THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

Brian Gibbons, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No.: 2019-001016

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

Appellants,

v.

Calhoun County Council,

Respondent.

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STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court properly grant Respondent's Motion for Summary Judgment when Appellants failed to bring this action within the 30-day statute of limitations contained in Section 4-10-330(F) of the Capital Project Sales Tax Act?

II. Are Appellants' remaining issues concerning the merits of their lawsuit properly preserved for appellate review where the circuit court declined to rule on these issues and Appellants failed to file a Rule 59(e) motion?

III. Does the Capital Project Sales Tax Act permit spending on the projects listed in County Ordinance No. 2018-18, including projects to purchase equipment and vehicles to equip the buildings specifically identified in the Act?

IV. If this Court determines that the Act does not permit penny tax funds to be spent on the four projects at issue, can those projects be severed from the Ordinance, leaving in place the eleven remaining, uncontested projects and upholding the penny sales tax?

STATEMENT OF THE CASE

This case is a legal challenge brought by Appellants the South Carolina Public Interest Foundation, Amy Hill and Rebecca Bonnett (collectively, "Appellants") against Respondent Calhoun County Council ("Respondent") contesting whether four of the projects included in Calhoun County Ordinance No. 2018-18 (the "Ordinance") fall outside the scope of the Capital Project Sales Tax Act (the "Act"). S.C. Code Ann. §§ 4-10-300–390 (Supp. 2018). This action commenced on April 3, 2019. [R. pp. 7-13]. Respondent and Appellants filed cross motions for summary judgment on May 16, 2019 and May 22, 2019, respectively. [R. pp. 35-47]. These cross motions for summary judgments were heard on May 30, 2019. [R. p. 161]. On June 18, 2019, the court issued an order granting summary judgment in favor of Respondent, finding that this action was barred by the 30-day statute of limitations contained in subsection 4-10-330(F) of the Act. [R. pp. 1-6].

STATEMENT OF FACTS

The Act authorizes counties to impose a one percent sales and use tax (hereinafter, the "penny sales tax") to fund specific capital projects. The Act sets forth the following procedure for counties wishing to impose a penny sales tax to fund capital projects. First, the governing body of the county—in this case, Respondent—must appoint a commission to determine the specific capital projects that are to be funded by the penny sales tax and formulate the ballot question that will be submitted to voters, which must include the list of approved capital projects. S.C. Code Ann. § 4-10-320 (Supp. 2018). Once the governing body receives the ballot question including the list of projects from the commission, it must approve the form of the ballot question by ordinance, which must also include the following information: (1) the purposes for which the tax proceeds will be used, (2) the maximum length of time that the tax will be imposed, (3) certain information related to any bonds that may be issued to fund the approved projects, and (4) any

other conditions precedents or restrictions on the imposition or use of the sales tax that may have been specified by the commission. S.C. Code Ann. § 4-10-330(A) (Supp. 2018). The governing body may not change the list of projects approved by the commission. The election commission must then conduct a referendum on the question of whether to impose the tax to fund the approved capital projects. § 4-10-330(C-D). After conducting this referendum, the election commission must certify the referendum results "no later than November thirtieth" to both the governing body and the South Carolina Department of Revenue. § 4-10-330(E). Upon receipt of the certified referendum results, the governing body must then declare by resolution the referendum results. § 4-10-330(F). After this process is complete, any party wishing to challenge the result of the referendum must do so within 30 days of this resolution. § 4-10-330(F). If the referendum passes, the Department of Revenue begins collecting the penny sales tax on May first of the following year. § 4-10-330(A).

The Act contains the following language specifying the types of projects that may be funded by the penny sales tax:

> [T]he purpose for which the proceeds of the tax are to be used . . . may include projects located within or without, or both within and without, the boundaries of the local governmental entities . . . 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;

§ 4-10-330(A)(1).

Pursuant to the procedure outlined above, the Calhoun County Capital Project Sales Tax Commission approved a list of 15 projects that were to be funded with the penny sales tax proceeds and approved the form of the ballot question to be submitted to the citizens of Calhoun County. [R. pp. 87-90]. On August 13, 2018, Respondent enacted the Ordinance, approving the form of the ballot and the list of approved projects. [R. pp. 91-106]. Many of these projects directly affect the public health and public safety of the citizens of Calhoun County. The list of projects included:

- improvements to existing water lines;
- construction of new water lines;
- construction of a new fire substation;
- purchase of a ladder truck and tanker truck for local firefighters;
- construction, acquisition, and equipping of new radio equipment for emergency service provider communication;
- acquisition and equipping of a new ambulance for local EMTs;
- demolition of dilapidated buildings and roads;
- renovations and improvements to county-owned properties including historical buildings and county recreational facilities;

- dredging and beautification of a local lake;
- construction of a new animal shelter;
- a streetscaping project; and
- construction of new storage facilities.

[R. pp. 103-04]. The Ordinance also stated that penny sales tax would run for 8 years. [R. p. 93]. Finally, the Ordinance stated that the County could issue bonds "in an aggregate principal amount not exceeding $7,000,000" to defray the cost of the projects. [R. p. 95].

The Ordinance was subjected to a referendum conducted in the November 2018 general election (hereinafter, the "Referendum"). [R. p. 111-16]. On November 6, 2018, the Referendum passed overwhelmingly, with 57% voting in favor (3,173 votes) and 43% voting against (2,370 votes). [R. pp. 107, 116]. On November 9, 2018, the election commission certified the results of the Referendum to both Respondent and the Department of Revenue. [R. pp. 111-16]. On November 26, 2018, Respondent officially declared the Referendum results in Resolution-17-2018. [R. pp. 107-16]. Thus, the 30-day deadline to challenge the Referendum ended on December 27, 2018. [R. p. 3].

More than four months later, on April 3, 2019, Appellants filed this declaratory judgment action, seeking to have the circuit court declare that the Ordinance exceeded the statutory authority of the Act and enjoin Respondent from collecting or spending penny sales tax funds. [R. pp. 7-13]. On May 6, 2019, Respondent filed its answer. [R. pp. 14-28].

On May 16, 2019, Respondent filed a motion for summary judgment arguing that the Act's 30-day statute of limitations barred the current action and, alternatively, that the plain language of the Act permitted the spending at issue. [R. pp. 35-38]. Three days later, on May 22, 2019, Appellants filed a cross motion for summary judgment arguing that they were entitled to the relief sought in their complaint as a matter of law. [R. pp. 39-47]. The circuit court held a hearing on

these cross motions for summary judgment on May 30, 2019. [R. pp. 161-99]. Both parties submitted memoranda in support of their respective motions. [R. pp. 62-121, 144-54]. Following the hearing, Respondent also submitted a supplemental memorandum in support of its motion for summary judgment. [R. pp. 122-43].

On June 18, 2019, the circuit court issued an order granting summary judgment to Respondent on the grounds that the current action was filed outside of the 30-day statute of limitations contained in the Act. [R. pp. 1-6]. Appellants did not file a Rule 59(e) motion. Instead, Appellants filed a Notice of Appeal with South Carolina Court of Appeals. [R. pp. 155-157]. Appellants then filed an Amended Notice of Appeal, seeking to have this case heard by this Court under South Carolina Appellate Court Rule 203(d)(1)(A)(iii) and (iv) as pertaining to county bonds and elections. [R. pp. 158-159].

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. *S.C. Pub. Interest Found. v. Greenville Cnty.*, 401 S.C. 377, 384-85, 737 S.E.2d 502, 506 (Ct. App. 2013). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). "In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Clea v. Odom*, 394 S.C. 175, 179, 714 S.E.2d 542, 545 (2011).

ARGUMENT

I. The circuit court properly granted Respondent's Motion for Summary Judgment because Appellants brought this action outside of the 30-day statute of limitations contained in subsection 4-10-330(F) of the Act.

Because Appellants brought this action more than three months after Respondent declared the results of the Referendum, this lawsuit is barred by the Act's 30-day statute of limitations.

Subsection 4-10-330(F) contains the Act's statute of limitations provision. It states:

> 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.

(emphasis added).

"The usual rules of statutory construction apply to the interpretation of tax statutes." *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 319-20, 731 S.E.2d 869, 872-73 (2012). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Montgomery v. Spartanburg Cnty. Assessor*, 419 S.C. 77, 81, 795 S.E.2d 866, 868 (Ct. App. 2016). "In doing so, we must give the words found in the statute their 'plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.'" *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute." *Alltel*, 399 S.C. at 320, 731 S.E.2d at 873. "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Id.* at 320-21, 731 S.E.2d at 873.

Applying the basic statutory construction principles outlined above to the language at issue, subsection 4-10-330(F) requires that any challenge to an Ordinance passed under the Act must be brought within 30 days of the resolution adopting the referendum results. Subsection 4-10-330(F) states that "the results of the referendum"—that is the decision to enact a penny sales tax to fund the specific projects listed on the ballot—"are not open to question except by a suit or proceeding instituted within thirty days from the date such resolution is adopted." There is no need for this court to resort to "subtle or forced construction to limit" this provision to "matters of procedure." *See CFRE*, 395 S.C. at 74, 716 S.E.2d at 881. The plain language of the Act bars any challenge not brought instituted within 30 days of the resolution adopting the Referendum results.

Moreover, this Court has repeatedly enforced similar, abbreviated statute of limitations drafted by the General Assembly into statutes authorizing action by local governments. *See State ex rel. Condon v. City of Columbia*, 339 S.C. 8, 21, 528 S.E.2d 408, 414 (2000) (enforcing a 90-day statute of limitation to bar the State's challenge to the City of Columbia's annexation of a large parcel of state-owned land); *Morgan v. Feagin*, 230 S.C. 315, 319, 95 S.E.2d 621, 623 (1956) (enforcing a 30-day statute of limitation to bar a challenge to a bond referendum issued by the Berkley County School Board). "[S]uch statutes are designed to promote justice by forcing parties to pursue a case in a timely manner." *Condon*, 339 S.C. at 19, 528 S.E.2d at 413. "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.

As this Court has frequently noted, an important policy consideration underlying these abbreviated statutes of limitations is to provide finality. Local governments and other third parties need finality so that they can confidently conduct business without fear of a subsequent, delayed challenge to the decision or election outcome. *See Ex parte State ex rel. Wilson*, 391 S.C. 565,

578, 707 S.E.2d 402, 409 (2011) (recognizing the lack of actual notice of an annexation, but nevertheless enforcing the statute of limitations due to the "greater importance [assigned] to the policy of finality of an annexation, with its attendant consequences"). For example, in examining the intent behind the abbreviated statute of limitations for challenges to decisions surrounding the issuance of bonds, this Court noted that "[p]urchasers of bonds could hardly be found if the bonds were subject in their hands to attack for alleged illegality in the proceedings upon the issuance of them." *Morgan*, 230 S.C. at 317, 95 S.E.2d at 622.

The exact same considerations are present here. Local governments instituting a penny sales tax need finality regarding the decision to collect the penny sales tax and expend tax proceeds on the projects approved by the voters. They need to be able to rely on the results of the referendum as they begin the expensive and time-consuming process of planning and developing the major capital projects their voters just approved. They need to be able to enter contracts, engage in procurement, and issue necessary bonds without fear that a challenge may upend the projects they are setting out to complete. Likewise, the Department of Revenue needs finality as it undertakes the process to ensure that the collection of the penny sales tax may commence on May first of the following year.

Appellants argue that the Act's 30-day statute of limitations is limited to "matters of procedure relating to the election, the certification of the vote, the validity of the referendum, and the results of the election." Br. of App. p. 8. A similar argument was raised to and rejected by this Court in *Hite v. Town of W. Columbia*, 220 S.C. 59, 66 S.E.2d 427 (1951). In that case, the appellants argued that the 90-day statute of limitations on challenges to annexations by local governments "applie[d] only to questions relating to the validity of the election proper." *Id.* at 64, 66 S.E.2d at 429. This Court rejected this argument, finding that the statute of limitations was

"not confined or restricted to the actual election,-that is, the casting and counting of ballots, but refers to and includes the entire annexation procedure." *Id.* In analyzing this issue, this Court stated:

> The most casual reading of the Act gives rise to no other conclusion. The statute makes the limitations apply to the whole annexation process. It provides specifically that 'In all instances when the limits of a city or town shall be ordered extended, no contest thereabout shall be allowed unless * * *.' (Emphasis added.) Then follow the limitation periods provided as to when protest shall be filed and an action begun.

Id. This Court went on to note the policy behind abbreviated statutes of limitations, which largely mirrors the rationale outlined in *Morgan* and *Condon*. It stated:

> It was doubtless in the mind of the general assembly that annexation 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.

Id. at 66, 66 S.E.2d at 430.

Similarly, even a "casual reading" of the Act's statute of limitation provision demonstrates that this limitation is "not confined or restricted to the actual election" but refers to and includes the implementation of the penny sales tax all together. *Id.* at 64, 66 S.E.2d at 429. Like issues surrounding annexation, the General Assembly wanted any issue surrounding the decision to implement a penny sales tax under the Act to be decided without undue delay, thereby allowing the governmental entities—namely, local governments and the Department of Revenue—to resolve any outstanding questions and begin the burdensome process of implementing the penny sales tax and delivering the projects approved by the voters.

Appellants have known about the intended projects since August 13, 2018, when Respondent enacted the Ordinance. Thus, Appellants had ample time to contemplate and bring this challenge, both after the election results or in the several months leading up to the vote.

The statute of limitations to bring a challenge to the Ordinance ran on December 27, 2018, which is thirty days after Respondent declared the result of the Referendum by resolution. Because Appellants brought this suit on April 3, 2019—approximately three months after the running of the statute and approximately seven months after learning of the proposed projects contained in the Ordinance—this action is barred. Accordingly, this Court should affirm the circuit court's order granting summary judgment to Respondent.

II. Because the circuit court did not rule upon the merits of Appellants' remaining arguments and Appellants failed to file a Rule 59(e) Motion seeking a ruling on the same, these arguments are not preserved for appellate review.

Appellants remaining issues on appeal are not preserved for appellate review. The circuit court did not rule on these issues and Appellants failed to file a Rule 59(e) motion. Consequently, Appellants cannot advance these arguments now.

"It is well settled that an issue must have been raised to and ruled upon by the [circuit] court to be preserved for appellate review." *S.C. Dep't of Transp. v. M&T Enters. of Mount Pleasant, LLC*, 379 S.C. 645, 658, 667 S.E.2d 7, 14 (Ct. App. 2008) (emphasis added). Under our preservation rules, a "losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *Id.*

"Although a Rule 59(e)[, SCRCP,] motion may effectively seek a reconsideration of issues and arguments, this type motion is often required for issue preservation purposes." *Home Med. Sys., Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 562, 677 S.E.2d 582, 586 (2009). "Put simply, Rule 59(e) motions serve a vital purpose for proper issue preservation." *Home Med. Sys., Inc.*, 382 S.C. at 562, 677 S.E.2d at 586. Thus, when a "losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment . . . to preserve the issue for appellate review." *I'On, LLC*, 338 S.C. at 422, 526 S.E.2d at 724 (emphasis added). "Without an initial ruling by the [circuit] court, a reviewing court simply would not be able to evaluate whether the [circuit] court committed error." *M&T Enters.*, 379 S.C. at 658-59, 667 S.E.2d at 15.

In this case, the circuit court expressly declined to rule on the merits of Appellants' challenge. [R. p. 3] ("Because this ruling [on the statute of limitations] is dispositive as to the entirety of [Appellants'] claims and requested relief, it is unnecessary to consider the merits of [Appellants'] claims."). Appellants then failed to file a Rule 59(e) motion asking the circuit court to address these issues. Because these issues were not ruled upon by the circuit court, they are not preserved for appellate review. Accordingly, should this court determine that statute of limitations does not bar the instant action, the appropriate relief is to remand this case to the lower court for a determination on the merits.

III. The Act permits spending on all of the projects contained in the Ordinance, including those projects for equipment and vehicles to equip the types of projects identified in the Act.

To the extent this Court determines that the statute of limitations is inapplicable to Appellants' claims and that Appellants remaining issues are preserved for appellate review, this Court should nevertheless affirm the circuit court's grant of summary judgment because the Act permits the challenged spending.

The Act speaks in terms of the funding of "projects" rather than "buildings." *See* § 4-10-330(A)(1). However, the Act does not define the term "project." 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. Cnty. of Aiken*, 354 S.C. 18, 23, 579 S.E.2d 334, 337 (Ct. App. 2003). 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 uniformly defined to include both brick and mortar facilities and the equipment and apparatus necessary to make those facilities useful. *See, e.g.*, S.C. Code Ann. § 4-29-67–68 (Supp. 2018) ("all other machinery apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful); S.C. Code Ann. § 6-25-25 (Supp. 2018) ("all works, improvements, facilities, plants, equipment, transportation lines, pump stations, sewage treatment plants, apparatus, and appliances"); S.C. Code Ann. § 11-37-20(4) (2011) ("demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment"); S.C. Code Ann. § 11-40-30(14)(a) (2011) ("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"); S.C. Code Ann. § 11-43-130(5)–(6) (2011) ("project costs are limited to capital expenditures for transit equipment and facilities"); S.C. Code Ann. § 11-50-40 (Supp. 2018) ("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"); S.C. Code Ann. § 11-51-30 (Supp. 2018) ("including, but not limited to, land acquisition, acquisition or construction of buildings, equipment, furnishings, site preparation, road and highway improvements, water and sewer infrastructure");

S.C. Code Ann. § 59-109-30 (Supp. 2018) ("furniture, equipment, furnishings, machinery, apparatus, appliances, appurtenances, and physical amenities").

Applying this definition of "project" customarily ascribed by the Legislature in other statutes dealing with similar subject matter, the Act allows for the spending at issue. The four projects challenged by the Appellants—the acquisition of two fire trucks, an ambulance, and new radio equipment to permit communication between first responders—are all portions of the projects found in subsection 4-10-330(A)(1) of the Act. These projects to purchase equipment and vehicles are necessary to equip the brick and mortar projects included on that list. Subsection 4-10-330(A)(1)(b) states that penny sales tax funds can be used on "courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, [and] educational facilities". § 4-10-330(A)(1)(b) (emphasis added). It logically follows that the Act would likewise permit counties to furnish and equip these buildings as to make them functional and useful to county's citizens for which they are intended to serve.

Practically speaking, it makes no sense for the Act to permit a county to build a new fire station but disallow the purchase of necessary equipment and vehicles that empower the fundamental service for which the building was constructed. To interpret the Act in such a manner would similarly prohibit counties from using penny sales tax proceeds to purchase essential equipment necessary to make courthouses, civic centers, hospitals, and other specifically listed projects useful for their intended purpose. Under this Court's longstanding statutory interpretation policy, this Court will not construe statutes so as to lead to an absurd result. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Rev.*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 351, 549 S.E.2d 243, 249 (2001).

Appellants mistakenly rely upon *Richland Cnty. 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 the specifically listed facilities. The statute at issue in *Richland County* is similar to the Act in that it likewise contains a list of brick-and-mortar projects that may be funded through a one-percent sales tax. *See* S.C. Code Ann. § 4-37-30(A)(1)(a) (Supp. 2018). This act (the "Transportation Act") pertains to transportation-related capital projects. In analyzing whether the Department of Revenue could enjoin the use of penny sales tax funds until the Department could implement guidelines concerning what spending was permitted, this Court construed the Transportation Act to permit the use of sales tax proceeds on costs that are "tethered to a specific transportation-related capital project or the administration of a specific transportation project." *Richland Cnty*, 422 S.C. at 312, 811 S.E.2d at 769. In *Richland County*, this Court recognized that in order to give effect to the statute, it must be construed to permit the expenditure of funds on expenses beyond the construction costs of the specifically listed transportation projects, such as the administrative costs of running transportation projects.

This Court should apply this same reasoning when interpreting the Act. This Court should interpret the Act to permit other costs reasonably "tethered to" to projects permitted under the Act, such as those additional costs necessary to make the project useful for its intended purpose. *See id.* at 302, 811 S.E.2d at 763-64. The construction is necessary to allow for adequate funding to make these projects beneficial to the voters who approved them in the referendum.

For these reasons, this Court should reject the narrow interpretation of the Act advanced by Appellants and permit the use of penny sales tax proceeds to fund projects that are tethered to the projects listed in the Act.

IV. If this Court determines that the Act does not permit spending on the four projects identified by Appellants, the Court should sever those projects and uphold the remaining provisions of the Ordinance.

If this Court determines the Challenged Projects are impermissible, the Court should sever the Challenged Projects and uphold the collection of the penny sales tax to fund the remaining projects.

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 in this case.

In support of their position, Appellants 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 this Court created an exception to the typical rule of severability that applies exclusively to violations of the "one-subject rule." However, this 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.* Appellants' 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 has consistently stated 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); *see also Berry v. Spigner*, 226 S.C. 183, 189, 84 S.E.2d 381, 384 (1954); *Connolly v. Beason*, 100 S.C. 74, 74, 84 S.E. 297, 298 (1915). There is no evidence to indicate that the result was in fact affected.

Rather, the record reflects that the voters voted in favor of imposing the penny sales tax with the knowledge that it may not be possible to complete all projects listed on the ballot. The Ordinance, which adopted the form of the ballot question, 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 . . . ." [Ordinance 2018-18]. Through this language, the Ordinance addresses the practical consideration that over the span of the eight-year term of the penny 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 four projects at issue 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 the Court chooses to invalidate these four projects, it should uphold the validity of the collection of the penny sales tax and funding of the remaining projects.

CONCLUSION

This Court should affirm the circuit court's order granting summary judgment to Respondent. Any challenge to the Ordinance needed to be brought on or before December 27, 2018, which is when the 30-day statute of limitations expired. Appellants failed to timely bring this suit. Accordingly, summary judgment was appropriate.

The remaining arguments raised by Appellants were not ruled upon by the lower court and are therefore not preserved for appellate review. To the extent this Court finds that the statute of limitations is inapplicable to Appellants' action, this Court should remand this case to the circuit court for additional hearing on the merits of Appellants' claims.

To the extent this Court finds Appellants' remaining arguments preserved and chooses to address the merits of Appellants' lawsuit in resolving this appeal, this Court should enter summary judgment in favor of Respondent. The language of the Act permits the spending at issue. To interpret this language any other way would be to construe the statute so as to lead to an absurd result.

Finally, to the extent this Court addresses the merits of Appellants' claims and finds that the four projects at issue are beyond the scope of the Act, this Court should sever those projects from the Ordinance, leaving in place the eleven remaining, uncontested projects and upholding the penny sales tax.

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December 10, 2019

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In the Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

RECEIVED
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Brian Gibbons, Circuit Court Judge

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

Appellants,

v.

Calhoun County Council, Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211 (b), SCACR.

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PROOF OF SERVICE

I certify that I have caused the Final Brief of Respondent to be served on Appellant by U.S. Mail and electronic mail on December 10, 2019, addressed to their attorneys of record at the following address:

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