STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Mary Edna Fraser; Glenda L. Miller, South Carolina Coastal Conservation League , Plaintiffs, vs. Charleston County; Charleston County Council, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT C/A No.: 2024-CP-10-03838 **PRE-TRIAL BRIEF OF CHARLESTON COUNTY AND CHARLESTON COUNTY COUNCIL**

COME NOW, Defendants Charleston County ("Charleston County" or the "County") and Charleston County Council ("County Council") (collectively, the "Defendants") and, subject to and incorporating its forthcoming responsive pleadings in response to Plaintiffs' Complaint, herewith submit their pre-trial statement of the issues and arguments that may, among others, be presented at the trial of this matter.

STATEMENT OF THE CASE

A. Charleston County's history of raising revenue for transportation facilities.

Presently, and for *many* years prior, Charleston County has collected sales and use taxes as revenue for transportation facilities pursuant to S.C. Code Ann. § 4-37-30 (as amended). First, Charleston County imposed a one-half cent transportation sales tax in 2004 (the "2004 Half-Cent Tax"), which the voters approved by referendum. Second, in 2016, Charleston County imposed a second one-half cent transportation sales tax (the "2016 Half-Cent Tax"), which again the voters approved by referendum. The voters approved the 2004 Half-Cent Tax and the 2016 Half-Cent Tax each for a term of up to 25 years or until fully collected, whichever first occurs.

Both the 2004 Half-Cent Tax and the 2016 Half-Cent Tax were the subject of unsuccessful legal challenges. *See Pet. For Writ of Cert., at pp. 7-8, Douan v. Charleston County Council*, App. Case No. 2004-31048 (Dec. 2004), cert. denied (January 20, 2005) ("*Douan II*");[1] and *S.C. Coastal Conservation League, Inc. v. Charleston Cty.*, 442 S.C. 409, 899 S.E.2d 609 (Ct. App. 2024) (affirming dismissal of the lawsuit).

B. Plaintiffs' new challenge to Charleston County's Ordinance #2302.

On July 23, 2024, Charleston County Council passed Ordinance #2302 (the "Ordinance") seeking to impose a *new* half-cent transportation sales tax pursuant S.C. Code Ann. § 4-37-30 (the "enabling act"). The Ordinance is intended to take effect upon the expiration of the 2004 Half-Cent Tax when its term expires.[2] In keeping with the requirements of Section 4-37-30, the transportation sales tax adopted by the Ordinance is subject to passage by a referendum, which the County Council has voted should appear on the November 2024 ballot. The Ordinance sets forth the referendum questions to appear on the ballot concerning both the passage of the tax and the authorization to issue a bond.

The transportation sales tax revenue generated by adoption of the Ordinance, just like the revenue generated by the 2004 Half-Cent Tax and 2016 Half-Cent Tax will be used to fund transportation-related projects. The Ordinance identifies the Mark Clark Extension (the "Mark Clark Extension") as a priority. (Ord. § 2.4).

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[1] For convenience, Defendants identify Mr. Douan's 2004 unsuccessful legal challenge to the 2004 Half Cent Tax as "*Douan II*" to distinguish it from Mr. Douan's prior successful challenge to Charleston County's efforts to impose a sales and use tax in 2002 (*See Douan v. Charleston Cty. Council*, 356 S.C. 602, 590 S.E.2d 484 (2003).

[2] Based on estimates, it is anticipated that the total sum to be collected by the 2004 Half-Cent Tax could be received sometime in 2027, but actual collections will determine whether the tax concludes prior to its 25-year term ending in 2029.

So that ballots can be timely created consistent with the referendum language contained in the Ordinance, Charleston County delivered a copy of the referendum questions adopted by the Ordinance to the Charleston County Board of Elections and Voter Registration on July 30, 2024—well before the statutory deadline of August 15, 2024. *See* S.C. Code Ann. § 7-13-355 (setting the deadline of August 15 to provide the referendum question to the election commission).

Plaintiff South Carolina Coastal Conservation League (the "SCCCL"), along with members of its organization, has a history of opposing the construction of the Mark Clark Extension and has consistently attempted to thwart Charleston County's efforts to raise the revenue needed to fund the Mark Clark Extension. This lawsuit is just the most recent effort by the SCCCL to advance its political objectives over the political decisions of the Charleston County Council.

C. The Ordinance and ballot question explained.

Section 1.3 of the Ordinance provides that:

> 1.3 The County Council finds that a one-half of one percent sales and use tax should be levied and imposed within Charleston County, for the following projects and purpose:
>
> (i) 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.
>
> (ii) For financing the costs of greenbelts.
>
> (the above herein referred to as the "projects").

County Council resolved that the tax, if approved by referendum, would raise an amount that will not exceed, "in the aggregate, the sum of $5,400,000,000." (Ord. § 2.3). The term of the sales tax was set as 25 years or until fully collected, whichever first occurs. (Ord. §§ 1.3 and 2.6). Separately, the Ordinance also authorizes the issuance of a bond, if approved by referendum, in

the amount of $1,000,000,000. This is the same basic structure utilized in the 2004 and 2016 Half-Cent Taxes and approved by the voters.

Section 2.4 of the Ordinance identified the following transportation-related projects for which it intends to utilize sales and use tax revenue:

> (i) 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, which may include, but not limited to:
>
> Priority Project: Mark Clark Extension
>
> Other Projects: Rivers Avenue Mobility Improvements, Northbridge Bicycle Pedestrian Improvements, Mall Drive Improvements, South US 17 Corridor Improvements from Dobbin Road to Main Road, Glenn McConnell Overpass at Magwood Drive, Ashley River Road Corridor Improvements from Bees Ferry Road to Old Parsonage Road, US 17 / SC 61 Exit Ramp Improvements, Maybank Highway Corridor Improvements from Bohicket Road to River Road, Maybank Highway Corridor Improvements from River Road to Stono River Bridge, Folly Road Bicycle Pedestrian Improvements including Sol Legare Road, Long Point Road Corridor Improvements from Whipple Road to US 17, Darrell Creek Trail Realignment, 2016 Sales and Use Tax Carryover Projects, Annual Allocation continuation: Resurfacing, Bike/Pedestrian Facilities, Local Paving, Intersection Improvements, and Rural Roads
>
> The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than $4,968,000,000;
>
> (ii) For financing the costs of greenbelts. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than $432,000,000.

The Ordinance specifically directed that the referendum for the proposed tax be voted on during the November 5, 2024, election. (Ord. §2.1). The Ordinance also included the language for the ballot question to appear on the referendum for both the imposition of the tax and the bond, which appear as follows:

4.2 The referendum question to be on the ballot of the referendum to be held in Charleston County on November 5, 2024, must read substantially as follows:

CHARLESTON COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

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 _____

Instructions to Voters: All qualified electors desiring to vote in favor of levying the special sales and use tax shall vote "YES;" and

All qualified electors opposed to levying the special sales and use tax shall vote "NO."

QUESTION 2

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 _____

Instructions to Voters: All qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote "YES;" and

All qualified electors opposed to the issuance of bonds for the stated purposes shall vote "NO."

4.3 In the referendum on the imposition of a special sales and use tax in Charleston County, all qualified electors desiring to vote in favor of imposing the tax for the stated purposes shall vote "yes" and all qualified electors opposed to levying the tax shall vote "no". If a majority of the electors voting in the referendum shall vote in favor of imposing the tax, then the tax is imposed as provided in the Act and this Ordinance. Expenses of the referendum must be paid by Charleston County government.

4.4 In the referendum on the issuance of bonds, all qualified electors desiring to vote in favor of the issuance of bonds for the stated purpose shall vote "yes" and all qualified electors opposed to the issuance of bonds shall vote "no". If a majority of the electors voting in the referendum shall vote in favor of the issuance of bonds, then the issuance of bonds shall be authorized in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of the referendum must be paid by Charleston County government.

SUMMARY OF RELEVANT FACTS

Before addressing the facts, Defendants believe it is important to note their position that the questions posed by Plaintiffs' Complaint are purely legal in nature. In other words, the issue of whether the Ordinance and proposed referendum questions comply with the statutory requirements of the Enabling Act is a question of law that does not require consideration of facts that are extraneous to the text of the Ordinance and proposed ballot questions. Plaintiffs do not challenge the validity or constitutionality of the Enabling Act, nor do Plaintiffs allege the County lacks authority to enact the Ordinance or that there was any procedural or ministerial defect in the passage of the Ordinance. Further, Plaintiffs do not challenge whether the projects identified in the Ordinance are transportation-related projects squarely within the scope of the Enabling Act. For this reason, Defendants believe the only facts necessary for consideration are those which concern the justiciability of Plaintiffs' claims—including those related to standing and ripeness.

Notwithstanding the foregoing observation, Defendants respond to Plaintiffs' various factual allegations below.

A. In response to Plaintiffs' factual allegations entitled "Parties"

Defendants acknowledge that it appears the Plaintiffs are bringing this suit to challenge the Ordinance and the corresponding referendum questions for the purposes of seeking to enjoin the same from appearing on the November ballot. Defendants do not concede the facts alleged in Sub-Section (I.)(1.) of Plaintiffs' pre-trial brief.

B. In response to Plaintiffs' factual allegations entitled "Factual Background"

Defendants do not dispute Plaintiffs' assertion that the Enabling Act, at S.C. Code Ann. § 4-37-30, grants Charleston County the authority to enact a sales tax of up to one percent to fund transportation-related projects. It likewise is not disputed that Charleston County currently has two half-cent sales taxes in place—*i.e.*, the 2004 Half-Cent Tax and 2016 Half-Cent Tax—and the 2004 Half-Cent Tax will expire sometime between 2026 and 2029, depending upon the actual sums collected.

The plain language of the Ordinance directs that it is to take effect upon the expiration of the 2004 Half-Cent Tax, and it further states that funding the Mark Clark Extension is a priority. *See* Ordinance §2.5 (providing the tax will take effect upon the expiration of the 2004 Half-Cent Tax); Ordinance § 2.4(i) (identifying the Mark Clark Extension as a "Priority Project").

Except as acknowledged above, Defendants do not concede that the remaining "factual background" set out in Plaintiffs' pre-trial brief is accurate, relevant, or supported by admissible evidence.

SUMMARY OF THE LEGAL ISSUES

In summary fashion, Plaintiffs set out the alleged reasons for which they contend this Court should enjoin the referendum. Therefore, any introduction into the issues of this lawsuit must begin with acknowledgement of the well-settled instruction by the Supreme Court of South Carolina that Courts should not typically enjoin elections where the invalidation of the election, after it occurs, is an adequate remedy. The Court has recognized that "It will rarely happen that a court can say in advance irremediable wrong will result to individual electors from the result of an illegal election." *Parler v. Fogle*, 78 S.C. 570, 575-76, 59 S.E. 707, 709 (1907) This is because, "If illegal votes are permitted, attack may be made on the election after it is held, in the manner provided by law." *Id.;*

accord Douan v. Charleston Cty. Council, 356 S.C. 602, 608-09, 590 S.E.2d 484, 487 (2003) (quoting *George v. Municipal Election Com'n of City of Charleston*, 335 S.C. 182, 186, 516 S.E.2d 206, 208 (1999)).

On the whole, Plaintiffs are attempting to prematurely challenge an election—one that has not yet been conducted—based on hyper-technical challenges akin to those that have been considered and rejected by the Supreme Court in challenges to Charleston County's prior sales and use taxes. For these basic reasons, this action must be dismissed for failing to present a justiciable controversy, notwithstanding its lack of merit on the issues presented.

I. The Enabling Act

General Explanation of Statutory Operation.

Section 4-37-30 (the "Enabling Act") provides that a County may fund certain transportation related projects through either a sales and use tax or a toll, but not both. This matter concerns Charleston County's decision to employ a sales and use tax as permitted by S.C. Code Ann. §4-37-30(A), which provides:

> Subject to the requirements of this section, the governing body of a county may impose by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction for a single project or for multiple projects and for a specific period of time to collect a limited amount of money.

Once the County passes an ordinance to impose the sales tax, it must be approved by a majority of the voters of the County via a referendum. Similarly, the ability of the County to issue bonded indebtedness for transportation-related projects against this future tax revenue also requires a referendum. Therefore, there are two primary components of the transportation sales tax: (1) the ordinance; and (2) the referendum questions (for both the tax itself and the corresponding bond).

The requirements of which are addressed at Sections 4-37-30(A)(1) and 4-37-30(A)(3) respectively.

1. The Ordinance. – S.C. Code Ann. §4-37-30(A)(1) provides:

> (1) The governing body of a county may vote to impose the tax authorized by this section, subject to a referendum, by enacting an ordinance. The ordinance must specify:
>
> > (a) the project or projects and a description of the project or projects 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 county imposing the tax and which may include:
> >
> > > (i) highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;
> > >
> > > (ii) jointly-operated projects, of the type specified in sub-subitem (i), of the county and South Carolina Department of Transportation; or
> > >
> > > (iii) projects, of the type specified in sub-subitem (i), operated by the county or jointly-operated projects of the county and other governmental entities;
> >
> > (b) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty-five years or the length of payment for each project whichever is shorter in length, for which the tax may be imposed;
> >
> > (c) the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax; and
> >
> > (d) the anticipated year the tax will end.

2. The Referendum Questions. – S.C. Code Ann. §4-37-30(A)(3)

a. *The Referenda to approve the sales tax.*

> (3) A separate question must be included on the referendum ballot for each purpose which purpose may, as determined by the governing body of a county, be set forth as a single question relating to several of the projects, and the question must read substantially as follows:

"I approve a special sales and use tax in the amount of (fractional amount of one percent) (one percent) to be imposed in (county) for not more than (time) to fund the following project or projects:

Project (1) for _____ $ _____

Yes ___
No ___

Project (2), etc."

b. *The Referenda on the bond.*

In addition, the referendum, as determined by the governing body of a county, may contain a question on the authorization of general obligation bonds under the exemption provided in Section 14(6), Article X of the Constitution of South Carolina, 1895, so that revenues derived from the imposition of the optional sales and use tax may be pledged to the repayment of the bonds. The additional question must read substantially as follows:

"I approve the issuance of not exceeding $_____ of general obligation bonds of _____ County, maturing over a period not to exceed ___ years to fund the _____ project or projects.

Yes ___
No ___"

If the referendum on the question relating to the issuance of general obligation bonds is approved, the county may issue bonds in an amount sufficient to fund the expenses of the project or projects.

S.C. Code Ann. § §4-37-30(A)(3).

SUMMARY OF LEGAL ARGUMENTS

I. In Response to Plaintiffs' Arguments

Plaintiffs assert four arguments in their complaint. Their first argument attacks the Ordinance under § 4-37-30(A)(1) for not listing the costs of each project separately. Their remaining three arguments challenge various aspects of the proposed referendum questions regarding both the imposition of the sales and use tax as well as the proposed bond. In addition to

such other and further arguments and authorities Defendants may subsequently rely upon, below is a general summary of Defendants' position on Plaintiffs' various claims.

As a threshold matter, there are three important flaws in Plaintiffs' arguments. First, it is undisputed that the voters of Charleston County have not yet had their say in connection with the upcoming referendum. Plainly, if a majority of voters cast their votes in opposition to the proposed sales and use tax and the bond question, neither will take effect. Until there is a vote on the referendum, Plaintiffs' lawsuit presents nothing more than contingent, hypothetical dispute. Accordingly, this lawsuit cannot proceed as a matter of law because the action presents no justiciable controversy at this time. "A justiciable controversy must be present before any action can be maintained." *S.C. Pub. Interest Found. v. S.C. DOT*, 421 S.C. 110, 120, 804 S.E.2d 854, 860 (2017) (citing *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996)). "A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character." *Sloan v. Greenville Cnty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003).

Second, the issues raised by Plaintiffs in this case have been raised before by others in a previous lawsuit challenging the 2004 Half-Cent Tax Ordinance and its corresponding referendum question. After the South Carolina Election Commission ruled these claims lacked merit, the plaintiffs in that action sought further review by way of a petition for writ of certiorari to the Supreme Court of South Carolina. After consideration of the issues raised, the Supreme Court in *Douan II* denied certiorari. *See Pet. For Writ of Cert., at pp. 7-8, Douan v. Charleston County Council*, App. Case No. 2004-31048 (Dec. 2004), cert. denied (January 20, 2005).[3] Considering

[3] This Court can take judicial notice of this petition for certiorari and its denial. A copy of the petition is attached hereto as Exhibit 1 for convenience.

that the Supreme Court has expressly declined to find that these arguments warranted review, this Court should likewise find these arguments are as meritless now as they were when made to the Supreme Court nearly 20 years ago. *See id.*

Third, Plaintiffs routinely, if not conveniently, conflate the "purpose" of the tax with the "project or projects" which may be funded with the revenue raised by the tax. Plaintiffs seemingly employ these terms inconsistently, and sometimes in conjunction. *See e.g.,* (Compl. ¶ 80) (using the undefined term "project purpose" to support its allegation, which oxymoronically combines two distinct terms into one). While perhaps this is an artful means of creating confusion, it remains a fatal flaw in Plaintiffs' reasoning.

These fundamental flaws infect all of Plaintiffs' arguments. Nonetheless, Defendants provide a general response to the Plaintiffs' various arguments below.

A. Section 4-37-30 does not require that the Ordinance separately set out the estimated capital costs of each transportation-related project as Plaintiffs' claim.

Generally, an ordinance imposing a tax, "is presumed to be both reasonable and otherwise valid, and not to be struck down unless 'palpably arbitrary, capricious or unreasonable'." *United States Fid. & Guar. Co. v. Newberry*, 257 S.C. 433, 438-39, 186 S.E.2d 239, 241 (1972) (quoting *Colonial Life & Accident Ins. Co. v. S.C. Tax Comm'n.,* 233 S.C. 129, 148, 103 S.E.2d 908, 918 (1958)).

The General Assembly codified the Enabling Act to provide a county (like Charleston County) the ability and authority to impose a sales tax for the purpose of funding transportation-related project(s). The purpose for which a county imposes the sales tax can include as many or as few projects as the County desires, provided the projects are "transportation related." *See* S.C. Code Ann. § 4-37-30(A) (indicating the need for separate referenda for each "purpose" but providing the county the discretion to define the "purpose" as including multiple projects).

Here, Charleston County declared the **purpose** of the tax to be to fund two categories of **projects**, stating as follows:

> 1.3 The County Council finds that a one-half of one percent sales and use tax should be levied and imposed within Charleston County, for the following projects and **purpose**:
>
> (i) 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.
>
> (ii) For financing the costs of greenbelts.
>
> (the above herein referred to as the "**projects**").

See (Ord. § 1.3) (emphasis added).

The Ordinance then goes on to identify specific projects in those categories and provides the costs of the projects in those categories. Specifically, Section 2.4 of the Ordinance provides an estimated cost of $4,968,000,000 for the category (i) projects which it defines as:

> Priority Project: Mark Clark Extension
>
> Other Projects: Rivers Avenue Mobility Improvements, Northbridge Bicycle Pedestrian Improvements, Mall Drive Improvements, South US 17 Corridor Improvements from Dobbin Road to Main Road, Glenn McConnell Overpass at Magwood Drive, Ashley River Road Corridor Improvements from Bees Ferry Road to Old Parsonage Road, US 17 / SC 61 Exit Ramp Improvements, Maybank Highway Corridor Improvements from Bohicket Road to River Road, Maybank Highway Corridor Improvements from River Road to Stono River Bridge, Folly Road Bicycle Pedestrian Improvements including Sol Legare Road, Long Point Road Corridor Improvements from Whipple Road to US 17, Darrell Creek Trail Realignment, 2016 Sales and Use Tax Carryover Projects, Annual Allocation continuation: Resurfacing, Bike/Pedestrian Facilities, Local Paving, Intersection Improvements, and Rural Roads

See (Ordinance § 2.4 (i)).

Section 2.4 of the Ordinance separately provides an estimated cost of $432,000,000 for category (ii) projects which it defines as "greenbelts." *See* (Ordinance § 2.4 (ii)).

Plaintiffs do not contend these projects are not transportation-related projects. Instead, Plaintiffs argue that Charleston County was required to separately identify the costs for each and every transportation-related improvement, rather than providing the aggregate estimated cost of the projects to be funded.

There is no requirement in the statute that the Ordinance identify the cost of each improvement separately. To the contrary, to meet the requirements of the statute, the Ordinance need only provide "the estimated capital cost of the project **or projects** to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax." §4-37-30(A)(1)(c) (emphasis added). The plain language of the Enabling Act provides that Charleston County's Ordinance need only identify the anticipated capital "cost" (noting the singular use of the word). The singular capital "cost" contemplated by the Enabling Act and the Ordinance would be the singular "cost" anticipated to fund either one thing (*i.e.*, a project) or the singular "cost" to fund multiple things (*i.e.*, project**s**). If distinct costs (in plural form) were required for each of the several projects contemplated by the tax, the Enabling Act would so state. It does not.

There are several reasons why Plaintiffs' contention that Charleston County must identify the cost of each project individually, rather than collectively, is simply wrong. As explained in more detail below, the referendum itself can group multiple projects together into a single "purpose." In fact, the Legislature amended the Enabling Act in 2000 to make clear that counties have the discretion to determine what "projects" will be included within a *single question* on the referendum. This amendment provided that, when preparing the referendum, "the purpose may, as

determined by the governing body of a county, be set forth as a single question relating to several of the projects." § 47-73-30(A)(3) (emphasis added).

Moreover, the Enabling Act makes plain that a qualified voter is only entitled to vote in the referendum on whether he or she approves the "purpose" of the tax. Nothing in the Enabling Act requires that a qualified voter participating in the referendum is entitled to vote separately on whether he or she approves each "project" listed among the transportation-related projects that form the purpose for the tax. This distinction matters, because it means an Ordinance and its corresponding referendum do not run afoul of the Enabling Act merely because it does not provide the opportunity to vote on whether to impose the tax on a separate project-by-project basis. Stated differently, because the Enabling Act does not require Charleston County to present a referendum question that allows voting on a road-by-road or project-by-project basis, there is no corresponding requirement to identify the capital cost on a road-by-road or project-by-project basis in the Ordinance as Plaintiffs suggest.[4]

Most importantly, in 2004 the South Carolina Supreme Court was asked to take review of Charleston County's 2004 Half-Cent Tax and find that the ordinance and corresponding referendum question adopting it was improper because it failed to separately list each project and its corresponding cost—which is exactly the argument Plaintiffs attempt here. After losing an appeal before the Charleston County Election Commission raising this concern in 2004, Joey Douan filed a Petition for Writ of Certiorari with the South Carolina Supreme Court seeking

[4] The logic of Plaintiffs' position has no end. If the County must submit a separate question for the Mark Clark Extension and Greenbelts, then it follows that the County would have to submit a different question for every transportation-related project. Thus, a ballot could contain countless referendum questions even among projects for a single purpose, which is contrary to the plaint text of the Enabling Act. See S.C. Code Ann. § 4-37-30(A)(3) (noting "the purpose may, as determined by the governing body of a county, be set forth as a single question relating to several of the projects.") (emphasis added).

review. Douan argued that the subject ordinance and corresponding referendum were invalid because "it failed to identify each project with a dollar amount" and thereby leaving voters with an "all or nothing" proposition. *See Pet. For Writ of Cert., at pp. 7-8, Douan v. Charleston County Council*, App. Case No. 2004-31048 (Dec. 2004), cert. denied (January 20, 2005). Douan's arguments, which the Supreme Court declined to review, are the same arguments that Plaintiffs raise here. (Complaint, ¶ 80) (complaining about the "all or nothing" nature of the referendum).

Further still, and although not binding on this Court, even the Attorney General opinions cited by Plaintiffs conclude that the Ordinance need not set out the separate capital costs for each project separately. *See* (Wilson, A.G. Opinion, dated Sept. 13, 2004, at p. 9).

For these reasons, the plain language of the statute does not support Plaintiffs' contention that the Ordinance must outline the costs of each project.

B. Plaintiffs' contention that the ballot question fails to provide separate votes for separate purposes conflates the term "purpose" with the term "project" which are distinct under the Enabling Act.

The Enabling Act only requires that the ballot contain a separate referendum question for each "purpose." Here, Plaintiffs' argument is that the tax is for "several different project types," thus they claim the ballot must provide a separate question for each of these different project types. However, Plaintiffs' argument overlooks several points.

First, nowhere in the Enabling Act is the phrase "several different project types" found. This is a characterization created by Plaintiffs, not the Legislature. Regardless, Plaintiffs ignore that the Ordinance does not identify different project types. Instead, it only concerns transportation-related projects. Certainly, if the Legislature intended for the Enabling Act to turn on project type it was aware of how to write such a statute. *See e.g.,* S.C. Code Ann. § 4-10-330(A) (in the Capital Project Sales Tax Act, addressing the required ballot question, and "the following

types of projects."); *compare* S.C. Code Ann. § 4-37-30(A)(1)(a)(ii) and (iii) (the Enabling Act explaining that the "type" of projects it contemplates all fall under the definition of subsection (i) regarding "highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects"). There is no contention the *type* of projects at issue here are not singularly limited to *transportation related* projects.

The essence of Plaintiffs' flawed position is that each *project* is a separate *purpose,* which they claim requires a separate question on the ballot when the referendum is held. This reasoning improperly equates project with purpose, ignoring that the Legislature has given them separate meaning, going so far as to amend the Enabling Act to provide that "the purpose [of the tax] may, as determined by the governing body of a county, be set forth as a single question relating to **several of the projects**." § 47-73-30(A)(3) (emphasis added). This amendment must have been inserted by the Legislature for a reason. *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something."). That reason can only be to clarify that the County has the discretion, granted by the Legislature, to determine what the purpose of the tax will be for determining the number of ballot questions that should appear on the referendum. This is plainly incongruent with Plaintiffs' argument that voters are deprived of the ability to vote on a project-by-project basis. (Compl., ⁋ 80) (complaining about voters who support one project and not another are not able to pick and choose projects on the ballot).

Simply put, the County retains the ability to provide what projects will be included in the purpose for the tax, just as it did here. It was within the County's political prerogative to vote to

include all of the "several projects" that are within the purpose for which it proposes to collect the tax. The determination of what transportation-related projects will be included in the purpose, or whether certain projects might be carved out for a separately stated purpose, is a political decision that is within Charleston County's purview and expressly authorized by the Enabling Act.

Plaintiffs complain that they are confronted here with an all or nothing proposition. Yet again, this was the very same unsuccessful argument Douan raised, and which the Supreme Court declined to review when asked. Regardless, the Enabling Act does not require conducting a referendum on a project-by-project basis. To the contrary, the Enabling Act expressly grants counties the right to group "several of the projects" together within the same purpose.

At present, the representatives serving on County Council voted to list the several projects on the ballot question under a single transportation-related purpose, which the Enabling Act expressly permits. The Legislature established this approach as the policy of this State, and it is not for the judicial branch to change that policy. If Plaintiffs do not support the purpose for the sales tax, they should vote "no" on the referendum. Plaintiffs' recourse is not in this Court, but at the polls to elect representatives to County Council that align with their political objectives.

C. The ballot question is not misleading.

As a threshold matter, there is no evidence that the ballot question for use in the referendum is misleading. Specifically, Plaintiffs complain that the ballot question does not reference the Mark Clark Extension. However, they have presented no evidence that this is misleading.

First, the ballot question here is substantially the same to that in 2004, which the Supreme Court determined did not warrant further review.

Second, each of the affidavits submitted by Plaintiffs is from a Charleston County resident that is plainly aware that Charleston County plans to utilize the sales tax revenue for the Mark Clark Extension, among other things. In fact, they brought this lawsuit because of this fact.

It is also important to remember that there is no requirement in the Enabling Act that the full text of the Ordinance must appear in the ballot question. To the contrary, it is only required that the ballot question "must read substantially as follows[,]" with the general framework being supplied by the Legislature as an example. The ballot question in the Ordinance follows this form. If Plaintiffs have any concern about notice, the Legislature resolved this issue as well by requiring notice of the referendum in the newspaper and the conducting of a public hearing prior to the referendum. *See* S.C. Code Ann. § 4-37-30(A)(2).

D. The Enabling Act does not require there to be multiple questions regarding the issuance of a bond in this case.

Contrary to Plaintiffs' assertion, there is but one bond proposition presented in the Ordinance here. Thus, there is but one ballot question for the referendum to address it. The singular proposition presented is whether the voters approve the issuance of a bond in the amount of $1 billion for the purposes of funding the projects for which the tax is proposed. For this simple reason, Plaintiff's reliance on *Ziegler v. Dorchester Cty.*, 426 S.C. 615, 617, 828 S.E.2d 218, 219 (2019), is misplaced.

Ziegler did not concern a referendum regarding bonds *in conjunction with* the imposition of a sales and use tax. *Ziegler*, 426 S.C. at 617, 828 S.E.2d at 219. Rather, *Ziegler* addressed the issuance of a bond to fund specific projects *directly*, which included a library and a community recreational facility. *Id.* Article 1 of Chapter 9 of Title 4 plainly provides that funding libraries is a purpose distinct and separate from other governmental purposes, such as funding recreational centers. *See* S.C. Code Ann. §4-9-10 *et. seq*. *see also* S.C. Code Ann. §4-9-30(5)(a) (providing a

list of projects and describing those "the purposes enumerated in this item.") (emphasis added). Because libraries and recreational facilities involve separate *purposes*, they each required a separate ballot question on whether to issue bonds for the same. While correctly decided, *Zeigler* has no application here because there is no dispute in this case that all of the several projects for which the sales and use tax are proposed are plainly transportation-related projects that are identified in the Ordinance. Here, issuing a bond serves this singular purpose and no others. Therefore, only one referendum question was required on the ballot.

II. Other issues/Arguments/Defenses.

A. Defendants do not concede the justiciability of this matter.

"Before any action can be maintained, a justiciable controversy must be present. A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical or abstract character." *Sloan v. Greenville Cty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003) *citing Byrd v. Irmo High School*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996) *Waters v. South Carolina Land Res. Conservation Comm'n*, 321 S.C. 219, 227, 467 S.E.2d 913, 917-18 (1996). "Justiciability encompasses several doctrines, including ripeness, mootness, and standing." *Wilson v. Dallas*, 403 S.C. 411, 423, 743 S.E.2d 746, 753 (2013).

1. Defendants do not concede that there is a ripe case in controversy.

"[A]n issue that is contingent, hypothetical, or abstract is not ripe for judicial review." *Colleton Cty. Taxpayers Ass'n v. Sch. Dist.*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006); *citing Waters*, 321 S.C. at 227, 467 S.E.2d at 917-18; *see also Pee Dee Elec. Co-Op, Inc. v. Carolina Power & Light Co.,* 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983) ("A justiciable

controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.").

Here, the essence of Plaintiffs' complaint is their disagreement with collecting or spending penny tax revenue on the Mark Clark Extension. However, unless and until the proposed referendum is put to a vote and passes, the matter is not ripe. If the referendum fails, Plaintiffs will have effectively achieved the relief they seek—the County will have to go back to the drawing board if it wants to impose a transportation sales tax. On the other hand, Plaintiffs alleged injury will only materialize if the ballot measure passes. Therefore, their claims are not ripe until the vote is had. *See Encore Tech. Grp., LLC v. Keone Trask & Clear Touch Interactive, Inc.,* 436 S.C. 289, 309, 871 S.E.2d 608, 619 (Ct. App. 2021) (recognizing a claim "is not ripe if it is contingent upon further events."); *accord S.C. Coastal Conservation League, Inc. v. Charleston Cty.*, 442 S.C. 409, 416, 899 S.E.2d 609, 613 (Ct. App. 2024) (indicating that while a challenge to the ordinance may be ripe upon passage a challenge to the ballot language becomes ripe after the election, stating: "The alleged deficiencies that Appellants point to in the ordinances and referenda ballot questions were apparent at the time of the adoption of the ordinance **and the referenda elections** and were ripe for challenge then.") (emphasis added).

This lack of ripeness is highlighted by Plaintiffs' claims that they have standing as taxpayers.

2. Defendants do not concede that the Plaintiffs have standing.

Fundamentally, Plaintiffs lawsuit attempts to invade the separation of powers by having the judicial system disrupt legislative process on matters of public policy.

> Courts are not bodies for the resolution of public policy and generalized grievances. Harms suffered by the public at large, like those Plaintiffs allege here, are to be remedied by the legislative and executive branches. If existing laws and regulations or their

> enforcement fail to protect the public from harm, **it is incumbent upon the public to seek reform through their elected officials or failing that, at the ballot box**.

Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014) (emphasis added).

The Complaint alleges that Plaintiffs Fraser and Miller have standing as taxpayers (Comp. ¶ 19), and that the Conservation League is entitled to associational standing because one or more of its members are taxpayers in Charleston County. (Comp. ¶ 16). However, Plaintiffs cannot establish that they have suffered any harm that is distinct from the generalized interest that every taxpayer has in connection with the matter at issue. Thus, Plaintiffs lack taxpayer standing. *See Crews v. Beattie*, 197 S.C. 32, 49, 14 S.E.2d 351, 357-58 (1941) (recognizing that the generalized interest every taxpayer has in the operation of the government is usually insufficient to confer standing).

For this same logical reason, Plaintiffs lack constitutional standing, having failed to allege any concrete and particularized injury. *S.C. Pub. Interest Found. v. S.C. DOT*, 421 S.C. 110, 125, 804 S.E.2d 854, 862 (2017) ("Here, Petitioners are unable to show they suffered a concrete and particularized injury distinct from that shared by other taxpayers; therefore, we find Petitioners do not have constitutional standing."); *see also Freemantle v. Preston*, 398 S.C. 186, 193, 728 S.E.2d 40, 44 (2012) (recognizing that a taxpayer's injuries are "common to all citizens and taxpayers . . . [which thereby] defeats the constitutional requirement of a concrete and particularized injury"). "As the United States Supreme Court observed, a taxpayer lacks standing when he 'suffers in some indefinite way in common with people generally.'" *ATC S., Inc.*, 380 S.C. at 198, 669 S.E.2d at 341 (2008) (quoting *Frothingham v. Mellon*, 262 U.S. 447, 488, 43 S. Ct. 597, 67 L. Ed. 1078 (1923)); *Bodman v. State*, 403 S.C. 60, 67, 742 S.E.2d 363, 366 (2013) ("[T]o the extent Bodman

has suffered or will suffer any harm as a result of this tax scheme, this harm is shared by all taxpayers in the State.").

Furthermore, Plaintiffs lack public importance standing. The key to public importance standing is whether there is a need for future guidance. *S.C. Pub. Interest Found. v. S.C. DOT*, 421 S.C. 110, 119, 804 S.E.2d 854, 859 (2017) (recognizing that "since many issues may be of public interest, or importance, "[t]he key . . . is whether a resolution is needed for future guidance."). Here, no such future guidance is needed. When the Supreme Court in *Douan* voided the County's referendum in 2002, the County subsequently amended the ballot question for use in the 2004 election to follow the Supreme Court's instructions. This once again resulted in voter approval of the 2004 Half Cent Tax now in place. Following this election, the plaintiff in *Douan II* brought a post-election challenge yet again, raising the same type of arguments Plaintiffs allege here, *to wit*, that the subject ordinance and corresponding referendum were invalid for failing to identify each project with a dollar amount and presenting an "all or nothing" proposition. *See Pet. For Writ of Cert., at pp. 7-8, Douan v. Charleston County Council*, App. Case No. 2004-31048 (Dec. 2004), cert. denied (January 20, 2005). Having failed to convince the election commission that his arguments held water, the plaintiff in *Douan II* filed a petition for writ of certiorari asking the Supreme Court to take review. The issues raised in that petition confront strikingly similar arguments to those raised by Plaintiffs, here, and the Supreme Court denied the petition and declined to review the plaintiff's arguments. Plainly, there is no need for future guidance on an issue that the Supreme Court has had an opportunity to address and declined to consider. "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008).

For the reasons stated above, associational standing is also lacking. "An organization has associational standing 'if one or more of its members will suffer an individual injury by virtue of the contested act.'" *Carnival Corp*., 407 S.C. at 76, 753 S.E.2d at 850 (Internal quotations omitted). "The three part test for associational standing requires that an association's members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Carnival Corp*., 407 S.C. at 76, 753 S.E.2d at 851. Because none of the individuals have standing in their own right for want of taxpayer, constitutional, or public importance standing, there is no basis for associational standing.

Assuming, even for the sake of argument that Plaintiffs could establish standing, the fact remains that *until* the referendum passes there is no tax which they would have to pay. Thus, such standing would not arise (if at all) until after the election were held. As a result, Plaintiffs' ability to assert standing is, like their other claims, not yet ripe as presently there is no justiciable controversy.

B. Other Defenses.

In their answer, Defendants assert additional defenses including the failure to state a claim under Rule 12(b)(6), SCRCP, and the failure to join indispensable parties under Rule 19, SCRCP. Defendants reserve the right to pursue these defenses and submit arguments in support of the same prior to the commencement of the trial on this matter.

EXHIBITS/EVIDENCE

Defendants assert that Plaintiffs' proposed exhibits 1, 2, 3, 4, 5, 6, 7, and 8 are irrelevant and therefore inadmissible under Rules 402 and 403, SCRE. These exhibits are not probative of any issue that is before this Court. Plaintiffs' Complaint challenges the validity of the Ordinance

and included referendum questions based on the manner in which it is written. The extraneous information offered by Plaintiffs has no bearing on this question.

Plaintiffs exhibits relate largely to issues concerning Plaintiffs' opinions regarding the possible environmental and societal impacts of the Mark Clark Extension and statements that were made during political debates prior to the passage of the Ordinance. The language of the Ordinance and its corresponding referendum question speak for themselves. These exhibits, and Plaintiffs' opinion of the Mark Clark Extension have no probative value to the question of whether this Court should enjoin the referendum.

UNUSUAL ISSUES OF EVIDENCE AND LAW

Plaintiffs purport to rely on the statements of individual council members made during political debate to support their claims. However, statements of individual members (even if they were relevant which they are not) are not binding on the Council as a body. The South Carolina Court of Appeals has commented on a party's inability to use the statements of a single member to impeach the Council as a whole, stating:

> We are aware of no authority allowing someone challenging action by Council to interrogate members individually to impeach Council's decision. The governing body of a municipality acts as a collective body, not as individuals, and decisions made in this fashion are the product of debate and compromise. If individuals are not satisfied with decisions made by members of a municipal government within the limits of the law, their remedy is at the polls, not the courts.

Bear Enters. v. Cty. of Greenville, 319 S.C. 137, 139 n.1, 459 S.E.2d 883, 885 (Ct. App. 1995).

SETTLEMENT NEGOTIATIONS

Upon information and belief, settlement in this matter is not practicable. By seeking to enjoin the referendum, Plaintiffs are seeking to undo a legislative act that was approved by a vote of the Charleston County Council subject to a referendum to be approved, or rejected, by the citizens of Charleston County in the November election.

THURMOND KIRCHNER &TIMBES, P.A.

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August 28, 2024
Charleston, South Carolina

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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January 20, 2005

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger
& Goldstein PA
P.O. Box 71121
Charleston, SC 29415

Re: Douan, W. J. v. Charleston County

Dear Mr. Goldstein:

The following Order has been endorsed on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari denied.

s/ Jean H. Toal C.J.
For the Court

January 20, 2005."

Very truly yours,

CLERK

DES/bfs

cc: Joseph Dawson, III, Esquire
Bernard E. Ferrara, Jr., Esquire
W. Kurt Taylor, Esquire
Samuel W. Howell, IV, Esquire
Ms. Donna Royson

Original

2004310418

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM STATE ELECTION COMMISSION
Karl S. Bowers, Jr., Chairman

W. J. "JOEY" DOUAN.....Petitioner,

v.

CHARLESTON COUNTY COUNCIL and
BOARD OF ELECTIONS AND VOTER
REGISTRATION FOR CHARLESTON COUNTY..... Respondents.

PETITION FOR *CERTIORARI*

Petition for Writ of Certiorari Denied
FOR THE COURT

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January 20, 2005

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for Charleston County

INDEX

STATEMENT OF THE CASE[1]

As authorized by §7-17-240, S. C. Code, the petitioner, complaining of the respondents, would show unto the Honorable Court as follows:

1, The petitioner is a citizen and resident of the State of South Carolina and the County of Charleston and is registered to vote in the County of Charleston and has standing to maintain this action.

2. The respondent, Charleston County Council, is the governing body of Charleston County as authorized by §4-9-10, *et. seq.*, South Carolina Code of laws, as amended.

3. The respondent, Board of Elections and Voter Registration for Charleston County Election Commission (hereinafter "Board"), is the governmental entity authorized by South Carolina law to prepare ballots for elections, conduct both general and special elections, tabulate votes, and otherwise provide all ministerial duties associated with the conduct of elections. (See §7-13-70, S. C. Code, Ann.)

4. This matter is before the Court on petitioner's writ of *certiorari* from the decision of the State Election Commission, which rendered its written decision on December 3, 2004 to affirm the decision of the Charleston Election Commission.[2]

5. All parties are subject to the jurisdiction of the Court, and this Court has subject matter jurisdiction over the legal issues involved.

6. In 1995, the South Carolina General Assembly amended the statutory law of South Carolina by adopting §4-37-10, *et. seq.*, which authorizes local governments to enact special sales taxes, not to exceed one percent (1%), subject to explicit, statutory limitations. (The act is often abbreviated as "L.O.S.T." for Local Option Sales Tax.) In

[1] Because this case is presented to the Supreme Court much like an action in the original jurisdiction and for accelerated disposition, the appellant sets forth his "statement of the case" in the form of pleadings.

summary, these limitations are that the tax so imposed be restricted to "transportation related projects."

7. In authorizing the counties and municipalities to adopt an optional sales tax, the Legislature placed specified limiting conditions upon the adoption of the special tax, which include (but are not limited to) the following:

a. the revenue raised by such local option sales tax must be used for "transportation purposes";

b. the registered voters located in the geographical area imposing it must approve the local option sales tax;

c. the form of the question presented to the voters must disclose the targeted purposes, and the form of the ballot question must comply with the form prescribed in §4-37-30 (attached hereto as Exhibit 1).

d. The accompanying enacting ordinance, 1324, failed to contain a complete list of projects, with a dollar amount identified with each project, that falls under the three purposes allowed by the statute: 1. roads and bridges, 2. mass transportation, and 3. greenbelts.

8. On July 30, 2004, the respondent, Charleston County Council, voted to enact a county ordinance pursuant to the state's enabling statute, by adopting Ordinance No. 1324,[3] purporting to place the question of a local sales tax to the vote of registered voters as allowed by §4-37-30.

9. Shortly thereafter, before the August 15th deadline imposed by §7-13-350, S. C. Code, ann., the County presented its enacting ordinance and accompanying

[2] The State Election Commission normally has five commissioners; four attended and voted.

referendum question to the Board of Elections and Voter Registration for Charleston County for insertion on the November 2, 2004, general election ballot. Upon receipt of the ordinance and referendum question, the Board refused to hold a public hearing as required by § 4-37-30, S. C. Code, ann.

10. Following a request by Senator Glenn McConnell, one of the authors of the § 4-37-30, S. C. Code, ann., to review the proposed language, on September 13, 2004, the Attorney General of South Carolina issued a written opinion to County Council that the proposed ballot question is unlawfully constituted because it lumps all of the undefined, inchoate purposes in to one catchall question. In response to this opinion, the respondent, County Council, filed on September 24, 2004, a petition with this Court, requesting that the Court take up the propriety of its proposed ballot language in the Court's original jurisdiction. The County Council included in its application the supporting affidavit of its then Chairman, dated September 27, 2004, and the published opinion of the South Carolina Attorney General dated September 13, 2004. The supporting affidavit said in applicable part:

> In an opinion dated September 13, 2004, requested by Senator Glenn F. McConnell, the Office of the Attorney General cast doubt upon the validity of the 2004 Referendum question. The opinion argues that a fourth defect, argued to but not found by the Court, exists in the form of the question. The Attorney General's Office urged County Council to seek judicial resolution to the question, which it raised, before the November election.
>
> The projects and purposes which are proposed to be funded by the proceeds of the tax represent critical issues to the health safety and quality of life for residents of Charleston County and nonresidents who visit here. Affidavit of Barrett S. Lawrimore, Chair, Charleston County Council

[3] The constitutionality of ordinance 1324 is currently challenged in the Charleston County Court of Common Pleas at Case No. 04-CP-10-4522.

This Court declined to accept the case in its original jurisdiction by written order dated October 20, 2004.

11. In Ordinance 1324, the respondent, Charleston County Council, directed the respondent, the Charleston County Election Commission, to place the sales tax question upon the November 2, 2004 in the following manner:

> *I approve a special sales and use tax in the amount of one-half (1/2) of one percent to be imposed in Charleston County for not more than 25 years, or until a total of $1,303,360,,000 in resulting revenue has been collected, whichever occurs first. The sales tax proceeds will be used for the following projects:*
>
> *Project (1) For financing the costs of highways, road, 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. $1,081,788,8000.*
>
> *Project (2) For financing the costs of greenbelts. $221,571,200.*
>
> *YES*
>
> *NO*
>
> *Instructions to Voters: All qualified electors desiring to vote in favor of levying the special sales and use tax shall vote "YES;" and*
>
> *All qualified electors opposed to levying the special sales and use tax shall vote "NO."*

(A copy of Ordinance No. 1324 is attached hereto as Exhibit 3 and incorporated by this reference. The Attorney General opinion construing it is attached as Exhibit 2.)

12. The question of the sales and use tax was presented to the voters of Charleston County during the general election of November 2, 2004, passed.

13. The question on the November 2, 2004 ballot was unlawful and fundamentally deceptive, for any or all of the following reasons, the effect of which was to disenfranchises Charleston County voters:

a. the underlying ordinance adopted by Charleston County is unlawful because it exceeds the authority granted to the county by the legislature in §4-37-30, S. C. Code, ann. by failing to identify each project with a dollar amount, and fails to allow a Yes/No vote of each purpose. The question as drafted by the County constitutes illegal "bobtailing."

b. The proposed local option sales tax exceeds the scope of the enabling legislation under §4-7-30, S. C. Code Ann., authorizing, among other things, "greenbelts" without providing the projects to be funded with the dollar amount.

c. Neither the ordinance nor the ballot question discloses to voters the identification of projects with a dollar amount under any of the three purposes as required by §4-37-30.

d. The language on the ballot combines all road and "greenbelt" projects in one broad question, forcing voters to vote all or nothing on the undefined purposes and projects.[4]

[4] In its published opinion of September 13, 2004, the Attorney General identified this flaw as follows: "While there may be no objection to voting on two separate propositions at the same time, in most jurisdictions two or more separate or distinct propositions cannot be combined and submitted as a single question, so as to have only one expression of the voter to answer all propositions. The voters cannot be put into the position of being compelled to accept one purpose or proposition for which bonds are sought to be issued that they do not desire, merely because it is coupled with another purpose or proposition that they do desire, or to reject a purpose or proposition that is satisfactory, because it is coupled with another that is not. Thus a separate proposition ordinarily must be placed on the ballot for each distinct and independent object or purpose for which indebtedness is contemplated."
64 Am. Jr.2d, Public Securities and Obligations, Section145, Attorney General Opinion September 13, 2004. The Attorney General went on to describe the combination of projects in an "all or nothing" question as illegal "bobtailing."

e. The ballot language selected by Charleston County Council is specifically drafted to coerce voters to vote all or nothing thereby insuring that the maximum amount of votes will be in the affirmative;

f. The ballot language selected by Charleston County Council is specifically drafted so as to interfere unlawfully with an election and prevent voters from having an opportunity to endorse some purposes and not others as required by the legislature;

g. The proponent of the question, Charleston County Council, selected language to be placed on the ballot when it knew that voters rely on the language as a basis for deciding the question, and that County Council knew that the language it selected is both false and greatly exceeds the authority for the local option sales tax as set forth in §4-37-30, *et. seq.*, S. C. Code of Laws.

h. After Charleston County presented its proposed ballot question to the Board, the Board failed to conduct the mandatory public hearing as required by §4-37-30, S. C. Code, Ann.

i. The Board acquiesced in the language submitted by the Charleston County Council and refused to allow members of the public to comment on the language as required by §4-37-30, S. C. Code, ann.

j. The Petitioner filed an application to the circuit court on October 28, 2004, seeking a writ of *mandamus* against the Charleston County Election

Commission to prevent it from placing the improper language on the *ballot.*

k. The respondent, Charleston County Council, sought to affect unfairly the outcome of the sales tax referendum by employing biased language in formulating a simple sales tax question.

l. The respondent, Charleston County Council, committed voter fraud by drafting language designed to lead voters to believe that all desired projects of any nature could be funded with L.O.S.T. money.

m. The respondent, Charleston County Council, committed voter fraud and disenfranchised voters by refusing to identify projects under the purpose headings of 1. road and bridges, 2. mass transit, and 3 greenbelts thereby misleading voters in to believing any project by any future council can be funded and refusing to identify purposes and projects as required by law.

14. The protest came on to be heard by the Board on November 15, 2004, and by unanimous decision, the Board affirmed the vote in favor of the question and certified the election.

15. Thereafter that appellant timely appealed the referendum question to the State Election Commission, which heard the appeal on December 3, 2004, and voted to affirm the action of the Board.

16. The State Election Commission denied the appellant's request for a hearing *de novo*, and thus appellant was denied his right to call witnesses and fully develop his case and thus denied fundamental due process.

17. The petitioner seeks a writ of *certiorari* to review the decisions of the Board and the State Election Commission and for an order directing the Charleston County Council to conform to the mandatory requirements of §4-37-30, S. C. Code, Ann.

18. The petitioner further prays for an order of the Court requiring Charleston County Council to submit its proposed ballot initiative questions to the Charleston County Legislative Delegation, or a referee appointed by the delegation to determine in the future if such questions are fairly and neutrally presented as the General Assembly required in §4-37-30, S. C. Code, ann. so that properly registered voters will have an opportunity to understand the question fairly and without being compelled to vote all or nothing.

19. The petitioner prays further for this Court to schedule an emergency hearing, dispense with further briefing, or in the alternative, an accelerated briefing schedule, in order that a review of the action of the State Election Commission be heard as a priority as authorized by §7-17-230, S. C. Code, Ann.[5]

20. The petitioner shows further that there are good grounds to support his claim, that he and other voters have been disenfranchised by the actions of Council, that he will suffer irreparable injury if an unlawful election is certified when the County Council unlawfully and unfairly presented to voters a ballot question that did not comply with the requirements of §4-37-30, S. C. Code, ann.

21. Because the County's efforts to affect unfairly the outcome of an election in which it is the proponent and the direct beneficiary, the petitioner asserts that he should

[5] "Appeals from decisions of the state Board shall be taken directly to the Supreme Court on petition for a writ of *certiorari* only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court."

be awarded a reasonable sum as an attorney's fee for the prosecution of this action as authorized by §15-77-300, S. C. Code, Ann.

Wherefore, having fully set forth his petition for *certiorari*, the petitioner prays for an order of the Supreme Court of South Carolina granting a writ of *certiorari* to hear this case and issue its order nullifying the sales tax question and the related bond referendum question of November 2, 2004, and issue its writ of *mandamus* as to the respondent, Board of Elections and Voter Registration for Charleston County, requiring it to present future sales or use tax questions to an independent third party for review appointed by the Charleston County Legislative Delegation prior to any future election; and for an order of the Court declaring Charleston County Ordinance No. 1324 void *ab initio* for exceeding the grant of power to the defendant, Charleston County Council, to enact a local option sales tax pursuant to §4-37-30, *et. seq.*, for costs of this action, for a reasonable sum as attorney's fees as provided by South Carolina law, and for such other and further relief as the Court deems just and proper.

ARGUMENT

The State Election Commission and the Board of Elections and Voter Registration for Charleston County erred in failing to set aside the election of November 2, 2004, the error being that the ballot language exceeds the authorization of the enabling legislation, and fails to provide separate questions for purposes as required by statute, §4-37-30, and the County's enacting ordinance fails to identify projects under each purpose heading and fails to include a dollar amount as required by § 4-37-30 thereby preventing voters from casting votes as contemplated by the legislature and disenfranchising voters by means of voter fraud

1.
Limitation of §4-37-30, S. C. Code

The enabling legislation passed by the General Assembly is plain and unambiguous and speaks for itself.[6] The cardinal rule of statutory construction is to give the words employed by the General Assembly their plain and ordinary meaning. *Gilstrap v. South Carolina Budget and Control Board*, 310 S. C. 210, 423 S.E.2d 101 (1992) It is impossible to read the enabling statute and then read the question on the November 2nd ballot and find any authority for combining the entire tax in one broad question with no identification of purposes or projects. Not only does the proposed referendum question clearly exceed items authorized by the General Assembly, but also without the identification of the projects as required by the statute, the County may use the projected 1.3 billion dollars, or one million dollars per week, for projects not even contemplated by the General Assembly. As comparison between the legislature's sample ballot, and the ballot reveals, the Charleston County Council has disenfranchised and prevented voters from knowing what the tax will fund. (See Ordinance No. 1324, Exhibit 2, which contains the ballot language.) While the establishment of "greenbelts"—whatever they may be—or establishment of other undefined wishes of future councils may or may not be commendable, the indisputable fact is that Charleston County Council has significantly exceeded its authority in seeking to level million dollar a week raise in the form of a local option sales tax for itself without conforming to the statute by defining the purposes and projects. Because the ordinance does not conform to the enabling legislation and because the ballot exceeds the

authority granted to the county, it must fail, and with either or both, the prop question on the referendum must fail as well.

As this Court noted in *Douan vs. Charleston County*, 357 S.C. 601, 594 S. 261 (2003), hereinafter "*Douan I*", §4-37-30, S.C. Code ann. prescribes the ballot to be employed by the various counties in putting sales tax referendums before voters. Our Legislature, recognizing the type of jockeying that occurs on the editorial of Hon. Joseph P. Riley, dated October 28, 2004, attached hereto as Exhib local level as various political interests seek to grab their shares of the million do week pie, placed specific limitations. The legislature recognized that the greate amount of money at stake, the higher the chances become that the stakes pro mischief. By prescribing the ballot form, our legislature sought to prevent exactly the County has done; to wit, loading the question in a particular fashion to achie unregulated financial payoff. The County knows it cannot use the sales tax mon build swimming pools or soccer fields, but in exchange for a million dollars a we does not mind portraying the ballot question in such form that its use of the mor unrestricted. (See editorial of Joseph P. Riley, as Exhibit 4.) In short, the County p a fraudulent election, intentionally thwarting the will of the General Assembly, gave Council the opportunity to enact a L.O.S.T. but under narrowly circumsc conditions, which Council ignored.

While not directly on point, but instructive nonetheless, this Court address

(1999) the plaintiff sought and obtained an injunction of a referendum question, but for different grounds than are asserted here. However, in discussing the video referendum question, this Court repeated the principle that South Carolina follows the universal rule of statutory construction of *expressio unis est exclusio alterius*, that is, the inclusion of one implies the exclusion of the other. In *Joytime* this rationale was applied to an analysis of whether private persons could hold a referendum on video poker in which provided for a contingent outcome. This Court rejected the notion and reaffirmed the universal principle that in a republic form of government, the power of citizens to do certain acts is circumscribed by law. In other words, power is vested in the elected representatives, and they are not permitted to delegate their responsibility to make the law. Because state law provides the specific mechanism for constitutional amendment—and this is the relevance to the present case—this Court refused to recognize an unarticulated back-up method for doing so.

The same rationale applies to the present case. Because the law of South Carolina law establishes the statutory ballot form, Charleston County is not authorized to reject the method authorized by the General Assembly on the ground that the legislature has not specifically prohibited it. And even if the County could, it cannot just veto the requirements imposed by the General Assembly. Such a notion not only offends the principle of *expressio unis est exclusio alterius*, but also flies in the face of common sense.

Just as the State has preempted the Charleston County regarding the parameters for official ballots, the State preempted local governments in the conduct of elections. Thus, when the City of Charleston attempted to usurp state law in a referendum case, by deciding voting booths were not necessary in a municipal election, this court disagreed

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collecting taxes in all of the political subdivisions of the State."

and voided the election. *George v. Municipal Election Commission, 335 S.C. 182 (1999), 516 S.E.2d 206 (1999).* As the above section demonstrates, state law does not permit the types of nonspecific, bobtailed questions utilized by the County of Charleston, the County ordinance notwithstanding. State law preempts the County. As such the ordinance authorizing the instructions to voters is void, and the language placed on the ballot is unlawful.

2.

Plain Meaning of Words on Ballot

The language selected also offends notions of plain meaning and fundamental fairness. If the County is permitted to place a referendum question before the voters without meaningfully defining the projects, then it is promising what if cannot deliver, which alone is enough to void an otherwise valid election. (See *Bellamy v. Johnson*, 234 S.C. 172, 107 S.E.2d 33 (1959)—ballot annexation question struck down for promising no taxes for certain parcels). Any doubt as to why Council specifically drafted an open-ended, nonspecific ballot question or ordinance is immediately dispelled by reviewing the attached preview of how local governments plan on misusing unallocated money for unauthorized projects. Joseph P. Riley's statement, attached hereto as Exhibit 4, is a roadmap to the election fraud perpetrated below. The spending proposal by Mayor Riley is exactly the type of financial misconduct § 4-37-30, S. C. Code, ann. is designed to prevent. Without conformity to the enabling statute or even the local ordinance, then the ballot becomes nothing more than an instrument to create a gigantic million dollar a week slush fund for politicians to use to create anything they have a mind to create notwithstanding the fact that the legislature narrowly limits the uses for L.O.S.T. funds. In fact, that is what

Charleston County's ballot is specifically designed to create—a million dollar a week slush fund. Moreover, If Charleston County can adopt a L.O.S.T. without tailoring the money to specific projects, then so too can every other county enact a L.O.S.T. with no commitment to legislative limitations. The stakes raised by the County's misconduct are great indeed, for instead of 1.3 billion dollars in mischief, the potential is for this number to be raised by the multiplier of 46 to become a 119.6 billion dollar fraud (1 penny = 2.6 billion x 46 = 119.6 billion). Every county in South Carolina is watching the opinion in this case closely for the answer to the following question: Can counties raise money by the L.O.S.T. option and be free of the spending limitations imposed by the legislature? Or, is the Supreme Court going to make the 46 counties conform to the statute? Any commonsense notion of a fair election requires that the question put before the voters be as authorized by the enabling legislation. No other conclusion makes sense, for if this were not the rule; any county may do precisely what the Honorable Joseph P. Riley has already pledged to do—use the tax money for any project even if such use in flagrant violation of the limitations imposed by the legislature.

3.

Fundamental Fairness of the language employed

As *Douan I* held, courts will not set aside election results unless the election is so tainted as to thwart the fundamental integrity of the election process. Here, the indefinite catchall questions presented by Council disenfranchised and deprived the electorate of casting informed decisions on particular purposes as required by the statute. The language employed in framing the question presented is thus fraud by omission. (In the

world of logicians, this type of statement is equivalent to: I did not say I would not hit therefore I can hit you. The law keeps from being illogical by principles such as *expre unis est exclusio alterius* discussed on page 14.) By not identifying the proposed proj the County has created an unanchored slush fund, which it may spend without approval or limitation.[7] This is the exact opposite of the clear intent of §4-37-30.

4.

Remedy

After this Court declined to accept the County's application to invoke ori jurisdiction, which would have allowed this Court to review the language that is subject matter of this lawsuit (See Order dated October 20, 2004), the petitioner file action on October 29, 2004 at case number 04-CP-10-4522, seeking the same r The plaintiff sought, among other remedies, a writ of *mandamus* to enjoin the b language now under review. The circuit court declined to hold a hearing on such notice, and based on the plaintiff's experience in *Douan I*, the case has traveled appropriate procedural course to reach this Court in its present posture. Now tha same case has reached this Court a second time—some might say a third- question becomes how can this Court force Charleston County to conform to the following a second legal challenge to the same ballot? Because this Court alr invalidated the same referendum in *Douan I*, the principle of judicial economy req that the Court issue a guideline to the County to draft the enacting ordinance

remedy is to order the County to adopt the sample ballot provision required by § 4-37-30, but if this simple proposal overtaxes the ability of Council, the Court can always order that the language be reviewed by an independent analysis, such as the Charleston County Legislative Delegation, prior to being placed on the ballot. Although the Board of Elections and Voter Registration for Charleston County normally prepares and distributes ballots pursuant to state law, the issue here involves not only a ballot question, but also the substratum of the Charleston County Ordinance, which creates the ballot language. As the record below demonstrates, the Board takes the position it has no authority to reject the language, reducing itself in essence to the legal equivalent of a potted plant. (The Board's position is demonstrably false, for if a candidate for elected office sought to place his or her name on the ballot in some unlawful or radically unconventional manner, the Board would certainly refuse.) When an ordinance setting up a L.O.S.T. referendum is facially defective, our courts have always held that the proper remedy is to enjoin the election. This Court held in *Joytime*:

> In *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992), this Court reaffirmed its holding in *Parler*[8] that a court rarely, if ever, may enjoin the expression of the popular will. At issue in that case was the validity of an ordinance initiated by petition. The Court held that pre-election review of the validity of the ordinance was appropriate to determine if the ordinance was facially invalid. The Court stated it was ". . . convinced that if an initiated ordinance is facially defective in its entirety, it is 'wholly unjustified to allow voters to give their time, thought, and deliberation to the question of the desirability of the legislation as to which they are to cast their ballots, and thereafter, if their vote be in the affirmative, confront them with a judicial decree that their action was in vain. . . ' " Id. At 455, 415 S.E.2d at 805 (quoting *Schultz v. Philadelphia*, 385 Pa. 79, 86, 122 A.2d 279, 283 (1956))

becomes of the 84% of $221,571,200 that is not allocated by the Charleston County ordinance? The answer is: it becomes a slush fund. The purpose of §4-37-30 is to prevent this exact circumstance.

[8] *Parler v. Fogle*, 78 S.C. 570, 59 S.E. 707 (1909)

The issue here is close to the question decided in *Town of Hilton Head.* While this Court declined accept the County's petition and entertain an application to enjoin the election by taking the case in its original jurisdiction (order of October 20, 2004), it did so only because the County requested an advisory opinion. Now the case is before the court with a real petitioner asserting a real controversy. Significantly, the County recognized the infirmity of its ballot question and ordinance, and in recognition of the flaws, the County attempted to invoke this Court's original jurisdiction. Had the Board conducted its mandatory public hearing as required by § 4-37-30, these issues could have been addressed in a more timely fashion. The Board, acting more like a potted plant than an independent Board, declined to do so and chose instead to do nothing. Because of the Board's inaction, the matter is before this Court to address the facially invalid ordinance and ballot question in the first instance. In evaluating this case this Court must keep in mind that the petitioner does not contest the County's right to enact special sales/use/toll taxes under § 4-37-30, provided it conforms to the statute authorizing it. When this issue was before the Court in *Douan I*, the Court did not hesitate to invalidate the election because of its view that the election was tainted. Now, the County will argue in *Douan II* that the election is only tainted a little—like a little pregnant—not enough to set aside the election. That is of course like a robbery defendant saying he should not be punished because he stole only a little. The tradition of this Court has been not to look the other way in the face of intentional election fraud. In fact, this Court, employing the above standards, threw out a referendum question in Charleston for far less serious violations of election law. When the City of Charleston held a referendum to change City Council races without providing for a private voting

booth for voters, *George v. Municipal Election Commission*, 335 S.C. 182, 516 S.E.2d 206 (1999), this Court found the violation enough to void the election. One cannot seriously argue to this Court that the defect in *George* is greater than the defect in the present action. Therefore, the proper remedy is to nullify the election of November 2, 2004, and either direct County Council to submit this proposed referendum question to a third party to prevent the type of irregularities that led to two challenges to the same referendum, or, in the alternative, direct the County to comply with the requirements of South Carolina law and employ the mandatory sample ballot form provided by the legislature.

CONCLUSION

Therefore for any or all of these reasons, the referendum question improperly appeared on the ballot on November 2nd, and it is far better for all parties, including those who heartily endorse the sales tax increase, that the question be put to the voters lawfully and fairly. Those who support the sales tax increase have nothing to fear from the question being put correctly and lawfully before the public and in accordance with South Carolina law. Because the question presented was not fairly posed, and presented as a comprehensive all or nothing, without even local ordinance authority defining spending, it is unlawful. Because most of the tax money approved is not authorized by the ordinance, the ballot language is tantamount to fraud and taxation without representation. It is a far worse prospect for the County to push a deliberately unlawful question on to the ballot and then be faced with the dilemma of having to refund taxes improperly collected, a lesson recently learned by Charleston County in enacting an unlawful 15% cap on *ad valorem* taxes. The County owes its citizens the duty to do this the right way and the fair way, and

the citizens of Charleston County had the right to expect its elected officials to get it right after this Court's decision in *Douan I*. The damage to the County is far less to present the question fairly from the inception even if it must do so in the next general election.

Respectfully submitted,

December 10, 2004

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South Carolina Code

South Carolina Code
TITLE 4 COUNTIES
CHAPTER 37 OPTIONAL METHODS FOR FINANCING TRANSPORTATION FACILITIES

§ 4-37-30. Sales and use taxes or tolls as revenue for transportation facilities.

To accomplish the purposes of this chapter, counties are empowered to impose one but not both of the following sources of revenue: a sales and use tax as provided in item (A) or to authorize an authority established by the county governing body as provided in Section 4-37-10 to use and impose tolls in accordance with the provisions of item (B):

(A) Subject to the requirements of this section, the governing body of a county may impose by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction for a single project or for multiple projects and for a specific period of time to collect a limited amount of money.

(1) The governing body of a county may vote to impose the tax authorized by this section, subject to a referendum, by enacting an ordinance. The ordinance must specify:

(a) the project or projects and a description of the project or projects 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 county imposing the tax and which may include:

(i) highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;

(ii) jointly-operated projects, of the type specified in sub-subitem (i), of the county and South Carolina Department of Transportation; or

(iii) projects, of the type specified in sub-subitem (i), operated by the county or jointly-operated projects of the county and other governmental entities;

(b) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty-five years or the length of payment for each project whichever is shorter in length, for which the tax may be imposed;

(c) the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax; and

(d) the anticipated year the tax will end.

(2) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of imposing the optional special sales and use tax in the jurisdiction. A referendum for this purpose must

EXHIBIT 1 - Def. Pre-Trial Brief

be held at the time of the general election. The commission shall publish the date and purpose of the referendum once a week for four consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the jurisdiction. A public hearing must be conducted at least fourteen days before the referendum after publication of a notice setting forth the date, time, and location of the public hearing. The notice must be published in a newspaper of general circulation in the county at least fourteen days before the date fixed for the public hearing.

(3) A separate question must be included on the referendum ballot for each purpose which purpose may, as determined by the governing body of a county, be set forth as a single question relating to several of the projects, and the question must read substantially as follows:

"I approve a special sales and use tax in the amount of (fractional amount of one percent) (one percent) to be imposed in (county) for not more than (time) to fund the following project or projects:

Project (1) for _____ $_____ .

Yes ___

No ___

Project (2), etc."

In addition, the referendum, as determined by the governing body of a county, may contain a question on the authorization of general obligation bonds under the exemption provided in Section 14(6), Article X of the Constitution of South Carolina, 1895, so that revenues derived from the imposition of the optional sales and use tax may be pledged to the repayment of the bonds. The additional question must read substantially as follows:

"I approve the issuance of not exceeding $_____ of general obligation bonds of _____ County, maturing over a period not to exceed ___ years to fund the _____ project or projects.

Yes ___

No ___"

If the referendum on the question relating to the issuance of general obligation bonds is approved, the county may issue bonds in an amount sufficient to fund the expenses of the project or projects.

(4) All qualified electors desiring to vote in favor of imposing the tax for a particular purpose shall vote "yes" and all qualified electors opposed to levying the tax for a particular purpose shall vote "no". If a majority of the votes cast are in favor of imposing the tax for one or more of the specified purposes, then the tax is imposed as provided in this section; otherwise, the tax is not imposed. The election commission shall conduct the referendum pursuant to the election laws of this State, mutatis mutandis, and shall certify the result no later than November thirtieth after the date of the referendum to the appropriate governing body and to the Department of Revenue. Included in the certification must be the maximum cost of the project or projects or facilities to be funded in whole or in part from proceeds of the tax, the

maximum time specified for the imposition of the tax, and the principal amount of bonds to be supported by the tax receiving a favorable vote. Expenses of the referendum must be paid by the jurisdiction conducting the referendum. If the tax is approved in the referendum, the tax is imposed effective the first day of May following the date of the referendum. If the certification is not made timely to the Department of Revenue, the imposition is postponed for twelve months.

(5) The tax terminates on the earlier of:

(a) the final day of the maximum time specified for the imposition; or

(b) the end of the calendar month during which the Department of Revenue determines that the tax has raised revenues sufficient to provide the greater of either the cost of the project or projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

(6) When the optional sales and use tax is imposed, the governing body of the jurisdiction authorizing the referendum for the tax shall include by definition more than one item as defined in (a)(i) and (a)(ii) to describe the single project or multiple projects for which the proceeds of the tax are to be used.

(7) Amounts collected in excess of the required proceeds first must be applied, if necessary, to complete each project for which the tax was imposed. Any additional revenue collected above the specified amount must be applied to the reduction of debt principal of the imposing political subdivision on transportation infrastructure debts only.

(8) The tax levied pursuant to this section must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The department may prescribe the amounts which may be added to the sales price because of the tax.

(9) The tax authorized by this section is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter 36 of Title 12 and the enforcement provisions of Chapter 54 of Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 are exempt from the tax imposed by this section. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture food stamps are exempt from the tax imposed by this section. The tax imposed by this section also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12.

(10) Taxpayers required to remit taxes pursuant to Article 13, Chapter 36 of Title 12 must identify the county in which the tangible personal property purchase at retail is stored, used, or consumed in this State.

(11) Utilities are required to report sales in the county in which consumption of the tangible personal property occurs.

(12) A taxpayer subject to the tax imposed by Section **12-36-920**, who owns or manages rental units in more than one county shall report separately in his sales tax return the total gross proceeds from business done in each county.

(13) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied pursuant to this section in a county, either pursuant to the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the special local sales and use tax provided in this section if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition of the special local sales and use tax.

(14) Notwithstanding the imposition date of the special local sales and use tax authorized pursuant to this section, with respect to services that are billed regularly on a monthly basis, the special local sales and use tax is imposed beginning on the first day of the billing period beginning on or after the imposition date.

(15) The revenues of the tax collected in each county pursuant to this section must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues and all interest earned on the revenues while on deposit with him quarterly to the county in which the tax is imposed, and these revenues and interest earnings must be used only for the purpose stated in the imposition ordinance. The State Treasurer may correct misallocations by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of city or county code errors must be corrected prospectively.

(16) The Department of Revenue shall furnish data to the State Treasurer and to the counties receiving revenues for the purpose of calculating distributions and estimating revenues. The information which must be supplied to counties upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

(17) The Department of Revenue may promulgate regulations necessary to implement this section.

(B)(1)(a) This item (B) is intended to provide an additional and alternative method, subject to a referendum, for the provision of and financing for highways, roads, streets, and bridges, and other transportation-related projects, either alone or in partnership with other governmental entities to the end that these transportation-related projects may be undertaken in such manner as may best be calculated to expedite relief of hazardous and congested traffic conditions on the highways in the State, including the authorization for turnpike projects undertaken by the Department of Transportation in Article 9 of Chapter 5 of Title 57. The Department of Transportation is prohibited from removing funds previously dedicated to the project or designated county area under its allocation formula based upon the fact that a county has passed a referendum to impose the tax provided in this chapter.

(b) Subject to the requirements of this item (B), the governing body of a county may by ordinance authorize, subject to a referendum, an authority to use tolls to finance projects authorized by this section.

(c) The ordinance enacted by the governing body of the county to authorize an authority to use tolls must specify:

(i) the purpose for which the toll revenues are to be used which may include jointly-operated projects between the authority and the South Carolina Department of Transportation;

(ii) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty-five years, for which the tolls may be imposed; and

(iii) the maximum cost of the project or facilities to be funded in whole or in part from toll revenues and the principal amount of bonds to be supported by the tolls.

(d) Upon receipt of the ordinance, the county election commission shall conduct a referendum on the question of authorizing an authority to use tolls in the jurisdiction. The referendum must be held on the first Tuesday occurring sixty days after the election commission receives the ordinance. If that Tuesday is a legal holiday then the referendum must be held on the next succeeding Tuesday that is not a holiday. The commission shall publish the date and purpose of the referendum once a week for four consecutive weeks immediately preceding the date of the referendum, in a newspaper of general circulation in the jurisdiction. A public hearing must be conducted at least fourteen days before the referendum, after publication of a notice setting forth the date, time, and location of the public hearing. The notice must be published in a newspaper of general circulation in the county at least fourteen days before the date fixed for the public hearing.

(e) A separate question must be included on the referendum ballot for each purpose and the question must read substantially as follows:

"I approve the imposition of tolls on the following project or projects in (county) for not more than (time) to fund the following project or projects:

Project (1) for _____ $_____

Yes ___

No ___

Project (2) etc."

(f) All qualified electors desiring to vote in favor of imposing tolls for a particular purpose shall vote "yes" and all qualified electors opposed to imposing tolls for a particular purpose shall vote "no". If a majority of the votes cast are in favor of imposing tolls for one or more of the specified purposes, then tolls are imposed as provided in this section; otherwise, an authority is not authorized to impose tolls. A subsequent referendum on this question, after the question is disapproved, must not be held more than once in twenty-four months. The election commission shall conduct the referendum under the election laws of this State, mutatis mutandis, and shall certify the result no later than sixty days after the date of the referendum to the appropriate county governing body and authority and to the South Carolina Department of Transportation. Included in the certification must be the maximum cost

of the project or facilities to be funded in whole or in part from proceeds of the tolls and the maximum time specified for the imposition of the tolls receiving a favorable vote. Expenses of the referendum must be paid by the jurisdiction conducting the referendum.

(g) Tolls terminate on the earlier of:

(i) the final day of the maximum time specified for the imposition; or

(ii) the end of the calendar month during which the authority determines that the tolls have raised revenues sufficient to provide the greater of either the cost of the project or projects as approved in the referendum or the cost to amortize all debts related to the approved projects.

(h) When tolls are imposed for more than one purpose, the governing body of the jurisdiction authorizing the referendum for the tolls shall determine the priority for the expenditure of the net proceeds of the tolls for the purposes stated in the referendum.

(i) Amounts collected in excess of the required proceeds must first be applied, if necessary, to complete each project for which the toll was imposed; otherwise, the excess amounts must be credited to the general fund of the jurisdiction imposing the tax for infrastructure use only.

(2) If the voters have approved the imposition of tolls by referendum and if the authority enters into a partnership, consortium, or other contractual arrangement with the Department of Transportation relating to turnpike facilities, the authority may designate, establish, plan, improve, construct, maintain, operate, and regulate designated highways, roads, streets, and bridges as "turnpike facilities" as a part of the state highway system or any federal aid system whenever the authority determines the traffic conditions, present or future, justify these facilities. Under such partnership arrangement, the authority may utilize funds available for the maintenance of the state highway system for the maintenance of any turnpike facility financed pursuant to this chapter. If the authority determines it is feasible to make all or part of a construction project a turnpike facility, it may engage in the preliminary estimates and studies incident to the determination of the feasibility or practicability of constructing any toll road as it from time to time considers necessary and the cost of the preliminary estimates and studies may be paid from the general highway fund and must be reimbursed from funds provided under this chapter only if the studies and estimates lead to the construction of a toll road.

(3) Under the partnership arrangement, the authority may acquire such lands and property, including rights of access as may be needed for turnpike facilities, by gift, devise, purchase, or condemnation by easement or in fee simple as authorized by law on or after the effective date of this chapter for acquiring property or property rights in connection with other state highways.

(4) In designating, establishing, planning, abandoning, improving, constructing, maintaining, and regulating turnpike facilities, the authority may exercise such authorizations as are granted generally to the Department of Transportation by the statutory law applicable to the state highway system, except as they may be inconsistent with the provisions included in this chapter.

(5) Whenever it becomes necessary that monies be raised for the transportation facilities described in this chapter, the authority may issue toll revenue bonds in a principal amount not to exceed the amount authorized in the referendum to authorize the authority to impose tolls to provide all or a portion of the cost of these facilities and maintenance of the toll road after adopting its resolution setting forth the following:

(a) the toll facility proposed to be constructed;

(b) the amount required for feasibility studies, planning, design, right-of-way acquisition, and construction of the toll facility;

(c) a tentative time schedule setting forth the period of time for which the toll shall be imposed and set forth a schedule for elimination of all or part of all tolls;

(d) a debt service table showing the estimated annual principal and interest requirements for the proposed toll revenue bonds;

(e) any feasibility study obtained by the authority relating to the proposed toll facility;

(f) any covenants to be made in the bond resolution respecting competition between the proposed toll facility and possible future highways whose construction would have an adverse effect upon the toll revenues which would otherwise be derived by the proposed toll facility;

(g) any additional revenue collected above the specified amount to satisfy the principal and interest of toll revenue bonds or maintenance must be applied to the reduction of debt principal of the imposing political subdivision.

(6) In addition to the powers listed above, the authority may in connection with such toll facilities:

(a) fix and revise from time to time and charge and collect tolls for transit over each turnpike facility constructed by it;

(b) combine for the purpose of financing the facilities any two or more turnpike facilities;

(c) control access to turnpike facilities;

(d) to the extent permitted by a bond resolution, expend turnpike facility revenues in advertising the facilities and services of the turnpike facility or facilities to the traveling public;

(e) receive and accept from any federal agency grants for or in the aid of the construction of any turnpike facility;

(f) do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(g) enter into contracts with the Department of Transportation for sharing the cost of building and the revenues derived from the facilities authorized in this chapter and for the operation and maintenance of the facilities for transportation infrastructure debts only.

(C) It is intended that this chapter is an additional and alternative method of financing highway and bridge projects to those already provided under the provisions of the State Highway Bond Act (Section 57-11-210), the State Turnpike Bond Act (Section 57-5-1310 et seq.), the Revenue Bond Act for Utilities (Section 6-21-10 et seq.), and Section 4-9-30(5).

(D) The Department of Transportation must not diminish or decrease funds available to a municipality, county, or multi-county area because a project has been funded in the municipality, county, or multi-county area pursuant to a referendum provided in this chapter.

HISTORY: Added by 1995 Act No. 52, § 2, eff upon approval (became law without the Governor's signature May 18, 1995). Amended by 1997 Act No. 122, § 1, eff June 13, 1997; 1999 Act No. 93, § 6, eff June 11, 1999; 2000 Act No. 368, § 1, eff June 14, 2000; 2001 Act No. 89, § 41, eff July 20, 2001.

EDITOR'S NOTE –

Act No. 458, Part II, Section 88 of 1996 provides that whenever the term "Department of Revenue" appears in the Acts and Joint Resolutions of the General Assembly or the 1976 Code of Laws of South Carolina, it shall mean the "Department of Revenue."

EFFECT OF AMENDMENT –

The 1997 amendment, in the first paragraph of subsection (A), inserted "or for multiple projects"; in subsection (A)(1)(a), inserted "or projects" in two places; in subsections (A)(1)(a)(ii) and (iii), inserted ", of the type specified in sub-item (i),"; in subsection (A)(1)(c), inserted "or projects"; rewrote subsection (A)(2); in subsection (A)(6), substituted "to describe the single project or multiple projects for which the proceeds of the tax are to be used" for "as long as the projects are connected and form a single transportation system"; and made other nonsubstantive changes.

The 1999 amendment in subsection (A)(4) changed "sixty days" to "November thirtieth" and "the month occurring one hundred eighty days after" to "May following", and in subsection (A)(15) changed "the State Treasurer" to "him" and "subsequent" to "later" and added the last sentence.

The 2000 amendment, in the first paragraph of subsection (A), substituted "in an amount not to exceed one percent" for "one percent", in subsection (A)(1)(a) added "mass transit systems, greenbelts,", in subsection (A)(2) deleted from the beginning of the second sentence "If the ordinance is received prior to January 1, 1998, a referendum for this purpose may be held on the Tuesday following the first Monday in November; however, if the ordinance is received on January 1, 1998, or thereafter", in subsection (A)(3) added in the first paragraph "which purpose may, as determined by the governing body of a county, be set forth as a single question relating to several of the projects,", in the first quoted paragraph substituted "in the amount of (fractional amount of one percent (one percent)" for "one percent", and in the first sentence of the second paragraph substituted "as determined by the governing body of a county, may" for "shall", and made nonsubstantive changes throughout subsection (A).

The 2001 amendment in paragraph (A)(15) clarified "misallocations" for

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Office of the Attorney General
State of South Carolina

*1 September 13, 2004

The Honorable Glenn F. McConnell
President Pro Tempore
The Senate
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator McConnell:

You seek an opinion "as to the upcoming referendum in Charleston County for a sales tax ordinance and the ballot question to be used in the referendum." By way of background, you provide the following information:

[a]s you may be aware, the Supreme Court voided the last referendum on the grounds that the ballot question failed to conform to the statutory requirements of § 4-37-30. After the Supreme Court voided the election, Governor Sanford issued an Executive Order to conduct a new election in conformity with state and federal law.

Since the Election Commission is charged with drafting the ballot question and concerns have been raised about the legality of drafting, we believe that it would be beneficial for your interpretation of applicable law so that they might know the legal parameters under which they have to operate in this regard. Hopefully, by taking this course of action we can perhaps avoid litigation on this matter, which could subject the taxpayers of Charleston to unnecessary expense as well as raise doubts as to the validity of the referendum. Therefore, we would respectfully request your opinion on the following issues that are relevant to the referendum.

First, does Section 4-37-30 require a separate question for each project on the ballot? Section 4-37-30(3) provides that "A separate question must be included on the referendum ballot for each purpose which purpose may, as determined by the governing body of a county, be set forth as a single question relating to several of the projects..." Secondly under the statute, is mass transit a different project or purpose from a bridge, road, or greenbelt? Finally, can a ballot question be written so as to include as a single question the following example and be in conformity with Section 4-37- 30?

"I approve a special sales and use tax in the amount of __% to fund the following projects:

Project 1: Greenbelts and I-526 Yes___No___
Project 2: Mass Transit (CARTA) and Expressway Yes___No___

According to the information supplied to this Office, the question for the 2004 referendum will read as follows:

CHARLESTON COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

I approve a special sales and use tax in the amount of one-half (1/2) of one percent to be imposed in Charleston County for not more than 25 years, or until a total of $1,303,360,000 in resulting revenue has been collected, whichever occurs first. The sales tax proceeds will be used for the following projects:

Project (1) For financing the costs of highways, roads, streets, bridges and other

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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. $1,081,788,800.

*2 Project (2) For financing the costs of greenbelts. $221,571,200.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of levying the special sales and use tax shall vote "YES;" and

All qualified electors opposed to levying the special sales and use tax shall vote "NO."

QUESTION 2

I approve the issuance of not exceeding $113,000,000 of general obligations bonds of Charleston County, payable from the special sales and use tax described in Question 1 above, maturing over a period not to exceed 25 years, to fund completion of projects from among the categories described in Question 1 above.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of the issuance of bonds for the stated purposes shall vote "YES;" and

All qualified electors opposed to the issuance of bonds for the stated purposes shall vote "NO."

Law / Analysis

South Carolina Code Ann. Section 4-37-30 empowers counties either to impose a sales and use tax or to authorize an authority established by the county council to "use and impose tolls" in order to provide revenue for a transportation facility. Section 4-37-30(A) provides as follows:

(A) Subject to the requirements of this section, the governing body of a county may impose by ordinance a sales and use tax in an amount not to exceed one percent within its jurisdiction for a single project or for multiple projects and for a specific period of time to collect a limited amount of money.

(1) The governing body of a county may vote to impose the tax authorized by this section, subject to a referendum, by enacting an ordinance. The ordinance must specify:

(a) the project or projects and a description of the project or projects 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 county imposing the tax and which may include:

(i) highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects facilities including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation-related projects;

(ii) jointly-operated projects, of the type specified in sub-subitem(i), of the county and South Carolina Department of Transportation; or

(iii) projects, of the type specified in sub-subitem (i), operated by the county or jointly-operated projects of the county and other governmental entities;

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(b) the maximum time, stated in calendar years or calendar quarters, or a combination of them, not to exceed twenty-five years or the length of payment for each project whichever is shorter in length, for which the tax may be imposed;
(c) the estimated capital cost of the project or projects to be funded in whole or in part from proceeds of the tax and the principal amount of bonds to be supported by the tax; and
*3 (d) the anticipated year the tax will end.

Subsection (3) of § 4-37-30(A) further provides in pertinent part:
(3) A separate question must be included on the referendum ballot for each purpose which purpose may, as determined by the governing body of a county, be set forth as a single question relating to several of the projects, and the question must read substantially as follows:
"I approve a special sales and use tax in the amount of (fractional amount of one percent) (one percent) to be imposed in (county) for not more than (time) to fund the following project or projects:
Project (1) for _____ $_____
Yes ___
No ___
Project (2), etc."

Several principles of statutory construction are pertinent to your inquiry. The primary objective in construing statutes is to determine and effectuate legislative intent if at all possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). 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. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). Every part of a statute must be given effect. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). The statute must be harmonized to render the statute consistent with the general purpose of the act. Crescent Mfg. Co. v. Tax Commission, 129 S.C. 480, 124 S.E. 761 (1924).

We have advised with respect to § 4-37-30 in particular that "the purpose of the enacting ordinance, like the ballot question, is to educate the public about the substance of the pending referendum," Op. S.C. Atty. Gen., November 7, 2001. Thus, we have observed that there should be
... as much disclosure to the public as practicable. Thus, although project categories may be sufficient, [we] ... would advise against identifying the projects only [by] reference to a pre-existing program list. The identification and description of the project categories should be adequately detailed in the enacting ordinance.
Id. See also, Op. S.C. Atty. Gen., August 30, 1996 ["A ballot description must give a true and impartial statement of the purpose of the measure in such language as not intentionally to be an argument or to be likely to create prejudice either for or against the measure." 42 Am.Jur.2d, Initiative and Referendum, § 46 (1969)."]

The November 7, 2001 opinion also stressed that the governing body possesses broad discretion in terms of the expenditure of funds raised by virtue of the authorizing referendum. There, we noted the following:
[h]owever, although the statute requires that the governing body notify the public of the intended uses of the proceeds of the tax, the county may maintain some discretion in the expenditure of the funds for best interests of the public. For example, in Ramsey v. Cameron, 245 S.C. 189, 139 S.E.2d 765 (1965), the Supreme Court of South Carolina found

that pursuant to the Municipal Bond Act, the effect the referendum question is to limit the use of funds for the purposes set forth in the referendum question. How those funds are spent and the precise improvements to which the proceeds are applied are decisions within the discretion of the municipal governing body. Id. In Sarrat v. Cash, 103 S.C. 531, 88 S.E. 256 (1916), the Supreme Court addressed the allegation by voters that they had approved a bond referendum based on representations made by school trustees that a school would be built in a certain location; upon approval of the referendum, the school trustees decided to build the school elsewhere. The court denied the plaintiffs' request to enjoin the trustees from building the school at a different locality, upholding the trustees' right to exercise discretion in the matter:

*4 [The trustees] could not, therefore, bind themselves by promises or representation, so as to divest themselves of the right to a free and untrammeled exercise of their judgment and discretion for the best interests of their district at the time they were required to act as a body.... It would be contrary to public policy to allow public officers who are charged with the duty of exercising their judgment and discretion ... to bind or fetter themselves by promise or presentation to individuals or to electors of ... the district so that they could not, at all times, act freely and impartially.... The power was conferred upon them for public purposes, and it could not be lawfully bartered away to influence ... votes in the election. The electors are presumed to have known this. Therefore they had no legal right to reply upon the alleged representations, or to be influenced by them in ... voting in the election.

Id. at 535-36, 88 S.E. at 258.

Thus, we found that "... the county must sufficiently identify and describe the projects for which the proceeds of the tax will be used in order for the public to make an informed decision in the referendum, but the county need not so narrowly tailor the enacting ordinance that it leaves no room for the exercise of discretion in the actual expenditure of funds." Accordingly, we specifically advised "against identifying the projects only by reference to a pre-existing program list," noting instead that the "identification and description of the project categories should be adequately detailed in the enacting ordinance." In our view, "[a]ny attempts to fund projects that could have been, but were not, included in the referendum and identified to the public could be seen as a violation of the spirit of Section 4-37-30."

Recently, in an opinion dated August 22, 2003, we reiterated at some length the general standards governing the validity of ballot referenda in South Carolina. We cited earlier opinions of May 8 and May 14, 2003 as well as a wealth of other authorities.

Our May 8 opinion discussed the general law governing any alleged material ambiguity or misrepresentation which a court would consider concerning any court action relating to the November 5 bond referendum. We noted therein that, generally speaking, the general purpose of a bond referendum - like any other referendum - "must be stated with sufficient certainty to inform and not mislead the voters as to the object in view...." Fairfax County Taxpayers Alliance v. Bd. of County Supervisors of Fairfax, 202 Va. 462, 117 S.E.2d 753 (1961), cited with approval by the South Carolina Supreme Court in Sadler v. Lyle, 254 S.C. 535, 176 S.E.2d 290, 295 (1970). [quoting Fairfax] See also, Stackhouse v. Floyd, 248 S.C. 183, 149 S.E.2d 437 (1966), citing Ex Parte Tipton v. Smith, 229 S.C. 471, 93 S.E.2d 640 (1956); Dick v. Scarborough, 73 S.C. 150, 53 S.E. 86 (1905) ["voter should have reasonable notice of the (bond) election and the issue it involved. "]; Winterfield v. Town of Palm Beach, 455 So.2d 359 (Fla. 1984) [ballot for bond referendum may not fail to adequately inform voters of the proposed project]; McNichols v. City and County of Denver, 120 Colo. 380, 209 P.2d 910 (1949) [question submitted to the electors must not be misleading, but must be specific]....

*5 The general rule in South Carolina is that the courts will employ every reasonable

presumption in favor of sustaining a contested election. Irregularities or illeg are held to be insufficient to set aside an election unless the errors actually have affected the result of the election. Knight v. State Bd. of Canvassers, 29 374 S.E.2d 685 (1988); Sims v. Ham, 275 S.C. 369, 241 S.E.2d 316 (1980); Gregor Carolina Democratic Executive Committee, 271 S.C. 364, 247 S.E.2d 439 (1978); B Spigner, 226 S.C. 183, 84 S.E.2d 831 (1954); Bolt v. Cobb, 225 S.C. 408, 82 S.E (1954). See also, Sykes v. Belk, supra. Quoting our Supreme Court in Connolly v 100 S.C. 74, 84 S.E.297 (1915), in the typical situation, a variance in the bon referendum "does not affect the validity of the bonds.... It goes only to the ap of the proceeds of the sale of the bonds."

Moreover, generally recognized is the following legal principle regarding the combination of separate propositions in a referendum ballot question:

[w]hile there may be no objection to voting on two separate propositions, a time, in most jurisdictions two or more separate or distinct propositions canno combined and submitted as a single question, so as to have only one expression voter to answer all propositions. The voters cannot be put into the position of compelled to accept one purpose or proposition for which bonds are sought to be that they do not desire, merely because it is coupled with another purpose or p that they do desire, or to reject a purpose or proposition that is satisfactory it is coupled with another that is not. Thus a separate proposition ordinarily placed on the ballot for each distinct and independent object or purpose for wh indebtedness is contemplated."

64 Am.Jur.2d, Public Securities and Obligations, § 145.

Our Supreme Court recently addressed the scope of § 4-37-30 in Douan v. Charl Council, 357 S.C. 601, 594 S.E.2d 261 (2003). In Douan, the Court granted certi review of a decision from the State Election Commission denying protests regard referendum in which the voters of Charleston County had approved the imposition and use tax. The Court voided the referendum, based upon the ballot's wording.

Douan recognized that "'[a] question should not be submitted in such form as to an argument for its acceptance or rejection."' 357 S.C. at 610. In the Court "... the characterization of the tax in the voter's instructions was so mislead warrant nullification of the election results." Referencing § 7-13-400, which " for the form of the ballot when questions are submitted...," as well as other d [Bellamy v. Johnson, 234 S.C. 172, 107 S.E.2d 33 (1959), George v. Municipal El Comm'n of City of Charleston, 335 S.C. 182, 516 S.E.2d 206 (1999) and O'Beirne Elgin, 1914 WL 2613 (Ill. App. 1914)], the Court held:

*6 [i]n our opinion, the Ballot used here does not conform with the statuto mandated format, and the non-conformance is so substantial that it affects the integrity of the election. See George. The purpose of section 7-13-400 is the s of the Illinois statute discussed in O'Beirne: to aid the voter in understandin meaning of his vote, not the reason for it. See O'Beirne. Instead of explaining voter could vote for or against the sales tax, the instructions to the voters i attributed reasons to vote in favor of the measure: "traffic congestion relief, roads, and clean water." In fact, these were the very same reasons that support tax espoused in favor of the tax in the weeks preceding election day. Additiona as in O'Beirne persons may be in favor of traffic congestion relief and clean w for reasons satisfactory to themselves [do] not favor the [tax] in question." O

that a vote for clean water was a vote for increased sales tax. Id. at 612.

While the Court in Douan voided the election because the "fundamental integri was at stake, the Court refused to do so on the basis of two other technical vi § 4-37-30(A)(3). In the Court's view, "the language actually placed on the ball case differed from the required language in three ways." 357 S.C. at 609. In ad the fact that "the title and instructions to the voters appeared to advocate pa the tax," Id. - the ground upon which the Court struck down the referendum - Do noted that two other flaws were that

[f]irst, instead of listing a dollar amount for the cost of each project, t question adopted by County Council listed the percentage of the total amount to collected that would be allotted to each project. The Ballot question included amount to be collected in the first paragraph of the ballot: 1,303,360,000. Sec two main projects were not numbered (1) and (2) as suggested in § 4-37-30(A)(3) instead, were separated into two different paragraphs. The second project's pur (purchasing and improving parklands and otherwise preserving greenspace) was bu end of the paragraph, after all of the benefits of the project were listed. Thi most importantly, the title and instructions to the voters appeared to advocate the tax.

The Court did not address the issue of combining projects into a single vote, such issue was argued in the Appellant's Brief.

We turn now to the specific questions which you have raised.

1. Does Section 4-37-30 require a separate question for each project on the bal

*7 No. While § 4-37-30(A)(3) is somewhat ambiguous, it is evident that the Ge Assembly intended that several projects may be enumerated within a single quest

Originally, § 4-37-30(A)(3) simply provided that "[a] separate question must on the referendum ballot for each purpose...." This wording may have led to the of whether a separate question was necessary for each "project" as enumerated i 4-37-30(A)(1)(i) through (iii). In any event, an amendment to § 4-37-30(3) was 2000 as part of Act No. 368 to include the present language "... which purpose determined by the governing body of a county, be set forth as a single question to several of the projects...." The title of Act 368 of 2000 provides that the Assembly's purpose in the amendment to § 4-37-30(A)(3) was "To Provide That A S Question Relating to The Funding of Several Projects May Be Placed on A Referen By A County Governing Body To Determine Whether Voters Approve A Special Sales Tax...." When read in conjunction with § 4-37-30(A)(1)(a), which refers only to various categories therein as "projects" and not "purposes," we are of the opin county council has the discretion to combine several "projects" into a single b question.

However, the fact that the law now allows several projects to be placed withi broad question, does not mean that the ballot may be so construed to authorize vote on different projects. This limitation contained in § 4-37-30 (3) is more explained below.

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therein (highways, roads, streets, bridges, mass transit systems, greenbelts, a transportation-related projects facilities...." are separate "projects." Subsec ballot form buttresses this reading by providing by example for a separate enum "projects." ["Project (1)... Project 2, etc."].

3. Can a ballot question be written so as to include as a single question the f example and be in conformity with Section 4-37-30?

"I approve a special sales and use tax in the amount of (fractional amount of percent) (one percent) to be imposed in (county) for not more than (time) to fu following project or projects:
Project (1) for _____ $_____
Yes ___
No ___
Project (2), etc."

No. While the statute permits the inclusion of various "projects" in a single (see No. 1 above), it does not allow separate projects to be listed together as project - with a single vote thereupon. Subsection (3)'s question form clearly that the General Assembly intended each project to be listed separately and tha not be "lumped" together. Moreover, such combining of projects could result in "bobtailing" in which voters interested in voting for or against one project wo required to vote the same way on another project which is combined with it. In opinion, both the language, as well as the spirit of § 4-37-30, does not author combinations.

*8 It should be noted here that § 4-37-30 (6) provides that
[w]hen the optional sales and use tax is imposed, the governing body of the jurisdiction authorizing the referendum for the tax shall include by definition one item as defined in (a)(i) and (a)(ii) to describe the single project or mul projects for which the proceeds of the tax are to be used.

Thus, this Subsection anticipates that certain projects must be described by one item" in (a)(i) and (a)(ii). The obvious purpose of this provision is to pr information to the voters regarding such multi-faceted projects.

There is no indication in the information which you have provided that § 4-37 applicable here. We are thus unaware of any requirement, pursuant to this subse describe the proposed projects by way of "more than one item."

Conclusion

Accordingly, in our opinion, § 4-37-30 requires that the various "items" in ((a)(ii) and (a)(iii) be separately presented to the voters as "different projec it may be argued that county council possesses the requisite discretion to comb projects together for a single vote, and arguably Douan implicitly approved suc grouping, we respectfully disagree that the statute permits such combination. T combination would, in our view constitute a form of "bobtailing" which is incon with § 4-37-30(3). A voter would necessarily have to vote "all or nothing" on c projects. Although the Amendment in 2000 clearly permitted several projects to in the same question, it did not authorize several unrelated projects to be rol

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Authorities are of the view that "[g]enerally, several separate distinct and uni projects may not be combined in one ballot." State v. City of Augustine, 235 So (Fla. 1970).

Thus, while the issue was before the Court in Douan, the Supreme Court did not comment upon this particular question. To our knowledge, our courts have not sq decided the issue. Therefore, in our view, both the language and the spirit of require that each project be voted on in "yes-no" fashion separately. County Co should thus proceed cautiously in combining discrete projects into a single vot opposed to a single question allowing separate votes on each project). Accordin opinion, it would be prudent to seek judicial resolution before the November el rather than to subject taxpayers to the possibility of a second court challenge vote has been held.

Very truly yours,

Robert D. Cook

Assistant Deputy Attorney General

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END OF DOCUMENT

CHARLESTON COUNTY ORDINANCE NO. 1324

TO LEVY AND IMPOSE A ONE-HALF (½) OF ONE PERCENT SALES AND USE TAX SUBJECT TO A REFERENDUM, WITHIN CHARLESTON COUNTY PURSUANT TO SECTION 4-37-30 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; TO DEFINE THE SPECIFIC PURPOSES AND DESIGNATE THE PROJECTS FOR WHICH THE PROCEEDS OF THE TAX MAY BE USED; TO PROVIDE THE MAXIMUM TIME FOR WHICH SUCH TAX MAY BE IMPOSED; TO PROVIDE THE ESTIMATED COST OF THE PROJECTS FUNDED FROM THE PROCEEDS OF THE TAX; TO PROVIDE FOR A COUNTY-WIDE REFERENDUM ON THE IMPOSITION OF THE SALES AND USE TAX AND THE ISSUANCE OF GENERAL OBLIGATION BONDS AND TO PRESCRIBE THE CONTENTS OF THE BALLOT QUESTIONS IN THE REFERENDUM; TO PROVIDE FOR THE CONDUCT OF THE REFERENDUM BY THE BOARD OF ELECTIONS AND VOTER REGISTRATION OF CHARLESTON COUNTY; TO PROVIDE FOR THE ADMINISTRATION OF THE TAX, IF APPROVED; TO PROVIDE FOR THE PAYMENT OF THE TAX, IF APPROVED; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

BE IT ENACTED BY THE COUNTY COUNCIL OF CHARLESTON COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1. **Recitals and Legislative Findings.** As an incident to the enactment of this Ordinance, the County Council of Charleston County, South Carolina (the "County Council") have made the following findings:

(a) The South Carolina General Assembly has enacted Section 4-37-30 of the Code of Laws of South Carolina 1976, as amended (the "Act"), pursuant to which the county governing body may impose by ordinance a sales and use tax in an amount not to exceed one percent, subject to the favorable results of a referendum, within the county area for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money.

(a) Pursuant to the terms of Section 4-37-10 of the Code of Laws of South Carolina 1976, as amended, the South Carolina General Assembly has authorized county government to finance the costs of acquiring, designing, constructing, equipping and operating highways, roads, streets and bridges and other transportation related projects either alone or in partnership with other governmental entities. As a means to furthering the powers granted to the County under the

partnership, consortium, or other contractual arrangements with one or more other government entities at this time; provided that nothing herein shall preclude County Council from entering in partnerships, consortiums, or other contractual arrangements in the future. County Council m utilize such provisions in the future as necessary or convenient to promote the public purposes serv by funding roads, mass transit, greenbelts as provided in this Ordinance.

(b) The County Council finds that a one-half of one percent sales and use t should be levied and imposed within Charleston County, for the following projects and purposes:

(i) For financing the costs of highways, roads, streets, bridges, and othe transportation-related projects facilities, and drainage facilities related thereto, and mass trans systems operated by Charleston County or jointly operated by the County and other governmenta entities.

(ii) For financing the costs of greenbelts

(the above herein collectively referred to as the "projects").

For a period not to exceed 25 years from the date of imposition of such tax, to fund the projects a a maximum cost not to exceed $1,303,360,000 to be funded from the net proceeds of a sales and us tax imposed in Charleston County pursuant to provisions of the Act, subject to approval of the qualified electors of Charleston County in referendum to be held on November 2, 2004. The imposition of the sales and use tax and the use of sales and use tax revenue, if approved in the referendum, shall be subject to the conditions precedent and conditions or restrictions on the use and expenditure of sales and use tax revenue established by the Act, the provisions of this Ordinance, and other applicable law. Subject to annual appropriations by County Council, sales and use tax revenues shall be used for the costs of the projects established in this Ordinance, as it may be amended from time to time, including, without limitation, payment of administrative costs of the projects , and such sums as may be required in connection with the issuance of bonds, the proceeds of which are applied to pay costs of the projects. All spending shall be subject to an annual independent audit to be made available to the public.

(c) County Council finds that the imposition of a sales and use tax in Charleston County for the projects and purposes defined in this Ordinance for a limited time not to exceed 25 years to collect a limited amount of money will serve a public purpose, provide funding for roads and transportation, mass transit, and greenbelts to facilitate economic development, promote public safety, provide needed infrastructure, promote desirable living conditions, enhance the quality of life in Charleston County, and promote public health and safety in the event of fire, emergency, panic,

Section 2. Approval of Sales and Use Tax Subject to Referendum.

2.1 A sales and use tax (the "Sales and Use Tax"), as authorized by the Act, is her imposed in Charleston County, South Carolina, subject to a favorable vote of a majority of qualified electors voting in a referendum on the imposition of the tax to be held in Charleston Cou South Carolina on November 2, 2004.

2.2 The Sales and Use Tax shall be imposed for a period not to exceed 25 years from date of imposition.

2.3 The maximum cost of the projects to be funded from the proceeds of the Sales a Use Tax shall not exceed, in the aggregate, the sum of $1,303,360,000, and the maximum amo of net proceeds to be raised by the tax shall not exceed $1,303,360,000, which includes administrati costs and debt service on bonds issued to pay for the projects. The estimated principal amount initial authorization of bonds to be issued to pay costs of the projects and to be paid by a portion the Sales and Use Tax is $113,000,000. The proceeds of these bonds shall be used for the followi projects, in estimated amounts as described: $25,000,000 to begin the right-of-way acquisition a engineering process for the widening and improvement of Johnnie Dodds Boulevard from the Arth Ravenel, Jr. Bridge to the I-526 overpass; $7,000,000 for Glenn McConnell Parkway/Bees Fer Road Intersection improvements; $10,000,000 for road improvements on James Island (Folly Ro and Maybank Highway intersection improvements, Harbor View Road Improvements, and an o ramp interchange loop from the James Island Connector to Folly Road); $6,000,000 for a U Highway 17 access ramp onto the US Highway 61 connector near Wesley Drive; $29,000,000 f acquisition and construction of a roadway connecting Ashley Phosphate Road and the Palmett Parkway through Spartan Blvd.; and $36,000,000 for greenbelts.

2.4 The Sales and Use Tax shall be expended for the costs of the following project including payment of any sums as may be required for the issuance of and debt service for bonds, th proceeds of which are applied to such projects, for the following purposes:

(i) For financing the costs of highways, roads, streets, bridges, and othe transportation-related projects facilities, and drainage facilities related thereto, and mass transi systems operated by Charleston County or jointly operated by the County and other governmenta entities. The amount of the maximum total funds to be collected which shall be expended for thes projects and purposes shall be no more than $1,081,788,800.

(ii) For financing the costs of greenbelts. The amount of the maximum total funds to be collected which shall be expended for these projects and purposes shall be no more than

the South Carolina Department of Revenue. Included in the certification must be the maximum c of the projects to be funded in whole or in part from the proceeds of the tax, the maximum tir specified for the imposition of the tax, and the principal amount of initial authorization of bonds any, to be supported by a portion of the tax.

2.6 The Sales and Use Tax, if approved in the referendum conducted on November 2004 shall terminate on the earlier of:

(1) on April 30, 2030; or

(2) the end of the calendar month during which the Department of Reven determines that the tax has raised revenues sufficient to provide the greater e either the costs of the projects as approved in the referendum or the cost t amortize all debts related to the approved projects.

2.7 Amounts of Sales and Use Tax collected in excess of the required proceeds must firs be applied, if necessary, to complete each project for which the tax was imposed. Any additiona revenue collected above the specified amount must be applied to the reduction of debt principal o Charleston County on transportation infrastructure debts only.

2.8 The Sales and Use Tax must be administered and collected by the South Carolin Department of Revenue in the same manner that other sales and use taxes are collected. Th Department may prescribe amounts that may be added to the sales price because of the tax.

2.9 The Sales and Use Tax is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36 of Title 12 of the Code of Laws of South Carolina, and the enforcement provisions of Chapter 54 of Title 12 of the Code of Laws of South Carolina. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the Code of Laws of South Carolina are exempt from the tax imposed by this Ordinance. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture Food Stamps are exempt from the tax imposed by this Ordinance. The tax imposed by this Ordinance also applies to tangible property subject to the use tax in Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina.

2.10 Taxpayers required to remit taxes under Article 13, Chapter 36 of Title 12 of the Code of Laws of South Carolina must identify the county in which the personal property purchased at retail is stored, used, or consumed in this State.

2.13 The gross proceeds of sales of tangible personal property delivered after t imposition date of the Sales and Use Tax, either under the terms of a construction contract execut before the imposition date, or written bid submitted before the imposition date, culminating in construction contract entered into before or after the imposition date, are exempt from the sales a use tax provided in this ordinance if a verified copy of the contract is filed with Department Revenue within six months after the imposition date of the sales and use tax provided for in th Ordinance.

2.14 Notwithstanding the imposition date of the Sales and Use Tax with respect to servic that are billed regularly on a monthly basis, the sales and use tax authorized pursuant to this ordinanc is imposed beginning on the first day of the billing period beginning on or after the imposition dat

Section 3. **Remission of Sales and Use Tax; Segregation of Funds; Administratio of Funds; Distribution to Counties; Confidentially.**

3.1 The revenues of the Sales and Use Tax collected under this Ordinance must b remitted to the State Treasurer and credited to a fund separate and distinct from the general fund o the State. After deducting the amount of any refunds made and costs to the Department of Revenu of administrating the tax, not to exceed one percent of such revenues, the State Treasurer shal distribute the revenues quarterly to the Charleston County Treasurer and the revenues must be use only for the purposes stated herein. The State Treasurer may correct misallocations by adjustin subsequent distributions, but these distributions must be made in the same fiscal year as th misallocation. However, allocations made as a result of city or county code errors must be corrected prospectively.

3.2 (a) Any outside agencies, political subdivisions or organizations designated to receive funding from the Sales and Use Tax must annually submit requests for funding in accordance with procedures and schedules established by the County Administrator. The County Administrator shall prepare the proposed budget for the Sales and Use Tax and submit it to the County Council at such time as the County Council determines. At the time of submitting the proposed budget, the County Administrator shall submit to the County Council a statement describing the important features of the proposed budget.

(b) County Council shall adopt annually and prior to the beginning of fiscal year a budget for expenditures of Sales and Use Tax revenues. County Council may make supplemental appropriations for the Sales and Use Tax following the same procedures prescribed for the enactment of other budget ordinances. The provisions of this section shall not be construed to prohibit the transfer of funds appropriated in the

annual budget for the Sales and Use Tax for purposes other than as specified in t annual budget when such transfers are approved by County Council. In t preparation of the annual budget, County Council may require any reports, estimat and statistics from any county agency or department as may be necessary to perfo its duties as the responsible fiscal body of the County.

(c) Except as specifically authorized by County Council, any outside agency organization receiving an appropriation of the Sales and Use Tax must provide County Council an independent annual audit of such agency's or organizatio financial records and transactions and such other and more frequent financ information as required by County Council, all in form satisfactory to County Counc

3.3 The Department of Revenue shall furnish data to the State Treasurer and to t Charleston County Treasurer for the purpose of calculating distributions and estimating revenue The information which must be supplied to the County upon request includes, but is not limited t gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpay is considered confidential and is governed by the provisions of S.C. Code Ann. §12-54-240. A person violating the provisions of this section shall be subject to the penalties provided in S.C. Cod Ann. §12-54-240.

Section 4. Sales and Use Tax Referendum; Ballot Question.

4.1 The Board of Elections and Voter Registration of Charleston County shall conduc a referendum on the question of imposing the Sales and Use Tax in the area of Charleston Count on Tuesday, November 2, 2004, between the hours of 7 a.m. and 7 p.m. under the election laws o the State of South Carolina, mutatis mutandis. The Board of Elections and Voter Registration o Charleston County shall publish in a newspaper of general circulation the question that is to appea on the ballot, with the list of projects and purposes as set forth herein, and the cost of projects, an shall publish such election and other notices as are required by law.

4.2 The referendum question to be on the ballot of the referendum to be held in Charlestor County on November 2, 2004, must read substantially as follows:

CHARLESTON COUNTY SPECIAL SALES AND USE TAX

QUESTION 1

I approve a special sales and use tax in the amount of one-half (½) of one percent to be imposed Charleston County for not more than 25 years, or until a total of $1,303,360,000 in resulting reven has been collected, whichever occurs first. The sales tax proceeds will be used for the followi projects:

Project (1) For financing the costs of highways, roads, streets, bridges, and other transportatio related projects facilities, and drainage facilities related thereto, and mass trans systems operated by Charleston County or jointly operated by the County and oth governmental entities. $1,081,788,800.

Project (2) For financing the costs of greenbelts. $221,571,200.

YES

NO

Instructions to Voters: All qualified electors desiring to vote in favor of levying the specia sales and use tax shall vote "YES;" and

All qualified electors opposed to levying the special sales and use ta shall vote "NO."

QUESTION 2

I approve the issuance of not exceeding $113,000,000 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 25 years, to fund completion of projects from among the categories described in Question 1 above.

YES

NO

4.3 In the referendum on the imposition of a special sales and use tax in Charlest County, all qualified electors desiring to vote in favor of imposing the tax for the stated purposes sh vote "yes" and all qualified electors opposed to levying the tax shall vote "no". If a majority of t electors voting in the referendum shall vote in favor of imposing the tax, then the tax is imposed provided in the Act and this Ordinance. Expenses of the referendum must be paid by Charlest County government.

4.4 In the referendum on the issuance of bonds, all qualified electors desiring to vote favor of the issuance of bonds for the stated purpose shall vote "yes" and all qualified electo opposed to the issuance of bonds shall vote "no". If a majority of the electors voting in th referendum shall vote in favor of the issuance of bonds, then the issuance of bonds shall be authorize in accordance with S.C. Constitution Article X, Section 14, Paragraph (6). Expenses of th referendum must be paid by Charleston County government.

Section 5. Imposition of Tax Subject to Referendum.

The imposition of the Sales and Use Tax in Charleston County is subject in all respects to th favorable vote of a majority of qualified electors casting votes in a referendum on the question o imposing a sales and use tax in the area of Charleston County in a referendum to be conducted by th Board of Elections and Voter Registration of Charleston County on November 2, 2004, and th favorable vote of a majority of the qualified electors voting in such referendum shall be a condition precedent to the imposition of a sales and use tax pursuant to the provisions of this Ordinance.

Section 6. Miscellaneous.

(a) If any one or more of the provisions or portions hereof are determined by a court of competent jurisdiction to be contrary to law, then that provision or portion shall be deemed severable from the remaining terms or portions hereof and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance; if any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied to any particular case in any jurisdiction or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, those circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever; provided, however, that the Sales and Use Tax may not be imposed without the favorable results of the referendum to be held on November 2, 2004

(b) This Ordinance shall be construed and interpreted in accordance with the laws

ENACTED THIS 10TH DAY OF AUGUST, 2004.

CHARLESTON COUNTY COUNCIL

(SEAL)

Chairman

Clerk of Council

First Reading: June 26, 2004
Public Hearing: July 8, 2004
Second Reading: July 27, 2004
Third Reading: August 10, 2004

Sales tax passage most important decision in this ge

BY JOSEPH P. RILEY JR.

This is America. We control our destiny. We citizens have the power to shape the future of our communities as we see fit. The half cent sales tax is this community's opportunity to make our future safe and livable. It is the most important decision we will make in this generation. It is so important that we vote in favor.

How will it positively enhance our future quality of life? There are three ways:

1) Our roads and highways are the second most congested in America. The half-cent tax will give us the resources to expedite needed highway improvements all over the county.

The plan is quite specific, including streets, highways and intersections that have become synonymous for traffic congestion: Ashley Phosphate Road, Johnnie Dodds Boulevard, Bees Ferry Road, Folly Road, Harbor View Road, Maybank highway and many more.

There are 29 specific highway improvements already identified, plus the county will set up a 14-person advisory committee to help guide and prioritize these and further highway improvements.

We do not need to live in a community where the commute from home to work or school or the hospital becomes a dreaded traffic-snarled and dangerous experience. We have the power to make our highways safer and our commutes convenient, safe and pleasurable.

Among the many significant new highway improvements is the extension of Glenn McConnell Parkway approximately two miles to the Village Green area. This is vitally needed and would connect a number of subdivisions north of Bees Ferry Road, allowing them convenient connections to the Parkway with wonderful pedestrian and bicycle paths, along with the lovely West Ashley Circle at Bees Ferry and Glenn McConnell Parkway.

Any further extension of Glenn McConnell Parkway beyond Village Green will depend upon a good regional planning effort to ensure that the areas north do not become sprawling developments. Working together, we have stopped the large Poplar Grove plan and now it is going to be essentially a conservation district. We need to make sure similar conservation protections are in place with Watson Hill to prevent a huge sprawling development. When those protections are in place in the areas south of Highway 165, then a parkway extension with limited access could become a safe evacuation route and take pressure from S.C. Highway 61 without threatening the historic Ashley River corridor.


Riley

The extension of the Mark Clark Expressway is vitally important as well. It will reduce huge amounts of traffic from Savannah Highway and positively impact its adjacent neighborhoods as well as to allow people to get to Johns and James Island more conveniently and safely. However, first we must insure that sufficient land protection initiatives are in place on Johns Island so that it will not become a sprawling series of subdivisions. This will be a precondition for the extension of the Mark Clark Expressway.

2) Without the half-cent sales tax, our public transportation system will end. We will become the only metropolitan area without public transportation. This will be devastating to our economy, harming businesses that depend upon their workers using the bus system to get to work, to say nothing of the economic damage to our citizens. But this is not just funding for th same system. The half-cent sale tax will allow for a new and be ter public transportation systen with park-and-ride lots, smalle neighborhood buses, expres routes and much more. It will be far more comprehensive syster and our economy and our enviror ment would improve greatly.

3) The pressures of economi growth on the natural resources c our county are extraordinary. Ur less we decisively act to protec our green edges, they will becom paved forever.

The half-cent sales tax will pro vide funds for three components o a greenbelt and land protectio program. First: $60 million for th county park system; second: $5 million to local municipalities t help acquire land and create bad ly needed recreational fields an facilities; third: $111 million fo rural land protection to make sur that the green edges of our com munity are preserved and tha

THE STATE OF SOUTH CAROLINA
In the Supreme Court

W. J. "JOEY" DOUAN.....Petitioner,

v.

CHARLESTON COUNTY COUNCIL and
BOARD OF ELECTIONS AND VOTER
REGISTRATION FOR CHARLESTON COUNTY.....Respondents.

PROOF OF SERVICE

I certify that I have served the Petition for Writ of *Certiorari* on the Charleston C
Council and the Board of Elections and Voter Registration for Charleston County El
Commission by depositing a copy of it in the United States Mail, postage prepa
December 10, 2004, addressed to their attorneys of record:

Joe Dawson
County Attorney
4045 Bridgeview Drive
Charleston, S. C. 29405
Attorney for Respondent,
Chas. County Council

Sam Howell, IV
P. O. Box 22495
Charleston, S. C. 29413
Attorney for Respondent,
Board of Elections &
Voter Registration for
Charleston County

Donna Royson
Dep. Executive Director
State Election Commission
2221 Devine Street
Suite 105
Columbia, S. C. 29205

Thomas R. Goldstein
BELK. COBB. INFINGER & GOLDSTEIN. P.A.

PCL XL error

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