THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
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.

REPLY BRIEF OF APPELLANTS

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I. Voters do not know and cannot know whether one or either of the two issues that were the subject of the bonding referendum would have received a majority of votes on their own.

Appellants do not contend that the voters did not understand that they were voting in the referendum on whether the County could issue bonds for libraries and for parks. Nor do Appellants contend that the motives of voters for voting for or against parks and libraries have anything to do with the legality of combining the separate issues of parks and libraries into one question. Rather, Appellants contend that the voters did and do not know, cannot know and were and are confused about whether (a) neither of the issues of funding libraries and parks would have passed favorably in the referendum if both of them had not been combined into only one question, and (b) one of the two issues that passed favorably in the referendum did so only because it was combined with the other issue into only one question and would not have passed favorably if it had stood alone and not been combined with the other issue. This combining of the libraries and parks issues into one question was a failure to meet legal requirements that "affect[ed] . . . the determination of the results, an essential element of the election [and] the fundamental integrity of the election." George v. Mun. Election Comm'n, 335 S.C. 182, 187, 516 S.E.2d 206, 208 (1999). Those are factual determinations that must have been decided but were not decided by the Circuit Court.

II. The provisions of a statute cannot alter the constitution; only the process provided for altering or amending the constitution can accomplish that.

Respondents contend that S.C. Code § 2-7-30 requiring that singular forms be construed to include the plural "definitively invalidat[es] the Plaintiff Appellants' and the AGeneral Opinion's conclusion" that the use of the singular in the South Carolina Constitution means only

the singular and not the plural. Respondents' Initial Brief, at 9. No statute, including S.C. Code Ann. 2-7-30, can change, modify, alter or interpret the meaning of a provision of the South Carolina Constitution, including S.C. Const. Art. X, § 14(4)'s requirement that general obligation debt be incurred only for "a purpose" in the singular. If the use of words in the singular in S.C. Const. Art. X, § 14(4) and in any other provision of the South Carolina Constitution were to be construed also in the plural, the South Carolina Constitution could and must have provided that that be done. However, the South Carolina Constitution does not provide that words in the singular also are to be construed in the plural and, therefore, the Respondents and courts may not do so.

III. Projects to construct libraries and public parks are different projects and different purposes under the bonding referendum.

A reasonable and common-sense interpretation of the words "libraries" and "parks" is that they are qualitatively different and not the same. That is evident by the very fact that the Legislature passed separate statutes related to parks and libraries – S.C. Code § 4-9-39 (libraries) and S.C. Code § 51-15-330 (parks). If parks and libraries were the same, by definition different statues would not exist applying to only one of them but not the other. Similarly, funding libraries and parks are for two different purposes, not for just one purpose. That is evident from the County ordinance authorizing the referendum and from the wording of the referendum question itself, both of which state that the referendum is about whether to fund parks in the amount of $13,000,000 and whether to fund libraries in the amount of $30,000,000. Belatedly, after the referendum, Respondents respond to this legal challenge to the wording of the referendum by arguing that funding libraries and parks need not be separate questions but can be combined into one question in the referendum because they have in common that they both affect the "quality of life." However, neither the ordinance authorizing the referendum nor the

wording of the referendum question itself says anything about "quality of life" or anything else that shows commonality between libraries and parks. Further, the words "quality of life" are so broad as to provide no meaningful criterion for differentiating between issues in a referendum because all subjects in a referendum somehow involve "quality of life." Parks and libraries are separate issues and should have been voted on separately in the referendum instead of as only one question.

IV. The statutory and constitutional provisions for taxing power and bonding authority impose different requirements.

S.C. Code § 4-9-30(5) authorizes counties to tax and spend for multiple purposes, including for "recreation" and "libraries." However, that statute authorizing taxing and spending has nothing to do with how the special, specific, particular requirements of how a referendum question must be worded to authorize a county to issue bonds for parks and bonds for libraries. Appellants do not dispute that counties can tax and spend regarding both recreation and libraries. Appellants do contend that the issues of whether to authorize the issuance of bonds for parks and for libraries should be separate questions rather than one question in the referendum on whether to authorize the bonds.

V. No Statute authorizes the joint submission of parks and libraries in a single referendum question

Respondents argue that Lucas v. Barringer, 120 S.C. 68, 112 S.E. 746 (1922) is a precedent for authorizing bonds for parks and libraries to be combined into one referendum question in this case. However, the Lucas case is not applicable because in Lucas "the act authorizing the issuance of the bonds provides for the joint submission" of issues, 120 S.C. at 85-86, 112 S.E. at 752, but no statute provides for the joint submission of parks and libraries as one issue in this case.

VI. The actual vote count in the election has no relevance to the legal question of whether the ballot language violated the state constitution.

The margin by which the referendum question combining the two issues, parks and libraries, passed does not affect whether combining the two issues into one question in the referendum was legally permissible. The question about parks and the question about libraries, or both of those questions, might not have passed if the separate issues of parks and libraries had not been impermissibly combined in the 2016 referendum.

VII. Council may proceed with bond issuance by submitting separate bond referenda questions to the voters.

Judicial notice should be taken that Dorchester County Council may stop delaying its issuance of bonds for parks and libraries due to the pendency of this lawsuit simply but putting the two issues as separate questions in a referendum in which each receive a favorable vote in the upcoming election in November, 2018, but has failed to do so. Moreover, on May 7, 2018, County Council refused to do that when a motion to do so by one Council member was not seconded by another member of Council. That failure and that refusal to allow voters to vote on the parks and libraries issues as separate issues in a referendum in the November, 2018 election evidence that a majority of Council recognizes and fears that one or both of the issues – parks and libraries – may not pass if voters were allowed to vote on each of those issues as separate questions.

VIII. The constitutional prohibition from submitting multiple purposes in one referendum question is practical and workable.

Respondents incorrectly claim that parks and libraries should be allowed as one referendum question because '[n]either the Complaint nor the AG Opinion sets out workable criteria for determining when two items are so distinct as to require two separate questions." Respondents'

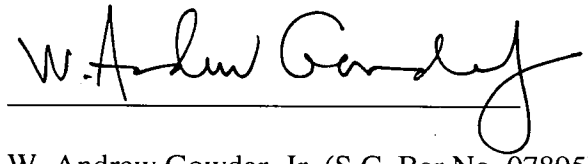
Initial Brief, at 26. This argument is not correct. It is not necessary for the Appellants or the Attorney General to define workable criteria for a Court to require compliance with the law by the Respondents. Whether any "workable criteria" might be needed and, if so, what that "workable criteria" would be is to be determined by the Court, not by Appellants or the Attorney General. Further, no "workable criteria" is needed other than what already is provided in the South Carolina Constitution and statutes. That parks and libraries are different purposes when neither the ordinance authorizing a referendum on those issues nor the wording of the referendum question itself even attempts to define them as being for one purpose, is obvious. Nor are the following arguments by the Respondents persuasive:

> "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?"

The number or location of one or more libraries obviously does not change the fact that issuing bonds for libraries is for one purpose and that issuing bonds for parks is for a different purpose qualitatively. Whether or not libraries and parks can be considered one purpose under the label of "quality of life" is not applicable in this case because the ordinance authorizing the referendum and the referendum question itself did not in any way define or mention the referendum issues as having anything to do with "quality of life." Further, if Council can justify combining multiple issues into only one question in a referendum because the issues involved "quality of life," then there is no limit to the number of issues Council can combine into one question by simply claiming they all involve, as does literally everything Council funds, "quality of life."

CONCLUSION

For the reasons stated in Appellants' Initial Brief and other pleadings, and above, the Court should reverse the Order of the Circuit Court and invalidate the referendum and the result thereof.



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Certificate of Counsel

The undersigned hereby certifies that the Reply Brief of Appellant complies with Rule 211(b) SCACR.

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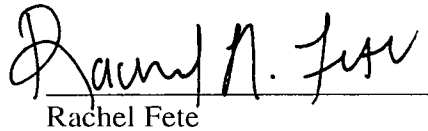
PROOF OF SERVICE

I certify that I have served the Reply Brief of Appellants on Steve A. Matthews by depositing a copy in the United States Mail with sufficient postage to be delivered to 1201 Main Street, 22nd Floor, Columbia, SC 29201.

July 23, 2018



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