid

on its face because: (1) the South Carolina Constitution and the Legislature does not authorize, but bars combining two issues into one question in a referendum; (2) combining separate issues into one question could cause one question to be passed or defeated because the other question is passed or defeated, and could mislead, confuse and create uncertainty among citizens and voters; and (3) allowing two issues to be combined into one referendum question would allow local governments to combine multiple additional issues, unlimited in number, into one referendum question.

On a motion for judgment on the pleadings, the trial court must look to the pleadings only, and if there are any factual issues presented there that could be decided in favor of the plaintiff, the court must deny the motion. There were a number of factual and legal issues presented by the Complaint that made the grant of judgment on the pleadings reversible error.

Given these errors of law, the trial court erred in granting the motion of the defendants for judgment on the pleadings.

Respectfully Submitted,



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Certificate of Service

The undersigned hereby certifies that a true copy of the Plaintiffs' Initial Brief of Appellants, Certificate of Counsel, and Designation of Matter to be Included in the Record on Appeal has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 11th day of April, 2018 to:

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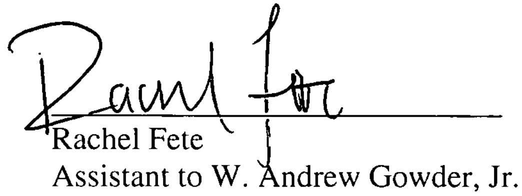

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