

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CALHOUN COUNTY

Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2019-001016

RECEIVED

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S.C. SUPREME COURT

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

v.

Calhoun County Council, ... Respondents.

RECORD ON APPEAL

Other Counsel of Record:

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Attorneys for Appellants

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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

Electronically signed on 2019-06-18 07:06:31 page 6 of 6

STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

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

v.

Calhoun County Council,
Defendants.

IN THE CIRCUIT COURT

CASE NO: 2019-CP-09-000 49

ACCEPTANCE OF SERVICE

The undersigned Clerk to County Council hereby accepts service of process for the
Defendant Calhoun County Council, this 3 day of April, 2019.

Megar O. Gorder
Clerk to County Council

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

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

v.

Calhoun County Council,
Defendants.

IN THE CIRCUIT COURT
CASE NO: 2019-CP-09-00049

SUMMONS

To the Defendants:

You are hereby summoned and required to serve upon the attorney at the address below an Answer to the attached Complaint within 30 days of the date of service hereof. If you fail to do so, judgment by default will be entered against you for the relief demanded in the Complaint.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

/S/ James G. Carpenter
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

April 3, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

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

v.

Calhoun County Council,
Defendants.

IN THE CIRCUIT COURT
CASE NO: 2019-CP-09-00 047

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, by their undersigned attorney, and as a Complaint against the Defendants, would show unto the Court:

1. Plaintiff South Carolina Public Interest Foundation 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 proper application and enforcement of the South Carolina Constitution and statutes.
2. Plaintiffs Amy Hill and Rebecca Bonnette are citizens, residents, taxpayers, and registered electors of Calhoun County. They bring this action individually and on behalf of all others similarly situated.
3. Defendant Calhoun County Council is the governing body of Calhoun County, South Carolina.
4. This Court possesses jurisdiction under SC Code Ann. § 4-10-300 ff. known as the "Capital Project Sales Tax Act" and under the following decisions, which address public interest and taxpayer standing: *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas*, 416

S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *Sloan v Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), *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. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997); and under S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act.

5. This action raises statutory issues of great public importance, and Plaintiffs ask the Court to grant them standing based upon the great public importance of the issues this action raises.
6. Plaintiffs Amy Hill and Rebecca Bonnette are or will be subject to paying the Penny Tax to Calhoun County, and therefore possess standing as Calhoun County taxpayers to contest the unlawful payments from the Penny Tax receipts.

7. The South Carolina General Assembly enacted SC Code Ann. § 4-10-300 ff. known as the “Capital Project Sales Tax Act” which authorizes counties to adopt an ordinance imposing a sales and use tax for the following purposes:

(a) highways, roads, streets, bridges, and public parking garages and related facilities;

(b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education, or any combination of these projects;

(c) cultural, recreational, or historic facilities, or any combination of these facilities;

(d) water, sewer, or water and sewer projects;

(e) flood control projects and storm water management facilities;

(f) beach access and beach renourishment;

(g) dredging, dewatering, and constructing spoil sites, disposing of spoil materials, and other matters directly related to the act of dredging;

(h) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (g) of this item;

(i) any combination of the projects described in subitems (a) through (h) of this item;

S.C. Code Ann § 4-10-330(a)(1).

8. Calhoun County adopted Ordinance Number 2018-18 (“Ordinance”) to levy and impose a one percent sales and use tax subject to a referendum within Calhoun County pursuant to S.C. Code Ann. § 4-10-300 ff.
9. The County gave notice in the newspaper of the 15 projects to be funded by the Penny tax.

10. Four of the proposed projects are not authorized by S.C. Code Ann. § 4-10-300 ff.

They include the following:

4. Calhoun County—Sandy Run Fire District Ladder Truck Project—to include the acquisition and equipping of a new ladder truck in the Sandy Run Fire District. To support the northern portion of Calhoun County, particularly industry located therein \$350,000
 11. Calhoun County Emergency Communications Project—to include the constructing, acquiring, and equipping of facilities and equipment to provide 800 MHz radio service for emergency service providers in Calhoun County \$500,000
 12. Calhoun County Ambulance Project—to include the acquisition and equipping of ambulances to be operated by Calhoun County Emergency Services Department \$165,000
 13. Calhoun County Sandy Run Fire District Tanker Truck Project—to include the purchase of the fire truck to serve the Sandy Run area \$267,000
11. The Referendum passed on November 6, 2018.
12. Upon information and belief, the County plans to make these purchases as and to issue bonds of May 1, 2019, in the amount of \$7 million to pay for these projects.
13. The Ordinance states that the County will collect the sales and use tax for a period of eight years beginning May 1, 2019.
14. Ordinance Number 2018-18 purports to adopt a 1% tax for purposes not permitted by the statute, and therefore, those provisions, purposes, and uses are unlawful.
15. The County's proposed use of bond proceeds for the purposes not authorized by statute is illegal.
16. Upon information and belief, the Referendum authorizing the tax and the bonds would not have passed if the unlawful projects had not been included.

WHEREFORE, Plaintiffs pray the Court:

1. Declare that Ordinance Number 2018-18 exceeds the statutory authority of S.C. Code Ann. § 4-10-300 ff, by purporting to use the 1% sales tax to purchase items not authorized by the statute;
2. Enjoin the collection of the tax because the Referendum purported to approve unlawful expenditures;
3. Enjoin the issuance of the bonds because the Referendum purported to approve unlawful expenditures;
4. Enjoin the expenditure of any bond proceeds;
5. Enjoin the issuance of the bonds for the unlawful purposes;
6. Enjoin all unlawful expenditures from the proceeds of the penny sales tax;
7. Enjoin all unlawful expenditures from the proceeds of the bonds;
8. Grant Plaintiffs their costs and attorneys' fees under S.C. Code Ann. § 15-77-300 ff.; and
9. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

/s/ James G. Carpenter
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

April 3, 2019

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

The Defendant, Calhoun County Council (the "County"), by and through its undersigned counsel, hereby answer the Complaint filed by Plaintiffs, South Carolina Public Interest Foundation, Amy Hill, and Rebecca Bonnette, individually, and on behalf of all others similarly situated, denying each allegation of the Complaint not hereinafter admitted, qualified, or explained:

1. Each and every allegation not hereinafter specifically admitted is denied.

VENUE AND JURISDICTION

2. The allegations contained in paragraphs 1 and 2 are admitted, upon information and belief.
3. The allegations contained in paragraph 3 are admitted.
4. The allegations contained in paragraphs 4, 5, and 6 constitute conclusions of law and are therefore denied.

FOR A FIRST DEFENSE
As to the Factual Allegations

5. In response to paragraph 7, the County craves reference to the statutory sections referenced therein and denies all allegations inconsistent therewith.

6. The allegations contained in paragraph 8 are admitted.

7. The allegations contained in paragraph 9 are admitted insofar as the County published the form of the ballot question for the referendum (the "Referendum") to approve a one-percent sales and use tax (the "Sales Tax") in the County, which included the list of capital projects to be funded by the proceeds of the Sales Tax.

8. The allegations contained in paragraph 10 are denied.

9. The allegations contained in paragraph 11 are admitted insofar as the ballot question was approved by the voters at the Referendum conducted at the November 6, 2018 general election, and the results thereof were declared by the County by resolution of the County Council of the County, adopted on November 26, 2018, attached to this Answer at Exhibit A.

10. The allegations contained in paragraph 12 are admitted insofar as the County plans to issue bonds to pay the cost of some or all of the capital projects approved by the voters in the Referendum. Any other allegations contained in paragraph 12 are denied.

11. The allegations contained in paragraph 13 are admitted.

12. The allegations contained in paragraphs 14 and 15 constitute conclusions of law and are therefore denied.

13. The County lacks sufficient Information to either admit or deny the allegations of paragraph 16 and therefore denies same and demands strict proof thereof.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Failure to Meet Requisites for Injunction)

14. Plaintiffs fail to state the necessary requisites for an injunction.

**FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO**

(Standing)

15. Plaintiffs lack standing to bring this action; therefore, no justifiable controversy is presented.

**FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO**

(Statute of Limitation)

16. Plaintiffs' claims are barred in whole or in part by the applicable Statute of Limitation or are otherwise time-barred according to applicable statutes, laws, and authorities of South Carolina.

**FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO**

(Failure to State a Claim)

17. Plaintiffs' claims are barred, in whole or in part, based upon Plaintiffs' failure to state claims upon which relief may be granted.

**FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO**

(Laches, Waiver, and Estoppel)

18. Plaintiffs' claims are barred by the doctrines of laches, waiver, and/or estoppel.

**FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO**

(Right to Amend)

19. Defendant hereby gives notice that it intends to rely upon such other affirmative and other defense as may become available or apparent during the course of discovery and thus reserves the right to amend its Answer to assert any such affirmative or other defenses.

COUNTY'S MOTION FOR SECURITY BOND

20. Pursuant to Rule 65(c) of the South Carolina Rules of Civil Procedure, "no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." In order to go forward with a proposed preliminary injunction, this Court should require Plaintiffs to submit an adequate security bond.

WHEREFORE, having fully responded to the allegations of the Plaintiffs' Complaint, Defendant prays that the same be dismissed with prejudice and for such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED:

POPE FLYNN, LLC

By: /S/ Charles D. Rhodes III
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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
May 6, 2019

EXHIBIT A
RESOLUTION OF COUNTY COUNCIL

RESOLUTION-17-2018

A RESOLUTION DECLARING THE RESULT OF A REFERENDUM TO IMPOSE A ONE PERCENT (1%) SALES AND USE TAX IN CALHOUN COUNTY, SOUTH CAROLINA PURSUANT TO THE CAPITAL PROJECT SALES TAX ACT, TITLE 4, CHAPTER 10, ARTICLE 3 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.

BE IT RESOLVED BY THE COUNTY COUNCIL OF CALHOUN COUNTY, SOUTH CAROLINA IN MEETING DULY ASSEMBLED:

Section 1. Findings of Fact

As an incident to the adoption of this resolution, the County Council of Calhoun County, South Carolina (the "County Council"), has made the following findings:

(A) Pursuant to an ordinance enacted by County Council dated August 13, 2018 (the "Ordinance"), the County Council ordered a referendum to be held in Calhoun County, South Carolina (the "County") on the question of the imposition of a one percent (1%) sales and use tax pursuant to the Capital Project Sales Tax Act, Title 4, Chapter 10, Article 3 of the Code of Laws of South Carolina 1976, as amended (the "Capital Project Sales Tax Act"), for a limited period of time for specific projects.

(B) The Board of Voter Registrations and Elections of Calhoun County (the "Election Board") conducted a referendum in the County in accordance with the Ordinance on November 6, 2018 (the "Referendum") where the ballot question attached as Exhibit A (the "Question") was submitted to the qualified electors of the County.

(C) The Election Board has provided, and the County Council has received, the official return of the Referendum, which official return establishes that the Referendum result was in favor of the Question.

Section 2. Declaration of Result

County Council hereby declares that the result of the Referendum was in favor of the Question, there having been 3,173 votes cast in favor of the Question and 2,370 votes cast in opposition to the Question. A copy of the official return, as provided by the Election Board, is attached at Exhibit B. This declaration is made pursuant to Section 4-10-330(F) of the Capital Project Sales Tax Act.

Section 3. Effective Date

This resolution shall be effective on the date of adoption hereof by County Council.

DONE AND RESOLVED this 26th day of November 2018.

CALHOUN COUNTY, SOUTH CAROLINA


Chairman, County Council

ATTEST:

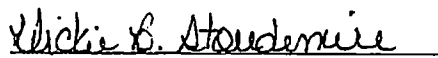

Clerk to County Council



Exhibit A

Form of Ballot Question

Question

Must a special one percent sales and use tax be imposed in Calhoun County, South Carolina for 8 years to raise the amounts specified for the following purposes:

	<u>Project Description</u>	<u>Estimated Cost</u>
1	Joint Calhoun County - St. Matthews Area Water Line Project - Matching funds to obtain \$10 million grant to provide for Lake Marion Regional Water Authority water distribution line and related infrastructure to serve the Creston/Midway Area and St. Matthews Area	\$ 2,500,000
2	Cameron Historical Depot Project - to include renovation of the Historical Depot in Cameron and related improvements, infrastructure, and certain ADA improvements	150,000
3	Calhoun County - Sandy Run Fire District Substation Project - to include the constructing and equipping of a new substation in the Sandy Run Fire District area	240,000
4	Calhoun County - Sandy Run Fire District Ladder Truck Project - to include the acquisition and equipping of a new ladder truck in the Sandy Run Fire District area to support the northern portion of Calhoun County, particularly industry located therein	350,000
5	St. Matthews Demolition and Park Projects - to include the demolition and remediation of the Town's old town hall and other dilapidated structures on the main roadways, including the dialysis building on F R Huff Drive and the old school by St. Matthews Ballfield, the creation of parks and recreational facilities on the sites of the old town hall and old school, and related infrastructure	520,000
6	St. Matthews Lake Inspiration/Hut Park Project - to include the dredging, beautification, construction and improvement of recreational and fishing facilities and infrastructure at Lake Inspiration/Hut Park and adjacent areas	500,000
7	Calhoun County Animal Shelter Addition Project - to include the constructing and equipping of additional facilities housing dogs and cats on Purple Martin Drive	100,000
8	St. Matthews Downtown Streetscaping Project - to include construction, acquisition and renovations of facilities and infrastructure improving the streetscape in downtown St. Matthews	400,000
9	St. Matthews Public Safety Renovation Project - to include the renovation, construction, improving, and equipping of facilities, to include storage facilities, to serve the Fire Department, Judicial Court, and other public safety functions	200,000

10	Cameron Demolition Projects - to include the demolition of three buildings in the Town of Cameron	250,000
11	Calhoun County Emergency Communications Project - to include the constructing, acquiring, and equipping of facilities and equipment to provide 800 MHZ radio service for emergency service providers in Calhoun County	500,000
12	Calhoun County Ambulance Project - to include the acquisition and equipping of ambulances to be operated by Calhoun County Emergency Services Department	165,000
13	Calhoun County Sandy Run Fire District Tanker Truck Project - to include the purchase of a fire truck to serve the Sandy Run area	267,000
14	Calhoun County Sandy Run Recreation Project - to include the improving and equipping of certain recreational facilities, including batting cages, lighting, field improvements, bleachers, and related infrastructure	100,000
15	Calhoun County New Water Lines Project - to include the construction of new water lines in the Highway 601 - Ft. Motte, Copperhead Lane, and Stabler Hill Road and Carolina Lane in Sandy Run areas and related infrastructure	400,000
Total		\$6,642,000

and pending the receipt of such sales and use tax, must the County also be authorized to issue and sell, either as a single issue or as several separate issues, general obligation bonds (the "Bonds") of the County in an aggregate principal amount not exceeding \$7,000,000 to defray the costs of the projects listed above plus issuance costs, to be paid from the sales and use tax to be imposed as stated herein and pledged to the payment of the principal of and interest on the Bonds, and, in the event such sales and use tax is inadequate, such bonds shall be payable from ad valorem taxes to be imposed on all taxable property in the County?

INSTRUCTIONS TO VOTERS: All qualified electors of the County desiring to vote in favor of imposing the tax for the stated purposes and authorizing the issuance and sale of Bonds in connection therewith as outlined above shall vote "YES", and all qualified electors opposed to levying the tax and issuing such Bonds shall vote "NO".

Yes []
No []

Exhibit B

Official Referendum Returns

STATE OF SOUTH CAROLINA
CALHOUN COUNTY BOARD OF CANVASSERS
STATEMENTS AND RETURNS OF VOTES
FOR
GENERAL ELECTION

ELECTION DATE: 11/6/18

We the County Board of Canvassers certify that all proper procedures for canvassing votes in this election have been followed, and we have received written confirmation from election commission staff of the same; and upon such confirmation and any further review of our own, we certify the following results of this election are correct in all respects.

<u>Patricia D. Phillips</u>	_____
<u>William J. Bates</u>	_____
<u>[Signature]</u>	_____
<u>Judith W. Taylor</u>	_____
<u>Vivian P. Portrick</u>	_____

Certification Date: 11/9/18

SEC. FORM 1104-2/0811

B-1
EXHIBIT A - 5

SUMMARY REPT-GROUP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

	TOTAL VOTES	%	DS950	M550	DS230	M100	Report K145A iVotronic	Page 081 Flash
PURCINCTS COUNTED (OF 17)	15	88.24						
REGISTERED VOTERS - TOTAL	10,258							
BALLOTS CAST - TOTAL	6,056		0	0	0	328	5,728	0
VOTER TURNOUT - TOTAL	59.08							
STRAIGHT PARTY								
Vote for 1								
Democratic (DEM)	2,345	59.02	0	0	0	165	2,180	0
Working Families (WFW)	20	.50	0	0	0	0	20	0
United Citizens (UNC)	21	.53	0	0	0	0	21	0
Green (GRN)	7	.16	0	0	0	0	7	0
Republican (REP)	1,564	39.37	0	0	0	65	1,499	0
American (AMR)	16	.40	0	0	0	0	16	0
Total	3,973		0	0	0	230	3,743	0
Governor and Lieutenant Governor								
Vote for 1								
James Smith (DEM)	2,990	50.27	0	0	0	198	2,792	0
Henry McMaster (REP)	2,952	49.63	0	0	0	124	2,828	0
Write-In	6	.10	0	0	0	2	4	0
Total	5,948		0	0	0	324	5,624	0
Secretary of State								
Vote for 1								
Melvin T Whittenburg (DEM)	2,825	47.61	0	0	0	208	2,625	0
Mark Hammond (REP)	3,108	52.38	0	0	0	124	2,984	0
Write-In	1	.02	0	0	0	0	1	0
Total	5,934		0	0	0	324	5,610	0
State Treasurer								
Vote for 1								
Rosalyn L Glenn (DEM)	2,741	46.11	0	0	0	194	2,547	0
Rosalyn Glenn (WFW)	68	1.14	0	0	0	2	66	0
Curtis Loftis (REP)	3,069	51.61	0	0	0	125	2,943	0
Sarah Wark (AMR)	68	1.14	0	0	0	2	66	0
Write-In	0		0	0	0	0	0	0
Total	5,945		0	0	0	323	5,622	0

SUMMARY REPT-GROUP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

	TOTAL VOTES	%	DS850	M650	DS200	M100	Report FL45A iVotronic	Page 002 Flash
Attorney General								
Vote for 1								
Constance Anastoponio (DEM)	2,887	48.50	0	0	0	206	2,681	0
Constance Anastoponio (WFW)	107	1.80	0	0	0	4	103	0
Alan Wilson (REP)	2,955	49.65	0	0	0	112	2,843	0
Write-In	2	.03	0	0	0	0	2	0
Total	5,952		0	0	0	322	5,630	0
Comptroller General								
Vote for 1								
Richard Eckstrom (REP)	3,611	97.62	0	0	0	143	3,468	0
Write-In	88	2.38	0	0	0	8	80	0
Total	3,699		0	0	0	151	3,548	0
State Superintendent of Education								
Vote for 1								
Israel Romero (DEM)	2,747	46.21	0	0	0	197	2,550	0
Billy Mitchell Spearman (REP)	3,176	53.42	0	0	0	124	3,052	0
Write-In	22	.37	0	0	0	4	18	0
Total	5,945		0	0	0	325	5,620	0
Commissioner of Agriculture								
Vote for 1								
Chris Belums (WRC)	500	11.69	0	0	0	50	450	0
David Edmund (GRN)	456	10.65	0	0	0	22	433	0
Bugh Weathers (REP)	3,293	77.81	0	0	0	131	3,162	0
WRITE-IN	27	.63	0	0	0	1	26	0
Total	4,276		0	0	0	205	4,071	0
U.S. House of Representatives Dist 6								
Vote for 1								
James E Jim Clyburn (DEM)	2,998	50.25	0	0	0	204	2,794	0
Bryan Pugh (GRN)	85	1.42	0	0	0	2	83	0
Gerhard E Gressmann (REP)	2,880	48.27	0	0	0	118	2,762	0
Write-In	3	.05	0	0	0	0	3	0
Total	5,966		0	0	0	324	5,642	0
State House of Representatives Dist 93								
Vote for 1								
Russell L Ott (DEM)	3,822	63.95	0	0	0	231	3,591	0
Terry L Kiser Sr (REP)	2,151	35.89	0	0	0	94	2,057	0
Write-In	3	.05	0	0	0	0	3	0
Total	5,976		0	0	0	325	5,651	0

SUMMARY REPT-GEORP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

	TOTAL VOTES	%	DS850	MS50	DS200	H100	Report ELASA iVotronic	Page 003 Flash
County Council District 3								
Vote for 1								
John Wilson (REP)	931	98.00	0	0	0	41	890	0
Write-In	19	2.00	0	0	0	1	18	0
Total	950		0	0	0	42	908	0
County Council District 4								
Vote for 1								
Cecil M Thornton Jr (DEM)	1,010	97.77	0	0	0	29	981	0
Write-In	23	2.23	0	0	0	1	22	0
Total	1,033		0	0	0	30	1,003	0
County Council District 5								
Vote for 1								
James E Baigler (DEM)	900	97.51	0	0	0	46	854	0
Write-In	23	2.49	0	0	0	0	23	0
Total	923		0	0	0	46	877	0
Soil and Water District Commission								
Vote for 2								
Donnie L Bozard	3,029	58.72	0	0	0	113	2,916	0
Fred Gantt	2,864	40.02	0	0	0	70	1,994	0
WRITE-IN	65	1.26	0	0	0	2	63	0
Total	5,958		0	0	0	185	4,973	0
School Board District 2								
Vote for 1								
Kevin G Jenkins	762	99.35	0	0	0	43	719	0
WRITE-IN	5	.65	0	0	0	0	5	0
Total	767		0	0	0	43	724	0
School Board District 5								
Vote for 1								
Debra Fredrick	742	98.67	0	0	0	39	703	0
WRITE-IN	16	1.33	0	0	0	0	16	0
Total	752		0	0	0	39	713	0
Statewide Constitutional Amendment								
Vote for 1								
Yes	2,325	43.08	0	0	0	88	2,237	0
No	3,072	56.92	0	0	0	206	2,866	0
Total	5,397		0	0	0	294	5,103	0

SUMMARY REPT-GROUP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

Report BL45A Page 002

	TOTAL VOTES	%	DS850	M650	DS200	M100	iVotronic	Flash
Attorney General								
Vote for 1								
Constance Anastopoulos (DEM)	2,887	48.50	0	0	0	206	2,681	0
Constance Anastopoulos (RFP)	107	1.80	0	0	0	4	103	0
Alan Wilson (RFP)	2,956	49.64	0	0	0	112	2,844	0
Write-In	3	.03	0	0	0	0	2	0
Total	5,952		0	0	0	322	5,630	0
Comptroller General								
Vote for 1								
Richard Beckstrom (RFP)	3,611	97.62	0	0	0	143	3,468	0
Write-In	88	2.38	0	0	0	8	80	0
Total	3,699		0	0	0	151	3,548	0
State Superintendent of Education								
Vote for 1								
Israel Romero (DEM)	2,747	46.21	0	0	0	197	2,550	0
Billy Mitchell Spearman (RFP)	3,176	53.42	0	0	0	124	3,052	0
Write-In	22	.37	0	0	0	4	18	0
Total	5,945		0	0	0	325	5,620	0
Commissioner of Agriculture								
Vote for 1								
Chris Helms (RFP)	500	11.69	0	0	0	50	450	0
David Edmund (RFP)	456	10.66	0	0	0	23	433	0
Boggy Weathers (RFP)	3,293	77.01	0	0	0	151	3,142	0
Write-In	27	.63	0	0	0	1	26	0
Total	4,276		0	0	0	205	4,071	0
U.S. House of Representatives Dist 6								
Vote for 1								
James E Jim Clyburn (DEM)	2,998	50.25	0	0	0	204	2,794	0
Bryan Pugh (RFP)	85	1.42	0	0	0	2	83	0
Edward E Grossmann (RFP)	2,880	48.27	0	0	0	118	2,762	0
Write-In	3	.05	0	0	0	0	3	0
Total	5,966		0	0	0	324	5,642	0
State House of Representatives Dist 93								
Vote for 1								
Russell L Ott (DEM)	3,822	63.96	0	0	0	231	3,591	0
Terry L Riser Sr (RFP)	2,151	35.99	0	0	0	94	2,057	0
Write-In	3	.05	0	0	0	0	3	0
Total	5,976		0	0	0	325	5,651	0

SUMMARY REPT-GROUP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

Report EL45A Page 004

	TOTAL VOTES	%	DS850	W650	DS200	W100	iVotronic	Flash
County Capital Projects								
Vote for 1								
Yes	3,173	57.24	0	0	0	199	2,274	000
No	2,370	42.76	0	0	0	25	2,275	000
Total	5,543		0	0	0	294	5,249	000
County Sunday Alcohol Sales:On-Premises								
Vote for 1								
Yes, in favor of the question	3,333	60.35	0	0	0	183	3,150	000
No, Opposed to the question	2,199	39.65	0	0	0	112	2,078	000
Total	5,532		0	0	0	295	5,228	000
County Sunday Alcohol Sales:Off-Premises								
Vote for 1								
Yes, in favor of the question	3,257	58.45	0	0	0	176	3,081	000
No, Opposed to the question	2,315	41.55	0	0	0	118	2,197	000
Total	5,572		0	0	0	294	5,278	000

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

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

v.

Calhoun County Council,
Defendants.

IN THE CIRCUIT COURT
CASE NO: 2019-CP-09-00049

**MOTION FOR
TEMPORARY AND PRELIMINARY
INJUNCTIVE RELIEF**

NOW COME the Plaintiffs, by their undersigned attorney, and move the Court for temporary and preliminary injunctive relief. In support of this motion, Plaintiffs would show the Court:

1. Plaintiff South Carolina Public Interest Foundation 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 proper application and enforcement of the South Carolina Constitution and statutes.
2. Plaintiffs Amy Hill and Rebecca Bonnette are citizens, residents, taxpayers, and registered electors of Calhoun County. They bring this action individually and on behalf of all others similarly situated.
3. Defendant Calhoun County Council is the governing body of Calhoun County, South Carolina.
4. This Court possesses jurisdiction under SC Code Ann. § 4-10-300 ff. known as the "Capital Project Sales Tax Act" and under the following decisions, which address public interest and taxpayer standing: *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804

S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas* , 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *Sloan v Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), *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. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997); and under S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act.

5. This action raises statutory issues of great public importance, and Plaintiffs ask the Court to grant them standing based upon the great public importance of the issues this action raises.
6. Plaintiffs Amy Hill and Rebecca Bonnette are or will be subject to paying the Penny Tax to Calhoun County, and therefore possess standing as Calhoun

County taxpayers to contest the unlawful payments from the Penny Tax receipts.

7. The South Carolina General Assembly enacted SC Code Ann. § 4-10-300 ff. known as the "Capital Project Sales Tax Act" which authorizes counties to adopt an ordinance imposing a sales and use tax for the following purposes:

- (a) highways, roads, streets, bridges, and public parking garages and related facilities;
- (b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education, or any combination of these projects;
- (c) cultural, recreational, or historic facilities, or any combination of these facilities;
- (d) water, sewer, or water and sewer projects;
- (e) flood control projects and storm water management facilities;
- (f) beach access and beach renourishment;
- (g) dredging, dewatering, and constructing spoil sites, disposing of spoil materials, and other matters directly related to the act of dredging;
- (h) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (g) of this item;
- (i) any combination of the projects described in subitems (a) through (h) of this item;

S.C. Code Ann § 4-10-330(a)(1).

8. Calhoun County adopted Ordinance Number 2018-18 ("Ordinance") to levy and impose a one percent sales and use tax subject to a referendum within Calhoun County pursuant to S.C. Code Ann. § 4-10-300 ff.

9. The County gave notice in the newspaper of the 15 projects to be funded by the Penny tax.
10. Four of the proposed projects are not authorized by S.C. Code Ann. § 4-10-300 ff. They include the following:
 4. Calhoun County—Sandy Run Fire District Ladder Truck Project—to include the acquisition and equipping of a new ladder truck in the Sandy Run Fire District. To support the northern portion of Calhoun County, particularly industry located therein \$350,000.
 11. Calhoun County Emergency Communications Project—to include the constructing, acquiring, and equipping of facilities and equipment to provide 800 MHz radio service for emergency service providers in Calhoun County \$500,000.
 12. Calhoun County Ambulance Project—to include the acquisition and equipping of ambulances to be operated by Calhoun County Emergency Services Department \$165,000.
 13. Calhoun County Sandy Run Fire District Tanker Truck Project—to include the purchase of the fire truck to serve the Sandy Run area \$267,000.
11. The Referendum passed on November 6, 2018.
12. Upon information and belief, the County plans to make these purchases as and to issue bonds of May 1, 2019, in the amount of \$7 million to pay for these projects.
13. The Ordinance states that the County will collect the sales and use tax for a period of eight years beginning May 1, 2019.
14. Ordinance Number 2018-18 purports to adopt a 1% tax for purposes not permitted by the statute, and therefore, those provisions, purposes, and uses are unlawful.
15. The County's proposed use of bond proceeds for the purposes not authorized by statute is illegal.

16. Upon information and belief, the Referendum authorizing the tax and the bonds would not have passed if the unlawful projects had not been included.
17. Ordinance Number 2018-18 exceeds the statutory authority of S.C. Code Ann. § 4-10-300 ff, by purporting to use the 1% sales tax to purchase items not authorized by the statute.
18. If these matters are not enjoined, the loss to the taxpayers will be irreparable, because the overt violation of the law by a public body is an irreparable injury to the citizens and taxpayers of Calhoun County.
19. Furthermore, it would be exceedingly difficult, if not impossible, to restore to the individual taxpayers the unlawful and wrongfully collected sales taxes.
20. Accordingly, the balance of hardships weighs heavily in favor of injunctive relief forbidding and enjoining the collection and expenditure of the unlawful sales tax and the unlawful issuance of the bonds, which are scheduled to be paid back with the unlawful sales tax.

WHEREFORE, Plaintiffs move the Court to temporarily and preliminarily:

1. Enjoin the collection of the tax because the Referendum purported to approve unlawful expenditures;
2. Enjoin the issuance of the bonds because the Referendum purported to approve unlawful expenditures;
3. Enjoin the expenditure of any bond proceeds;
4. Enjoin the issuance of the bonds for the unlawful purposes;
5. Enjoin all unlawful expenditures from the proceeds of the penny sales tax;
6. Enjoin all unlawful expenditures from the proceeds of the bonds; and

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

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

/S/ James G. Carpenter
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

April 10, 2019

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

TO: JAMES G. CARPENTER, ESQ., COUNSEL FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the presiding Judge, Court of Common Pleas for Calhoun County, within ten (10) days after service hereof or as soon thereafter as counsel may be heard, for an Order, pursuant to Rule 56, South Carolina Rules of Civil Procedure, granting summary judgment in favor of Defendant Calhoun County Council (hereinafter, the "County") in this matter.

Plaintiffs allege that County acted outside the scope of the Capital Project Sales Tax Act, South Carolina Code Ann. Section 4-10-300 *et seq.* (1976, as amended) (hereinafter referred to as the "Act" or the "Statute"), by submitting for the approval of voters capital projects that are outside of the scope of those authorized under the Act. The Act authorizes the County to impose a one percent sales and use tax (hereinafter, the "Sales Tax") to fund specific capital projects, subject to the approval of the voters in a referendum held in the County. The Sales Tax and the capital projects to be funded therewith were approved by the County's voters at a referendum conducted in the November 2018 general election (hereinafter, the "Referendum"). Plaintiffs seek to enjoin

(1) the collection of the Sales Tax, (2) the issuance of any bonds authorized by the Referendum and the expenditure of any proceeds thereof, and (3) the expenditure of bond proceeds or Sales Tax proceeds. There are no genuine issues of material fact that are in dispute in this matter, and the County is entitled to summary judgment as set forth below.

Plaintiffs' claims are barred under the applicable statute of limitations. Pursuant to Section 4-10-330(F) of the Act, "[u]pon 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." *Id.* (emphasis added). On November 26, 2018, County Council adopted such a resolution. See Exhibit A of Defendant's Answer. The deadline for commencing Plaintiffs' challenge to the Referendum expired on December 27, 2018.

Plaintiffs were on notice that the Act requires challenges to be commenced immediately and in no event more than thirty days after the County adopted its resolution. Yet the Plaintiffs nonetheless took more than three times the time allotted to assert their challenge. The Plaintiffs filed their Complaint on April 3, 2019, more than three months after the date that the statute of limitations expired. To permit such an untimely challenge would directly contravene the provisions of the Act which contemplate that the County must carry out the will of its voters without delay or unwarranted interference. The legislature's enactment of a thirty-day statute of limitations evidences the legislature's intent that immediate action is necessary if a challenge is to be made. When considered in light of the time and work necessary to implement the Sales Tax by May 1, the reasoning underlying the thirty-day statute of limitation is evident.

Accordingly, the County's motion for summary judgment must be granted based upon the Plaintiffs' violation of the applicable statute of limitations. In the alternative, the County is nonetheless entitled to summary judgment based upon the substantive language of the Act.

Plaintiffs assert that certain of the capital projects approved in the Referendum are not authorized by the Act; however, Plaintiffs rely upon an unsupported and unreasonable interpretation of the Act. Specifically, Plaintiffs allege that four of the capital projects overwhelmingly approved by the voters in the Referendum—a ladder fire truck, a tanker fire truck, an ambulance, and communications equipment and facilities (hereinafter, the "Challenged Projects")—are not authorized under the Act. However, the list of permissible capital projects set forth in Section 4-10-330(A)(1) of the Act should be construed expansively rather than narrowly, as preferred by Plaintiffs. See *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 402, 450 S.E.2d 87, 95 (1994); *Baker v. Chavis*, 306 S.C. 203, 410 S.E.2d 600 (S.C. Ct. App. 1991); *Southland Mobile Homes of S.C., Inc. v. Assocs. Fin. Servs. Co.*, 270 S.C. 527, 531, 244 S.E.2d 212, 213–14 (1978).

It is beyond dispute that the Challenged Projects are critical components of the types of projects listed at Section 4-10-330(A)(1) of the Act. Emergency facilities contemplated by the Act cannot be useful to the community if the Act does not also permit Sales Tax proceeds to be used to purchase the additional capital items, such as the Challenged Projects, that are essential to the functionality of these facilities. Fire trucks, ambulances, and emergency communications equipment and facilities are crucial for the proper functioning of these emergency facilities and are contemplated by the legislature in enacting this Statute.

This Motion is consistent with Defendant's Answer and Exhibit A thereto, and will be further supported by a consolidated Memorandum in Support of Defendant's Motion for Summary

Judgment and in Opposition to Plaintiffs' Motion for Injunctive Relief. The Consolidated Memorandum and such other and further supporting material will be presented to the Court prior to the hearing.

For the foregoing reasons, and as set forth in the aforementioned Consolidated Memorandum by Defendant, the County is entitled to summary judgment because the Plaintiffs' claims violate the applicable Statute of Limitations, S.C. Code Ann. § 4-10-330(F). In the alternative, the Plaintiffs' motion to enjoin the collection of the Sales Tax and the issuance of bonds is unsupported by any reasonable interpretation of the statutory language of the Section 4-10-330(A)(1) of the Act, and the County is entitled to summary judgment consistent with the proper interpretation of the Act.

Respectfully submitted,

POPE FLYNN, LLC

By: /S/ Charles D. Rhodes III
R. Patrick Flynn
pflynn@popeflynn.com
Charles D. Rhodes III
cdrhodes@popeflynn.com
Michael W. Allen, Jr.
mallen@popeflynn.com
1411 Gervais St., Suite 300
Columbia, SC 29201
(803) 354-4900

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

May 16, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)
South Carolina Public Interest Foundation,)
Amy Hill, and Rebecca Bonnette,)
individually, and on behalf of all others)
similarly situated,)
Plaintiffs,)
v.)
Calhoun County Council,)
Defendants.)

IN THE CIRCUIT COURT
CASE NO: 2019-CP-09-00049
**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

(REVISED)

NOW COME the Plaintiffs, by their undersigned attorney, and move the Court pursuant to SCRPC 56 for Summary Judgment. In support of this Motion, Plaintiffs would show the Court:

1. Plaintiff South Carolina Public Interest Foundation 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 proper application and enforcement of the South Carolina Constitution and statutes.
2. Plaintiffs Amy Hill and Rebecca Bonnette are citizens, residents, taxpayers, and registered electors of Calhoun County. They bring this action individually and on behalf of all others similarly situated.
3. Defendant Calhoun County Council is the governing body of Calhoun County, South Carolina.
4. This Court possesses jurisdiction under SC Code Ann. § 4-10-300 ff. known as the "Capital Project Sales Tax Act" and under the following decisions, which address public interest and taxpayer standing: *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804

S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas* , 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *Sloan v Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), *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. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997); and under S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act.

5. This action raises statutory issues of great public importance, and Plaintiffs ask the Court to grant them standing based upon the great public importance of the issues this action raises.
6. Plaintiffs Amy Hill and Rebecca Bonnette are or will be subject to paying the Penny Tax to Calhoun County, and therefore possess standing as Calhoun

County taxpayers to contest the unlawful payments from the Penny Tax receipts.

7. The South Carolina General Assembly enacted SC Code Ann. § 4-10-300 ff. known as the "Capital Project Sales Tax Act" which authorizes counties to adopt an ordinance and referendum imposing a sales and use tax.

(A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission pursuant to Section 4-10-320(C), subject to referendum approval in the county. The **ordinance must specify:**

(1) the **purpose** for which the proceeds of the tax are to be used, **which may include projects** located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, **and may include the following types of projects:**

(a) highways, roads, streets, bridges, and public parking garages and related facilities;

(b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education, or any combination of these projects;

(c) cultural, recreational, or historic facilities, or any combination of these facilities;

(d) water, sewer, or water and sewer projects;

(e) flood control projects and storm water management facilities;

(f) beach access and beach renourishment;

(g) dredging, dewatering, and constructing spoil sites, disposing of spoil materials, and other matters directly related to the act of dredging;

(h) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, **for the projects delineated in subitems (a) through (g) of this item;**

(i) any combination of the projects described in subitems (a) through (h) of this item:

S.C. Code Ann § 4-10-330(a)(1) (emphasis added).

8. Calhoun County adopted Ordinance Number 2018-18 ("Ordinance") to levy and impose a one percent sales and use tax subject to a referendum within Calhoun County pursuant to S.C. Code Ann. § 4-10-300 ff.
9. The County gave notice in the newspaper of the 15 projects to be funded by the Penny tax.
10. Four of the proposed projects are not authorized by S.C. Code Ann. § 4-10-330. They include the following:
 - 4, Calhoun County—Sandy Run Fire District Ladder Truck Project—to include the acquisition and equipping of a new ladder truck in the Sandy Run Fire District. To support the northern portion of Calhoun County, particularly industry located therein \$350,000.
 11. Calhoun County Emergency Communications Project—to include the constructing, acquiring, and equipping of facilities and equipment to provide 800 MHz radio service for emergency service providers in Calhoun County \$500,000.
 12. Calhoun County Ambulance Project—to include the acquisition and equipping of ambulances to be operated by Calhoun County Emergency Services Department \$165,000.
 13. Calhoun County Sandy Run Fire District Tanker Truck Project—to include the purchase of the fire truck to serve the Sandy Run area \$267,000.
11. The Referendum passed on November 6, 2018.
12. The Ordinance states that the County will collect the sales and use tax for a period of eight years beginning May 1, 2019. Upon information and belief, the tax collection has begun.

13. The County planned to make these purchases and to issue bonds May 1, 2019, in the amount of \$7 million to pay for these projects. Upon information and belief, the bonds have not been issued.
14. Ordinance Number 2018-18 purports to adopt a 1% tax for purposes not permitted by the statute, and therefore, those provisions, purposes, and uses are unlawful.
15. The County's proposed use of bond proceeds for the purposes not authorized by statute is illegal.
16. Upon information and belief, the Referendum authorizing the tax and the bonds would not have passed if the unlawful projects had not been included.
17. The overt violation of the law by a public body is an irreparable injury to the citizens and taxpayers of Calhoun County.
18. The County has moved for Summary Judgment. The County argues that the statute is written permissively, because it uses the phrase "may include."
19. The County cites a case that says "may" sometimes means "shall" and is sometimes mandatory and not merely permissive. It depends on the context of the verbiage, and upon the legislative intent.

A basic rule of statutory construction is that words in a statute must be given their plain and ordinary meaning. *Adkins v. Varn*, 312 S.C. 188, 439 S.E.2d 822 (1993). Ordinarily, the use of the word "may" in a statute signifies permission and generally means the action spoken of is optional or discretionary. *Robertson v. State*, 276 S.C. 356, 278 S.E.2d 770 (1981). **But, when the question arises whether "may" is to be interpreted as mandatory or permissive in a particular statute, legislative intent is controlling.** *Id.* And the use of the word "may" in a statute can be interpreted to mean "shall" *Id.* This is especially so where the original statute used the term "shall" but a later amendment uses the term "may", and there is no explanation for the change in terminology. *Id.* In interpreting the interchangeability of the word "may" and "shall" in statutes, other jurisdictions have held that "may" will be construed as "shall"

or as imposing an imperative duty whenever it is employed in a statute to delegate a power, the exercise of which is important for the protection of a public or private interest. *Puckett v. Sellars*, 235 N.C. 264, 69 S.E.2d 497 (1952). Accord, *Independent Bankers Assoc. of Ga., Inc. v. Dunn* 230 Ga. 345, 197 S.E.2d 129 (1973).

T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 402, 450 S.E.2d 87, 95 (1994) (emphasis added) (attached). This statute “delegate[s] a power.” *Id.* Furthermore, the limited list is “important for the protection of a public . . . interest.” *Id.* The protection of the taxpayers’ fiscal interests. Accordingly, even though this statutory list, uses the words “may include” the legislative intent is to limit the permissible uses to those listed in the statute.

20. “Legislative intent is controlling.” *Id.* The legislative intent is made clear in paragraphs (h) and (i). In both paragraphs, the statute limits the permissible uses to those delineated in the previous paragraphs: “(a) through (g)” and “(a) through (h).” Accordingly, the statutory list is limited to those uses articulated in the statute.
21. Second, the legislative amendments to broaden the list of permissible uses demonstrate that the list of uses in the statute is not open-ended.
22. The “Capital Project Sales Tax Act” was initially enacted in 1997. The initial act contained a list of permissible uses.
23. On two separate occasions since its enactment, the General Assembly explicitly expanded the list of permissive uses in S.C. Code Ann. § 4-10-330 for the Capital Projects Sales Tax. The legislative history of § 4-10-330 demonstrates that the statutorily permitted used are the ones listed in the statute.
24. Plaintiffs attach two Acts of the General Assembly amending this Code section to add new permitted purposes for the Capital Projects Sales Tax.

25. Act 44 of 2004 (attached) added “public parking garages” and “beach access and beach renourishment” as permissible uses for the Capital Projects Sales Tax.
26. Act 268 of 2012 (attached) added additional authorized uses for the Capital Projects Sales Tax, including “dredging, dewatering, construction of spoil sites, and disposal of spoil materials, and other matters directly related to the act of dredging.”
27. These enactments demonstrate that the General Assembly intended that any type of permissible purpose must be specifically stated in the statute. The General Assembly recognized a need to expand the list of projects permissibly financed by this tax by statute, and they did so on two separate occasions.
28. If the permissible list was only vaguely illustrative, like the County contends, the General Assembly would not have explicitly limited the combination of projects to those specifically listed in the previous paragraphs in the statute, and furthermore, there would have been no need to amend the statute, not once, but twice, to expand the list of permissible uses.
29. The statute refers to “the following *types* of projects.” The word “types” indicates that there is a degree of flexibility. But in determining what is an appropriate “type” of project, the Court must use the ones specifically listed as referents. All permissible uses are real estate-related; not one includes equipment, not even equipment ancillary to the real estate project mentioned. Accordingly, equipment is not of a similar “type” of project as the projects permissible under the statute.
30. The “may include” language means that the counties need not include all these listed purposes, but it does not mean that they are allowed to go beyond the stated types of permissible purposes.

31. This statute is not remedial legislation; accordingly, it should be strictly, not liberally, construed.
32. Finally, the County contends that the statute contains a 30-day statute of limitations for challenges to the ordinance.
33. A careful reading of the statute demonstrates that the 30-day time limitation addresses challenges to the vote count, not to the substance of the referendum. In this case, Plaintiffs do not challenge the vote count, but rather, they challenged the legality of the substance of the ordinance submitted to the voters. It is broader than the statutorily permitted uses.

WHEREFORE, Plaintiffs pray the Court for Summary Judgment and for injunctive relief, and ask the Court to:

1. Enjoin the collection of the tax, because the Referendum purported to approve unlawful expenditures;
2. Enjoin the issuance of the bonds, because the Referendum purported to approve unlawful expenditures;
3. Enjoin the expenditure of any bond proceeds;
4. Enjoin the issuance of the bonds for the unlawful purposes;
5. Enjoin all unlawful expenditures from the proceeds of the penny sales tax;
6. Enjoin all unlawful expenditures from the proceeds of the bonds;
7. Award the Plaintiffs their costs and attorneys fees under S.C. Code Ann. § 15-77-300 et seq.; and
8. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

/S/ James G. Carpenter
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May 22, 2019

T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388 (1994)

450 S.E.2d 87

316 S.C. 388
Court of Appeals of South Carolina.

T.W. MORTON BUILDERS, INC., Plaintiff,

v.

Richard P. von BUEDINGEN, Individually, and C. Clifton Alsbrooks, as the Personal Representative of the Estate of Bari L. von Buedingen, and NCNB National Bank of South Carolina, f/k/a NCNB South Carolina, Defendants.

WILLIAMSBURG FENCE COMPANY, Plaintiff,

v.

Richard P. von BUEDINGEN, a/k/a Richard P. von Buedingen Philippseich, Individually, and C. Clifton Alsbrooks, as the Personal Representative of the Estate of Bari L. von Buedingen, a/k/a Bari L. von Buedingen Philippseich, and NCNB National Bank of South Carolina, f/k/a NCNB South Carolina, Defendants.

Herbert A. JONES, Plaintiff,

v.

Richard P. von BUEDINGEN, a/k/a Richard P. von Buedingen Philippseich, Individually, and C. Clifton Alsbrooks, as the Personal Representative of the Estate of Bari L. von Buedingen, a/k/a Bari L. von Buedingen Philippseich, and NCNB National Bank of South Carolina, f/k/a NCNB South Carolina, Defendants,

of whom T.W. Morton Builders, Inc., is
Respondent-Appellant,

and Richard P. von Buedingen, Individually, and C. Clifton Alsbrooks, as the Personal Representative of the Estate of Bari L. von Buedingen, are Appellants-Respondents.

No. 2235.

Heard Feb. 8, 1994.

Decided Sept. 30, 1994.

Synopsis

Home improvement contractor sued to foreclose on mechanics' lien. The Circuit Court, Aiken County, Kelly F. Zier, Special Master, held in favor of contractor, and both sides appealed. The Court of Appeals held that: (1) finding that homeowners had entered into cost-plus contract with contractor was sufficiently supported by evidence; (2) contractor was not guilty of any deceptive or unfair practices; and (3) attorney fees had to be awarded to contractor as prevailing party under mechanics' lien foreclosure statute.

Affirmed in part, reversed in part and remanded.

West Headnotes (16)**[1] Mechanics' Liens**

◆ Agreement or consent of owner and terms thereof

Finding that homeowners had entered into a cost-plus contract for improvements to their home, and not into a guaranteed-maximum-cost contract, was sufficiently supported by evidence presented in home improvement contractor's action to foreclose its mechanics' lien, including language in contract itself and in contractor's cover letter to its final bid, as well as contractor's testimony that he never would have entered into fixed-price contract for improvements to home.

Cases that cite this headnote

[2] Appeal and Error

◆ Sufficiency of evidence

Mechanics' Liens

◆ Legal or equitable

Foreclosure of mechanics' lien is action at law, in which factual findings entered by master without benefit of jury verdict will not be disturbed on appeal unless found to be without reasonable evidentiary support.

3 Cases that cite this headnote

[3] Appeal and Error

◆ Sufficiency of evidence

In action at law, tried without jury, master's findings of fact will not be disturbed on appeal unless found to lack reasonable evidentiary support.

1 Cases that cite this headnote

[4] Mechanics' Liens

◆ Indebtedness of defendant and amount thereof

Finding that increased costs on home improvement project were attributable to homeowners was sufficiently supported by

T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388 (1994)

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evidence presented in contractor's mechanics' lien foreclosure action, including evidence of homeowners' numerous requested changes and knowledge that, as result of changes, project costs were escalating.

1 Cases that cite this headnote

^[5] **Contracts**

☛ Contracts for buildings and other works

Home improvement contractor was not liable to property owners for various deficiencies and failures in plans, including flooding and mildew problems, given evidence that homeowners had personally directed subcontractors to make changes that resulted in these problems.

Cases that cite this headnote

^[6] **Contracts**

☛ Waiver

Homeowners waived right to insist that written change order forms be completed for any changes in home improvement project, where homeowners requested changes in construction work without insisting on written change order forms.

2 Cases that cite this headnote

^[7] **Antitrust and Trade Regulation**

☛ Construction, renovation, improvement, and repair

Home improvement contractor was not liable to homeowners on deceptive or unfair practices theory, for allegedly deflating its bid and then seeking to recover additional sums as cost overruns, given evidence of similarity between contractor's bid and other bid on project, as well as evidence that cost overruns had resulted from numerous changes requested by homeowners.

Cases that cite this headnote

^[8] **Interest**

☛ Contract and sales matters

Home improvement contractor was not entitled to prejudgment interest in its mechanics' lien

foreclosure action, where contractor was suing to recover for cost overruns vigorously disputed by property owners.

1 Cases that cite this headnote

^[9] **Interest**

☛ Liquidated or unliquidated claims in general

If sum is certain or capable of being reduced to certainty, prejudgment interest is allowed from point when parties agreed, or law provides, payment was demandable.

1 Cases that cite this headnote

^[10] **Mechanics' Liens**

☛ Items and amount allowable

Contractor's right to attorney fees, for successfully suing to enforce its mechanics' lien for home improvements that it performed pursuant to its contract with homeowners, was governed by mechanics' lien statute specifically applicable to mechanics or suppliers who deal directly with owner, and not by mechanics' lien statute designed to protect mechanic or supplier who deals with general contractor or some person other than owner or his agent. Code 1976, §§ 29-5-10(a), 29-5-20.

3 Cases that cite this headnote

^[11] **Mechanics' Liens**

☛ Items and amount allowable

Award of attorney fees is mandatory to contractor who successfully sues to enforce mechanics' lien for improvements performed directly pursuant to contract with homeowner, as well as for work performed pursuant to contract with general contractor or some person other than owner; by using the word "may" in mechanics' lien statute awarding fees to mechanic or supplier who successfully sues to enforce contract directly with homeowner, state legislature did not intend to create difference between contractors who deal directly with homeowner and those who deal with general contractor or some other person. Code 1976, §§ 29-5-10(a), 29-5-20.

4 Cases that cite this headnote

T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388 (1994)

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- [12] **Statutes**
 ➡ Plain Language; Plain, Ordinary, or Common Meaning

Basic rule of statutory construction is that words in statute must be given their plain and ordinary meaning.

1 Cases that cite this headnote

- [13] **Statutes**
 ➡ Mandatory or directory statutes

Ordinarily, the use of the word "may" in statute signifies permission and generally means that actions spoken of is optional or discretionary.

2 Cases that cite this headnote

- [14] **Statutes**
 ➡ Mandatory or directory statutes

Legislative intent is controlling whenever question arises as to whether the word "may" is to be interpreted as mandatory or permissive in particular statute.

2 Cases that cite this headnote

- [15] **Statutes**
 ➡ Mandatory or directory statutes

Legislature's use of the word "may" in statute can be interpreted to mean "shall," particularly when original statute used term "shall" and later amendment uses the term "may," but with no explanation for change in terminology.

1 Cases that cite this headnote

- [16] **Mechanics' Liens**
 ➡ Items and amount allowable

Although award of attorney fees is mandatory whenever contractor prevails in mechanics' lien foreclosure action, amount of fee to be awarded is left to sound discretion of court, subject to guidance set forth in statute as to who is prevailing party. Code 1976, §§ 29-5-10(a), 29-5-20.

5 Cases that cite this headnote

Attorneys and Law Firms

****89 *390** John W. Harte and Gregory P. Harlow, Aiken, for appellants-respondents.

Richard E. Miley, North Augusta, for respondent-appellant.

Opinion

PER CURIAM:

T.W. Morton Builders, Inc. brought this foreclosure action pursuant to the von Buedingens' alleged failure to pay in full for renovations performed on their home. The von Buedingens counterclaimed for, among other things, breach of contract and unfair trade practices. The master held in favor of the contractor for \$116,434.88. Both parties appeal. We affirm in part, reverse in part and remand.

After purchasing a \$500,000 home at 1500 Huntsman Drive in Aiken, South Carolina, the von Buedingens sought bids for considerable renovations to the home, including the addition of a master bedroom/bathroom wing, a horse barn, and other significant improvements.

***391** They received bids on the proposed renovations, including a bid from T.W. Morton for \$540,000, which they rejected outright. The von Buedingens also rejected T.W. Morton's second bid of \$425,000. After a meeting, however, at which the parties discussed further scaling down of the project, the von Buedingens accepted T.W. Morton's third bid of \$370,690.

The contract between the parties was an American Institute of Architects form contract entitled "Standard Form of Agreement Between Owner and Contractor." The initial language of the form provides that the basis of payment is the "Cost of the Work Plus a Fee."¹ Elsewhere, the contract provides:

The maximum cost to the Owner, including the Cost of the Work and the Contractor's Fee, is *estimated to be* the sum of *THREE HUNDRED SEVENTY THOUSAND, SIX HUNDRED NINETY AND 00/100 dollars (\$370,690.00)*; such Maximum Cost shall be increased or decreased for Changes in the Work as provided in Article 7. *A ten percent deposit is due upon execution of this contract in the amount of \$37,069.00.*²

Other pertinent sections of the contract include:

ARTICLE 9

COSTS NOT TO BE REIMBURSED

....
9.1.6 Costs due to the negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.

ARTICLE 7

7.3 Any Changes in the Work which result in additional costs to the Contract will not become effective until *392 Change Orders are signed by the parties or their representatives, and the funds are on deposit in the construction account at NCNB.³

Ted Morton of T.W. Morton testified this form contract was an AIA cost plus contract form, and denied he would have ever agreed to a fixed price contract on the project.

After construction began, the contract requirement of obtaining signed change orders for each change was not observed. According to Charles Horton, the job superintendent on the project, and Ted Morton, not all changes were put into change orders because the orders would have slowed the progress of the project, particularly when the changes became so frequent. Morton testified **90 changes were made daily, and that the number of changes ultimately made strict compliance with the contract impossible. Morton also testified that Dr. von Buedingen never complained the change order procedure was not followed, and did not insist on written change orders even once the overruns were apparent. Dr. von Buedingen furthermore did not establish a construction account as provided in the change order provision of the contract.

Ultimately, the final cost well exceeded the total of the bid plus written, authorized change orders. The final costs for the renovation project totalled approximately \$654,000.

Horton testified to the various changes requested during the course of construction. He attributed a number of the changes to Wesley Cadle, the von Buedingens' interior decorator. According to Horton, Cadle insisted interior trim work be removed and then re-done after the wallpapering. The trim itself was also more detailed than

the plans indicated and required extra labor. Cadle also directed the installation of cabinets in Mrs. von Buedingen's bathroom, which were not in the original plans, and requested expensive flextrim on the radius and porthole windows be redone, for reasons unrelated to workmanship, at an additional cost of \$2,300.

Several witnesses testified to numerous other changes made involving extra expense. The hardwood floors were refinished; extra marble work was added to the old fireplace; *393 electrical work was done in the old house; doors were replaced in the old house; the front bay window was raised; an access door was moved; changes were made in the framework; a vent and certain outlets were moved; trim was re-applied to the bay windows; extra plywood was added to the sunroom floor; a column in front of the house was changed; the barn doors were rebuilt; fencing was removed from the backyard; a room was added in the garage; the barn was enlarged; a well was added; and several additional tons of dirt were removed at the start of the project. Costs were also increased by the considerable delays resulting from these changes.

Costs mounted further when Dr. von Buedingen demanded the sunroom be re-built with a different slope to the roof. Apparently, the original plans showed sloped roofs on the bay, but were not clear as to the sunroom. Horton and the framing contractor both believed the original roof line complied with the plans. However, Dr. von Buedingen insisted on the change, and the second roof proved to be more difficult and expensive to build. The framing contractor estimated the extra framing work on the sunroom totalled \$7,500. A separate sub-contractor, Richard Bragg, testified the second roof was more complicated and required double the amount of copper, excluding the wasted copper torn from the first roof.

A dressage arena was added at considerable cost. Horton testified the arena was not part of the original contract. Morton likewise testified the \$370,690 bid did not include the arena. Dr. von Buedingen claimed, however, the arena was always included in the plans, and gave directions to complete it.

Although the landscaping bid had been \$16,000, the final bill amounted to \$30,513.70. The landscaping sub-contractor, Mark Solly, testified he had to provide extra sod and perform extra work not anticipated in the bid, including drain field grading for the dressage arena, drainage systems around the barn, and 500 feet of edging around the beds and house. Solly also testified Dr. von Buedingen requested changes in the cross-tie walls.

The framing contractor, Leonard Kelly, had bid \$38,000,

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but his final bill was \$54,700. Kelly provided, a list of 28 requested *394 changes and additions, including the re-framing of the sunroom.

The tile contractor, Boyce Raulerson, had bid \$17,017, and his final bill was \$35,968.92. Raulerson attributed the difference to the von Buedingens' decision to change from marble to granite, and to extra work requested **91 in the entranceway, gazebo, tack room, laundry room, and barn area. Raulerson also put tile in the sunroom, which was not initially contemplated, and had to re-do some tile work pursuant to plumbing changes.

Although costs were mounting from the numerous changes, T.W. Morton failed to properly inform the von Buedingens of the escalating costs of the project. On July 23, 1990, T.W. Morton sent the von Buedingens the third draw request indicating a contract sum of \$412,000, with payments of \$273,000, and a "balance to finish" of \$139,390.53. Judy Morton of T.W. Morton claimed the \$139,390.53 figure represented simply the difference between the contract price and payments received, and should not have been represented as the balance to finish. The error was not corrected until the sixth draw, at which point the cost of the project, as yet unfinished, had reached \$527,015.90.

Despite these errors, however, there was nonetheless evidence that Dr. von Buedingen had knowledge of the cost overruns at an earlier point. Jeff Spears, vice-president with NCNB South Carolina, which financed the project, testified he first learned of potential problems with the project on July 23, 1990. Spears said he learned of these problems through discussions with Dr. von Buedingen and others regarding the cost overruns.

The parties and bank representatives met at the bank on November 22, 1990 to discuss the project and the unpaid sixth draw request of \$111,252.89. Dr. von Buedingen agreed to put up additional collateral to release the sixth draw and pay in full upon completion of the job if T.W. Morton provided a list of items as yet uncompleted. T.W. Morton prepared the list and estimated the remaining cost to complete the project at \$108,000.

As to workmanship, Dr. von Buedingen complained of problems with the barn plumbing, flooding in the pool house, mildew, paint peeling, and leaking where the new roof attached *395 with the main house. Morton acknowledged there were flooding problems after the renovations, but attributed them to changes demanded by Dr. von Buedingen, who directly instructed the sub-contractor as to grading.

After hearing all of the evidence, the master found the von Buedingens either directed the changes that were made, or approved of the changes requested by their architect and their decorator. The master found some of the requested changes were reflected in change order forms not returned by the von Buedingens, while other changes were not reflected on any change order forms. The master found further that the dressage arena was not included in T.W. Morton's bid.

The master found the von Buedingens, their architect and their interior decorator were in almost exclusive control of the cost of most of the allowance items, which exceeded the contract allowances by \$116,215.41. The master found the von Buedingens therefore were in at least as good a position, if not better, to keep track of the allowance expenditures. The master concluded further that the von Buedingens were aware or should have been aware of the cost overruns by July 23, 1990, if not sooner. The master also noted that while T.W. Morton gave an inaccurate "cost to complete" figure on the first five draw requests, the von Buedingens failed to demonstrate the actual cost figures were inaccurate.

The master determined that T.W. Morton bore no responsibility for the subsequent problems the von Buedingens experienced with flooding, or with mildew on the vaulted ceiling, because these problems resulted from changes or decisions over which T.W. Morton did not have control. The master also concluded that additional costs related to extra work on the barn doors were not attributable to T.W. Morton and that the extra expense was chargeable to the von Buedingens as part of the "cost of the work."

The master found that delays in the project were the result of the numerous changes directed by the von Buedingens, and that T.W. Morton substantially completed the project within a reasonable period of time.

The master rejected the von Buedingens' claim that T.W. Morton engaged in unfair trade practices by providing a fictitiously low bid and then raising the cost of the work. **92 The master found the present action involved only a private breach of *396 contract and was insufficient to affect the public interest so as to give rise to an unfair trade practices claim. Furthermore, the master found that T.W. Morton's bid was reasonable, noting a second contractor independently gave a similar bid for the project.

The master concluded the contract between the parties was a cost plus contract, not a guaranteed maximum price contract. Alternatively, the master found that even if the original contract had been a guaranteed maximum price

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contract, the parties orally modified it to become a cost plus contract. Furthermore, the master found the von Buedingens consented to a modification of the contract whereby the parties would not strictly comply with the requirement of written change orders.

The master also found the von Buedingens agreed at the November, 1990 meeting to pay the sixth draw request, plus completion costs of approximately \$108,000, inducing Morton to complete the work. The master then found T.W. Morton's final draw request of \$127,259.88 was due and payable as of April 1, 1991. T.W. Morton was, however, liable for the cost of a \$4,000 oversight on the plumbing estimate, and for \$4,000 to correct defective exterior paint and other miscellaneous problems. The master ordered the subject property sold at public auction to satisfy the remaining net amount of \$116,434.88 due T.W. Morton.

The master held further that T.W. Morton was not entitled to pre-judgment interest, but that it was entitled to post-judgment interest at a rate of twelve percent. The master also concluded the litigation was inevitable as a result of poor practices by both parties, and therefore that neither should recover attorney's fees.

In a supplemental order, the master held T.W. Morton's warranty would run from the date of filing of the order. The master further issued an order dated December 28, 1992 pursuant to Rule 59(e), SCRPC motions filed by the von Buedingens and T.W. Morton. The master found T.W. Morton was not entitled to prejudgment interest because the sum due was not certain or capable of being reduced to certainty as the negligent manner in which the parties dealt with the contract required litigation to reach a figure due under the contract. He further found the Mechanics' Liens statutes did not require *397 that attorney's fees be awarded but only that they "may" be recovered. He thus denied T.W. Morton the recovery of attorney's fees.

I.

^[1] On appeal, the von Buedingens argue the master erred in not giving greater weight to the "guaranteed maximum cost" language of the contract and instead finding the contract was a cost plus contract. We affirm the finding of a cost plus contract.

^[2] ^[3] Foreclosure of a mechanic's lien is an action at law. *Glover v. Lewis*, 299 S.C. 44, 382 S.E.2d 242, 243 (Ct.App.1989). In an action at law, tried without a jury, the master's findings of fact will not be disturbed on appeal unless found to be without evidence which reasonably supports the master's findings. *Townes Assocs., Ltd. v. City*

of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

Language on the first page of the contract form provides that the basis of payment is "Cost of the Work Plus a Fee." Furthermore, T.W. Morton's cover letter to its final bid indicates a cost plus contract shall be drawn up, and Morton personally testified he would never have entered into a fixed price contract for this project. This evidence reasonably supports the master's finding of a cost plus contract.

II.

^[4] ^[5] ^[6] The von Buedingens also dispute findings of liability for costs exceeding the original estimate, of liability for changes authorized in reliance on the draw requests, and of liability for deficiencies and failures in the plans, and further dispute the master's finding they waived the change order requirement of the contract. We affirm as to each of these issues.

There is evidence the excess costs were attributable to the von Buedingens. Ted Morton, and a number of others involved in the project, testified the von Buedingens requested **93 numerous changes that resulted in additional costs. There is evidence the von Buedingens did not rely on the draw requests, and knew the project costs were escalating. A representative of the bank testified Dr. von Buedingen was aware of the escalating costs of the project no later than July, 1990. There is *398 evidence, the von Buedingens were responsible for certain deficiencies and failures in the plans. Morton testified the von Buedingens personally directed sub-contractors to raise the barn and to move a vent, and that these changes resulted in certain flooding and mildew problems. Finally, there was evidence of waiver. The von Buedingens did not establish the construction account to cover change order costs as required by the change order provision of the contract, and requested numerous changes without insisting on written change order forms.

Again, we affirm the findings of the master, which are reasonably supported by the evidence.

III.

^[7] The von Buedingens also argue the master erred in not finding Morton's bidding practices constituted an unfair and deceptive trade practice because the alleged wrongdoing does affect the public interest.

We need not determine whether the public interest is

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affected by the alleged actions of T.W. Morton. The master also found no deceptive or unfair practices on the part of T.W. Morton that would support an unfair trade practices claim. The record reveals a second contractor's bid was similar to T.W. Morton's bid. This evidence is sufficient to support the master's finding of no deceptive or unfair bidding practices.

IV.

^[8] T.W. Morton, in turn, appeals the master's determination that it was not entitled to pre-judgment interest when the contract provided for the payment of interest⁸ and the amount due was capable of being reduced to a certainty.

The master found poor business practices on the part of both parties. He in turn found the parties responsible for allowing the project to get out of hand, and determined that prejudgment interest was inappropriate. Implicitly, the master concluded that while the parties agreed to the changes in *399 the project, they did not have a stated account as to the cost overruns.

^[9] On an obligation to pay money, if the sum is certain or capable of being reduced to certainty, prejudgment interest is allowed from a point when the parties agreed, or the law provides, payment was demandable. *Southern Welding Works, Inc. v. K & S Construction Co.*, 286 S.C. 158, 332 S.E.2d 102 (Ct.App.1985).

T.W. Morton's success in proving the additional amount due for the renovations does not automatically translate into entitlement to prejudgment interest on the unpaid balance. *Id.* To establish its right to prejudgment interest, T.W. Morton had the burden of establishing a stated account and the parties' agreement, express or implied, that the account is a true statement due at a specific point. *Id.* The master's implicit finding of no stated account is supported by the testimony of Dr. von Buedingen, who vigorously disputed the amount due T.W. Morton for cost overruns. We accordingly affirm the denial of prejudgment interest.

V.

T.W. Morton also argues the special master should have awarded it attorney fees under Sections 29-5-10 & -20 of the South Carolina Code because it was the prevailing party in this mechanic's lien foreclosure. We agree.

The mechanics' liens statutes provide as follows as to attorney fees:

A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate ... by virtue of an agreement with ... the owner ... shall **94 have a lien upon the building or structure ... to secure the payment of the debt due to him. The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien....

S.C.Code Ann. § 29-5-10(a) (1991) (emphasis added).

*400 Elsewhere Section 29-5-20 of the Mechanics' Liens Statute provides:

Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon ... to the value of the labor or material so furnished, including the costs of the action and a reasonable attorney's fee which must be determined by the court in which the action is brought but only if the party seeking to enforce the lien prevails. If the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court.... (emphasis added)

^[10] First, we note that both parties have mistakenly in combination applied the provisions of the two Code Sections to the attorney fee dispute in this case. The South Carolina Mechanic's Lien Statute recognizes two types of liens—Section 29-5-10 affords a lien to the mechanic or supplier who deals directly with the owner, while Section 29-5-20 is designed to protect the mechanic or supplier who deals with a general contractor or some person other than the owner or his agent. See 25 S.C.L.Rev. 817, *Mechanics' Liens in South Carolina; Lowndes Hill Realty Co. v. Greenville Concrete Co.*, 229 S.C. 619, 93 S.E.2d 855 (1956) (A manifest purpose of Section 45-252 [now 29-5-20] is "the protection of one not a party to a contract with the owner, who furnishes labor or material in the improvement of the owner's property, by giving him a lien for such labor or material ..."); *Williamson v. Hotel Melrose*, 110 S.C. 1, 96 S.E. 407 (1918) (As to a 29-5-10 lien, "as between the furnisher and the landowner dealing directly with each other, there can be no lien except there shall first be a contract betwixt him who furnishes and him who receives"). T.W. Morton alleges in its complaint a Section 29-5-10 lien and clearly its claim is based on a

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direct contract with the owner. Therefore, its right to an attorney fee is governed by Section 29-5-10 and not by Section 29-5-20.

^[13] The question next presented is whether Section 29-5-10 mandates the award of an attorney fee to T.W. Morton under the facts of this case. We hold that it does. *401 South Carolina Code of Laws, 1962 Section 45-251, the predecessor to Section 29-5-10, provided a mechanic or supplier of materials a lien "to secure payment of the debt so due him, and the costs which may arise in enforcing such lien under this chapter, including a reasonable attorney's fee...." The allowance of attorney fees under this Section was considered mandatory in view of the fact that the allowance was included in the lien, *See* 38 S.C.L.Rev. 823, *Recovery of Attorneys' Fees As Costs or Damages* In South Carolina, although the amount of the award was discretionary with the court. *D.A. Davis Construction Company, Inc. v. Palmetto Properties, Inc.*, 281 S.C. 415, 315 S.E.2d 370 (1984).

In *Southeastern Home Building & Refurbishing, Inc. v. Platt*, 283 S.C. 602, 325 S.E.2d 328 (1985), the Supreme Court declared the attorneys' fees provisions of Sections 29-5-10 and 29-5-20 unconstitutional. The court found that by allowing a prevailing mechanic or supplier to recover attorney fees while denying that right to an owner who successfully defends a mechanic lien action amounted to a denial of equal protection of the laws. In response to the *Platt* decision, the Legislature enacted Act No. 408, Act and Joint Resolutions of the General Assembly of South Carolina, 1986. Importantly, the Act is entitled:

AN ACT TO AMEND SECTION 29-5-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MECHANICS' LIENS, SO AS TO INCLUDE PLAN PREPARATION, SPECIFICATIONS, AND DESIGN **95 DRAWINGS WITHIN THE DEFINITION OF "LABOR PERFORMED" UNDER THIS SECTION AND TO PROVIDE THAT THE PREVAILING PARTY IN AN ACTION TO ENFORCE THE LIEN MAY RECOVER COSTS AND ATTORNEYS' FEES ...; TO AMEND SECTION 29-5-20 ... TO PROVIDE THAT THE PREVAILING PARTY IN AN ACTION TO ENFORCE THE LIEN MAY RECOVER COSTS AND ATTORNEYS' FEES AND TO PROVIDE A PROCEDURE FOR SETTLING CLAIMS AND DETERMINING WHO IS THE PREVAILING PARTY.

(emphasis supplied).

*402 ^[12] ^[13] ^[14] ^[15] The von Buedingens' argue that the use of the words "may" in the statute grants to the trial court the discretion to deny an award of attorneys' fees. A basic rule of statutory construction is that words in a statute must be given their plain and ordinary meaning. *Adkins v. Varn*, 312 S.C. 188, 439 S.E.2d 822 (1993). Ordinarily, the use of the word "may" in a statute signifies permission and generally means the action spoken of is optional or discretionary. *Robertson v. State*, 276 S.C. 356, 278 S.E.2d 770 (1981). But, when the question arises whether "may" is to be interpreted as mandatory or permissive in a particular statute, legislative intent is controlling. *Id.* And the use of the word "may" in a statute can be interpreted to mean "shall" *Id.* This is especially so where the original statute used the term "shall" but a later amendment uses the term "may", and there is no explanation for the change in terminology. *Id.* In interpreting the interchangeability of the word "may" and "shall" in statutes, other jurisdictions have held that "may" will be construed as "shall" or as imposing an imperative duty whenever it is employed in a statute to delegate a power, the exercise of which is important for the protection of a public or private interest. *Puckett v. Sellars*, 235 N.C. 264, 69 S.E.2d 497 (1952). Accord, *Independent Bankers Assoc. of Ga., Inc. v. Dunn* 230 Ga. 345, 197 S.E.2d 129 (1973).

We hold that there is no indication the Legislature by amending Sections 29-5-10 and 29-5-20 intended to provide for disparate treatment of prevailing mechanics and suppliers who deal directly with the owner under Section 29-5-10 and prevailing mechanics and suppliers who furnish labor or material through a contractor under 29-5-20. Such a scheme would have no rational basis in fact and would create the same kind of unequal treatment the amendment was enacted to cure. Additionally, the title to the Act reflects an intention to treat Sections 29-5-10 and 29-5-20 claimants the same in terms of attorney fees. *See Lindsay v. Southern Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 188 S.E.2d 374 (1972) (court may consider the title of Act in aid of construction to show intent of the Legislature); Accord *The Lite House, Inc. v. J.C. Roy Co.*, 309 S.C. 50, 419 S.E.2d 817 (Ct.App.1992). Moreover, the statute can reasonably be read as empowering a Section 29-5-10 claimant to recover attorney fees, and not, as suggested by *403 von Buedingen, in the sense of importing discretion in the trial court. The Legislature could have said the trial court "may award" attorneys' fees, thus, clearly importing discretion to award attorneys' fees.

^[16] We therefore hold that in order to protect the private interest of contractors, like T.W. Morton who deal directly with an owner, "may" as used in Section 29-5-10 should be interpreted to mean that costs, to include a reasonable

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attorney's fee shall be secured by the mechanic lien, as is the case in Section 29-5-20. We further hold that because the statute refers to a "reasonable attorney's fee" and because it also states the "fee must be determined by the court", the amount of the fee to be awarded is left to the sound discretion of the court, subject to the guidance set forth in 29-5-10 as to who is a prevailing party.

Clearly, under the guidance set forth in Section 29-5-10, T.W. Morton is a prevailing party and is entitled to an attorney fee in some amount. Accordingly, we reverse and remand the issue of attorneys' fees to the trial court.

VI.

Finally, T.W. Morton appeals the master's finding that its warranty period began to run **96 upon entry of the master's report, arguing the period should run instead from the point the owner's architect issued a certificate of substantial completion.

The master declared that the contractor's warranty would run from May 5, 1992. T.W. Morton argues the warranty period, if any, should begin to run on April 1, 1991, the date of substantial completion. T.W. Morton does not, however, raise any potential prejudice in the commencement date of the warranty. Accordingly, we do not address whether the master erred in not choosing April 1, 1991 as the date on which the contractor's warranties should commence. *See Visual Graphics Leasing Corp., Inc. v. Lucia*, 311 S.C. 484, 429 S.E.2d 839 (Ct.App.1993) (error not reversible unless material and prejudicial to the substantial rights of appellant).

For the foregoing reasons, the order below is

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

All Citations

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Footnotes

- 1 T.W. Morton's cover letter for the \$370,690 bid also provides that "[u]pon acceptance of proposal, a cost plus contract shall be drawn up."
- 2 The underlined portions represent language typed in by the parties, while the balance is from the standard AIA form.
- 3 This provision was added by the parties, and was not included in the standard language of the form contract.
- 4 The extra plywood was apparently necessary because the von Buedingens changed the sunroom flooring from hardwood to tile.
- 5 The contract provides that "Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate [of 12% interest]."

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COUNTIES, 2004 South Carolina Laws Act 244 (H.B. 4272)

2004 South Carolina Laws Act 244 (H.B. 4272)

SOUTH CAROLINA 2004 SESSION LAWS**REGULAR SESSION**

Additions and deletions are not identified in this document.

Vetoed provisions within tabular material are not displayed.

Act 244

H.B. No. 4272
COUNTIES

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 4-3-85 SO AS TO ALTER THE LINES OF BERKELEY AND CHARLESTON COUNTIES BY ANNEXING A CERTAIN PORTION OF CHARLESTON COUNTY TO BERKELEY COUNTY AND MAKE PROVISIONS FOR LEGAL RECORDS; AND TO AMEND SECTION 4-10-330, RELATING TO THE BALLOT QUESTION SUBMITTED TO THE QUALIFIED ELECTORS OF A COUNTY FOR THE APPROVAL OF THE IMPOSITION OF A SALES AND USE TAX IN THE COUNTY AND THE PURPOSES FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED, SO AS TO ADD PUBLIC PARKING GARAGES AND BEACH ACCESS AND BEACH RENOURISHMENT FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED.

Whereas, the governing bodies of Berkeley and Charleston Counties have no objection to a change in the county lines of both counties; and

Whereas, Section 7, Article VII of the Constitution of South Carolina, 1895, requires before any county line is altered the question must be submitted to the qualified electors of the territory proposed to be taken from one county and given to another; and

Whereas, at this time there are no inhabitants in the territory proposed to be taken from Charleston County and given to Berkeley County; and

Whereas, the South Carolina Attorney General has issued an opinion, Op. Atty. Gen., 90-67 (November 21, 1990), which concludes that when there are no inhabitants and therefore no qualified electors in the territory being moved from one county to another no election is required to move a county line between two counties. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Charleston area transferred to Berkeley County

SECTION 1. Chapter 3, Title 4 of the 1976 Code is amended by adding:

<< SC ST § 4-3-85 >>

Section 4-3-85. (A)(1) The following described portion of Charleston County is transferred and annexed to Berkeley County: All that area, approximately 4.04 acres, now lying in the County of Charleston and identified as a portion of TMS #487-00-00-026 located adjacent to Crowfield Plantation Development and shown on a map prepared by ADC Engineer, Inc., designated as Job #02227 and dated December 4, 2002.

COUNTIES, 2004 South Carolina Laws Act 244 (H.B. 4272)

(2) The proper proportion of the existing Charleston County indebtedness of the area transferred must be assumed by Berkeley County.

(B) Upon application, the clerk of court, register of deeds, sheriff, and probate judge of Charleston County shall furnish certified copies of any judgment roll, entry on abstract of judgment book, will, record, execution, decree, deed, mortgage, or other papers signed or recorded in the office of such officers, upon payment of proper fees and when this certified copy is filed or recorded in the proper office of Berkeley County, it has the same force and effect in Berkeley County that it had in Charleston County and any record not transferred continues in force and effect, and each has the same force and effect in Berkeley County as if it had been transferred and made a record in the proper office in Berkeley County.

Sales and use tax, new purposes added for which proceeds may be used

SECTION 2. Section 4-10-330(A)(1) of the 1976 Code, as added by Act 138 of 1997, is amended to read:

<< SC ST § 4-10-330 >>

(1) the purpose for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, and may include the following types of projects:

- (a) highways, roads, streets, bridges, and **public parking garages** and related facilities;
- (b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, or any combination of these projects;
- (c) cultural, recreational, or historic facilities, or any combination of these facilities;
- (d) water, sewer, or water and sewer projects;
- (e) flood control projects and stormwater management facilities;
- (f) **beach access and beach renourishment**;
- (g) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (f) of this item;
- (h) any combination of the projects described in subitems (a) through (g) of this item;

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 19th day of May, 2004.

Approved the 24th day of May, 2004.

SC LEGIS 244 (2004)

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CAPITAL IMPROVEMENTS--WATERS AND..., 2012 South Carolina...

2012 South Carolina Laws Act 268 (H.B. 4033)

SOUTH CAROLINA 2012 SESSION LAWS

REGULAR SESSION

Additions and deletions are not identified in this document.

Vetoed are indicated by ~~Text~~;stricken material by ~~Text~~.

Act 268

H.B. No. 4033

CAPITAL IMPROVEMENTS--WATERS AND WATERCOURSES--SALES AND USE TAX

AN ACT TO AMEND SECTION 4-10-330, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CAPITAL PROJECT SALES TAX ACT, SO AS TO PROVIDE THAT THE AUTHORIZED PROJECTS THAT ARE ALLOWED TO BE FUNDED BY A COUNTY CAPITAL PROJECT SALES TAX INCLUDE DREDGING, DEWATERING, CONSTRUCTION OF SPOIL SITES, AND DISPOSAL OF SPOIL MATERIALS; AND TO AMEND SECTIONS 5-37-40, 5-37-50, AND 5-37-100, ALL AS AMENDED, RELATING TO THE MUNICIPAL IMPROVEMENT ACT, SO AS TO PROVIDE THAT A MUNICIPAL IMPROVEMENT DISTRICT MAY BE CREATED FOR THE SOLE PURPOSE OF THE WIDENING AND DREDGING OF WATERWAYS WITHOUT PRIOR WRITTEN CONSENT OF OWNERS OF OWNER-OCCUPIED RESIDENTIAL PROPERTY AT THE TIME THE IMPROVEMENT DISTRICT IS CREATED.

Be it enacted by the General Assembly of the State of South Carolina:

Capital Project sales tax purposes

SECTION 1. Section 4-10-330(A)(1) of the 1976 Code, as last amended by Act 49 of 2009, is further amended to read:

<< SC ST § 4-10-330 >>

(A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission pursuant to Section 4-10-320(C), subject to referendum approval in the county. The ordinance must specify:

(1) the purpose for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, and may include the following types of projects:

- (a) highways, roads, streets, bridges, and public parking garages and related facilities;
- (b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education, or any combination of these projects;
- (c) cultural, recreational, or historic facilities, or any combination of these facilities;
- (d) water, sewer, or water and sewer projects;

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- (e) flood control projects and storm water management facilities;
- (f) beach access and beach renourishment;
- (g) dredging, dewatering, and constructing spoil sites, disposing of spoil materials, and other matters directly related to the act of dredging;**
- (h) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (g) of this item;
- (i) any combination of the projects described in subitems (a) through (h) of this item;

Establishment of improvement districts

SECTION 2. Section 5-37-40 of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

<< SC ST § 5-37-40 >>

Section 5-37-40. (A) If the governing body finds that:

- (1) improvements would be beneficial within a designated improvement district;
- (2) the improvements would preserve or increase property values within the district;
- (3) in the absence of the improvements, property values within the area would be likely to depreciate, or that the proposed improvements would be likely to encourage development in the improvement district;
- (4) the general welfare and tax base of the city would be maintained or likely improved by creation of an improvement district in the city; and
- (5) it would be fair and equitable to finance all or part of the cost of the improvements by an assessment upon the real property within the district, the governing body may establish the area as an improvement district and implement and finance, in whole or in part, an improvement plan in the district in accordance with the provisions of this chapter. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals and waterways that are connected to canals as described in Section 48-39-130(D)(10), owner-occupied residential property that is taxed, or will be taxed pursuant to Section 12-43-220(c), must not be included within an improvement district unless the owner, at the time the improvement district is created, gives the governing body written permission to include the property within the improvement district.

(B) If an improvement district is located in a redevelopment project area created pursuant to Chapter 6, Title 31, the improvement district being created under the provisions of this chapter must be considered to satisfy items (1) through (5) of subsection (A). The ordinance creating an improvement district may be adopted by a majority of council after a public hearing at which the plan is presented, including the proposed basis and amount of assessment, or upon written petition signed by a majority in number of the owners of real property within the district that is not exempt from ad valorem taxation as provided by law. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals and waterways that are connected to canals as described in Section 48-39-130(D)(10), owner-occupied residential property that is taxed, or will be taxed pursuant to Section 12-43-220(c), must not be included within an improvement district unless the owner, at the time the improvement district is created, gives the governing body written permission to include the property within the improvement district.

Resolution regarding improvement plan

SECTION 3. Section 5-37-50 of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

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CAPITAL IMPROVEMENTS--WATERS AND..., 2012 South Carolina...

<< SC ST § 5-37-50 >>

Section 5-37-50. The governing body, by resolution adopted, shall describe the improvement district and the improvement plan to be effected, including a property within the improvement district to be acquired and improved, the projected time schedule for the accomplishment of the improvement plan, the estimated cost and the amount of the cost to be derived from assessments, bonds, or other general funds, together with the proposed basis and rates of assessments to be imposed within the improvement district. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals and waterways that are connected to canals as described in Section 48-39-130(D)(10), owner-occupied residential property that is taxed, or will be taxed pursuant to Section 12-43-220(c), must not be included within an improvement district unless the owner, at the time the improvement district is created, gives the governing body written permission to include the property within the improvement district. The resolution also shall establish the time and place of a public hearing to be held within the municipality not sooner than twenty days nor more than forty days following the adoption of the resolution, at which an interested person may attend and be heard, either in person or by attorney, on a matter in connection with the improvement district.

Ordinance creating improvement districts

SECTION 4. Section 5-37-100 of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

<< SC ST § 5-37-100 >>

Section 5-37-100. No sooner than ten days nor more than one hundred twenty days following the conclusion of the public hearing provided in Section 5-37-50, the governing body, by ordinance, may provide for the creation of the improvement district as originally proposed or with the changes and modifications in it as the governing body may determine, and provide for the financing by assessment, bonds, or other revenues as provided in this chapter. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals and waterways that are connected to canals as described in Section 48-39-130(D)(10), owner-occupied residential property that is taxed pursuant to Section 12-43-220(c), must not be included within an improvement district unless the owner gives the governing body written permission to include the property within the improvement district. The ordinance may not become effective until at least seven days after it has been published in a newspaper of general circulation in the municipality. The ordinance may incorporate by reference plats and engineering reports and other data on file in the offices of the municipality. The place of filing and reasonable hours for inspection must be made available to all interested persons.

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 5th day of June, 2012.

Vetoed by the Governor--6/11/12.

Veto overridden by House--6/19/12.

Veto overridden by Senate--6/20/12.

End of Document

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF CALHOUN	)	CASE NO.: 2019-CP-00049
	)	
South Carolina Public Interest Foundation,	)	
Amy Hill, and Rebecca Bonnette,	)	
Individually, and on behalf of all others	)	
Similarly situated,	)	DEFENDANT'S CONSOLIDATED
	)	MEMORANDUM IN SUPPORT OF
Plaintiffs,	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT AND IN
v.	)	OPPOSITION TO PLAINTIFFS' MOTIONS
	)	FOR SUMMARY JUDGMENT AND
Calhoun County Council,	)	INJUNCTIVE RELIEF
	)	
Defendant.	)	
	)	

The Defendant, the Calhoun County Council ("County Council" or the "Council"), the governing body of Calhoun County, South Carolina ("Calhoun County" or the "County") by and through its counsel, files this Consolidated Memorandum in Support of Defendant's Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Injunctive Relief.

BACKGROUND

This case concerns a challenge to a referendum held during the November 2018 general election at which the electors of Calhoun County voted by a 14.5-point margin to impose a one percent sales and use tax for a period of 8 years to fund 15 specific projects. The referendum was held pursuant to and in accordance with the procedures of the Capital Project Sales Tax Act (the "Act"). S.C. Code Ann. §§ 4-10-300–390 *et seq.* The Act authorizes County Council to impose a one percent sales and use tax (the "Sales Tax") to fund specific capital projects, subject to the approval of the voters in a referendum to be held in the County. The use of proceeds of the Sales Tax is restricted to the capital projects identified and approved by the Calhoun County Capital Project Sales Tax Commission (the "Commission"). S.C. Code Ann. § 4-10-330. In accordance

with the Act, County Council created the Commission, and its members were appointed by the County Council and the councils of the municipalities within the County.

At the request of the County, the South Carolina Revenue and Fiscal Affairs Office forecasted the Sales Tax would generate proceeds of \$1,000,132 in the 2019-20 fiscal year. *See* Letter of South Carolina Revenue and Fiscal Affairs Office at **Exhibit A**. In consideration of this forecast, the Commission projected that the Sales Tax would generate approximately \$8,000,000 over the eight-year period of its imposition. *See* Resolution of the Commission adopted July 11, 2018 (the “Commission Resolution”), at **Exhibit B**. The Commission fulfilled its responsibilities under the Act by considering the capital needs of the County and its municipalities and approving the use of Sales Tax proceeds to fund 15 capital projects with a total estimated cost of \$6,642,000. *See Id.* Pursuant to the Act, the Commission is also charged with the creation and approval of the form of the ballot question, which must include the list of approved capital projects. By the terms of the Commission Resolution, the Commission approved the form of the ballot question and the list of approved capital projects (the “Ballot Question”) and forwarded the Commission Resolution and Ballot Question to the County Council. *See Id.*

Upon the County’s receipt of the Commission Resolution and Ballot Question, the County Council determined that the health, safety and welfare of the residents of the County would be benefited from the completion of the capital projects approved by the Commission. *See* Section 1.01(e) of the Ordinance of County Council dated August 13, 2018 (the “County Ordinance”), at **Exhibit C**. Pursuant to the Act, the County Council was not permitted to change the list of capital projects approved by the Commission or to otherwise alter the form of the Ballot Question, except to add to it the authorization for the County to issue general obligation bonds to finance the approved capital projects. S.C. Code Ann. § 4-10-330(A) and (D). In order to provide funding for

the approved capital projects in as expeditious a manner as possible, and to make the most economic and efficient use of the Sales Tax proceeds, County Council determined to provide for the issuance of general obligation bonds in an amount not to exceed \$7,000,000, subject to the approval of the voters, and to modify the form of the Ballot Question accordingly. *See* County Ordinance, at **Exhibit C**. Pursuant to the County Ordinance, the County Council ordered that a referendum regarding the imposition of the Sales Tax be held at the upcoming November 2018 general election. In accordance with the Act, the Calhoun County Board of Voter Registrations and Elections gave public notice of the referendum and otherwise organized and conducted the referendum as required under South Carolina law. The referendum (the "Referendum") was held on November 6, 2018, with 3,173 (57.24%) voting in favor of the Ballot Question, and 2,190 (42.76%) voting against.

In accordance with Section 4-10-330(F) of the Act, on November 26, 2018, County Council adopted a resolution declaring the results of the Referendum. *See* Resolution of County Council dated November 26, 2018, at **Exhibit D**. Pursuant to the Act, "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). On December 27, 2018, the 30-day statute of limitations to challenge the results of the referendum ran without any such suit having been filed. Thereafter, the County and the South Carolina Department of Revenue (the "Department of Revenue") began preparing for the imposition of the Sales Tax. On May 1, 2019, the Sales Tax went into effect.

Given the historically low interest rate environment and expected increases in construction and acquisition costs, the County had begun preparations for a general obligation bond sale to

deliver the Capital Projects for the citizens of the County on an expedited basis. The County's plans to issue bonds are now indefinitely delayed pending the resolution of this lawsuit.

PROCEDURAL BACKGROUND

Plaintiffs instituted this action by filing a Summons and Complaint (the "Complaint") on April 3, 2019, followed by a Motion for Temporary and Injunctive Relief (the "Motion") filed on April 10, 2019 and a Motion for Summary Judgment filed on May 22, 2019. In the Complaint and Motion Plaintiffs allege that County Council acted outside the scope of the Act by submitting for the approval of voters capital projects that are outside of the scope of those authorized under the Act. Complaint at 14; Motion at 17. Plaintiffs specifically allege that the following capital projects are not authorized under the Act (the "Challenged Projects"):

- | | | |
|----|---|---------|
| 4 | Calhoun County - Sandy Run Fire District Ladder Truck Project - to include the acquisition and equipping of a new ladder truck in the Sandy Run Fire District area to support the northern portion of Calhoun County, particularly industry located therein | 350,000 |
| 11 | Calhoun County Emergency Communications Project - to include the constructing, acquiring, and equipping of facilities and equipment to provide 800 MHZ radio service for emergency service providers in Calhoun County | 500,000 |
| 12 | Calhoun County Ambulance Project - to include the acquisition and equipping of ambulances to be operated by Calhoun County Emergency Services Department | 165,000 |
| 13 | Calhoun County Sandy Run Fire District Tanker Truck Project - to include the purchase of a fire truck to serve the Sandy Run area | 267,000 |

Plaintiffs further allege that the Referendum would not have passed had the Challenged Projects not been included in the Ballot Questions. Complaint at 16; Motion at 16. Plaintiffs now seek to enjoin (1) the collection of the Sales Tax, (2) the issuance of any bonds authorized by the Referendum and the expenditure of any proceeds thereof, and (3) the expenditure of bond proceeds

or Sales Tax proceeds for any unlawful purpose. Defendant filed its Answer to the Complaint on May 6, 2019, and file its Motion for Summary Judgment on May 16, 2019.

**IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I. Standard of Review

Pursuant to Rule 56(c), SCRPC, summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

II. Analysis

A. The Statute of Limitations has Run on any Challenge to the Referendum or the List of Approved Capital Projects

By seeking to enjoin the collection of the Sales Tax and the expenditure of Sales Tax proceeds on the Challenged Projects, Plaintiffs seek to do by indirection that which the applicable statute of limitations expressly bars Plaintiffs from doing directly. Under the Act, "[u]pon 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). By resolution dated

November 26, 2018, County Council adopted such a resolution. *See Exhibit D.* The statute of limitations to challenge the result of the Referendum ran on December 27, 2018. Plaintiffs filed the Complaint over three months later on April 3, 2019.

1. Plaintiff's Claims are Barred in Total

Plaintiffs' claim is patently a challenge to the result of the Referendum and, because the statute of limitations for any such challenge has long-since run, and Plaintiffs' claims are time-barred. The Act contemplates that voters be given the opportunity to approve the implementation of the Sales Tax for "a specific purpose or purposes." S.C. Code Ann. § 4-10-310. The Act prescribes a grass roots process requiring participation from representatives of multiple municipalities and the county itself as it determines the specific purposes for which the proceeds of the Sales Tax must be spent. *See* S.C. Code Ann. § 4-10-320. The Act further requires that the Ballot Question include the specific capital projects that are approved by the Commission and the cost of those projects to ensure that voters are fully aware of how the proceeds of the Sales Tax are to be spent. S.C. Code Ann. § 4-10-320. Once implemented, the proceeds of the Sales Tax must be spent on the capital projects approved in the Referendum, and the County Treasurer must certify to the Department of Revenue the amount of the proceeds that have been spent on each capital project and the portion of the capital projects that remain to be funded. S.C. Code Ann. § 4-10-360. The provisions of the Act provide ample evidence of legislative intent that the approval of the list of projects on the Ballot Question is an essential element of the result of the Referendum.

The Supreme Court of South Carolina similarly addressed the scope of a statute of limitation in connection with the approval of an annexation. In *Hite v. Town of West Columbia*, the Court considered whether a 90-day statute of limitation to contest an annexation referendum barred a five-month late challenge on the basis that the petition giving rise to the referendum had

an insufficient number of signatures. *Hite v. Town of West Columbia*, 220 S.C. 59, 63, 66 S.E.2d 427, 428 (1951). The plaintiffs sought to avoid the statute of limitation by arguing that it applied only to the “validity of the election proper, and not to questions dealing with the annexation petition and other procedural steps.” *Id.* at 64, 66 S.E.2d at 429. The Court held that the applicability of the statute of limitation in that instance was “not confined or restricted to the actual election, . . . but refer[ed] to and include[ed] the entire annexation procedure.” *Id.* at 65, 66 S.E.2d at 429.

Plaintiffs’ sole claim, that the Challenged Projects should not have been included in the list of capital projects approved by the voters, amounts to a challenge to the result of the Referendum and the procedure employed by the County and the Commission to formulate the Ballot Question. Plaintiffs allege that the Referendum would not have been successful—that the result of the Referendum would have been different—had the Challenged Projects not been included in the Ballot Question. Complaint at 12; Motion at 16. Plaintiffs had ample opportunity to challenge any aspect of the result of the Referendum, whether an alleged procedural irregularity or the purported unauthorized inclusion of the Challenged Projects, during the 30-day statute of limitations afforded by Act. Plaintiffs failed to do so. Accordingly, a challenge to any aspect of the result of the Referendum, including the list of approved capital projects, is time-barred, and the County is entitled to summary judgment with respect to each of Plaintiffs’ claims.

2. The Statute of Limitations has Run on any Challenge to the Collection of the Sales Tax

Regardless of whether the Court gives consideration to the sole issue underlying Plaintiffs’ Complaint—whether the Challenged Projects are outside the scope of those permitted by the Act—Plaintiffs’ request to temporarily and permanently enjoin the collection of the Sales Tax is time-barred. Under its most basic conception, the result of the Referendum is the implementation and

collection of the Sales Tax. The success of the Referendum is the sole condition precedent to the imposition of the Sales Tax and the collection and administration thereof by the Department of Revenue. S.C. Code Ann. § 4-10-330(F). Even if the Court ultimately reaches the merits of Plaintiffs' claim, the result should have no impact on the Department of Revenue's statutory obligation to implement and collect the Sales Tax and the County's statutory obligation to use the proceeds of the Sales Tax to fund the other approved capital projects. As a result, Plaintiffs' challenge to the implementation and collection of the Sales Tax, and the use of the proceeds of the Sales Tax to fund the other approved capital projects, is barred by the applicable statute of limitations.

The South Carolina courts have repeatedly considered the public policy that underlies the relatively short statutes of limitation applicable to many acts of public bodies and have reasoned that they are justified by the need for cities and counties to proceed expeditiously after an act has received legislative approval or the approval of voters. *See Berry v. McLeod*, 328 S.C. 435, 444, 492 S.E.2d 794, 799 (Ct. App. 1997) (applying a 20-day statute of limitations in connection with the approval of bonds); *Morgan v. Feagin*, 230 S.C. 315, 317, 95 S.E.2d 621, 622 (1956) (applying a 30-day statute of limitations in connection with the approval of school bonds); *Hite*, 220 S.C. at 66; 66 S.E.2d at 430 ("[A]nnexation issues should be decided without undue delay, so that the town officials would be advised whether the affected area would become a part of the municipality. Many questions connected with municipal government, including that of taxation, would need to be known with reasonable promptness.").

Plaintiffs requests of this Court are contrary to the policy that underlies the Act's twenty-day statute of limitation and the impact of enjoining the collection of the Sales Tax is ample justification for the length of the statute of limitations that is set forth in the Act. With regard to

the collection of the Sales Tax, the Act provides, “[i]f the sales and use tax is approved in the referendum, the tax is imposed on the first of May following the date of the referendum.” S.C. Code Ann. § 4-10-340(A). Once approved by referendum, the Sales Tax “must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected.” S.C. Code Ann. § 4-10-350(A). The implementation by the Department of Revenue of an additional one percent sales tax undoubtedly required a great deal of preparation over the five months between the approval of the Sales Tax and its implementation on May 1, when the Sales Tax went into effect.

While the Act does provide for the distribution of unidentified Sales Tax revenue, the Act does not give any consideration to the handling of the Sales Tax revenue collected to date, or the unwinding of the Sales Tax if it is declared invalid after its implementation. *See* S.C. Code Ann. § 4-10-380. These are issues that the Act need not address, however, if the statute of limitations is properly construed to preclude late-arising challenges to the implementation and collection of the Sales Tax such as those requested by Plaintiffs. Under Plaintiffs’ interpretation of the Act’s statute of limitation, the collection of the Sales Tax could be challenged at any time, even years after its collection began and millions of dollars had been collected and spent. Even if the Court elects to consider the merits of Plaintiffs’ sole underlying issue, the County is entitled to summary judgment as to Plaintiffs’ request to permanently and temporarily enjoin the collection of the Sales Tax.

3. Plaintiffs’ Incorrectly Claim that the Statute of Limitations Applies Only to “Challenges to the Vote Count”

Plaintiffs assert in their Motion for Summary Judgment that the Act’s 30-day statute of limitation only applies to “challenges to the vote count, not to the substance of the referendum.” Plaintiffs misinterpret the statute of limitations to apply to an exceptionally narrow category of election challenges, and this interpretation is not supported by a plain reading of the Act or South

Carolina's election laws. Plaintiffs' narrow reading of the statute of limitation is also directly contrary to the public policy behind the relatively short statutes of limitation that apply to many public actions that has repeatedly been recognized by the Supreme Court, as discussed above. *See Berry*, 328 S.C. at 444, 492 S.E.2d at 799; *Morgan*, 230 S.C. at 317, 95 S.E.2d at 622; *Hite*, 220 S.C. at 66; 66 S.E.2d at 430.

Section 4-10-330(E) of the Act requires that the Referendum be conducted under the South Carolina election laws. *See* S.C. Code Ann. § 4-10-330(E) ("The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis . . ."). The election laws of South Carolina contain a detailed procedure that must be followed to challenge or protest any aspect of an election. *See* S.C. Code Ann. §§ 7-17-30—80 and 7-17-250—275. These provisions are expressly applicable to and controlling of "all elections, including elections for the issuance of bonds and other elections which any question or issue is submitted to a vote of the people." S.C. Code Ann. § 7-1-40. These administrative procedures have previously been applied by the Supreme Court to challenges similar to those made by Plaintiffs where the contents of the ballot question itself were at issue. *See W.J. Douan v. Charleston Cty. Council*, 357 S.C. 601, 606, 594 S.E.2d 261, 263 (2003); *Taylor v. Roche*, 271 S.C. 505, 511, 248 S.E.2d 580, 583 (1978).

Plaintiffs' misinterpretation of the Act's statute of limitation is opposite to the provision's intended effect. The statute of limitation should be read to apply broadly to any challenge or protest that would be brought under the State's election laws, including vote counts or the sufficiency of the language in a ballot. However, there is nothing in the Act to indicate that the statute of limitation should be applied narrowly, as Plaintiffs would interpret it, to only cover challenges to the vote count. In this instance, the Act and its statute of limitations should be read in concert with the election laws of this State, as the Act instructs. *See* S.C. Code Ann. § 4-10-330(E). Read

together, the Act and the election laws provide the certainty in the result of the Referendum that is absolutely required for the successful execution of the will of the voters by both the County and the Department of Revenue. Unfortunately for Plaintiffs, the 30-day statute of limitation applies to their claims, and they failed to bring this action within that deadline.

B. The Challenged Projects are within the Scope of the Act

Plaintiffs allege that Challenged Projects are not authorized under the Act. However, the language of the Act indicates that the list of permissible capital projects should be construed broadly, rather than under the narrow construction favored by Plaintiffs.

The Act places complete discretion with the Commission to “consider proposals for funding capital projects within the county area” and to “formulat[e] the referendum question that is to appear on the ballot” S.C. Code Ann. § 4-10-320(C) The term “capital projects” is not defined in the Act. Section 4-10-330 of the Act provides, “[t]he [Sales Tax] is imposed by an enacting ordinance of the county governing body containing the ballot question formulated by the commission pursuant to Section 4-10-320(C), subject to referendum approval in the county.” S.C. Code Ann. § 4-10-330(A). The enacting ordinance must specify “the purpose for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, and may include the following types of projects:” S.C. Code Ann. § 4-10-330(A)(1) (emphasis added). The “types of projects” identified include the following:

- (a) highways, roads, streets, bridges, and public parking garages and related facilities;
- (b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education, or any combination of these projects;

- (c) cultural, recreational, or historic facilities, or any combination of these facilities;
- (d) water, sewer, or water and sewer projects;
- (e) flood control projects and storm water management facilities;
- (f) beach access and beach renourishment;
- (g) dredging, dewatering, and constructing spoil sites, disposing of spoil materials, and other matters directly related to the act of dredging;
- (h) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (g) of this item;
- (i) any combination of the projects described in subitems (a) through (h) of this item.

S.C. Code Ann. § 4-10-330(A)(1).

1. The List of the Types of Projects that may be Funded Under the Act Should be Construed Expansively

The list of permissible project types set forth in the Act is not without meaning. *See Breeden v. TCW, Inc./Tennessee Exp.*, 355 S.C. 112, 120, 584 S.E.2d 379, 383 (2003) “Every word, clause, and sentence must be given some meaning, force, and effect, if it can be done by any reasonable construction.” *Id.* at n. 7. The County does not have the unfettered ability to spend proceeds of the Sales Tax in any manner that it sees fit. The Act does impose limitations—all projects must be capital projects. As the Supreme Court of South Carolina recently held in a suit involving a challenge to a similar sales tax to fund transportation capital projects, “[i]t is axiomatic that the County’s Ordinance may not expand the scope of expenditures authorized in the enabling provisions of the Transportation Act, which requires a nexus between expenditures and a transportation-related capital project. *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 311, 811 S.E.2d 758, 768 (2018). The County’s inclusion of the Challenged Projects did not expand the scope of the types of projects set forth in the Act. Rather, there is a clear nexus between each of the Challenged Projects and one or more of the types of projects listed in the Act. Each of the

Challenged Projects is an integral component of one or more of the “types of projects” that are suggested by the Act, essential to the functionality of the suggested projects.

Section 4-10-330(A)(1) of the Act requires that the county’s ordinance calling for the referendum specify “the purpose for which the proceeds of the tax are to be used . . . and may include the following types of projects,” followed by the illustrative list of project types set forth above. The operative language of this sentence includes words that would be construed as expansive in nature: “may include.” The meaning of the Act’s list of illustrative projects should be considered in light of these words of expansion. The intent of the Act is that this list be construed expansively, rather than under the narrow construction preferred by Plaintiffs.

Ordinarily, the use of the word “may” in a statute signifies permission and generally means the action spoken of by the statute is optional or discretionary. *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 402, 450 S.E.2d 87, 95 (1994) (citing *Robertson v. State*, 276 S.C. 356, 278 S.E.2d 770 (1981)). “But, when the question arises whether “may” is to be interpreted as mandatory or permissive in a particular statute, legislative intent is controlling.” *Id.* The word “include,” as used in a statute, is ordinarily a word of “enlargement and not limitation.” *See Baker v. Chavis*, 306 S.C. 203, 410 S.E.2d 600 (S.C. Ct. App. 1991) (quoting in citation *United States v. Gertz*, 249 F.2d 662 (9th Cir.1957)). Construing the term “include” with somewhat greater specificity, the South Carolina Supreme Court has relied upon a holding of the United States Supreme Court wherein that Court held, “by use of the word ‘include’ the definition suggests a calculated indefiniteness with respect to the outer limits of the term,” while recognizing that by making reference to a specific item that is to be included indicates that the item referenced should be included as an element. *See Southland Mobile Homes of S.C., Inc. v. Assocs. Fin. Servs. Co.*, 270 S.C. 527, 531, 244 S.E.2d 212, 213–14 (1978) (quoting *First National Bank v. Dickinson*, 396

U.S. 122 (1969)). In short, principles of statutory interpretation indicate that “may include” should result in the list being construed expansively in evaluating whether the Challenged Projects could be approved at the Referendum.

2. The Challenged Projects are Essential Elements of and Have a Nexus with the Projects Listed in the Act

The items on the project list provided in the Act should be construed to include capital assets, including equipment, that are essential to the operation of the listed projects. In the same way that the financing of a courthouse or administration building would necessarily include the cost of the equipment and personal property that is essential to its operation, each of the Challenged Projects are necessary for the operation of and have an essential nexus with the types of projects that are included on the list set forth in the Act. “Emergency medical facilities” and “fire stations” are each specifically listed in the Act. Each will be addressed in turn.

Emergency Medical Facilities. Term “facilities” is expansive. In the context of a suit challenging expenditures beyond the scope of a legislative authorization, the Supreme Court of South Carolina has held that “[t]he word ‘facility’ means ‘A thing that promotes the ease of any action, operation, transaction, or course of conduct; advantage; opportunity.’” *Caldwell v. McMillan*, 224 S.C. 150, 157, 77 S.E.2d 798, 800 (1953). In *Caldwell*, a plaintiff challenged the inclusion of a cafeteria in the current South Carolina Department of Transportation (formerly known as the Highway Department) building, claiming that an authorization for “office space and other *proper facilities*” did not encompass a cafeteria for the workers. 224 S.C. at 156 (emphasis added). In its ruling in favor of the Department of Transportation, the Court held that “[i]t could hardly be argued that under this definition the Highway Department would be denied the authority to equip the building with furniture, supplies, elevators, air conditioning, modern lighting, and

various machines and equipment as aids to efficiently handling the department's business." *Caldwell v. McMillan*, 224 S.C. 150, 157, 77 S.E.2d 798, 801 (1953).

From the perspective of the County, emergency medical facilities necessarily includes all of the Challenged Projects. Without a means of communicating between first responders in ambulances and fire trucks, and without ambulances and fire trucks to respond to emergency medical events (to which the fire service responds with increasing frequency), the ability of the County to address the health, safety, and welfare of its citizens is effectively compromised. That is to say that the Challenged Projects each constitute "a thing that promotes the ease of [emergency medical] action, operation, transaction, or course of conduct" to paraphrase the definition of "facilities" adopted by the Supreme Court in *Caldwell*. See *Caldwell*, 224 S.C. at 157, 77 S.E.2d at 800.

Fire Stations. A fire station project, as a suggested project under the Act, under a plain reading of the term, should include those capital items necessary to allow the fire station to fulfil its operational purpose. Capital items that are functionally tethered to a project specifically listed in the Act are particularly appropriate. In the absence of the fire apparatus and fire-fighting equipment, a fire station is uniquely useless; it is merely a large garage. Using the Plaintiffs' logic, a building nominally called a "fire station" that is unable to provide fire service is acceptable, while a building equipped with air packs and fire trucks capable of safeguarding public and private property and saving lives is illegal. A fire station project that is not capable of performing its function frustrates the democratic process and produces an absurd result.

C. The Act's List of Project Types is Inapplicable to the Commission's Deliberations

A governmental entity's purchase of each of the Challenged Projects would constitute a "capital project" for federal tax purposes—as opposed to a routine maintenance cost or other

working capital expenditures. In the tax-exempt bond area, for example, the term “capital project” is defined by the Federal Income Tax Regulations as all of the “capital expenditures” (together with a limited amount of related working capital expenditures) “that carry out the governmental purpose of an issue.” Regs. §1.148-1(b). “Capital expenditures,” in turn, are defined as,

... any cost of a type that is properly chargeable to capital account (or would be so chargeable with a proper election . . .) under general Federal income tax principles. For example, costs used to acquire, construct , or improve land buildings, and equipment generally are capital expenditures. [Regs. §1.150-1(b)]

Accordingly, the Challenged Projects are the kind of fixed, one-time expenses that are capital in nature under well-established federal tax principles.

The Commission enjoys broad discretion in evaluating the purposes to which the Sales Tax may be applied; the only restriction in the Act is found at Section 4-10-320(C), which limits consideration of the objectives of the Sales Tax to “capital projects” and requires that the Ballot Question conform to the form of question specified at Section 4-10-330(D). S.C. Code Ann. § 4-10-320(C). The list of projects set forth in the Act is found in the section of the Act specifying the contents of the ordinance imposing the Sales Tax. S.C. Code Ann. § 4-10-330(A)(1). However, the ordinance must contain both the Ballot Question created by the Commission and the statement regarding the purposes to which the Sales Tax will be applied. *Id.*

Chronologically, the Commission necessarily would have concluded its work and provided the Ballot Question before the Ordinance specifying “the purpose for which the proceeds of the tax are to be used” would be enacted. Given the inability of County Council to “line-item veto” projects it finds objectionable, the requirement at Section 4-10-330(A)(1) should be read as a requirement that County Council provide notice to the public of the purpose to which the proceeds of the Sales Tax will be applied as derived from its reading of the Ballot, rather than as a constraint on the ability of the Commission to “consider proposals for funding capital projects within the

county area” and “formulat[e] the referendum question that is to appear on the ballot pursuant to Section 4-10-330(D).” S.C. Code Ann. § 4-10-320(C).

**IN OPPOSITION TO
PLAINTIFFS’ MOTION FOR INJUNCTIVE RELIEF**

I. Standard of Review

Rule 65, SCRPC, gives the Court, on motion of a party, the power to issue a temporary and preliminary injunction for the purpose of “preserv[ing] the status quo ante.” *Hook Point, LLC v. Branch Banking & Tr. Co.*, 397 S.C. 507, 511, 725 S.E.2d 681, 683 (2012) (quoting *Peek v. Spartanburg Reg’l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005)). “An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 309–10, 811 S.E.2d 758, 767 (2018). In order to issue an order for a preliminary injunction, a Court must first find that the moving party (1) will suffer irreparable harm in the absence of the injunction, (2) is likely to succeed on the merits, and (3) has no adequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). “[I]n order to receive the aid of a court of equity to enjoin a public corporation or department of government in the performance of actions or duties provided by statute, there must be allegations or showing that the public department or corporation has exercised its power in an arbitrary, oppressive or capricious manner.” *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. at 310, 811 S.E.2d at 767.

Rule 65, SCRPC further provides “no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” It is outside of the trial court’s discretion to grant a nominal bond, or to grant no bond at all. *Spartanburg Buddhist Ctr. of S.C. v. Ork*, 417

S.C. 601, 610, 790 S.E.2d 430, 435 (Ct. App. 2016) (citing *Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007)). Rather, a security bond must be set at “an amount sufficient to protect [the enjoined party] in the event the injunction is ultimately deemed improper.” *Atwood Agency*, 374 S.C. at 73, 646 S.E.2d at 884.

II. Analysis

A. Plaintiffs are Unlikely to Succeed on the Merits

For the reasons discussed above in support of Defendant’s Motion for Summary Judgment, Plaintiffs are unlikely to succeed on the merits of their claims. Plaintiffs claims are barred by the applicable statute of limitations set forth at Section 4-10-330(F) of the Act. Moreover, even if this Court were to consider the merits of Plaintiffs’ claims, these claims rely upon an unsupported and unreasonable interpretation of the Act. Because Plaintiffs are unable to show that they are more likely than not to prevail on the merits of their claims, Plaintiffs’ motion for temporary injunctive relief should be denied. *See Hook Point, LLC* 397 S.C. at 517, 725 S.E.2d at 686.

B. Plaintiffs Will Not Suffer Irreparable Harm

Plaintiffs fail to articulate how they will be irreparably harmed by the imposition of a Sales Tax to finance the Capital Projects. Assuming, *arguendo*, that the Court ultimately rules that that inclusion of the Challenged Projects on the Ballot was improper, there remain eleven important projects to be funded and completed as authorized by the electors of the County. The severance of the four Challenged Projects from the remaining projects approved by the voters will should not impact the collection of the Sales Tax or the use of Sales Tax proceeds to fund the remaining projects. The elimination of the Challenged Projects would not serve to reduce the amount of the Sales Tax that may be collected or the term for which it is to be imposed. The Sales Tax is to be implemented for a period of eight years regardless of whether a project becomes impossible or

whether all approved projects have been fully funded. Even if Plaintiffs succeed on the underlying merits of their Complaint, the amount of the Sales Tax collected, and the amount they ultimately pay, will be unaffected and Plaintiffs will have suffered no harm whatsoever.

C. The Ordinance is Not Arbitrary, Oppressive, or Capricious

Plaintiffs have failed to meet the standard to enjoin County Council and the Department of Revenue from imposing and collecting the Sales Tax. “[I]n order to receive the aid of a Court of equity to enjoin a public corporation or department of government in the performance of actions or duties provided by statute, there must be allegations or showing that the public department or corporation has exercised its power in an arbitrary, oppressive or capricious manner.” *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018) (quoting *Headdon v. State Highway Dep’t*, 197 S.C. 118, 14 S.E.2d 586, 588 (1941)). Pursuant to the Act, the Department of Revenue is now statutorily obligated to implement and collect the Sales Tax. Plaintiffs have alleged no arbitrary, oppressive, or capricious act with respect to the implementation or collection of the Sales Tax as would be required to enjoin the Department of Revenue from performing the actions required of it by the Act.

III. Plaintiffs Are Required to Post a Security Bond

If the Court grants Plaintiffs’ request for a preliminary injunction Plaintiffs are required to submit a bond to the Court. Rule 65(c), SCRCP. Rule 65(c), SCRCP, provides “no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” In addition to other damages that an enjoined party may suffer, the South Carolina courts recognize that attorneys fees and other litigation expenses are included among the costs and damages incurred by

a party who has been wrongfully enjoined. See *Britt v. McCormick Cty. Comm'n*, 117 S.C. 8, 108 S.E. 179, 179 (1921); *Chambron v. Lost Colony Homeowners Ass'n*, 317 S.C. 43, 44, 451 S.E.2d 410, 410 (Ct. App. 1994).

As discussed in the Affidavit of Denise Christmas, attached to this memorandum at **Exhibit E**, if the Court enjoins the collection of the Sales Tax, the County will suffer irreparable damage through the potential loss of months of Sales Tax collections and interest earned on Sales Tax proceeds. The Act requires that the imposition of the Sales Tax be approved for a “maximum period of time . . . not to exceed eight years from the date of imposition.” S.C. Code Ann. § 4-10-330(A)(2). The Ballot Question stated that the Sales Tax would be imposed for a period of eight years, which began to run on May 1, 2019. There is no provision of the Act that allows the imposition period of the Sales Tax to be tolled. If the Court enjoins the collection of the Sales Tax, the County will forever lose the opportunity to collect the Sales Tax during the period of the injunction. The County will also lose substantial earned interest on the Sales Tax proceeds during this period. The total of the County’s damages during an 18-month period if the Sales Tax is not collected is estimated to be \$1,510,099. See **Exhibit E** at 14.

Further, if the Court enjoins the expenditure of Sales Tax proceeds on the Challenged Projects, the County will be damaged by anticipated increases in the costs of the Challenged Projects in the amount of \$41,735. In addition to these amounts, any bond required by the Court should include the amount of \$100,000 to compensate the County for attorneys fees and other litigation costs that the County expects to incur to seek the dissolution of the requested injunctions and any resulting appeals.

CONCLUSION

For the reasons set forth herein, the Court should:

1. Grant Defendant's motion for summary judgment and dismiss Plaintiffs Complaint with prejudice.
2. Deny Plaintiffs' motions for summary judgment and temporary and preliminary injunctive relief in their entirety;
3. In the event the Court grants Plaintiffs motion for temporary and preliminary injunctive relief with respect to the expenditure of Sales Tax proceeds or bond proceeds on the Challenged Projects, deny Plaintiffs' motion with respect to the collection of the Sales Tax and the expenditure of Sales Tax proceeds on the remaining projects approved in the Referendum; and
4. In the event the Court grants any aspect of Plaintiffs' motion for preliminary injunctive relief, the Court should order Plaintiff to pay into the Court a security bond in an amount sufficient to pay the costs and damages incurred by the County in the event the injunction is deemed improper, including attorneys fees.

RESPECTFULLY SUBMITTED:

POPE FLYNN, LLC

By: /s/ Charles D. Rhodes, III

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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
May 24, 2019



EDWARD B. GRIMBALL, Chairman
HOWELL CLYBORNE, JR.
EMERSON F. GOWER, JR.

**SOUTH CAROLINA
REVENUE AND FISCAL AFFAIRS OFFICE**

FRANK A. RAINWATER
Executive Director

June 1, 2018

Ms. Denise M. Christmas, CGFO
Deputy Administrator/Finance
Calhoun County

Dear Ms. Christmas:

This letter is in response to your request for an estimate of the amount of revenue that would be generated in FY 2019-20 from a 1 percent local capital projects sales tax for Calhoun County pursuant to S.C. Code of Laws §4-10-300.

Our estimate is based on the revenue generated from the existing local option sales and use tax. Since the tax bases for these two local option taxes are similar, we would expect similar collections. With a new tax, however, there are additional risks associated with consumer price resistance and initial compliance issues that could affect these collections. Please note also that our current expectation for the state is for continued growth. If there are any significant changes in the economy, this estimate may be affected.

For FY 2016-17, Calhoun County generated \$1,038,065 in total collections from the current 1 percent local option sales tax. Based on this amount and our estimate of sales tax growth for the state, we expect the revenue from a new 1 percent capital projects sales tax in FY 2019-20 in Calhoun County would total \$1,000,132. Unprepared food items would not be subject to the proposed capital projects sales tax, unlike the current local option sales tax, and this exemption is reflected in the estimate. Also reflected in the estimate is an anticipated reduction in collections from consumer response to the increased prices of goods from the additional sales tax. Please note that start-up or compliance issues may impact this estimate and have not been taken into account. Hopefully, any such impact would be minimal, but we recommend budgeting a lower amount in the first year.

You additionally asked for an estimate of the amount of capital projects sales tax that would be generated in the municipalities and unincorporated areas of the county. The second enclosure reports net taxable sales and the percentage of sales in the municipalities and unincorporated areas of Calhoun County. We utilize these net taxable sales data, collected by the Department of Revenue, to estimate the amount of

Ms. Denise M. Christmas, CGFO
June 1, 2018
Page 2

the capital projects sales tax generated in these areas. As shown, we expect 74 percent, or \$739,995, of the proposed capital projects sales tax would be from sales in unincorporated areas of the county. We expect Cameron's sales would generate \$14,401 and St. Matthews to generate \$245,736 of the total \$1,000,132 estimate.

If we may be of further assistance, please advise.

Sincerely,



Frank A. Rainwater
Executive Director

FAR/gos

Enclosures: (2)

Exhibit A

Calhoun County Capital Project Sales Tax Act Estimate for FY 2019-20

Fiscal Year	Local Option Sales Tax Collections	Annual Percent Change
2011-12	\$ 695,652	
2012-13	\$ 752,070	8.1%
2013-14	\$ 761,406	1.2%
2014-15	\$ 860,791	13.1%
2015-16	\$ 969,053	12.6%
2016-17	\$ 1,038,065	7.1%
Estimates		RFA Estimates a/
2017-18	\$ 1,089,968	5.0%
2018-19	\$ 1,128,117	3.5%
2019-20	\$ 1,176,626	4.3%
Adjustments to FY 2019-20 LOST Estimate to Generate CPST Estimate		
Elasticity b/	(\$58,831)	5%
Food Exemption c/	(\$117,663)	10%
FY 2019-20 Capital Projects Sales Tax Estimate (Adjusted)	\$ 1,000,132	

Notes:

a/ Growth rates are based on state sales and use tax growth.

b/ Revenue from an additional tax is expected to be 5% lower than collections from the first local sales tax.

c/ Sales of unprepared food are exempt from the local capital projects sales tax. Based on a comparison of other counties with both a local option sales tax and a capital projects sales tax, the difference in revenue collections ranges between 5% to 16%. An average of 10% is used for this estimate.

6/1/2018

Calhoun County capital projects sales tax estimate for FY 2019-20

Estimated Capital Projects Sales Tax Distribution

			FY 2019-20 CPST Estimate Distributed by
Calhoun County	Net Taxable Sales	Percent of Total Sales	Percent of Total Sales
Calhoun Unincorporated	\$35,433,822	74.0%	\$739,995
Cameron	\$689,574	1.4%	\$14,401
St. Matthews	\$11,766,776	24.6%	\$245,736
Calhoun County Total	\$47,890,173	100.0%	\$1,000,132

Source:

SC Department of Revenue Gross and Net Taxable Sales for FY 2016-17
Calculations by RFA staff

7 years \$ 7,000,024
8 years \$ 8,001,056

Calhoun net taxable sales by municipality and county
6/1/2018

Exhibit A

STATE OF SOUTH CAROLINA)

)

RESOLUTION

)

COUNTY OF CALHOUN)

)

**OF THE CALHOUN COUNTY CAPITAL PROJECT SALES TAX COMMISSION
REGARDING THE FORM OF THE PROPOSED BALLOT PURSUANT TO TITLE 4,
CHAPTER 10, ARTICLE 3 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS
AMENDED, AND OTHER MATTERS RELATED THERETO.**

Whereas, Sections 4-10-300 through 4-10-380 of the Code of Laws of South Carolina 1976, as amended (the "CPST Act") allow for the imposition of a one percent sales and use tax by ordinance, subject to a referendum within the County to fund specific capital improvement projects and for a limited amount of time not to exceed 8 years;

Whereas, the Calhoun County Capital Project Sales Tax Commission ("the Commission") was created pursuant to Section 4-10-320 of the CPST Act, by resolution of Calhoun County Council (the "County Council") dated April 23, 2018, and pursuant to which the County appointed three commissioners from the County;

Whereas, the Town of St. Matthews appointed two commissioners by resolution dated May 10, 2018;

Whereas, the remaining commissioner, from the Town of Cameron, was identified and appointed on May 30, 2018, in accordance with the CPST Act;

Whereas, the Commission received funding proposals for projects qualifying under the CPST Act, which projects are estimated to cost approximately \$8 million;

Whereas, the Commission has reviewed all projects and made a determination of the specific projects that should be included on the ballot question to be placed on the November 6, 2018 ballot, if County Council approves an ordinance (the "CPST Ordinance") to place the question as formulated by the Commission on the November 6, 2018 ballot;

Whereas, the South Carolina Revenue and Fiscal Affairs Office, by letter dated June 1, 2018, has estimated that a one percent sales and use tax would generate approximately \$1 million during the fiscal year ending June 30, 2020;

Whereas, provided such revenues remain constant, the County would realize sales tax receipts of \$8 million during the 8-year period from May 1, 2019 to April 30, 2027; and

Whereas, the Commission is recommending projects with a total estimated cost of approximately \$8 million.

Exhibit B

NOW THEREFORE BE IT RESOLVED BY THE CALHOUN COUNTY CAPITAL PROJECT
SALES TAX COMMISSION IN MEETING DULY ASSEMBLED:

Section 1 Formulation of Ballot Question

The question as formulated by the Commission in discharging its responsibility under Section 4-10-320(C) of the CPST Act is attached as Exhibit A (the "Ballot Question").

Section 2 Provision of Ballot Question to County Council

Pursuant to Section 4-10-330(D) of the CPST Act, the Commission has determined the question to be submitted to County Council for the referendum on November 6, 2018, must read substantially as set forth in Exhibit A, with such modifications and changes thereto as are provided herein, and as may be required or authorized by law and approved by County Council. The Chairman of the Commission is hereby directed to provide this Resolution and the Ballot Question to the County Council for its consideration.

Section 3 Effective Date

This Resolution is effective immediately upon its adoption by the Commission.

DONE AND RESOLVED this 11th day of July, 2018.

CALHOUN COUNTY CAPITAL
PROJECT SALES TAX COMMISSION

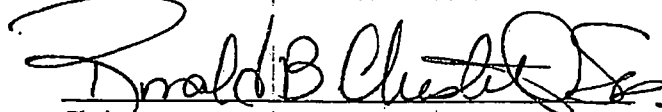

Chairman

EXHIBIT A

FORM OF BALLOT

Question

Must a special one percent sales and use tax be imposed in Calhoun County, South Carolina for 8 years to raise the amounts specified for the following purposes:

	<u>Project Description</u>	<u>Estimated Cost</u>
1	Joint Calhoun County - St. Matthews Area Water Line Project - Matching funds to obtain \$10 million grant to provide for Lake Marion Regional Water Authority water distribution line and related infrastructure to serve the Creston/Midway Area and St. Matthews Area	\$ 2,500,000
2	Cameron Historical Depot Project - to include renovation of the Historical Depot in Cameron and related improvements, infrastructure, and certain ADA improvements	150,000
3	Calhoun County - Sandy Run Fire District Substation Project - to include the constructing and equipping of a new substation in the Sandy Run Fire District area	240,000
4	Calhoun County - Sandy Run Fire District Ladder Truck Project - to include the acquisition and equipping of a new ladder truck in the Sandy Run Fire District area to support the northern portion of Calhoun County, particularly industry located therein	350,000
5	St. Matthews Demolition and Park Projects - to include the demolition and remediation of the Town's old town hall and other dilapidated structures on the main roadways, including the dialysis building on F R Huff Drive and the old school by St. Matthews Ballfield, the creation of parks and recreational facilities on the sites of the old town hall and old school, and related infrastructure	520,000
6	St. Matthews Lake Inspiration/Hut Park Project - to include the dredging, beautification, construction and improvement of recreational and fishing facilities and infrastructure at Lake Inspiration/Hut Park and adjacent areas	500,000
7	Calhoun County Animal Shelter Addition Project - to include the constructing and equipping of additional facilities housing dogs and cats on Purple Martin Drive	100,000
8	St. Matthews Downtown Streetscaping Project - to include construction, acquisition and renovations of facilities and infrastructure improving the streetscape in downtown St. Matthews	400,000
9	St. Matthews Public Safety Renovation Project - to include the renovation, construction, improving, and equipping of facilities, to include storage facilities, to serve the Fire Department, Judicial Court, and other public safety functions	200,000
10	Cameron Demolition Projects - to include the demolition of three buildings in the Town of Cameron	250,000

A-1

Exhibit B

11	Calhoun County Emergency Communications Project - to include the constructing, acquiring, and equipping of facilities and equipment to provide 800 MHZ radio service for emergency service providers in Calhoun County	500,000
12	Calhoun County Ambulance Project - to include the acquisition and equipping of ambulances to be operated by Calhoun County Emergency Services Department	165,000
13	Calhoun County Sandy Run Fire District Tanker Truck Project - to include the purchase of a fire truck to serve the Sandy Run area	267,000
14	Calhoun County Sandy Run Recreation Project - to include the improving and equipping of certain recreational facilities, including batting cages, lighting, field improvements, bleachers, and related infrastructure	100,000
15	Calhoun County New Water Lines Project - to include the construction of new water lines in the Highway 601 - Ft. Motte, Copperhead Lane, and Stabler Hill Road and Carolina Lane in Sandy Run areas and related infrastructure	400,000
Total		<u>\$6,642,000</u>

[and pending the receipt of such sales and use tax, must the County also be authorized to issue and sell, either as a single issue or as several separate issues, general obligation bonds (the "Bonds") of the County in an aggregate principal amount not exceeding \$_____ to defray the costs of the projects listed above plus issuance costs, to be paid from the sales and use tax to be imposed as stated herein and pledged to the payment of the principal of and interest on the Bonds, and, in the event such sales and use tax is inadequate, such bonds shall be payable from a sufficient ad valorem tax imposed on all taxable property in the County?]

INSTRUCTIONS TO VOTERS: All qualified electors of the County desiring to vote in favor of imposing the tax for the stated purposes [and authorizing the issuance and sale of Bonds in connection therewith] as outlined above shall vote "YES", and all qualified electors opposed to levying the tax and issuing such Bonds shall vote "NO".

Yes []
No []

A-2
Exhibit B

FILED

2018 AUG 14 A 11:14

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

CALHOUN COUNTY, SOUTH CAROLINA

ORDINANCE NO. 2018-18

AN ORDINANCE ENACTED PURSUANT TO THE CAPITAL PROJECT SALES TAX ACT, TITLE 4, CHAPTER 10, ARTICLE 3 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, PROVIDING FOR THE IMPOSITION OF A ONE PERCENT SALES AND USE TAX AND THE AUTHORIZATION OF GENERAL OBLIGATION BONDS UPON REFERENDUM APPROVAL, THE FORM OF THE BALLOT TO BE USED IN CONNECTION THEREWITH, AND OTHER MATTERS RELATING THERETO.

ENACTED AUGUST 13, 2018

Exhibit C

BE IT ORDAINED BY THE COUNTY COUNCIL OF CALHOUN COUNTY, SOUTH CAROLINA, AS FOLLOWS:

ARTICLE I

FINDINGS

Section 1.01 Findings

The County Council of Calhoun County (the "*County Council*"), the governing body of Calhoun County, South Carolina (the "*County*"), hereby finds and determines as follows:

- (a) Pursuant to the Capital Project Sales Tax Act, codified at Title 4, Chapter 10, Article 3 of the Code of Laws of South Carolina 1976, as amended (the "*Capital Project Sales Tax Act*"), the County Council is authorized to impose a one percent sales and use tax (the "*Sales and Use Tax*"), subject to the approval of a referendum to be held in the County. The proceeds of the Sales and Use Tax must be applied for the purposes identified by the Commission (as defined below).
- (b) The County Council created the Calhoun County Capital Project Sales Tax Commission (the "*Commission*") by resolution adopted on April 23, 2018. The Commission fulfilled its duties and obligations under the Capital Project Sales Tax Act by considering requests for the funding of capital projects within the County area with an estimated total cost of \$6,642,000, and evaluating and determining which capital projects to submit to the electors of the County.
- (c) The South Carolina Revenue and Fiscal Affairs Office, by letter dated June 1, 2018, advised the County that Sales and Use Tax proceeds are anticipated to be approximately \$1,000,000 annually. If held constant, the County finds that such proceeds would total approximately \$8,000,000 over eight years, which is the anticipated term of the Sales and Use Tax.
- (d) The ballot question contemplated by Section 4-10-330(D) of the Capital Project Sales Tax Act is required to be formulated by the Commission as provided at Section 4-10-320(C) of the Capital Project Sales Tax Act. By resolution dated July 11, 2018 (the "*Resolution*"), a copy of which is attached hereto at Exhibit A, the Commission transmitted the referendum question (the "*Ballot Question*") to County Council. The Ballot Question sets forth the Commission's determination regarding which capital projects are eligible to be funded from Sales and Use Tax proceeds (the "*Capital Projects*"). The Capital Projects are anticipated to require approximately \$6,642,000.
- (e) The County Council has received the Resolution and proposed Ballot Question, finds that the health, safety and welfare of the residents of the County shall be benefited from the completion of the Capital Projects, and is now minded to enact this ordinance imposing the Sales and Use Tax subject to a favorable referendum.
- (f) A referendum regarding the imposition of the Sales and Use Tax shall be held at the next general election, as such term is defined in the Capital Project Sales Tax Act, on November 6, 2018 (the "*Referendum*").
- (g) In order to provide funding for the Capital Projects described on the Ballot Question in as expeditious a manner as possible, to allow for projects to be funded simultaneously, to ensure sufficient funds are on hand at times appropriate for expected construction draws, and to make the most economic and efficient use of Sales and Use Tax proceeds, County Council has determined to provide for the issuance

Exhibit C

of general obligation bonds in an amount not to exceed \$7,000,000, subject to Referendum approval, and to modify the form of the Ballot Question to so provide.

(h) In accordance with Section 4-10-330 of the Capital Project Sales Tax Act, this ordinance: (i) imposes the Sales and Use Tax subject to Referendum approval; (ii) contains the Ballot Question (as modified to provide for the authorization to issue general obligation bonds); (iii) specifies the purposes for which the Sales and Use Tax proceeds will be used; (iv) states the maximum time for which the Sales and Use Tax may be imposed; (v) provides for the authorization of general obligation bonds subject to Referendum approval, including the maximum amount of bond proceeds to be used to fund Capital Projects and the amount of Sales and Use Tax proceeds and other sources of funds expected to be used to pay the costs of the Capital Projects and the debt service on such general obligation bonds; (vi) sets forth a system by which multiple Capital Projects are to be funded simultaneously; (vii) recites the date of imposition and termination of the Sales and Use Tax if approved at the Referendum; and (viii) directs the Clerk to County Council to transmit this ordinance to the Calhoun County Board of Voter Registration and Elections (the "Election Commission").

ARTICLE II

SALES AND USE TAX IMPOSITION, PURPOSES, TERMS AND CONDITIONS

Section 2.01 Imposition; Term

Subject to Referendum approval, the County Council hereby imposes the Sales and Use Tax in the County for the 8-year period beginning May 1, 2019, and ending April 30, 2027.

Section 2.02 Purposes

The Sales and Use Tax proceeds shall be applied for the purpose of funding the Capital Projects set forth on the Final Ballot Question (as defined herein), attached as Exhibit B hereto, subject to the conditions and restrictions provided herein.

Section 2.03 Formula or System of Distributing Proceeds

(a) Section 4-10-330(B) of the Capital Project Sales Tax Act requires that when a Capital Project Sales Tax is imposed for more than one purpose, that the enacting ordinance must set forth "the priority in which the net proceeds are to be expended for the purposes stated." The County determines that the Capital Projects will be funded as follows:

(1) First, as many Capital Projects as may be financed through the issuance of the Bonds (as defined below) given market conditions prevailing on the date of sale shall be funded simultaneously beginning in the order listed on the Ballot Question. In the event of any simultaneous funding, the County shall distribute proceeds of the Bonds in the amounts listed on the Ballot Question or such lesser amount as may be necessary to complete the subject Capital Project; then

(2) Second, to the extent that market conditions do not allow for all Capital Projects to be financed through the issuance of a single issuance of Bonds, such Capital Projects shall be funded either (a) simultaneously through the issuance of a subsequent series of Bonds, or (b) on a pay-as-you-go basis to all unfunded projects, simultaneously and pro-rata based on the amount listed on the Final Ballot Question for such Capital Projects, from the net proceeds of the Sales and Use Tax after provision has been made for the payment of debt service on the Bonds; then

(3) Third, to the extent that any Capital Project undertaken by the County (or another project sponsor) has not been completed and is on-going, any residual proceeds of the Bonds (to the extent permitted) or the Sales and Use Tax shall be used to complete such Capital Project, with such amounts to be funded simultaneously and pro-rata based on the amount the County or other project sponsor estimate in good faith the over-budget Capital Project or Projects will require to complete.

(b) The Sales and Use Tax and any related Bond proceeds shall be used and expended for direct and indirect costs of Capital Projects that are properly classified as capital costs and properly assignable to a specific capital project under applicable accounting and tax regulations, to include all necessary costs of issuance and debt service on the Bonds. The expenditures of net proceeds of the Sales and Use Tax and of the Bonds described hereinabove may be adjusted by considerations related to the acquisition of property, rights-of-way, design and engineering considerations, the receipt of all necessary permits and regulatory approvals, funding of Capital Projects from other sources (including unanticipated grants that fund a project), bids in excess of project estimates, qualifications of bidders, cost overruns, financing costs, and exhaustion or insufficiency of net proceeds of the Sales and Use Tax or Bond proceeds. Such impacts and other unforeseen circumstances and conditions may affect the ability to complete, or the timing of completion of, a Capital Project pursuant to the funding methodology described above. In the event any of the foregoing affect any Capital Project, the County Council shall, by ordinance, make findings regarding the same before declaring a Capital Project impracticable, impossible, or similar. The applicable portion of any funds allocated to any impacted Capital Project, and all other excess net proceeds of the Sales and Use Tax, shall be reallocated to other Capital Projects to the extent such additional funds are necessary to complete such Capital Project, or disposed of in accordance with Section 4-10-340(C) of the Capital Project Sales Tax Act.

ARTICLE III

REFERENDUM

Section 3.01 Ballot Question: Holding of Referendum

The Ballot Question as formulated by the Commission and set forth in the Resolution is included at Exhibit A (as an attachment to the Resolution). Section 4-10-330(D) of the Capital Project Sales Tax Act provides for a ballot question to be revised by County Council to include authorization for the issuance of bonds if it so determines pursuant to Section 4-10-330(A)(3)(a) of the Capital Project Sales Tax Act. The Ballot Question has been modified to so provide (as modified, the "*Final Ballot Question*") in conformance with Section 4.01 below. The Final Ballot Question is attached at Exhibit B hereto.

Pursuant to the applicable provisions of the Constitution and laws of the State of South Carolina, there is hereby ordered the Referendum to be held in the County on November 6, 2018. On the date of the Referendum, the Final Ballot Question shall be submitted to all persons residing in the County and qualified to vote under the Constitution and laws of the State of South Carolina.

Section 3.02 Certification of Referendum

The Election Commission shall conduct the Referendum under the election laws of this State, *mutatis mutandis*, and shall certify the result no later than November 30, 2018, to the County Council and to the South Carolina Department of Revenue. Expenses of the Referendum must be paid by the governmental entities that would receive the proceeds of the Sales and Use Tax in the same proportion that those entities would receive the net proceeds of the Sales and Use Tax. The County Council shall declare

the result thereof by resolution in accordance with Section 4-10-330(F) of the Capital Project Sales Tax Act.

Section 3.03 Notice of Referendum

To assist the Election Commission in complying with the Capital Project Sales Tax Act, the specific contents of the notice of the Referendum required by the Capital Project Sales Tax Act are described in Exhibit C hereto.

Section 3.04 Polling Places

The voting precincts and polling places for each of such precincts shall be such precincts and polling places as established by law wholly or partially within the County. The Election Commission is authorized to change any of the locations of polling places for the Referendum in accordance with State law as deemed necessary or advisable.

ARTICLE IV

BOND AUTHORIZATION

Section 4.01 Principal Amount, Security, Authorization

The terms of the Final Ballot Question authorize the issuance of not exceeding \$7,000,000 aggregate principal amount of general obligation bonds of the County (the "**Bonds**") for the purpose of defraying the costs of the Capital Projects and the costs of issuance thereof. The Sales and Use Tax to be imposed as stated herein shall be pledged to the payment of the principal of and interest on the Bonds, and, in the event such Sales and Use Tax is inadequate, such Bonds shall be payable from *ad valorem* taxes to be imposed on all taxable property in the County.

The Bonds shall be issued pursuant to Article X, Section 14 of the Constitution of the State of South Carolina, 1895, as amended; Title 4, Chapter 15 and Title 11, Chapter 27 of the Code of Laws of South Carolina 1976, as amended; and an ordinance to be enacted by the County Council providing for the terms thereof. The Bonds may be issued as a single issue or from time to time as several separate issues, provided that the Bonds authorized at the Referendum must be issued within five years from the date thereof.

Section 4.02 Use of Bond Proceeds, Use of Sales and Use Tax Proceeds for Debt Service

The maximum cost of Capital Projects to be funded from proceeds of the Bonds is expected to be approximately \$6,642,000, which amount encompasses the aggregate cost of all Capital Projects listed on the Final Ballot Question. The maximum cost of the Capital Projects to be funded from the Bonds and the Sales and Use Tax is expected to be approximately \$6,642,000. The maximum amount of Sales and Use Tax proceeds expected to be used to pay the costs of the Capital Projects and debt service on the Bonds is \$8,000,000. Funds for the Capital Projects other than Sales and Use Tax proceeds and the Bonds paid from Sales and Use Tax proceeds are not currently anticipated to be available to fund Capital Projects; however, to the extent unanticipated funding sources become available, such moneys will be applied to fund Capital Projects as provided at Section 2.03 hereof. Any investment earnings on the proceeds of the Bonds shall be used to defray debt service or complete Capital Projects, in the discretion of County Council and after taking into account relevant tax regulatory and arbitrage considerations upon advice of bond counsel.

ARTICLE V
OTHER MATTERS

Section 5.01 Transmittal to Election Commission

Upon enactment of this ordinance, the Clerk to County Council is directed to provide the same to the Election Commission with direction to provide for the submission of the Final Ballot Question to the electors of the County at the Referendum.

Section 5.02 Authorization for Further Action

The County Council hereby authorizes the County Administrator to take all action necessary and convenient in connection with implementing this ordinance.

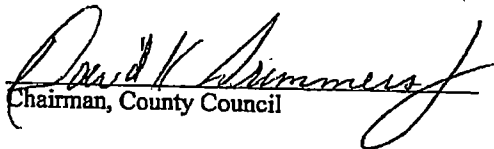
Section 5.03 Effective Date

This ordinance shall take effect upon third and final reading hereof.

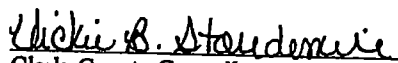
DONE AND ENACTED AT CALHOUN, SOUTH CAROLINA, THIS 13TH DAY OF AUGUST 2018.



CALHOUN COUNTY, SOUTH CAROLINA


Chairman, County Council

Attest:


Clerk, County Council

First Reading:	July 16, 2018
Second Reading:	July 23, 2018
Public Hearing:	August 13, 2018
Third Reading:	August 13, 2018

EXHIBIT A

CALHOUN COUNTY CAPITAL PROJECT SALES TAX COMMISSION RESOLUTION

DATED JULY 11, 2018

Exhibit C

STATE OF SOUTH CAROLINA)
)
)
)
)

RESOLUTION

COUNTY OF CALHOUN)

**OF THE CALHOUN COUNTY CAPITAL PROJECT SALES TAX COMMISSION
REGARDING THE FORM OF THE PROPOSED BALLOT PURSUANT TO TITLE 4,
CHAPTER 10, ARTICLE 3 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS
AMENDED, AND OTHER MATTERS RELATED THERETO.**

Whereas, Sections 4-10-300 through 4-10-380 of the Code of Laws of South Carolina 1976, as amended (the "CPST Act") allow for the imposition of a one percent sales and use tax by ordinance, subject to a referendum within the County to fund specific capital improvement projects and for a limited amount of time not to exceed 5 years;

Whereas, the Calhoun County Capital Project Sales Tax Commission ("the Commission") was created pursuant to Section 4-10-320 of the CPST Act, by resolution of Calhoun County Council (the "County Council") dated April 23, 2018, and pursuant to which the County appointed three commissioners from the County;

Whereas, the Town of St. Matthews appointed two commissioners by resolution dated May 10, 2018;

Whereas, the remaining commissioner, from the Town of Cameron, was identified and appointed on May 30, 2018, in accordance with the CPST Act;

Whereas, the Commission received funding proposals for projects qualifying under the CPST Act, which projects are estimated to cost approximately \$8 million;

Whereas, the Commission has reviewed all projects and made a determination of the specific projects that should be included on the ballot question to be placed on the November 6, 2018 ballot, if County Council approves an ordinance (the "CPST Ordinance") to place the question as formulated by the Commission on the November 6, 2018 ballot;

Whereas, the South Carolina Revenue and Fiscal Affairs Office, by letter dated June 1, 2018, has estimated that a one percent sales and use tax would generate approximately \$1 million during the fiscal year ending June 30, 2020;

Whereas, provided such revenues remain constant, the County would realize sales tax receipts of \$8 million during the 8-year period from May 1, 2019 to April 30, 2027; and

Whereas, the Commission is recommending projects with a total estimated cost of approximately \$8 million.

A-1

Exhibit C

NOW THEREFORE BE IT RESOLVED BY THE CALHOUN COUNTY CAPITAL PROJECT
SALES TAX COMMISSION IN MEETING DULY ASSEMBLED:

Section 1 Formulation of Ballot Question

The question as formulated by the Commission in discharging its responsibility under Section 4-10-320(C) of the CPST Act is attached as Exhibit A (the "Ballot Question").

Section 2 Provision of Ballot Question to County Council

Pursuant to Section 4-10-330(D) of the CPST Act, the Commission has determined the question to be submitted to County Council for the referendum on November 6, 2018, must read substantially as set forth in Exhibit A, with such modifications and changes thereto as are provided herein, and as may be required or authorized by law and approved by County Council. The Chairman of the Commission is hereby directed to provide this Resolution and the Ballot Question to the County Council for its consideration.

Section 3 Effective Date

This Resolution is effective immediately upon its adoption by the Commission.

DONE AND RESOLVED this 11th day of July, 2018.

CALHOUN COUNTY CAPITAL
PROJECT SALES TAX COMMISSION

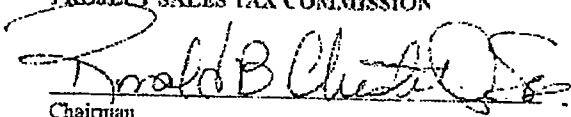

Chairman

EXHIBIT A

FORM OF BALLOT

Question

Must a special one percent sales and use tax be imposed in Calhoun County, South Carolina for 8 years to raise the amounts specified for the following purposes:

	<u>Project Description</u>	<u>Estimated Cost</u>
1	Joint Calhoun County - St. Matthews Area Water Line Project - Matching funds to obtain \$10 million grant to provide for Lake Marion Regional Water Authority water distribution line and related infrastructure to serve the Creslon/Midway Area and St. Matthews Area	\$ 2,500,000
2	Cameron Historical Depot Project - to include renovation of the Historical Depot in Cameron and related improvements, infrastructure, and certain ADA improvements	150,000
3	Calhoun County - Sandy Run Fire District Substation Project - to include the constructing and equipping of a new substation in the Sandy Run Fire District area	240,000
4	Calhoun County - Sandy Run Fire District Ladder Truck Project - to include the acquisition and equipping of a new ladder truck in the Sandy Run Fire District area to support the northern portion of Calhoun County, particularly industry located therein	350,000
5	St. Matthews Demolition and Park Projects - to include the demolition and remediation of the Town's old town hall and other dilapidated structures on the main roadways, including the dialysis building on F R Huff Drive and the old school by St. Matthews Ballfield, the creation of parks and recreational facilities on the sites of the old town hall and old school, and related infrastructure	\$20,000
6	St. Matthews Lake Inspiration/Hut Park Project - to include the dredging, beautification, construction and improvement of recreational and fishing facilities and infrastructure at Lake Inspiration/Hut Park and adjacent areas	500,000
7	Calhoun County Animal Shelter Addition Project - to include the constructing and equipping of additional facilities housing dogs and cats on Purple Martin Drive	100,000
8	St. Matthews Downtown Streetscaping Project - to include construction, acquisition and renovations of facilities and infrastructure improving the streetscape in downtown St. Matthews	400,000
9	St. Matthews Public Safety Renovation Project - to include the renovation, construction, improving, and equipping of facilities, to include storage facilities, to serve the Fire Department, Judicial Court, and other public safety functions	200,000
10	Cameron Demolition Projects - to include the demolition of three buildings in the Town of Cameron	250,000

11	Calhoun County Emergency Communications Project - to include the constructing, acquiring, and equipping of facilities and equipment to provide 800 MHZ radio service for emergency service providers in Calhoun County	500,000
12	Calhoun County Ambulance Project - to include the acquisition and equipping of ambulances to be operated by Calhoun County Emergency Services Department	165,000
13	Calhoun County Sandy Run Fire District Tanker Truck Project - to include the purchase of a fire truck to serve the Sandy Run area	267,000
14	Calhoun County Sandy Run Recreation Project - to include the improving and equipping of certain recreational facilities, including bathing cages, lighting, field improvements, bleachers, and related infrastructure	100,000
15	Calhoun County New Water Lines Project - to include the construction of new water lines in the Highway 601 - Ft. Motte, Copperhead Lane, and Stabler Hill Road and Carolina Lane in Sandy Run areas and related infrastructure	400,000

Total

56,642,000

[and pending the receipt of such sales and use tax, must the County also be authorized to issue and sell, either as a single issue or as several separate issues, general obligation bonds (the "Bonds") of the County in an aggregate principal amount not exceeding \$_____ to defray the costs of the projects listed above plus issuance costs, to be paid from the sales and use tax to be imposed as stated herein and pledged to the payment of the principal of and interest on the Bonds, and, in the event such sales and use tax is inadequate, such bonds shall be payable from a sufficient ad valorem tax imposed on all taxable property in the County?]

INSTRUCTIONS TO VOTERS: All qualified electors of the County desiring to vote in favor of imposing the tax for the stated purposes [and authorizing the issuance and sale of Bonds in connection therewith] as outlined above shall vote "YES", and all qualified electors opposed to levying the tax and issuing such Bonds shall vote "NO".

Yes []
No []

EXHIBIT B
FINAL BALLOT QUESTION

Exhibit C

FORM OF BALLOT

Question

Must a special one percent sales and use tax be imposed in Calhoun County, South Carolina for 8 years to raise the amounts specified for the following purposes:

	<u>Project Description</u>	<u>Estimated Cost</u>
1	Joint Calhoun County - St. Matthews Area Water Line Project - Matching funds to obtain \$10 million grant to provide for Lake Marion Regional Water Authority water distribution line and related infrastructure to serve the Creston/Midway Area and St. Matthews Area	\$ 2,500,000
2	Cameron Historical Depot Project - to include renovation of the Historical Depot in Cameron and related improvements, infrastructure, and certain ADA improvements	150,000
3	Calhoun County - Sandy Run Fire District Substation Project - to include the constructing and equipping of a new substation in the Sandy Run Fire District area	240,000
4	Calhoun County - Sandy Run Fire District Ladder Truck Project - to include the acquisition and equipping of a new ladder truck in the Sandy Run Fire District area to support the northern portion of Calhoun County, particularly industry located therein	350,000
5	St. Matthews Demolition and Park Projects - to include the demolition and remediation of the Town's old town hall and other dilapidated structures on the main roadways, including the dialysis building on F R Huff Drive and the old school by St. Matthews Ballfield, the creation of parks and recreational facilities on the sites of the old town hall and old school, and related infrastructure	520,000
6	St. Matthews Lake Inspiration/Hut Park Project - to include the dredging, beautification, construction and improvement of recreational and fishing facilities and infrastructure at Lake Inspiration/Hut Park and adjacent areas	500,000
7	Calhoun County Animal Shelter Addition Project - to include the constructing and equipping of additional facilities housing dogs and cats on Purple Martin Drive	100,000
8	St. Matthews Downtown Streetscaping Project - to include construction, acquisition and renovations of facilities and infrastructure improving the streetscape in downtown St. Matthews	400,000
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Total		\$6,642,000

and pending the receipt of such sales and use tax, must the County also be authorized to issue and sell, either as a single issue or as several separate issues, general obligation bonds (the "Bonds") of the County in an aggregate principal amount not exceeding \$7,000,000 to defray the costs of the projects listed above plus issuance costs, to be paid from the sales and use tax to be imposed as stated herein and pledged to the payment of the principal of and interest on the Bonds, and, in the event such sales and use tax is inadequate, such bonds shall be payable from ad valorem taxes to be imposed on all taxable property in the County?

INSTRUCTIONS TO VOTERS: All qualified electors of the County desiring to vote in favor of imposing the tax for the stated purposes and authorizing the issuance and sale of Bonds in connection therewith as outlined above shall vote "YES", and all qualified electors opposed to levying the tax and issuing such Bonds shall vote "NO".

Yes []
No []

EXHIBIT C
CONTENTS OF
NOTICE OF REFERENDUM

Exhibit C

The County Council of Calhoun County requests that the following be included in the notice published by the Calhoun County Board of Voter Registration and Elections and that such notice appear in a newspaper of general circulation in Calhoun County not less than two weeks prior to the Referendum:

1. The Final Form of the Ballot, attached as Exhibit B.
2. In accordance with Section 4-10-330(C) of the Code of Laws of South Carolina, 1976, as amended, the following statement:

The question is being submitted pursuant to Title 4, Chapter 10, Article 3 of the Code of Laws of South Carolina 1976, as amended, and an ordinance of the County Council of Calhoun County, South Carolina (the "County Council") enacted on August 13, 2018. The Referendum question includes authorization for both the imposition of a sales and use tax and the issuance of general obligation bonds. If a majority of qualified electors of the County voting in the Referendum vote in favor of the question, a one percent sales and use tax will be imposed in the County for a period of 8 years beginning May 1, 2019, and ending April 30, 2027, and the County Council will be authorized to issue not exceeding \$7,000,000 principal amount of general obligation bonds to defray the costs of the projects listed on the ballot question and issuance costs.

C-1

Exhibit C

STATE OF SOUTH CAROLINA)

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COUNTY OF CALHOUN)

RESOLUTION-17-2018

A RESOLUTION DECLARING THE RESULT OF A REFERENDUM TO IMPOSE A ONE PERCENT (1%) SALES AND USE TAX IN CALHOUN COUNTY, SOUTH CAROLINA PURSUANT TO THE CAPITAL PROJECT SALES TAX ACT, TITLE 4, CHAPTER 10, ARTICLE 3 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.

BE IT RESOLVED BY THE COUNTY COUNCIL OF CALHOUN COUNTY, SOUTH CAROLINA IN MEETING DULY ASSEMBLED:

Section 1. Findings of Fact

As an incident to the adoption of this resolution, the County Council of Calhoun County, South Carolina (the "County Council"), has made the following findings:

(A) Pursuant to an ordinance enacted by County Council dated August 13, 2018 (the "Ordinance"), the County Council ordered a referendum to be held in Calhoun County, South Carolina (the "County") on the question of the imposition of a one percent (1%) sales and use tax pursuant to the Capital Project Sales Tax Act, Title 4, Chapter 10, Article 3 of the Code of Laws of South Carolina 1976, as amended (the "Capital Project Sales Tax Act"), for a limited period of time for specific projects.

(B) The Board of Voter Registrations and Elections of Calhoun County (the "Election Board") conducted a referendum in the County in accordance with the Ordinance on November 6, 2018 (the "Referendum") where the ballot question attached as Exhibit A (the "Question") was submitted to the qualified electors of the County.

(C) The Election Board has provided, and the County Council has received, the official return of the Referendum, which official return establishes that the Referendum result was in favor of the Question.

Section 2. Declaration of Result

County Council hereby declares that the result of the Referendum was in favor of the Question, there having been 3,173 votes cast in favor of the Question and 2,370 votes cast in opposition to the Question. A copy of the official return, as provided by the Election Board, is attached at Exhibit B. This declaration is made pursuant to Section 4-10-330(F) of the Capital Project Sales Tax Act.

Exhibit D

Section 3. Effective Date

This resolution shall be effective on the date of adoption hereof by County Council.

DONE AND RESOLVED this 26th day of November 2018.

CALHOUN COUNTY, SOUTH CAROLINA


Chairman, County Council

ATTEST:

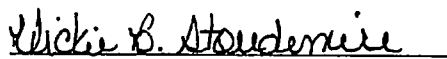

Clerk to County Council



Exhibit A

Form of Ballot Question

Question

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Yes []
No []

Exhibit B

Official Referendum Returns

STATE OF SOUTH CAROLINA
CALHOUN COUNTY BOARD OF CANVASSERS
STATEMENTS AND RETURNS OF VOTES
FOR
GENERAL ELECTION

ELECTION DATE: 11/6/18

We the County Board of Canvassers certify that all proper procedures for canvassing votes in this election have been followed, and we have received written confirmation from election commission staff of the same; and upon such confirmation and any further review of our own, we certify the following results of this election are correct in all respects.

<u>Patricia D. Phillips</u>	_____
<u>Johnnie J. Bates</u>	_____
<u>[Signature]</u>	_____
<u>Judith W. Taylor</u>	_____
<u>Vivian P. Potrick</u>	_____

Certification Date: 11/9/18

SEC' FRM 1104-200811

B-1
Exhibit D

SUMMARY REPT-GROUP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

Report EL45A Page 001

	TOTAL VOTES	%	DS850	M650	DS200	M190	iVotronic	Flash
PRECINCTS COUNTED (OF 17)	15	88.24						
REGISTERED VOTERS - TOTAL	10,258							
BALLOTS CAST - TOTAL	6,058							
VOTER TURNOUT - TOTAL	59.08		0	0	0	328	5,728	0
STRAIGHT PARTY								
Vote for 1								
Democratic (DEM)	2,345	59.82	0	0	0	165	2,180	0
Working Families (WFW)	28	.50	0	0	0	0	28	0
United Citizens (UNC)	21	.53	0	0	0	0	21	0
Green (GRN)	7	.18	0	0	0	0	7	0
Republican (REP)	1,564	39.37	0	0	0	65	1,499	0
American (AMR)	16	.40	0	0	0	0	16	0
Total	3,973		0	0	0	230	3,743	0
Governor and Lieutenant Governor								
Vote for 1								
James Smith (DEM)	2,990	58.27	0	0	0	198	2,792	0
Henry McMaster (REP)	2,952	49.63	0	0	0	124	2,828	0
Write-In	6	.10	0	0	0	2	4	0
Total	5,948		0	0	0	324	5,624	0
Secretary of State								
Vote for 1								
Melvin T Whittenburg (DEM)	2,825	47.61	0	0	0	200	2,625	0
Mark Hammond (REP)	3,108	52.38	0	0	0	124	2,984	0
Write-In	1	.02	0	0	0	0	1	0
Total	5,934		0	0	0	324	5,610	0
State Treasurer								
Vote for 1								
Rosalyn L Glenn (DEM)	2,741	46.11	0	0	0	194	2,547	0
Rosalyn Glenn (WFW)	68	1.14	0	0	0	2	66	0
Curtis Loftis (REP)	3,068	51.61	0	0	0	125	2,943	0
Sarah Work (AMR)	68	1.14	0	0	0	2	66	0
Write-In	0		0	0	0	0	0	0
Total	5,945		0	0	0	323	5,622	0

Exhibit D

SUMMARY REPT-GROUP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

Report HL45A Page 002

	TOTAL VOTES	%	DS650	M650	DS200	M100	iVotronic	Flash
Attorney General								
Vote for 1								
Constance Anastoponio (DEM)	2,887	48.50	0	0	0	206	2,681	0
Constance Anastoponio (WFF)	197	1.80	0	0	0	4	103	0
Alan Wilson (REP)	2,956	49.66	0	0	0	112	2,844	0
Write-In	2	.03	0	0	0	0	2	0
Total	5,952		0	0	0	322	5,630	0
Comptroller General								
Vote for 1								
Richard Eckstrom (REP)	3,611	97.62	0	0	0	143	3,468	0
Write-In	88	2.38	0	0	0	3	80	0
Total	3,699		0	0	0	151	3,548	0
State Superintendent of Education								
Vote for 1								
Israel Romero (DEM)	2,747	46.21	0	0	0	197	2,550	0
Holly Mitchell Spearman (REP)	3,176	53.43	0	0	0	124	3,052	0
Write-In	22	.37	0	0	0	4	18	0
Total	5,945		0	0	0	325	5,620	0
Commissioner of Agriculture								
Vote for 1								
Chris Velums (DNC)	500	11.69	0	0	0	50	450	0
David Edmond (GRN)	456	10.56	0	0	0	22	433	0
Hugh Weathers (REP)	3,293	77.81	0	0	0	131	3,162	0
WRITE-IN	27	.63	0	0	0	1	26	0
Total	4,276		0	0	0	205	4,071	0
U.S. House of Representatives Dist 6								
Vote for 1								
James E Jim Clyburn (DEM)	2,998	50.25	0	0	0	304	2,794	0
Bryan Fugh (GRN)	85	1.42	0	0	0	2	83	0
Gerhard J Gressmann (REP)	2,880	48.27	0	0	0	118	2,762	0
Write-In	3	.05	0	0	0	0	3	0
Total	5,966		0	0	0	324	5,642	0
State House of Representatives Dist 93								
Vote for 1								
Russell L Ott (DEM)	3,422	63.96	0	0	0	231	3,591	0
Terry L Kiser Sr (REP)	2,151	35.99	0	0	0	94	2,057	0
Write-In	3	.05	0	0	0	0	3	0
Total	5,576		0	0	0	325	5,651	0

SUMMARY REPT-GROUP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

Report EL45A Page 003

	TOTAL VOTES	%	DS950	K650	DS200	M100	Report EL45A iVotronic	Page 003 Flash
County Council District 3								
Vote for 1								
John Nelson (REP)	931	98.00	0	0	0	41	890	0
Write-In	19	2.00	0	0	0	1	18	0
Total	950		0	0	0	42	908	0
County Council District 4								
Vote for 1								
Cecil M Thornton Jr (DEM)	1,010	97.77	0	0	0	29	981	0
Write-In	23	2.23	0	0	0	1	22	0
Total	1,033		0	0	0	30	1,003	0
County Council District 5								
Vote for 1								
James E Haigler (DEM)	900	92.51	0	0	0	46	854	0
Write-In	23	2.49	0	0	0	0	23	0
Total	923		0	0	0	46	877	0
Soil and Water District Commission								
Vote for 2								
Ronnie L Bozard	3,029	58.72	0	0	0	113	2,916	0
Fred Gantt	2,064	40.02	0	0	0	70	1,994	0
WRITE-IN	65	1.26	0	0	0	2	63	0
Total	5,158		0	0	0	185	4,973	0
School Board District 2								
Vote for 1								
Kevin G Jenkins	762	99.35	0	0	0	43	719	0
WRITE-IN	5	.65	0	0	0	0	5	0
Total	767		0	0	0	43	724	0
School Board District 5								
Vote for 1								
Debra Fredrick	742	98.67	0	0	0	39	703	0
WRITE-IN	10	1.33	0	0	0	0	10	0
Total	752		0	0	0	39	713	0
Statewide Constitutional Amendment								
Vote for 1								
Yes	2,325	43.08	0	0	0	88	2,237	0
No	3,072	56.92	0	0	0	206	2,866	0
Total	5,397		0	0	0	294	5,103	0

Exhibit D

SUMMARY REPT-GROUP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

Report NL45A Page 002

	TOTAL VOTES	%	D5850	H650	DS200	H100	iVotronic	Flash
Attorney General								
Vote for 1								
Constance Anastopoulos (DEM)	2,887	48.50	0	0	0	206	2,681	0
Constance Anastopoulos (WV)	197	1.80	0	0	0	4	103	0
Alan Wilson (REP)	2,956	49.66	0	0	0	112	2,844	0
Write-In	2	.03	0	0	0	0	2	0
Total	5,952		0	0	0	322	5,630	0
Comptroller General								
Vote for 1								
Richard Eckstrom (REP)	3,611	97.62	0	0	0	143	3,468	0
Write-In	88	2.38	0	0	0	8	80	0
Total	3,699		0	0	0	151	3,548	0
State Superintendent of Education								
Vote for 1								
Israel Romero (DEM)	2,747	46.21	0	0	0	197	2,550	0
Molly Mitchell Spearman (REP)	3,176	53.42	0	0	0	124	3,052	0
Write-In	22	.37	0	0	0	4	18	0
Total	5,945		0	0	0	325	5,620	0
Commissioner of Agriculture								
Vote for 1								
Chris Helms (UNC)	500	11.69	0	0	0	50	450	0
David Edmund (GRN)	456	10.66	0	0	0	23	433	0
Rugh Weathers (REP)	3,293	77.81	0	0	0	131	3,162	0
Write-In	27	.63	0	0	0	1	26	0
Total	4,276		0	0	0	205	4,071	0
U.S. House of Representatives Dist 6								
Vote for 1								
James & Jim Clyburn (DEM)	2,998	59.25	0	0	0	204	2,794	0
Bryan Pugh (GRN)	85	1.42	0	0	0	2	83	0
Garbard & Gressmann (REP)	2,880	49.27	0	0	0	118	2,762	0
Write-In	3	.05	0	0	0	0	3	0
Total	5,966		0	0	0	324	5,642	0
State House of Representatives Dist 93								
Vote for 1								
Russell L Ott (DEM)	3,822	63.96	0	0	0	231	3,591	0
Terry L Eiser Sr (REP)	2,151	35.99	0	0	0	94	2,057	0
Write-In	3	.05	0	0	0	0	3	0
Total	5,976		0	0	0	325	5,651	0

SUMMARY REPT-GROUP DETAIL

Calhoun County
Statewide General
November 6, 2018

OFFICIAL RESULTS

Run Date:11/09/18 12:37 PM

Report EL45A Page 004

	TOTAL VOTES	t	DS850	W650	DS200	N100	iVotronic	Flash
County Capital Projects								
Vote for 1								
Yes	3,173	57.24	0	0	0	199	2,974	0
No.	2,370	42.76	0	0	0	85	2,275	0
Total	5,543		0	0	0	294	5,249	0
County Sunday Alcohol Sales:On-Premises								
Vote for 1								
Yes, in favor of the question.	3,333	60.35	0	0	0	183	3,150	0
No, Opposed to the question	2,190	39.65	0	0	0	112	2,078	0
Total	5,523		0	0	0	295	5,228	0
County Sunday Alcohol Sales:Off-Premises								
Vote for 1								
Yes, in favor of the question.	3,257	58.45	0	0	0	176	3,081	0
No, Opposed to the question	2,315	41.55	0	0	0	118	2,197	0
Total	5,572		0	0	0	294	5,278	0

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)
South Carolina Public Interest Foundation,)
Amy Hill, and Rebecca Bonnette,)
Individually, and on behalf of all others)
Similarly situated,)
Plaintiffs,)
v.)
Calhoun County Council,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2019-CP-00049

AFFIDAVIT OF
DENISE M. CHRISTMAS

Personally appeared before me the undersigned Denise M. Christmas, who being duly sworn deposes and states as follows:

1. I am Denise M. Christmas, Deputy Administrator/Chief Financial Officer ("CFO") for Calhoun County, South Carolina (the "County"), where I served as CFO for five years and as Deputy Administrator/CFO for the past two years.
2. In my role as CFO I am responsible for the management of the County's finances, including the investment of the County's funds. Additionally, I work closely with the other department heads of the County to review, coordinate, and plan expenditures for all capital projects.
3. I have been asked to prepare estimates of the costs and financial damages that the County may sustain if the injunctions requested by the Plaintiffs in this matter are granted.

**SALES TAX COLLECTIONS
AND INTEREST EARNINGS**

4. I was involved in the County's effort to seek the approval of the Calhoun County voters to impose a one percent sales and use tax (the "Sales Tax") within the County to fund

specific capital projects pursuant to the Capital Projects Sales Tax Act , which is codified at Title 4, Chapter 10, Article 3 of the Code of Laws of South Carolina 1976, as amended (the "Act").

5. The County's voters approved the imposition of the Sales Tax to fund 15 capital projects with a total estimated cost of \$6,642,000.
6. In preparation for the adoption and implementation of the Sales Tax, I requested that the South Carolina Department of Revenue (the "Department of Revenue") provide an estimate of the amount of revenue that would be generated in the 2019-20 fiscal year from the imposition of the Sales Tax. The Department of Revenue estimated that the Sales Tax would generate approximately \$1,000,132 in the 2019-20 fiscal year.
7. Based upon the estimate provided by the Department of Revenue, the Calhoun County Capital Project Sales Tax Commission projected that the Sales Tax would generate \$1,000,000 during each year of its imposition.
8. According to the Act, the Department of Revenue must pay the receipts of the Sales Tax over to the County on a quarterly basis. Based upon my discussions with the Department of Revenue the County will receive the initial distribution of Sales Tax proceeds in October 2019 and at the end of each calendar-quarter (January, April, July and October) thereafter through the end of the eight-year period of the Sales Tax imposition.
9. Based upon the estimate provided by the Department of Revenue, the County anticipates the receipt of Sales Tax proceeds in the amount of approximately \$250,000 each quarter.
10. The County plans to invest the proceeds of the Sales Tax as it receives them in an interest-bearing account until such time as the funds are needed to pay project costs or for debt service on bonds issued to pay the costs of projects.

11. If the Court enjoins the collection of the Sales Tax, the County will be irreparably damaged by the loss of the proceeds of the Sales Tax during the period in which the injunction is in place.
12. If the Court enjoins the collection of the Sales Tax, the County will also be damaged by the loss of substantial interest earnings on the Sales Tax, which the County would otherwise use to pay the costs of capital projects within the County.
13. I have calculated the amount of the irreparable damage that the County will suffer if the collection of the Sales Tax is enjoined assuming that the collection of the Sales Tax is enjoined for a period of 18 months, and based upon (i) the County receiving payments of Sales Tax proceeds in the amount of \$250,000 each quarter beginning October 2019, (ii) the Sales Tax proceeds on deposit in the County's interest-bearing account at any given time earning an annual interest rate of 2.5%, and (iii) the issuance of an initial series of bonds (in the par amount of \$3,500,000) (the "Bonds") to defray the cost of certain projects, including a May 2020 debt service payment on such bonds in the amount of \$339,775 made using the proceeds of the Sales Tax.
14. Relying upon these assumptions, I estimate that if the collection of the Sales Tax is enjoined and the Sales Tax ceases to be collected as of June 1, 2019, through October 2020 the County would be damaged by the loss of Sales Tax proceeds in the amount of \$1,500,000 and by the loss of interest earnings on Sales Tax proceeds in the amount of \$10,099.

INCREASES IN PROJECT COSTS

15. Prior to this lawsuit being filed, the County had begun with its bond counsel and financial advisor to plan for and authorize the issuance of the Bonds in order to deliver many of the

capital projects to the voters in as expeditious a manner as possible. Among the projects that the County intended to fund out of this initial series of bonds were the four projects that have been challenged by Plaintiffs (the "Challenged Projects") with a total estimated cost of \$1,282,000. Using these proceeds, the County intended to deliver or enter into contracts for the delivery of the Challenged Projects starting in July 2019.

16. I have asked the County's department heads to contact the vendors from whom the County would likely purchase the fire trucks, ambulances, and communications equipment that comprise the Challenged Projects to determine whether these vendors have any planned upcoming price increases.
17. If the County is enjoined from spending the Sales Tax proceeds to purchase the tanker fire truck as planned, the County will, at a minimum, be subject to a price increase in the amount of \$19,460.
18. If the County is enjoined from spending the Sales Tax proceeds to purchase the communications equipment as planned, the County will, at a minimum, be subject to a price increase in the amount of \$22,275.
19. Relying upon the information provided by these vendors, I conservatively estimate that if the Court enjoins the use of proceeds of the Sales Tax on the Challenged Projects the County will be damaged by these increases in prices in the total amount of \$41,735.

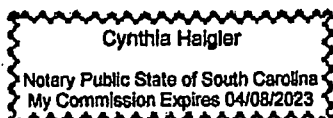
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FURTHER AFFIANT SAYETH NOT.

Denise M. Christmas
Denise M. Christmas

SWORN TO BEFORE me the 22nd day of May, 2019.

Cynthia Haigler
Notary Public for South Carolina
My Commission Expires: _____



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

The Defendant, the Calhoun County Council, the governing body of Calhoun County, South Carolina (the "County") by and through its counsel, files this Supplementary Memorandum in Support of Defendant's Motion for Summary Judgment. Cross-motions for summary judgment in this matter were heard by the Honorable Brian M. Gibbons on April 30, 2019, wherein the Court granted the parties leave to file supplementary memoranda.

**PLAINTIFFS' CLAIMS ARE SUBJECT TO THE ACT'S
30-DAY STATUTE OF LIMITATIONS**

Plaintiffs incorrectly assert that the brief statute of limitations applicable to the referendum authorized by the Capital Project Sales Tax Act (the "Act") applies solely to challenges to the technical or procedural aspects of the referendum. A review of the Act, as well as our jurisprudence in analogous circumstances, establishes that the Act's 30-day statute of limitations should be applied to bar Plaintiffs' claims.

In *State ex rel. Condon v. City of Columbia*, 339 S.C. 8, 528 S.E.2d 408, (2000), the Supreme Court of South Carolina squarely defined the parameters and necessity of enforcing statutes of limitations stemming from referenda. In *Condon*, the State challenged the City of

Columbia's annexation of a large parcel of State-owned land. *Id.*, at 12, 528 S.E.2d at 410. The State alleged that the annexation of its land was *invalid* because the narrow strip of land used to establish contiguity with the State land was not properly annexed. *Id.* The Supreme Court declined to consider the merits of the State's claim on the basis that the State failed to bring the action within the applicable 90-day statute of limitations. *Id.* at 16, 528 S.E.2d at 412. The Court explained, "such 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." *Id.* at 19, 528 S.E.2d at 413-14.

Similarly, in challenges to bond issues, the Supreme Court of South Carolina has upheld very short statutes of limitations. In *Morgan v. Feagin*, 230 S.C. 315, 95 S.E.2d 621 (1956), the Supreme Court barred a challenge to a bond referendum initiated after the expiration of a brief statute of limitations. *Id.*, at 316-17, 95 S.E.2d at 622. There the Supreme Court discussed the necessity of brief statutes of limitations in the context of local government action, stating, "many questions connected with municipal government, including that of taxation, would need to be known with reasonable promptness." *Id.*, at 318, 95 S.E.2d at 623.

The same reasoning applies here. The Act expressly establishes a strict timeline for the implementation of the one-percent sales tax (the "Sales Tax") once it has been approved. The plain language of the Act demands that the election commission "certify the result not later than November thirtieth to the . . . Department of Revenue." S.C. Code Ann. § 4-10-330(E). Once approved, "the tax is imposed on the first of May following the date of the referendum." S.C. Code Ann. § 4-10-340(A). The Act then states, "[i]f the certification is not timely made to the Department of Revenue, the imposition is postponed for twelve months." *Id.* Simply put, the Act

requires finality. Practically, the Legislature established this strict timeline to ensure the Department of Revenue can act in reliance upon the Sales Tax going into effect on May 1, and so that local governments¹ may begin the expensive and time-consuming process of planning and developing the major capital projects their voters just approved.

Plaintiffs' suggestion that they are not subject to the 30-day statute of limitations proscribed in subsection (F) is nonsensical and ignores the clear intent of the Act. First, it ignores the plain language of the statute and requires this Court to ignore the cardinal rules of statutory construction.² Second, it directly inhibits the interests our Supreme Court has identified as a key rationale for brief statutes of limitation. To disregard the timeline established by the Act would lead to the absurd result where the Department of Revenue and the County are left in a state of limbo while attempting to fulfill statutory obligations and give effect to the will of the voters.

In the absence of authority and statutory direction, Plaintiffs direct this Court to consider a litany of possible offenses that other counties might commit if the Act's statute of limitations were to be applied to Plaintiffs' claims. Respectfully, Plaintiffs' hypothetical, speculative, and abstract assertions are not ripe for review, and are not before this Court.³ *See generally, Colleton Cty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cty.*, 371 S.C. 224, 233, 638 S.E.2d 685, 689–90 (2006) (“unless and until the School District appropriates funds for an installment payment from a source

¹ The Act is used by many counties and the municipalities therein as a primary source of meeting the capital needs within the county area. Municipalities, special purposes districts, and other governments rely on this mechanism in addition to the counties themselves.

² “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). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Id.* (quotation omitted).

³ Plaintiffs contend that in the hearing counsel for the Defendant conceded that the Act's statute of limitations does not apply to constitutional challenges. Counsel made no such concession but merely pointed out that these are not the types of matters before this Court.

other than the issuance of general obligation indebtedness, this claim is speculative and thus not ripe for judicial review”).

In sum, Plaintiffs’ seek relief through the interpretation of the Act, and in so doing, are subject to the Act’s statute of limitations. The Act provides Plaintiffs with an opportunity to be heard, and that time has passed. Plaintiffs are not the first to miss the opportunity to have the merits of their claim considered because they failed to bring an action within the applicable statute of limitation, and they have failed to allege that the statute of limitation is “so insufficient that the statute becomes a denial of justice.” *Hite v. Town of W. Columbia*, 220 S.C. 59, 65, 66 S.E.2d 427, 430 (1951). Accordingly, this Court should dismiss Plaintiffs’ claims.

**THE ACT’S LIST OF PERMISSIBLE PROJECT TYPES SHOULD BE
READ TO INCLUDE THE EQUIPPING OF SUCH PROJECTS**

To the extent this Court addresses the merits of Plaintiffs’ claims, the Court should consider that the Act speaks in terms of the funding of “projects” rather than “buildings.” *See* S.C. Code Ann. § 330(A)(1). When the term “project” is used in other provisions of the South Carolina Code concerning the funding or financing of the capital needs of public entities, the term is nearly uniformly defined to include both brick and mortar facilities and the equipment and apparatus necessary to make those facilities useful.

The Act does not define the term “project,” and when faced with an undefined statutory term, “the court must interpret the term in accord with its usual and customary meaning.” *Georgia-Carolina Bail Bonds, Inc. v. Cty. of Aiken*, 354 S.C. 18, 23, 579 S.E.2d 334, 337 (Ct. App. 2003). Helpfully, the usual and customary meaning of the term “project” may be obtained from the many provisions of the South Carolina Code that provide for the financing of public capital projects. Where these statutes define the term, the customary usage in the vast majority include within the

scope of a “project” or as a lawful cost of a “project” both real property improvements as well as equipment, apparatus, furnishings, and other personal property.⁴

The term “project,” as used in the Act, should be given the usage that is customarily ascribed to it by the Legislature in other statutes dealing with similar subject matter. Accordingly, the County properly interpreted the Act to allow the use of Sales Tax proceeds to fund projects that have an essential nexus with the listed project types, including the Challenged Projects, which are essential to make the “types of projects” listed in the Act useful for their intended purpose.

In the hearing Plaintiffs mistakenly relied upon *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 811 S.E.2d 758 (2018), for the proposition that the list of project types contained in the Act should be strictly and narrowly interpreted to include only those listed facilities. The statute at issue in *Richland County* is similar to the Act in that it specifically lists brick and mortar-type projects that may be funded through a one-percent sales tax. *See* S.C. Code Ann. § 4-37-30(A)(1)(a). While the Supreme Court in *Richland County* did determine that some expenditures exceeded the statutory authorization, the Court construed the statute to permit the use of sales tax proceeds on the administrative costs of the approved transportation projects. *See Richland Cty.*

⁴ *See, e.g.*, S.C. Code Ann. § 4-29-67–68 (“all other machinery apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful”); § 6-25-25 (“all works, improvements, facilities, plants, equipment, transportation lines, pump stations, sewage treatment plants, apparatus, and appliances”); § 11-37-20(4) (“demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment”); § 11-40-30(14)(a) (“furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement”); § 11-43-130(5) – (6) (“project costs are limited to capital expenditures for transit equipment and facilities”); § 11-50-40 (“furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement”); § 11-51-30 (“including, but not limited to, land acquisition, acquisition or construction of buildings, equipment, furnishings, site preparation, road and highway improvements, water and sewer infrastructure”); § 59-109-30 (“furniture, equipment, furnishings, machinery, apparatus, appliances, appurtenances, and physical amenities”).

422 S.C. at 312, 811 S.E.2d at 769 (“A proper expenditure of Penny Tax funds must be tethered to a specific transportation-related capital project *or the administration of a specific transportation project.*” (emphasis added)). In *Richland County*, the Supreme Court recognized that in order to give effect to the statute, it must be construed to permit the expenditure of funds on administrative costs assignable to a capital project that are necessary to give the project life even though they are not expressly authorized by the statute. *See id.*, at 302, 811 S.E.2d at 763-64.

This Court should apply this same reasoning to the Act. In order to allow for the adequate funding of the project types listed in the Act, it should be construed to permit the funding of equipment such as the Challenged Projects that is essential to the usefulness of these projects.

**IF THE CHALLENGED PROJECTS ARE FOUND IMPERMISSIBLE THE
COLLECTION OF THE SALES TAX SHOULD CONTINUE**

If this Court determines the Challenged Projects are impermissible, the Court should sever the Challenged Projects and uphold the collection of the Sales Tax. The case law cited by Plaintiffs regarding the severability of invalid portions of legislative acts does not stand for the proposition that was asserted to this Court. Rather, a review of Plaintiffs’ “legislative logrolling” cases shows that the reasoning on which they are based is readily distinguishable from the issues at hand here.

In support of their position, Plaintiffs have cited *Am. Petroleum Inst. v. S.C. Dep’t of Revenue*, 382 S.C. 572, 579, 677 S.E.2d 16, 19 (2009), in which the Supreme Court created an exception to the typical rule of severability that applies exclusively to violations of the “one-subject rule.” However, the Supreme Court’s reasoning in *American Petroleum* was specific to the problem presented by such violations. Where a piece of legislation contained provisions addressing more than one subject, each provision of the legislation is equally an “offending provision.” *Id.* at 579, 677 S.E.2d at 19. Where each provision is equally offensive to the one-subject rule, it is beyond the prerogative of the court to determine which provision was considered by the

Legislature to be the “proper subject” of the legislation. *Id.* Plaintiffs’ argument is an obfuscation that has no bearing on the issues before the Court in this matter. It remains entirely proper for courts to sever an invalid portion of a legislative act where the effect of the act remains complete unto itself and independent of that portion which is stricken, and the remainder “is of such a character that it may fairly be presumed” that it would have passed without the offending portions. *See Thomas v. Cooper River Park*, 322 S.C. 32, 34, 471 S.E.2d 170, 171 (1996).

This Court should look rather to the rule consistently applied by the Supreme Court that the courts “should employ every reasonable presumption in favor of sustaining a contested election” and “mere technical irregularities or illegalities are insufficient to set aside an election unless the errors appear to have affected the result of the election.” *Knight v. State Bd. of Canvassers*, 297 S.C. 55, 56, 374 S.E.2d 685, 686 (1988); *Berry v. Spigner*, 226 S.C. 183, 189, 84 S.E.2d 381, 384 (1954); *Connolly v. Beason*, 100 S.C. 74, 84 S.E. 297, 298 (1915). Other than a bare allegation by the Plaintiffs that the presence of the Challenged Projects on the ballot may have affected the result, there is nothing to indicate that the result was in fact affected.

There is no indication that the inclusion of the Challenged Projects affected the result of the referendum. To the contrary, the record reflects that the voters voted in favor of the Sales Tax with the knowledge that it may not be possible to complete all projects listed on the ballot. In its August 13, 2018 ordinance adopting the form of the ballot question, the County made it clear that factors such as the inability to receive permits, bids in excess of project estimates, or other unforeseen reasons “may affect the ability to complete, or the timing of the completion of, a Capital Project” *See* Section 2.03(b) of Ordinance 2018-18 attached as Exhibit C of Defendant’s Consolidated Memorandum. Ordinance 2018-18 addresses the practical consideration that over

the span of the eight-year term of the Sales Tax some issue may arise with regard to one or more of the approved projects that makes the project impossible to complete.

The Court should presume that, to the extent that the voters were influenced by the presence of the Challenged Projects on the ballot, that influence was tempered by the knowledge that any of these projects may become impossible for any variety of reasons. Under this presumption, if this Court chooses to invalidate the Challenged Projects, it should uphold the validity of the Sales Tax and approve the expenditure of its proceeds to fund the remaining projects.

Notably, the County is by no means alone in adopting this interpretation of the Act. Of the twenty-three counties that have made use of the Act to fund their capital needs, ten other counties, Aiken, Florence, Greenwood, Hampton, Lancaster, Lee, McCormick, Newberry, Sumter, and Williamsburg, have funded similar types of projects. *See* Ballots of Aiken, Greenwood, Lancaster, McCormick, Williamsburg, and Sumter attached at Exhibit A. Many of the Sales Taxes authorized in these counties have been in place for years and the capital projects completed. If Plaintiffs are correct that the collection of the Sales Tax may be enjoined on the grounds presented here over a month after it's collection has begun, there is no reason that the Sales Taxes in each of these counties may not also be enjoined years after they have been placed into effect. Significantly, the Act includes no provision for the refund or expenditure of any Sales Tax proceeds collected prior to such an injunction, leaving the Court with the responsibility of sitting in the place of the Legislature to craft a workable remedy.

CONCLUSION

For the reasons set forth herein, the Court should grant Defendant's motion for summary judgment, deny Plaintiffs' motions for summary judgment and permanent injunctive relief, and dismiss Plaintiffs Complaint with prejudice.

RESPECTFULLY SUBMITTED:

POPE FLYNN, LLC

By: /s/ Charles D. Rhodes, III

Patrick Flynn,
pflynn@popeflynn.com
Charles D. Rhodes III
cdrhodes@popeflynn.com
Michael W. Allen, Jr.
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1411 Gervais St., Suite 300
Columbia, SC 20201
(803) 354-4900

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
June 5, 2019

**OFFICIAL BALLOT - GREENWOOD COUNTY
GENERAL ELECTION
NOVEMBER 8, 2016**

ELECTRONICALLY FILED - 2019 Jun 05 4:34 PM - CALHOUN - COMMON PLEAS - CASE#2019CP0900049

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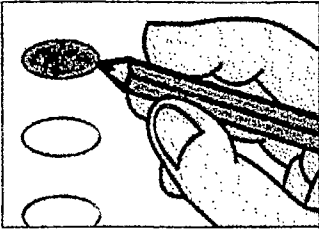
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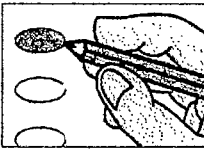
A	Absentee	B	South Carolina	C	Absentee
Instructions Marking Your Ballot  - To vote, darken the oval beside your choice using a No. 2 pencil or blue or black pen. Do not make marks outside the oval. - Vote for one candidate in each contest unless otherwise indicated. - You do not have to vote in every contest. - To change or correct your ballot, request a replacement from the election official.		President and Vice President Vote for One ☐ Hillary Rodham Clinton Timothy Michael Kaine Democratic ☐ Darrell Castle Scott Bradley Constitution ☐ Evan McMullin Nathan Johnson Independence ☐ Jill Stein Ajamu Baraka Green ☐ Donald J Trump Michael R Pence Republican ☐ Peter Skewes Michael Lacy American ☐ Gary Johnson Bill Weld Libertarian		State Senate District 10 Vote for One ☐ Floyd Nicholson Democratic ☐ J Bryan Hope Republican Write-In	
Write-Ins To write-in a candidate, darken the oval beside "Write-In" and print the name on the line provided.				State House of Representatives District 12 Vote for One ☐ Anne Parks Democratic ☐ Jennings G McAbee Sr Republican Write-In	
Straight Party Vote - If you make a straight party selection, you are selecting all candidates of that party on this ballot. - Any vote cast for an individual candidate will take precedence over your straight party selection. - Nonpartisan offices and questions are not included in the straight party vote and must be marked individually.				Solicitor Circuit 8. Vote for One ☐ David Stumbo Republican Write-In	
STRAIGHT PARTY ☐ Democratic ☐ Working Families ☐ Constitution ☐ Independence ☐ Green ☐ Republican ☐ American ☐ Libertarian		U.S. Senate Vote for One ☐ Thomas Dixon Democratic ☐ Thomas Dixon Working Families ☐ Bill Bledsoe Constitution ☐ Thomas Dixon Green ☐ Tim Scott Republican ☐ Rebel Michael Scarborough American ☐ Bill Bledsoe Libertarian Write-In		Sheriff Vote for One ☐ Arnie Fisher Democratic ☐ Dennis Kelly Republican Write-In	
		U.S. House of Representatives District 3 Vote for One ☐ Hosea Cleveland Democratic		Clerk of Court Vote for One ☐ Chastity Copeland Republican Write-In	
				Coroner Vote for One	

D	E	F
Soil and Water District Commission Vote for One ☐ Jan Figueira Nonpartisan ☐ _____ Write-In	(12) \$66,326 for the construction of a pedestrian trail in the Promised Land community; (13) \$33,163 for the construction of restroom facilities at Cokesbury College; (14) \$27,636 for the renovation of the Brewer Center in Greenwood; (15) \$1,326,535 for the purchase of a records management system for the Greenwood County Sheriff's Office and the Greenwood Police Department; (16) \$1,747,000 for the modeling and study of flooding within watersheds of Greenwood County; (17) \$11,942,770 for the widening of Highway 246 from its intersection with Highway 221 to Emerald Road; (18) \$3,397,273 for the rehabilitation of Katherine Hall in Ware Shoals; (19) \$429,939 for the repair and maintenance of the Greenwood County Detention Center; (20) \$208,998 for the purchase of a case management system for the Eighth Circuit Solicitor's Office; (21) \$358,283 for the installation of fiber optic cable and related equipment on the campus of the Greenwood Genetic Center; (22) \$2,447,774 for the construction of the Carolina Avenue Connector, a new road with related infrastructure between South Main Street and the campus of the Greenwood Genetic Center on Liner Circle in Greenwood; (23) \$685,987 for the renovation of the Arts Center at the Federal Building in Greenwood, including but not limited to the replacement of the roof and certain flooring, and painting of the exterior; (24) \$1,221,806 for the construction of an exhibition hall replicating the former Southern Passenger Depot for the Railroad Historical Center; (25) \$1,468,664 for the purchase of a platform fire truck and related equipment for the City of Greenwood Fire Department; (26) \$1,223,887 for the placement of lines for water service and fire suppression in the area of Harris Landing, and; (27) \$4,895,548 for the placement of lines for water services and fire suppression in the area of Highway 25 South.	☐ Yes, in favor of the question ☐ No, opposed to the question
LOCAL QUESTION		
Capital Project Sales Tax Referendum Must a special one percent (1%) sales and use tax be imposed in Greenwood County for not more than eight (8) years to raise the amounts specified for the following purposes? (1) \$6,099,696 for the construction of the Upstate Center for Manufacturing Excellence on the campus of Piedmont Technical College in Greenwood; (2) \$5,578,754 for the construction or improvement of public parks in Hodges and Troy, the Grace Street Park, the Emma Gaskins Magnolia Park and a new public park in the area of Foundry Road in Greenwood, the Ninety Six Town Park in Ninety Six, and bike and pedestrian trails in and around Greenwood; (3) \$4,858,409 for the implementation of a countywide public safety radio system; (4) \$646,592 for the expansion of the Benjamin E. Mays Historical Site; (5) \$14,242,921 for the implementation of the Fire Service Master Plan adopted by the Greenwood County Council, including but not limited to the renovation and equipping of existing fire stations, the construction and equipping of new fire stations, and the construction of a public safety training facility; (6) \$810,000 for the implementation of the Lake Greenwood Master Plan, to possibly include but not be limited to the construction of public access areas, restroom facilities, and refuse collection facilities, and landscaping and signage on entrance ways; (7) \$1,569,339 for the replacement of certain sewer lines and the construction or refurbishment of a pump station in the area of the Camell Bridge in Ware Shoals; (8) \$671,456 for the replacement of water lines in the area of Pinehaven, Saluda and Wingard Streets in Ninety Six; (9) \$10,723,817 for the renovation and expansion of athletic facilities at _____ The proceeds of the tax shall be used for _____		

ELECTRONICALLY FILED 2019 JUN 05 4:54 PM - GALLIHOUS - COMMON PLEAS - CASE#2019CP000069

OFFICIAL BALLOT - AIKEN COUNTY
STATEWIDE GENERAL ELECTION
NOVEMBER 6, 2018

ELECTRONICALLY FILED - 2019 Jun 05 4:34 PM - CALHOUN - COMMON PLEAS - CASE#2019CP0900049

A	B	C
Absentee	South Carolina	Absentee
Instructions Marking Your Ballot  - To vote, darken the oval beside your choice using a No. 2 pencil or blue or black pen. Do not make marks outside the oval. - Vote for one candidate in each contest unless otherwise indicated. - You do not have to vote in every contest. - To change or correct your ballot, request a replacement from the election official. Write-Ins - To write-in a candidate, darken the oval beside "Write-In" and print the name on the line provided. Straight Party Vote - If you make a straight party selection, you are selecting all candidates of that party on this ballot. - Any vote cast for an individual candidate will take precedence over your straight party selection. - Nonpartisan offices and questions are not included in the straight party vote and must be marked individually.	Secretary of State Vote for One ☐ Melvin T Whittenburg Democratic ☐ Mark Hammond Republican ☐ Write-In State Treasurer Vote for One ☐ Rosalyn L Glenn Democratic ☐ Rosalyn Glenn Working Families ☐ Curtis Loftis Republican ☐ Sarah Work American ☐ Write-In Attorney General Vote for One ☐ Constance Anastopoulos Democratic ☐ Constance Anastopoulos Working Families ☐ Alan Wilson Republican ☐ Write-In Comptroller General Vote for One ☐ Richard Eckstrom Republican ☐ Write-In State Superintendent of Education Vote for One ☐ Israel Romero Democratic ☐ Molly Mitchell Spearman Republican ☐ Write-In Commissioner of Agriculture Vote for One ☐ Chris Nelums United Citizens ☐ David Edmond Green ☐ Hugh Weathers Republican ☐ Write-In	U.S. House of Representatives District 2 Vote for One ☐ Sean Carrigan Democratic ☐ Joe Wilson Republican ☐ Sonny Narang American ☐ Write-In State House of Representatives District 81 Vote for One ☐ Elise Fox Democratic ☐ Elise Fox Working Families ☐ Bart Blackwell Republican ☐ Write-In County Council District 6 Vote for One ☐ Philip A Napier Republican ☐ Write-In School Board District 6 Vote for One ☐ Tim Lintner Nonpartisan ☐ Dwight Smith Nonpartisan ☐ Write-In Soil and Water District Commission Vote for up to Two ☐ Melanie Shull Nonpartisan ☐ Write-In ☐ Write-In CONTINUE VOTING ON BACK

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ATTENTION VOTER: DO NOT REMOVE STUB FROM BALLOT

OFFICIAL BALLOT - AIKEN COUNTY
STATEWIDE GENERAL ELECTION
NOVEMBER 6, 2018

No. 00004

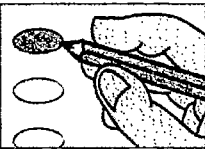
Absentee

Initials of Issuing Officer

[illegible]

OFFICIAL BALLOT - LANCASTER COUNTY
GENERAL ELECTION
NOVEMBER 4, 2014

ELECTRONICALLY FILED - 2014 Jun 05 4:34 PM - CALHOUN - COMMON PLEAS - CASE#2019C0900049

A	B	C
Absentee	South Carolina	Absentee
Instructions Marking Your Ballot  - To vote, darken the oval beside your choice using a No. 2 pencil or blue or black pen. Do not make marks outside the oval. - Vote for one candidate in each contest unless otherwise indicated. - You do not have to vote in every contest. - To change or correct your ballot, request a replacement from the election official. Write-Ins - To write-in a candidate, darken the oval beside "Write-In" and print the name on the line provided. Straight Party Vote - If you make a straight party selection, you are selecting all candidates of that party on this ballot. - Any vote cast for an individual candidate will take precedence over your straight party selection. - Nonpartisan offices and questions are not included in the straight party vote and must be marked individually. STRAIGHT PARTY ☐ Libertarian ☐ Democratic ☐ Working Families ☐ United Citizens ☐ Republican ☐ American Governor Vote for One ☐ Steve French Libertarian ☐ Tom J Ervin Peloton ☐ Vincent Sheheen Democratic ☐ Morgan Bruce Reeves United Citizens ☐ Nikki R Haley Republican ☐ Write-In	Lieutenant Governor Vote for One ☐ Bakari Sellers Democratic ☐ Henry McMaster Republican ☐ Write-In Secretary of State Vote for One ☐ Ginny Deerin Democratic ☐ Mark Hammond Republican ☐ Write-In State Treasurer Vote for One ☐ Curtis Loftis Republican ☐ Write-In Attorney General Vote for One ☐ Pamela Digs Democratic ☐ Alan Wilson Republican ☐ Write-In Comptroller General Vote for One ☐ Kyle Herbert Democratic ☐ Richard Eckstrom Republican ☐ Write-In State Superintendent of Education Vote for One ☐ Tom Thompson Democratic ☐ Molly Mitchell Spearman Republican ☐ Ed Murray American ☐ Write-In Adjutant General Vote for One ☐ Bob Livingston Republican ☐ Write-In	Commissioner of Agriculture Vote for One ☐ David Edmond United Citizens ☐ Hugh E Weathers Republican ☐ Emile DeFelice American ☐ Write-In U.S. Senate Vote for One ☐ Victor Kocher Libertarian ☐ Thomas Ravenel Peloton ☐ Brad Hutto Democratic ☐ Brad Hutto Working Families ☐ Lindsey Graham Republican ☐ Write-In U.S. Senate (Unexpired Term) Vote for One ☐ Joyce Dickerson Democratic ☐ Tim Scott Republican ☐ Jill Bossi American ☐ Write-In U.S. House of Representatives District 5 Vote for One ☐ Tom Adams Democratic ☐ Tom Adams Working Families ☐ Mick Mulvaney Republican ☐ Write-In State House of Representatives District 85 Vote for One ☐ Jay Lucas Republican ☐ Write-In CONTINUE VOTING ON BACK

7.4.2.0 / 012303-14 © Election Systems & Software, Inc. 1991, 2002

ATTENTION VOTER: DO NOT REMOVE STUB FROM BALLOT

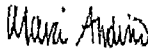
OFFICIAL BALLOT - LANCASTER COUNTY
GENERAL ELECTION
NOVEMBER 4, 2014

No. 00001

Absentee

Initials of Issuing Officer

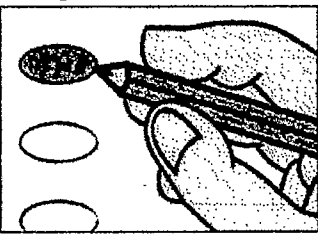
D	Absentee	E	South Carolina	F	Absentee
	Solicitor Circuit 6 Vote for One ☐ William P Fritch Democratic ☐ Randy Newman Jr Republican ☐ Write-In		STATEWIDE CONSTITUTIONAL AMENDMENTS Amendment 1 Must Section 7, Article XVII of the Constitution of this State be amended so as to provide that a raffle is not a lottery prohibited by this section, if the raffle is conducted by a nonprofit organization for charitable, religious, fraternal, educational, or other eleemosynary purposes, and the general law defines the type of organization authorized to operate and conduct the raffle, provides standards for the operation and conduct of the raffle, provides for the use of proceeds for charitable, religious, fraternal, educational, or other eleemosynary purposes, provides penalties for violations, and provides for other laws necessary to ensure the proper functioning, honesty, and integrity of the raffles, but in the absence of any general law, then the raffle remains a prohibited lottery? Explanation A "Yes" vote will allow certain nonprofit organizations to conduct raffles and use the proceeds for charitable, religious, or educational purposes. A "No" vote maintains the current law that considers a raffle to be a lottery and is prohibited.		Sales and Use Tax Referendum Must a special one percent sales and use tax (the "Tax") be imposed in Lancaster County (the "County") for not more than seven (7) years from the date of imposition to raise the amounts specified for the following purposes and in order to pay the costs (including rights-of-way acquisition and architectural, engineering, legal, administrative costs, and related fees) of the projects described below; pending the receipt of such sales and use tax, must the County also be authorized to issue and sell, either as a single issue or as several separate issues, general obligation bonds (the "Bonds") of the County in the aggregate principal amount of not exceeding \$18,500,000 to be paid from the sales and use tax to be received and pledge the sales and use tax to be received to the payment of the principal of and interest on the Bonds? \$28,000,000 - Road Improvements and resurfacing for roads owned by the County and made owned by the South Carolina Department of Transportation; \$7,500,000 - Acquisition and construction of a public safety and time-lapse video surveillance system; \$8,000,000 - Constructing and landscaping improvements to the library system; and \$284,000 - Constructing and equipping a forensics crime laboratory facility for the County Sheriff's Department. The proceeds of the Bonds will be expended as follows: \$12,000,000 for the roadway improvements and \$4,500,000 for the communications system. The proceeds of the Tax will be used to pay directly the cost of the portion of the projects not funded with Bond proceeds in the following priority: (1) forensics crime laboratory; (2) the completion of the communications system; (3) library system; and (4) resurfacing roadway improvements. TOTAL COST OF ALL PROJECTS: \$41,788,000. The maximum amount of net proceeds of the Tax that will be pledged for and used for the payment of the principal of and interest on the Bonds must not exceed \$18,500,000. CONDITIONS AND RESTRICTIONS ON THE USE OF SALES AND USE TAX REVENUE COLLECTED UNDER THE CAPITAL PROJECT SALES TAX ACT: The Tax shall be expended for design, engineering, construction or improvement of the capital projects listed above. Net proceeds of the Tax, if approved, must be expended for the purposes stated and in the priority listed. The expenditure of revenues from the Tax, if approved, shall be subject to acquisition of title, right-of-way, design and engineering considerations, environmental issues, the discovery of historic sites or endangered species, the receipt of necessary permits, funding of projects from other sources, bids in excess of project estimates, qualifications of bidders, cost overruns, exhaustion or insufficiency of Tax revenues to complete all projects in order and priority provided herein and other unforeseen circumstances and conditions. If Tax revenues are insufficient to fund completely all projects, the lowest priority project will not be fully funded.
	Probate Judge Vote for One ☐ Sandy Estridge Democratic ☐ Jerry L Holt Republican ☐ Write-In		Amendment 2 Must Section 7, Article VI of the Constitution of this State relating to state constitutional officers and Section 4, Article XIV relating to the Adjutant General and his staff officers be amended so as to update references to his title; to provide that the position of Adjutant General is recognized as holding the rank of Major General, as opposed to Brigadier General; to provide that upon the expiration of the term of the Adjutant General serving in office on the date of the ratification of this provision, the Adjutant General must be appointed by the Governor, upon the advice and consent of the Senate; to provide that the appointed Adjutant General serve for a term not co-terminus with the Governor and may be reappointed only for cause; and to require the General Assembly to provide by law for the term, duties, compensation, and qualifications for office, the procedures by which the appointment is made, and the procedures by which the Adjutant General may be removed from office? Explanation A "Yes" vote will require, beginning in 2018, the Adjutant General be appointed by the Governor with consent of the Senate. The General Assembly will set the term, duties, compensation and qualifications for office and procedures by which appointment is made and how an Adjutant General can be removed from office. A "No" vote maintains the current method of electing an Adjutant General.		☐ Yes ☐ No
	Soil and Water District Commission Vote for up to Two ☐ Nancy Fleming Nonpartisan ☐ Write-In ☐ Write-In				
	School Board District 3 Vote for One ☐ Bobby Parker Nonpartisan ☐ Write-In				
	Cane Creek Watershed Conservation District Vote for up to Two ☐ Jim Boiling Nonpartisan ☐ Tony M Sistare Nonpartisan ☐ Write-In ☐ Write-In				


 Mari Andino
 Executive Director
 South Carolina State Election Commission

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**OFFICIAL BALLOT - MCCORMICK COUNTY
GENERAL ELECTION
NOVEMBER 8, 2016**

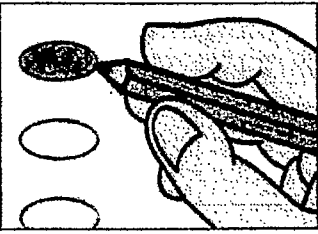
ELECTRONICALLY FILED - 2019 Jun 05 4:34 PM - CALHOUN - COMMON PLEAS - CASE#2019CP0900049

	A Absentee	B South Carolina	C Absentee
Instructions Marking Your Ballot  - To vote, darken the oval beside your choice using a No. 2 pencil or blue or black pen. Do not make marks outside the oval. - Vote for one candidate in each contest unless otherwise indicated. - You do not have to vote in every contest. - To change or correct your ballot, request a replacement from the election official. Write-Ins • To write-in a candidate, darken the oval beside "Write-In" and print the name on the line provided. Straight Party Vote • If you make a straight party selection, you are selecting all candidates of that party on this ballot. • Any vote cast for an individual candidate will take precedence over your straight party selection. • Nonpartisan offices and questions are not included in the straight party vote and must be marked individually. STRAIGHT PARTY ☐ Democratic ☐ Working Families ☐ Constitution ☐ Independence ☐ Green ☐ Republican ☐ American ☐ Libertarian	President and Vice President Vote for One ☐ Hillary Rodham Clinton Timothy Michael Kaine Democratic ☐ Darrell Castle Scott Bradley Constitution ☐ Evan McMullin Nathan Johnson Independence ☐ Jill Stein Ajamu Baraka Green ☐ Donald J Trump Michael R Pence Republican ☐ Peter Skewes Michael Lacy American ☐ Gary Johnson Bill Weld Libertarian	State House of Representatives District 12 Vote for One ☐ Anne Parks Democratic ☐ Jennings G McAbee Sr Republican ☐ Write-In	
		Solicitor Circuit 11 Vote for One ☐ Rick Hubbard Republican ☐ Write-In	
		Sheriff Vote for One ☐ LeRoy Martin Petition ☐ J R Jones Democratic ☐ Clarke A Stearns Republican ☐ Write-In	
	U.S. Senate Vote for One ☐ Thomas Dixon Democratic ☐ Thomas Dixon Working Families ☐ Bill Bledsoe Constitution ☐ Thomas Dixon Green ☐ Tim Scott Republican ☐ Rebel Michael Scarborough American ☐ Bill Bledsoe Libertarian ☐ Write-In	Clerk of Court Vote for One ☐ Gwendolyn Gwen Chiles Democratic ☐ Write-In	
		Coroner Vote for One ☐ Faye Leverette Puckett Democratic ☐ Write-In	
	U.S. House of Representatives District 3 Vote for One ☐ Hosea Cleveland Democratic	County Council District 1 Vote for One ☐ Henry Banks Democratic ☐ Kevin Busbee Republican ☐ Write-In	

D Absentee	E South Carolina	F Absentee
School Board Vote for up to Four ☐ Karen Beckner Nonpartisan ☐ Christine Lee Nonpartisan ☐ Heather McNally Nonpartisan ☐ James Bernard Moss Nonpartisan ☐ Eddie L Talbert Nonpartisan ☐ Don Tummons Nonpartisan ☐ George W Yeldell Nonpartisan ☐ Write-In ☐ Write-In ☐ Write-In ☐ Write-In	(Turnout and SCBA Packs) \$350,000 6 Mims Multi Purpose Sports and Conference Center (Life Safety Renovation) \$1,000,000 7 Town of McCormick Public Safety Office Renovations \$12,500 8 McCormick County Arts Council (Life Safety Renovations) \$ 50,739 Total Amount For All Listed Projects \$3,576,000	
LOCAL QUESTION	☐ Yes, in favor of the question at the County Council of McCormick County be authorized not exceeding ☐ No, opposed to the question	
Capital Project Sales Tax Referendum Must a special one percent sales and use tax be imposed in McCormick County for not more than eight (8) years to raise the amounts specified for the following purposes: The cost of acquiring (including, in certain instances, the acquisition of real property), constructing, furnishing, and equipping the following projects in the priority as listed: 1 Public Safety Emergency Radio System \$697,735 2 Emergency Operations Center \$1,878,265	\$3,576,000 principal amount of general obligation bonds of McCormick County; provided that the proceeds of such bonds shall be applied to defray the costs of the designated projects, plus issuance costs, and provided further that in the event the sales and use tax to be imposed as stated herein is inadequate for the payment of such bonds, the bonds shall be payable from ad valorem taxes imposed on all taxable property in McCormick County?	

**OFFICIAL BALLOT - WILLIAMSBURG COUNTY
GENERAL ELECTION
NOVEMBER 8, 2016**

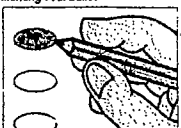
ELECTRONICALLY FILED - 2019 JUN 05 4:34 PM - CAL HOUN - COMMON PLEAS - CASE#2019CP0900049

A	Absentee	B	South Carolina	C	Absentee
Instructions Marking Your Ballot  • To vote, darken the oval beside your choice using a No. 2 pencil or blue or black pen. Do not make marks outside the oval. • Vote for one candidate in each contest unless otherwise indicated. • You do not have to vote in every contest. • To change or correct your ballot, request a replacement from the election official. Write-Ins • To write-in a candidate, darken the oval beside "Write-In" and print the name on the line provided. Straight Party Vote • If you make a straight party selection, you are selecting all candidates of that party on this ballot. • Any vote cast for an individual candidate will take precedence over your straight party selection. • Nonpartisan offices and questions are not included in the straight party vote and must be marked individually.		President and Vice President Vote for One ☐ Hillary Rodham Clinton Timothy Michael Kaine Democratic ☐ Darrell Castle Scott Bradley Constitution ☐ Evan McMullin Nathan Johnson Independence ☐ Jill Stein Ajamu Baraka Green ☐ Donald J Trump Michael R Pence Republican ☐ Peter Skewes Michael Lacy American ☐ Gary Johnson Bill Weld Libertarian		State Senate District 32 Vote for One ☐ Ronnie A Sabb Democratic ☐ Write-In State House of Representative District 101 Vote for One ☐ Cezar McKnight Democratic ☐ Write-In Sheriff Vote for One ☐ Stephen R Gardner Democratic ☐ Write-In Probate Judge Vote for One ☐ Betty F Matthews Democratic ☐ Write-In Clerk of Court Vote for One ☐ Sharon Washington Staggers Democratic ☐ Write-In Coroner Vote for One ☐ Harrison McKnight Democratic ☐ Write-In County Council District 4 Vote for One ☐ Eddie Butch Woods Jr Democratic ☐ Write-In	
STRAIGHT PARTY ☐ Democratic ☐ Working Families ☐ Constitution ☐ Independence ☐ Green ☐ Republican ☐ American ☐ Libertarian		U.S. Senate Vote for One ☐ Thomas Dixon Democratic ☐ Thomas Dixon Working Families ☐ Bill Bledsoe Constitution ☐ Thomas Dixon Green ☐ Tim Scott Republican ☐ Rebel Michael Scarborough American ☐ Bill Bledsoe Libertarian ☐ Write-In			
		U.S. House of Representatives District 6 Vote for One ☐ James E Jim Clyburn Democratic			

D Absentee	E South Carolina	F Absentee
LOCAL QUESTION Capital Projects Sales Tax Question Must a special one percent sales and use tax (the "Tax") be imposed in Williamsburg County (the "County") for not more than eight (8) years from the date of imposition to raise the amounts specified for the following purposes and in order to pay the costs (including land acquisition and architectural, engineering, legal, administrative costs, and related fees) of the following projects: (1) Emergency Management/911 Acquiring, constructing and equipping a county-wide public safety and emergency services communications system including a dispatch center. \$2,457,504 (2) Williamsburg County Fire/EMS Acquiring, constructing and equipping a new County Fire and EMS Headquarters Building \$5,839,000 (3) Town of Kingstree Acquiring, constructing, equipping and acquiring land for a public safety building \$3,340,000 (4) Williamsburg County EMS Acquiring, constructing and equipping an EMS addition for the St. Lawrence Fire Station \$345,000 (5) South Lynches Fire District Acquiring, constructing and equipping a new fire station. South Lynches Fire District serves the Cades, Hebron, Baker Crossroads, Hog Eye, White Oak, Bethesda, Roper Woods, Moore's Crossroads, Springs Crossroads and Clark Crossroads communities in Williamsburg County \$680,000 (6) Town of Greeleyville Acquiring, constructing and equipping a building addition for police headquarters \$250,000 (7) Town of Hemingway Acquiring, constructing and equipping a building addition for police headquarters and town hall \$450,000 (8) Town of Lane Acquiring, constructing and equipping a new community building \$200,000 (9) Town of Stuckey Acquiring, constructing and equipping a new community building \$25,000	and equipping a new Fire Station with Equipment \$845,000 (14) Williamsburg County Environmental Services Acquiring, constructing and equipping new storage building and kennels \$100,000 (15) Williamsburg County Fire Department Acquiring, constructing and equipping a new Fire Station with Equipment \$665,000 (16) Town of Hemingway Upgrades to Hemingway Fire Department and equipment \$700,000 (17) Williamsburg County Sheriff's Department Acquiring, constructing and equipment upgrades to training facility \$1,000,000 (18) Williamsburg County Fire Department Acquiring, constructing and equipping a new fire station \$165,000 (19) Town of Kingstree Acquiring a fully equipped fire engine for the Town of Kingstree \$500,000 (20) Emergency Management Acquiring and equipping new mobile communications command center \$774,805 (21) Williamsburg County Community Development Projects \$1,500,000 (22) Emergency Management/911 Acquiring and upgrading the radio communication infrastructure \$2,500,000 MAXIMUM COST OF THE PROJECTS - \$23,380,309 Pending the receipt of the Tax, must the County also be authorized to issue and sell, either as a single issue or as several separate issues, general obligation bonds (the "Bonds") of the County in the aggregate principal amount of not exceeding \$14,500,000 including cost of issuance of the Bonds to be paid from the Tax? The maximum amount of net proceeds of the Tax which may be applied to the payment of the principal of and interest of the Bonds must not exceed \$18,000,000. The not exceeding \$14,500,00 principal amount of Bonds to be issued together with interest shall be repaid from the Tax which shall be pledged for the repayment of the Bonds. CONDITIONS AND RESTRICTIONS	revenues from the capital projects sales and use tax, if approved, shall be subject to acquisition of title, right-of-way, design and engineering considerations, environmental issues, the discovery of historic sites or endangered species, legal issues, the receipt of necessary permits, funding of projects from other sources, bids in excess of project estimates, qualifications of bidders, cost overruns, exhaustion or insufficiency of net sales and use tax revenues to complete all projects in order and priority provided and other unforeseen ☐ In favor of the question/yes ☐ Opposed to the question/no will not be fully funded. In such event, the lowest priority project(s) will be initiated only upon the condition of availability of funding from other sources to complete the project(s). INSTRUCTIONS TO VOTERS: All qualified electors of the County desiring to vote in favor of imposing the tax for the stated purposes and authorizing the issuance and sale of the Bonds in connection there with as outlined above and subject to the limitations and conditions set forth above, choose "In favor of the question/yes;" if the voter wishes to vote against the question, choose "Opposed to the question/no."

OFFICIAL BALLOT - SUMTER COUNTY
GENERAL ELECTION
NOVEMBER 4, 2014

ELECTRONICALLY FILED - 2014 Jun 05 4:34 PM - CALHOUN - COMMON PLEAS - CASE#2013CP000099

A Absentee		B South Carolina		C Absentee	
Instructions Marking Your Ballot  - To vote, darken the oval beside your choice using a No. 2 pencil or blue or black pen. Do not make marks outside the oval. - Vote for one candidate in each contest unless otherwise indicated. - You do not have to vote in every contest. - To change or correct your ballot, request a replacement from the election official. Write-Ins - To write-in a candidate, darken the oval beside "Write-In" and print the name on the line provided.		State Treasurer Vote for One ☐ Curtis Loftis Republican ☐ Write-In Attorney General Vote for One ☐ Pamela Diggs Democratic ☐ Alan Wilson Republican ☐ Write-In Comptroller General Vote for One ☐ Kyla Herbert Democratic ☐ Richard Ekstrom Republican ☐ Write-In State Superintendent of Education Vote for One ☐ Tom Thompson Democratic ☐ Molly Mitchell Spearman Republican ☐ Ed Murray American ☐ Write-In Adjutant General Vote for One ☐ Bob Livingston Republican ☐ Write-In Commissioner of Agriculture Vote for One ☐ David Edmond United Citizens ☐ Hugh E. Weathers Republican ☐ Emilio DeFolice American ☐ Write-In U.S. Senate Vote for One ☐ Victor Kocher Libertarian ☐ Thomas Ravenel Paladin ☐ Brad Hutto Democratic ☐ Brad Hutto Working Families ☐ Lindsey Graham Republican ☐ Write-In U.S. Senate (Unexpired Term) Vote for One ☐ Joyce Dickerson Democratic ☐ Tim Scott Republican ☐ Jill Bossi American ☐ Write-In		U.S. House of Representatives District 5 Vote for One ☐ Tom Adams Democratic ☐ Tom Adams Working Families ☐ Mick Mulvaney Republican ☐ Write-In State House of Representatives District 50 Vote for One ☐ Grady Brown Democratic ☐ Write-In Solicitor Circuit 3 Vote for One ☐ Ernest Chip Finney III Democratic ☐ Write-In Probate Judge Vote for One ☐ Dale W. Atkinson Democratic ☐ Write-In Soil and Water District Commission Vote for up to Two ☐ Rowland P. Alston Nonpartisan ☐ Betty C. Martin Nonpartisan ☐ Write-In ☐ Write-In School Board District 1 Vote for One ☐ Brian L. Alston Nonpartisan ☐ Linda V. Alston Nonpartisan ☐ Daniel Cook Nonpartisan ☐ Caleb M. Karshaw Jr. Nonpartisan ☐ Philip Marlowe Nonpartisan ☐ Write-In	
Straight Party Vote - If you make a straight party selection, you are selecting all candidates of that party on this ballot. - Any vote cast for an individual candidate will take precedence over your straight party selection. - Nonpartisan offices and questions are not included in the straight party vote and must be marked individually. STRAIGHT PARTY ☐ Libertarian ☐ Democratic ☐ Working Families ☐ United Citizens ☐ Republican ☐ American Governor Vote for One ☐ Steve French Libertarian ☐ Tom J. Ervin Paladin ☐ Vincent Shuheen Democratic ☐ Morgan Bruce Reeves United Citizens ☐ Nikki R. Haley Republican ☐ Write-In Lieutenant Governor Vote for One ☐ Bakari Sellers Democratic ☐ Henry McMaster Republican ☐ Write-In Secretary of State Vote for One ☐ Ginny Deerin Democratic ☐ Mark Hammond Republican ☐ Write-In		CONTINUE VOTING ON BACK			

ATTENTION VOTER: DO NOT REMOVE STUB FROM BALLOT

OFFICIAL BALLOT - SUMTER COUNTY
GENERAL ELECTION
NOVEMBER 4, 2014

No. 00001

Absentee

Initials of Issuing Officer

STATEWIDE CONSTITUTIONAL AMENDMENTS	LOCAL QUESTION
Amendment 1 Must Section 7, Article XVII of the Constitution of this State be amended so as to provide that a raffle is not a lottery prohibited by this section, if the raffle is conducted by a nonprofit organization for charitable, religious, fraternal, educational, or other eleemosynary purposes, and the general law defines the type of organization authorized to operate and conduct the raffle, provides standards for the operation and conduct of the raffle, provides for the use of proceeds for charitable, religious, fraternal, educational, or other eleemosynary purposes, provides penalties for violations, and provides for other laws necessary to ensure the proper functioning, honesty, and integrity of the raffle, but in the absence of any general law, then the raffle remains a prohibited lottery? Explanation A "Yes" vote will allow certain nonprofit organizations to conduct raffles and use the proceeds for charitable, religious, or educational purposes. A "No" vote maintains the current law that considers a raffle to be a lottery and is prohibited. ☐ Yes ☐ No	Pedestrian, streetscape, intersection, traffic calming, lighting, access, and landscaping improvements to the Manning Avenue Corridor and connections to the Southern Gateway project. 7. \$1,000,000-Main Street Corridor. Pedestrian, streetscape, intersection, traffic calming, lighting, access, and landscaping improvements to the Main Street Corridor and connections to the Lafayette Intersection project. (The proceeds of the Capital Project Sales Tax attributable to Projects 1, 6, and 7 may be used as a full or partial match for any one or more federal, state, or local grants with similar purposes, and the timing and priority of these funds may be adjusted to allow and maximize such matching.) 8. \$600,000-Wisdom Hall Road and Wise Drive Intersection. Improvements to the existing right-of-way to relieve congestion at busy entrance near intersection and to improve traffic flow during peak traffic hours. 9. \$500,000-Wisdom Hall Road at Carter Road and Westmark Boulevard. Improvements to existing right-of-way to improve traffic flow during peak traffic hours. 10. \$2,000,000-Administration Building Renovation. Renovation will provide a secure access point and will enhance the security and operations for the Treasurer's Office and other administrative operations in the building. 11. \$2,750,000-Citizen Park Renovation. Renovation will include a new football complex, paved parking, an enhanced walking track, and other improvements. 12. \$300,000-Pleasant Sports and Wellness Center/Recreational Park. Develop "Sports and Wellness Center/Recreational Park" with a multi-sports field, playground equipment, picnic area, restrooms and parking. 13. \$175,000-Marysville Downtown Revitalization. Leverage existing grants to renovate downtown buildings for public purposes. Renovation includes, as a minimum, repairs or replacement of roofs, front facade, location signage, interior public bathrooms, and interior floor and walls. 14. \$4,000,000-Short Pouch Greenway. A pedestrian greenway will connect the City and County vertically from Dillon Park on the north to Saver Lake on the south, creating one several major corridors including the 79778 By-pass, Broad Street, and Delgard Drive. 15. \$1,800,000-County Penins. New paving road projects on 16 miles of dirt roads to ease public travel and emergency vehicle accessibility and to improve maintenance service on other Summit County roads. Roads to be paved include: Alena Drive, Ambrose Drive, Anson Road, Arden Court, Bar Zee Drive, Bennett Drive, Birch Court, Bob White Drive, Breckinridge Drive, Brighton Court, Carleton Drive, Cedarwood Drive, Canana Street, Charles Miller Road, Clark Lane, Daniel Taylor Lane, Evergreen Court, Fourth Street, Gaddy Street, Goodman Road, Hagan Street, Halsey Park Drive, Inverness Court, Joseph Court, Kilbuck Drive, Lewis Court, Lenore Pringle Lane, Livingston Street, Malory Court, Malory Drive, Marjory Road, Old Camden Road, Payne Drive, Peacock Drive, Prairie Road, Rejoice Lane, River Run, Repency Court, River Birch Drive, Robert Perry Road, Rosemary Court, Road Farm Road, S. Harvey Drive, Saxon Road, Sheffield Court, Shattuck Street, Silo Road, Searle Drive, Syracuse Drive, Thatcher Court, Timber Road Road, Tinsman Street, Vision Loop, Whitworth Drive, Winston Road (both ends), Woodfield Court, Woodfield Lane, Yorkville Drive and Zachary Road. 16. \$3,100,000-County Resurfacing. Resurfacing road projects on 16 miles of roads to ease public travel and to improve maintenance service on the other Summit County Roads. Roads to be resurfaced include: Ambrose Court, Annie Court, Annie Street, Arden Street, Arden Court, Arden Drive, Bush Court, Bush Lane, Carmelite Street, Carriage Drive, Chanson Court, Chanson Lane, Cherry Hill Court, Chris Drive, Cobb Court, Concorde Court, Daly Street, Deville Lane, Derek Drive, Drake Street, Edwards Drive, Expedition Drive, Firestone Court, Green View Parkway, Indigo Court, Indigo Drive, Imbabrock Court, Kilmory Lane, Kim Street, Kirt Court, Lacosta Court, Lakewood Circle, Lakewood Court, Lakewood Drive, Lancelator Drive, Lantern Lane, Lee Albin Road, Lennox Street, Lorens Drive, Luna Drive, Marwood Drive, McLaughlin Road, McPhail Street, Mona Court, Morris Way Drive, Move Street, Nicholson Drive, Oak Haven Court, Pinecrest Drive, Potts Lane, Praterwick Court, Ridge Street, Royal Greenwood Court, Sandspur Drive, Sheridan Drive, Sunset Court, Sylvia Way, Tidewater Drive, Torrey Pine Drive, Trent Street, Turnberry Court, Warrick Court, Warfield Drive, Whiteway Drive, Waverly Drive, and Waverly Drive. 17. \$1,500,000-Downtown Building Renovation. Renovation to the City Centre Offices (12 W. Liberty St.) and other downtown properties. Renovation includes, as a minimum, repairs or replacement of roofs, front facade, location signage, interior public bathrooms, and interior floor and walls. 18. \$1,000,000-Downtown Summit Intersections and Infrastructure. Infrastructure and building improvements in the historic central business district will include as a minimum pedestrian crosswalks, utilities, streets and sidewalks, lighting, landscaping to address safety, quality of life and investment in the central business district for economic development. 19. \$4,000,000-Recreation/Recreation/Recreation. Construction of a new playground and renovations to the Recreation Department facility including a new paved walking to service Patrick Hall. 20. \$1,000,000-Renovation of the Industrial Engineering Building at Central Carolina Technical College. The renovation of the 400 building will allow expansion of current programs and provide enhanced training for workforce development. 21. \$2,000,000-Property and Building Acquisition/ Renovation of Building. Purchase and renovate property to provide new workspaces for five (5) state agencies providing services for the Summit Community. 22. \$275,000-Museum Renovation. Clubhouse renovations of the 1940 Lodge will include energy efficient upgrades and will make the facility ADA compliant. 23. \$300,000-Renovations to Animal Control Building. Renovations in the building will provide necessary upgrades and repairs to improve countywide Animal Control services. 24. \$500,000-Palmetto Park Renovation. New lighting system to improve safety for the youth athletes and to increase sports tourism events. 25. \$1,000,000-Courthouse Restoration. Restoration of historic County landmark with handicap accessibility to improve functionality and to upgrade technological work space while providing an energy efficient environment. 26. \$1,000,000-Campbell Library Renovation. Restore building to house a permanent Summit County Military Museum. 27. \$2,300,000-Community Sidewalks. The project expands the community sidewalk network, providing safe walking connections to neighborhoods, schools, parks, and commercial areas to include: North Columbia Drive, Craddock Drive, North Delgard Drive, Highland Avenue, North Lafayette Drive, Lewis Road, Lyman Road, West Oakland Avenue and West Red Bay Road. 28. \$1,000,000-Community-Wide Demolition of Distressed Structures for Open Space. Acquire and/or demolish vacant, abandoned and/or distressed properties and return land to open space, recreation park, other natural use, or return to commercial use. Funds will be used to identify nuisances and engage in a process of removing these structures from our community.
Amendment 2 Must Section 7, Article VI of the Constitution of this State relating to state constitutional officers and Section 4, Article XII relating to the Adjutant General and his staff officers be amended so as to update references to his title to provide that the position of Adjutant General be recognized as holding the rank of Major General, as approved by the Senate to provide that upon the expiration of the term of the Adjutant General serving in office on the date of the ratification of this provision, the Adjutant General must be appointed by the Governor, upon the advice and consent of the Senate; to provide that the appointed Adjutant General serve for a term not continuous with the Governor and may be removed only for cause; and to require the General Assembly to provide by law for the term, duties, compensation, and qualifications for office, the procedures by which the appointment is made, and the procedures by which the Adjutant General may be removed from office? Explanation A "Yes" vote will require, beginning in 2016, the Adjutant General be appointed by the Governor with consent of the Senate. The General Assembly will set the term, duties, compensation and qualifications for office and procedures by which appointment is made and how an Adjutant General can be removed from office. A "No" vote maintains the current method of electing an Adjutant General. ☐ Yes ☐ No	LOCAL QUESTION Referendum; Ballot Question Must a special One Percent Sales And Use Tax be imposed in Summit County (the "County") for not more than seven (7) years, to begin when the current Capital Projects Sales Tax ends on or before May 1, 2016, to raise the amounts specified for the following purposes and to order to pay the costs (including rights-of-way acquisition and architectural, engineering, legal, administrative costs, and related fees) of the projects described below: pending the receipt of such sales and use tax, must the County also be authorized to issue and sell, either as a single issue or as several separate issues, General Obligation Bonds (the "Bonds") of the County in the aggregate principal amount not to exceed \$40,000,000.00 to be paid from the Sales And Use Tax to be received and to pledge the Sales And Use Tax to be received to the payment of the principal of and interest on the Bonds? 1. \$10,000,000-New E911 Emergency Services Facility. New communications infrastructure will provide the updated technology to meet mandated digital radio service, allowing county-wide coverage, and will replace the obsolete analog system. 2. \$5,000,000-Police Station. A new City of Summit Police Department Headquarters. 3. \$5,000,000-Headquarters Fire Station. A new downtown Headquarters Fire Station to serve the City of Summit and County Fire Departments. 4. \$2,000,000-Industrial Infrastructure. Roads, water, and sewer for industrial parks to attract new industry. 5. \$2,000,000-Manning Avenue Bridge. Renovation of the Manning Avenue Bridge. 6. \$4,000,000-Manning Avenue Corridor.

Mari Andrus

Mari Andrus
Executive Director
South Carolina State Election Commission

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ATTENTION VOTER: DO NOT REMOVE STUB FROM BALLOT

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)
South Carolina Public Interest Foundation,)
Amy Hill, and Rebecca Bonnette,)
individually, and on behalf of all others)
similarly situated,)
Plaintiffs,)
v.)
Calhoun County Council,)
Defendants.)

IN THE CIRCUIT COURT
CASE NO: 2019-CP-09-00049

**PLAINTIFFS' REPLY
MEMORANDUM
IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

NOW COME the Plaintiffs, by their undersigned attorney, and submit this Reply Memorandum in Support of Plaintiffs' Motion for Summary Judgment.

STATEMENT OF THE CASE

On August 13, 2018, Defendants ("County Council") enacted a County Council Ordinance providing for the collection of a one cent sales tax, contingent upon a Referendum of the County taxpayers. On November 6, 2018, the County voters passed a Referendum. The tax became effective May 1, 2019.

On April 3, 2019, Plaintiffs ("Taxpayers") filed suit alleging that the projects listed in the Ordinance and the Referendum exceeded the scope of the authorizing statute, and therefore the Ordinance and the Referendum were unlawful. On April 10, 2019, Taxpayers filed a motion for injunctive relief.

On May 6, 2019, the County Council filed an Answer, and on May 16, 2019, County Council moved for Summary Judgment. On May 22, 2019, Taxpayers filed a Cross Motion for Summary Judgment. On May 24, 2019, County Council served a Memorandum of Law in support of their Motion. On May 30, 2019, the Court heard oral argument on the Cross Motions for Summary Judgment.

This matter has three issues. First, does the 30-day statute of limitations in S.C. Code Ann. § 4-10-330(e) and (f) bar this action?

Second, do the projects listed in the Ordinance and Referendum exceed the scope of the authorizing statute, S.C. Code Ann. § 4-10-330?

Third, if the Ordinance and Referendum are unlawful, should this Court redraft them to excise offending portions, or declare them unlawful as a whole?

ARGUMENT

I. THE 30-DAY STATUTE OF LIMITATIONS DOES NOT BAR THIS ACTION.

County Council rely on the 30-day statute of limitations in S.C. Code Ann. § 4-10-330(e) and (f):

(E) . . . The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than November thirtieth to the county governing body and to the Department of Revenue. . . .

(F) 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.

Id. (Emphasis added).

County Council adopted a resolution declaring the results of the referendum on November 26, 2018. Taxpayers filed suit April 3, 2019. County Council contend that the 30-day statute of limitations bars this action.

The wording of the statute demonstrates that the 30-day statute of limitations addresses matters of procedure relating to the election, the certification of the vote count, and the results of the election. It does not address the substantive merits of the content of

the Referendum. Taxpayers do not challenge the procedures of the Referendum, the vote count, or the certification. Taxpayers challenge the legality of the Ordinance and Referendum because they include four illegal purposes. Taxpayers argue that the content of the Referendum exceeds the boundaries of the authorizing act.

County Council rely on several cases enforcing similar brief statutes of limitation. All these cases address procedural issues governing the validity of the vote or preconditions to the vote, or they challenge the vote totals. In *Hite v. Town of West Columbia*, the Supreme Court explained:

The **plaintiffs**, who have appealed, make no contest of the election, the result of which was published, or of the form of any procedure taken by the town council, or the election commissioners. They **contend that the election was held without a petition containing the signatures of a majority of the freeholders in the area to be annexed**, and that without such petition **no jurisdiction was acquired**, and therefore no authority to act, and all action taken in the matter was void.

220 S.C. 59, 63, 66 S.E.3d 427, 428 (1951) (emphasis added). At that time, statute required that a challenge be filed within 90 days. The Court denied the plaintiffs' petition because "no protest was ever filed . . . ; nor was the suit commenced within 90 days from the time the result of the election was declared." 220 S.C. 59, 64, 66 S.E.3d 427, 429 (1951). The challenge was procedural; it was not a challenge to the legality of the substance of the election. Under the statute, the procedural challenges were time-barred.

Similarly, in *Morgan v. Feagin*, the plaintiffs contended that the publication of the notice of the special election "was not precisely timed, and the first appearance of it in that newspaper was in the form of a news item rather than an official notice." 230 S.C. 315, 316-17 95 S.E.2d 621, 622 (1956). The Supreme Court ruled that the plaintiffs had not filed their challenge within 30 days of the election and that challenge was thereby barred. The Court relied on the language of the act governing procedural challenges:

neither the results of such election, as declared by the aforesaid resolution, nor the manner of holding the election shall be open to question except by a suit or proceedings instituted within thirty days from the date of the filing of such certified copy of such resolution.

230 S.C. 315, 317 95 S.E.2d 621, 622 (1956) (emphasis added).

County Council rely on other cases that contain similar holdings. Accordingly, County Council's cases are distinguishable from the Taxpayers' challenge, which contests substance or merits of the Referendum.

At oral argument on May 30, 2019, County Council conceded that if Taxpayers argued that the Ordinance or Referendum were unconstitutional, the 30-day statute of limitations would not bar that challenge. Taxpayers respectfully submit that an argument alleging unconstitutionality is no different from one contending that the Referendum and Ordinance exceed the statutory limits. In both scenarios, the local law must defer to the State law. Accordingly, the 30-day statute of limitations does not bar Taxpayers' challenge.

II. THE ORDINANCE AND THE REFERENDUM EXCEED THE SCOPE OF THE AUTHORIZING STATUTE.

The General Assembly enacted the Capital Projects Sales Tax Act in 1997. The Act contains a list of permissible uses. The Act states, "The ordinance must specify . . . the purpose for which the proceeds of the tax are to be used, . . . and may include the following types of projects." The Act lists such projects in paragraphs (a) through (i). County Council contend that this list is not exclusive and that counties may expand the list. Taxpayers, on the other hand, contend that when the Act says the Ordinance "may include" certain projects, it also holds that the Ordinance may not include projects not listed.

The permitted projects all relate to real property, not personal property, supplies, personnel, or equipment. The Ordinance and Referendum in the case at bar included fire trucks, an ambulance, and communications equipment. These projects are not authorized by the Capital Projects Sales Tax Act.¹

A. The Act does not authorize the purchase of personal property.

The County Council concede that the Capital Projects Sales Tax Act does not explicitly list fire trucks, ambulances, or communications equipment. Nevertheless, County Council contend that the statutory list should be read broadly or expansively, and that this Court should read into the statute to allow the use of the Penny Tax for personal property and equipment. Taxpayers contend that if the General Assembly had intended to include personal property, equipment, and supplies, the General Assembly would have listed them specifically in the Act.

B. The Act's Amendments Demonstrate that the List of Permissible Uses is Exclusive.

After the enactment of the Act, the General Assembly twice amended the Act to expand the list of permissible uses. Taxpayers contend that if the General Assembly had intended the list to be expansive and not limiting from the beginning, it would not have needed to amend the Act twice to expand the list of permissible uses.

In 2004, General Assembly enacted Act 244, which added public parking garages, beach access, and beach re-nourished as permissible uses for the Act. In 2012, the General

¹ The neighboring county, Orangeburg County, agrees with the Taxpayers' position. In its Capital Projects Sales Tax "Facts and Figures," the Orangeburg County website says: "Proceeds must be used for capital/infrastructure projects only: *for example, Roads, Water, Sewer, Municipal Buildings, Community Facilities - Cannot be used for operations, personnel, or equipment.*" <https://orangeburgcounty.org/depts/commDev/cpst/cpst.asp> (italics and bold in original).

Assembly enacted Act 268, which again expanded the list of permissible uses to include dredging, dewatering, construction of spoil sites, and disposal of spoil materials. These statutory amendments demonstrate that the list of permissible uses must be expanded by statute, and not by decisions of the individual counties, nor by expansive readings from the courts. Counties must act only within the confines of the authorizing act.

C. The Act's Wording and Structure Demonstrates that the List of Permissible Uses is Exclusive.

The structure and wording of the Act also demonstrates that the list is exclusive and cannot be expanded by individual counties. S.C. Code Ann. § 4-10-330(A)(1)(a)–(g) contain a list of authorized uses. In addition, sub-item (h) allows counties to join with municipalities and special purpose districts for projects; however, the combination must be “for the projects delineated in subitems (a) through (g).” § 4-10-330(A)(1)(h) (emphasis added). In addition, the statute allows “any combination of the projects described in subitems (a) through (h) of this item.” *Id.* Accordingly, sub-items (h) and (i) emphasize that the counties are not free to expand the list of projects or uses; they must be “delineated” or “described” in the paragraphs (a) through (g).

D. The County May Not Expand the Authorizing Statute.

The appellate courts of this state have not addressed the Capital Projects Sales Tax Act. However, the South Carolina Supreme Court addressed a similar Penny Tax act in *Richland Co. v. Dept. of Revenue*, the Optional Methods for Financing Transportation Facilities Act (Transportation Act), S.C. Code Ann. § 4-37-30. That Penny Tax act, like the Act in the case at bar, requires, “The ordinance must specify . . . the project or projects

... for which the proceeds of the tax are to be used, ... which **may include**” projects listed thereafter in the statute. *Id.* (emphasis added).

The Supreme Court ruled: “The revenues generated from such a tax **must be used in accordance with statutory restrictions** imposed by the General Assembly—namely, proceeds **must be used** for the capital costs of the types of transportation projects identified in the Transportation Act. *Id.* § 4-37-30(A)(15).” *Richland Co. v. Dept. of Revenue*, 422 S.C. 292, 298, 311, 811 S.E.2d 758, 761 (2018) (emphasis added).

The Supreme Court also ruled,

It is axiomatic that **the County’s Ordinance may not expand the scope of expenditures authorized in the enabling provisions of the Transportation Act**, which requires a nexus between expenditures and a transportation-related capital project. *See, e.g.*, S.C. Code Ann. § 4-37-30(A)(1)(a)–(c); *Sinkler v. County of Charleston*, 387 S.C. 67, 76–78, 690 S.E.2d 777, 781–82 (2010) (invalidating a county ordinance that failed to establish a development scheme as contemplated by the relevant enabling legislation and **rejecting the county’s argument that the flexibility and authority conferred by the enabling legislation authorized the county to employ measures beyond the scope of the enabling legislation**); *Holler v. Ellisor*, 259 S.C. 283, 287, 191 S.E.2d 509, 510 (1972) (observing that **local government enactments and regulations “must be authorized by the enabling act**, at least, where they are enacted pursuant to the authority conferred by such act, and **they can be no broader than the statutory grant of power**”).

Richland Co. v. Dept. of Revenue, 422 S.C. 292, 311–12, 811 S.E.2d 758, 768 (2018) (emphasis added).

The Supreme Court found “many suspect expenditures of Penny Tax funds.” *Id.*, 422 S.C. at 312, 811 S.E.2d at 768 (2018). The Court ruled that under those circumstances “an injunction is appropriate.” *Id.* The Supreme Court, **itself**, issued an injunction and ruled, “the County is hereby enjoined from violating the Transportation Act. We direct the circuit court, no later than thirty days following remand, to enter the preliminary

injunction in accordance with this opinion.” *Id.*, 422 S.C. at 311-12, 811 S.E.2d at 768 (2018).

Finally, the Court ruled,

In addition to the challenged expenditures that gave rise to this litigation, we further recognize it may be contended that the County expended Penny Tax funds contrary to the Transportation Act during the pendency of this appeal. If the circuit court determines the County violated the Transportation Act during the pendency of the appeal by expending Penny Tax funds on matters unrelated to a transportation project or unrelated to the direct administration of a transportation project, the circuit court shall order the County to repay the improper expenditures from the County’s general fund.

Id., 422 S.C. 292, 313, n. 9, 811 S.E.2d 758, 769 (2018) (emphasis added).

Just as the Supreme Court issued an injunction in *Richland County* when the County spent Penny Tax funds in violation of the strictures of the enabling act, so too, this Court should enjoin the unlawful expenditure of Penny Tax revenues in this case.

III. THE ORDINANCE, AS A WHOLE, SHOULD BE ENJOINED.

The final issue is whether the Ordinance and Referendum should be enjoined, or whether the Court should simply excise the four impermissible uses from the Ordinance and Referendum and allow the remainder to stand. Taxpayers respectfully suggest that the Ordinance and Referendum must stand or fall, as a whole. The impermissible uses constitute 4 of the 15 uses in the Ordinance and Referendum. The impermissible uses constitute approximately 1/5 of the dollars to be raised by taxation and expended unlawfully. The taxpayers of Calhoun County did not vote for an Ordinance as edited by this Court. They voted for the Ordinance and Referendum as presented by the County Council.

Taxpayers respectfully suggest that this Court, as an institution, is not competent to redraft or edit legislation. Redrafting legislation would violate the Separation of Powers provisions of the South Carolina Constitution, Article 1, Section 8: “In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.” It is the function and province of this Court to rule on judicial matters presented to it, but not to redraft legislation, nor to impose upon the citizens and taxpayers of Calhoun County an Ordinance and Referendum that they did not adopt.

On several occasions, the South Carolina Supreme Court has addressed legislation that violates the Constitutional provision: “Every Act or resolution having the force of law shall relate to but one subject.” South Carolina Constitution, Article 3, Section 17. Taxpayers respectfully suggest that this analysis and reasoning is appropriate for the case at bar. County Council added 4 illegal uses to 11 legal uses, like the General Assembly added unrelated matters to a pending bill, a practice called bob-tailing or log-rolling. When faced with challenges to the practice, the Supreme Court initially ruled that it would decide the “one subject” of the Act and strike from the Act everything that did not relate to that “one subject.” *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *SCPIF v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008).

However, in *American Petroleum Inst. v. S.C. Dept. of Rev.*, the Court re-examined the practice and reversed its prior holdings.

Having found a violation of the constitution, we must consider whether any portion of the Act is severable. Both Petitioners and Respondents urge us to sever section 3 from the Act, as the “offending provision,” if we find that the one subject rule is violated. **However, we find that to sever only part**

of the unconstitutional act would require this Court to go beyond its proper role and to intrude into the province of the legislature. We therefore are constrained to find the entire Act violative of Article III, § 17.

Recent precedent from this Court stands for the proposition that an Act which offends Article III, § 17 of the South Carolina Constitution may merely be shorn of its “offending provision” where “the constitutional portion of the legislation remains complete in itself, wholly independent of that which is rejected, and is of such a character that it may fairly be presumed the legislature would have passed it independent of that which conflicts with the constitution.” *Wilkins*, 362 S.C. at 439, 608 S.E.2d at 584. We take this opportunity to reconsider the remedy for violations of the one subject rule.

First, we find that the notion that the Court may excise an “offending provision” is inherently flawed since all provisions in an act which does not address one subject are “offending” provisions. In the instant case, sections 1 and 2 offend the one subject provision of our constitution equally as much as section 3.

Second, in order to sever the “unconstitutional portion” of an act so as to bring it into harmony with the one subject rule, this Court must ascertain which subject is the “proper” subject, that is, the one actually intended by the General Assembly. In the instant case, while this Court may find that the three provisions of the statute do not concern the same subject, current practice would require the Court to decide whether the proper subject is, for example, sales tax exemptions or fuel blending in order to determine which provision(s) to sever. To examine an act passed in package form, and to then choose which portion to excise and which to keep would require the Court to usurp the prerogative of the General Assembly and thus act as a super-legislature.

We therefore hold that Act 338 is unconstitutional in its entirety.

382 S.C. 572, 578-79, 677 S.E.2d 16, 19 (2009) (emphasis added). Similarly, in this case, for this Court to excise certain illegal provisions from the Ordinance and the Referendum “would require this Court to go beyond its proper role and to intrude into the province of the legislature.” *Id.*²

² More recently, the Supreme Court addressed this issue again and ruled that when the General Assembly added a proviso to the Appropriations Act, the Court could rely on the General Assembly’s determination that the “one subject” of the Appropriations Act was appropriations, and the Court could strike from the Appropriations Act any proviso that was not germane to the “one subject” of appropriations, without invalidating the entire Appropriations Act. *SCPIF v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016).

If this Court rules that the Ordinance and Referendum are unlawful, the County may hold a new referendum, with a lawful list of projects. The projects would be delayed, but the delay can be relatively short, and it is caused by the County's unlawful conduct: its listing of illegal projects in the referendum. This Court should rule that County Council violated the enabling statute, and that that the Ordinance and Referendum are unlawful.

WHEREFORE, Plaintiffs pray the Court to:

1. grant them Summary Judgment,
2. rule that the Referendum and Ordinance exceed the authorizing statute,
3. enjoin the collection and expenditure of the tax,
4. enjoin the issuance of the bonds,
5. grant them costs and attorneys' fees under S.C. Code Ann. § 15-77-300 et seq.,
6. and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,
THE CARPENTER LAW FIRM, PC

/s/ James G. Carpenter
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819 East North Street
Greenville, SC 29601
(864) 235-1269
Attorney for the Plaintiffs

June 5, 2019

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CALHOUN COUNTY

Court of Common Pleas

Brian Gibbons, Circuit Court Judge

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,

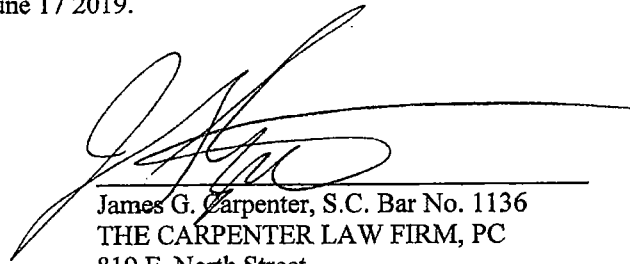
v.

Calhoun County Council, ... Respondents.

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 by the
Honorable Brian Gibbons entered June 17 2019.

June 17, 2019



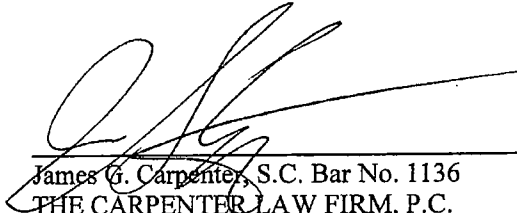
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Attorney for Respondents

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 Monday, June 17, 2019, addressed as follows:

Patrick Flynn,
Charles D. Rhodes III
Michael W. Allen, Jr.
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Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

Brian Gibbons, Circuit Court Judge

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.

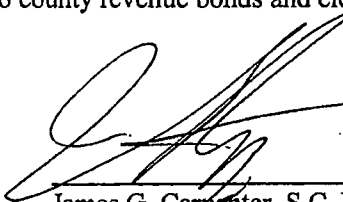
Calhoun County Council, ... Respondents.

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



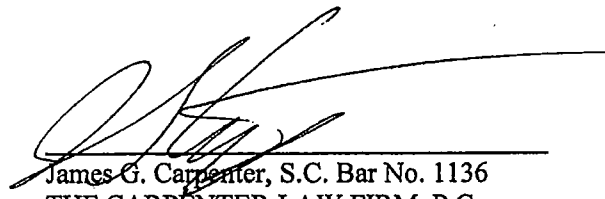
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Certificate of Service

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:

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STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF CALHOUN

2019-CP-09-00049

SOUTH CAROLINA PUBLIC INTEREST)
FOUNDATION, ET AL,)

Plaintiff,)

-VS-

TRANSCRIPT OF RECORD

CALHOUN COUNTY COUNCIL,)

Defendant.)

MAY 30, 2019

CALHOUN COUNTY, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, Presiding Judge

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

SOUTH CAROLINA PUBLIC INTEREST
FOUNDATION

ATTORNEY FOR THE PLAINTIFF: JAMES G. CARPENTER

CALHOUN COUNTY CITY COUNCIL

ATTORNEY FOR THE DEFENDANT: CHARLES D. RHODES, III

Rose Walker
Official Court Reporter
State of South Carolina

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In The Interest of:

South Carolina Public Interest Foundation

Vs.

Calhoun County Council

2019-CP-09-00049

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EXHIBITS

NO EXHIBITS MARKED

COURT PROCEEDINGS

1
2 THE COURT: Since everybody on the first case is
3 present, first matters before the Court this morning are
4 listed on the roster as items six, seven and eight,
5 styled as South Carolina Public Interest Foundation
6 versus Calhoun County Council, docket 19-CP-09-49.
7 Gentlemen, if y'all will introduce yourselves and tell me
8 what we're here for and in which order you'd like to
9 proceed. I see there are several motions and we'll go
10 which ever one you think is best.

11 MR. CARPENTER: Your Honor, I'm James Carpenter and
12 I represent the Plaintiff, South Carolina Public Interest
13 Foundation and the tax payers of Calhoun County. There
14 are three motions before the Court this morning. We
15 filed this case April 3. April 10, we made a Motion for
16 Injunctive Relief, temporary, preliminary injunction. May
17 6, the Defendant answered. May 16, the Defendants filed
18 a Motion for Summary Judgment and on May 22, we made a
19 cross Motion for Summary Judgment. May 24th the
20 Defendants filed a lengthy memorandum and that was the
21 Friday before Memorial Day, and I haven't had time to
22 file a reply memorandum, but I'm ready to argue the case,
23 and I think that both sides are the same, summary
24 judgment, those two motions were to supersede Motion for
25 Temporary, Preliminary Injunction, so I would propose

1 that we go ahead and argue the two motions, cross motions
2 for summary judgment.

3 THE COURT: Alright, what do y'all think about that?

4 MR. RHODES: Your Honor, I think - - that's correct.
5 There's really no - - it's all just kind of matters of
6 law, interpretation of the law.

7 THE COURT: And who are you?

8 MR. RHODES: I'm sorry, I'm C.D. Rhodes. I
9 represent Calhoun County, the Defendants in this matter.
10 With me is Pat Flynn from Pope Firm.

11 THE COURT: Alright, thank you. Go ahead and go
12 forward with the Motion for Summary Judgment. Who filed
13 it first?

14 MR. RHODES: Your Honor, I think we filed it first,
15 summary judgment. I'll kick things off.

16 THE COURT: I've got it pulled up right now. If you
17 want to hand up anything, that is fine.

18 MR. RHODES: Your Honor, I see you have a copy of
19 the memo that we filed on last Friday. Just in case, if I
20 might approach.

21 THE COURT: That would be better, yes.

22 MR. RHODES: Your Honor, this is a Motion for
23 Summary Judgment and briefly start by kind of laying out
24 what got us to this point. In about probably this time
25 last year, the county started the process under the

1 Capital Project Sales Tax Act, whereby the folks here in
2 the county could decide whether to impose upon themselves
3 a new one percent sales tax and could decide exactly how
4 the proceeds of that sales tax would be used, the exact
5 capital project that would be funded with proceeds of
6 that tax. Now, in keeping with the procedures of the act,
7 they created a special commission that was made up of
8 citizens here in the county that were representative of
9 the various municipalities of the county and the county
10 itself to engage the public and to engage with the county
11 and the other municipalities to come up with a list of
12 capital projects, the most essential capital needs of the
13 county and that list was passed on to county council and
14 it was included on the ballot that was put before the
15 voters in November, 2018, election. So, the voters were
16 asked to approve both the imposition of the tax itself
17 and these specific projects that would be funded from
18 that tax. That's exactly what the voters did in
19 November, 18, November 2018 election. So, voters here in
20 the county voted overwhelmingly in favor of the tax
21 itself and the various projects that would be funded.
22 Now, we were - - the county was working to issue bonds
23 this summer in order to deliver some, if not all, the
24 projects here in this county as quickly as they could.
25 Once this law suit was filed, we've all kind of stepped

1 back and were to work through these issues before that
2 happens. But Your Honor, what they're effectively asking
3 for and there a number of specific injunctions that they
4 request, but it really boils down to two primary issues.
5 Number one: They're asking to enjoin the use of the
6 sales tax proceeds on four of the fifteen projects that
7 were approved by the voters. There are two fire trucks
8 on that list. These are fire trucks that were included
9 on the ballots, of course, and they are really essential
10 to equip some fire stations in the Sandy Run part of the
11 county in order to make those fire stations. As to the
12 list, Your Honor, it's on page 4. A list of projects - -
13 it's on page 4 of our memorandum. The two fire trucks
14 and ambulance that is similarly needed to equip EMS
15 facilities here in Calhoun County and finally some
16 communications equipment. Now, this equipment consists
17 not only of 800 megahertz radios, it certainly does
18 include that, but it also includes other improvements to
19 emergency facilities throughout the county, fire
20 stations, police stations that are absolutely needed in
21 order to allow these facilities to communicate with the
22 emergency personnel. So, in order to support these
23 injunctions, the council has really adopted a very narrow
24 reading of the Act. First of all, they are asserting
25 that the thirty-day statute of limitations that's clearly

1 set forth in the Act doesn't apply and to these
2 particular challenges because, as they say, it only
3 applies to challenges to the vote count. Your Honor,
4 that's entirely too narrow of a reading of this
5 particular statute of limitations. Your Honor, I got the
6 Act, here. I can provide it to you if you like. So, Your
7 Honor, I'll direct you to page 3 of my copy. I'm sorry,
8 it's 4-10-330. I think I flipped to that page for you.

9 THE COURT: I've got it.

10 MR. RHODES. It says here in subsection F: Upon the
11 receipt of the returns of the referendum, the county
12 governing body must, by resolution, declare the results
13 thereof. In such event, the results of the referendum,
14 as declared by resolution of county governing body, are
15 not open to question except by a suit of proceeding
16 instituted within thirty days from the date such
17 resolution is adopted.

18 Your Honor, the county adopted that resolution on
19 November 27, 2018. I'm sorry, November 26, 2018. The
20 statute ran on December 27, 2018 and the Plaintiff filed
21 their complaint on April 3, 2019, three months after the
22 statute ran. Your Honor, that resolution was adopted in
23 open session, county council, and was adopted from the
24 public. It was on notice on their agenda. Certainly,
25 it's right there in the Act. They certainly have

1 reviewed the Act to determine its intent on the claim,
2 but they seem to be ignoring the fact they had a thirty-
3 day statute of limitations, which they just simply did
4 not meet. And this idea that the statute only applies to
5 the vote count, really ignores the purpose of the statute
6 of limitations itself. So, Your Honor, there are lots of
7 fairly brief statutes like this throughout the code. And
8 uniformly, they apply to governmental action and they
9 apply in instances where you need certainty as to the
10 results pretty quickly after the action is taken and that
11 certainty is necessary in order to allow public entity
12 itself to take action or to allow the public to act kind
13 of in reliance upon the action that was taken. Your
14 Honor, we see these annexations we cite to the Hite
15 versus West Columbia case. We see these with respect to
16 the issue with the bond. We see these with respect to
17 the enlargement of the boundaries, and every time the
18 Court has considered these breached statute of
19 limitations, they've fallen back on this policy of
20 requiring certainty pretty quickly after the action was
21 so that everybody can move on with their lives. Your
22 Honor, that is exactly the policy that underlines this
23 particular statute of limitations. It's important to
24 note that if you look right above the statute in
25 Subsection C, the election commission, just like it would

1 with any other election, has to go out there and verify
2 the results of the election and they verify the results
3 not only to the county council but also to the Department
4 of Revenue, and it's important that they verify the
5 results with the Department of Revenue because the
6 Department of Revenue is the agency that's actually
7 charged with implementing this particular tax. So, as
8 soon as that election is over, DOR has five months. They
9 have until May 1st to put the tax act actually into
10 effect. And essentially what they did and I'm sure it
11 takes pretty much all of that time to go through and make
12 sure that every cash register for the entire county is
13 set up and ready to put on that one percent tax on May
14 1st. In order for them to do that work and in order for
15 them to undertake that work, they have to start that
16 process almost immediately, and they have to start that
17 process with certainty that when they get to day one the
18 tax is actually going to go into effect. The way that
19 they would read the statute, there's no limit as to when
20 you can challenge the tax itself. You can challenge it
21 seven years into its eighth-year term. Now, keep in
22 mind, Your Honor, that the proceeds of that tax has to be
23 spent in a very specific way. It has to be spent on the
24 projects that are actually outlined in the Act - - I'm
25 sorry, on the ballot. So, if they're validating

1 everything that has happened after you've collected
2 perhaps millions of dollars in taxes, how do you deal
3 with that money? Where does that money go? There's not
4 an efficient process to return that money back to the
5 individuals that actually paid it. There's just no way to
6 go about doing it. So, Your Honor, I would argue that
7 the statute of limitations in this case is it applies to
8 these types of claims. Similar statute of limitation
9 applies to similar types of claims in other cases and
10 there's no reason why it shouldn't apply here. And Your
11 Honor, that should be a bar to the entirety of claims,
12 but at the very least, it should be a bar to their
13 injunction on the collection of the tax itself. So, Your
14 Honor, as far as the merits of the case are concerned, is
15 it also applying similarly, narrow reading to this list
16 itself. So, Your Honor, if you will flip a couple of
17 pages back to the beginning of 4-10-330, you'll see the
18 list that the Act sets forth and as you read the language
19 of the statute, it's clear that that list should be read
20 expansively. Now, we are absolutely not saying that
21 under the Act the county has the ability to spend this
22 money on any capital project that they want in an
23 unfettered way. We absolutely recognize that this list
24 has meaning. However, I think if you read (A)(1), you'll
25 see that the list itself should really be construed in an

1 expansive way. The use of language like - may include.
2 It uses language like - types of project. Your Honor,
3 projects are not in the provisional - - public finance
4 projects are not limited to the brick and mortar. I can
5 assure you that when this courthouse was financed back
6 who knows how many years ago, they didn't only finance
7 the brick and mortar, but they also financed the desks,
8 the chairs and everything else that has to go into a
9 courthouse to make it useful. And similarly, Your Honor,
10 when they are financing fire stations and EMS facilities,
11 you also have to finance the fire trucks, the ambulances,
12 all of the equipment that make that fire station or that
13 EMS facility useful. To look at it as a project as the
14 Act would instruct you to do, that doesn't say you're
15 funding the facility, it says you're funding the project
16 and that encompasses the broad range of projects. It
17 encompasses the brick and mortar itself. It would
18 encompass certainly renovations to the type of facility
19 that's listed here and should also include those types of
20 facilities and that's exactly what the county is doing.
21 They're buying fire trucks that are necessary for fire
22 stations. They're buying ambulances that are necessary
23 to equip the medical facilities, and they're buying
24 communications equipment that is necessary to equip all
25 of the emergency facilities in order to make these useful

1 for the people of the county. Your Honor, I think for
2 those reasons or for those statute of limitations and
3 also under the merits of the case itself, we're entitled
4 to summary judgment.

5 THE COURT: Thank you, sir. Mr. Carpenter, once you
6 respond to his motion, then I will hear your motion and
7 go from there. We'll just do it that way.

8 MR. CARPENTER: I'll address the statute of
9 limitations issue first. If you look at the language of
10 the statute, and I've got another copy of it marked and
11 underlined.

12 THE COURT: No, sir, go ahead. The more papers, the
13 better.

14 MR. CARPENTER: If you look at 4-10-330 over at the
15 end of it, paragraph E and I've highlighted some of the
16 responsibilities that are listed there. Middle of the
17 paragraph E says: The election commission shall conduct
18 the referendum under the election laws of this state,
19 mutatis mutandis, and shall certify the result no later
20 than November 30th to the county governing body and the
21 Department of Revenue.

22 If you look at F: Upon receipt of the returns of
23 the referendum, the county governing body must, by
24 resolution, declare the results thereof. In such event,
25 the results of the referendum, as declared by resolution

1 of the county governing body, are not open to question
2 except by a suit or proceeding instituted within 30 days
3 from the date such resolution is adopted.

4 What is the election commission certifying and what
5 is the county council resolving or certifying as valid?
6 We're not resolving whether to buy a fire truck. We're
7 not resolving whether to buy an ambulance. They're
8 resolving whether the vote passed, whether the vote was
9 procedurally proper. It's that set of issues that is
10 governed by the thirty-day statute of limitations and to
11 contend otherwise, I think is not well thought out. For
12 instance, if it were passed by referendum and the
13 referendum gets certified, any challenge to that is
14 barred unless it's brought within thirty days would
15 create chaos. For instance, let's suppose hypothetically
16 that the county passed a tax like this, had a referendum
17 and one of the things they wanted to do was take
18 \$100,000.00 of that money and give it to the re-election
19 campaign for governor. The thirty days passes. That's
20 beyond - - they want to take \$500,000.00 and give it to
21 the First Baptist Church. Thirty days passes, that's
22 beyond review. They wanted to build a school, one for the
23 white children and one for the African American children
24 and that passed by referendum, thirty days passes, nobody
25 challenged anything. This Court couldn't do a thing

1 about it if thirty days passes. That just can't be the
2 law. The thirty-days statute of limitations relates to
3 the processes of the voting mechanisms. It's related to
4 what the county election commission certified and what
5 the county council approved by everybody by their
6 resolution; is a result of the votes; how many votes were
7 yes and how many votes were no and were the ballots
8 properly formed and all that. Those are the kinds of
9 things that ordinarily appeal through the election
10 commission or administrative processing, but those are
11 the kinds of things that are under the thirty-day statute
12 of limitations. It can't be that a county referendum can
13 override the United States Constitution, South Carolina
14 Constitution, South Carolina state law or nullify those
15 terms. The referendum - - the substance of the
16 referendum must comply with state law and that issue is
17 something that can be challenged by tax payers and the
18 thirty-day statute of limitations does not bar that
19 challenge. Now, we didn't wait seven years out of the
20 eight to bring this challenge. We brought the challenge
21 before the tax went into effect, so there's no laches
22 argument. We filed suit in April. The tax didn't go into
23 effect until May. The preliminary injunction - - tried to
24 get a hearing on it before the tax went into effect and
25 because of scheduling issues, we just couldn't get a

1 hearing on it. But we are not guilty of laches and
2 there's no statute of limitations that bars our challenge
3 to the referendum. And the ordinance . . .

4 THE COURT: I certainly understand your position on
5 the more substantive on this subject. What were the
6 results, I mean, as far as that thirty-day statute of
7 limitations? What about his argument and defense
8 argument that, well, at least as far as the injunction?

9 MR. CARPENTER: Well, I think we agreed beforehand
10 that we kind of bypassed the injunction, gone for summary
11 junction be permanent injunction.

12 THE COURT: Okay.

13 MR. CARPENTER: We're not asking for
14 temporary/preliminary . . .

15 THE COURT: Temporary injunction is moot . . .

16 MR. CARPENTER: Right, we make cross motion for
17 summary judgment and the relief we want is a permanent
18 injunction.

19 THE COURT: Gotcha.

20 MR. CARPENTER: Moving on to the merits of the case,
21 if you look again at the statute that governs. Opposing
22 counsel argued that because 4-10-330 (A)(1), use of the
23 language - may include, then the list of projects below
24 that must be read expansively. And the question is: Is
25 this list permissive or mandatory. When it says: That

1 the project may include these things, is that a mandatory
2 list or is that something that can be expanded upon at
3 the whim of all these individual counties? We contend
4 this is a list that is the exhausted list of what is
5 allowed in the statute. We contend that the statute
6 allows a certain kind of expenditures be based from this
7 tax and it doesn't allow the kind of expenditures that
8 are not in this list, but they contend that it may
9 include - - I think they concede that fire trucks are not
10 listed in this list of permissive, permitted use. I
11 think they concede that ambulances are not listed in this
12 list. I think they concede that communications equipment
13 is not in this list. Everything in this list basically
14 relates to real property, doing something with real
15 property, not personal property, and that's why we
16 brought this lawsuit because state statutes governs how
17 this tax is to be used and we have a county that's
18 decided to use it beyond the permitted boundaries of the
19 state's statute and that simply is unlawful. Now, to my
20 knowledge, there's no appellate court construing this
21 particular statute, but there's a 2018 Supreme Court
22 opinion construing another penny tax statute that uses
23 the same language, and I have a copy of that. I just
24 made one copy that I will hand up to you. It's 4-37-30
25 is penny tax statute that relates to sales and use taxes

1 transportation facilities. First page relates to the
2 language we're talking about. It says: On the
3 transportation penny tax, the following projects - - the
4 wording - may include the following projects, list a
5 three-category project. As I said, there was a case in
6 2018 that went to the Supreme Court on that statute and
7 it was called Richland County versus South Carolina
8 Department of Revenue. I have a copy of that case here
9 that I think is very important for our purposes today.

10 THE COURT: Yes, sir. What's the cite?

11 MR. CARPENTER: 422 South Carolina 292. The
12 Richland County passed a penny tax for transportation
13 purposes and it was going to run twenty years and
14 Richland County being a big, prosperous county, they were
15 bringing in millions of dollars. They set up all these
16 programs and they started using it in a variety of ways.
17 The Department of Revenue started doing an audit of all
18 the ways they were using the penny tax and they came to
19 believe that they were using it well beyond anything
20 permitted by the statute, and they went back and forth
21 and had correspondence back and forth and came to a
22 stalemate basically. The Department of Revenue said:
23 Until you straighten out what you're using this penny tax
24 for, we're not going to remit any of the penny tax back
25 to you. And of course, they cut off the funding and

1 Richland County became quite upset about that. Richland
2 County filed suit against the Department of Revenue
3 saying you've got a mandatory duty to give us back our
4 penny tax money and Department of Revenue says: You have
5 the duty to follow the statute and you're not following
6 the statute, until you do, we're not giving it to you.
7 So, they went to court and Judge Cooper heard the
8 argument there in Richland County. They asked for
9 various relief. The Department of Revenue asked for an
10 injunction. Richland County asked for mandamus. Richland
11 County asked for injunction. Department of Revenue asked
12 for a receiver to be appointed. Judge Cooper ruled that
13 the duty to remit the money back to Richland County is
14 mandatory. Richland County also said the Department of
15 Revenue doesn't have standing to bring this lawsuit.
16 Judge Cooper rejected that. In any event, it all went to
17 the Supreme Court, went through the Court of Appeals - -
18 the Supreme Court ruled that Richland County had been
19 violating the terms of the penny tax Act. They were using
20 it for purposes that were not authorized by the Act. The
21 Supreme Court itself issued an injunction to Richland
22 County saying, don't use any more penny tax funds for
23 purposes that violate the enabling statute. And just in
24 case you need guidance, the Department of Revenue has
25 issued this memorandum telling you what are permissible

1 uses and what are not permissible uses and until the
2 final court issues its own injunction, you're going to
3 follow those and the Supreme Court directed the final
4 court to issue its own, more fuller, complete injunction
5 to make sure that Richland County didn't spend the penny
6 tax monies in violation of the Penny Tax Act and if they
7 did, if they had been spending in violation of the Penny
8 Tax Act during the pendency of the appeal, Richland
9 County had to pay back those pennies, so the Supreme
10 Court was very strong on this that the enabling statute
11 controlled and the county, either under our rule or under
12 other theory, had the right to expand on the permitted
13 purposes of this penny tax. Now, the reason that I think
14 that's important is, if you look at the statute that
15 governs the transportation penny tax, it has the same
16 language as the issue here that the projects may include
17 the following and the Supreme Court didn't have any
18 trouble saying that those projects are what's allowed and
19 anything else is not allowed. The Supreme Court said a
20 lot of other things in there that I think are relevant to
21 our consideration today. If I could direct the Court's
22 attention to the various places I have in bold and
23 underlined. Page 4 of the opinion: DOR counterclaiming
24 seeking a declaration of county's expenditures were
25 unlawful, an injunction - - and the Supreme Court says on

1 page 4: DOR is entitled to injunction requiring the
2 county to spend the funds generated by the tax solely on
3 transportation related projects in accordance with the
4 law. They enforced the enabling statute.

5 THE COURT: So, in other words, you're arguing that
6 the statute should be strictly construed rather than . .

7 MR. CARPENTER: That's right. When it says, it may
8 include these projects, that's all been made exclusive.
9 It doesn't include these and half a dozen others. When
10 the Penny Tax Act says you do this, you can't do anything
11 else.

12 THE COURT: If the legislature had intended for all
13 this other stuff to be allowed, penny sales tax would've
14 specifically included in the statute.

15 MR. CARPERNTER: Well, that's right and in our case,
16 they did twice. In our memorandum, attached to our
17 memorandum in support of Motion for Summary Judgment . .

18 THE COURT: You have an extra copy of . . .

19 MR. CARPENTER: I'll hand you mine, Your Honor.

20 THE COURT: Thank you.

21 MR. CARPENTER: I attached two Acts of General
22 Assembly, and I'm opening it to Act 268, underlined in
23 bold. Act 268, 2012, was an Act to specifically expand
24 the permissible uses of this penny tax we're talking
25 about here today. Also, Act 244 which is behind,

1 attached the memo after Act 268, 2012. Act 244 of 2004,
2 there's another separate, legislative enactment that
3 specifically, explicitly expands the permissible uses of
4 this capital penny tax that were talking about here. Not
5 only would the General Assembly have specifically listed
6 after they made the initial list twice - - I think they
7 made initial list in '97, twice since then, they've
8 expanded the permissible list, and it expanded like the
9 county argues, there wouldn't be any need for Act 244,
10 2004 or Act 268 of 2012, but because I think I'm right,
11 that the list is exclusive, the General Assembly passed
12 statutes twice that specifically broadens the list of
13 permitted uses for this penny tax.

14 THE COURT: And the broadens didn't include fire
15 trucks, communications devices and emergency . . .

16 MR. CARPENTER: It did not. Another thing that
17 seems to be significant is if you look at the statute
18 again, 4-10-330, underlines what I handed up to you, I
19 think, first, if you look at paragraph (A)(1)(H)(I),
20 bottom of first page, one of the permissible uses is:
21 jointly operated projects of the county, a
22 municipalities, special purpose district, and school
23 district or any combination of those entities for the
24 projects delineated in subitems (a) through (g). Those
25 projects delineated above says to me that is an exclusive

1 list. Put two or three of them together that have to be
2 delineated in the list above that. That's in the
3 language of the statute itself. Paragraph I, I think
4 repeats the same concept. Reads: any combination of the
5 projects described in subitems (a) through (h) of this
6 item. So, the General Assembly, I think on multiple
7 occasions, have made it very clear that this list is an
8 exclusive list and if we've got to run this capital penny
9 tax, you have to spend it on the items listed here, and
10 it doesn't list fire truck, ambulances, and communication
11 equipment. Unifying characteristic of the items listed is
12 that they are real property projects and, of course, fire
13 trucks, ambulances, so on are personal property; they're
14 not real property. So, the remedy we're seeking is
15 summary judgment and permanent injunction so that is the
16 question becomes; well, do we just enjoin these four
17 unlawful ones or do we enjoin implementation of the
18 entire referendum penny tax. Now, I contend it's
19 collateral because the best analogy I can think of is the
20 General Assembly for years, decades, have had a habit of
21 lumping bills together. It's called bobtailing or - -
22 and there have been challenges to the constitution
23 provision that prohibits bobtailing; that every new tax
24 must relate to one subject, so there's been cases that
25 address that issue and the remedy has changed over time.

1 I know something about these cases having been involved
2 in them. The first one that I was involved in that
3 challenged bobtailing is called Sloan versus Wilkins in
4 2005, 362 S.C.430, that involved an Act that was an
5 conglomeration, multiple Acts all strung together to get
6 it passed and Mr. Sloan, who is the founder of South
7 Carolina Public Interest Foundation, filed a lawsuit
8 challenging that and under the Supreme Court and in 2005
9 the Supreme Court said, yes, this violates the One
10 Subject Rule and we think the one subject is this, and
11 we're going to decide that everything that doesn't relate
12 to this is going to be excised from this Act. We asked
13 at the time to throw the whole thing out because the
14 constitution says the statute must relate to one subject.
15 If it doesn't relate to one subject, the whole thing is
16 unconstitutional. The Supreme Court decided in that case
17 to just excise those portions that didn't, that were not
18 germane to the one subject as they thought. Three years
19 later in South Carolina Public Interest Foundation versus
20 Harrell, 378 South Carolina 441, it was the same kind of
21 thing. The name of the speaker had changed, but they had
22 an Act, that again with the conglomeration of multiple
23 Acts related to multiple subjects and South Carolina
24 Public Interest Foundation filed suit, went to the
25 Supreme Court and again the Supreme Court says: We think

1 the one subject of this Act is this and we're going to
2 excise everything that doesn't relate to this because
3 it's got to relate to but one subject. Well, the
4 following year, there was another case called American
5 Petroleum Institute versus South Carolina Department of
6 Revenue. We were not directly involved in that, but we
7 filed an amicus brief in the matter and there was an Act
8 that had three different subjects to it and the parties
9 fighting over it were arguing about who was going to get
10 the benefit of the tax break/blend ethanol gasoline,
11 whether it was going to the retailers that sold the gas
12 out of the pump or whether it was going to go to the
13 wholesalers who blended it and put it in the pumps. They
14 were having a fight over who was going to get that. So,
15 the issue went to the Supreme Court again and the issue
16 came up of does this relate to one subject or more. Well,
17 it related to three different subjects and in the course
18 of the argument, I think the Chief Justice asked one of
19 the parties, what about this amicus brief from Mr.
20 Sloan's foundation about we should throw the whole thing
21 out and nobody knew what to say. They were relying on
22 Sloan versus Wilkins and Harrell and they didn't know how
23 to answer them. But the Supreme Court took that occasion
24 to say: From now on, we're not going to decide what the
25 one subject is. If it relates to more than one subject,

1 we're throwing the whole thing out; it's
2 unconstitutional. You can't have the good with the bad
3 and get the bad in with the good. You throw the whole
4 thing out and that's what they did in the American
5 Petroleum case. I had a copy of that case here for your
6 reference. They acknowledge that the 2009, basically one
7 year after the last time, they said we're going to decide
8 what the subject is, but they said this has become an
9 issue and we're going to change the remedies by throwing
10 the whole statute out. Now, relatively minor point to
11 that is another case brought a few years later called
12 South Carolina Public Interest Foundation versus Lucas,
13 again the speaker has changed and this was also a
14 challenge to the one-subject rule and challenged to the
15 Appropriations Act, as the Court knows, a huge bill,
16 biggest expenditures of the year. There was a provision
17 in there, a proviso, though, that was unrelated to
18 appropriations and South Carolina Public Interest
19 Foundation filed suit saying: This proviso is not
20 related to appropriation so, therefore, you haven't
21 violated the constitution. Every action related to one
22 subject; it didn't relate to the raising and spending of
23 money. The Supreme Court was left with a little bit of
24 dilemma. Recently it says, if it's a violation of the
25 one-subject rule, we're throwing the whole thing out.

1 Well, they swallowed hard, I guess, and said: Well, in
2 this case, we're going to have to figure out what the one
3 subject of the Act is; it's clearly the appropriations
4 Act. And this proviso, though, it's not related to the
5 appropriations, we feel, despite the American Petroleum,
6 we're free to excise this one proviso and say we're
7 cutting that out because we already know what the
8 Appropriations Act one-subject is. So, how does all that
9 relate to this? In this case, we've got four of the
10 fifteen projects that are unlawful and those four
11 projects constitute approximately one/fifth of the dollar
12 value of the various projects; it's six-point-two-
13 million, something like that, roughly a million and a
14 half in round figures so it's about twenty percent. So,
15 our point is, does that twenty percent take the entire
16 referendum? We think it does just like in the bobtailing
17 cases when you've got lawful with unlawful, you've got
18 conglomeration of those, mixture of those, but I think
19 the only appropriate remedy is to declare the entire
20 ordinance unlawful. I don't think - - and the - - I
21 think the American Petroleum case contains an analysis
22 that says it is not the judiciary's job to rewrite
23 legislation and if the judiciary goes in and starts
24 cutting out like they did in the Wilkins case, Sloan
25 versus Wilkins case, and they cut out like they did in

1 S.C. versus Harrell, then you've got the General Assembly
2 rewriting legislation and assuming that the legislation
3 would have passed without the illegal stuff in there and
4 basically imposing a new statute on the General Assembly.
5 Who knows whether the General Assembly would have passed
6 those conglomeration bills if it didn't contain all the
7 irrelevant stuff in it. The judiciary is not, as an
8 institution, competent to decide that this statute would
9 have passed even without the illegal stuff in it.
10 Similarly, meaning no disrespect, I don't think this
11 Court is competent to say this referendum would have
12 passed and we're going to cut out four of them and then
13 shove the others on through. That's not what the voters
14 approved. It's either legal or illegal as a whole and
15 this is not legal as a whole and, therefore, it's
16 illegal. I think the only appropriate remedy, due to the
17 limitations of the Court not interfering with the
18 legislative process, is to declare this ordinance and
19 this referendum is unlawful because it is in excess of
20 the statutory, mandated, limited uses. We've got four of
21 them that are unlawful; they constitute twenty percent of
22 the expenditures. Who is to say that without those four
23 unlawful ones in there, this would have passed at all?
24 It's impossible to say and surely this Court can't say
25 that. As an institution, is not competent to make that

1 judgment. It is competent to say: Was this referendum as
2 a whole lawful or unlawful? Did it comply with the
3 statute or did it not and we contend it did not because
4 based on the Richland County versus Department of Revenue
5 case where the statute says it may include these kind of
6 projects and the Court very clearly said, went beyond
7 those, it's going to be enjoined; that kind of ruling,
8 that kind of analysis, I think, applicable to the issues
9 we face here. This list of permitted uses is exclusive
10 and the fact that the General Assembly twice amended the
11 Act to add permitted uses and because it said at the
12 bottom of that paragraph that you can have these uses
13 combined together as long as they are delineated above;
14 that indicates the statute itself that says that these
15 are exclusive and when it says it may include these and
16 may not include any others. So therefore, Your Honor, we
17 are asking for judgment and injunctive relief ruling that
18 this referendum and ordinance exceed the legal bound of
19 the Enabling Act and, therefore, it's unlawful, it ought
20 to be declared so and it ought to be enjoined. Now, is
21 that the end of the world? No. November's coming again.
22 They can go back to the voters again this November to
23 renew that referendum to vote on that's limited to the
24 uses stated in the statute to use the right way and they
25 can vote on it again and we'll see whether the voters

1 accept the legal uses instead of conglomeration of uses.
2 It's not the end of the world. It's got to be remedied
3 by the county by next November, but this one is unlawful
4 and we ask the Court to declare that and enjoin
5 collection of tax, issuance of bonds and funding of these
6 projects. Thank you.

7 THE COURT: Thank you, Mr. Carpenter. Brief reply.

8 MR. RHODES: Sure. Prior to all that, I'm not sure
9 if it's necessarily germane to what we're talking about
10 here, but if anything, I think, if he's talking about the
11 - - it would result if the referendum had been different,
12 if anything gets to the result of the referendum, if
13 anything proves our case, that what he's actually doing
14 is challenging the result of the referendum itself, but
15 statute of limitations would apply. I think it's exactly
16 the way he's constructed it. It interfirmes that what they
17 are actually doing is presenting a challenge that falls
18 directly under the statute of limitations. And Your
19 Honor, in the beginning of this discussion he got into
20 kind of a litany of horrors that might happen if
21 challenges like his were barred by statute of
22 limitations, things like segregated schools. I'll point
23 out there is a critical difference there, so all of
24 sudden he's rallying off, these are Acts that would be
25 unconstitutional, no public body could do them in any

1 instance through any funding mechanism. What the county
2 is doing here is they are funding capital projects, which
3 they are absolutely authorized to do and they're doing it
4 under a statute that authorizes the funding of capital
5 projects. Your Honor, and I apologize I don't have a
6 copy of these papers, but I cite them in my brief, the
7 Douan versus Charleston City Council case, cite 357
8 S.C.601, the Taylor v. Rush Case, 277 S.C. 505. In both
9 of those instances, not the exact same statute of
10 limitations, but in both of those instances, what was
11 being challenged? What was being challenged in both
12 cases was the wording of the ballot itself. In the Douan
13 case, it was whether the ballot question was overly
14 encouraging the voters to vote a particular way. The
15 Court noted there that the challenge was brought in a
16 timely fashion, it was brought within the very short
17 statute of limitations that were provided under the
18 election laws. They're actually much shorter than the
19 ones we have here. This actually expands the statute of
20 limitations. In Taylor v. Rush case, that was challenged
21 to a school bond referendum. It was a similar challenge
22 to the wording of the referendum itself, and in that case
23 as well - - actually in that case, the Court ruled that
24 the challenge was not brought in a timely fashion. So,
25 this idea that the statute of limitations and the

1 election laws are really only there to provide time limit
2 for challenges to vote counts and technical procedures
3 under which the election was conducted, really ignores a
4 lot of case law out there where you have similar
5 challenges that were brought under election laws with
6 similar statute of limitations. They go far beyond these
7 technical challenges. I would direct you as well, Your
8 Honor, I do have a copy of this case. If I may approach,
9 Your Honor. The Hite versus Town of West Columbia. Your
10 Honor, here is a challenge to an annexation. We have a
11 similar short statute of limitations and they made a
12 similar argument. They made an argument that really only
13 applied to kind of technical vote itself, referendum
14 itself and the Court made clear that that's not really
15 the case. In this case, it was actually they were
16 challenging the petition itself, whether the petition was
17 valid and the Court said that the statute of limitations
18 in this particular case didn't apply only to the
19 referendum and the technical aspects of the way the
20 referendum was conducted, it applied to all of the
21 procedures that went into arriving to that referendum and
22 we have that exact same situation here. We have a lot of
23 procedures that took place to get us from probably May of
24 2018 to election of November of 2018. And all of those
25 procedures are accomplished within that statute of

1 limitations in the exact same way and it's similar
2 statute of limitations, Your Honor. Also, I find it
3 interesting the read that he gave to the Richland County
4 case. That is an interesting case and we certainly paid
5 it a lot of attention when we talk about public finance
6 for it, so we paid very close attention to any case that
7 deals with public projects and issuance of bonds and what
8 is important there is the fact that what the Court was
9 actually doing in that case was giving a similar read to
10 that statute and we're asking this Court to give the
11 capital project sales tax. The issue was whether
12 Richland County had gone beyond the bounds of the statute
13 by spending money, tax money on administrative cost and
14 in some cases they absolutely did. If you read through
15 the list and some of it is pretty absurd the way they
16 tried to spend these funds, but the Court recognized that
17 there were administrative costs that the county could
18 spend these tax dollars on as long as they were connected
19 to a specific transportation project. And Your Honor,
20 that's exactly very similar read that we give to this
21 statute. Once again, we absolutely do not think this list
22 is without - - but I fall back on the language of the
23 statute that authorizes you to spend these dollars on
24 these types of projects. A project is not just brick and
25 mortar. A project can be the renovation of a facility, it

1 can be construction of new facility and it can also be
2 equipment of a facility and we are equipping facilities
3 that are specifically listed here. So, absolutely fire
4 trucks aren't listed, ambulances aren't listed, but these
5 are projects that pertain to the very projects that are
6 listed in the Acts. Your Honor, as far as to the
7 amendments to the Acts that he brought out, I'll very
8 briefly say, I think they are very good explanations for
9 why all those amendments were made. Dredging and beach
10 renourishment, those are not traditionally considered to
11 be capital projects in the same way the courthouse would
12 be. I think adding those to the Acts to make it expressly
13 clear that they can be funded was absolutely essential
14 and as far parking garages are concerned, Your Honor,
15 those are often - - we finance a lot of these in our
16 public finance and often times these are done on private
17 property; they're done in conjunction with private
18 development. There are very good reasons why all of
19 these projects needed to be added to the Act to make it
20 clear that the money could be spent on these where on the
21 original list, might not otherwise be there. And
22 finally, Your Honor, as far as all the talk about the
23 one-subject cases, I think if anything, just making our
24 argument for us, that if he is looking at this thing
25 expansively - - he is looking at that one project

1 affecting the entire process. I think you have to fall
2 back at this time on the statute of limitations. Once
3 again, we have a tax that went into effect on May 1st that
4 the Department of Revenue is administrating and
5 collecting taxes right now as we speak. That money has
6 to be spent on projects that were approved in the Act and
7 there's absolutely no reason, even if you agree with them
8 on the merits of his claim that these four projects are
9 not permissible. There's no reason that those projects
10 can't be severed from the remaining projects on the list.
11 We made note that there is the possibility that some
12 projects could become impossible for whatever reason.
13 Expense can go through the roof, property that you were
14 going to put a project on may not be able to be acquired.
15 There are various reasons why a project could over an
16 eight-year-term of statute might become impossible and
17 certainly if a project is not permissible is one of
18 those. We can certainly move on with the other eleven
19 projects on the list, fund those and carry out the will
20 of the voters. A lot of the entities examples he raises,
21 you don't have this situation, that firewall of a
22 referendum. Your Honor, I think if you read back through
23 the Douan versus the City of Charleston case, you'll see
24 the Court does give special to deference to Acts that
25 have been authorized by referendum above and beyond the

1 deference given to just those Acts that are authorized by
2 ordinance or by statute or act of General Assembly.

3 THE COURT: Alright, thank you. Briefly, anything
4 else you want to tell me before we end this?

5 MR. CARPENTER: Yes, the Hite case, the Plaintiffs
6 contend that the election was held without a petition
7 containing the signatures of a majority of the
8 freeholders in the area. That was a procedural
9 deficiency. Two reasons the statute of limitations
10 apply. I've got a copy highlighted for you. This was
11 not the challenge to the merits of this procedural
12 challenge, it was a part by that short statute of
13 limitations and rightfully so. In the Douan case, there
14 was a challenge to the process. He even admitted that;
15 that's the short statute of limitations. Those kinds of
16 things that have to be brought within thirty days or
17 ninety days or whatever statute of limitations is. I
18 think I detected in his latest argument, a concession
19 that says my examples that I gave when I was arguing
20 whether the results of the referendum are beyond review
21 when I argued that you can have unconstitutional results
22 in a referendum. He wanted to draw a line that says: Oh,
23 no, unconstitutional, you can do those. Apparently, the
24 thirty-day statute wouldn't apply to those. Well, if
25 it's unconstitutional or in violation of state law, what

1 difference is that? It's either legal or illegal. If
2 you concede that a constitutional violation can be
3 challenged beyond the thirty days, then I think he just
4 gave up the statute of limitations argument. We're saying
5 these are in violation of the state's law and we look
6 again at Richland County case. If you look at the
7 Richland County case, one thing that the Supreme Court
8 said over and over again is that the counties ordinances,
9 the counties referendum, they're only valid as long as
10 they don't contravene state law and that's pretty basic
11 principle. Again, you can't have counties out on their
12 own deciding what the law is, it's contradictory once the
13 state has instituted through the statute; that's on page
14 10 of the highlighted copy I handed up to the Court.
15 Over and over again the Supreme Court has decided that
16 the county can't go off on its own. They're limited by
17 the authorizing statute and that's exactly what we have
18 here today, county, trying by referendum, to expand the
19 authorized statute. It's unlawful and I don't think, like
20 I said, this Court isn't institutionally competent to
21 take an unlawful statute, carve out certain portions of
22 it and say, well, we're going to let that one go through
23 and give the voters an ordinance they didn't vote for.

24 THE COURT: Thank you, gentlemen. I'm going to take
25 this matter under advisement, obviously. Read through

1 everything that's been handed to me and consider
2 everything on e-filing as well. I'll be back in touch
3 with you concerning the very important decision for
4 Calhoun County. I don't like to sit on things too long.
5 Hopefully, I'll have something by the end of next week.
6 I will give both of you - - I know y'all are busy in
7 other venues as well as other things. I'll leave the
8 record open until Wednesday. Y'all email me any
9 additions you want to make in consistent with your
10 arguments. If you want to. I'm not requiring it. Thank
11 you very much.

12 END OF COURT PROCEEDINGS
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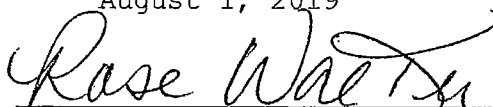
C E R T I F I C A T E

I, the undersigned, Rose Walker, Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the hearing of the captioned case in the First Judicial Circuit, Court of Common Pleas, Calhoun County, South Carolina, on the 30th day of May, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

This transcript has been prepared to the best of my ability and skill.

August 1, 2019

A handwritten signature in cursive script, reading "Rose Walker", is written over a horizontal line.

Rose Walker
Official Court Reporter
State of South Carolina

Certificate of Counsel

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

THE CARPENTER LAW FIRM, P.C

A handwritten signature in black ink, appearing to read 'J. Carpenter', is written over a horizontal line.

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November 22, 2019