THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 17 2018

S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson

Case No. 2016-CP-18-1975
Appellate Case No. 2018-000395

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, ... 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,

---

RESPONDENTS' FINAL BRIEF

Steve A. Matthews
SC Bar No. 3689
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 11889
Columbia, South Carolina 29211-1889
803.540.7827
smatthews@hsblawfirm.com

Counsel for Respondents

TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

FACTS OF THE CASE 3

STANDARD OF REVIEW 5

I. THE ISSUES ARE QUESTIONS OF LAW AND THE REVIEW BY THIS COURT IS *DE NOVO*. 5

II. LEGISLATIVE ENACTMENTS SUCH AS THE REFERENDUM ORDINANCE HAVE A STRONG PRESUMPTION OF VALIDITY 6

III. THE PRESUMPTION OF VALIDITY APPLIES EQUALLY TO REFERENDA CALLED BY LEGISLATIVE ENACTMENT. 7

IV. THE AG OPINION RELIED UPON BY PLAINTIFF APPELLANTS IS NOT BINDING ON THIS COURT. 8

ARGUMENT 9

I. INTRODUCTION AND SUMMARY 9

II. THE APPEARANCE OF CERTAIN NOUNS IN SINGULAR FORM IN CONSTITUTIONAL AND STATUTORY PROVISIONS CITED BY PLAINTIFF APPELLANTS – S.C. CONST. ART. X, § 14(4), S.C. CODE § 4-15-20 AND -30, AND S.C. CODE § 7-13-400 – DOES NOT FORBID CONSIDERATION OF LIBRARY FACILITIES AND RECREATIONAL FACILITIES IN ONE REFERENDUM QUESTION. 10

III. THERE IS NO COMMON-LAW, QUASI-CONSTITUTIONAL RULE THAT FORBIDS CONSIDERATION OF LIBRARY FACILITIES AND RECREATIONAL FACILITIES IN ONE REFERENDUM QUESTION. 18

IV. DORCHESTER COUNTY'S 2016 REFERENDUM QUESTION IS NOT CONFUSING. 21

V. EVEN IF THERE WERE A "NECESSARILY SINGULAR" REQUIREMENT, THE COUNTY'S 2016 REFERENDUM WAS COMPLIANT 25

VI. A RULE THAT FORBIDS CONSIDERATION IN ONE REFERENDUM QUESTION OF SEVERAL ASPECTS ON WHICH SOME VOTERS MAY WISH TO EXPRESS SEPARATE OPINIONS IS NOT A JUDICIALLY MANAGEABLE RULE. 26

CONCLUSION 27

TABLE OF AUTHORITIES

CASES

Anders v. S.C. Parole & Cmty. Corr. Bd., 279 S.C. 206, 305 S.E.2d 229 (1983) 8

Angle v. Ry. Co., 151 U. S. 1, 14 Sup. Ct. 240, 38 L. Ed. 55 (1894) 23

Bethea v. Town of Dillon, 91 S.C. 413, 74 S.E. 983 (1912) 25

Bugsy's, Inc. v. City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890 (2000) 6

Charleston Cty. Sch. Dist. v. Harrell, 393 S.C. 552, 713 S.E.2d 604 (2011) 8

Chase v. Gilbert, 83 S. C. 546, 65 S. E. 735 (1909) 20

Detroit United Ry. v. City of Detroit, 255 U.S. 171, 41 S. Ct. 285, 65 L. Ed. 570 (1921) 23

Duncan v. County of York, 267 S.C. 327, 228 S.E.2d 92 (1976) 18

Ex parte Tipton, 229 S.C. 471, 93 S.E.2d 640 (1956) 7, 23

Fairfax Cty. Taxpayers All. v. Bd. of Cty. Sup'rs of Fairfax Cty., 202 Va. 462, 117 S.E.2d 753 (1961) 13, 19

Fielding v. S.C. Election Comm'n, 305 S.C. 313, 408 S.E.2d 232 (1991) 7

Fleming v. Royall, 145 S.C. 438, 143 S.E. 162 (1928) 8, 24

George v. Mun. Election Comm'n of Charleston, 335 S.C. 182, 516 S.E.2d 206 (1999) 7

George v. Mun. Election Comm'n, supra, 335 S.C. 182, 516 S.E.2d 206 (1999) 8

Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006) 5

Heinitsh v. Floyd, 130 S.C. 434, 126 S.E. 336 (1925) 8, 24

Herbert v. Griffith, 99 S. C. 7, 82 S. E. 986 (1914) 20

Hospitality Ass'n of SC, Inc. v. County of Charleston, 320 S.C. 219, 464 S.E. 2d 113 (1995) 6, 19

Jamison v. City of Charlotte, 239 N.C. 682, 80 S.E.2d 904 (1954) 20, 25

Johnson v. Roddey, 83 S. C. 462, 65 S. E. 626 (1909) 20

Kalber v. Redfearn, 215 S.C. 224, 54 S.E.2d 791 (1949) 8

Lorraine v. Markel American Ins. Co., 241 F.R.D. 534; 2007 U.S. Dist. LEXIS 33020; 73 Fed. R. Evid. Serv. (Callaghan) 446 (D.Md. 2007) 4

Lowery v. Shirley, 234 S.C. 279, 107 S.E.2d 769 (1959) 5, 7, 23

Fleming v. Royall, 145 S.C. 438, 143 S.E. 162 (1928) 5

Lucas v. Barringer, 120 S.C. 68, 112 S.E. 746 (1922) 13, 20, 21

Paralyzed Veterans of America v. McPherson, 2008 U.S. Dist. LEXIS 69542 (N.D.Cal., September 8, 2008) 4

Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651 (2002) 6

Robinson v. Richland Cty. Council, 293 S.C. 27, 358 S.E.2d 392 (1987) 17

Ross v. Lipscomb, 83 S. C. 136, 65 S. E. 451 (1909) 20, 21

Sadler v. Lyle, 254 S.C. 535, 176 S.E.2d 290 (1970) 25

Soon Hing v. Crowley, 113 U. S. 703, 5 Sup. Ct. 730, 28 L. Ed. 1145 (1885) 23

State ex rel. Corry v. Cooney, 70 Mont. 355, 225 P. 1007 (1924) 7

State ex rel. Parler v. Jennings, 79 S.C. 414, 60 S.E. 967 (1908) 8

State v. Antonio, 3 Brev. 567 (1816) 13

State v. Brasington, 93 S. C. 447, 76 S. E. 1086 (1913) 20

State v. County of Florence, 406 S.C. 169, 749 S.E.2d 516 (2013) 15

State v. Ramsey, 409 S.C. 206, 762 S.E.2d 15 (2014) 8

State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975) 11

Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 593 S.E.2d 462 (2004) 6

Town of Summerville v. City of N. Charleston, 378 S.C. 107, 662 S.E.2d 40 (2008) 5

University of South Carolina v. Mehlman, 245 S.C. 180, 139 S.E.2d 771 (1964) 6

Voss v. Chicago Park Dist., 392 Ill. 429, 64 N.E.2d 731 (1946) 20

Waits v. Town of Ninety-Six, 154 S.C. 350, 151 S.E. 576 (1930) 21, 25

Weeks v. Bryant, 99 S. C. 8, 82 S. E. 988 (1914) 20

Watson v. Harmon, 280 S.C. 214, 312 S.E.2d 8 (Ct. App. 1984) 19

Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999) 6

Williams v. Town of Hilton Head Island, S.C., 311 S.C. 417, 429 S.E.2d 802 (1993) 6, 19

STATUTES

S.C. Act No. 1377 (1968 S.C. Acts 3175) 13

S.C. Joint Resolution No. 750 (1976 S.C. Acts 2217) 11

S.C. Act No. 249 (1977 S.C. Acts 827) 13

S.C. Act No. 71 (1977 S.C. Acts 90) 11, 13

S.C. Act No. 564 (1978 S.C. Acts 1657) 17

S.C. Act No. 1, Part II, § 1 (2001 S.C. Acts 20) 13

S.C. Code § 2-7-30 .... 9, 10, 11, 12
S.C. Code § 4-9-10 17
S.C. Code § 4-9-25 .... 6, 18
S.C. Code § 4-9-30(5) 17, 26
S.C. Code § 4-9-35 17
S.C. Code § 4-9-36 17
S.C. Code § 4-9-37. 17
S.C. Code § 4-9-38 17
S.C. Code § 4-9-39 .... 16, 17
S.C. Code § 4-10-300 *et seq.* 10, 14, 15
S.C. Code § 4-10-310 14
S.C. Code § 4-10-330(D) 14
S.C. Code § 4-15-10 *et seq.* 3
S.C. Code § 4-15-20 .... 9, 13, 17
S.C. Code § 4-15-30 .... 1, 9, 13, 16, 17
S.C. Code § 4-15-60 4
S.C. Code § 5-5-10 17
S.C. Code § 7-13-355 3
S.C. Code § 7-13-400 .... 9, 10, 11, 14
S.C. Code § 7-17-20 4
S.C. Code § 7-17-30 4
S.C. Code § 15-53-10 *et seq.* 2
S.C. Code § 51-15-110 (1) 16
S.C. Code § 51-15-330 16
S.C. Code § 30-203 (1962 Code) 11
1 U.S. Code § 1 12

OTHER AUTHORITIES

64 Am. Jur. 2d Public Securities and Obligations § 132 23
64A C.J.S. Municipal Corporations § 2151 23
Op. S.C. Att'y Gen., 2016 WL 5820153 (S.C.A.G. September 30, 2016) 4
Scalia and Garner, *Reading Law: The Interpretation of Legal Texts* (2012) 12

RULES

Rule 12(c), SCRCP 2, 5
Rule 56, SCRCP 2, 5
Rule 201, SCRE 4
Rule 803(8), SCRE 5
Rule 902(5), SCRE 4
Rule 203(d)(1)(A), SCACR 2
Rule 902(5), FRE 4

CONSTITUTIONAL PROVISIONS

S.C. Const. art. I, § 8 8
S.C. Const. art. III, § 17 26
S.C. Const. art. V, § 1 8
S.C. Const. art. VIII, § 17 .... 6, 18
S.C. Const. art. X, §13(3) 13
S.C. Const. art. X, § 14(4) 9, 10, 13, 15, 16
S.C. Const. art. X, § 14(6) 1, 3, 15
S.C. Const. art. X, § 14(7)(a) 3
S.C. Const. art. XVI, § 2 .... 12, 20, 25

STATEMENT OF ISSUES ON APPEAL

With respect to the referendum question propounded by ordinance of Dorchester County Council in the general election of 2016 for the purpose of authorizing Dorchester County, pursuant to S.C. Const. art. X, § 14(6), to issue general obligation bonds not counted against its constitutional debt limit:

1. Does the appearance of certain nouns in singular form in constitutional and statutory provisions cited by Plaintiff Appellants – S.C. Const. art. X, § 14(4), S.C. Code § 4-15-30, and S.C. Code § 7-13-400 – forbid consideration of library facilities and recreational facilities in one referendum question?

2. Does South Carolina recognize a quasi-constitutional common-law rule that forbids consideration of library facilities and recreational facilities in one referendum question?

3. Is Dorchester County's 2016 referendum question impermissibly confusing because it authorized the issuance of bonds and the expenditure of the proceeds thereof for library facilities and recreational facilities?

4. Is a rule that forbids consideration in one referendum question of several matters on which some voters may want to voice separate opinions a judicially manageable rule?

STATEMENT OF THE CASE

Plaintiff Appellants, who are voters in Dorchester County (the "**County**"), brought this action under the South Carolina Uniform Declaratory Judgments Act, S.C. Code §15-53-10 *et seq.*, concerning an upcoming (now concluded) referendum to be held in the County, which was to authorize the issuance of general obligation bonds by the County outside of its constitutional debt limit. The proceeds of those bonds would be used for library and recreation facilities. The action sought declarations that the form of the ballot was constitutionally and statutorily deficient, and injunctions against the holding of the referendum and the issuance of any bonds pursuant thereto.

The referendum was not enjoined and resulted favorably to the issuance of the bonds. Thereafter, the County and the members of its County Council ("**Council**"), the defendants in this action, having previously answered, moved under Rule 12(c), SCRCP, for judgment on the pleadings. Following briefing and a hearing, Hon. Edgar W. Dickson, Circuit Judge, granted the motion (the "**Order**"). Plaintiff Appellants thereupon moved for reconsideration. Following briefing, Judge Dickson denied that motion.

Plaintiff Appellants have appealed. The appeal is before this Court pursuant to each of SCACR Rules 203(d)(1)(A)(ii) [*constitutionality of a county ordinance*] and 203(d)(1)(A)(iii) [*authorization or proposed issuance of general obligation debt of a county*].

FACTS OF THE CASE

On July 18, 2016, Council adopted Ordinance 16-03 (the "**Referendum Ordinance**"), calling for a referendum to be held among the voters of the County. The Referendum Ordinance set the date of the referendum for November 8, 2016, the date of the general State and federal elections.

The referendum was pursuant to the County Bond Act, S.C. Code § 4-15-10 *et seq.*, for the purpose of allowing the County to issue general obligation indebtedness that would not count against its constitutional limitation on such debt. Under S.C. Const. art. X, § 14(7)(a), 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 the County, however, are not constrained by, and do not count against, that debt limit. S.C. Const. art. X, § 14(6).

The question to be placed on the ballot, as set by the Referendum Ordinance, 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, Ex. 2, pp. 2-3. (R., pp. 42-43.) See also https://www.dorchestercounty.net/Modules/ShowDocument.aspx?documentid=11660.

The form of a ballot question to be voted upon at the time of a general election must be final and submitted to the appropriate election commission not later than August 15 of the year in which the general election is to be held. S.C. Code § 7-13-355.

Eleven weeks after adoption of the Referendum Ordinance and seven weeks after the deadline for submission of final ballot forms, on October 3, 2016, counsel for Plaintiff

Appellants advised the County Attorney by letter that they had obtained an opinion of the South Carolina Attorney General (*Op. S.C. Att'y Gen.*, 2016 WL 5820153 (S.C.A.G. September 30, 2016), the "**AG Opinion**") that a court would likely find the form of the ballot question violative of the South Carolina Constitution and statutes because it encompassed both library facilities and recreational facilities within the ambit of a single vote. Complaint, Exs. 1, 2, and 4. (R., pp. 29-39, 40-43, and 50-58.) Ten days following the date of that letter, Plaintiff Appellants filed this action.

The ballot question as formulated by the Referendum Ordinance was voted upon on November 8, 2016. The tally was 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 a court may take judicial notice.[1] See Rules 201 and 902(5), SCRE; see also Rule 803(8), SCRE. The vote tally was not challenged and is therefore final. S.C. Code §§ 4-15-60 and 7-17-20, -30.

---

[1] See *Lorraine v. Markel American Ins. Co.*, 241 F.R.D. 534, 551; 2007 U.S. Dist. LEXIS 33020, **64; 73 Fed. R. Evid. Serv. (Callaghan) 446 (D.Md. 2007) and *Paralyzed Veterans of America v. McPherson*, 2008 U.S. Dist. LEXIS 69542, *21-23 (N.D.Cal., September 8, 2008) (government website documents are self-authenticating under Rule 902(5), FRE, which is identical to Rule 902(5), SCRE.)

STANDARD OF REVIEW

I. THE ISSUES ARE QUESTIONS OF LAW AND THE REVIEW BY THIS COURT IS *DE NOVO*.

This appeal is from a judgment on the pleadings under Rule 12(c), SCRCP. By that Rule, matters outside the pleadings may be presented; and if they are so presented and not excluded, the motion is to be treated as a motion for summary judgment under Rule 56, SCRCP. Here, one fact not appearing in the Complaint, the result of the referendum, was presented, not disputed, and not excluded. Order, p. 2. (R. p. 2.) That fact is also (as noted above) established by self-authenticating public, governmental records.

In any event, the facts are not in dispute.[2] Whether viewed as a motion for judgment on the pleadings or as a motion for summary judgment, an appellate court applies *de novo* the same

---

[2] Although the issue of whether the ballot question was confusing to voters may be considered a fact issue, this Court reviews allegations of impermissibly confusing ballots by examining the text of the ballot and related enactments from the perspective of a reasonable voter. Constitutional requirements are met when "the question is fairly stated on the ballot in such language that the average voter may understand the true import and scope of the [referendum subject]." *Lowery v. Shirley*, 234 S.C. 279, 282, 107 S.E.2d 769, 771 (1959), citing *Ex parte Tipton*, 229 S.C. 471, 93 S.E.2d 640 (1956). This test is amenable to decision on a motion for judgment on the pleadings where, as here, the text of the ballot is before the Court. See *Lowery*, *Tipton*, *Fleming v. Royall*, 145 S.C. 438, 143 S.E. 162 (1928), and *Heinitsh v. Floyd*, 130 S.C. 434, 126 S.E. 336 (1925), in each of which the Court determined the question of ballot confusion based on the text of the ballot question and related enactments. *Heinitsh* referred in passing (130 S.C. 438, 126 S.E. at 337) to some unspecified "admitted facts;" however, this Court noted in *Tipton*:

> The opinion in the *Heinitsh* case does not set forth in detail the 'admitted facts' upon which the court concluded that the electors had been misled, and the quoted words do not necessarily imply that evidence on the point, other than the resolution and the ballot themselves, was offered. Certainly the decision required no such additional evidence to support it, for it was manifest from the ballot itself that the proviso contained in the body of the resolution, but not mentioned in its title, had not been fairly presented to the voters.

Tipton, 229 S.C. at 478, 93 S.E.2d at 643-644. These cases are discussed further in Section IV of ARGUMENT below.

standard of review on questions of law as is required of the circuit court. See *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 109–10, 662 S.E.2d 40, 41 (2008).

II. LEGISLATIVE ENACTMENTS SUCH AS THE REFERENDUM ORDINANCE HAVE A STRONG PRESUMPTION OF VALIDITY.

The standard to be applied both by the circuit court and *de novo* by this Court begins with the fundamental principle that legislative enactments like the Referendum Ordinance are presumed valid, whether the challenge is constitutional or statutory in nature.

> "A municipal ordinance is a legislative enactment and is presumed to be constitutional." *Whaley v. Dorchester County Zoning Bd. of Appeals,* 337 S.C. 568, 575, 524 S.E.2d 404, 408 (1999). The burden of proving the invalidity of an ordinance is on the party attacking it. *Id.* Determining whether an ordinance is valid is a two-step process. First, the Court must determine whether a municipality has the power to adopt the ordinance. If no power exists, the ordinance is invalid. Second, the Court must determine whether the ordinance is consistent with the Constitution and general laws of this state. *Riverwoods, LLC v. County of Charleston,* 349 S.C. 378, 384, 563 S.E.2d 651, 654 (2002); *Bugsy's, Inc. v. City of Myrtle Beach,* 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000).

Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 425, 593 S.E.2d 462, 467 (2004) [*emphasis added*]. A legislative enactment will be held invalid only when its invalidity appears so clearly as to leave no room for reasonable doubt. *University of South Carolina v. Mehlman*, 245 S.C. 180, 139 S.E.2d 771 (1964).

This deferential standard is not only jurisprudentially recognized; it is constitutionally and statutorily mandated. Both S.C. Const. art. VIII, § 17[3] and S.C. Code § 4-9-25[4] require that

---

[3] "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."

the powers of a county be liberally construed. See also *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 429 S.E.2d 802 (1993) and *Hospitality Ass'n of SC, Inc. v. County of Charleston*, 320 S.C. 219, 464 S.E. 2d 113 (1995), holding that the Home Rule Amendments to the Constitution had abrogated the old Dillon's Rule restrictive reading of the powers of local general (county and municipal) governments.

III. THE PRESUMPTION OF VALIDITY APPLIES EQUALLY TO REFERENDA CALLED BY LEGISLATIVE ENACTMENT.

Courts are highly reluctant to disturb referenda called by a legislative enactment.

> The Courts are slow to strike down either the legislative proceedings or the election incident to the adoption of a constitutional amendment, and will indulge every reasonable presumption in favor of their validity. As was said in *State ex rel. Corry v. Cooney*, 70 Mont. 355, 225 P. 1007, 1009: 'The question is not whether it is possible to condemn the amendment, but whether it is possible to uphold it, and we shall not condemn it unless in our judgment its nullity is manifest beyond a reasonable doubt'.

Ex parte Tipton, 229 S.C. 471, 476, 93 S.E.2d 640, 643 (1956).

> Every reasonable presumption will be indulged in favor of the validity of both the legislative proceedings and the election incident to the adoption of a constitutional amendment . . . .

Lowery v. Shirley, 234 S.C. 279, 282, 107 S.E.2d 769, 771 (1959).

The standard is whether "the question is fairly stated on the ballot in such language that the average voter may understand the true import and scope of the proposed amendment." *Id.* Election or ballot irregularities not breaching that threshold are disregarded, especially after the election has been held. *George v. Mun. Election Comm'n of Charleston*, 335 S.C. 182, 516 S.E.2d 206 (1999). "Every reasonable presumption in favor of sustaining a contested election

---

4 " . . . . The 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."

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, 317, 408 S.E.2d 232, 234 (1991). In such situations, any failure to meet legal requirements must "affect the free and intelligent casting of a vote, the determination of the results, an essential element of the election, or the fundamental integrity of the election" in order to justify invalidating the referendum. *George v. Mun. Election Comm'n*, *supra*, 335 S.C. at 187, 516 S.E.2d at 208. See also *State ex rel. Parler v. Jennings*, 79 S.C. 414, 60 S.E. 967 (1908); *Fleming v. Royall*, 145 S.C. 438, 143 S.E. 162 (1928); and *Heinitsh v. Floyd*, 130 S.C. 434, 126 S.E. 336 (1925).

IV. THE AG OPINION RELIED UPON BY PLAINTIFF APPELLANTS IS NOT BINDING ON THIS COURT.

In an effort to meet their burden, Plaintiff Appellants rely extensively, both in their Complaint and in their Appellants' Brief, on the AG Opinion.

> 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.

State v. Ramsey, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014). See also *Anders v. S.C. Parole & Cmty. Corr. Bd.*, 279 S.C. 206, 305 S.E.2d 229 (1983); *Charleston Cty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560–61, 713 S.E.2d 604, 609 (2011); and *Kalber v. Redfearn*, 215 S.C. 224, 237, 54 S.E.2d 791, 796 (1949). Because the whole judicial power of the State is vested in a unified judicial system under this Court (S.C. Const. art. V, § 1), deference on a constitutional question to a non-judicial official would be inconsistent with that constitutionally-established judicial independence and contrary to the Separation of Powers provision of the South Carolina Declaration of Rights (S.C. Const. art. I, § 8).

ARGUMENT

I. INTRODUCTION AND SUMMARY

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. Plaintiff Appellants' contention, in reliance on the AG Opinion and its reasoning, is that it was unlawful for Council to call a referendum on a single question to authorize bonds for library facilities and recreational facilities.

Plaintiff Appellants' argument is built around the following contentions.

- The word "purpose," as used in S.C. Const. art. X, § 14(4) and in S.C. Code § 4-15-20 and -30(A) of the County Bond Act, is grammatically singular, and so the purpose as stated in a bond referendum must be singular. Complaint, ¶¶ 26-28, 37-48 (R. pp. 20-25.), and Ex. 1 thereto (AG Opinion), pp. 1-2, 9. (R. pp. 30-31, 38.)

- South Carolina election laws, at S.C. Code § 7-13-400, refer to "the question or issue" and "the proposition" to be voted upon using those grammatically singular words, and so the question may not refer to more than one thing. Complaint, ¶¶ 49-51 (R. p. 25), and Ex. 1 thereto (AG Opinion), pp. 2, 9. (R. pp. 31, 38.)

- There is a common law, quasi-constitutional principle against combining two issues into a single question for voter approval. Complaint, ¶32 (R. p. 21), and Ex. 1 thereto (AG Opinion), pp. 3-8. (R. pp. 32-37.)

- Voters must be allowed to voice their opinions separately on each "issue," "matter," or "purpose" involved in what is put before them. Complaint, ¶¶ 39, 42, 45, 48, 51 and 54. (R. pp. 22-26.)

The rebuttals by defendants County and Council are summarized as follows and elaborated in the remainder of the ARGUMENT.

- A long-standing South Carolina statute, S.C. Code § 2-7-30, requires that singular forms be construed to include the plural, thus definitively invalidating the Plaintiff Appellants' and the AG Opinion's conclusion on that point.

- Other constitutional and statutory evidence demonstrate that the use of a grammatically singular form does not preclude consideration of multiple projects in one question.

- If either the Constitution or a general quasi-constitutional principle forbids the inclusion of more than one project in a single question, then the Capital Project Sales Tax Act, S.C. Code § 4-10-300 *et seq.*, is invalid, thus disrupting large-scale, long-term project financing arrangements for a number of counties and depriving all counties of a valuable tool of proven workability.

- Constitutional and statutory provisions relied upon by Plaintiff Appellants relate to the issuance of bonds and not to a referendum to authorize bonds. Consequently, their 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.

- Plaintiff Appellants, through the AG Opinion, rely 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 in the AG Opinion 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.

- Applying the test described in STANDARD OF REVIEW (Footnote 2, above), the County's 2016 referendum question is not only not impermissibly confusing; it is not confusing at all.

- The approach of both the courts and the General Assembly of South Carolina is to recognize the incurrence of bonded indebtedness as a single subject.

- Neither the Complaint nor the AG Opinion sets out workable criteria for determining when two items are so distinct as to require two separate questions.

II. THE APPEARANCE OF CERTAIN NOUNS IN SINGULAR FORM IN CONSTITUTIONAL AND STATUTORY PROVISIONS CITED BY PLAINTIFF APPELLANTS – S.C. CONST. ART. X, § 14(4), S.C. CODE § 4-15-20 AND -30, AND S.C. CODE § 7-13-400 – DOES NOT FORBID CONSIDERATION OF LIBRARY FACILITIES AND RECREATIONAL FACILITIES IN ONE REFERENDUM QUESTION.

Long-standing South Carolina statute, S.C. Code § 2-7-30, requires that singular forms be construed to include the plural, thus definitively invalidating the Plaintiff Appellants' and the AG Opinion's conclusion on that point.

The heart of the Complaint and 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 <u>a purpose</u>" –and

in several sections of the County Bond Act must be singular and cannot include anything that smacks of a plural. The Complaint and the AG Opinion argue similarly with regard to the singular forms of "the question or issue" and "the proposition" in S.C. Code § 7-13-400, which governs ballot forms in all South Carolina elections. However, 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 enactments.

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

This Court applied S.C. Code § 2-7-30 about the same time as Article X was being adopted. In holding that a statute that created a singular office ("a ministerial recorder," "the person" elected) would nevertheless allow for the utilization of multiple positions, the Court wrote:

> 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 . . . .'

State v. Sachs, 264 S.C. 541, 551, 216 S.E.2d 501, 506 (1975).

Plaintiff Appellants object that Article X is not a statute nor a joint resolution. But 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), with § 2-7-30 already long on the books and recently enforced by *State v Sachs*. Each of that joint resolution and that act sets forth the full text of new Article X. The meaning of that text in the Constitution cannot be different from what it was in that joint resolution and that Act, both of which pre-date the constitutional provision and both of which are controlled by § 2-7-30.

S.C. Code § 2-7-30 alone is sufficient to negate the Plaintiff Appellants' contention on this point. However, even if that statute were not on the books, its rule is standard, a common sense rule that appears in the boilerplate of most contracts. 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, which sets forth rules for construing acts of Congress. It also equates the singular and plural forms: "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. 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, Justice Scalia 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).

Other constitutional and statutory evidence demonstrate that the use of a grammatically 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." There is no such explicit statement, either constitutional or statutory, with regard to county bond referenda.

The local government debt provision of the Constitution, S.C. Const. art. X, § 14(4) upon which Plaintiff Appellant relies, has a counterpart for State debt in S.C. Const. art. X, §13(3), which similarly requires a "purpose" [*singular form*]. That provision was added to the Constitution by Act No. 71 (1977 S.C. Acts 90), ratified May 4, 1977, effective November 30, 1977. Shortly after that adoption, S.C. Act No. 249 (1977 S.C. Acts 827) (effective June 14, 1977), authorized in a single statute State general obligation bonds for multiple projects including, for example, purchase of an airplane, purchase of educational and vocational equipment, armory roof repair, construction of an airport, various building design services, and dormitory construction. That long-standing practice of authorizing multiple unrelated projects in a single statute (by the ongoing amendment of S.C. Act No. 1377 (1968 S.C. Acts 3175, known as the State Bond Act) continued thereafter, despite the singular "purpose" requirement. <u>See</u>, for example, S.C. Act No. 1, Part II, § 1 (2001 S.C. Acts 20).

In addition, the County Bond Act provides that a county may issue bonds "to defray the cost of any authorized <u>purpose</u>" (S.C. Code § 4-15-30), and defines "authorized purpose" as "any <u>purpose</u> for which the county might, under the applicable constitutional provisions, issue bonds or levy taxes" (S.C. Code § 4-15-20(2)) [*emphasis added*]. This singular form of the emphasized provisions is one of the key underpinnings of Plaintiff Appellants' argument. In each instance, however, the word "any" precedes the singular form; and "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." *Lucas v. Barringer*, 120 S.C. 68, 85 112 S.E. 746, 52 (1922).[5] Consequently, each of "<u>any</u> purpose" and "<u>any</u> authorized purpose"

---

[5] *Lucas* was cited by a <u>Corpus Juris Secundum</u> article, which was in turn cited in *Fairfax Cty. Taxpayers All. v. Bd. of Cty. Sup'rs of Fairfax Cty.*, 202 Va. 462, 117 S.E.2d 753 (1961), a

is, by its statutory definition and based on accepted principles of construction, plural despite its singular form.

Plaintiff Appellants attempt to draw a negative inference from a comparison of the County Bond Act and the Capital Project Sales Tax Act (S.C. Code § 4-10-300 *et seq.*). The Capital Project Sales Tax Act in § 4-10-310 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" and in § 4-10-330(D) affirmatively requires all projects to be incorporated into a single ballot question. Overlooked, however, is the specific requirement in § 4-10-330 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). This shifting from plural to singular and back to plural, all within one financing statute, clearly indicates that use of the grammatically singular word "purpose" does not carry all of the intentional weight that Plaintiff Appellants ascribe to it and that it may readily, even necessarily, encompass multiple, unrelated projects.

Plaintiff Appellants also recite South Carolina election law, S.C. Code § 7-13-400, that voters be allowed to vote on "the question or issue" or "the proposition." 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 County's 2016 referendum did precisely that. There was a single question on which each elector had to vote yes or no.

---

case heavily relied upon by Plaintiff-Appellants via the AG Opinion, as one of the cases behind the asserted general common law principle discussed below.

If either the Constitution or a general quasi-constitutional principle forbids the inclusion of more than one project in a single question, then the Capital Project Sales Tax Act, S.C. Code § 4-10-300 et seq., is invalid, thus disrupting large-scale, long-term project financing arrangements for a number of counties and depriving all counties of a valuable tool of proven workability.

As noted above, the Capital Projects Sales Tax Act, S.C. Code § 4-10-300 *et seq.*, requires a single question on all projects proposed to be financed thereunder. If there is a general (constitutional or quasi-constitutional) prohibition against joint submission of questions, then the Capital Project Sales Tax Act would be unconstitutional. In an *amicus curiae* brief filed with this Court in *State v. County of Florence*, 406 S.C. 169, 749 S.E.2d 516 (2013), the South Carolina Association of Counties advised on September 26, 2013, that fourteen counties were then relying on the Capital Projects Sales Tax Act for their long-term capital project financing needs. Invalidating that Act would be severely disruptive both to governmental planning and to financial markets for outstanding bonds.[6]

Constitutional and statutory provisions relied upon by Plaintiff Appellants relate to the issuance of bonds and not to a referendum to authorize bonds. Consequently, their 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.

Plaintiff Appellants rely on the singular form of the word "purpose" in S.C. Const. art. X, § 14(4). But 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). Although the referendum provision (§ 14(6)) does not allow a referendum to authorize bonds not contemplated by the

---

[6] *State v. County of Florence* allowed a multi-project referendum to proceed, but the question of the plural aspect of the projects was not directly raised in that case.

issuance provision (§ 14(4)), it contains no restriction on the form of ballot. Consequently, the Plaintiff Appellants and the AG Opinion are focused on text that is irrelevant to the question at hand.

Moreover, applying a "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, costly, and 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 (even where it could do so within its debt limit and without a referendum), 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.

Plaintiff Appellants also note that there are separate statutes in the South Carolina Code of Laws related to parks and libraries – S.C. Code § 4-9-39 (libraries) and S.C. Code § 51-15-330 (parks). That fact is dispositive of nothing related to this case. Especially irrelevant 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.[7] 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 has 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 delineates the scope of 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, in fact, contained in the same statute. There is, moreover, no impediment to the General Assembly creating alternate means of allowing local governments more than one avenue for exercising their Home Rule powers. Both cities and counties have a choice of forms of government (see S.C. Code §§ 4-9-10 and 5-5-10); and this Court has recognized that the legislature has the power to create alternate means, by general law, for counties to exercise their constitutional powers. *Robinson v. Richland Cty. Council*, 293 S.C. 27, 30, 358 S.E.2d 392, 395 (1987).

---

7 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."

III. THERE IS NO COMMON-LAW, QUASI-CONSTITUTIONAL RULE THAT FORBIDS CONSIDERATION OF LIBRARY FACILITIES AND RECREATIONAL FACILITIES IN ONE REFERENDUM QUESTION.

Plaintiff Appellants, through the AG Opinion, rely 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 in the AG Opinion 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.

The case law cited by Plaintiff Appellants and the AG Opinion in this regard 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.[8] 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

[8] 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).

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").[9]

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"), Plaintiff Appellants rely 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 articles in American Jurisprudence and Corpus Juris Secundum. A careful look at those articles (now re-located from where they were cited in the *Fairfax Cty.* case[10]) shows that the most recent case cited in support in either treatise is from 1954, well before the advent of a national trend toward Home Rule. Moreover, where many of the cases cited may refer to instances in which multi-purpose ballot questions were objectionable, those

---

[9] In light of the Home Rule amendments to the Constitution and their displacement of Dillon's Rule, the AG Opinion's conclusion that "neither the Constitution nor the General Assembly intended to give a county council the authority" is mistaken. 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 of S.C. Inc. v. County of Charleston*, 320 S.C. 219, 464 S.E.2d 113 (1995).

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

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.[11] 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 64 Am. Jur. 2d Public Securities and Obligations § 132 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 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. 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, 120 S.C. at 85-86, 112 S.E. at 752.

---

[11] See, for example, *Voss v. Chicago Park Dist.*, 392 Ill. 429, 64 N.E.2d 731 (1946), cited in 64 Am. Jur. 2d Public Securities and Obligations § 132.

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.[12] In *Waits*, the Court stated:

> [T]he 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.

Id., 154 S.C. at 357-358, 151 S.E. at 579.

Consequently, the Plaintiff Appellants' and 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.

Post Home-Rule, the prior ability of the General Assembly to call for referenda for local bond issuances is now within the purview of the duly constituted county authorities. There is no "general principle" that inhibits the liberally-construed Home Rule powers of a county council; and the duly constituted political authorities can craft suitable ballot questions within their own "legislative cognizance."

IV. DORCHESTER COUNTY'S 2016 REFERENDUM QUESTION IS NOT CONFUSING.

Applying the test described in STANDARD OF REVIEW, the County's 2016 referendum question is not only not impermissibly confusing, it is not confusing at all.

Plaintiff Appellants urge that the referendum question put to the County's voters was impermissibly confusing. As noted above in STANDARD OF REVIEW, the requirement for clarity is met when the average voter may understand the true import and scope of the question; and this

---

[12] 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*.

Court will determine the issue based on the text of the ballot question and related enactments. See fn. 2 above, and cases cited there.

Again, the County's ballot question was as follows:

> 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?

There is no basis for finding that language to be confusing, or even for suggesting that it is. An average voter would readily understand that, if the question passed, then the County would be able to issue $30 million in bonds for library facilities and that the County would be able to issue $13 million in bonds for recreational facilities. The subject matter is not a partial revision of an arcane constitutional provision; there are no double negatives, no pronouns without clear antecedents; no doubt about who is being authorized or what the limit of the authorization is.

In order for the language to be confusing, there would have to be at least two different reasonable readings of the text. There is, instead, only one. Neither the Complaint, the AG Opinion, nor Plaintiff Appellants' briefing or presentation at the hearing below has suggested what such an alternative understanding might be.

Indeed, in Plaintiff Appellants' Supplemental Memorandum (R. pp. 136-39) filed in opposition to defendants' Motion for Judgment on the Pleadings, Plaintiff Appellants suggest that their real concern is that voters would clearly understand that, in order to approve one set of facilities (library or recreation), they would have to approve both (*id.*, at p. 1 (R. p. 136)).

The "confusion" that Plaintiff Appellants' describe is not confusion on the part of the voter but confusion on the part of an observer as to what the real motivations of the voters might have been: did they really want both, or did they just want one badly enough to vote for both?

> 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 Nat that a majority of voters supported issuing bonds for both parks and libraries on it merely that a majority of voters favored issuing bonds for parks or libraries.

Plaintiff Appellants' Supplemental Memorandum, pp. 2-3 (R. pp. 137-38.)

That, however, is confusion <u>about</u> the voter. It is not confusion <u>of</u> an average voter. It is a generally accepted principle that what motivated a voter is not a proper subject for judicial inquiry.

> We think that the court below correctly held that the motives of the officials, and of the electors acting upon the proposal, are not proper subjects of judicial inquiry in an action like this so long as the means adopted for submission of the question to the people conformed to the requirements of the law. The principle has been declared by this court. *Angle v. Ry. Co.*, 151 U. S. 1, 18, 14 Sup. Ct. 240, 38 L. Ed. 55; *Soon Hing v. Crowley*, 113 U. S. 703, 710, 5 Sup. Ct. 730, 28 L. Ed. 1145.

Detroit United Ry. v. City of Detroit, 255 U.S. 171, 178, 41 S. Ct. 285, 288, 65 L. Ed. 570 (1921)

This Court has declined to find impermissible voter confusion, even in cases where (unlike here) there actually could have been some degree of confusion in voters' minds about what they were voting on. In *Lowery, supra*, a referendum to <u>increase</u> the debt limit of Oconee County asked whether a debt limit should be <u>provided</u> for Oconee County, arguably suggesting that a limit was being imposed where there had been none before. The ballot question went on, however, to specify what the new, higher limit would be. This Court analyzed the text of the ballot to determine that the ballot, while "not above criticism," was not impermissibly confusing. In *Tipton*, the same issue of "providing" vs. "raising" a debt limit occurred; but the question did

not go on to specify what the limit would be. The Court there measured the text of the question against the effect of the proposed amendment as set out in the resolution calling for the referendum, and invalidated the question. In *Fleming*, *supra*, the text of the ballot question authorized amendment of two constitutional provisions "relating to the limit of the bonded debt of townships" (which phrasing "might well be taken to refer exclusively to a limit upon the amount of bonded debt"), without mentioning that one "limit" being removed was a purpose-limitation against financing railroads. The Court acknowledged that the text might be confusing but read it in light of the constitutional provision cited therein (to which the voters could have had access) to find that it would engender no impermissible confusion. In *Heinitsh v. Floyd*, 130 S.C. 434, 126 S.E. 336 (1925), both the title of the legislative resolution calling for the referendum and the ballot question itself spoke only of eliminating the City of Spartanburg's debt limit; and the referendum passed. However, the body of the resolution calling the referendum and the body of the act ratifying it, after language eliminating the debt limit, included an unnoticed proviso that reinstated a debt limit. The Court held that the clear contradiction created no ambiguity, that the electorate had voiced its opinion on the text of the ballot question without reference to the text of the resolution that called the referendum (even though the voters could, as in *Fleming*, have had access to it), and allowed a bond issuance to proceed in reliance on the intended elimination of the limit, ignoring the proviso that was in the text.

Finally on the issue of confusion, it should be noted that the County's 2016 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, supra,* and *Waits, supra.* The level of participation and the margin in favor demonstrate that there was neither confusion nor an outcome-affecting impact in this situation.

V. EVEN IF THERE WERE A "NECESSARILY SINGULAR" REQUIREMENT, THE COUNTY'S 2016 REFERENDUM WAS COMPLIANT.

The approach of both the courts and the General Assembly of South Carolina is to recognize the incurrence of bonded indebtedness as a single subject.

Even if there were a "necessarily singular" rule, under the long-standing approach of this Court, the County's 2016 referendum did have a single purpose – raising the County's debt limit. That was the only thing for which a vote was needed.

In *Sadler v. Lyle*, 254 S.C. 535, 176 S.E.2d 290 (1970), despite the constitutional requirement of S.C. Const. art. XVI, § 2 (described above) that each constitutional amendment be subject to a separate ballot question, the Court 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. . . . 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, *supra*, 254 S.C. at 541–543, 545, 176 S.E.2d at 293, 294.

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., 91 S.C. 416, 74 S.E. at 984.

This concept is, moreover, consistent with the General Assembly's long-standing approach to authorizing State projects for general obligation bond financing as described above. That practice of including multiple unrelated projects in a single bond bill is subject to S.C. Const. art. III, § 17, which requires that every act have but one subject; and it has not been thought to this point that the subject of such enactments is anything other than bonded indebtedness, regardless of how dissimilar the various projects might be.

Also, as noted above, 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. Consequently, the single purpose can be said to be the exercise of the County's § 4-9-30(5) powers to enrich the lives of the citizens of the County by providing facilities for their development and recreation, both physical and intellectual – a single, proper County purpose.

VI. A RULE THAT FORBIDS CONSIDERATION IN ONE REFERENDUM QUESTION OF SEVERAL ASPECTS ON WHICH SOME VOTERS MAY WISH TO EXPRESS SEPARATE OPINIONS IS NOT A JUDICIALLY MANAGEABLE RULE.

Neither the Complaint nor the AG Opinion sets out workable criteria for determining when two items are so distinct as to require two separate questions.

Even if the rule for which the Plaintiff Appellants argue existed and even if it applied at the projects level, what makes two things sufficiently distinct to merit separate votes? 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 County 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? Are there two purposes – libraries and recreation; or is there just one purpose – quality of life in the County? What if a library and a gym are proposed for inclusion in a new multi-purpose County building? What if Council has already committed to projects, so that there remains for the referendum but one purpose – to determine whether those projects can be financed with bonds? The impossible distinctions required by the rule offered by Plaintiff Appellants, upon closer inspection, simply multiply.

CONCLUSION

For the reasons stated by the Circuit Court in its Orders herein and for the reasons stated above, this Court should affirm those Orders and allow the referendum and the result thereof to stand.

July 17, 2018

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: ______________________

Steve A. Matthews
SC Bar 3689
1201 Main Street (29201-3226)
P.O. Box 11889 (29211-1889)
Columbia, South Carolina
803.540.7827
smatthews@hsblawfirm.com

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson

Case No. 2016-CP-18-1975
Appellate Case No. 2018-000395

RECEIVED
JUL 17 2018
S.C. SUPREME COURT

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.......................Appellants,

v.

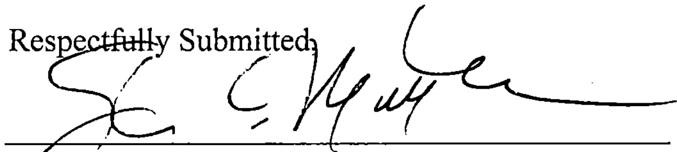
Dorchester County; Dorchester County Council; Charles D. Chinnis, George H. Bailey, Sr., Jay Byars, Willie R. Davis, Carroll S. Duncan, Larry Hargett and William R. Hearn, Jr., in their official capacities as members of Dorchester County Council...........................Respondents,

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that *Respondents' Final Brief* complies with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme Court Order regarding personal data identifiers.

July 17, 2018

Respectfully Submitted,



Steve A. Matthews
SC Bar No. 3689
HAYNSWORTH SINKLER BOYD, P.A.
P.O. Box 18889
Columbia, South Carolina 29211-1889
smatthews@hsblawfirm.com

Counsel for Respondents

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JUL 17 2018
S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson

Case No. 2016-CP-18-1975
Appellate Case No. 2018-000395

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........................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,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel with a copy of the *Respondents' Final Brief* by causing the same to be deposited with the United States Postal Service with first class postage prepaid and addressed as follows:

W. Andrew Gowder, Jr.
Austen & Gowder, LLC
1629 Meeting Street Road
Charleston, South Carolina 29405

Michael T. Rose
Mike Rose Law Firm, PC
409 Central Avenue
Summerville, South Carolina 29483

July 17, 2018