

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

JUN 24 2019

Brian Gibbons, Circuit Court Judge

S.C. SUPREME COURT

Case No. 2019-CP-09-00049

South Carolina Public Interest Foundation and Amy Hill, and Rebecca Bonnette, individually,
and on behalf of all others similarly situated, Appellants,

v.

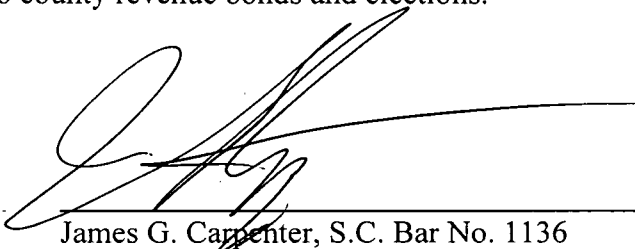
Calhoun County Council, Respondents.

AMENDED NOTICE OF APPEAL

Appellants South Carolina Public Interest Foundation and Amy Hill, and Rebecca Bonnette, individually, and on behalf of all others similarly situated, appeal the Judgment and Order of the Honorable Brian Gibbons entered June 18, 2019. (Appellants previously gave Notice of Appeal in the Court of Appeals of a prior and superseded Order entered June 17, 2019.)

Upon further reflection, this Order qualifies for appeal to the Supreme Court under SCACR 203(d)(1)(A)(iii) and (iv) as pertaining to county revenue bonds and elections.

June 19, 2019



James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, PC
819 E. North Street
Greenville, South Carolina 29601
(864) 235-1269
Attorneys for Appellants

Other Counsel of Record:

Patrick Flynn,

Charles D. Rhodes III

Michael W. Allen, Jr.

1411 Gervais St., Suite 300

Columbia, SC 20201

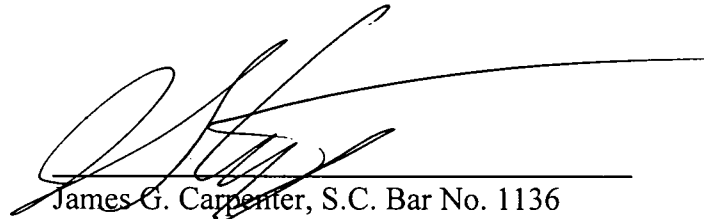
(803) 354-4900

Attorney for Respondents

Certificate of Service

The undersigned attorney hereby certifies that he has served a copy of the foregoing Notice of Appeal on counsel for Respondent by US Mail, postage prepaid on Wednesday, June 19, 2019, addressed as follows:

Patrick Flynn,
Charles D. Rhodes III
Michael W. Allen, Jr.
1411 Gervais St., Suite 300
Columbia, SC 20201



James G. Carpenter, S.C. Bar No. 1136
THE CARPENTER LAW FIRM, P.C.
819 E. North Street
Greenville, South Carolina 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorneys for Appellants

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JUN 24 2019

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF CALHOUN)	CASE NO.: 2019-CP-09-00049
)	
South Carolina Public Interest Foundation,)	
Amy Hill, and Rebecca Bonnette,)	
Individually, and on behalf of all others)	
Similarly situated,)	
)	ORDER
Plaintiffs,)	
)	
v.)	
)	
Calhoun County Council,)	
)	
Defendant.)	
_____)	

PROCEDURAL HISTORY

Plaintiffs commenced this action on April 3, 2019, by filing a Summons and Complaint, followed by a Motion for Temporary and Preliminary Injunctive Relief on April 10, 2019. Defendant filed its Answer to the Complaint on May 6, 2019, followed by its Motion for Summary Judgment on May 16, 2019. Plaintiffs filed their Motion for Summary Judgment on May 22, 2019. On May 24, 2019, Defendant filed a Consolidated Memorandum in Support of Defendant’s Motion for Summary Judgment and in Opposition to Plaintiffs’ Motions for Summary Judgment and Injunctive Relief. Subsequent to the hearing, on June 5, 2019, Plaintiffs filed a Reply Memorandum in Support of Plaintiffs’ Motion for Summary Judgment, and Defendant filed a Supplementary Memorandum in Support of Defendant’s Motion for Summary Judgment.

This matter was heard on May 30, 2019. Plaintiffs were represented at the hearing by James G. Carpenter. Defendant was represented by Charles D. Rhodes III and Patrick Flynn. At the hearing the parties agreed to forego Plaintiffs’ Motion for Temporary and Preliminary Injunctive Relief and move forward on the parties’ cross-motions for summary judgment. Based upon the

conclusions of law set forth herein, and upon the Court's consideration of the filed pleadings and motions, the parties' supporting memoranda of law, and oral arguments of counsel, the Court grants the Defendant's Motion for Summary Judgment as to all of Plaintiffs' claims and requested relief.

BACKGROUND

This case concerns a referendum held during the November 2018 general election at which the electors of Calhoun County (the "County") voted in favor of imposing an additional one-percent sales and use tax within the County for a period of 8 years to fund 15 specific capital projects that were listed on the ballot. The referendum was held at the 2018 general election on November 6, 2018.

The ballot question to be considered at the referendum, including the list of proposed capital projects, was formulated and approved by the Calhoun County Capital Project Sales Tax Commission, which was created by the County in accordance with the requirements of the Capital Project Sales Tax Act, codified at S.C. Code Ann. § 4-10-300 *et seq.* (the "Act"). As further required by the Act, the ballot question and list of capital projects was approved by the County pursuant to Ordinance No. 2018-18 dated August 13, 2018. Following the successful referendum, the Calhoun County Board of Voter Registrations and Elections certified the results of the referendum to the County and the South Carolina Department of Revenue. *See* S.C. Code Ann. § 4-10-330(E). In accordance with the Act, the County thereafter declared the result of the referendum by resolution dated November 26, 2018 (the "County Resolution"). *See* S.C. Code Ann. § 4-10-330(F).

The Act establishes a 30-day statute of limitations, stating:

Upon receipt of the returns of the referendum, the county governing body must, by resolution, declare the results thereof. In such event, the results of the referendum.

as declared by resolution of the county governing body, are not open to question except by a suit or proceeding instituted within thirty days from the date such resolution is adopted.

S.C. Code Ann. § 4-10-330(F) (emphasis added). Based upon the date of the County Resolution, the Act's 30-day statute of limitations ran on December 27, 2018.

Plaintiffs filed their Complaint on April 3, 2019. In accordance with the requirements of the Act, the Sales Tax went into effect on May 1, 2019 and is currently being collected by the Department of Revenue.

CONCLUSIONS OF LAW

Through their respective arguments, the parties narrowed the issues before the Court to three issues:

1. Is the Act's 30-day statute of limitations applicable to Plaintiffs' claims?
2. Do the Challenged Projects exceed the scope of the Act?
3. If the Challenged Projects do exceed the scope of the Act, may the Court enjoin the expenditure of the proceeds of the Sales Tax on the Challenged Projects, but uphold the continued collection of the Sales Tax and the expenditure of its proceeds on the remaining eleven approved capital projects that were not subject to challenge?

Based upon the following conclusions of law, the Court rules that the Act's statute of limitations is applicable to the Plaintiffs' claims pursuant to a plain reading of the Act, and, accordingly, Plaintiffs' claims and requested relief are barred. Because this ruling is dispositive as to the entirety of Plaintiffs claims and requested relief, it is unnecessary to consider the merits of Plaintiffs' claims.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The plain language

of the Act and the applicable jurisprudence demonstrate that the Legislature included a relatively brief statute of limitations in the Act with the intent of promptly establishing certainty and finality with respect to the implementation and the use of the proceeds of the Sales Tax. This construction is consistent with the jurisprudence in South Carolina regarding the relatively brief statutes of limitations that often apply to the results of referenda and governmental action. *See e.g. Hite v. Town of West Columbia*, 220 S.C. 59, 66, 66 S.E.2d 427, 430 (1951); *Morgan v. Feagin*, 230 S.C. 315, 318, 95 S.E.2d 621, 623 (1956).

The plain language of the Act demonstrates that the Legislature intended to promptly establish certainty and finality after the approval of the Sales Tax. Practically, this finality is necessary to allow the Department of Revenue, the County, and the many other local governments sponsoring projects approved at the referendum to begin the time-consuming process of implementing the Sales Tax and planning for the delivery of the approved capital projects. The Act's statute of limitations allows these parties to act with certainty that the Sales Tax will go into effect on the following May 1 and that the proceeds may be used to fund the projects approved by the voters.

At the hearing and in Plaintiffs' Motion for Summary Judgment and Reply Memorandum, Plaintiffs contend that the Act's statute of limitations applies only to "matters of procedure relating to the election, the certification of the vote count, and the results of the election," and not to "the substantive merits of the content of the Referendum." This contention runs counter to the plain language of the Act and the policy behind such brief statutes of limitations repeatedly relied upon by the Supreme Court. Moreover, the Supreme Court has applied a similarly brief statute of limitation in instances where the validity of governmental action was in question. *See e.g., State ex rel. Condon v. City of Columbia*, 339 S.C. 8, 16, 528 S.E.2d 408, 412 (2000) ("[S]uch statutes

are designed to promote justice by forcing parties to pursue a case in a timely manner. Parties should act before memories dim, evidence grows stale or becomes nonexistent, or other people act in reliance on what they believe is a settled state of public affairs.”).

Plaintiffs were afforded an opportunity under the Act during which to bring their claims. Plaintiffs failed to do so. To permit Plaintiffs to bring such claims at this late juncture would require the Court to ignore the plain language of the Act and the cardinal rule of statutory construction that the courts should give effect to the intentions of the Legislature. *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581. Moreover, permitting Plaintiffs to go forward with their claims would inhibit the interests our Supreme Court has identified as a key rationale for brief statutes of limitations. *See, e.g., Hite*, 220 S.C. at 66; 66 S.E.2d at 429; *Morgan*, 230 S.C. at 318, 95 S.E.2d at 623; *Condon*, 339 S.C. at 16, 528 S.E.2d at 412.

CONCLUSION

Upon consideration of the filed pleadings and motions in this matter, the parties’ memoranda of law, and oral arguments of counsel, and as set forth in the conclusions of law herein, the Court grants Defendant’s Motion for Summary Judgment as to all of Plaintiffs’ claims and requested relief and, accordingly, this matter is hereby dismissed with prejudice.

IT IS SO ORDERED.

Honorable Brian M. Gibbons
Presiding Judge for the First Judicial Circuit

Chester, South Carolina
June __, 2019



Calhoun Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al VS
Calhoun County Council
Case Number: 2019CP0900049
Type: Order/Summary Judgment

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge



THE CARPENTER LAW FIRM, P.C.
819 EAST NORTH STREET GREENVILLE, SC 29601

The Honorable Daniel Shearouse
Clerk of SC Supreme Court
PO Box 11330
Columbia, SC 29211

