

THE STATE OF SOUTH CAROLINA
In the 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.

AMENDED RECORD ON APPEAL

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHSTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Gerard. E. Ziegler; Brenda Barrington III:)
James Stephen Greene, 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,)

Case No.: 2016-CP-18-01978

FILED-RECORDED
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CHERYL GRIFFIN
CLERK OF COURT
DORCHESTER COUNTY

Plaintiffs,)

Vs.)

ORDER OF DISMISSAL

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,)

Defendants.)

THIS MATTER came before the Court upon Defendant's Motion for Judgment on the Pleadings. A hearing was convened on August 24, 2017 at the Orangeburg County Courthouse, at which counsel for all parties were present.

After due deliberation, a thorough review of the pleadings, memoranda, case law, and arguments of counsel, this Court hereby GRANTS Defendant's Motion on the Pleadings and DISMISSES Plaintiff's Complaint in its entirety.

BACKGROUND

On July 18, 2016 Dorchester County Council (hereinafter "Council") passed an Ordinance requiring that a referendum be held on November 8, 2016, on whether Dorchester County should be authorized to issue general obligation bonds not exceeding \$43,000,000 for the purposes of

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funding new library facilities, parks, recreational facilities and hiking, biking and pedestrian trails.

Dorchester County held an election on November 8, 2016 and included on the ballot was the following question on the referendum:

Shall Dorchester County, South Carolina be authorized to issue general obligation bonds in an amount not to exceed \$30,000,000 for funding the acquisition of land and the design and construction of new library facilities in Summerville and North Charleston and general obligation bonds in an amount not to exceed \$13,000,000 for funding recreational facilities, including the development of the Dorchester County Courthouse Park in St. George, the Ashley River Park and the Pine Trace Natural area in Summerville, and the development of hiking, biking and pedestrian trails, together with associated infrastructure, at various locations throughout the County?

The question passed with 60.46% in favor and 39.54% opposed. Now, the Plaintiffs', including five individual taxpayers and two organizations representing taxpayers, represent that Dorchester County and its Council in their individual capacity unlawfully and unconstitutionally combined two separate issues into one question to be voted on by referendum.

In essence, Plaintiffs contend that the eventual consequence of the question's form was a majority vote supporting bonds for libraries and parks; without insight into whether one would have passed without the other. Specifically, Plaintiffs' claim violations of South Carolina Constitution Article X, § 14(2), (3), (4); S.C. Code Ann. §§ 4-15-10 et seq.; S.C. Code Ann. § 7-13-400; and S.C. Code Ann. § 51-15-330. In short, Plaintiffs' persist that voter confusion is a factual question which requires further proceedings.

Defendants move this Court for Judgment on the Pleadings and to find that the relief sought depends solely on assertions and conclusions which lack sufficient facts to constitute a cause of action. Thus, they surmise that Plaintiffs' opposition to the form of the question as presented and the belief it was without legal authority, and therefore does not authorize issuance of bonds is strictly a matter of law.

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DISCUSSION

A judgment on the pleadings, although drastic, shall be granted where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor. Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty., 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). Article X §14(2), (3), (4) of the South Carolina Constitution gives power to both counties and municipalities of this State to incur bonded indebtedness in accordance with the law set forth by the General Assembly. S.C. Const. Art. X, § 14. The power is limited to indebtedness for general obligations and those payable only from a revenue-producing project or from a special source. Id. "General obligation debt" is codified as indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power. Id. at § 14(3). That debt may only be incurred for a **purpose** [*emphasis added*] which is a public purpose and which is a corporate purpose of the applicable political subdivision. Id. at § 14(3). It is this singular "purpose" in the Article about which the majority of this matter revolves.

I. JUDICIAL REVIEW OF LEGISLATIVE ACTS

Although no specific justiciability argument has been made of the current question, this Court takes opportunity to emphasize the fundamental characteristic of a nonjusticiable political question. Specifically, that such adjudication would place a court in conflict with a coequal branch of government. Alexander v. Houston, 403 S.C. 615, 618–19, 744 S.E.2d 517, 519 (2013) (citing Segars-Andrews v. Judicial Merit Selection Comm'n, 387 S.C. 109, 121, 691 S.E.2d 453, 460 (2010) (quoting S.C. Pub. Interest Found. v. Judicial Merit Selection Comm'n, 369 S.C. 139, 142–43, 632 S.E.2d 277, 278 (2006))). Furthermore, courts cannot reject as "no lawsuit" a bona fide controversy as to whether some action denominated political exceeds constitutional authority. Id. Instead, the court is duty bound to review the actions of the legislature and its subsidiaries when it

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is alleged in a properly filed suit that such actions are unconstitutional. Id. Only after a limited review will a complaint challenging the wisdom of the Council's actions or the process by which this situation developed be dismissed for lacking a bona fide legal challenge proper for judicial review. Id.

As an initial matter, this Court finds that Plaintiffs' have not plead sufficient factual allegations in the Complaint or incorporated pleadings which would support a judgment that the referendum was ambiguous and confusing. The assertion that there is uncertainty as to whether a majority of voters supported both bonds and whether some would have supported one without the other are simply conclusory. Plaintiffs in this case rely heavily on an Attorney General's opinion which purports to state that the bond question impermissibly combined two separate and distinct questions because the applicable article of the Constitution does not allow for "purposes" as does other statutes. Op. S.C. Atty. Gen., September 30, 2016, page 2. That opinion further suggests that since a "library is governed by a separate statute than one for a park" separate bond questions are necessary. Op. S.C. Atty. Gen., September 30, 2016, page 9. To support the statement, the Attorney General's letter draws attention to S.C. Code Ann. §§ 4-9-35, 39 and S.C. Code Ann. § 51-15-330 which separately provide counties and municipalities with the authority to create, control, and fund libraries and parks respectfully. While helpful, the Attorney General's opinion is not binding, and after proper review, this Court finds the statements and opinions relied upon by Plaintiffs' do not present a bona fide legal challenge supporting further proceedings.

II. HOME RULE ACT OF 1975

Article VIII of the South Carolina Constitution provides that the "Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall

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include those fairly implied and not prohibited by this Constitution.” S.C. Const. art. VIII, § 17. The “Home Rule Act” passed in 1975 was created to strengthen local governments and to provide significant independence from the state legislature. Pierce T. MacLennan, A Long Way from Home: Slow Progress Toward "Home Rule" in South Carolina and A Path to Full Implementation, 64 S.C. L. Rev. 781, 783 (2013). The Article now provides general law for the structure and responsibilities of counties and prohibits the Legislature from passing laws specific to one county. Id. at 783. After passage of the Act, local governments were granted greater flexibility and authority which was formerly constrained by the “county purpose doctrine.” Id. at 787. As local governments have been granted flexibility, it is no longer proper to constrain analysis to form over function. Id. at 791 (citing then Chief Justice Toal’s dissent in Hamm v. Cromer, 305 S.C. 305, 310, 408 S.E.2d 227, 230 (1991)). As stated in Hamm, the essential purpose and intent of the Act is to be considered. Id.

Additionally, “The County Bond Act” found in Chapter 15 of the South Carolina Code provides power and purpose(s) so that local government(s) may incur debt. As defined, an “*authorized purpose*” means any purpose for which the particular county might, under the applicable constitutional provisions, issue bonds or levy taxes. S.C. Code Ann. § 4-15-20 (2). Only upon favorable election on the issuance of bonds by the voters may a county issue general obligation bonds to defray cost of any authorized purpose. S.C. Code Ann. § 4-15-30 (1). The issue must be in the form of a question or questions expressing whether the voter is in favor of or opposed to the question or issue. S.C. Code Ann. § 7-13-400. Combined, Home Rule and The County Bond Act may be liberally construed to give, as in this case, the Council power to fund its own purpose(s) free from the Legislature’s management.

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III. STATUTES PRETAINNIG TO LOCAL GOVERNMENT

Plaintiff(s) contend that the existence of distinct chapters in the Code of Laws relating to the bond question's purpose necessitate separate bond questions in the instance. The argument is that, since the State requires county run or operated public library systems in one section, and allows cities to create their own parks in another, whether a single bond question pertaining to library and parks facilities is consequently factual in nature. The Code defines governing "authorities" within a county as those such as county board of commissioners or other board or body to which is delegated the administrative duties of the particular county provide. S.C. Code Ann. § 4-15-20 (1). One specific statute gives a county authority to make appropriations for recreation and libraries alike. S.C. Code. Ann. § 4-9-30(5). Nothing in that statute limits a county fund raising authority to those two purposes. Id.

Meanwhile, S.C. Code Ann. § 51-15-330 deals directly with a municipality's ability to call for the issuance of bonds for parks and recreational facilities. True, the chapter is separate and distinct from that above proscribing county authority. Nonetheless, the Council's bond question at hand unambiguously asks voters to consider a "County" referendum. The argument that the legislature in separating grants of power to county and municipalities separately automatically requires separate bond questions is not persuasive. Instead, the law includes, but does not limit local governments in their purpose(s) or projects so long as they remain "a public purpose." South Carolina Constitution Article X, § 14 (4).

IV. A PUBLIC PURPOSE

Plaintiffs seek to handcuff reading of the words "a purpose" found in the applicable law to the singular. However, the General Assembly has expressed intent to include the plural in words importing the singular and further requires the spirit and intent of an act to be considered over the

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form of a single word. S.C. Code Ann. § 2-7-30. Following that logic, Plaintiffs' believe that if one purpose were allowed in a question to be voted on in the referendum, the law would have read that election approval must be for authorized purposes [plural] and not for an authorized purpose [singular]. The Attorney General seems to agree. Op. S.C. Atty. Gen., September 30, 2016, page 9.

With that in mind, the Attorney General's opinion correctly states: the bond question must be viewed as a whole in determining whether it would likely mislead the average voter. Op. S.C. Atty. Gen., September 30, 2016, page 3 (citing Lowery v. Shirley, 234 S.C. 279, 282, 107 S.E.2d 769, 771 (1959)). Typically, where the intention of a statute requires funding for individual projects be regarded as separate and independent, the qualified electors should have the opportunity of voting separately for the issuance of bonds. Johnson v. Roddey, 83 S.C. 462, 65 S.E. 626, 627 (1909). Other states have held that whether a single or multiple proposition is presented asks "whether or not there exists a natural relationship between the objects united in one proposition and whether or not the several projects are so related that united they form in fact one rounded whole." Henkel v. City of Pevely, 504 S.W.2d 141, 146-47 (Mo. App., 1973).

"Every reasonable presumption in favor of sustaining contested election will be employed and irregularities or illegalities which do not appear to have affected the result of the election will not be allowed to overturn it." Fielding v. S.C. Election Comm'n, 305 S.C. 313, 408 S.E.2d 232 (1991). A bond question is not required to set out the specific details of the proposed work or improvements on the ballot. Sadler v. Lyle, 254 S.C. 535, 546, 176 S.E.2d 290, 295 (1970); See also, Fairfax County Taxpayers Alliance v. Board of County Supervisors of Fairfax County, 202 Va. 462, 117 S.E.2d 753 (1961). Unless fraud has been perpetrated, a violation of the single-

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purpose rule (as complained presently) does not invalidate bonds per se. Wood v. Ross, 85 S.C. 309, 67 S.E. 449, 451 (1910).

Only where the law requires and a different result would occur should a court overturn an election result. In Johnson, it was held that questions for funding the erection of plants, either for waterworks or sewerage, or lighting purposes required separate questions. Johnson v. Roddey, 83 S.C. 462, 65 S.E. 626, 627 (1909). However, in another instance a bond question was found proper that called for the purchase of waterworks plant where part of the proceeds were for equipment and part for operation. McDaniel v. Bristol, 160 S.C. 408, 158 S.E. 804 (1931). The reason, the voters in that case understood what was to be purchased, the purchase price, and that the purchase price could only be paid by the issue of municipal bonds. Further, by answering "Yes" to that question, the voters approved the town council to purchase the plant at a price not exceeding the bond amount, issue municipal bonds therefor, and pay the sellers the purchase price. Id.

Here, the pleadings shade closer to those in McDaniel. Dorchester County Council sought funding for a general obligation bond for the acquisition of land, design, and construction of new facilities. The laws of this state are multi-faceted. The Constitution may refer to "all laws." While the Legislature separates county and municipal authority. Both are controlling and both important to the instant case. Likewise, those pre-Home Rule cases should not be ignored. Viewed together, even if Council chooses in the Referendum to specify with detail its proposed work, it is not required to do so. Thus, the intent of the bond question and whether the voters of Dorchester County understood its results must dominate. There are no factual allegations to suggest they did not.

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This Court finds as a matter of law that the Council was within its power to call for the referendum. That the question clearly asks whether the Council should be authorized to incur \$43,000,000 dollars in debt to provide for new facilities which would include library, recreational, and associated infrastructure throughout Dorchester County. Further, it is undisputed by answering "Yes" to that question, the voters approved Dorchester County to issue bonds, specifically \$30,000,000 for library facilities, and \$13,000,000 for parks and recreation and that no issue of fact raised by the complaint would entitle the Plaintiffs to judgment if resolved in their favor.

CONCLUSION

Accordingly, IT IS THEREFORE ORDERED, that Defendant's Motion for Judgment on the Pleadings is hereby GRANTED.

IT IS FURTHER ORDERED, that Plaintiff's Complaint is summarily DISMISSED in its entirety.

AND IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge, First Judicial Circuit

December 8, 2017
Orangeburg, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Gerard E. Ziegler; Brenda Barrington III;
James Stephen Greene, 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,

Plaintiffs,

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,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT**

C.A. No.: 2016-CP-18-1975

FILED - RECORDED
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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

**ORDER DENYING
PLAINTIFF'S MOTION TO RECONSIDER,
ALTER OR AMEND JUDGMENT,
AND FOR A REHEARING**

This Court issued its Order of Dismissal (the "Order"), granting the Defendants' Motion for Judgment on the Pleadings and dismissing all claims in Plaintiffs' Complaint in this lawsuit on December 8, 2017 (entered, December 11, 2017). The Order followed Defendants' motion for judgment on the pleadings and supporting memorandum of June 16, 2017; Plaintiffs' memorandum in opposition of August 23, 2017; a hearing before the Court on August 24, 2017, at which both sides were heard extensively; Defendants' email to the Court on August 25, 2017, providing case citations requested by the Court at the hearing; Plaintiffs' supplemental memorandum in opposition of August 29, 2017; Defendants' reply to Plaintiffs' supplemental memorandum of September 5, 2017; and Plaintiffs' email to the Court of September 8, 2017, addressing Defendants' reply to Plaintiffs' supplemental memorandum

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By motion dated December 18, 2017 (the "Motion"), Plaintiffs requested reconsideration, alteration, or amendment of the Order and a second hearing. The Motion suggests that four, overlapping points deserve reconsideration, rehearing, and amendment. Defendants responded by memorandum dated January 5, 2018, addressing those points and arguing that each of them had been fully covered in the facts, law, and argument already presented to the Court and had been ruled on in the Order, and that no further consideration is warranted

After due deliberation and review of the Motion, the supporting and opposing points of counsel, case law, Constitutional and statutory provisions, and the Court's notes, the Court finds that there is nothing new warranting reconsideration, amendment, or rehearing of its Order. This Court therefore denies Plaintiffs' Motion.

AND IT IS SO ORDERED.



Edgar W. Dickson
Presiding Judge, First Judicial Circuit

January 22, 2018

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

2016 OCT 13

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Gerard E. Ziegler; Brenda Barrington III;
James Stephen Greene, 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,

Plaintiffs,

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

Defendants.

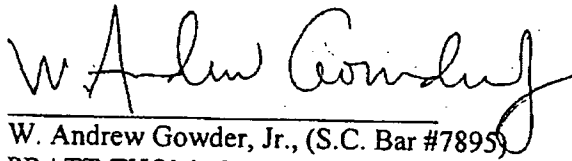
Civil Action No.: 2016-CP-18-1975

SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers, at their offices at 16 Charlotte Street, P.O. Drawer 22247, Charleston, SC, 29413, within thirty (30) days after the service hereof, exclusive of the day of service; and if you fail to respond to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

A handwritten signature in cursive script, reading "W. Andrew Gowder, Jr.", positioned above a horizontal line.

W. Andrew Gowder, Jr., (S.C. Bar #7895)
PRATT-THOMAS WALKER, P.A.
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Phone: 843/727-2229 wag@p-tw.com
Counsel for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT
)

Gerard E. Ziegler; Brenda Barrington III;
James Stephen Greene, 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,

) Civil Action No.: 2016-CP-18-1975
)

Plaintiffs,

COMPLAINT

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

Defendants.

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CERTIFIED COPY
CLERK OF COURT

Each of the above-named Plaintiffs brings the following actions seeking declaratory, injunctive and other legal relief. For their complaint, the Plaintiffs state as follows:

I. PRELIMINARY STATEMENT

1. This is a civil action for declaratory, injunctive and other relief brought for violations and threatened violations of, and to enforce the requirements of, inter alia, S.C. Const. art. X §§ 14(2), (3), (4); S.C. Code Ann. §§ 4-9-30(5), 4-9-35, 4-9-39; S.C. Code Ann. § 4-15-10, *et seq.*; S.C. Code Ann. § 4-15-20, 4-15-30(a); S.C. Code Ann. § 7-13-400; S.C. Code Ann. § 51-15-330; and the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et seq.*

2. This action is brought by the Plaintiffs, individually, in their representative capacities and on behalf of their members, to (1) obtain a declaration from the Court that Dorchester County has illegally combined into one question to be voted on in a referendum to be held on November 8, 2016, two separate questions about whether Dorchester County should issue bonds for two expressly stated different purposes and amounts (i.e., \$30 million for libraries, \$13 million parks); (2) obtain a declaration from the Court that any vote in a referendum combining into one question two separate questions about whether Dorchester County should issue bonds for two expressly stated different purposes and amounts (i.e., \$30 million for libraries, \$13 million parks) is null and void, a nullity, illegal and *ultra vires*; and (3) obtain from the Court injunctions preventing the continued violations of law alleged herein and prohibiting the issuance of any bond and any other action by Defendants based on any favorable vote in a referendum which combines into one question two separate questions about whether Dorchester County should issue bonds for two expressly stated different purposes and amounts (i.e., \$30 million for libraries, \$13 million parks).

3. The allegations against the Defendants are made as to those Defendants in their official capacities. All actions by all Defendants at all relevant times were taken under color of state law.

4. This Court has jurisdiction over this subject matter and the parties to this action and venue is proper in this Court. This Court possesses jurisdiction under the South Carolina Constitution Articles I, VIII and X, §§ 5 and 11; S.C. Code Ann. §15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act; 42 U.S.C. § 1983; and the following decisions: *American Petroleum Institute v. S.C. Dep't of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009); *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008); *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008); *Sloan v. Hardee*, 357 S.C. 495, 640

S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003); *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); and *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).

II. PARTIES

A. The Plaintiffs

5. Gerard E. Ziegler ("Ziegler") is a citizen, resident and taxpayer of the County, and has standing as a Plaintiff in this action as a taxpayer. Ziegler has paid and will continue to pay taxes which fund the County; would be required to pay taxes to finance parks and libraries if the referendum passes that is the subject of this lawsuit; and brings this action individually on his behalf and on behalf of all others similarly situated.

6. Brenda Barrington III ("Barrington") is a citizen, resident and taxpayer of the County, and has standing as a Plaintiff in this action as a taxpayer. Barrington has paid and will continue to pay taxes which fund the County; would be required to pay taxes to finance parks and libraries if the referendum passes that is the subject of this lawsuit; and brings this action individually on her behalf and on behalf of all others similarly situated.

7. James Stephen Greene, Jr. ("Greene") is a citizen, resident and taxpayer of the County, and has standing as a Plaintiff in this action as a taxpayer. Greene has paid and will continue to pay taxes which fund the County; would be required to pay taxes to finance parks and libraries if

the referendum passes that is the subject of this lawsuit; and brings this action individually on his behalf and on behalf of all others similarly situated.

8. William A. Harbeson ("Harbeson") is a citizen, resident and taxpayer of the County, and has standing as a Plaintiff in this action as a taxpayer. Harbeson has paid and will continue to pay taxes which fund the County; would be required to pay taxes to finance parks and libraries if the referendum passes that is the subject of this lawsuit; and brings this action individually on his behalf and on behalf of all others similarly situated.

9. David Messinger ("Messinger") is a citizen, resident and taxpayer of the County, and has standing as a Plaintiff in this action as a taxpayer. Messinger has paid and will continue to pay taxes which fund the County; would be required to pay taxes to finance parks and libraries if the referendum passes that is the subject of this lawsuit; and brings this action individually on his behalf and on behalf of all others similarly situated.

10. The Dorchester County Taxpayers Association ("DCTA") is a non-profit corporation incorporated in 1998 under the laws of the State of South Carolina. The mission of the DCTA is to encourage government to tax its citizens less and to work more efficiently with the taxes collected. The DCTA is suing as a representative of its members who reside in and are citizens, qualified electors and taxpayers in the County and/or one or more of the School Districts. DCTA brings this action individually on its behalf, its members and on behalf of all others similarly situated.

11. The South Carolina Public Interest Foundation ("SCPIF") is a not-for-profit corporation organized and existing under the laws of the State of South Carolina and dedicated to the public interest, including the upholding and proper application of the South Carolina Constitution. The SCPIF brings this action individually, on its behalf and on behalf of all others

similarly situated, as a representative of taxpayers and because of the great public importance of the issues that this civil action raises that are capable of being repeated and that require judicial guidance.

12. Plaintiffs are entitled to standing based on their status as taxpayers and fee payers who would have to contribute to the funds at issue, and because of the great public importance of the issues that this civil action raises, that are capable of being repeated and regarding which judicial guidance is required.

13. Each of the above-named Plaintiffs has a personal stake in the subject matter of this action and is a real party in interest having a real, material, and substantial interest in the subject matter of this action. As a result of the actions of the Defendants alleged in this complaint, the individual Plaintiffs and those represented by the organizations named as Plaintiffs will sustain or are in imminent danger of sustaining direct injury of a personal nature to the Plaintiffs, not common to all members of the general public.

14. Each of the above-described Plaintiffs alleging taxpayer standing has as an overriding public purpose or concern as the basis for his or its suit on behalf of their fellow taxpayers regarding the proper use and allocation of tax receipts by the County, County Council and members of County Council named as Defendants in this action. These questions are of such substantial public importance as to warrant a resolution by the Court for future guidance, as the public interest involved is the prevention of the unlawful expenditures of money raised by taxation. Each taxpayer Plaintiff has a real, material, and substantial interest in whether the County, County Council and members of the County Council followed the requirements and procedures set out in the state constitution, state statutes and County ordinances, procedures, rules, guidelines and customs specifically designed to ensure wise management of the public fisc.

15. Plaintiff DCTA has standing based on the individualized injuries that have been or will be suffered by its members as a result of the actions of the Defendants described in this Complaint. Members of this organization would otherwise have standing to sue in their own right. The interests at stake in this case are germane to each organization's purpose. Neither the claims DCTA asserts, nor the relief it requests, requires the participation of the individual members of either of those organizations in this action.

16. Each of the Plaintiffs, whether alleging taxpayer standing, actual injury to its or his real or personal property or acting on behalf of organizational members, has suffered and will suffer an injury in fact causally connected to the conduct complained of, which is likely to be redressed by a favorable decision.

B. The Defendants

17. Dorchester County is a body corporate and a corporation of the State of South Carolina located in South Carolina.

18. Dorchester County Council ("County Council") is the elected governing body of Dorchester County created and operating under the laws of the State of South Carolina.

19. Charles D. Chinnis ("Chinnis") is the Chairman and a member of Dorchester County Council, and is being sued in his official capacity.

20. George H. Bailey, Sr. ("Bailey") is the Vice Chairman and a member of Dorchester County Council, and is being sued in his official capacity.

21. Jay Byars ("Byars") is a member of Dorchester County Council, and is being sued in his official capacity.

22. Carroll S. Duncan ("Duncan") is a member of Dorchester County Council, and is being sued in her official capacity.

23. Larry Hargett ("Hargett") is a member of Dorchester County Council, and is being sued in his official capacity.

24. Willie R. Davis ("Davis") is a member of Dorchester County Council, and is being sued in his official capacity.

25. William R. Hearn, Jr. ("Hearn") is a member of Dorchester County Council, the governing body of Dorchester County, South Carolina; and is being sued in his official capacity.

III. CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. SOUTH CAROLINA CONSTITUTION

26. S.C. Const. art. X, § 14(4) states that "[g]eneral obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision." (Emphasis added.)

B. SOUTH CAROLINA STATUTES

27. S.C. Code Ann. § 4-15-20 states that "the term 'authorized purpose' shall mean any purpose for which the particular county might, under the applicable constitutional provisions, issue bonds or levy taxes." (Emphasis added.)

28. S.C. Code Ann. § 4-15-30(A) states that "[t]he authorities of a county may issue general obligation bonds of the county to defray the cost of any authorized purpose . . . if: (1) the election required by this chapter as a condition precedent to the issuance of bonds is favorable. . . ." (Emphasis added.)

29. S.C. Code Ann. § 4-15-10, *et seq.*, is known as the County Bond Act and specifies the terms and conditions by which a South Carolina county may issue bonds.

30. S.C. Code Ann. §§ 4-9-30(5), 4-9-35, 4-9-39 specify the duties of a county regarding the creation and funding of libraries.

31. 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.

C. ATTORNEY GENERAL OPINIONS

32. On September 30, 2016, the Attorney General of South Carolina issued an Opinion, attached hereto as Exhibit #1 and incorporated by reference herein, stating in part the following regarding the legality of combining multiple separate issues for bond issuance into one referendum question:

Conclusion:

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.

IV. FACTUAL ALLEGATIONS

33. On July 18, 2016, Dorchester County Council passed an Ordinance, attached hereto as Exhibit #2 and incorporated by reference herein, requiring that a referendum be held on November 8, 2016, on whether Dorchester County should issue bonds for two expressly stated different purposes and amounts (i.e., (1) \$30 million for libraries and (2) \$13 million for parks), but pursuant to only one question.

34. State Senator Paul Thurmond sent a letter dated September 8, 2016, attached hereto as Exhibit #3 and incorporated by reference herein, to the Deputy Attorney General of South Carolina asking for an Attorney General Opinion about whether Dorchester County's combining

two issues into one question for the above-referenced referendum as stated above is legally permissible.

35. In response, the Solicitor General of and an Assistant Attorney General of South Carolina both issued an Attorney General Opinion dated September 30, 2016, attached as Exhibit #1, stating that in their opinion Dorchester County's combining two issues into one question for the above-referenced referendum as stated above is illegal.

36. Attorneys for the Plaintiffs sent the Dorchester County Attorney a letter dated October 3, 2016, attached as Exhibit #4 and incorporated by reference herein, providing the County Attorney a copy of said Attorney General Opinion dated September 30, 2016, and asking that Dorchester County take corrective action to either separate the parks and libraries issues into two different questions to be voted on separately in the referendum or to cancel the referendum. Dorchester County has failed to take any of the actions requested in said letter.

V. CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION SC CONSTITUTION ARTICLE X, § 14(2),(3),(4)

37. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

38. Dorchester County's authorizing and holding a referendum combining into one question the parks and library issues as stated above, and the issuance of any bond and any other action taken based on the result of said referendum, violate Article X, § 14(2),(3),(4) of the South Carolina Constitution.

39. As a direct and proximate result of the Defendants violations of Article X, § 14(2),(3),(4) of the South Carolina Constitution described above, the Plaintiffs and those similarly situated have been harmed or will be harmed, *inter alia*, by having to vote on both the parks and

library issues together instead of separately in the November 8, 2016 referendum, thereby causing 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; by having to fund through their taxes and spend their time voting on an illegally constituted referendum question; and by having to pay in the future additional and unlawful taxes; and have incurred and will incur additional harm and losses, as described above and as will be proved at trial.

**FOR A SECOND CAUSE OF ACTION
S.C. CODE ANN. § 4-15-20**

40. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

41. Dorchester County's authorizing and holding a referendum combining into one question the park and library issues as stated above, and the issuance of any bond and any other action taken based on the result of said referendum, violate S.C. Code Ann. § 4-15-20.

42. As a direct and proximate result of The Defendants' violations of S.C. Code Ann. § 4-15-20 described above, the Plaintiffs and those similarly situated have been harmed or will be harmed, *inter alia*, by having to vote on both the parks and library issues together instead of separately in the November 8, 2016 referendum, thereby causing 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; by having to fund through their taxes and spend their time voting on an illegally constituted referendum question; and by having to pay in the future additional and unlawful taxes; and have incurred and will incur additional harm and losses, as described above and as will be proved at trial.

**FOR A THIRD CAUSE OF ACTION
S.C. CODE ANN. § 4-15-30(A)**

43. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

44. Dorchester County's authorizing and holding a referendum combining into one question the park and library issues as stated above, and the issuance of any bond and any other action taken based on the result of said referendum, violate S.C. Code Ann. § 4-15-30(A).

45. As a direct and proximate result of The Defendants' violations of S.C. Code Ann. § 4-15-30(A) described above, the Plaintiffs and those similarly situated have been harmed or will be harmed, *inter alia*, by having to vote on both the parks and library issues together instead of separately in the November 8, 2016 referendum, thereby causing 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; by having to fund through their taxes and spend their time voting on an illegally constituted referendum question; and by having to pay in the future additional and unlawful taxes; and have incurred and will incur additional harm and losses, as described above and as will be proved at trial.

**FOR A FOURTH CAUSE OF ACTION
S.C. CODE ANN. § 4-15-10 *et seq.***

46. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

47. Dorchester County's authorizing and holding a referendum combining into one question the park and library issues as stated above, and the issuance of any bond and any other action taken based on the result of said referendum, violate S.C. Code Ann. § 4-15-10 *et seq.*

48. As a direct and proximate result of The Defendants' violations of S.C. Code Ann. § 4-15-10 *et seq.* described above, the Plaintiffs and those similarly situated have been harmed or will be harmed, *inter alia*, by having to vote on both the parks and library issues together instead of separately in the November 8, 2016 referendum, thereby causing 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; by having to fund through their taxes and spend their time voting on an illegally constituted referendum question; and by having to pay in the future additional and unlawful taxes; and have incurred and will incur additional harm and losses, as described above and as will be proved at trial.

**FOR A FIFTH CAUSE OF ACTION
S.C. CODE ANN. § 7-13-400**

49. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

50. Dorchester County's authorizing and holding a referendum combining into one question the park and library issues as stated above, and the issuance of any bond and any other action taken based on the result of said referendum, violate S.C. Code Ann. § 7-13-400.

51. As a direct and proximate result of The Defendants' violations of S.C. Code Ann. § 7-13-400 described above, the Plaintiffs and those similarly situated have been harmed or will be harmed, *inter alia*, by having to vote on both the parks and library issues together instead of separately in the November 8, 2016 referendum, thereby causing 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; by having to fund through their taxes and spend their time voting on an illegally constituted referendum question; and by having to pay in the future additional and unlawful taxes; and have incurred and will incur additional harm and losses, as described above and as will be proved at trial.

**FOR A SIXTH CAUSE OF ACTION
S.C. CODE ANN. § 51-15-330**

52. The Plaintiffs repeat and restate the preceding paragraphs as if fully restated herein.

53. Dorchester County's authorizing and holding a referendum combining into one question the park and library issues as stated above, and the issuance of any bond and any other action taken based on the result of said referendum, violate S.C. Code Ann. § 51-15-330.

54. As a direct and proximate result of The Defendants' violations of S.C. Code Ann. § 51-15-330 described above, the Plaintiffs and those similarly situated have been harmed or will be harmed, *inter alia*, by having to vote on both the parks and library issues together instead of separately in the November 8, 2016 referendum, thereby causing 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; by having to fund through their taxes and spend their time voting on an illegally constituted referendum question; and by having to pay in the future additional and unlawful taxes; and have incurred and will incur additional harm and losses, as described above and as will be proved at trial.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court grant the following relief in addition to any other relief which this Court deems just and proper:

A. Grant a Declaratory Judgment declaring that:

- (1) Dorchester County Council's placing as only one question to be voted on in a referendum to be held on November 8, 2016, both the question about funding parks and the question about funding libraries is unconstitutional;
- (2) Dorchester County Council's placing as only one question to be voted on in a referendum to be held on November 8, 2016, both the question about funding parks and the question about funding libraries violates South Carolina statutes and the intent of the South Carolina General Assembly;
- (3) Dorchester County Council's placing as only one question to be voted on in a referendum to be held on November 8, 2016, both the question about funding parks and the question about funding libraries violates the public policy of the State of South Carolina;

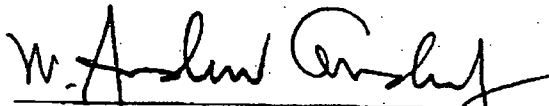
- (4) The results of the referendum to be held on November 8, 2016, in which both the question about funding parks and the question about funding libraries with bonds is consolidated into one question is null and void, a nullity, illegal and *ultra vires*; and
- (5) The issuance of any bonds and any other action taken based on the results of the referendum to be held on November 8, 2016, in which both the question about funding parks and the question about funding libraries with bonds is consolidated into one question is null and void, a nullity, illegal and *ultra vires*.

B. Grant a Permanent Injunction Order immediately enjoining, restraining and prohibiting the Defendants, their agents, employees, and any other persons acting on their behalf or in concert with them, directly or indirectly, until further Order of this Court, from conducting or allowing the conducting of the referendum to be held on November 8, 2016, in which both the question about funding parks and the question about funding libraries with bonds is consolidated into one question;

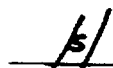
C. Grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff, and any other applicable law; and

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



W. Andrew Gowder, Jr., (S.C. Bar #7895)
PRATT-THOMAS WALKER, P.A.
Post Office Drawer 22247
Charleston, South Carolina 29413-2247
Phone: 843/727-2229 wag@p-tw.com
Counsel for Plaintiffs.



Michael T. Rose, Esquire (S.C. Bar #4910)

MIKE ROSE LAW FIRM, PC
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Facsimile: 843-478-7595 mrose5@sc.rr.com
Counsel for Plaintiffs

Exhibit 1

FILED-RECORDED
2016 OCT 13 PM 12:56
CLERK OF COURTY
BORCHESIER COUNTY



ALAN WILSON
ATTORNEY GENERAL

September 30, 2016

2016 OCT 13 PM 12:56
RECEIVED
CLERK OF COURT
DORCHESTER COUNTY

The Honorable Paul Thurmond, Member
South Carolina Senate, District No. 41
P.O. Box 142
Columbia, SC 29202

Dear Senator Thurmond:

Attorney General Alan Wilson has referred your letter dated September 8, 2016 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

I am writing to ask you to provide us as soon as possible an Attorney General Opinion about the legality of the wording of a bond referendum Dorchester County Council has voted to hold in the general election to be held on November 8, 2016. [] As shown in the ordinance dated 7/18/16 attached as Exhibit #1, Dorchester County Council has voted to hold a referendum on November 8, 2016, on whether Dorchester County should issue bonds for TWO expressly stated different purposes and amounts (i.e., \$30 million for libraries, \$13 million parks) but pursuant to only ONE question. ... This Ordinance cites as authority for this referendum Article X, Section 14, of the South Carolina Constitution, and the County Bond Act, S.C. Code Section 4-15-10 to 4-15-180. Neither of those authorities appears to state expressly whether a referendum question to be voted on as a prerequisite for this issuance of bonds pursuant to these authorities may contain more than one purpose or item in a question to be voted on, or whether there must be a separate question voted on for each purpose or item. However, both authorities refer to the "purpose" of an approved bond in the singular and not in the plural, thereby perhaps evidencing the intent to require a separate vote for each specific different purpose for which the bonds are issued.

For example, Article X, Section 14(4) states that "[g]eneral obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision" (emphasis added). S.C. Code Section 4-15-20 states that "the term 'authorized purpose' shall mean any purpose for which the particular county might, under the applicable constitutional provisions, issue bonds or levy taxes" (emphasis added). Section 4-15-30(A) states that "[t]he authorities of a county may issue general obligation bonds of the county to defray the cost of any authorized purpose ... if: (1) the election required by this chapter as a condition precedent to the issuance of bonds is favorable ... (emphasis added)."

Taxpayers questioning the legality of combining these two different items into one referendum question appear to believe that each question should stand on its own merits and not affect or cause a favorable or unfavorable vote on the other. Further, some taxpayers express fear that if these two items can be combined into one referendum question, multiple other unrelated items, perhaps without limit,

could be combined into one referendum question, each affecting or even determining the outcome of the vote on the other items and rendering meaningless a decision about each item on its individual merits. They argue that if more than one purpose were allowed in a question to be voted on in the referendum, the law would have read that election approval must be for authorized purposes [plural] and not for an authorized purpose [singular]. Again, they fear that allowing two items in one question in a referendum to justify the issuance of bonds for two different purposes would be a precedent for allowing an unlimited number of items to be combined into one question in a referendum, and do not think the Constitution or the Legislature intended to give County Council the authority to combine multiple separate requests for bond issuance authority into one referendum question.

Please let us know whether it is legal to combine both of the above stated requests of authorization to issue bonds – for libraries and for parks – into one referendum question or if a separate referendum question must be stated and voted on for each of the two separate purposes.

Law/Analysis:

As you reference in your letter, the South Carolina Constitution Article X, § 14 authorizes political subdivisions, including a county, to “incur bonded indebtedness in such manner and upon such terms and conditions as the General Assembly shall prescribe by general law within the limitations set forth in this section and Section 12 of this article.” S.C. Const. art. X, § 14(2). Section 14 goes on to authorize indebtedness as general obligation debt or from a “revenue-producing project or from a special source as provided in subsection (10) of this section.” *Id.* It is our understanding the bonds referenced in your letter would be incurred by a county as general obligation debt. Regarding general obligation debt, § 14 of the Constitution defines it as “any indebtedness of the political subdivision which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power.” S.C. Const. art. X, § 14(3). Furthermore, as you mention in your letter, our Constitution specifies that general obligation debt “may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision.” S.C. Const. art. X, § 14(4) (emphasis added). As you point in your opinion request “purpose” is singular here, as opposed to other statutes such as the Capital Project Sales Tax Act (S.C. Code § 4-10-300 *et seq.*) which authorize a referendum “for a specific purpose or purposes.” S.C. Code § 4-10-310; *Op. S.C. Att’y Gen.*, 2004 WL 1182081 (S.C.A.G. May 20, 2004).¹ 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).” The legislative intent from the plain language of the ballot has each “question” or “issue” listed separately when multiple questions or issues are submitted. S.C. Code § 7-13-400.²

This Office has previously opined regarding bond referenda. *See, e.g., Op. S.C. Att’y Gen.*, 2009 WL 2844866 (S.C.A.G. August 19, 2009). In one such opinion we were asked whether a bond could be used

¹ *See also* S.C. Code § 4-37-20 *et seq.* authorizing a sales and use tax for transportation facilities. The statute authorizes a referendum for the “project or projects for which the proceeds of the tax are to be used.” S.C. Code § 4-37-30 (emphasis added).

² While we note prior opinions by this Office have referenced a June 18, 1994 opinion stating “the effect of the referendum question is to limit the use of the funds for the purposes set forth” in that question, we were not able to find such an opinion, nor we were able to find any authority for interpreting the plain language of the statute any way other than “purpose” in the singular. *See, e.g., Op. S.C. Att’y Gen.*, 2003 WL 22050874, at *2 (S.C.A.G. Aug. 22, 2003).

for "purposes other than those described in the bond referendum" pursuant to the School Bond Act. Id. In that opinion we stated, among other things, that:

"a ballot referendum may not confuse or mislead the voter." Op. S.C. Atty. Gen. May 8, 2003. We explained in detail, in an opinion issued in 2003, the general requirements in this regard:

The general test applied by our Supreme Court as to whether a particular referendum is upheld or set aside is whether "when viewed as a whole, [the referendum] ... would likely mislead the average voter." Lowery v. Bright, 234 S.C. 279, 107 S.E.2d 769 (1959). It is the purpose of a bond referendum to "determine the will of the voters upon the assumption of a public debt to the amount of and for the object proposed." Fairfax County Taxpayers Alliance v. Bd. of County Supervisors of Fairfax, 202 Va. 462, 117 S.E.2d 753 (1961). The general purpose of the debt "must be stated with sufficient certainty to inform and not mislead voters as to the object in view" The painstaking details of the proposed work or improvements, of course, need not be set out in the ballot. Id.

In Tipton v. Smith, et al., our Supreme Court articulated the general standard for legal sufficiency of a referendum. Quoting with approval the Massachusetts case, In re Opinion of Justices, 271 Mass. 582, 171 N.E. 294, 297, 69 A.L.R., the Court stated that the referendum

... must be complete enough to convey an intelligible idea of the scope and import of the proposed law. It ought not to be clouded by undue detail, nor yet so abbreviated as not to be readily comprehensible. It ought to be free from any misleading tendency, whether of amplification, of omission, or of fallacy. It must contain no partisan coloring. It must in every particular be fair to the voter to the end and that the intelligent and enlightened judgment may be exercised by the ordinary person in deciding how to mark the ballot.

93 S.E.2d at 642. In the Tipton case, the Court found that the ballot in question was materially misleading and thus declared the election invalid. See also Heinitsh v. Floyd, 130 S.C. 434, 126 S.E. 336, 337 ["To give effect to the [wording of the ballot] would be to approve the submission of constitutional amendments under forms which would procure their adoption by deceit."].

Id. However, we noted that the determination of whether a particular bond referendum is misleading is a factual determination that only a court can decide. Id.

Op. S.C. Att'y Gen., 2009 WL 2844866, at *4 (S.C.A.G. Aug. 19, 2009).³

Let us, therefore, examine bond referenda generally. Traditionally, bonds must fulfill their statutory purpose and otherwise comply with their governing statutory. See, e.g., Watson v. Harmon, 280 S.C. 214, 312 S.E.2d 8 (Ct. App. 1984). Our State Court of Appeals stated in one opinion that:

If a bond is given pursuant to a statutory requirement, the bond is construed with reference to the statute and the intent of the statute will govern. *Rogers v. U.S. Fidelity and Guaranty Co.*, 225 S.C. 298, 81 S.E.2d 896 (1954). Furthermore,

[w]hile a bond is ordinarily purely a contract which, when privately given without any qualifying laws, is to be strictly construed and not extended beyond the scope of the obligation according to its express terms, a statutory bond to the public given for the observance of a law is to be read, construed, and enforced in connection with, and according to, the statute pursuant to which it is given, and to be interpreted according to the purpose and meaning of the legislative enactment. The provisions of the statute pursuant to which a bond is given are to be read into the bond and considered a part of it.... *It is essential that the principal to a statutory bond be a party thereto, while the person in whose behalf a statutory undertaking is executed need not become a party to the instrument.*

12 Am.Jur.2d *Bonds* § 2, 479 (1964) [emphasis added]. *See also id.* § 26, 495-96; *Kimbrell v. Heffner*, 163 S.C. 35, 161 S.E. 175, 177 (1931). "When a bond is given in compliance with the provisions of a statute, the Court will hold liberally the wording and terms of the bond to carry out the statutory purpose." *Pickens County v. Love*, 171 S.C. 235, 250, 171 S.E. 799 (1933).

Watson v. Harmon, 280 S.C. 214, 217-18, 312 S.E.2d 8, 10-11 (Ct. App. 1984). We also note this concept of limiting bonds to a single purpose is generally practiced, and McQuillin states concerning bonds:

If there are two or more separate and distinct propositions to be voted on, each proposition should be stated separately and distinctly, so that a voter may declare his or her opinion as to each matter separately, since several propositions cannot be united in one submission to the voters so as to call for one assenting or dissenting vote on all the propositions.⁵

Elections are invalid where held under such restrictions as to prevent the voter from casting his or her individual and intelligent vote on the object or objects sought to be attained.⁶ The object of the rule preventing the submission of several

³ Fairfax County Taxpayers Alliance v. Bd. of County Supervisors of Fairfax, 202 Va. 462, 117 S.E.2d 753 (1961) was cited by the South Carolina Supreme Court in Sadler v. Lyle, 254 S.E. 535, 176 S.E.2d 290, 295 (1970). See Op. S.C. Att'y Gen., 2003 WL 23138213 (S.C.A.G. December 23, 2003). See also W.J. Donan v. Charleston County Council, 357 S.C. 601, 594 S.E.2d 261 (2003) (our State Supreme Court held, among other things, that the ballot did not conform to the statutory mandate to the extent that it affected the outcome of the election).

and distinct propositions to the people united as one in such a manner as to compel the voter to reject or accept all, is to prevent rejection of popular or necessary propositions that are joined with other measures that are not so popular or necessary.⁷ However, unless otherwise provided, it is proper to submit a number of propositions or questions at one time, providing the ordinance specifies each separate question or proposition as such, and provision is made by which the voters are given an opportunity to vote on each specific proposition or question independent of the other questions submitted at the same time. This may be done on a single ballot, but the ballot must state each proposition separately, so that the voter may be able to express his or her will with reference to each question.⁸ For example, a dual question of: (1) increase of debt limit; and (2) bonding after increase of debt limit, both for a stated purpose, may be submitted on the ballot at one election, if the form of the ballot permits such propositions to be voted on separately.⁹

...
There is considerable difference of judicial opinion as to whether the submission of the question concerning the issuance of bonds for the "purchase" or "erection," or practically equivalent words, of waterworks or the like, combines two or more propositions in a single question so as to be invalid. Some courts hold that such a submission is improper, states two propositions, and renders the election void,¹¹ but the weight of authority is to the contrary.¹⁴

The presumption arises that the acting municipal authorities in all required steps kept within the law, and one who raises the question of invalidity of anything done has the burden of demonstration.¹⁵

However, an election need not be invalidated despite a violation of the single-purpose rule, unless fraud has been perpetrated or corruption or coercion practiced to a degree to have affected the result.¹⁶ A violation of the single-purpose rule does not render bonds invalid per se.¹⁷

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)).⁴ Moreover regarding two or more propositions, it states:

Applying these rules, mandamus to compel an issuance of bonds has been denied where the approval of the electorate was not had,⁶ where the notice of election was insufficient,⁷ where the order for an election was insufficient,⁸ where the election was irregularly held,⁹ and where two or more propositions were voted on as one.¹⁰

15 McQuillin Mun. Corp. § 43:142 (3d ed.) (citing Johnson v. Roddey, 83 S.C. 462, 65 S.E. 626 (1909)).⁵ Moreover, as far back as 1909 when our State Supreme Court decided Ross v. Lipscomb, 83 S.C. 136, 65 S.E. 451 (1909), it denied a mayor a writ of mandamus requiring bonds for lights, waterworks and a sewer system. The case opined the election notice stated that the bonds "shall be issued to extend the

⁴ Please read McQuillin for the full text and for all cites listed therein.

⁵ Please see Footnote #4.

electrical light plant or waterworks in the town of Gaffney or to secure additional water supply for said town." Id. at 454. Our State Supreme Court stated in Ross that:

The intention of the Legislature was that there should be separate and distinct statements as to the amount of the bonds for electric lights and waterworks and as to the amount of those for establishing a sewerage system, ... But, even if the manner in which the different propositions were submitted to the voters is considered apart from the statute, the same result would follow.

In the well-considered opinion in the case of Rea v. City of La Fayette, 130 Ga. 707, 61 S. E. 707, it was ruled that, when several distinct and independent propositions for the issuing of bonds by a municipality are submitted to the qualified voters of the town or city, provision should be made in the submission for a separate vote upon each. They cannot be lawfully combined as a single question. ... Mr. Chief Justice Fish in delivering the opinion of the court used this language: "There may be in a given community such a strong sentiment in favor of incurring a public debt for a particular purpose—for instance, as providing adequate and suitable accommodations for the public schools—that by combining a proposition of this popular character with one to create a public debt for a wholly different purpose, which would not, as an independent measure, commend itself to the unbiased judgment of the voters, the unpopular proposition may obtain the requisite number of votes to insure its adoption. On the other hand, the sentiment against the last-mentioned proposition might be so strong as to cause the voters to defeat the one in favor of the public schools, although, if standing alone, it would have received their hearty support. To present both propositions in a single submission, thus rendering the success of the one dependent upon the success of the other, or the defeat of the one dependent upon the defeat of the other, is clearly unfair to the voters, and not at all conducive to a free and untrammelled expression of public sentiment as to the merits of either. ... Mr. Justice Stockton, delivering the opinion of the court in McMillan v. Lee County, 3 Iowa, 311, said: "The law in our opinion has provided no such mode of submitting these questions to the vote of the people. The evils which might be permitted to grow up under such a system are so obvious and apparent that any extended discussion of the question by us would be superfluous. It may be sufficient to suggest that, if it were allowed, measures in themselves odious and oppressive might by means of it become fastened upon a county which in no other way would have obtained the number of votes requisite to insure their adoption, but by being connected with some other proposition which commended itself to the favor and suffrages of the people by its inherent merits and popularity. They must be adopted or rejected together. After the same manner a measure desirable and necessary to a people of a county may when offered for their adoption be rejected by their votes and fail to become a law by reason of its connection with some other measure or measures unpopular and uncalled for. In either case there is an evil. An unpopular measure may be enforced upon an unwilling people or a necessary and desirable one may be denied them in despite of their wishes. It is sufficient for us to say that the law in our opinion intended to provide for no such system of contradictions In Lewis v. Bourbon County Com'rs, 12 Kan. 186, Mr. Justice Brewer thus stated the rule: "It may be conceded that two or more questions may be submitted at a single election, provided each question may be voted on separately, so that each may stand or fall upon its own merits. But that is a very different matter from tacking two questions together, to stand or fall upon a single vote. It needs no argument to show the rank injustice of such a mode of submission. By it several interests may be combined, and the real will of the people overslaughed. By this combination an unpopular measure may be tacked on to one that is popular, and carried through on the strength of the latter. A necessary matter may be made to carry with it some private speculation for the benefit of a few. Things odious and wrong in themselves may receive the popular approval because linked with propositions whose immediate consummation is deemed essential. It i[s]

against the very spirit of popular elections, that aims to secure freedom of choice, not merely between parties, but also in respect to every office to be filled, and every measure to be determined. A voter at a state election would be shocked to be told that because he voted for a person named for governor on one ticket he must vote for all other persons named thereon; or that, voting for one person, he was to be understood as voting for all. He would feel that his freedom of choice was infringed upon. None the less so it is by such a submission as this."

Ross v. Lipscomb, 83 S.C. 136, 65 S.E. 451, 454-55 (1909) (emphasis added). After our State Supreme Court decided Ross, it also decided other cases consistent with Ross. See, e.g., Johnson v. Roddey, 83 S.C. 136, 65 S.E. 451 (1909).⁶

However, in 1918 the General Assembly passed an act authorizing municipalities to incur bonds for water, sewerage and lighting plants in a single question. Act No. 463, 1918 S.C. Acts 801. That Act became § 4429 of the 1922 Code of Laws. It stated:

Powers of Municipal Corporations—Provisos.—All cities and towns in this State are hereby authorized and empowered to incur bonded indebtedness and to own and possess property to any amount within the discretion of the municipal authorities of such towns and cities for the purposes of purchase, establishment and maintenance of waterworks plants, sewerage systems and lighting plants: Provided, That the question of such purchase or establishment shall be submitted to an election, and no such purchase or construction shall be made except upon a majority of the electors of such cities or towns who are qualified to vote on the bonded indebtedness of said cities or towns; And provided, further, That the question of incurring such indebtedness be submitted with favorable results to the freeholders of such municipalities by petition, and the qualified voters of such municipalities for decision according to the requirements of the Constitution of this State upon the question of other bonded indebtedness.

Act No. 463, 1918 S.C. Acts 801 (emphasis added).⁷ In 1930 the Supreme Court decided Waits v. Town of Ninety-Six, 154 S.C. 350, 151 S.E. 576 (1930). In Waits the Supreme Court of this State held that a bond referendum was "legal, valid and binding obligations of said town" for construction of waterworks and a sewerage system. Id. at 579. The Court held the ballot did not need to have two separate bond questions for water and lights because of the act passed in 1918. Id. Quoting from Waits, the court stated:

However, the Court decided that a separate submission was necessary in that case under the statutes considered in accordance with the rule as laid down in case of Ross v. Lipscomb, 83 S.C. 136, 65 S.E. 451, 137 Am. St. Rep. 794; Johnson v. Roddey, 83 S.C. 462, 65 S. E. 626; Chase v. Gilbert, 83 S.C. 546, 65 S.E. 735; State v. Brasington, 93 S.C. 447, 76 S. E. 1086; Weeks v. Bryant, 99 S.C. 8, 82 S. E. 988. These cases, however, were decided prior to the general statute now Section 4429 of Code of 1922, which was enacted in 1918, and evidently for the express purpose of changing the rule declared in the above cases. At any rate the general statute Sec. 4429 does have that effect, for it is plain that all three

⁶ The Court decided other relevant cases too numerous to mention here.

⁷ See S.C. Code § 5-21-250 authorizing a referendum for bonds for water and sewer purposes to be combined.

purposes, water works, lighting plants, and sewerage systems are tied together; whereas under former provisions of the Code water works plant and sewerage systems were provided for under entirely different sections. ...

Waits v. Town of Ninety-Six, 154 S.C. 350, 151 S.E. 576, 578 (1930) (emphasis added). Thus, it is this Office's opinion that Waits did not change that each separate proposition should be voted on as individual questions, but that it merely complied with the South Carolina's General Assembly's codification that certain utility bonds controlled by municipalities could be voted within the same bond. We believe the language the Court warns of, the "evils" of voting on two or more propositions in the same question, still exist. Ross v. Lipscomb, 83 S.C. 136, 65 S.E. 451, 454-55 (1909). We also believe the Court's concerns are a correct interpretation of the General Assembly's intent since the law passed after Ross only gave municipalities the power to put propositions of bonds for certain utilities as one question. The General Assembly could have instead passed a law authorizing a single bond question for multiple purposes, but it chose to only combine water, sewer and light systems. Act No. 463, 1918 S.C. Acts 801.

Other courts have held that water and sewer systems were so connected that the two propositions could be placed together as one bond question. See, e.g., Henkel v. City of Pevely, 504 S.W.2d 141 (Mo. Ct. App. 1973). Quoting from Henkel, the Court in that case used a test described as a natural relationship between propositions and stated that:

It has long been the law of Missouri that doubleness in propositions submitted to voters in bond elections is to be condemned to prevent the yoking together of distinct things to the end that the two combined may attract a majority of the voters when neither separately might be able to do so. State ex rel. Pike County v. Gordon, 268 Mo. 321, 188 S.W. 88 (banc 1916); State ex inf. Barrett v. Maitland, 296 Mo. 338, 246 S.W. 267 (banc 1922). 64 Am.Jur.2d, Public Securities and Obligations, s 154, pp. 196-197 (1972). But not every proposition which contains multiple submissions is to be condemned. The test whether there is presented a single or multiple proposition is whether or not there exists a natural relationship between the objects united in one proposition and whether or not the several projects are so related that united they form in fact one rounded whole. "The test is whether the several parts of the proposition are plainly and naturally so related or connected that, united, they form in fact but one united, rounded whole, and may be logically viewed as parts or aspects of a single plan. If so, or if they are dependent one upon the other, they may be grouped together and submitted as one proposition; if not, and if they have to do with different subjects which are so unrelated and incongruous and their association so artificial as to constitute logrolling and a fraud upon the voter, separate submissions are required * * *"
State ex rel. Phelps County v. Holman, 461 S.W.2d 689, 691 (Mo. banc 1971) quoting from State ex inf. Taylor ex rel. Schwerdt v. Reorganized School District R-3, 257 S.W.2d 262, 266-267 (Mo.App.1953). Under these tests and under the authorities in this and other states, State ex rel. City of Chillicothe v. Wilder, 200 Mo. 97, 98 S.W. 465 (1906) (submitting water works and electric light plant does not violate rule although upon a new submission the proposition 'should' use the word combined); see cases collected in Annot., 4 A.L.R.2d 617, 654 (1949) and 64 Am.Jur.2d, Public Securities and Obligations, s 156, p. 201 (1972), the rule against doubleness of submission is not violated. A water system and the improvement of

The Honorable Paul Thurmond

Page 9

September 30, 2016

a sewer system complement one another, City of Maryville v. Cushman, 363 Mo. 87, 249 S.W.2d 347, 358 (1952).

Henkel v. City of Pevely, 504 S.W.2d 141, 146-47 (Mo. Ct. App. 1973).

Regarding public parks, our General Assembly has authorized a municipality to issue a bond referendum concerning a public park. See S.C. Code § 51-15-330; 1962 Code § 51-165.22; 1954 (48) 1809. Moreover, South Carolina Code § 4-9-30(5)(a) lists "recreation" as one of the operations of the county and its authority to levy taxes. We presume a court will interpret the General Assembly to include a "park" as a public purpose of the county. Furthermore, South Carolina Code § 4-9-35 requires each county council to establish a county public library system and deems the county public library system a "continuing function of the county." S.C. Code § 4-9-35. Regarding public libraries, this Office has previously opined that a county council must be the one to sponsor a referendum to increase taxes for the benefit of the county library system. Op. S.C. Att'y Gen., 2011 WL 2214064 (S.C.A.G. May 6, 2011); see also S.C. Code § 4-9-39; § 4-9-30(5)(a). Moreover, as you are likely aware, any millage levied by county council for the county public library system must be used for the county public library system. S.C. Code § 4-9-39. Thus, a court will also include a public library as encompassed by the General Assembly as a public purpose of the county. Nevertheless, we did not find evidence in the information you provide that a park provides a service which can fairly be classified within the same purpose as money for county libraries. This is especially true where the General Assembly specifically authorized a bond referendum for a library pursuant to South Carolina Code § 4-9-39. Thus, a bond question for a county library is governed by a separate statute than one for a park. Id. This further supports your concerns of combining the two questions into one question on the referendum ballot.

Conclusion:

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 and that South Carolina Code § 7-13-400 specifies each question or issue be listed in the singular on the ballot. Moreover, we believe your concerns are further supported by our State's case law and general bond referendum case law as expressed by McQuillin. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,

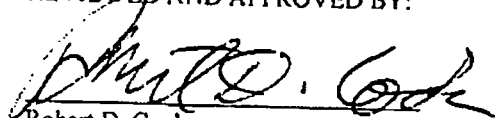


Anita S. Fair

Assistant Attorney General

The Honorable Paul Thurmond
Page 10
September 30, 2016

REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "R. D. Cook", written over a horizontal line.

Robert D. Cook
Solicitor General

Exhibit 2

LFD-RECORDED
2016 OCT 13 PM 12:56
CHERYL DANIEL
CLERK OF COURT
DORCHESTER COUNTY

FILED-RECORDED
2016 OCT 13 PM 12:56

CHERYL L. HALL, A/C
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

ORDINANCE NUMBER 16-03

COUNTY OF DORCHESTER

ORDERING A REFERENDUM PURSUANT TO THE COUNTY BOND ACT FOR THE PURPOSE OF DETERMINING WHETHER DORCHESTER COUNTY, SOUTH CAROLINA SHALL BE AUTHORIZED TO ISSUE NOT EXCEEDING \$43,000,000 GENERAL OBLIGATION BONDS FOR THE PURPOSES OF FUNDING NEW LIBRARY FACILITIES, PARKS, RECREATIONAL FACILITIES AND HIKING, BIKING AND PEDESTRIAN TRAILS

WHEREAS, it is provided in Section 14 of Article X of the Constitution of South Carolina that the political subdivisions of the State shall have power to incur general obligation debt without limitation if the

same be authorized by a majority vote of the qualified electors of the political subdivision voting in a referendum authorized by law; and

WHEREAS, statutory authorization for the holding of the election and the issuance of bonds is provided by Sections 4-15-10 to 4-15-180, inclusive, of the Code of Laws of South Carolina 1976, as amended (herein called the "County Bond Act"); and

WHEREAS, the County Council of Dorchester County, South Carolina (the "County Council"), the governing body of Dorchester County, South Carolina (the "County"), desires to fund the acquisition of land

and the design and construction of new library facilities in Summerville and North Charleston (the "Library Projects") and to fund recreational facilities, including the development of the Dorchester County Courthouse Park in St. George, the Ashley River Park and the Pine Trace Natural Area in Summerville, and the development of hiking, biking and pedestrian trails, together with associated infrastructure, at various locations throughout the County (the "Recreation Projects" and, together with the

Library Projects, the "Projects"); and

WHEREAS, the County Council further desires to fund the Library Projects through the issuance of not exceeding \$30,000,000 of general obligation bonds of the County and to fund the Recreation Projects

through the issuance of not exceeding \$13,000,000 of general obligation bonds of the County provided that

such bonds are authorized by a majority vote of the qualified electors of the County voting in a referendum;

and

WHEREAS, the County Council has now determined to order a referendum for the purpose of seeking voter approval to issue not exceeding \$30,000,000 of general obligation bonds of the County in order

2

to fund the Library Projects and not exceeding \$13,000,000 of general obligation bonds of the County in order to fund the Recreation Projects.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF
DORCHESTER COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1.

A referendum pursuant to the County Bond Act is hereby ordered to be held in Dorchester County, South Carolina at the general election on Tuesday, November 8, 2016 (the "Referendum"), at which there

shall be submitted to the qualified electors of the County the following question:

REFERENDUM QUESTION AUTHORIZATION FOR ISSUANCE OF NOT TO EXCEED \$30,000,000 GENERAL OBLIGATION BONDS TO FUND NEW LIBRARY FACILITIES AND NOT TO EXCEED \$13,000,000 GENERAL OBLIGATION BONDS TO FUND PARKS, RECREATIONAL FACILITIES, AND HIKING, BIKING AND PEDESTRIAN TRAILS

Shall Dorchester County, South Carolina be authorized to issue general obligation bonds in an amount not to exceed \$30,000,000 for funding the acquisition of land and the design and construction of new library facilities in Summerville and North Charleston and general obligation bonds in an amount not to exceed \$13,000,000 for funding recreational facilities, including the development of the Dorchester

County Courthouse Park in St. George, the Ashley River Park and the Pine Trace Natural Area in Summerville, and the development of hiking, biking and pedestrian trails, together with associated infrastructure, at various locations throughout the County?

Section 2.

A certified copy of this Ordinance shall be delivered to the Dorchester County Board of Elections and Voter Registration which shall be requested to conduct the Referendum at the general election held on

November 8, 2016, and they shall be requested to direct the Managers of Election to conduct this Referendum and thereafter to certify the results of such Referendum to this County Council.

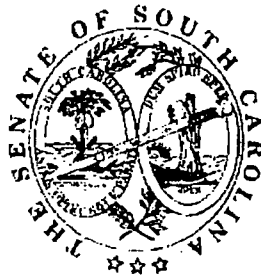
Section 3.

A Notice of Referendum, substantially in the form attached hereto as Exhibit A, shall be published in a newspaper published in the County and in compliance with the provisions of Sections 7-13-35 and 4-15-50 of the Code of Laws of South Carolina 1976, as amended (or any other applicable statutory provisions enacted subsequent to the date of enactment of this Ordinance) not less than 60 days prior

Exhibit 3

FILED-RECORDED
2016 OCT 13 PM 12:56
CLERK OF COURT
WORCHESTER COUNTY

PATIL THURMOND
SENATE IS DEPENDENT
JANET MURPHY
OFFICE OF THE SENATE CLERK
1000 ASSEMBLY STREET, STE 501
COLUMBIA, SC 29201
803.732.4000
803.732.4000



FILED RECORDED
2016 OCT 13 PM 12:54
CLERK OF COURT
DORCHESTER COUNTY

Robert D. Cook
Deputy Attorney General
Office of the Attorney General
1000 Assembly Street, Ste 501
Columbia, South Carolina 29201

September 8, 2016

Dear Mr. Cook:

I am writing to ask you to provide us as soon as possible an Attorney General Opinion about the legality of the wording of a bond referendum Dorchester County Council has voted to hold in the general election to be held on November 8, 2016.

As shown in the ordinance dated 7/18/16 attached as Exhibit #1, Dorchester County Council has voted to hold a referendum on November 8, 2016, on whether Dorchester County should issue bonds for TWO expressly stated different purposes and amounts (i.e., \$30 million for libraries, \$13 million parks) but pursuant to only ONE question. The ordinance stating the wording of the question for this referendum can be found also at <https://www.dorchestercounty.net/Modules/ShowDocument.aspx?documentid=11660>.

This Ordinance cites as authority for this referendum Article X, Section 14, of the South Carolina Constitution, and the County Bond Act, SC Code Section 4-15-10 to 4-15-180. Neither of those authorities appears to state expressly whether a referendum question to be voted on as a prerequisite for the issuance of bonds pursuant to these authorities may contain more than one purpose or item in a question to be voted on, or whether there must be a separate question voted on for each purpose or item. However, both authorities refer to the "purpose" of an approved bond in the singular and not in the plural, thereby perhaps evidencing the intent to require a separate vote for each specific different purpose for which the bonds are issued.

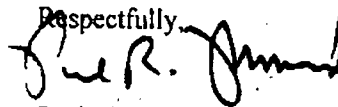
For example, Article X, Section 14(4) states that "[g]eneral obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision" (emphasis added). S.C. Code Section 4-15-20 states that "the term 'authorized purpose' shall mean any purpose for which the particular county might, under the applicable constitutional provisions, issue bonds or levy taxes" (emphasis added). Section 4-15-30(A) states that "[t]he authorities of a county may issue general obligation bonds of the county to defray the cost of any authorized purpose . . . if: (1) the election required by this chapter as a condition precedent to the issuance of bonds is favorable . . . (emphasis added)."

Taxpayers questioning the legality of combining these two different items into one referendum question appear to believe that each question should stand on its own merits and not affect or cause a favorable or unfavorable vote on the other. Further, some taxpayers express fear that if these two items can be combined into one referendum question, multiple other unrelated items, perhaps without limit, could be combined into one referendum question, each affecting or even determining the outcome of the vote on the other items and rendering meaningless a decision about each item on its individual merits. They argue that if more than one purpose were allowed in a question to be voted on in the referendum, the law would have read that election approval must be for authorized purposes [plural] and not for an authorized purpose [singular]. Again, they fear that allowing two items in one question in a referendum to justify the issuance of bonds for two different purposes would be a precedent for allowing an unlimited number of items to be combined into one question in a referendum, and do not think the Constitution or the Legislature intended to give County Council the authority to combine multiple separate requests for bond issuance authority into one referendum question.

Please let us know whether it is legal to combine both of the above stated requests for authorization to issue bonds -- for libraries and for parks -- into one referendum question or if a separate referendum question must be stated and voted on for each of the two separate purposes.

Thank you very much for your assistance with this matter.

Respectfully,



Paul Thurmond
State Senator

STATE OF SOUTH CAROLINA

ORDINANCE NUMBER 16-03

COUNTY OF DORCHESTER

ORDERING A REFERENDUM PURSUANT TO THE COUNTY BOND ACT FOR THE PURPOSE OF DETERMINING WHETHER DORCHESTER COUNTY, SOUTH CAROLINA SHALL BE AUTHORIZED TO ISSUE NOT EXCEEDING \$43,000,000 GENERAL OBLIGATION BONDS FOR THE PURPOSES OF FUNDING NEW LIBRARY FACILITIES, PARKS, RECREATIONAL FACILITIES AND HIKING, BIKING AND PEDESTRIAN TRAILS

WHEREAS, it is provided in Section 14 of Article X of the Constitution of South Carolina that the political subdivisions of the State shall have power to incur general obligation debt without limitation if the same be authorized by a majority vote of the qualified electors of the political subdivision voting in a referendum authorized by law; and

WHEREAS, statutory authorization for the holding of the election and the issuance of bonds is provided by Sections 4-15-10 to 4-15-180, inclusive, of the Code of Laws of South Carolina 1976, as amended (herein called the "County Bond Act"); and

WHEREAS, the County Council of Dorchester County, South Carolina (the "County Council"), the governing body of Dorchester County, South Carolina (the "County"), desires to fund the acquisition of land and the design and construction of new library facilities in Summerville and North Charleston (the "Library Projects") and to fund recreational facilities, including the development of the Dorchester County Courthouse Park in St. George, the Ashley River Park and the Pine Trace Natural Area in Summerville, and the development of hiking, biking and pedestrian trails, together with associated infrastructure, at various locations throughout the County (the "Recreation Projects" and, together with the Library Projects, the "Projects"); and

WHEREAS, the County Council further desires to fund the Library Projects through the issuance of not exceeding \$30,000,000 of general obligation bonds of the County and to fund the Recreation Projects

through the issuance of not exceeding \$13,000,000 of general obligation bonds of the County provided that

such bonds are authorized by a majority vote of the qualified electors of the County voting in a referendum;

and

WHEREAS, the County Council has now determined to order a referendum for the purpose of seeking voter approval to issue not exceeding \$30,000,000 of general obligation bonds of the County in order

2

to fund the Library Projects and not exceeding \$13,000,000 of general obligation bonds of the County in order to fund the Recreation Projects.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF
DORCHESTER COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1.

A referendum pursuant to the County Bond Act is hereby ordered to be held in Dorchester County, South Carolina at the general election on Tuesday, November 8, 2016 (the "Referendum"), at which there

shall be submitted to the qualified electors of the County the following question:

REFERENDUM QUESTION AUTHORIZATION FOR ISSUANCE OF NOT TO EXCEED \$30,000,000 GENERAL OBLIGATION BONDS TO FUND NEW LIBRARY FACILITIES AND NOT TO EXCEED \$13,000,000 GENERAL OBLIGATION BONDS TO FUND PARKS, RECREATIONAL FACILITIES, AND HIKING, BIKING AND PEDESTRIAN TRAILS

Shall Dorchester County, South Carolina be authorized to issue general obligation bonds in an amount not to exceed \$30,000,000 for funding the acquisition of land and the design and construction of new library facilities in Summerville and North Charleston and general obligation bonds in an amount not to exceed \$13,000,000 for funding recreational facilities, including the development of the Dorchester

County Courthouse Park in St. George, the Ashley River Park and the Pine Trace Natural Area in Summerville, and the development of hiking, biking and pedestrian trails, together with associated infrastructure, at various locations throughout the County?

Section 2.

A certified copy of this Ordinance shall be delivered to the Dorchester County Board of Elections and Voter Registration which shall be requested to conduct the Referendum at the general election held on

November 8, 2016, and they shall be requested to direct the Managers of Election to conduct this Referendum and thereafter to certify the results of such Referendum to this County Council.

Section 3.

A Notice of Referendum, substantially in the form attached hereto as Exhibit A, shall be published in a newspaper published in the County and in compliance with the provisions of Sections 7-13-35 and 4-15-50 of the Code of Laws of South Carolina 1976, as amended (or any other applicable statutory provisions enacted subsequent to the date of enactment of this Ordinance) not less than 60 days

prior

Exhibit 4

FILED-RECORDED
2016 OCT 13 PM 12:57

CLERK OF COURT
WORCHESTER COUNTY

2016 OCT 13 PM 12:57

CLERK OF COURT
DORCHESTER COUNTY
October 3, 2016

John Frampton
Dorchester County Attorney
201 Johnson Street
St. George, South Carolina 29477

Dear John:

I hope you are well. I am writing regarding an upcoming referendum in Dorchester County and a copy of an Attorney General Opinion ("AG Opinion") dated September 30, 2016, sent to Senator Paul Thurmond. Mike Rose and I represent clients with standing to challenge the referendum as contrary to the law of this state.

The AG Opinion concludes that, based on South Carolina case law and general bond law, it is impermissible for Dorchester County Council to combine into one question in a referendum to be held on November 8, 2016 the two questions of whether Dorchester County should issue bonds for both libraries in the amount of \$30 million and for parks in the amount of \$13 million.

Specifically, the AG Opinion states:

[A] court likely will 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 and that South Carolina Code & 7-13-400 specifies each question or issue be listed in the singular on the ballot.
AG Opinion, at page 9.

In order for Dorchester County to comply with the conclusions, rationales and authorities stated in that AG Opinion, I am writing on behalf of our clients to ask you whether Dorchester County Council either will (1) change its ordinance to state the libraries and parks issues as two different questions on the November 8, 2016, or, if it will not or cannot do so, (2) cancel now or invalidate the results of the November 8, 2016 referendum on these two issues currently scheduled and, as a substitute, in any subsequent referendum, cause the two issues to be voted on as two separate questions, instead of as one combined question.

If Dorchester County Council does not promptly take the corrective action requested above to comply with the law stated in the AG Opinion, our clients can only conclude that they have no means to obtain compliance with the law but to file a lawsuit seeking a declaratory judgment, an injunction and attorney fees, and promptly will do so.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Gerard E. Ziegler; Brenda Barrington III;
James Stephen Greene, 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,

Plaintiffs,

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,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT**

C.A. No.: 2016-CP-18-1975

ANSWER OF ALL DEFENDANTS

Defendants Dorchester County (the "County"), Dorchester County Council ("Council"),
and all Council members *ex officio* ("Members") answer the Complaint as follows.

1. The Defendants deny all allegations of the Complaint that they do not admit below. The Defendants base the denial of each allegation either on information known to the Defendants or on the Defendants' lack of knowledge sufficient to form a belief. If any assertions or conclusions of law contained in the Complaint require a response, the Defendants deny each such assertion or conclusion.
2. The Defendants admit Paragraph 3 of the Complaint.
3. With respect to Paragraph 4 of the Complaint, the Defendants admit that this Court has jurisdiction over the subject matter of, and the parties to, this action, and that venue here

is proper, all under S.C. Code Ann §15-53-10 *et seq.*, the Uniform Declaratory Judgment Act, but deny that the other statutes and cases cited in Paragraph 4 constitute additional bases of jurisdiction.

4. Paragraphs 5, 6, 7, 8, and 9 of the Complaint make certain allegations regarding what the Plaintiffs contend would be the case “if the referendum passes that is the subject of this lawsuit.” Defendants note and aver that, on November 8, 2016, the voters of the County voted favorably on a referendum question (the “Referendum”) to authorize the County to issue general obligation bonds in the amounts of \$30 million for libraries and \$13 million for parks. The tally was approximately 60.46% in favor and 39.54% opposed, with a total of 56,635 votes cast on the question. There were 62,567 votes cast in the County in the United States Presidential Election held that same day.

5. The Defendants further note and aver that:

- (a) The bonds that are the subject of the Referendum would be general obligation bonds of the County, secured by the full faith and credit of the County and payable from *ad valorem* property tax revenues, under S.C. Const. art. X, §14 and S.C. Code Ann. §4-15-10 *et seq.* (1986) (the “County Bond Act”).
- (b) Under S.C. Const. art. X, §14, the County can issue general obligation debt in an amount up to 8% of the total assessed value of taxable property in the County; however, bonds authorized by the voters of a County are not constrained by, and do not count against, that debt limit.
- (c) Currently, the County does not have sufficient available constitutional debt limit to permit the proposed bond issuance without a referendum.

- (d) Passage of the referendum does not, however, require the authorized bonds to be issued; their issuance is still subject to discretionary action of Council under the County Bond Act, which Council may exercise at any time within five years after the favorable referendum. S.C. Const. art. X, §14.
6. With respect to Paragraph 17 of the Complaint, the Defendants admit that the County is “a body politic and corporate” of the State of South Carolina pursuant to S.C. Code §4-1-10 (1986), but deny that the County is a corporation.
7. The Defendants admit the allegations of Paragraph 18 through 25 of the Complaint.
8. With respect to the Constitutional and statutory provisions cited in Paragraphs 26 through 31 of the Complaint, the Defendants refer to the texts of those provisions and deny any inconsistent or additional allegations regarding them.
9. With respect to Paragraph 32 of the Complaint, the Defendants admit that the Office of the Attorney General of the State of South Carolina issued an opinion on September 30, 2016 (the “Opinion”) related to the legal question that this case presents to this Court, and that what purports to be a copy thereof is attached to the Complaint as Exhibit 1. With respect to the content of the Opinion, the Defendants refer to the Opinion itself and deny any inconsistent or additional allegations regarding it. The Defendants note and aver that the Opinion is not binding upon this Court and is not entitled to any deference from this Court. The Defendants aver that the legal conclusion stated in the Opinion is incorrect for reasons that will be established in subsequent motions or at trial, including but not limited to the Opinion’s reliance on cases decided before counties (including the County) were given home-rule powers by amendment of the South Carolina Constitution; the Opinion’s

reliance on a case that has nothing to do with a referendum and concerns only a private party's surety bond, rather than a bond evidencing a governmental debt obligation; and the Opinion's having completely overlooked, neither discussing nor even citing, South Carolina's long-standing statute on the relevant issue of interpretation.

10. With respect to Paragraph 33 of the Complaint, the Defendants admit that Council passed Ordinance No. 16-03 (the "Ordinance"), on July 18, 2016, and that an incomplete portion of the Ordinance is attached to the Complaint as Exhibit 2. With respect to the content of the Ordinance, the Defendants refer to the Ordinance itself and deny any inconsistent or additional allegations regarding it.
11. With respect to Paragraph 34 of the Complaint, the Defendants admit that South Carolina State Senator Paul Thurmond, by letter dated September 8, 2016 (the "Request"), requested an opinion from the Office of the Attorney General of the State of South Carolina related to the legal question that this case presents to this Court, and that what purports to be a copy thereof is attached to the Complaint as Exhibit 3. With respect to the content of the Request, the Defendants refer to the Request itself and deny any inconsistent or additional allegations regarding it.
12. With respect to Paragraph 35 of the Complaint, the Defendants admit that the Office of the Attorney General of the State of South Carolina issued an opinion on September 30, 2016 (the "Opinion"). With respect to the content of the Opinion, the Defendants refer to the Opinion itself and deny any inconsistent or additional allegations regarding it.
13. With respect to Paragraph 36 of the Complaint, the Defendants admit that Plaintiffs' counsel W. Andrew Gowder, Jr., by letter dated October 3, 2016, (the "Demand"),

demanding that Council amend the Ordinance or cancel or invalidate the Referendum called by the Ordinance, and that an incomplete portion of what purports to be a copy of the Demand is attached to the Complaint as Exhibit 4. With respect to the content of the Demand, the Defendants refer to the Demand itself and deny any inconsistent or additional allegations regarding it. The Defendants admit that Council did not amend the Ordinance or cancel or invalidate the Referendum pursuant to the Demand.

14. The Defendants further note and aver that, at the time of the Demand:
 - (a) Council's call for the Referendum was complete with the passage of the Ordinance on July 18, 2016.
 - (b) Thereafter, none of the Defendants was responsible for holding the Referendum.
 - (c) That duty belonged to the Board of Elections and Voter Registration of Dorchester County (the "Election Board") pursuant to S.C. Code Ann. §7-5-10(C) (2016 Supp.), S.C. Code Ann. §7-13-70 (1976) [repealed by Act No. 196, 2014 S.C. Acts ____], and S.C. Code Ann. §7-13-10 (1976).
 - (d) The Election Board and its members are not appointed by, are not controlled by, are not removable by, and are not agents of any of the Defendants, pursuant to S.C. Code Ann. §7-5-10(A) (2016 Supp.).
 - (e) To the Defendants' knowledge, there is no provision in the South Carolina Code of Laws subjecting the independent Election Board to a subsequent direction from Council to remove a question once the Election Board has placed it on the ballot. The form of a ballot question to be voted upon at the time of a general election must be final and submitted to the Election Board not later than August 15 of the year in which the general election is to be held. S.C. Code Ann. §7-13-355 (Supp.

2016). The Referendum was to be held on the general election date (November 8) of 2016. The August 15, 2016, deadline had passed more than five weeks before the Plaintiffs sent the Demand.

(f) The Election Board had no power to change the form of the question submitted. *Douan v. Charleston County Council*, 357 S.C. 601, 594 S.E.2d 261 (2003).

(g) To the Defendants' knowledge, the Plaintiffs never made any demand on the Election Board with respect to the holding of the Referendum.

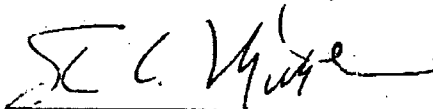
15. The Complaint's assertions and conclusions of law that Council's determination of the form of question for the Referendum was without legal authority, that that form of question was unlawful, that the Referendum therefore does not authorize the issuance of any bonds by the County, and that the issuance of any bonds pursuant to the Referendum would subject the Plaintiffs to unlawful taxation are incorrect as matters of law. Because each of the Complaint's requests for relief depends on one or more of those assertions and conclusions, the Complaint fails to state facts sufficient to constitute a cause of action.

Having fully answered the Complaint, the Defendants request that this Court deny each request for relief made therein by the Plaintiffs, that this Court dismiss the Complaint of the Plaintiffs with prejudice, and that this Court grant to the Defendants such further relief as shall be shown lawful and proper.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By:



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Counsel for Defendants

December 19, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FIRST JUDICIAL CIRCUIT

2016-CP-18-1975

Gerald 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,))

Plaintiffs,))

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,))

Defendants.))

August 24, 2017
St. George, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

A P P E A R A N C E S:

Attorney for the Plaintiff
Andy Gowder, Esquire
Mike Rose, Esquire

Attorney for the Defendant
Steve Matthews, Esquire

Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E X

MOTIONS HEARING

WITNESS/DESCRIPTION

PAGE NO.

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter 55

1 THE COURT: What's coming to Dorchester County if
2 you can tell me that?

3 MR. FRAMPTON: Sportsman Boats --

4 MR. MATTHEWS: Is doing an expansion.

5 MR. FRAMPTON: -- expansion.

6 THE COURT: Oh, yeah. Okay. Okay. Good. Okay.

7 MR. MATTHEWS: Here on behalf of the county are
8 council member, Larry Hargett; the county administrator, Mr.
9 Jason Ward; Mr. Ward's deputy, Charles Potts; in addition,
10 Eric Davis, who is director of parks and recreation; Ms.
11 (inaudible), who's the library director of operations; and,
12 let's see, Mr. Joe (inaudible) of Charleston Director of
13 Elections and I've got everyone, I think.

14 And, Your Honor, as you mentioned this is a motion for
15 a judgment on the pleadings under Rule 12(c) by the
16 defendants. It's made on the basis that there's really only
17 one question and that's a legal question with regard to the
18 legality of the form of the ballot referendum. Some time
19 back the elected representatives of Dorchester County
20 decided that it would be a good thing to undertake some
21 construction to improve the quality of life for the citizens
22 of Dorchester County. Included in the proposed construction
23 were new library facilities and new parks and recreation
24 facilities. Thirty million was the cost estimated for the
25 library, thirteen million for library -- excuse me -- for

1 parks and recreation. In order to finance that with general
2 obligation debt of the county, it was necessary that the
3 county have referendum in order to exceed the constitutional
4 eight percent debt limit. And so the county council, back
5 in July of last year, called for a referendum to do exactly
6 that. It was in their Ordinance Number 1603 and it called
7 for a referendum to be held in the General Election in 2016,
8 the Presidential Election date on November the 8th.

9 The question that was proposed and on which the
10 referendum was held was as follows: Shall Dorchester
11 County, South Carolina be authorized to issue general
12 obligation bonds in an amount not to exceed thirty million
13 dollars for funding the acquisition of land and the design
14 and construction of new library facilities in Summerville in
15 North Charleston and general obligation bonds in an amount
16 not to exceed thirteen million dollars for funding
17 recreational facilities, including the development of the
18 Dorchester County Courthouse Park at St. George, the Ashley
19 River Park in the Pine Trace Natural Area of Summerville and
20 the development of hiking, biking and pedestrian trails
21 together with associated infrastructure at various locations
22 throughout the county. That referendum question went on the
23 ballot and was voted on by the electors of Dorchester County
24 on November the 8th. In that election, the referendum in
25 question passed by a little bit better than sixty percent of

1 the vote, It was a sixty/forty -- a sixty-one/thirty-nine
2 split. There was a fairly high turnout. The overall
3 turnout was approximately sixty-three percent, but not
4 everybody votes on everything on the ballot. So the
5 Presidential Election didn't have quite that high an amount.
6 The Senatorial Election didn't have quite that high amount.
7 The actual turnout on the referendum question was
8 approximately fifty-seven percent, still a relatively high
9 turnout. And, as I said I've got --

10 THE COURT: Mr. Matthews, do you mind if I
11 interrupt and ask a couple questions as you go along?

12 MR. MATTHEWS: Certainly, absolutely.

13 THE COURT: The fifty-seven percent, you mean
14 fifty-seven percent of the registered voters voted on this
15 issue?

16 MR. MATTHEWS: That's correct, Your Honor. In
17 fact, I can provide to you -- we cited in our memorandum the
18 --

19 THE COURT: That's good. I just needed to note
20 that. You can go ahead.

21 MR. MATTHEWS: This is just the election
22 commission printout that shows the number of registered
23 voters. And I've got a copy for them as well.

24 THE COURT: All right. Thank you, sir.

25 MR. MATTHEWS: The number of registered voters in

1 the county and the number who voted on particular questions.
2 And you'll see that it shows registered voters ninety-nine
3 thousand seven-eight-nine up at the top. Total ballots cast
4 sixty-three one thirty-eight. And the voter turnout was
5 sixty-three point two-seven on various -- The Presidential
6 vote, etcetera, there were different numbers. But it shows
7 that on the bond referendum fifty-six thousand six-hundred
8 thirty-five turned out or actually voted on.

9 MR. GOWDER: And, Your Honor, I certainly note
10 that this is useful background. I don't want to interrupt
11 Mr. Matthews but I would point out that this is for judgment
12 on the pleadings, not on --

13 THE COURT: Oh, no, no. I understand. I
14 understand. I was just kind of curious myself.

15 MR. GOWDER: Yes, sir.

16 THE COURT: Okay.

17 MR. MATTHEWS: And, Your Honor, with regard to the
18 judgment on the pleadings, you may have noticed that the
19 results of the referendum were pointed out in the answer,
20 which is part of the pleadings. And on a 12(c) motion, it
21 is appropriate for the Court to take judicial notice of
22 uncontested facts, including public records on government
23 websites.

24 THE COURT: That's fine.

25 MR. MATTHEWS: So with regard to that we had a

1 significant turnout and a very high vote in favor of sixty
2 to forty. The question that comes up and was brought by
3 this lawsuit is whether or not in that question that was
4 posed to the voters, it was appropriate to ask about both
5 the bonds for the library facilities and the bonds for the
6 park facilities.

7 The plaintiffs argument based on an attorney general's
8 opinion is that is not so appropriate to do that. So one of
9 the first questions is -- before this Court what is the
10 weight, what is the authority of the attorney general's
11 opinion. And the attorney general's opinion is not binding
12 on this Court. The Supreme Court of South Carolina as
13 recently as three years ago in State versus Ramsey, a case
14 that's cited in our memorandum but not quoted, the court
15 there said it's well settled that although it may be
16 persuasive authority, an attorney general's opinion is not
17 binding on this court and because we disagree with the
18 reasoning, we decline to adopt it. So the whole question is
19 whether or not the court agrees with the reasoning, which
20 means an independent judgment by the court, that is, in
21 fact, required by the Constitution, Article V, Section 1,
22 which creates a unified judicial system in which is vested
23 the whole judicial power of the state, so the deference on
24 questions of constitutional law or statutory construction to
25 a non-judicial body would be inconsistent with the

1 constitutionally established independence of the judiciary.
2 In reaching the conclusion that the two purposes -- if there
3 are two purposes, we'll get to that later -- but the two
4 items of library bonds and park bonds could be combined into
5 a single question.

6 The attorney general relied on a few phrases in Section
7 14.4 of Article X of the Constitution and Chapter 15 of
8 Title IV of the State Code. Article X of the Constitution
9 is the article on finances, debt and taxation. And Section
10 14 of Article X is the provision that relates to the general
11 obligation debt of local bodies; counties, municipalities
12 and special purpose districts, for example. Title XV --
13 Excuse me. Chapter 15 of Title IV of the State Code is the
14 county bond act, which is the statutory framework for the
15 issuance of general obligation bonds by the county. Several
16 places there, there's a reference to the word purpose in a
17 singular form. And the attorney general concluded that
18 because it is singular in form, you cannot have two purposes
19 in a single question. And also found that there was a
20 general common law principal event against combining two
21 issues into a single question for voter approval.

22 We think the attorney general was mistaken in that for
23 six reasons that are outlined in our memorandum and I'll go
24 through those and highlight a few aspects of those as we go
25 forward. First, there is a statute actually on point that

1 controls this issue, which the attorney general's opinion
2 completely overlooks or ignores. Section 2-7-30 of the
3 state code states the words person and party, and any other
4 word in quoting a singular number used in any act or joint
5 resolution shall be held to include the full. So where it
6 says purpose, that would include purposes.

7 You received yesterday evening a memorandum from the
8 plaintiffs suggesting that the constitutional provision is
9 neither a statute nor a resolution and in effect was
10 anticipated. In our memorandum we said if it's objected
11 that Article X is not a statute or joint resolution, it must
12 be recalled. Article X was formulated and proposed by joint
13 resolution. The first appearance of the language that's now
14 in constitution appeared in a joint resolution of the
15 general assembly, which was resolution number 750 of 1976.
16 Following the vote of the electorate in the state and
17 approving that amendment, the amendment was then ratified by
18 a statute, which was act number 71 of 1977. So that the
19 objection that the language wasn't -- you know, that the
20 constitution is not a statute or a resolution really is not
21 apropos here because the language began as a resolution, so
22 that the statute clearly control. With regard to the impact
23 of that, there is a case not cited in our memorandum but
24 it's State versus Sachs, S-A-C-H-S 1975. It's 264 SC 541 or
25 216 S.E.2d 501. And there was a statute that called for the

1 creation of a particular public office, that being a
2 ministerial recorder, and use that a singular there was a
3 ministerial recorder in a county and it referred to the
4 person elected. And the question came up could a county
5 have more than one such entity. And the court in State
6 versus Sachs said the question of the proper construction of
7 this language has been resolved. And it then quoted the
8 statute 2-7-30 to say that even though the form was
9 singular, it included the plural and that a county in that
10 case -- I think it was Richland County -- could, in fact,
11 have more than ministerial recorder. Interestingly, that
12 argument was made by the attorney general in 1975.

13
14 The second issue with the attorney general's opinion is
15 that it ignored other evidence in both the constitution and
16 in statutes that use of the singular form not conclude
17 consideration of multiple projects. First among these is
18 Article XVI, Section 2 of the Constitution, which has to do
19 with the amendment of the South Carolina Constitution. And
20 in there it says that each separate amendment has to be
21 posed as a separate question and voted upon separately.

22 So clearly in the constitution when it wants to say you
23 have to have them as separate questions for each separate
24 form for them to be considered, they have to be broken out.
25 They know how to do that. There is no such clarity in

1 Article X, Section 14.4. There's simply the use of a
2 singular word purpose. In addition to that, the definition
3 of purpose in the county bond act, it defines authorized
4 purpose as any purpose for which the county might, under the
5 applicable constitutional provisions issue bonds or levy
6 taxes. Any purpose. Using the word any means one or more.
7 That's clear from case law of the state going way back.
8 There are two cases cited in our memorandum, State versus
9 Antonio and also Lucas v. Berringer. Lucas v. Berringer was
10 actually a part of the underpinning of the attorney
11 general's opinion here. But in that it says the word any
12 and its common acceptation means one or more and our Supreme
13 Court has so defined it. Consequently, an authorized
14 purpose, singular, under the county bond act is also plural.
15 The attorney general also failed to draw a distinction -- or
16 attempted to draw a distinction between the county bond act
17 and the capital project sales tax. In there they said look,
18 in the capital project sales tax, the general assembly
19 specifically authorized combining more than one project into
20 a single ballot question. So clearly they didn't mean to do
21 it in the much older county bond act.

22 First of all, the two are separate by a significant
23 amount of time, but they've overlooked the fact that in the
24 capital project sales tax act at 4-10-330, it says the
25 purpose, singular, for which the proceeds are to be used may

1 include projects, plural. So that the purpose can encompass
2 multiple projects, a singular purpose can encompass multiple
3 projects even under the capital project sales tax act, which
4 his what they were trying to distinguish there.

5 The third issue with regard to the attorney general's
6 opinion is that it focused on provisions related to the
7 issuance of bonds rather than to the referendum requirement.
8 There are several stages in the course of issuing bonds.
9 First, you have to have authorization constitutionally to do
10 it. And there is -- used to be the endeavor of an election
11 of any bond issuance. With the 1977 modifications to
12 Article X, there is a set bond limit eight percent of the
13 general -- eight percent of the assessed value of taxable
14 property within the county, for these purposes. If you want
15 to go beyond that, you have to have a referendum. Once
16 you've had the referendum, then the governing body of the
17 county has to come in and authorize the issuance of the
18 bonds by an ordinance and then sell the bonds. The
19 provision that the attorney general's opinion relies on and
20 that the plaintiff's -- relies on is this in Section 14.4 of
21 Article X. General obligation debt may be incurred only for
22 a purpose, which is a public purpose and which is for the
23 purpose of the applicable subdivision. That is the
24 incurrence of the debt, which is the actual issuance of the
25 debt. That's in 14.4 of Article X. The referendum provision

1 isn't until subsection (6), which is if general obligation
2 debt authorized by a majority vote, then there are no
3 restrictions on incurring it, except as above. So that
4 doesn't -- the 14.4 is not a restriction on the referendum.
5 It's a restriction on the incurrence of the debt. Moreover,
6 if you apply the necessarily singular rule to the issuance
7 of bonds, you come up with an even more difficult, if not
8 absurd position, which is that it would lead to or result in
9 an inefficient, costly and impractical. So, for example,
10 even if there had been a separate referendum on parks and a
11 separate referendum on library facilities, reading it the
12 way the attorney general does would mean that you would have
13 to do two separate bond issuances, have two separate
14 offerings, two separate underwriters, two separate
15 disclosure documents, two separate bond councils, two
16 separate sets of lawyers and fees and financial advisors.

17 There's absolutely no reason and it's certainly not the
18 practice in the state to do a separate bond issue for each
19 small amount that's there. In that there is a parallel
20 provision in the constitution where we can see exactly what
21 the general assembly meant, what they intended. And it was
22 not to have the authorization, in this case a referendum,
23 broken out into multiple pieces. Section 14, as I mentioned
24 is the local government bond indebtedness section. Section
25 13 is the State of South Carolina bond indebtedness section.

1 And 13.3 mirrors 14.4. It says general obligation debt here
2 at the state may not be incurred except for a public
3 purpose. Singular, just like in Section 14. So the same
4 restriction on singularity, if there is one that applies to
5 the local governments, applies to the state government. So
6 does the State in issuing bonds restrict itself to covering
7 one topic at a time. And the answer there is no. The
8 changes that were made in Article X came in -- they were
9 ratified May the 4th of 1977. About six weeks later in June
10 of 1977, the general assembly the same one that had ratified
11 Article X adopted an amendment to the state bond act. The
12 state bond act is act number 1377 of 1968. And whenever the
13 state needs to do more bonds, they just tack onto that. In
14 1977 act number 249, the general assembly duly constricted
15 by its own handiwork in Section 13.3 authorized the issuance
16 of bonds. And it wasn't just for one purpose. They
17 authorized bonds for armory constructions in several places,
18 purchase of an airplane for the aeronautics commission, a
19 heating and cooling system for archives and history,
20 architectural and engineering studies for the Dennis
21 Building, a Pee Dee experiment station for Clemson
22 University, construction of a number of vocational schools,
23 a fine arts building for Francis Marion, hospital
24 renovations at the Medical University,
25 (inaudible) replacement at S.C. State, a steam plant

1 expansion at the department of mental health, sewerage
2 facilities for parks, recreation and tourism.

3 So the general assembly, which is limited to incurring
4 debt for a single purpose, no s on the end of it just like
5 the county, almost immediately after the adoption of Article
6 X stepped in and in one act authorized general obligation
7 bonds for a wide assortment of activities.

8 The fourth issue with the attorney general's opinion
9 actually subsumes four issues. The attorney general found a
10 common law principal against combining purpose in a ballot
11 question. But in doing that, they ignored the fact that the
12 case law that they were relying on was pre-home rule. They
13 ignored the fact that the case that they were citing
14 primarily actually had nothing to do with county debt. It
15 had to do with a construction surety bond, which is
16 completely unrelated to what we're talking about here. All
17 it has is the word in common, bond.

18 Third, the cases that they were relying on for saying
19 that there was a necessity for split questions actually
20 relied on clear specific statutory provisions that mandated
21 that. And then the -- in most of the cases that they
22 referred on, even though there was fairly clear statutory
23 language, they still found that the combined question was
24 okay.

25 So the -- let me address first the home rule aspect of

1 this. Prior to 1973 with the amendments to Article VIII of
2 the Constitution, counties were limited to specific county
3 purposes for financing. There were, I think, six of them,
4 five or six listed in old Article X, Section 6. That was
5 changed to public purpose in the new Article X in order to
6 allow county governments to determine those issues on their
7 own. Both the constitution, as amended in the 1970s and the
8 state code provide that the powers granted to counties and
9 municipalities are to be liberally construed in their favor.
10 That was to give them the opportunity to rule themselves
11 instead of being ruled out of Columbia. The Article VIII,
12 Section 17 says that powers given to county governments must
13 be liberally construed in their favor. Powers, duties and
14 responsibilities granted to local government subdivisions by
15 this constitution and by law shall include those fairly
16 implied and not prohibited by this constitution. Same thing
17 appears in 4-9-25. The powers of the county must be
18 liberally construed in favor of the county. And the
19 specific mention of particular powers may not be construed
20 as limiting in any manner the general powers of counties.
21 The Supreme Court has upheld that on a number of occasions
22 and, in fact, got rid of the old Dillon Rule, which was what
23 constricted powers. And these are cases cited in footnote
24 six of our memorandum, Williams v. Town of Hilton Head and
25 Hospital Association versus County of Charleston, which

1 allows the counties to do what they need to do as long as
2 they haven't been specifically prohibited. So the calling
3 of a referendum in order to determine whether or not the
4 bonded debt limit can be exceeded falls clearly within those
5 categories.

6 The second problem with regard to this general
7 principle that the attorney general's opinion found is that
8 they relied on a case of Watson versus Harmon, which as I
9 mentioned, was a case about a construction contractors
10 surety performance bond. It has nothing to do with a bond
11 issued by a county in order to finance -- completely -- and
12 to be honest, I can't figure out how that one --

13 Third, the set of cases and the treatise provisions
14 that the attorney general relied upon end at about 1954, I
15 think it was. And that's well before the advent of home
16 rule nationally, when Dillon's Rule was still in full force
17 and effect through most of the country. And as I mentioned,
18 in most of the situations that statutory language that was
19 being interpreted in those cases itself was clear that you
20 couldn't combine the cases, you couldn't combine the
21 questions -- excuse me. You couldn't combine purposes in
22 the same question. But even so, the courts were fairly
23 relaxed about that issue. For example, one of the North
24 Carolina cases that was cited and relied upon by the
25 treatises that the AG relied upon, upheld the bond

1 referendum ballot that had a single question to authorize
2 bond by two different governmental entities, which were not
3 coterminous and all the voters got to vote on the single
4 ballot question, even though they might not live in the
5 jurisdiction that would be issuing some sets of the bonds.

6 In South Carolina, there were a couple of cases. Lucas
7 versus Berringer and Waites versus the Town of Ninety-Six,
8 where the idea that there's some overarching general
9 principal against combining purposes simply doesn't hold up.
10 In Lucas the Court said the rule that the propositions
11 cannot be submitted jointly are not applicable in this case
12 as the decisions in those cases was based on the fact that
13 the wording of the statute under which the bonds were issued
14 require the submission of a proposition to be separate. Not
15 the case here as we've mentioned. Corporate purpose is any
16 purpose, any project. If the municipal action is within the
17 statutory (inaudible) granted no constitutional inhibition
18 appears courts cannot annul. A similar results in Waites
19 versus Ninety-Six. So post home rule, the prior ability of
20 the general assembly to call for a referendum is now in the
21 purview of the duly constituted local authorities and
22 they're well within their rights to decide that the
23 appropriate way to deal with this was to have a single
24 question that covered both parks and libraries.

25 The fifth issue with the attorney general's opinion is

1 even more basic and that is let's suppose that there is some
2 rule against combining purposes. Is this one purpose or is
3 this two purposes? What is the subject of the referendum?
4 Well, the subject was to raise the county's debt limit.
5 That's what you have to have a referendum for. You don't
6 have to have a referendum to build libraries. You don't
7 have to have a referendum to construct park facilities.
8 What you have to have a referendum for is to exceed the
9 eight percent debt limit. In the case of Sandler versus
10 Liddle, which was a 1970 case, the court said that in
11 interpreting constitutional amendments relaxing debt
12 limitations, the Court has consistently given a broad
13 interpretation to the language used in order to effect the
14 legislative intent. The court has, therefore, consistently
15 treated the question at issue here and one dealing solely
16 with the subject matter of debt limitations rather than two
17 independent questions, one relating to relaxing the debt
18 limit of one political entity, the other relating to
19 relaxing the debt limit of another political entity.

20 So even though they're two complete different
21 jurisdictions involved, with one would think would clearly
22 be separate purposes, the issue is increase in debt limit
23 and that can be combined. This is not new. As far back as
24 1912 the Supreme Court upheld against such a challenge a
25 referendum in the case of LeFey versus Town of Dillon where

1 the court wrote it was really only one amendment submitted
2 and that had reference to only one subject, the limitation
3 upon the bonded debt of municipal corporations. So the
4 first issue here is this is a referendum on the increase of
5 bonded debt, which is the only thing they have to have a
6 referendum for, so it's one purpose. Even though if you
7 look at the -- if you keep breaking it down as far as you
8 can get and say okay, well, what are the various projects
9 that are going to be constructed? Can you put two projects
10 in? Aren't the library and the parks separate projects?
11 Well, from the standpoint of a county governing body they
12 are to improve the lives of the people in the county to
13 improve the facilities for recreational and personal
14 betterment, it's really one project. It just has two
15 different aspects to it.

16 Finally, the sixth issue with regard to the attorney
17 general's opinion is the fact that the voters have spoken
18 and the rule in South Carolina is -- and here I'm quoting
19 from a case that's not cited in my memorandum. This is
20 Fielding versus South Carolina Election Commission, which
21 was in 1991 305 SC 313 or 408 S.E.2d 232. In that case the
22 court wrote, every reasonable presumption in favor of
23 sustaining a contested election will be employed and
24 irregularities or illegalities, which do not appear to have
25 affected the result of the election, will not be allowed to

1 overturn it. As Your Honor sees, there was a sixty to forty
2 split in the election. There's no reason to believe that
3 voters would have rejected one and approved the other if
4 they had been put forward as separate ballot questions.

5 One other thing that I would point out to Your Honor --
6 this goes back to the question of whether or not there is a
7 general principle against combining multiple purposes
8 projects into a single ballot question. And this has to do
9 with constitutional development history in South Carolina.
10 As I mentioned before the amendments of the 1970s, there
11 were different provisions in the state constitution related
12 to virtually every local government that had to be amended
13 whenever they wanted to do new bond issuances. And in those
14 in Article XVII, Section 7(b) and it actually still appears
15 because it's never -- nobody ever got around to moving the
16 text from the constitution, even though it's no longer in
17 effect. There were a series of amendments that were put
18 into place during the period in which this so-called general
19 rule was supposed to be developing. Pre home rule, still in
20 the context of Dillon's Rule. And in this, in the fifth
21 provision or the fifth paragraph of Article XVII, Section
22 7(b), the necessity for a petition in order to get to a
23 referendum was eliminated where the proceeds of the bonds to
24 be authorized are used for any corporate purpose of the City
25 of Columbia. And remember going way back, any means one or

1 more.

2 So the constitution itself said that there could be a
3 referendum in the City of Columbia for any corporate
4 purpose. Likewise, City of Charleston in the sixth
5 paragraph. Likewise, City of Greenville in the seventh
6 paragraph. Likewise, City of Spartanburg in the eighth
7 paragraph. Likewise York County in the eleventh paragraph.
8 Those provisions date from 1964, 1966, 1970, 1968 and '71.
9 So even during the period before home rule, before an
10 expansive authority was given to local government when this
11 supposed general rule was being developed, the fact of the
12 matter is the general assembly, the people of South Carolina
13 and local governments were, in fact, authorizing one or more
14 purposes through the use of the word any as embodied in the
15 constitution itself. For all these reasons, Your Honor, we
16 think that the decision that was made by Dorchester County
17 Council in July of 2016 to put a question to the voters, did
18 they want their debt limit increased for projects that would
19 improve the quality of life, was a perfectly legitimate,
20 lawful, constitutional and statutorily authorized decision.
21 It resulted in the holding of an election in November, and
22 which a large percentage of the voters in Dorchester County
23 voted in favor of increasing the debt limit. And the county
24 should be free from the restrictions imposed just by the
25 existence of this lawsuit against issuing the bond. Because

1 as long as this lawsuit is pending, it is impossible for the
2 county to be able to sell those bonds. Nobody's going to
3 buy them with the possibility that it's going to be revoked
4 subsequently. Thank you, Your Honor.

5 THE COURT: Mr. Matthews before you sit down, just
6 let me ask a question. If this referendum was to increase
7 the debt, why didn't they just say increase the debt limit
8 for forty-three million and list everything instead of
9 breaking it into thirty and thirteen? I'm just curious?

10 MR. MATTHEWS: My understanding is, and I wasn't
11 involved in the process, but my understanding is, it was
12 just to provide more information.

13 THE COURT: Okay. All right. Thank you, sir.
14 All right. Mr. Gowder.

15 MR. GOWDER: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. GOWDER: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. GOWDER: Your Honor, I'm Andy Gowder with Mike
20 Rose. We represent the plaintiffs in this case who are
21 citizens and taxpayers of Dorchester County and non-profit
22 corporations in South Carolina dedicated to the public
23 interest.

24 Your Honor, weeks before the General Election, on
25 September the 30th, 2016, the South Carolina Attorney

1 General issued an opinion on it, which Mr. Matthews has been
2 discussing. It's attached to the complaint as an exhibit.
3 He reviewed the specific language that we're here talking
4 about today. And it concluded this: It is for all of the
5 above reasons we are in agreement with the concerns
6 expressed in your letter and we believe a court will likely
7 determine not either the constitution nor the general
8 assembly intended to give a county council the authority to
9 combine multiple separate issues for bond issuance into one
10 referendum question. The county got that attorney general's
11 opinion soon after it was issued and was sent to the county
12 legal staff and to the county and they decided that they
13 were going to proceed with the election without changing the
14 language. Even after they received a follow-up letter from
15 my office representing my clients on October the 3rd. And
16 then the complaint was filed before the election on October
17 the 13th. The county chose to proceed when the simple
18 solution was to reword the ballot question to ask for
19 authorization of the library system bond and the parks bond
20 in separate questions on the same ballot. We can guess
21 about why they didn't want to separate the questions but can
22 only conclude that they did not want to give the voters the
23 option of voting for both or neither or one or the other.

24 So now in the face of this challenge, the defendants
25 want the court to hurry up and rule on the pleadings, when

1 it's clear that the allegations of the complaint and the
2 attachments, including the attorney general's opinion, raise
3 factual issue that must be decided on evidence and not
4 merely based on the complaint and the answer, which are the
5 only pleadings that have been filed in this case. The
6 determination of whether a particular bond referendum is
7 misleading is a factual determination that only a court can
8 decide. And we've cited the case for that proposition in
9 our memo ex parte: Tifton. A Supreme Court case 1956. All
10 of the authority cited in the attorney general's opinion,
11 including the state constitution, statutes, the judicial
12 decisions that reach back over a hundred years and the
13 writing of McQuillin on state and municipal law, point to
14 the problems with combining two separate purposes or issues
15 in the same bond referendum question. First, there's the
16 likelihood that voters will be confused or mislead, which is
17 sort of the hallmark of the inquiry in this cases.

18 THE COURT: Mr. Gowder, you can see the quizzical
19 look on my face?

20 MR. GOWDER: Sure. I see it.

21 THE COURT: Yeah. Good. Good. Thank you. Let
22 me ask you a question.

23 MR. GOWDER: All right.

24 THE COURT: If you don't mind. When you're quoting
25 ex parte: Tifton, you indicate that only a court can decide

1 the factual issue?

2 MR. GOWDER: Right.

3 THE COURT: Is that correct?

4 MR. GOWDER: Yes, sir.

5 THE COURT: Does that mean the court with a jury
6 or the court as a non-jury?

7 MR. GOWDER: I think it could be either one.

8 THE COURT: Usually, factual questions we have
9 juries decide; isn't that correct?

10 MR. GOWDER: Unless it's a bench trial that both
11 the parties have waived --

12 THE COURT: Yeah. Correct.

13 MR. GOWDER: Right. But I think that's right.
14 It's a factual question to be decided by a jury or the court
15 if the parties have agreed.

16 THE COURT: All right. If it's a factual issue
17 for the court to decide --

18 MR. GOWDER: Yes, sir.

19 THE COURT: We have to reconvene and take
20 testimony about that?

21 MR. GOWDER: I think we have to take testimony. I
22 think we have to look at other evidence or -- I say other
23 evidence -- evidence. Because you don't have any evidence
24 before you now.

25 THE COURT: No, I just have the pleadings. But

1 I'm just kind of curious what --

2 MR. GOWDER: I think the inquiry is going to look,
3 Your Honor, at the -- you know, it's almost like a contract
4 case and we're going to be looking at the ballot question
5 itself and whether or not you can make a decision of whether
6 it's misleading or not based on the law and on the language
7 of the ballot. And if you think you need or the jury needs
8 additional evidence outside the ballot question, then there
9 would be external evidence.

10 THE COURT: Okay.

11 MR. GOWDER: I think that's how it would go.

12 THE COURT: All right. Okay. All right. Thank
13 you, sir.

14 MR. GOWDER: Yes, sir. And so there's the
15 likelihood that the voters would be confused or mislead.
16 And then the possibility that a majority support for one
17 question might cause a vote for the combined question when
18 there might not be support for another issue in that
19 combined question. So I think both of those are problems
20 that the single purpose doctrine that Mr. Matthews mentioned
21 and it's featured prominently in the attorney general's
22 opinion try to address.

23 Your Honor, again, we're here on 12(c), judgment on the
24 pleadings. The judgment on the pleadings against the
25 plaintiff is not proper if there is an issue of fact raised

1 by the complaint, which if resolved in favor of the
2 plaintiff would entitle them to judgment. We already
3 referred to Ex Parte: Tifton. We think just by the nature
4 of this case with the ballot question being at issue is a
5 factual question. So 12(c) relief would not be appropriate.

6 But going on, Your Honor, there really are three
7 essential factual allegations from the complaint and we've
8 cited them in our memo. One is that on July 18th of 2016
9 Dorchester County Council passed an ordinance requiring that
10 a referendum be held on November the 8th, 2016 on whether
11 Dorchester County should issue bonds for two different
12 purposes and amounts, one for thirty million dollars for the
13 library system another for thirteen million for the parks
14 system, all contained within only one question. And, Your
15 Honor, as you pointed out in your question to Mr. Matthews,
16 and I looked again as he was arguing at the ballot question
17 itself, there's nothing in this ballot question about
18 raising limits at all. The question is about whether money
19 is being authorized through bonds for parks and for
20 libraries. And so that the question about whether or not
21 the real purpose of this was raising the limits allowed by
22 the county bonding authority. It's not in there and I would
23 say it's not what the purpose of the ballot is. It's
24 certainly not evident by the facial language on the statute
25 and there's certainly nothing about quality of life, which

1 was the other thing mentioned in combining these purposes.
2 It's clear that's two separate purposes. The attorney
3 general says in their letter that it's two separate purposes
4 and I think that's clear.

5 Secondly, Your Honor, State Senator Paul Thurmond sent
6 a letter dated September 8th, 2016 to the Attorney General
7 of South Carolina asking for an opinion about whether
8 Dorchester County's combining authorization for a library
9 bond, together with one for the parks, instead of stating
10 them separately in referendum questions is legally
11 permissible. That's in the complaint at paragraph thirty-
12 four. The letter from Senator Thurmond and the attorney
13 general are attached to the complaint, along with the
14 ordinance and the ballot question. And my letter of October
15 the 3rd, 2016 that I sent discussing the attorney general's
16 opinion. And I'd ask Your Honor to consider them all as
17 part and parcel of the complaint.

18 The attorney general's opinion in summary really said -
19 - had three conclusions. One was that neither the
20 constitution nor the general assembly intended to give a
21 county council the authority to combine multiple separate
22 issues for bond issuance into one referendum question.
23 Second is is that Article X, Section 14.4 of the South
24 Carolina Constitution authorizes a purpose in singular. And
25 thirdly, the South Carolina Code Annotated, Section 7-13-400

1 specifies each question or issue be list in the singular on
2 the ballot. And then they also rely heavily on the state's
3 case law and general bond referendum case law as expressed
4 in treatise of McQuillin to support this conclusion and, in
5 fact, there was a long section from McQuillin cited on page
6 four and five of this attorney general opinion that goes
7 right to this question and describes the single purpose
8 doctrine in detail.

9 I have to disagree with Mr. Matthews that the attorney
10 general's opinion relies on Watson versus Harmon for the
11 single purpose doctrine. It doesn't at all. The Watson
12 versus Harmon citation is simply to general language about
13 bonds and their relationship to statutory authority, nothing
14 to do with the single purpose doctrine. There are specific
15 opinions in the attorney general opinion and cited by
16 McQuillin that are South Carolina cases that do go to that
17 doctrine, which have not been overturned to this date.

18 I would say, Your Honor, that the plaintiff's [sic]
19 outlined by Mr. Matthews fail for these reasons. One,
20 determination of whether a particular bond referendum
21 question could be misleading or could distort the voting
22 results are factual determinations to be decided by the
23 court. Judgment on the pleadings is appropriate only if
24 there are no factual issues to be decided. And there are --
25 and the very nature of this case is a factual determination.

1 As pointed by the attorney general's opinion attached to the
2 complaint, questions in any ballot referendum challenge are
3 one: whether the language as stated may confuse or mislead
4 the voter; and, two, whether combining two issues with one
5 question on a referendum would deprive voters of voting on
6 each issue separately and could cause support for one issue
7 to cause passage of another that would not pass if the issue
8 were voted on alone. Throughout the complaint, the
9 referendum as stated is alleged to have caused confusion and
10 the making of each of those issues more less likely to
11 obtain -- or fail to obtain a majority by being voted on
12 together if they were voted on separately. So clearly this
13 issue of the validity of the ballot has been raised by the
14 complaint and by the attachments to the complaint. Those
15 are factual issues and the Court must take evidence on
16 those.

17 THE COURT: Just out of curiosity --

18 MR. GOWDER: Yes, sir.

19 THE COURT: Is somebody going to come to court and
20 testify that, you know, when they read this they were
21 confused or is it supposed to be the Court reading this, is
22 the Court confused?

23 MR. GOWDER: Well, I think the Court is going to
24 make a decision on whether it is likely, given its
25 construction and given the inclusion of these two questions

1 on the same -- in the same referendum question contrary to
2 state law whether that would likely confuse voters. I think
3 that would be the question.

4 THE COURT: Okay. All right.

5 MR. GOWDER: And, of course, Your Honor, we, you
6 know, there would be discovery in the case. I mean, there
7 would be -- if the -- you know, whatever the evidence might
8 be, I mean, there's going to need to be a presentation of
9 evidence to the Court beyond simply examination of the
10 complaint and the answer.

11 THE COURT: I'm just trying to -- and I hate to --

12 MR. GOWDER: You're trying to imagine what that
13 trial's going to be like?

14 THE COURT: Yeah. That's what I'm trying to
15 figure out now, because I'm trying to figure out -- it seems
16 to me that -- relatively clean, but I don't know what I'm
17 missing and that's why I'm asking you to kind of tell me --

18 MR. GOWDER: Well, I think -- I mean, I think
19 there clearly could be testimony by Dorchester County
20 officials about, you know, the purpose of this referendum
21 question. Why it was constructed the way it was
22 constructed? Why they didn't choose to do it in two
23 separate questions on the same ballot? I mean, I think all
24 of that would be relevant testimony and relevant evidence.

25 THE COURT: Let me ask one other question. Let me

1 ask this. Why did they go against the attorney general's
2 opinion that someone asked for?

3 MR. GOWDER: That would be a fair question.

4 THE COURT: But Senator Thurmond was not on county
5 council. He was just --

6 MR. GOWDER: He was responding to a request from a
7 constituent.

8 THE COURT: Okay. Okay. All right. I'm sorry,
9 Mr. Gowder.

10 MR. GOWDER: It's okay. Very well. No, it's okay
11 and I wanted to know what you want -- what you're interested
12 in, Your Honor. I wish I could have the same dialogue with
13 jurors, but --

14 THE COURT: Me too, sometimes.

15 MR. GOWDER: I bet that's the case. Your Honor,
16 and also, Your Honor, I think it could be the case that
17 voters -- there could be evidence by voters who were
18 confused. I don't know. But certainly, I think it's -- it
19 is a factual question upon which evidence could be or should
20 be tendered.

21 THE COURT: Okay.

22 MR. GOWDER: Secondly, Your Honor, you know, the
23 gravamen of the plaintiff's complaint is that the ballot, by
24 improperly combining the two separate bond issues into the
25 same question, is misleading to voters and could cause one

1 issue to allow passage of the second issue that wouldn't
2 have passed without being combined.

3 The defendants begin their argument really -- in their
4 memorandum anyway -- by saying that the complaint rises or
5 falls based on what the Court thinks about an interpretation
6 of Article X of the constitution and whether or not purpose
7 is singular or could be construed as plural. We disagree
8 with that. We do agree with the attorney general's opinion
9 that the constitution compels only one purpose per question
10 on the ballot. But I don't think the case rises or falls on
11 that. I think the question is whether or not including more
12 than one purpose in a ballot question contrary to that
13 language we would assert -- we would argue is likely to
14 confuse the voters. And that's really the test. And that's
15 set out on page three of the attorney general's opinion.
16 The general test applied by our Supreme Court as to whether
17 a particular referendum is upheld or set aside is whether
18 when viewed as a whole the referendum would likely mislead
19 the average voter. I think that's the bottom-line test. I
20 think all of these arguments about, you know, whether the
21 constitutional provision compels that or not; do those
22 statutes compel that or not, that's part of the discussion
23 and part of the argument that I think the ultimate test is
24 on the likelihood of confusion of the voters as a result of
25 the language of the referendum. And this is because we

1 think the constitutional provision supports the principle
2 that the purpose of a bond referendum is to determine the
3 will of the voters upon the assumption of public debt to the
4 amount of and for the object proposed. And that's in this
5 letter as well. And, you know, I think it's difficult to
6 determine exactly what the voters were saying as a result of
7 this vote. I mean, they could have been saying they loved
8 both of the -- that they were very much in favor of both of
9 the issuances. But it could be that they really wanted the
10 parks funded and they didn't care so much about the library
11 or vice versa and maybe would have voted against the library
12 or against the park if they'd been given the chance, but
13 they weren't. And the problem, Your Honor, that that raises
14 is what if it's not just two? And what if it's not just
15 parks and libraries, but what if it's twenty questions or
16 more. You know, might it be that a county council might try
17 to get a bond issued that is very unpopular through by
18 combining it with a number of other bond issues that people
19 want. And I think that is the very problem that the
20 constitutional provision, the single purpose doctrine in all
21 of the -- and these cases that have been decided are trying
22 to avoid. They want the ballot to be clear. They want
23 people to be able to understand what they're voting on. And
24 then they want the will of the voters to be clear from the
25 vote.

1 THE COURT: Well, Mr. Gowder, are you more or less
2 suggesting that we need a direct democracy?

3 MR. GOWDER: No, sir.

4 THE COURT: Well, I'm just kind of curious because
5 if, you know, we could say that we elect county council. We
6 authorize them to increase the bond, okay?

7 MR. GOWDER: Correct.

8 THE COURT: But if they're going to increase the
9 bond -- okay. Say they rewrote this. The same question I
10 asked Mr. Matthews earlier.

11 MR. GOWDER: Okay.

12 THE COURT: If they said what we want to do is
13 increase the debt limit to forty-three million dollars?

14 MR. GOWDER: Right.

15 THE COURT: Because that's what essentially it
16 says if you add it up?

17 MR. GOWDER: Right.

18 THE COURT: And that we list -- we want to do all
19 of these different things to it. With that forty-three
20 million we're going to do the library. We're going to do
21 the Courthouse Park in St. George, Ashley River Park, Pine
22 Trace Natural Area in Summerville and the development of
23 hiking, biking and pedestrian trails. We go through each
24 one of them and list out what they approximately cost.

25 MR. GOWDER: Uh-huh. (Affirmative response)

1 THE COURT: But what your suggestion is -- what
2 you're suggesting, I think, is that instead of having forty-
3 three million and let them decide to spend it on these items
4 is there's going to be one million for a hiking trail here;
5 two million for a hiking trail there or biking or something
6 like that.

7 MR. GOWDER: Correct.

8 THE COURT: And then the people come through and
9 vote each one of them, yes, no, yes, no. Wouldn't that be a
10 direct democracy?

11 MR. GOWDER: Well, maybe. I don't know. But I
12 think -- and, in fact, that is the way other public financed
13 -- like, for example, I think local option sales tax or a
14 penny sales tax that we have in Charleston County that could
15 fund (inaudible) park. That's the way that is done. But I
16 do -- my understanding is that the bonding authority is set
17 up differently and is more controlled. And, you know, by
18 the constitutional provision. And so I think that -- I
19 think it says that it has to be a purpose, not multiple
20 purposes.

21 THE COURT: Okay. So the simple question for me
22 to ask you --

23 MR. GOWDER: Right.

24 THE COURT: Would this be two questions or more
25 than two?

1 MR. GOWDER: In this particular --

2 THE COURT: In this particular case?

3 MR. GOWDER: I think it's two questions.

4 THE COURT: Okay. It's just two questions?

5 MR. GOWDER: I think so.

6 THE COURT: Okay. So we would not be here if they
7 asked, if they said we've got two questions for a general
8 obligation bond, one is for thirty million and one is for
9 thirteen. We would be --

10 MR. GOWDER: I think if it had been asked in two
11 separate questions --

12 THE COURT: Right.

13 MR. GOWDER: -- and people could vote on them
14 separately. We would not be here.

15 THE COURT: Right. We would not be here. So
16 everything is okay, except it's not two?

17 MR. GOWDER: It's not two.

18 THE COURT: And because it's two, because some
19 people would -- may be in favor of the library but not in
20 favor of the parks, and some people would be in favor of the
21 parks and not the library, that's where the confusion is?

22 MR. GOWDER: That would be part of the confusion.
23 And we don't know really what folks have voted for.

24 THE COURT: Okay. I think I've got it now. Okay.
25 Go ahead.

1 MR. GOWDER: Your Honor, I would say that our
2 third point is that the citation by the defendants of the
3 statute governing construction of statutory language and
4 examples of statutory usage, really don't change the legal
5 principle that's in this -- and it's cited in the attorney
6 general's opinion, in McQuillin and in these couple of cases
7 that are South Carolina cases from 1909, Johnson versus
8 Roddey. And we would say -- and there's nothing about home
9 rule, Your Honor, that I don't think has changed that law.
10 There is no citation in any case that said after home rule
11 that that doctrine has changed. There's no authority that
12 I've seen that overturns either one of these decisions. And
13 so I would say that this single purpose doctrine continues
14 after the -- after home rule and it is unaffected and is the
15 law today.

16 The other thing, Your Honor, that I would point out is
17 -- and Mr. Matthews addressed this -- but the statutory
18 construction statute that he cited can't possibly effect
19 construction of the language in the constitution. You know,
20 if there is a rule of construction of language in the
21 constitution, it would have to be in the constitution. And
22 so we don't think that a statute that says, in statutory
23 authority, singular can also be plural would apply. We
24 think that as the -- again, as the attorney general opinion
25 point out, that the, you know, purpose was made in the

1 singular for a reason. And we think it needs to be
2 construed that way.

3 So, Your Honor, on a motion for judgment on the
4 pleadings, we think that the court must look to the
5 pleadings only. There are factual issues presented that can
6 only be decided in favor of the plaintiff. The Court must
7 deny the motion, which we think it must do here. The
8 allegations that the complaint, together with the
9 attachments, including the attorney general's opinion, raise
10 questions and issues to whether the ballot, which combines
11 two separate and unrelated issues in a single question is
12 invalid on its face. And whether it's likely to mislead or
13 confuse voters presented with this language. And whether
14 combining one issue with another in a single question could
15 cause one question to be passed or defeated because the
16 other question is. Given those factual questions presented
17 by the pleadings, Your Honor, we respectfully request that
18 you deny the motion of the defendants for judgment on the
19 pleadings and proceed to a trial of this matter based on the
20 evidence and not the pleadings only. Thank you.

21 THE COURT: All right. Thank you, Mr. Gowder. I
22 appreciate it.

23 Mr. Matthews.

24 MR. MATTHEWS: Thank you, Your Honor.

25 THE COURT: Before you get started, can I ask you

1 a question?

2 MR. MATTHEWS: Absolutely.

3 THE COURT: If the county had the letter from the
4 attorney general's office, why didn't they just do two --
5 why didn't they just do two questions?

6 MR. MATTHEWS: The letter from the attorney
7 general's office came in on September the 30th. The timing
8 for getting an ordinance done, you have to have three
9 readings by the county council, you have to have a public
10 hearing --

11 THE COURT: So it came late.

12 MR. MATTHEWS: It came late. You have to go
13 through -- they have to get it to the election commission.
14 ballots had already been printed at September 30th. You've
15 got to send them off to people overseas and absentee ballot
16 applications, that sort of thing. There was no way to get
17 that done in that period of time. It was an impossibility.
18 The -- I suppose you could have -- well, I'm not even sure
19 if you could cancel that election. Normally, once it's been
20 called and put into the hands of the county election
21 commission to hold it, there's really nobody under the
22 statute, now that I think about it, who has the authority to
23 stop it. If there were some way to stop it --

24 THE COURT: Uh-huh. (Affirmative response)

25 MR. MATTHEWS: -- reschedule it for later, you're

1 likely to get a much less true reflection of voter sentiment
2 than you would in a presidential election, simply because of
3 turnout. When you have a special election on a bond issue,
4 you're lucky if you get, you know, twenty percent turnout.
5 In a presidential election year there was a sixty-three
6 percent total turnout. And just on this question there was
7 a fifty-five percent turnout. So it couldn't have even
8 done. And even if we could do it, we would come up with a
9 much less reliable indication of voter sentiment.

10 With regard to some of the questions that were raised
11 and I'll probably do these more or less reverse order.
12 First, with regard to the statute, the 2-7-30, a couple of
13 things. The idea that because it says for a statute or a
14 resolution you apply this, but that doesn't have any impact
15 on a constitutional provision, when the constitutional
16 provision began with a resolution and ended with a statute
17 just doesn't add up. Because what that means is when you
18 have the general assembly adopt a resolution to propose a
19 constitutional amendment, at that point, the meaning would
20 be governed by 2-7-30. It goes out for a referendum of the
21 voters and any explanation that goes with it would be based
22 on what the general assembly had done and intended, which
23 would be ??? includes the plural based on the statute. The
24 voters vote on it. It then comes back to the general
25 assembly for a statute authorizing it, adopting it word for

1 word and that statute would have the same meaning. But
2 somehow, all of a sudden, once that ratification act is
3 finished and gets third reading from both houses, all of a
4 sudden that language suddenly becomes untethered from what
5 it did in that meaning before and is now just off on its own
6 and can mean something else from what was intended at the
7 outset. That just doesn't add up.

8 Second, Mr. Gowder said that there was this pre-
9 existing general legal principle and that the statute
10 couldn't change that legal principle. Well, that is exactly
11 what statutes do. If they didn't change --

12 MR. GOWDER: I don't think I argued that. And if
13 I did, that's not what I meant to say.

14 THE COURT: I thought he phrased it a little
15 differently. I think he said that those cases are still
16 viable after home rule --

17 MR. MATTHEWS: After home rule. That is what he
18 said.

19 THE COURT: -- because it was home rule -- there
20 have never been any case addressing home rule overtaking
21 those. So that's the way I understood it.

22 MR. GOWDER: That's what I intended, Your Honor.

23 MR. MATTHEWS: I appreciate that. That was my --
24 my second point -- what I heard was two pieces. One was
25 statute doesn't change the principle. Second was, the cases

1 haven't changed and there's been no post-home rule that
2 addresses this. Well, in fact, there has been. The two
3 cases that I referred to, Williams and Hospitality
4 Association which obliterated Dillon's Rule in South
5 Carolina has far reaching effects because what it does, it
6 establishes the principal that anything not prohibited to
7 the local government is permitted at that point.

8 THE COURT: You know, there's some interesting law
9 -- there's a Law Review article from two years ago on home
10 rule and the Supreme Court's interpretation of home rule.
11 Y'all can look it up.

12 MR. MATTHEWS: There were -- and I'm trying to
13 remember --

14 THE COURT: They said --

15 MR. MATTHEWS: I think Perry McClennon (sp) wrote
16 the article.

17 THE COURT: Yeah. Might have been.

18 MR. MATTHEWS: With regard to some of the other
19 issues on some of the factual concerns, several of them are
20 background facts which are perfectly legitimate. July the
21 18th, the county adopted the ordinance, that's true.
22 Senator Thurmond sent a letter asking for an opinion. That
23 is true. The attorney general issued an opinion on
24 September the 30th. That's true. The county received
25 notice shortly after the attorney general's opinion and then

1 received it from Mr. Gowder's office. That's true. As I
2 mentioned though, with regard to the timing, it was too
3 little too late. That train had left the station.

4 With regard to other factual questions and whether or
5 not they had any impact or bearing on the 12(c) motion here,
6 Mr. Gowder indicated that they would want discovery or
7 testimony with regard to the purpose that county council had
8 in mind when they did it this way, as opposed to doing it
9 some other way. And on that, the motive for legislative
10 action is not relevant to determination of the validity of
11 legislative action and is not subject to testimony or
12 discovery. Both the United States Supreme Court and the
13 South Carolina Supreme Court recognize and respect this
14 legislative privilege. And the cases that I will cite there
15 are United States versus O'Brien, which is 391 US 367, a
16 1968 case. Greenville County versus Kenwood Enterprises, a
17 2003 South Carolina case, which was 353 SC 157 and 577
18 S.E.2d 428. Byrd versus City of Hartsville 365 SC 650 or
19 620 S.E.2d 76 at footnote eleven 2005. And Bayer
20 Enterprises versus County of Greenville 319 SC 137 or 445
21 S.E.2d 883, Court of Appeals case from 1995. The reason why
22 I happen to have that handy is because we've already
23 received discovery requests asking about the motivation and
24 the purposes of county council and we responded that that's
25 not appropriate for testimony or discovery. So that's

1 really not something that any trial would have. And I'll be
2 happy to provide those citations if Your Honor would --

3 THE COURT: Yeah, I would like to --

4 MR. MATTHEWS: I'll provide them to you.

5 THE COURT: You can send them to me.

6 MR. MATTHEWS: Second or next, with regard to the
7 issue of factual questions, the case is premised upon an
8 opinion of the attorney general's office, which styles
9 itself as a legal opinion. It doesn't give any opinion on
10 facts. There is an issue here that is a legal question: Is
11 it permissible to have the ballot question in the form that
12 it's in or does that violate a legal construct that
13 necessitates bifurcating or more the purposes, the projects
14 into separate ballot questions. So the attorney general's
15 opinion, for example, on page three, which Mr. Gowder cited
16 said however, we noted that the determination of whether a
17 particular bond referendum is misleading is a factual
18 determination that only a court can decide. And they say
19 this is our legal opinion, and they don't give any opinion
20 with regard to the facts.

21 With regard to whether or not there would need to be
22 any testimony on the misleading aspect of this, again, I
23 would go back to what the attorney general said that Mr.
24 Gowder quoted. The general test applied by our Supreme
25 Court as to whether a particular referendum is upheld or set

1 aside is whether when viewed as a whole it would likely
2 mislead the average voter. Well, the question of likely
3 mislead is a reasonable man sort of test, which the Court is
4 perfectly authorized, capable and within its jurisdiction to
5 decide on reading the ballot question. Is it the case that
6 someone reading this question wouldn't understand what was
7 being asked.

8 Now, Mr. Gowder said the gravamen is that they might
9 look at one and that it would pass when it ordinarily
10 wouldn't. And I might see the library bonds and think gee,
11 I would have liked libraries but I hate the outdoors. I
12 don't want to spend any money on parks and recreation or
13 vice versa. It's true that I might decide to vote because I
14 really like libraries and I'm only modestly unfavorable
15 toward parks and recreation. That's not a question of
16 misleading. That's a question of whether or not I've decide
17 the package is better than the not package. That's not a
18 question of misleading so it's not a factual question that
19 needs to be determined. The only question to be determined
20 is the legal question, which is whether or not having parks
21 and libraries in a single question is legally permissible.
22 If we do get to the question of whether or not the
23 referendum is misleading to voters, that is something that
24 is based on what is likely to mislead and is a question for
25 the Court to determine.

1 THE COURT: But you're saying I don't need to
2 address that.

3 MR. MATTHEWS: I don't believe you need to address
4 that, Your Honor.

5 THE COURT: Okay.

6 MR. MATTHEWS: Let's see. The question was raised
7 that the bond referendum didn't mention raising the debt
8 limit. And that's true. It doesn't. Simply because of the
9 way these things work. The constitution provides that you
10 can't issue bonds unless you're within your eight percent
11 debt limit or if the bonds get approved by referendum. So
12 what you have to do in order to get yourself outside of the
13 eight percent limit is to have the approval in a referendum.
14 It doesn't say you have to specify the provision of the
15 constitution that you're -- that is making you have the
16 referendum. You just have to get the approval and then it
17 takes it outside of the eight percent debt limit. So that
18 was really not something that was needed. I think there was
19 one other.

20 Oh, Your Honor, you asked the question of how many
21 questions are here? And the answer was, there are two.
22 Well, maybe yes; maybe no. Is the library in North
23 Charleston the same question as the library in Summerville
24 or are those two separate questions? Are we now looking at
25 three questions instead of two? Is the courthouse park in

1 St. George the same as the Pine Trace Natural Area in
2 Summerville or are those two different questions? At what
3 point do you quit breaking it down? And simply breaking it
4 down into multiple questions, further and further down,
5 there's no principle reason to say that there are two
6 instead of three or four or five or six. There is a
7 principle reason to say that this is permissible because of
8 the statutory construction, the home rule powers of the
9 county and the prior consistent constitutional activity of
10 the general assembly immediately following the enactment of
11 new Article X. For all those reasons, we think it's
12 appropriate for the Court to determine that the form of the
13 question was legally principle. And if the plaintiffs want
14 to raise their question of whether or not this legally
15 permissible form was misleading, then it's appropriate for
16 the Court to look at the question as stated in the
17 referendum and make a determination of whether it would
18 likely mislead an average voter, which is not required
19 testimony. I can't even imagine any testimony that would be
20 helpful on that. One person could come in say well, gee, I
21 was confused and another one could come in and say I
22 understood it perfectly well. And unless you heard from all
23 ninety-nine thousand registered voters in Dorchester County,
24 there would be no way to determine what the average was. So
25 that's really a question for the Court to determine and

1 there's no need for a further trial on that.

2 THE COURT: Well, I kind of like to meet the
3 average voter. I just like to meet an average voter.

4 MR. MATTHEWS: Well, let me know if you find them,
5 Your Honor.

6 THE COURT: Yeah.

7 MR. GOWDER: Your Honor, if I may. If you would
8 hear from me on just a couple of my responses?

9 THE COURT: Yes, sir.

10 MR. GOWDER: Thank you. I'll start with last
11 point first because I think it's simple. Is there a
12 principle reason to separate libraries and parks? Yes.
13 There's separate statutory authority given to counties to
14 administer those services. And so that's a very clear
15 reason to separate those as different purposes.

16 Secondly, Your Honor, he talked about this whole issue
17 about the effect of the statutory construction statute on
18 the constitution. I look at it like an amendment. You
19 can't amend the constitution without going through the back
20 process to amend the constitution. It would be the same
21 thing with interpreting language. You can't pass a statute
22 that says this is how you read the constitution unless it
23 went through the constitutional process.

24 Next, Your Honor, on the -- this whole thing about the
25 effect of home rule, I mean, he talked about the two cases

1 that obliterated the Dillon Rule. I bet neither one of them
2 talk about this doctrine and about bond issues and about
3 this rule. I don't think there's anything that changes the
4 two cases that we cited here. Main point, Your Honor, one,
5 consistently through statutes both, you know, in our code
6 the phrase purpose or purposes is used. And so they could
7 easily -- the legislature could easily have used that
8 language, the drafters could have used that language in both
9 the constitutional provision and in the statutory provision
10 if they wanted to. He had earlier argued that similar
11 point.

12 THE COURT: With any purpose.

13 MR. GOWDER: What's that?

14 THE COURT: With any purpose.

15 MR. GOWDER: With any. Yeah.

16 THE COURT: Yeah.

17 MR. GOWDER: And so it could -- when this language
18 said purpose, it could have said purpose or purposes; it
19 didn't. Secondly, you know, you had asked about well, why
20 didn't you change it. And he said well, we didn't have
21 time. Well, I do believe just as background and obviously
22 not in the pleadings, but the county was on notice that this
23 was a question long before it was raised.

24 Lastly, Your Honor, the motive of council is really not
25 what's relevant here. And, you know, we wouldn't go into

1 that so much as the effect on the voters that's wrong. The
2 possibility of one question was passed because of the other.
3 That's really the determining question. And really it's not
4 even the clarity of the language but it's the effect of the
5 combination of both of these issues into one question as
6 being a confusing and misleading wording or construction of
7 the ballot. That would be the question for the Court. So
8 we would say that -- we would ask the Court to consider the
9 complaint and the attachments to the complaint, including
10 the attorney general's opinion and deny the motion for
11 judgment on the pleadings and let's proceed to a trial.
12 Thank you.

13 THE COURT: All right. Thank y'all.

14 Y'all always bring me interesting stuff.

15 MR. GOWDER: Thank you.

16 THE COURT: Okay.

17 MR. MATTHEWS: Your Honor?

18 THE COURT: Yeah.

19 MR. MATTHEWS: If I might just address one last
20 thing.

21 THE COURT: Sure. I'm here for the day.

22 MR. MATTHEWS: Mr. Gowder mentioned there were
23 separate statutes and that was the principle of why you
24 could separate parks from libraries.

25 THE COURT: Uh-huh. (Affirmative response)

1 MR. MATTHEWS: In fact, there's one statute at
2 issue here, which is the county bond act, which authorizes
3 bonds for any county purpose 4-15-10 et. seq. And with
4 regard to county powers generally to provide these sorts of
5 services the home rule act 4-9-10 et. seq., in particular 4-
6 9-30 is the single statute that applies to county authority.

7 THE COURT: All right. Well, thank y'all. As
8 always, I appreciate it.

9 MR. MATTHEWS: Thank you.

10 THE COURT: If you wouldn't mind sending me those
11 citations.

12 MR. MATTHEWS: I will.

13 THE COURT: All right. I appreciate it.

14 MR. GOWDER: Thank you, Your Honor. Appreciate
15 it.

16 THE COURT: All right. Y'all have a good day.

17 MR. MATTHEWS: We appreciate it.

18 MR. GOWDER: Thank you.

19 THE COURT: Thank you. Appreciate it.

20 (This proceeding was concluded.)
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Gerard E. Ziegler; Brenda Barrington III;
James Stephen Greene, 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,

Plaintiffs,

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,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-1975

DEFENDANTS' MOTION
FOR JUDGMENT ON THE PLEADINGS
PURSUANT TO SCRCIVP RULE 12(C)

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Clerk of Court
DORCHESTER COUNTY

Defendants Dorchester County (the "County"), Dorchester County Council ("Council"),
and all Council members *ex officio* ("Members") move for judgment on the pleadings pursuant to
S.C.R.Civ.P. Rule 12(c).

In particular, the plaintiffs have alleged as the sole operative fact:

On July 18, 2016, Dorchester County Council passed an Ordinance, attached [to
the Complaint] as Exhibit #2 and incorporated by reference [t]herein, requiring
that a referendum be held on November 8, 2016, on whether Dorchester County
should issue bonds for two expressly stated different purposes and amounts (i.e.,
(One) \$30 million for libraries and (two) \$13 million for parks), but pursuant to
only one question.

Complaint, ¶ 33. Other than pointing out that the attached copy of the Ordinance was incomplete
and referring to the complete Ordinance for the terms thereof, the defendants admitted that
allegation. Answer, ¶ 10.

Citing several South Carolina constitutional and statutory provisions, the plaintiff's argue that Council is without power to call a referendum in the form set out in the Ordinance. Complaint, ¶¶ 37 - 54, First through Sixth Causes of Action, citing S.C. Const. art. X, §14 (2), (3), and (4), and S.C. Code §§ 4-15-10 *et seq.*, 4-15-20, 4-15-30(A), 7-13-400, and 5-15-330.

The defendants have responded:

The Complaint's assertions and conclusions of law that Council's determination of the form of question for the Referendum was without legal authority, that that form of question was unlawful, that the Referendum therefore does not authorize the issuance of any bonds by the County, and that the issuance of any bonds pursuant to the Referendum would subject the Plaintiffs to unlawful taxation are incorrect as matters of law. Because each of the Complaint's requests for relief depends on one or more of those assertions and conclusions, the Complaint fails to state facts sufficient to constitute a cause of action.

Answer, ¶ 15.

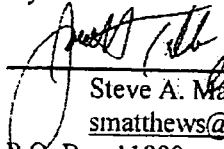
The question presented is thus one solely of law and is appropriate for judgment on the pleadings.

For the reasons stated herein, in the Answer, and in the Memorandum in Support accompanying this Motion, the defendants move that the Court grant the relief requested in the Answer, dismissal of the Complaint with prejudice.

Respectfully submitted,

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June 16, 2017

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Gerard E. Ziegler; Brenda Barrington III;
James Stephen Greene, Jr.; William A.
Harbeson; David Messinger; South Carolina
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Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-1975

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION
FOR JUDGMENT ON THE PLEADINGS
PURSUANT TO SCRCIVP RULE 12(C)

CLERK OF COURT
DORCHESTER COUNTY

2017 JUN 16 PM 12:37

CERTIFIED COPY

INTRODUCTION

On July 18, 2016, Dorchester County Council ("Council"), the duly-elected governing body of Dorchester County (the "County"), adopted its Ordinance No. 16-03, calling for a County-wide referendum to be held at the general election on November 8, 2016, to seek approval from the County's voters for the issuance of bonds in the amounts of \$30,000,000 for library facilities and \$13,000,000 for recreation facilities.

The bonds that were the subject of the referendum will be general obligation bonds of the County, secured by the full faith and credit of the County and payable from tax revenues, under S.C. Const. art. X, §14. Under that constitutional provision, the County can issue general obligation debt in an amount up to 8% of the total assessed value of taxable property in the County. Bonds authorized by the voters of a County, however, are not constrained by, and do not

count against, that debt limit. *Id.* The County did not have sufficient available constitutional debt limit to permit the proposed bond issuance without the referendum.

As noted in the defendants' Answer, ¶ 4, the tally was approximately 60.46% in favor and 39.54% opposed, with a total of 56,635 votes cast on the question. There were 62,567 votes cast in the County in the United States Presidential Election held that same day. See <http://www.enr-scvotes.org/SC/Dorchester/64676/183887/en/summary.html#> (website of the South Carolina State Election Commission). The result of the referendum is a matter of public record that is not in dispute, that is self-authenticating, and of which the Court may take judicial notice. See S.C.R.Evid. Rules 201 and 902(5); see also Rule 803(8).

After authorization by the referendum, issuance of the bonds is governed by S.C. Code §4-15-10 *et seq.* (1986) (the "County Bond Act"), and is at the direction and discretion of Council, at any time or from time to time within five years after the referendum. S.C. Const. art. X, §14.

THE QUESTION ON THE REFERENDUM

The question called by Ordinance 16-03 and approved by the voters of the County was:

Shall Dorchester County, South Carolina be authorized to issue general obligation bonds in an amount not to exceed \$30,000,000 for funding the acquisition of land and the design and construction of new library facilities in Summerville and North Charleston and general obligation bonds in an amount not to exceed \$13,000,000 for funding recreational facilities, including the development of the Dorchester County Courthouse Park in St. George, the Ashley River Park and the Pine Trace Natural area in Summerville, and the development of hiking, biking and pedestrian trails, together with associated infrastructure, at various locations throughout the County?

Complaint, Exhibit 2; see also

<https://www.dorchestercounty.net/Modules/ShowDocument.aspx?documentid=11660>.

THE QUESTION BEFORE THIS COURT

There is no dispute that Council could lawfully call a referendum on the question of \$30,000,000 in bonds for library facilities. Likewise there is no dispute that Council could lawfully call a referendum on the question of \$13,000,000 in bonds for recreational facilities.

The plaintiffs' contention is that it was unlawful for Council to call a referendum on a single question to authorize library facility and recreational facility bonds. They rely on an opinion of the South Carolina Attorney General, issued September 30, 2016. Complaint, ¶ 32 and Exhibit 1; 2016 WL 5820153 (the "AG Opinion"). Opinions of the Attorney General, however, are not binding on a court; and it remains incumbent on the court to determine whether constitutional provisions, statutes, and cases relied upon by the Attorney General are apposite and correctly construed and applied. State v. Ramsey, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014); Charleston Cty. Sch. Dist. v. Harrell, 393 S.C. 552, 560–61, 713 S.E.2d 604, 609 (2011).

SUMMARY

The gravamen, indeed the entirety of the plaintiffs' lawsuit is that the word "purpose," as used in S.C. Const. art. X, §14(4) and in several sections of the County Bond Act, must be singular. The AG Opinion offered its belief that:

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 and that South Carolina Code § 7-13-400 specifies each question or issue be listed in the singular on the ballot. [*Emphasis added.*]

In reaching that conclusion, the Attorney General relied on the fact that the word "purpose" in S.C. Cons. Art. X, § 14(4) and in S.C. Code § 4-15-20 and -30(A) is singular in grammatical form and what it found to be a general common law principle against combining two issues into a single question for voter approval.

For the reasons stated below, we are respectfully of the opinion that the Attorney General was mistaken in reaching that conclusion.

- The AG Opinion completely ignored a long-standing South Carolina statute governing the construction of singular and plural forms, which definitively invalidates the AG Opinion's conclusion on that point.
- The AG Opinion likewise ignored other statutory evidence that the use of the word "purpose" in singular form does not preclude consideration of multiple projects in one question.
- The AG Opinion focused on provisions that relate to the issuance of bonds and not to a referendum to authorize bonds. Consequently, its conclusion with regard to constitutional and statutory interpretation (i) does not apply to a bond referendum ballot, and/or (ii) leads to an even more inconveniently absurd result when applied to the issuance of bonds.
- The AG Opinion relies on treatises and cases in finding a common law principle against combining purposes in a ballot question, while ignoring (i) the pre-Home Rule age of the cases, (ii) the fact that the case cited most extensively relates to surety bonds and has nothing whatsoever to do with government indebtedness bonds, (iii) the fact that the results there were mandated by specific statutory provisions, and (iv) the fact that most if not all of the cases relied on by the treatises actually upheld the referenda in question. As there is no "general common law principle" involved, the duly constituted political authorities can, within the confines of statutory and constitutional strictures, craft suitable ballot questions.
- The AG Opinion does not answer the question of whether the Dorchester County bond referendum actually involved a combination of purposes that would be contrary to the supposed common law principle.
- The AG Opinion notes that only a court can authoritatively resolve whether the Dorchester County bond referendum ballot question was in an appropriate form; however, it provides no guidance with respect to what remedy, if any, would be available after passage by a wide margin with no evidence that separate questions would have resulted in a different outcome.

FULL DISCUSSION

The AG Opinion completely ignored a long-standing South Carolina statute governing the construction of singular and plural forms, which definitively invalidates the AG Opinion's conclusion on that point.

The heart of the AG Opinion is that the word "purpose," as used in S.C. Const. art. X, §14(4) – "General obligation debt may be incurred only for a purpose" –and in several sections of the County Bond Act must be singular and cannot include the plural.¹ However, the AG Opinion completely omitted any reference to the controlling authority on the question of whether "purpose" is only singular or, instead, also includes the plural. South Carolina has (and has had since before 1872) a statute, currently codified at S.C. Code Ann. §2-7-30, that controls how singular and plural words are to be construed in South Carolina statutes:

The words "person" and "party" and any other word importing the singular number used in any act or joint resolution shall be held to include the plural . . .

If it be objected that Article X is not a statute nor a joint resolution, it must be recalled that Article X was formulated and proposed by joint resolution and, after approval by the State's voters, was ratified by a statute, those being S.C. Joint Resolution No. 750 (1976 S.C. Acts 2217) and S.C. Act No. 71 (1977 S.C. Acts 90), each of which sets forth the full text of new Article X.

¹ The AG Opinion also cites prominently S.C. Code § 7-13-400 relating to the form of ballot when questions are submitted, and argues that it, too, requires singularity. That statute, however, has nothing to do with what can be contained in the question under consideration. Rather, it simply says that the ballot must require one to vote "in favor of the question or issue." The Dorchester County referendum did precisely that. There was a single question on which each elector had to vote yes or no. The issue in the Lawsuit, however, was whether the contents of the question were allowable.

This statute alone is sufficient to negate the AG Opinion.² However, in the interest of completeness, additional issues with respect to the rationale of the AG Opinion are discussed below.

The AG Opinion likewise ignored other constitutional and statutory evidence that the use of the word "purpose" in singular form does not preclude consideration of multiple projects in one question.

Where the constitutional or legislative intent has been to prevent the combination of two or more matters into a single ballot question, that intent has been explicit and unambiguous. For example, S.C. Const. art. XVI, § 2, provides that "If two or more [constitutional] amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately."³

In addition, the County Bond Act defines "authorized purpose [singular in form]" as "any purpose for which the county might, under the applicable constitutional provisions, issue bonds or levy taxes." S.C. Code S.C. Code § 4-15-20(2). This provision is also one of the key underpinnings of the AG Opinion, because "authorized purpose" is in the singular form. But the AG Opinion neglects the teaching of Lucas v. Barringer that "the word 'any' in its common acceptance means 'one or more,' and our Supreme Court has so defined it in State v. Antonio, 3 Brev. 567, where it was held that 'any' means 'one or more.'" Lucas v. Barringer, 120 S.C. 68,

² This statute embodies a common sense rule that appears in the boilerplate of most contracts and, in fact, occurs in the first section of the first title of the United States Code, where the Federal Definition Act sets forth rules for construing acts of Congress, including that "words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular . . ." 1 U.S. Code § 1.

³ S.C. Const. art. XVI, § 1 permitted an explicit exception from that rule for the election held in 1990.

112 S.E. 746, 52 (1922).⁴ Consequently, “authorized purpose” is, by its statutory definition and based on accepted principles of construction, plural despite its singular form.

“Any” is also relevant in the operative provision on which the AG Opinion places so much emphasis: “The authorities of any county may issue general obligation bonds of such county to defray the cost of any authorized purpose” S.C. Code Ann. §4-15-30. Although “purpose” there is singular in form, the use of “any” leads to the entirely sensible rule that the singular includes the plural.

Further, the AG Opinion attempts to draw a distinction between the County Bond Act and other statutes such as the Capital Project Sales Tax Act (S.C. Code § 4-10-300 *et seq.*). The AG Opinion relies on the general statement of the purpose of the Capital Project Sales Tax Act in § 4-10-310, which states that a county may impose a sales tax “by ordinance, subject to a referendum, within the County area for a specific purpose or purposes.” The AG Opinion overlooks the specific requirement in § 4-10-330, stating that the ordinance must specify “(1) the purpose [*singular*] for which the proceeds of the tax are to be used, which may include projects [*plural*]. . . and may include the following types of projects [*plural*]” (followed by a list ranging from highways to courthouses to libraries to recreational and cultural facilities to water and sewer projects to beach re-nourishment and any combination thereof), thus clearly indicating that a single purpose may encompass multiple, unrelated projects.

⁴ Lucas was cited by a CJS article, which was in turn cited by the Fairfax Cty. Taxpayers All. v. Bd. of Cty. Sup'rs of Fairfax Cty., 202 Va. 462, 117 S.E.2d 753 (1961), case heavily relied upon in the AG Opinion, as one of the cases behind the so-called general common law principle described below.

The AG Opinion focused on provisions that relate to the issuance of bonds and not to a referendum to authorize bonds. Consequently, its conclusion with regard to constitutional and statutory interpretation (i) does not apply to a bond referendum ballot, and/or (ii) leads to an even more inconveniently absurd result when applied to the issuance of bonds.

The AG Opinion focused on S.C. Const. art. X, §14(4). That provision, however, relates to the issuance of bonds, not to the referendum for the authorization of bonds. The provision relating to a referendum to exceed the 8% debt limit is S.C. Const. art. X, §14(6). Although the referendum provision (§ 14(6)) does not allow a referendum to authorize bonds not contemplated by the issuance provision (§ 14(4)), it contains no restriction on the form of ballot. Consequently, the AG Opinion is focused on text that is irrelevant to the question at hand.

Moreover, applying the AG Opinion's "necessarily singular" rule to the requirements for the issuance of bonds in S.C. Const. art. X, §14(4) and S.C. Code §4-15-30 where singular forms actually appear (as opposed to just the ballots for exceeding debt limit, where singular forms do not appear) leads to a grossly impractical, inefficient, and costly absurd effect. If "purpose" is singular only, then each bond issuance must also be for a singular purpose. See S.C. Const. art. X, §14(4) and S.C. Code §4-15-30. So that, if a county needed to issue bonds for a library, a park, a courthouse, new police vehicles, new fire protection vehicles, and a new jail, it would have to issue six sets of bonds and incur six times the usual cost of issuing bonds – even though the bonds would be identical except for which invoices get paid with which proceeds. Such multiplication of bond issues is contrary to the universal practice of counties in South Carolina, which regularly issue bonds for multiple purposes, in order to secure for their taxpayers the advantages of efficiencies of scale, avoidance of duplication, and more attractive interest rates.

The AG Opinion relies on treatises and cases in finding a common law principle against combining purposes in a ballot question, while ignoring (i) the pre-Home Rule age of the cases, (ii) the fact that the case cited most extensively relates to surety bonds and has nothing whatsoever to do with government indebtedness bonds, (iii) the fact that the results there were mandated by specific statutory provisions, and (iv) the fact that most if

not all of the cases relied on by the treatises actually upheld the referenda in question. As there is no "general common law principle" involved, the duly constituted political authorities can, within the confines of statutory and constitutional strictures, craft suitable ballot questions.

The case law cited in the AG Opinion is almost exclusively pre-Home Rule. During that era, which ended on March 7, 1973, with the ratification of new Article VIII of the South Carolina Constitution, counties were not general purpose governments but operated under the thumb of Columbia, with only certain allowable purposes for bonded indebtedness, specifically those listed in old Article X, Section 6. The change to "a public purpose" in new Article X in 1975 was to allow county governments to determine such issues on their own as long as they did not stray beyond public purpose or into an area of responsibility reserved for another category of political subdivision.⁵ As provided both constitutionally and statutorily, the powers conferred on county governments must be "liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution." S.C. Const. art. VIII, §17; see also S.C. Code Ann. §4-9-25 ("powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties").⁶

⁵ For discussion of the 2-year gap between new Article VIII and new Article X, see James Lowell Underwood, *The Constitution of South Carolina, Volume II: The Journey Toward Local Self Government* (University of South Carolina Press, 1989), pp. 182-83, and Duncan v. County of York, 267 S.C. 327, 228 S.E.2d 92 (1976).

⁶ In light of the Home Rule amendments to the Constitution and their displacement of Dillon's Rule, the AG Opinion's conclusion that "a court will likely determine neither the Constitution nor the General Assembly intended to give a county council the authority" is completely off point. The Constitution does not address the issue at hand and left to the General Assembly the task of imposing limits, if any, on county government. A general government authority that is not prohibited to county governments is allowed. See Williams v. Town of Hilton Head Island, S.C., 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) and Hospitality Ass'n v. County of Charleston, 320 S.C. 219, 464 S.E.2d 113 (1995).

In fact, the primary post-Home Rule case quoted and relied upon by the AG Opinion, Watson v. Harmon, 280 S.C. 214, 312 S.E.2d 8 (Ct. App. 1984), had absolutely nothing to do with government bonds or referenda. Watson v. Harmon was a case about a construction contractor's surety performance bond, not a government debt bond. Including it in a discussion of government debt bonds is like including a discussion of flying mammals (bats) in an opinion on baseball equipment (bats). Other than the spelling, the two have nothing in common.

In finding a general common law principle against having multiple "purposes" or "subjects" (see below regarding what sufficiently differentiates two things to make them different "purposes" or "subjects"), the AG Opinion relies on a case out of Virginia, Fairfax Cty. Taxpayers All. v. Bd. of Cty. Sup'rs of Fairfax Cty., 202 Va. 462, 117 S.E.2d 753 (1961). Fairfax Cty. in turn relies on AmJur and CJS articles. A careful look at those articles (now re-located from where they were cited in the Fairfax Cty. case⁷) shows that the most recent case cited in support in either treatise is from 1954, well before the national advent of Home Rule. Moreover, where many of the cases cited may refer to instances in which multi-purpose ballot questions were objectionable, those are almost all in situations where the statute was clear (similar to our S.C. Const. art. XVI, § 2) that combination of purposes was not allowed.⁸ And most if not all of the cases cited distinguish the rule and uphold the ballot question being sued upon. For example, a North Carolina case cited by AmJur as its key case for establishing the rule, actually upheld a bond referendum ballot with a single question that was to authorize bonds by two different governmental entities (a county and a city, which were not co-terminous), and all voters got the

⁷ Now appearing at 64 Am. Jur. 2d Public Securities and Obligations § 132 and 64A C.J.S. Municipal Corporations § 2151.

⁸ See, for example, Voss v. Chicago Park Dist., 392 Ill. 429, 64 N.E.2d 731 (1946), cited in AmJur.

same ballot (even out-of-city voters who were really eligible to vote only in the county referendum). See Jamison v. City of Charlotte, 239 N.C. 682, 80 S.E.2d 904 (1954).

The same is true of the South Carolina cases cited in the AG Opinion. The Court in Lucas v. Barringer, *supra*, noted that earlier cases were dictated by specific statutes, not pursuant to some general rule against combined issues on a ballot.⁹ The same conclusion was reached in Waits v. Town of Ninety-Six, 154 S.C. 350, 151 S.E. 576 (1930), which also disavowed any constitutional implications of the form of ballot questions.¹⁰ Consequently, the AG Opinion's rather extensive discussion of a policy or rule against multiple purposes on a single ballot, immune from political modification, is mistaken. There is no such rule.

⁹ The Court in Lucas stated:

The rule that the propositions cannot be submitted jointly as laid down by our Supreme Court in Herbert v. Griffith, 99 S. C. 7, 82 S. E. 986, Ross v. Lipscomb, 83 S. C. 136, 65 S. E. 451, 137 Am. St. Rep. 794, Chase v. Gilbert, 83 S. C. 546, 65 S. E. 735, State v. Brasington, 93 S. C. 447, 76 S. E. 1086, and Weeks v. Bryant, 99 S. C. 8, 82 S. E. 988, are not applicable to this case, as the decision in those cases was based on the fact that the wording of the statute under which the bonds were issued required the submission of the propositions to be separate, whereas in this case the act authorizing the issuance of the bonds provides for the joint submission. In this concurring opinion in Johnson v. Roddey, 83 S. C. at page 466, 65 S. E. at page 627, Mr. Chief Justice Jones lays down the doctrine "that, where the statute confers the right to submit the proposition of bonds for waterworks and sewerage as a single proposition, the courts have no right to interfere because in their view such submission is unwise and dangerous. If the municipal action is within the statutory power granted, and no constitutional inhibition appears, courts cannot annul."

Lucas v. Barringer, 120 S.C. 68, 112 S.E. 746, 752 (1922). The Court in Ross v. Lipscomb stated that it would have reached the same result even without the specific statute; but that dictum was implicitly disavowed by Lucas and by Waits.

¹⁰ In Waits, the Court stated, "the manner in which the purposes for which municipalities may issue bonds, shall be submitted to the electorate, is one purely of legislative cognizance, with which the Constitution does not purport to deal except 'as provided in the Constitution upon the question of bonded indebtedness,' which has reference to provisions of the Constitution that such bond issues be submitted to the electorate in general terms, leaving the details to legislative provisions."

Post Home-Rule, that prior ability of the General Assembly in calling for referenda for local bond issuances is now within the purview of the duly constituted county authorities. Absent any prohibition in statute law or in the Constitution (discussed above), there is no "general principle" that inhibits the Home Rule powers of the county council.

The AG Opinion does not answer the question of whether the Dorchester County bond referendum actually involved a combination of purposes that would be contrary to the supposed common law principle.

Even if there were a general rule applicable to county bond referenda against combining "purposes" in a single ballot question, the "subject" of the Dorchester County referendum was raising the County's debt limit. That was the only thing for which a vote was needed. "In interpreting constitutional amendments relaxing debt limitations the court has consistently given a broad interpretation to the language used in order to effect the legislative intent." Sadler v. Lyle, 254 S.C. 535, 545, 176 S.E.2d 290, 294 (1970). The Court in Sadler, despite the constitutional requirement of S.C. Const. art. XVI, § 2 (described above) that each constitutional amendment be subject to a separate ballot question, upheld the results of a single-question referendum amending the debt limit of two different municipalities, against the explicit objection that it combined two questions into one, stating:

The court has, therefore, consistently treated the question at issue here as one dealing solely with the subject matter of debt limitations rather than two independent questions, one relating to relaxing the debt limit of one political entity, and the other relating to relaxing the debt limit of another political entity.

Sadler, *supra*, 254 S.C. at 541-43, 176 S.E.2d at 293. Nor is this approach to debt limit referenda new. In 1912, the Supreme Court in Bethea v. Town of Dillon, 91 S.C. 413, 74 S.E. 983 (1912) upheld the results of a constitutional referendum that amended both the 8% limit imposed on each political subdivision (old art. VIII, § 7), and the 15% limit on aggregate debt affecting any geographic area (old art. X, § 5), stating:

It is clear, upon the slightest consideration, that the submission of the amendment to section 7 of article 8, as above quoted, including the amendment, by reference thereto of section 5 of article 10, was not in violation of the provision of section 2 of article 16, above quoted, because there was really only one amendment submitted, and that had reference to only one subject — the limitation upon the bonded debt of municipal corporations.

Id., 74 S.E. at 984.

But even if the rule for which the plaintiffs argue existed and even if it applied at the projects level, what makes two things sufficiently distinct to be separate purposes? Is the building of a library in the northeast corner of the county and the building of a library in the southwest corner of the library one purpose or two? Does it matter if there will be one builder or two? Does it matter if there will be one contract or two? The absurdities of the reading offered by plaintiffs, upon closer inspection, simply multiply.

Moreover, it is perfectly reasonable to assert that the authorized bonds are to enrich the lives of the citizens of Dorchester County by providing facilities for their development and recreation, both physical and intellectual — a single, proper County purpose.

It is therefore clear that the Dorchester County ballot question was sufficiently a single purpose to comply with whatever requirement, if any there be, for singularity in a ballot question.

The AG Opinion notes that only a court can authoritatively resolve whether the Dorchester County bond referendum ballot question was in an appropriate form; however, it provides no guidance with respect to what remedy, if any, would be available after passage by a wide margin with no evidence that separate questions would have resulted in a different outcome.

The Dorchester County bond referendum passed by a wide margin. In considering the adequacy of ballot questions after elections have been held, courts have generally looked to see whether the question caused confusion as to what was being voted upon or whether the closeness of the result indicates that a different ballot form would have resulted in a different outcome. See

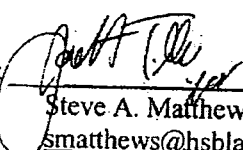
Jamison v. City of Charlotte, 239 N.C. 682, 80 S.E.2d 904 (1954), and Waits v. Town of Ninety-Six, 154 S.C. 350, 151 S.E. 576 (1930). The level of participation and the margin in favor demonstrate that there was neither confusion nor an outcome-affecting impact in this situation. Especially in light of the generally-anticipated rising interest rate environment, it would be inappropriate to ignore the will of a clear majority of the electorate and enjoin the issuance of bonds pursuant to the 2016 referendum, thus imposing on the County's taxpayers the significant additional-referendum cost and interest rate risk for no likely change in outcome.

CONCLUSION

For the foregoing reasons, the defendants motion for judgment on the pleadings pursuant to S.C.R.Civ.P Rule 12(c) dismissing the complaint in this action with prejudice should be granted.

Respectfully submitted,

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June 16, 2017

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Gerard E. Ziegler; Brenda Barrington III;
James Stephen Greene, 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,

Plaintiffs,

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-18-1975

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION FOR JUDGMENT ON
THE PLEADINGS**

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INTRODUCTION

On September 8, 2016, Senator Paul Thurmond sent a letter to the South Carolina Attorney General asking for an opinion on whether Dorchester County's proposed referendum language that combined two bond issues into a single ballot question was legal in light of the state Constitution, statutes and common law. On September 30, 2016, the South Carolina Attorney General issued an opinion letter (attached to the complaint) that answers that question at length and concluded "[i]t 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 the referendum is

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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.”

(emphasis added).

The attorney general opinion was forwarded to Dorchester County officials who decided to proceed, nonetheless, to the election without changing the structure and wording of the ballot question. Though Dorchester County could easily have stated the two questions separately on the ballot, it chose not to do so.

Still prior to the election, these plaintiffs filed this action again raising the same issues as were raised in Senator Thurmond's letter and in the Attorney General's opinion, but Dorchester County ignored those challenges, refused to restructure the ballot question to state the issues separately, and chose to proceed to the election with the challenged ballot language unchanged.

Now, after the election, Dorchester County has filed a motion under Rule 12(c), SCRPC to have this court render judgment on the pleadings for the defendants. The defendants are not entitled to this relief. The determination of whether a particular bond referendum is misleading is a factual determination that only a court can decide. See, Ex parte Tipton, 229 S.C. 471, 473, 93 S.E.2d 640, 641 (1956).

All of the authorities cited in the Attorney General's opinion, including the state Constitution, statutes, judicial decisions that reach back over 100 years and the writing of the most respected treatise in state and municipal law, McQuillin, point to the problems with combining two separate purposes or issues in the same bond referendum question: the likelihood that voters will be confused or misled, and the possibility that majority support for one issue will cause majority support for another issue that would not be supported by a majority on its merits alone. The court must weigh the evidence and make a factual determination based on that

evidence after the identity of that evidence is determined through discovery. A judgment on the pleadings is inappropriate and the defendants' motion must be dismissed.

LEGAL STANDARD

JUDGMENT ON THE PLEADINGS

Under Rule 12(c), SCRPC, judgment on the pleadings is appropriate when there is no dispute of fact. Only the pleadings are considered. 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. Russell v. Columbia, 305 S.C. 86, 87, 406 S.E.2d 338, 338 (1991). The Rule 12(c) motion admits the well-pleaded facts in the complaint and the court must take those well-pleaded factual allegations as true. The motion does not admit the inferences drawn from the facts nor does it admit conclusions of law. Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990); Fields v. Melrose P'ship, 312 S.C. 102, 103, 439 S.E.2d 283, 284 (Ct. App. 1993).

FACTUAL ALLEGATIONS FROM THE COMPLAINT

On July 18, 2016 Dorchester County Council passed an ordinance requiring that a referendum be held on November 8, 2016 on 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 together with one for parks, instead of stating them separately in the referendum question, would be "legally permissible." Complaint, ¶34.

The letter from Senator Thurmond and the Attorney General opinion which followed are attached to the complaint and are fully incorporated by reference as the allegations of the complaint. The plaintiffs respectfully request that the court review the Attorney General's opinion in its consideration of the defendants' motion, since it is a part of the pleadings in this case.

ARGUMENT

The plaintiffs will not restate the full reasoning of the Attorney General's opinion in this memorandum, since the opinion is available for the court's reading and consideration, but a summary of the opinion, which forms the basis of the plaintiffs' complaint, is as follows:

- 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.
- Article X, § 14(4) of the South Carolina Constitution authorizes a purpose in the singular.
- S.C. Code Ann. §7-13-400 specifies each question or issue be listed in the singular on the ballot.
- The State's case law and general bond referendum case law as expressed in the treatise, McQuillin, support this conclusion.

The defendants, in their motion and memorandum for judgment on the pleadings, attempt to counter the points in the Attorney General's opinion to support their argument for judgment on the pleadings. Those arguments fail, though, for the following reasons:

1. The determinations of whether a particular bond referendum question could be misleading or could distort the voting results are factual determinations to be decided by the court.

As stated earlier in this memorandum, a judgment on the pleadings is only appropriate if there are no factual issues to be decided by the court. A judgment on the pleadings is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle plaintiff to judgment. All well pleaded factual allegations are deemed admitted for purposes of considering a motion for judgment on the pleadings. Fields, 312 S.C. at 103, 439 S.E.2d at 284.

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 voting 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 court cannot, under Rule 12(c), render judgment on the pleadings.

2. The gravamen of the plaintiffs' complaint is that the ballot, by improperly combining two separate bond issues into the same referenda question, is misleading to voters and could cause one issue to allow passage of a second issue that would not have passed without having been combined with the first issue.

The defendants begin their argument by stating that the complaint rises or falls based on the court's interpretation of Article X, § 14(4) of the South Carolina Constitution and whether its use of the words "purpose" in the singular preclude more than one purpose in being included in the same ballot question. Though both the Attorney General and the plaintiffs agree that this constitutional provision prohibits multiple bond issues being included in a single question, that is not the whole of the opinion or complaint. Rather, this constitutional provision 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.Att'y.Gen. September 30, 2016, page 3, citing Op.S.C.Att'y.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 in the same ballot, it is impossible to know which singular issues the voters may approve or disapprove and is likely to lead to voter confusion on whether the bond issues are somehow related or separate. The validity of the ballot question as stated by Dorchester County is the subject of the complaint, not a single legal authority in support of the plaintiff's position, and that question, as stated before, is a factual, not a simple legal one that can be decided under Rule 12(c).

3. The citation by the defendants of a statute governing construction of statutory language, and examples of other statutory usage, do not change the legal principle requiring only one purpose, as outlined in the Constitution, statutes and case law.

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 could dictate the interpretation and construction of the Constitution.

Secondly, 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.

CONCLUSION

On a motion for judgment on the pleadings, the 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. As outlined above, the allegations of the complaint, together with the attachments including the S.C. Attorney General's opinion, raise the issues of whether the ballot, which combines two separate and unrelated¹ issues in a single question, is invalid on its face; whether it is likely to mislead or confuse voters presented with this language; and whether combining one issue with another in a single question could cause one question to be passed or defeated because the other question is passed or defeated. Given those factual questions presented by the pleadings, the court must deny the motion of the defendants for judgment on the pleadings and proceed to a trial of this matter based on the evidence, not the pleadings only.

Respectfully submitted,

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¹ 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 and recreation are separate issues.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT
)

Gerard E. Ziegler; Brenda Barrington III;
James Stephen Greene, 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,

) Civil Action No.: 2016-CP-18-1975
)

Plaintiffs,

) **PLAINTIFFS' SUPPLEMENTAL**
) **MEMORANDUM IN OPPOSITION**
) **TO DEFENDANTS' MOTION FOR**
) **JUDGMENT ON THE PLEADINGS**
)

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

Defendants.

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Clerk of Court
DORCHESTER COUNTY

Plaintiffs file this Supplemental Memorandum in Opposition to Defendants' Motion for Judgment on the Pleadings, to clarify and to respond to arguments made at and after the hearing on this motion held on August 24, 2017, as follows:

**I. VOTING ON ISSUES SEPARATELY IS REQUIRED TO
AVOID ONE ISSUE INFLUENCING ANOTHER**

Combining two issues into one question on a referendum ballot is prohibited when it could cause support or opposition for one issue to cause passage or rejection of another issue that would not pass or fail 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)).

Regarding the referendum that is the subject of this motion, a majority vote supporting the issuance of bonds for parks could have caused a majority vote supporting the issuance of bonds for libraries, or the majority vote for libraries could have caused the majority vote for parks. The only way to have clearly determined whether a majority of voters supported issuing bonds for both parks and for libraries was to have allowed voters to vote on those two issues separately. Therefore, separation of those two issues in the referendum was required by law.

**2. VOTING ON COMBINED ISSUES PROHIBITED
WHEN LANGUAGE CONFUSES OR MISLEADS VOTERS**

Combining two issues into one question on a referendum ballot is prohibited when doing so may confuse or mislead the voters (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).

Voters may be confused or misled by a referendum when language stating what they will be voting about is not clear and unambiguous. In addition, voters may be confused or misled about the meaning of referendum election results when combining issues in the referendum language results in voter uncertainty and confusion about whether an issue was or will be approved or disapproved because of the number of votes cast regarding that issue or because of the number of votes cast regarding another issue in the referendum.

In the referendum that is the subject of this motion, there is uncertainty and confusion about whether a majority of the voters supported issuing bonds for parks or a majority of the voters supported issuing bonds for libraries, or both. Further, at the time voters voted in the referendum there was uncertainty and confusion about whether a majority vote for parks and libraries meant that a majority of voters supported issuing bonds for both parks and libraries, or meant merely that

a majority of voters favored issuing bonds for parks or libraries. That uncertainty and confusion could have been avoided only by separating the issue of parks from the issue of libraries to enable voters to cast a separate vote on each of those issues.

**3. THE REFERENDUM VOTES ON PARKS AND ON LIBRARIES
WERE SEPARATE ISSUES REQUIRING SEPARATE VOTES**

The issue of whether bonds should be approved for libraries is qualitatively different than the issue of whether bonds should be approved for parks. Nothing in the ordinance authorizing the referendum even remotely claims that one issue is connected with the other. Rather, the ordinance simply proclaims that there will be one vote on whether bonds should be issued for parks and for libraries. As a result, voters were required to approve or disapprove both issues together, and were deprived of their right to approve one but not the other.

Indeed, the Legislature showed it considers parks and libraries to be qualitatively different issues when it passed separate statutes in separate sections of the South Carolina Code of Laws regarding the financing of parks and libraries. See S.C. Code Ann. ¶ 4-9-35(5), 4-9-35, 4-9-39 regarding the duties of a county regarding the creation and funding of libraries, Complaint, ¶ 30, and S.C. Code Ann. ¶ 51-15-330 regarding the authority to call for a referendum regarding the issuance of bonds for parks and recreation, Complaint, ¶ 31.

CONCLUSION

On a motion for judgment on the pleadings, the 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. As outlined above, the allegations of the complaint, together with the attachments including the S.C. Attorney General's opinion, raise the issues of whether the ballot, which combines two separate and unrelated issues in a single question, is invalid on its face; whether it is likely to mislead or confuse voters presented with this language; and whether

combining one issue with another in a single question could cause one question to be passed or defeated because the other question is passed or defeated. Given those factual questions presented by the pleadings, the court must deny the motion of the defendants for judgment on the pleadings and proceed to a trial of this matter based on the evidence, not the pleadings only.

Respectfully submitted,

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Gerard E. Ziegler; Brenda Barrington III;
James Stephen Greene, 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,

Plaintiffs,

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,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT**

C.A. No.: 2016-CP-18-1975

**DEFENDANTS' REPLY
TO PLAINTIFFS'
SUPPLEMENTAL MEMORANDUM
IN OPPOSITION TO DEFENDANTS'
MOTION FOR JUDGMENT ON PLEADINGS**

In their Supplemental Memorandum filed in opposition to Defendants' motion for judgment on the pleadings, Plaintiffs offer contradictory arguments and seriously misapprehend, and so mischaracterize, a statute that they claim to be relevant. Those are, in reverse order, as follows.

In Section 3 of the Supplemental Memorandum, Plaintiffs continue an argument from the hearing that parks and libraries are so distinct as to require separate questions because a county's powers with regard to those facilities are conferred by and governed by separate statutes. In the Supplemental Memorandum, Plaintiffs identify the statutes as S.C. Code § 4-9-35 and -39 (libraries) and S.C. Code § 51-15-330 (parks). The most obvious error here is the reference to Section 51-15-330, which has nothing to do with counties at all. Instead, that statute relates to cities with populations between 36,000 and 55,000. See S.C. Code § 51-15-110 (1). While S.C.

Code § 4-9-35 and -39 do relate to county libraries, they merely set up the structure for county library systems. The actual grant of power to counties to tax and spend for parks and libraries (the two sides of a bond-issuance coin are, after all, taxing and spending) is in a single statute, indeed, in a single subsection – S.C. Code § 4-9-30(5) –for both parks and libraries. That subsection provides that each county government shall have the power:

to assess property and levy ad valorem property taxes . . . and make appropriations for functions and operations of the county, including, but not limited to . . . recreation; . . . libraries; and to provide for the regulation and enforcement of the above. [*Emphasis added.*]

In Sections 1 and 2 of the Supplemental Memorandum, Plaintiffs argue that a voter who wanted either parks or libraries but not both would correctly understand that he/she would have to vote for both in order to get the one that he/she wanted (Section 1 of the Supplement Memorandum); but that the form of the question on the ballot would not be understandable by the voter. Those two arguments are at war with each other.

The premise of the first argument is correct: the ballot question was clear and comprehensible. The conclusion drawn, that a voter must express his/her will separately on each point of decision, is not correct. Voters ordinarily do not vote separately. Even in Plaintiffs' preferred scenario, one question for libraries and one question for parks, a voter who wanted one park but not another would have to vote for all parks to get the one he/she wanted; and a voter who wanted one library facility but not another would have to vote for all libraries to get the one he/she wanted. Concerning the pre-Home Rule cases, the treatise, and the Attorney General's opinion cited by Plaintiffs on this point in the Supplemental Memorandum, see Defendants' Memorandum in Support of Motion for Judgment on the Pleadings and Defendant's arguments in the August 24, 2017, hearing on that Motion.

The premise of the second argument – that the ballot question was not clear -- is incorrect. Regarding the standard of review on that question, see Defendants' arguments in the August 24, 2017, hearing on their Motion.

CASES CITED AT HEARING

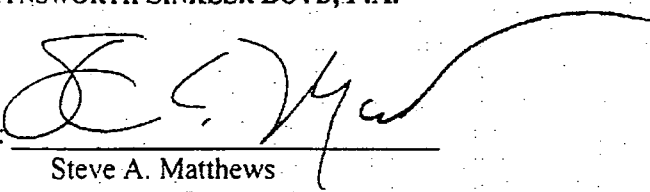
At the hearing on August 24, 2017, Judge Dickson asked that the undersigned provide citations for sources not in Defendants' Memorandum in Support of Motion for Judgment on the Pleadings. They are as follows. Except for the last, these were provided to the Court by email on August 25, 2017.

- Regarding the effect of S.C. Code §2-7-30 with respect to whether the creation of a singular office ("a ministerial recorder," "the person" elected) would allow multiple positions: *State v. Sachs*, 264 S.C. 541, 551, 216 S.E.2d 501, 506 (1975). The portion that I quoted was, "The question of the proper construction of this language has been resolved by § 30-203 of the South Carolina Code (1962) [*the earlier codification of §2-7-30*]. It states inter alia 'The words 'person' and 'party' and any other word importing the singular number used in any act or joint resolution shall be held to include the plural . . .'"
- Regarding the legislative privilege against compelling public officials to testify or be deposed about their motivation for taking a particular legislative action and the irrelevance of such motives in determining the validity of the legislative action: *United States v. O'Brien*, 391 U.S. 367 (1968); *Greenville County v. Kenwood Enterprises*, 353 S.C. 157, 577 S.E.2d 428 (2003) [overruled on other grounds, *Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 at fn. 11 (2005)]; *Bear Enterprises v. County of Greenville*, 319 S.C. 137, 459 S.E.2d 883 (Ct. App. 1995)
- Regarding allowing elections to stand where the results make clear the will of the electorate: *Fielding v. S.C. Election Comm'n*, 305 S.C. 313, 317, 408 S.E.2d 232, 234 (1991). The portion that I quoted was "Every reasonable presumption in favor of sustaining a contested election will be employed, and irregularities or illegalities which do not appear to have affected the result of the election will not be allowed to overturn it."
- The mid-1960s allowances of bond referenda "for any corporate purpose" for various cities are in S.C. Const. art. XVII, § 7.B.
- The constitutional provision on State debt that parallels S.C. Const. art X, §14(4) on local debt, is S.C. Const. art. X, §13(3); and the 1977 enactment that, shortly after the adoption of new art. X, authorized State general obligation bonds for multiple projects was S.C. Act No. 249 (1977 S.C. Acts 827).

- Regarding the inability of an Attorney General's opinion to bind courts in the performance of their duties: *State v. Ramsey*, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014). The portion quoted in the hearing was, "It is well settled that although it may be persuasive authority, an Attorney General's opinion is not binding on this Court, and because we disagree with the reasoning, we decline to adopt it." On the same point, S.C. Const. art. V, §1 was cited at the hearing on the Constitutional requirement of a separate and independent judicial branch to determine questions of law.

Respectfully submitted,

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September 5, 2017

) IN THE COURT OF COMMON PLEAS
) FOR THE FIRST JUDICIAL CIRCUIT
)

) Civil Action No.: 2016-CP-18-1975

PLAINTIFFS' MOTION TO
RECONSIDER, ALTER OR AMEND
JUDGMENT, AND FOR A
REHEARING

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The Plaintiffs, by and through their undersigned counsel, hereby move this Court to reconsider, alter or amend, and to grant a rehearing regarding, the Order entered by the Court on December 11, 2017 on the following issues pursuant to Rules 59(e) and 52(b), SCRPC. The Plaintiffs and their Counsel received written notice of this "Order of Dismissal" on December 8, 2017. **A copy of the Order is attached as Exhibit A.**

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the following issues. As grounds in support of its Motion to Reconsider, Alter or Amend, and for a Rehearing, Plaintiffs rely on the totality of the record in this case, including all memoranda, pleadings and other documents, evidence and arguments previously submitted, and incorporate them herein, and state as follows:

1. **The South Carolina Constitution never intended to give and does not give a county council the authority to combine multiple separate issues for bond issuance into one referendum question, and prohibits a county council from doing so.**

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 debt¹ 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 therein 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.

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. The referendum question combining

¹ The indebtedness at issue in this case is general obligation bond debt. See Complaint §§ 26, 38.

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, i.e., for libraries and for parks. Therefore, the referendum question combining two issues into one in this case is unconstitutional.

2. The General Assembly never intended to give a 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 § 4-10-310; Op. S.C. Att'y Gen., 2004 WL 1182081 (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 upheld 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, 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 the case at bar, no statute allows the combining of whether to allow 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, 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 § 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 § 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. **The possibility that majority support or non-support for one issue could cause majority support or non-support for another issue that would not have received majority support or non-support standing alone, invalidates the referendum combining the two issues as one referendum question.**

It may be impossible to determine factually whether majority support to fund the libraries caused majority support to fund the parks, or vice versa. 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

fact per se 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 issues 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.

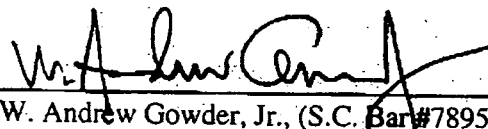
4. The precedent of allowing two issues to be combined into one referendum question would allow multiple additional issues, unlimited in number, to be combined into one referendum question.

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 statewide from "loading up" in the future multiple unpopular referendum issues with one or more popular referendum issues into one question, hoping and with the effect that the popular issue or issues would cause passage of the unpopular issue or issues. Moreover, that would ensure that unpopular issues that would not pass on their own merits might be passed solely due to their linkage to popular issues that do pass on their own merits, and that 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 taxpayers and clearly is not what the South Carolina Constitution or the General Assembly intended or permits, or good fiscal policy.

CONCLUSION

For the above reasons, the Court should reconsider, alter or amend its Order, grant a rehearing and allow this case to proceed through discovery.

Respectfully submitted,



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**STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER**

Gerard E. Ziegler; Brenda Barrington III;
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**IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT**

C.A. No.: 2016-CP-18-1975

**DEFENDANTS' MEMORANDUM
IN OPPOSITION TO
PLAINTIFF'S MOTION TO RECONSIDER,
ALTER OR AMEND JUDGMENT,
AND FOR A REHEARING**

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CLERK OF COURT
DORCHESTER COUNTY

This Court issued its Order of Dismissal (the "Order"), granting the Defendants' Motion for Judgment on the Pleadings and dismissing all claims in Plaintiffs' Complaint in this lawsuit on December 8, 2017 (entered, December 11, 2017). The Order followed Defendants' motion for judgment on the pleadings and supporting memorandum of June 16, 2017; Plaintiffs' memorandum in opposition of August 23, 2017; a hearing before the Court on August 24, 2017, at which both sides were heard extensively; Defendants' email to the Court on August 25, 2017, providing case citations requested by the Court at the hearing; Plaintiffs' supplemental memorandum in opposition of August 29, 2017; Defendants' reply to Plaintiffs' supplemental memorandum of September 5, 2017; and Plaintiffs' email to the Court of September 8, 2017, addressing Defendants' reply to Plaintiffs' supplemental memorandum

Plaintiffs' present motion (the "Motion") requests reconsideration, alteration, or amendment of the Order and a second hearing on the issues re-hashed in the Motion. The Motion suggests that four, overlapping points deserve reconsideration, rehearing, and amendment. Each of those points, however, has been fully covered in the facts, law, and argument already presented to the Court and has been ruled on in the Order. No further consideration is warranted. Nevertheless, Defendants reiterate below the salient points of the prior discussions before the Court regarding the four points of the Motion

Plaintiffs' first point: *"The South Carolina Constitution never intended to give and does not give a County Council the authority to combine multiple separate issues for bond issuance into one referendum question, and prohibits a County Council from doing so."*

Here Plaintiffs cite S.C. Const. art. X, § 14(4), which recites that general obligation debt "may be incurred only for a purpose that is a public purpose and which is a corporate purpose," adding the emphasis to imply that issuance is "only for a purpose in the singular, not in the plural." [*Bolding and underscoring employed by Plaintiffs in the Motion.*] Plaintiffs' point here is ill-taken for at least five reasons that Defendants have previously pointed out.

First, the restriction of S.C. Const. art. X, § 14(4) refers to the issuance of general obligation debt, which is accomplished by the elected governing body of a political subdivision; it does not refer to the authorization to exceed the debt limit, which is the matter that requires an approving vote of the electorate. See S.C. Const. art. X, § 14(6). This point was covered in Defendants's memorandum in support of its Motion for Judgment on the Pleadings ("Defendants' Memorandum") at p. 8.

Second, the standard rule of construction for legal provisions is that use of the singular includes use of the plural. This is made explicit by S.C. Code § 2-7-30, which has been the law in South Carolina for well over a century:

The words “person” and “party” and any other word importing the singular number used in any act or joint resolution shall be held to include the plural . . .

Plaintiffs argue in the Motion that this statute cannot limit the meaning of a constitutional provision. That argument, however, was anticipated in Defendants’ Memorandum and so was already before this Court. In Defendants’ Memorandum (at p. 5), Defendants noted:

If it be objected that Article X is not a statute nor a joint resolution, it must be recalled that Article X was formulated and proposed [*with S.C. Code § 2-7-30 already on the books*] by joint resolution and, after approval by the State’s voters, was ratified by a statute, those being S.C. Joint Resolution No. 750 (1976 S.C. Acts 2217) and S.C. Act No. 71 (1977 S.C. Acts 90), each of which sets forth the full text of new Article X.

However, even if S.C. Code § 2-7-30 were not on the books, its rule is standard. In his treatise on canons of construction of legal texts, the late Justice Scalia refers to the analogous Federal Definition Act, the very first section of the United States Code, 1 U.S.C. § 1 (cited in Defendants’ Memorandum at fn. 2), which also equates the singular and plural forms. Justice Scalia describes that provision thus: “The rule is simply a matter of common sense and everyday linguistic experience The best drafting practice, in fact, is to use the singular number . . .,” and, after citing Jeremy Bentham on the same point, concludes: “His point is well taken – which is why books on legal drafting recommend using the singular over the plural.” Scalia and Garner, *Reading Law: The Interpretation of Legal Texts*, “Canon 14. Gender/Number Canon: In the absence of a contrary indication, the masculine includes the feminine (and vice versa) and the singular includes the plural (and vice versa),” pp. 129-131 (2012).¹

¹ South Carolina case law also favors this “common sense” rule. Although the Opinion of the South Carolina Attorney General, 2016 WL 5820153 (September 30, 2016) (the “AG

Third, the restrictive rule requiring a particular form of action by County Council in exercising its powers urged by Plaintiffs is contrary to S.C. Const. art. VIII, § 17 (cited in Defendants' Memorandum at p. 9):

The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

Fourth, the cases cited by Plaintiffs with regard to their first point as well as with regard to their overlapping subsequent points, are pre-Home Rule. As such, their outcomes were determined by locale-specific constitutional provisions or by the terms of specific statutes; and they are, thus, not relevant here. See Lucas v. Barringer, *supra*, 120 at 85-86, 112 S.E. at 752:

The rule that the propositions cannot be submitted jointly as laid down by our Supreme Court in [*case citations, including cases relied upon by Plaintiffs*] are not applicable to this case, as the decision in those cases was based on the fact that the wording of the statute under which the bonds were issued required the submission of the propositions to be separate, whereas in this case the act authorizing the issuance of the bonds provides for the joint submission.

See Defendants' Memorandum, pp. 9-11.

Fifth, if there is a Constitutionally-imposed prohibition against joint submission of questions, as argued by Plaintiffs, then even an explicit statutory authorization of joint submissions would be prohibited. Accepting Plaintiffs' argument on this point would require declaring void the Capital Project Sales Tax Act (to which, ironically, both Plaintiffs and the AG Opinion point as an acceptable statutory authorization of joint submission), as bonds issued under that Act are secured by a pledge of taxes and thus are general obligation bonds. S.C. Const.

Opinion"), heavily relied upon by Plaintiffs, also made the singular-form-requires-singular-action argument based on the use of the word "any" in the County Bond Act, S.C. Code § 4-15-20(2), Lucas v. Barringer, 120 S.C. 68, 85, 112 S.E. 746, 752 (1922) instructs that "the word 'any' in its common acceptation means 'one or more,' and our Supreme Court has so defined it in State v. Antonio, 3 Brev. 567, where it was held that 'any' means 'one or more.'" See Defendants' Memorandum at pp. 6-7.

art. X, § 14. That statute, S.C. Code § 4-10-300 *et seq.*, requires a single question on all projects proposed to be financed by the authorized debt issuance (just as Defendants' did here, in their November 2016 referendum). If the Constitution prohibits, as a Constitutional matter, the joint submission of projects in a single question for exceeding the general obligation bond debt limit, then the hundreds of millions of dollars of bonds issued by numerous counties around the State under the Capital Project Sales Tax Act would be called into question, and further utilization of that Act would be halted. Moreover, even the Capital Project Sales Tax Act, at S.C. Code § 4-10-330, states that the ordinance must specify "(1) the purpose [*singular*] for which the proceeds of the tax are to be used, which may include projects [*plural*]. . . and may include the following types of projects [*plural*]" (followed by a list ranging from highways to courthouses to libraries to recreational and cultural facilities to water and sewer projects to beach re-nourishment and any combination thereof), thus clearly indicating that a single purpose may encompass multiple, unrelated projects. See Defendants' Memorandum, p. 7.

Plaintiffs' second point: "*The General Assembly never intended to give a County Council the authority to combine separate issues for bond issuance into one referendum question.*"

Under this heading, Plaintiffs treat the Capital Project Sales Tax Act, already discussed above.

In addition, Plaintiffs recite the necessity from South Carolina election law, S.C. Code § 7-13-400, that voters be allowed to vote on "the question or issue." That statute relates to the form of ballot when questions are submitted; it has nothing to do with what can be contained in the question under consideration. It simply says that the ballot must require one to vote "in favor of the question or issue." The Dorchester County referendum did precisely that. There was a

single question on which each elector had to vote yes or no. See Defendants' Memorandum at fn. 1.

Also under this heading, Plaintiffs note that there are separate statutes in the South Carolina Code related to parks and libraries. That fact is dispositive of nothing related to this case. Plaintiffs identify the statutes as S.C. Code § 4-9-39 (libraries) and S.C. Code § 51-15-330 (parks). The most obvious error here is the reference to Section 51-15-330, which has nothing to do with counties at all. Instead, that statute relates to cities with populations between 36,000 and 55,000. See S.C. Code § 51-15-110 (1). While S.C. Code § 4-9-39 does relate to county libraries, it merely sets up the annual funding mechanism for county library systems; it has nothing to do with "authorizing a bond referendum for a library," as claimed in Plaintiffs' Motion (p. 4).² The actual grant of power to counties to tax and spend for parks and libraries (the two sides of a bond-issuance coin are, after all, taxing and spending) is in a single statute, indeed, in a single subsection – S.C. Code § 4-9-30(5) –for both parks and libraries. That subsection provides that each county government shall have the power:

to assess property and levy ad valorem property taxes . . . and make appropriations for functions and operations of the county, including, but not limited to . . . recreation; . . . libraries; and to provide for the regulation and enforcement of the above. [*Emphasis added.*]

That taxing function, in turn, is what creates the ability to issue bonds under the County Bond Act. See S.C. Code §§ 4-15-20, -30 (a county may issue bonds for any purpose for which it can levy taxes). Thus, a county's powers to fund and to issue bonds for both parks and libraries are,

² S.C. Code § 4-9-39, along with S.C. Code § 4-9-35 through 4-9-38, was enacted by the General Assembly in 1978 in order to transfer library systems to County control, in accordance with the mandate of Home Rule. S.C. Act No. 564 (1978 S.C. Acts 1657) made that explicit in its "Findings" in Section 1: "By this act the General Assembly seeks to clarify the status of county public libraries under the 'home rule legislation', to define the relationship between county government and county library systems, and to ensure the continued operation and support of such libraries on a uniform basis."

in fact, contained in the same statute. See Defendants' reply to Plaintiffs' supplemental memorandum ("Defendants' Reply"), pp. 1-2.

Plaintiffs' third point: *"The possibility that majority support or non-support for one issue could cause majority support or non-support for another issue that would not have received majority support or non-support standing alone, invalidates the referendum combining the two issues as one referendum question."*

Plaintiffs argue that this point alone "requires invalidation of the referendum," and again refers to S.C. Const. art. X, § 14(4). Plaintiffs' argument here has all the infirmities described above.

Plaintiffs argue that a voter who wanted either parks or libraries but not both would correctly understand that he/she would have to vote for both in order to get the one that he/she wanted; but that the form of the question on the ballot would not be understandable by the voter and/or would create confusion as to whether the projects were related. Those two arguments are at war with each other. The premise of the first argument is correct: the ballot question was clear and comprehensible. The conclusion drawn, that a voter must express his/her will separately on each point of decision, is not correct. Voters ordinarily do not vote separately. Even in Plaintiffs' preferred scenario, one question for libraries and one question for parks, a voter who wanted one park but not another would have to vote for all parks to get the one he/she wanted; and a voter who wanted one library facility but not another would have to vote for all libraries to get the one he/she wanted. See Defendants' Reply at p. 2.

Moreover, the Dorchester County bond referendum passed by a wide margin. In considering the adequacy of ballot questions after elections have been held, courts have generally looked to see whether the question caused confusion as to what was being voted upon or whether

the closeness of the result indicates that a different ballot form would have resulted in a different outcome. See Jamison v. City of Charlotte, 239 N.C. 682, 80 S.E.2d 904 (1954), and Waits v. Town of Ninety-Six, 154 S.C. 350, 151 S.E. 576 (1930). The level of participation and the margin in favor demonstrate that there was neither confusion nor an outcome-affecting impact in this situation. See Defendants' Memorandum at pp. 13-14.

And again, if combining questions is fatally defective, the same argument would apply against the Capital Project Sales Tax Act, which was enacted with a requirement for such joint submission by the General Assembly and approved (although not on this point) by the Supreme Court in State v. County of Florence, 406 S.C. 169, 749 S.E.2d 516 (2013).

Plaintiffs' fourth point: *"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."*

This point simply recasts the third point in a "slippery slope" format. It requires no further discussion here.

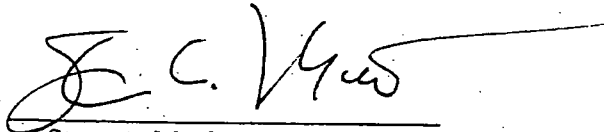
CONCLUSION

For the foregoing reasons, the Plaintiffs' Motion for reconsideration, alteration, and amendment of, and rehearing on, the Order should be denied.

Respectfully submitted,

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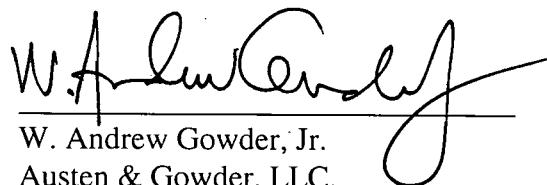
Counsel for Defendants

January 5, 2018

Certificate of Counsel

The undersigned hereby certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 27, 2018

A handwritten signature in black ink, appearing to read "W. Andrew Gowder, Jr.", written over a horizontal line.

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