

STATE OF SOUTH CAROLINA )  
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 COUNTY OF CHARLESTON )  
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 Mary Edna Fraser; Glenda L. Miller; )  
 South Carolina Coastal Conservation )  
 League, )  
 )  
 Plaintiffs, )  
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 )  
 v. )  
 )  
 Charleston County; Charleston County )  
 Council, )  
 )  
 Defendants. )  
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IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 Case No. 2024-CP-1003838

**PLAINTIFFS’ PRETRIAL BRIEF**

The Plaintiffs, Mary Edna Fraser, Glenda Miller, and the South Carolina Coastal Conservation League, submit their Pre-Trial Brief Pursuant to Rule 16(c) of the South Carolina Rules of Civil Procedure.

**Introduction and Summary**

Mary Edna Fraser, Glenda L. Miller, and the South Carolina Coastal Conservation League (“Plaintiffs”) challenge a transportation sales tax ordinance, Ordinance #2302 (“Ordinance”), passed by Defendant Charleston County Council on July 23, 2024. The Ordinance seeks to impose a half-cent sales tax that will raise \$5.4 billion over 25 years and includes referendum language that will seek voter approval of the tax in the November 2024 election. Despite the exorbitant sum of money the County proposes to raise, the Council has failed to draft an ordinance or referendum that complies with South Carolina law. First, the ordinance fails to list the estimated capital cost of each project, as is required by state statute. Second, the referendum fails to provide a separate opportunity to vote on each distinct purpose of the tax. Third, the referendum misleads the voters by omitting critical information about the Mark Clark Extension (“the Extension”) as a priority

project. Finally, the referendum fails to provide separate votes for separate municipal bonding propositions. Given these significant flaws, we respectfully request that this Court declare that the Ordinance and referendum violate South Carolina law.

**I. A concise, non-argumentative statement of the facts of the case.**

**1. Parties**

Plaintiffs Mary Edna Fraser and Glenda L. Miller are citizens, voters, and taxpayers in Charleston County, South Carolina, who will vote in the November 2024 election. Disputed Ex. 2, Fraser Aff. ¶ 2–4; Disputed Ex. 3, Miller Aff. ¶ 2–4. Plaintiff South Carolina Coastal Conservation League (“the Conservation League”) is a non-profit corporation in good standing, organized, and existing under South Carolina law. Disputed Ex. 1, Cedzo Aff. ¶ 3. The Conservation League represents over one thousand members, many of whom are citizens, residents, and taxpayers in Charleston County. Id. at ¶ 2. The Conservation League and its members are committed to, among other things, improved connectivity of existing roadways, safety improvements, public transit, drainage facilities and flood control, bicycle lanes, and Greenbelt-funded conservation initiatives. Id. at ¶ 5, 8. Plaintiffs bring this case to challenge a transportation sales tax ordinance, Ordinance #2302, passed by Defendant Charleston County Council (the “County” or “County Council”) on July 23, 2024.

**2. Factual Background**

S.C. Code Ann. § 4-37-30 et seq. grants counties the authority to enact a sales tax to fund transportation-related projects. The sales tax or taxes cannot exceed one percent combined. Id. South Carolina law also authorizes the issuance of general obligation bonds, towards which the revenues raised by the sales tax may be pledged as repayment. S.C. Code Ann. § 4-27-30(3).

Charleston County currently has two half-cent transportation sales taxes, totaling the

maximum of one percent. One passed in 2004, and one in 2016; both were authorized for the maximum 25-year period. See Ex. 1 (2004 Transportation Sales Tax Ordinance); Ex. 2 (2016 Transportation Sales Tax Ordinance). The 2004 tax will expire between 2027 and 2029. See S.C. Code Ann. § 4-37-30(5) (sales taxes terminate either “the final day of the maximum time specific for the imposition,” here, 25 years, or when “the Department of Revenue determines that the tax has raised [sufficient] revenues”); Disputed Ex. 5, Jan. 2024 Meeting Minutes, at 3 (noting that new transportation sales tax would start in 2027 based on the expiration date for 2004 tax).

In anticipation of the 2004 tax’s expiration in 2027, the County has proposed a new half-cent sales tax to replace the 2004 tax and the issuance of \$1 billion in general obligation bonds. Ex. 3. Most of the tax proceeds and bonds will fund the Extension, a proposed new interstate highway extending Interstate 526 (“I-526”) to Johns Island and James Island. See Compl. ¶ 38, Fraser v. Charleston County, 2024-CP-1003838 (filed July 30, 2024) (“The County has stated that it will be responsible for \$1.83 billion of th[e] cost [of Mark Clark], representing around [one third] of the \$5 billion” referendum).

The Extension project has long been controversial. It would cut through communities and degrade natural resources along its path, and it has a price tag of over \$2 billion. *Id.* at ¶ 37–38; Disputed Ex. 5, Jan. 2024 Meeting Minutes, at 6. The project and how the County proposes to fund it have been the subject of significant public interest and media coverage in Charleston.

In February 2024, the County initiated a public comment period for the new proposed transportation sales tax. Plaintiff Conservation League submitted comments to the County during this comment period. The Conservation League explained to the County that South Carolina law required the County to include a separate vote for each project purpose to be funded by the referendum. The Conservation League further explained that this necessitated a separate vote on

the Mark Clark Extension project.

On July 23, 2024, following three readings, Charleston County passed Ordinance #2302 to establish the new transportation sales tax, subject to voter approval, which will raise \$5.4 billion. Ex. 3 § 2.2.3 (2024 Transportation Sales Tax Ordinance). Although the Ordinance includes some information about the sales tax, it does not include the estimated cost of each project the County proposes to fund with the tax as required by law. Id. at § 2.2.4. The Ordinance also includes the referendum language seeking approval of the sales tax and the issuance of \$1 billion in general obligation bonds.<sup>1</sup> Id. at § 4.4.2. In the referendum, the County does not provide for separate votes on the referendum based on distinct project purposes for either the sales tax or the general obligation bonds, nor does the County mention the Mark Clark Extension project or inform voters that approximately one-third of the sales tax funds and nearly all the general obligation bonds will go towards the Extension. Id.

The County signed the Ordinance on July 29, 2024, and the Plaintiffs promptly filed this lawsuit on July 30, 2024.<sup>2</sup>

## **II. An objective statement of the facts in controversy.**

The Plaintiffs are not aware of any facts in controversy.

## **III. The legal issues involved and the applicable law.**

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<sup>1</sup> On election day, voters will only see the referendum language as written in § 4.4.2 of the Ordinance and will not see the Ordinance itself. Ex. 3.

<sup>2</sup> This is not the first time that voters have had to challenge a tax referendum drafted by Charleston County Council. Charleston enacted its first transportation sales tax in 2002. Shortly after the tax passed, voters challenged the referendum and the South Carolina Supreme Court overturned the results of the 2002 referendum, holding that the County drafted the ballot language in a way that “appear[ed] calculated to persuade and ultimately mislead voters into voting in favor of the tax.” Duoan v. Charleston Cnty. Council., 357 S.C. 601, 612, 594 S.E.2d 261, 267 (2003). Then, in 2016, the County proposed another transportation sales tax. Prior to the vote, the County promised residents that the tax would not be used to fund the Mark Clark Extension project. Disputed Ex. 1, Cedzo Aff. ¶¶ 12, 13. After the sales tax was approved, the County reversed course and used funds from the tax for the Mark Clark Extension project. Id. Voters and the Conservation League challenged this referendum after the Council announced its intention to use the tax proceeds for Mark Clark; however, the South Carolina Court of Appeals concluded that the challenge was untimely. S.C. Coastal Conservation League v. Charleston Cnty., 899 S.E.2d 609 (S.C. 2024).

It is fundamental to a fair election that a question on a ballot referendum must be phrased to sufficiently inform voters of what they are voting for or against and to allow voters to express their will. For this reason, South Carolina law sets out requirements for the contents of an enacting ordinance and the contents of the ballot referendum, see S.C. Code Ann. § 4-37-30 et seq., and the South Carolina Supreme Court and two South Carolina attorneys general have concluded that referenda violating these requirements restrict the will of voters. The County’s transportation sales tax referendum violates these state law requirements in multiple ways.

**1. The Ordinance fails to list the estimated capital costs of each project.**

Before levying a proposed transportation sales tax, a county must pass an ordinance and obtain voter approval through a referendum. S.C. Code Ann. § 4-37-30(A)(2). The ordinance must, among other things, specify the estimated capital cost of the projects to be funded by the tax. S.C. Code Ann. § 4-37-30 (A)(1)(b). This requirement makes sense given that the purpose of an enacting ordinance “is to educate the public about the substance of the pending referendum” and should thus have “as much disclosure to the public as practicable.” Op. S.C. Atty. Gen., 2004 WL 2052167, at \*3 (Sept. 13, 2004) (“2004 Attorney General Opinion”).

The statute requires a county to tether sales tax funds “to a specific transportation-related capital project or the administration of a specific transportation project.” Richland Cnty. v. S.C. Dep’t Revenue, 422 S.C. 292, 312 811 S.E.2d 758, 768 (2018) (interpreting §4-37-30(A)(1)(b)); S.C. Pub. Int. Found. v. Richland County, 436 S.C. 271, 273, 871 S.E.2d 599, 600 (2021) (penny tax funds must “be tethered to building or operating a ‘transportation-related project’”); see also S.C. Coastal Conservation League v. Charleston County, 899 S.E.2d at 612 (“Each enabling ordinance must also identify the anticipated cost and timeline for completion of the project or projects.”). Because Section 4-37-30(A)(1)(c) is clear on its face, a court need not

“look for or impose another meaning.” Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994). Additionally, “words used must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation.” Op. S.C. Att’y Gen., 2004 WL 2052167, at \*3; Bryant v. City of Charleston, 295 S.C. 408, 411, 368 S.E.2d 899, 901 (1988).

Despite this clear requirement, **the County’s ordinance does not list the estimated cost of ANY project**, including the Extension. Instead, it only allocates funding by broad “transportation-related projects” and greenbelts. Grouping the estimated cost in this manner violates the plain language of Section 4-37-30(A)(1)(b). Indeed, comparing the languages in Section 4-37-30(A)(3) with other provisions of the statute further supports the argument that the ordinance may not group projects. While other provisions of the statute allow for projects to be grouped by purpose (although “purpose” is never as broad as all “transportation-related projects”), it does not allow ordinances to do any grouping. Compare S.C. Code § 4-37-30(A)(3) (allowing projects to be grouped by purpose) with id. § 4-37-30(A)(1)(c) (requiring that the ordinance list the capital cost of each project).

Accordingly, the County's Ordinance violates S.C. Code § 4-37-30.

**2. The referendum fails to provide separate votes for separate purposes of the tax.**

S.C. Code Ann. § 4-37-30 also sets forth requirements for the referendum ballot. Relevant here, the referendum language must include “[a] separate question” “for each purpose” of the tax. S.C. Code § 4-37-30 (A)(3). As with the requirement to list the cost of each project in an ordinance, it is not difficult to understand why the statute requires counties to provide a separate vote on the ballot for each purpose of the tax. The South Carolina Supreme Court has explained that “[t]he object of the rule preventing the submission of several and distinct propositions to the people

united as one . . . is to prevent the rejection of popular or necessary propositions that are joined with other measures that are not so popular or necessary.” Ziegler v. Dorchester County, 426 S.C. 615, 622, 828 S.E.2d 218, 222 (S.C. 2019).

The County proposes to use the tax for several different project types, including the Mark Clark Extension, a new highway that it claims will improve regional capacity; local road and street improvements; mass transit; and greenbelts.<sup>3</sup> Despite multiple distinct project purposes for the tax, the referendum provides only a single vote for all purposes. The referendum reads as follows:

I approve a special sales and use tax in the amount of one-half (½) of one percent to be imposed in Charleston County for not more than twenty-five (25) years, or until a total of \$5,400,000,000 in resulting revenue has been collected, whichever occurs first. The sales tax proceeds will be used to fund the following projects:

Project (1) For financing the costs of highways, roads, streets, bridges, and other transportation-related projects facilities, and drainage facilities related thereto, and mass transit systems operated by Charleston County or jointly operated by the County and other governmental entities. \$4,968,000,000.

Project (2) For financing the costs of greenbelts. \$432,000,000.

YES \_\_\_\_\_

NO \_\_\_\_\_

Although County Council staff received comments from Charleston residents requesting, at minimum, a separate vote on the Mark Clark Extension project, the County refused to do so. Disputed Ex. 4, Apr. 2024 Meeting Minutes, at 19. As Councilmember Honeycutt explained, **“[t]his is an all or nothing. If folks want their greenbelts, if they want interim improvements, if they want allocation funding for improvements to sidewalks and intersections, it’s all or nothing.”** Disputed Ex. 7, Charleston Cnty. Gov., 4/18/2024, at 52:07, YouTube (Apr. 18, 2024) (emphasis added), <https://www.youtube.com/live/TdNkzEInUEI>; see also id. (Councilmember

<sup>3</sup> While greenbelts are not defined by statute, they are commonly described as “a belt of parkways or farmlands that encircles a community.” Duoan, 594 S.E.2d, at 265 n.4.

Moody explains that “you’re either for greenbelt, you’re for mass transit, you’re for roads, you’re for bike and ped, or you’re not”); Disputed Ex, Apr. 2024 Meeting Minutes, at 21.

The 2004 Attorney General Opinion confirms that the County cannot legally combine unrelated projects into a single vote in South Carolina. In that opinion, the Attorney General's Office was asked whether a Charleston County referendum could combine Mark Clark (or I-526) and Greenbelts in a single question and vote. Id. The answer was “no.” Id. at \*7. The Attorney General's Office explained that the statute “**d[oes] not authorize [ ] unrelated projects to be rolled into a single vote**” because such a tactic would “**constitute a form of ‘bobtailing’ . . . in which voters interested in voting for or against one project would be required to vote the same way on another project which is combined with it.**” Op. S.C. Att’y Gen., 2004 WL 2052167, at \*8–11 (emphasis added). The County now does precisely that: by combining Mark Clark with local road improvements, drainage projects, bicycle and pedestrian improvements, and greenbelts. The County ties an unpopular provision to popular ones and “bobtails” voters into voting a particular way. This violates South Carolina law and limits the “true expression of the will of the people [of Charleston].” Ross v. Lipscomb, 65 S.E. 451, 455, 65 S.E. 451, 454 (S.C. 1909).

**3. The referendum misleads the voters by omitting critical information about the Mark Clark Extension as a priority project.**

The purpose of a referendum question “must be stated with sufficient certainty to inform and not mislead voters as to the object in view.” Op. S.C. Att’y Gen., 2004 WL 2052167, at \*4; Dick v. Scarborough, 73 S.C. 150, 150, 53 S.E. 86, 87 (1905) (“Voter[s] should have reasonable notice of the election and the issue it involve[s].”); see also Op. S.C. Att’y Gen., 2016 WL 5820153, at \*2 (Sept. 30, 2016) (noting that referenda questions must be phrased in a manner that does not “confuse or mislead voters”). Importantly, omissions of information material to an

informed vote may result in an unlawfully misleading referendum. Op. S.C. Att’y Gen., 2016 WL 5820153, at \*3 (“[A] referendum . . . ought to be free from any misleading tendency, whether of amplification, *or omission*, or of fallacy.”) (emphasis added) (citing *Ex parte Tipton*, 229 S.C. 471, 93 S.E.2d 640 (1956)).

While listing the Extension as a “priority project” in the ordinance,<sup>4</sup> the referendum language is silent on the County’s plan to allocate over one-third of the tax proceeds to the Extension. The County’s share of the \$2.4 billion project would require using 36 percent of the \$5 billion allocated by the referendum to transportation-related projects. See Compl. ¶ 38, Fraser v. Charleston County, 2024-CP-1003838 (filed July 30, 2024). Given the history of the Extension’s costs, this percentage is likely to increase. See id at ¶ 38 (As recently as 2019, the Extension was only estimated to cost between \$725 million and \$752 million). Despite the proportion of funds intended for the Extension, the referendum fails to inform voters of the County’s plan to prioritize this project and spend the proceeds on the Extension first and foremost. Indeed, the Extension was the primary reason for the referendum. See Charleston Cnty. Gov., 1/26/2023, at 56:10, YouTube (Jan. 26, 2023) <https://www.youtube.com/watch?v=07SAluodn5U> (Councilmember Boykin asking South Carolina Department of Transportation Secretary Hall if a sales tax referendum to fund the Extension would address concerns about the County’s ability to fund the project). Instead, Question 1 only asks whether voters approve a sales tax to fund general transportation-related purposes. **There is no mention of I-526 or the Mark Clark Extension project, possibly the driving force behind the referendum, on the ballot.**

Such a stark omission in the referendum language misleads voters and violates state election law. By failing even to mention the Extension in the referendum language, the County is

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<sup>4</sup> Importantly, the ordinance itself will not appear on the referendum.

preventing voters from making informed decisions because they are not provided the relevant information about what the tax will fund.

**4. The referendum fails to provide separate votes for separate bonding propositions.**

Article X, subsection 14(4) of the South Carolina Constitution authorizes political subdivisions, such as counties, to incur general obligation bonded indebtedness for a “public purpose” that is also a “corporate purpose.” S.C. Const. art. X, § 14(4). Section 7-13-400 of the South Carolina Code provides, “[t]he form of ballot in an election on the issuance of bonds . . . shall be a statement of the question or questions” and must permit the voter to vote “[i]n favor of the question” or “[o]pposed to the question.” S.C. Code Ann. § 7-13-400 (1976). As with the referendum question on the sales tax, the County is also required to provide separate votes for distinct and independent bonding propositions. That is, “[t]hey cannot be lawfully combined as a single question.” Ziegler, 828 S.E.2d, at 22. But a single question is all the County intends to provide to voters. The bond question reads as follows:

I approve the issuance of not exceeding \$1,000,000,000 of general obligation bonds of Charleston County, payable from the special sales and use tax described in Question 1 above, maturing over a period not to exceed twenty-five (25) years, to fund completion of projects from among the categories described in Question 1 above.

YES \_\_\_\_\_

NO \_\_\_\_\_

Ex. 3 § 4.4.2. This question only provides one opportunity to vote on bonding for “projects from among the categories described in Question 1 above.” That is, the list of general project categories described in the sales tax question. Yet the list in Question 1 includes numerous distinct purposes. See supra Section III.2.

This is precisely the type of bond question the Supreme Court rejected in Ziegler. In that case, the Supreme Court concluded that libraries and recreation could not be combined into a single

vote for issuance of bonds given that these types of public facilities were listed as distinct purposes in S.C. Code Ann. § 4-9-30(5)(a), just as highways, roads, mass transit systems, and greenbelts are listed as distinct purposes in S.C. Code Ann. § 4-37-30(A)(1)(a)(i). 828 S.E.2d, at 221-22; see also Op. S.C. Att’y Gen., 2004 WL 2052167, at \*7 (noting that highways, roads, greenbelts, and mass transit are separate project types). The referendum drafted by the County thus combines several bond propositions into a single vote in violation of the South Carolina constitution and statute. S.C. Const. Art. X, § 14(4), and S.C. Code Ann. § 7-1-40, Ziegler, 828 S.E.2d at 221-22.

#### **IV. Exhibits and witnesses.**

The following is a list of undisputed exhibits. These were jointly provided to the Court on Tuesday, August 20, and there is no disagreement about these exhibits. There will be no witnesses.

1. 2004 Transportation Sales Tax Ordinance
2. 2016 Transportation Sales Tax Ordinance
3. 2024 Transportation Sales Tax Ordinance
4. County Council Agenda Notice, June 4, 2024
5. County Council Agenda Notice, June 18, 2024
6. County Council Agenda Notice, July 23, 2024
7. Notice of Public Hearing, June 18, 2024
8. Charleston County Letter to Election Commission, July 29, 2024

Parties additionally agree to the following stipulation:

1. Plaintiffs South Carolina Coastal Conservation League participated in the public comment period for the subject ordinance prior to its adoption.

The following is a list of disputed exhibits. Plaintiffs provided these exhibits to the Court on Tuesday, August 20.

1. Affidavit of Emily Cedzo
2. Affidavit of Mary Edna Fraser
3. Affidavit of Glenda L. Miller
4. Charleston County Council, Meeting Minutes (Apr. 2024)
5. Charleston County Council, Meeting Minutes (Jan. 2024)
6. Charleston County Council Meeting, YouTube Video at 56:10-57:20 (Jan. 26, 2023)
7. Charleston County Council Meeting, YouTube Video at 52:20-53:33 (Apr. 18,

2024)

8. Charleston County Council, Presentation of Public Survey (Apr. 18, 2024)

**V. Unusual problems related to evidence to be introduced.**

There are no unusual problems related to evidence to be introduced.

**VI. Usual questions or matters which should be brought to the attention of the court.**

The Court should be aware of the particular timing of this case. The County Council intends to include the challenged referendum on the November 5, 2024, ballot. Plaintiffs filed this lawsuit as soon as they could—the day after they received the signed Ordinance from the County—and worked with the County on an expedited briefing and hearing schedule to resolve these issues before the deadlines for referenda appearing on the November 2024 ballot.

Plaintiffs note, however, that the proposed sales tax cannot go into effect until 2027 at the earliest. Because Charleston County currently has two half-cent sales taxes in place, totaling the maximum one percent, it cannot impose a new transportation sales tax until one of the current taxes expires. The County has stated in public meetings that the earliest that one of the current taxes will terminate is 2027. Disputed Ex. 5, Jan. 2024 Meeting Minutes, at 3 (noting that new transportation sales tax would start in 2027). Accordingly, should the County be unable to place the challenged sales tax referendum on the 2024 ballot, they could do so in 2026 without any gap in tax funding.

**VII. Settlement negotiations.**

Although the parties have not engaged in formal settlement negotiations and do not plan to before the September 4, 2024 hearing, the Conservation League previously communicated its concerns with the referendum to the County. The County had multiple opportunities to fix the ordinance and referendum to comply with the law, but it declined.

Respectfully submitted this 21 day of August 2024.

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