THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM JASPER COUNTY
In the Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2024-000014

RECEIVED

May 21 2024

S.C. SUPREME COURT

Alvin Adkins, ... Appellant,

v.

Jasper County and The Board of Voter Registration
and Election of Jasper County, ... Respondents.

INITIAL BRIEF OF RESPONDENT JASPER COUNTY

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Counterstatement of the Issues

1. Is this appeal now moot because the special election for the Pocotaligo Council District Seat ordered by the trial court was conducted on April 23, 2024?

2. Did the trial court correctly rule that Jasper County Ordinance 2-31 required Alvin Adkins to reside in the Pocotaligo Council District to qualify to serve on the Pocotaligo Seat on Jasper County Council and that, as previously decided by this Court in *Infinger v. Edwards*, 268 S.C. 375, 234 S.E.2d 214 (1977), the method of electing Councilmembers adopted by the County does not violate the Home Rule Act?

3. Does the two-issue rule require affirming the trial court's order because Adkins did not appeal either the trial court's ruling that Adkins' interpretation of the relevant Jasper County Election Ordinance presented a nonjusticiable political question or the ruling ordering the Pocotaligo Council special election?

Introduction

Jasper County has elected County Councilmembers the same way for at least the past 54 years. All qualified electors countywide vote for all five Council seats, but for four of those seats, a person must reside in defined election districts corresponding with the four townships in the County - Coosawhatchie, Hardeeville, Pocotaligo, and Robertville. The fifth Council Seat is an At-Large Seat.

Adkins ran for and was elected to the Jasper County Council Pocotaligo Seat in 2020, but it is undisputed that his residence was not within the boundaries of the Pocotaligo District (but the Coosawhatchie District) at the time of his election. Adkins specifically chose to be a candidate for the Pocotaligo Seat, even though the At-Large Seat was also up for election that year. Adkins now argues that he qualifies for the Council seat because the relevant Jasper County Election Ordinance (Ordinance 2-31), which provides that Council "shall consist of five (5) members elected at-large; provided, that at least one member of the council shall be a resident of each of the four townships of the county and one member having no residency requirement," does not have a residency requirement. Adkins also argues that Jasper County violates state law if it does elect "at-large with a residency requirement," but the Supreme Court has already upheld Charleston County's then-identical method of election against this challenge. *See Infinger v. Edwards*, 268 S.C. 375, 234 S.E.2d 214 (1977).

The trial court correctly dismissed Adkins' post-hoc attempts to salvage his qualification and, *inter alia*, declared a vacancy and ordered a special election for the Pocotaligo Seat. Beyond that, Adkins did not move for supersedeas as to the special election, attempt to expedite this appeal, or even actually appeal the order for a special election, and now the special election has concluded. Adkins has not preserved his appellate rights to challenge the special election or other aspects of

the trial court's ruling. Accordingly, there is no longer any active controversy and the case is now moot.

Statement of the Case and Statement of Facts

1. Background

Jasper County is a political subdivision of the State of South Carolina, governed by a 5 member County Council. **(R. p.)** (Compl. ¶¶ 1-2). Since at least 1970, Jasper County has elected its Councilmembers by what is known as an "at-large with a residency requirement" method of election. **(R. p.)** (Order at 2). Initially, the South Carolina General Assembly prescribed for Jasper County's method of election through passage of Act 982 of 1968, which provides in part:

> The council shall be composed of five members elected at large from the county for terms of four years and until their successors are elected and qualified; *provided,* that beginning in 1970 and at all times thereafter there shall be at least one member of the council who is a resident of each of the four townships of the county.

(R. pp.) (Order at 3; Tr. 3:20-22; Trial Ex. 5 at 5-9).

Since June 25, 1976, Jasper County Council has continued this same method of election by enacting Ordinance 2-31, which provides

> [T]he County Council of Jasper County shall consist of five (5) members elected at-large; provided, that at least one member of the council shall be a resident of each of the four townships of the county and one member having no residency requirement.

(R. pp.) Order at 3; Tr. 13:14-23; Trial Ex. 5 at 3; Trial Ex. 7). The four townships in Jasper County—Coosawhatchie (District 1), Hardeeville (District 2), Pocotaligo (District 3), and Robertville (District 4)—correspond to 4 of the 5 Council seats. The fifth Council seat is known as the At-Large seat. **(R. pp.)** (Order at 2-3; Tr. 78:23-79:4; Tr. 108:4-6).

As recently as the 2012 general election, a local question referendum was on the ballot in Jasper County to change its method of electing members of Council, and a majority of those

participating voted to retain the current method of election. **(R. pp.)** (Order at 9; Tr. 82:10-83:09; Tr. 85:7-15; Trial Ex. 9). Since that time, no subsequent referenda on changing the method of election have been held, and thus Jasper County's method of election is unchanged. **(R. p.)** (Tr. 85:17-24).

Jasper County holds staggered elections for its Councilmembers. **(R. pp.)** (Order at 3; Tr. 79:12-19; Tr. 95:21-24). The Hardeeville, Pocotaligo, and At-Large seats are up for election during the same election cycle, while the Coosawhatchie and Robertville are up in a different election cycle. **(R. pp.)** (Order at 3; Tr. 95:11-97:8; Trial Ex. 16; Trial Ex. 17).

2. Alvin Adkins' election to Council

In 2020, Jasper County held elections for the Hardeeville seat, the Pocotaligo seat, and the At-Large Council seats. **(R. p.)** (Order p. 3; Tr. pp. 96:6 – 96:23; Tr. Ex. 16). On March 20, 2020, Alvin Adkins, a first-time candidate, became a candidate for the June 9, 2020 Democratic primary for the Pocotaligo District Council Seat by timely completing and filing the statutorily required[1] Statement of Intention of Candidacy and Party Pledge Form (SIC Form) with the Board of Voter Registration and Election of Jasper County (Jasper BVRE). **(R. pp.)** (Order at 4; Compl. ¶ 14, Ex. A; Trial Ex. 18, at 2). On the SIC Form, Adkins indicated that he was running for the Pocotaligo Seat on Jasper County Council and listed his address as 67 Bolden Lane, Yemassee, South Carolina, 29945. **(*Id.*)**. As required by S.C. Code Ann. § 7-11-15(C), Adkins signed the Candidate's Oath on the SIC Form affirming that he meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought. **(*Id.*).** Pursuant to Section

[1] *See* S.C. Code Ann. § 7-11-15(A)("[A]ll candidates seeking nomination by political party primary or political party convention must file a statement of intention of candidacy and party pledge . . . .").

7-13-40,[2] on April 3, 2020, then-South Carolina Democratic Party (SCDP) Chair Trav Robertson, Jr. certified to the Jasper BVRE that Adkins met or will meet by the time of the general election the qualifications for office. **(R. pp.)** (Order at 4; Tr. Ex. 18).

On June 9, 2020, Adkins won the Democratic primary for the Pocotaligo seat and he was unopposed in the November 3, 2020 general election, and therefore elected to the seat. **(R. pp.)** (Order at 5; Tr. Ex. 8; Tr. Ex. 9). On January 2, 2021, Adkins was sworn-in as a Jasper County Councilmember for the Pocotaligo Seat. **(R. p.)** (Order at 5). At this time and the time of Adkins' election and his assuming of office, Adkins' address of 67 Bolden Lane in Yemassee was not within the boundaries of the Pocotaligo Township District, but the Coosawatchie Township District. **(R. pp.)** (Order at 5-6; Tr. 63:6-18; Tr. Ex. 2; Tr. Ex. 12).

3. Discovery of Adkins residency issue; filing of action; redistricting process

On January 13, 2022, about a year after Adkins had been in office, the South Carolina Revenue and Fiscal Affairs Office (RFA) was presenting a draft redistricting map to Council that included the election districts and the addresses of the incumbent Councilmembers. **(R. pp.)** (Order at 6; Compl. ¶ 22, Ex. B; Tr. 57:10-59:15). The map showed no incumbent Councilmembers residing in the Pocotaligo District and three Councilmembers—notably, including Adkins—residing in the Coosawhatchie District. **(R. pp.)** (Order at 6; Compl. ¶ 22, Ex. B; Tr. 57:10-59:15; Tr. 63:6-18). On January 18, 2022, RFA verified that Adkins' residence was indeed located in the Coosawhatchie District, not the Pocotaligo District. **(R. pp.)** (Order at 6; Compl. ¶ 22, Ex. B; Tr. 62:22-64:11).

[2] S.C. Code Ann. § 7-13-40 requires political parties by 12:00 noon on April 5 to "verify the qualifications of [ ] candidates prior to certification" and certify only those candidates who "meet, or will meet by the time of the general election, or as otherwise required by law, the qualifications for office, which s/he has filed."

On February 15, 2022, Jasper County filed the underlying action for declaratory and injunctive relief against Adkins and the Jasper BVRE[3] principally on the question of whether Adkins was qualified to serve on the Pocotaligo Township District on Council because he did not live in the Pocotaligo District. **(R. pp.)** (Compl.).

On February 22, 2022, Council approved Third Reading of the Redistricting Ordinance approving new district maps which moved Adkins' residential address into the Pocotaligo Township District. **(R. pp.)** (Order at 1-2, 18, 20; Tr. Ex. 10; Tr. 104:22-105:19). The new district lines became effective immediately with the passing of Third Reading on February 22, 2022. **(R. pp.)** (Order at 2; Tr. Ex. 10; Tr. 105:8-19).

4. Bench trial; procedural posture

On November 13, 2023, a one-day bench trial was held before the Honorable Michael G. Nettles. At the trial, four witnesses testified—RFA Executive Director Frank Rainwater, Jasper County Administrator Andy Fulghum, former SCDP Chair Trav Robertson, and Adkins—and 18 trial exhibits were introduced and accepted into the record. **(R. pp.)** (Tr. 37:22-38:9; Tr. 83:10-85:4; Tr. 86:5-87:25; Tr. 93:22-94:2). The trial court took the matter under advisement.

On December 5, 2023, the trial court ruled in favor of Jasper County. For two independent reasons, the trial court rejected Adkins' primary contention, which was he qualified to serve on the Pocotaligo Council Seat because the Ordinance 2-31 did not impose a residency requirement. First, the court ruled that interpreting the ordinance in the manner urged by Adkins presented a non-justiciable political question because the court would effectively be changing Jasper County's method of election, and the General Assembly's intent in passing the Home Rule Act was that a

[3] No allegations were made against the Jasper BVRE, but it was sued as a necessary party because the BVRE would have to implement a special election if one was ordered. **(R. p.) (**Compl. ¶ 4).

county's method of election could only be changed by a successful referendum of the voters. **(R. pp.)** (Order at 6-9). Second, the court rejected Adkins' interpretation of Ordinance 2-31 based on a plan reading of the ordinance. **(R. pp.)** (Order at 9-11). Next, the trial court addressed and rejected Adkins' apparent contention that Jasper County's "at-large with a residency requirement" method of election violated S.C. Code Ann. §§ 4-9-10, 4-9-90, and 4-9-610, all of which were part of the Home Rule Act. **(R. pp.)** (Order at 11-17). The trial court ruled that the Supreme Court had already determined in *Infinger v. Edwards*, 268 S.C. 375, 234 S.E.2d 214, discussed *supra*, that an "at-large with a residency requirement" method of election did not violate the Home Rule Act **(R. pp.)** (Order at 12-14), and further ruled that Jasper County's method of election complied with the Home Rule Act. **(R. pp.)** (Order at 14-17).

The trial court next turned to the discussion of the declaratory and injunctive relief. On the principal issue in the case, Adkins' qualification for office, the trial court ruled that Adkins was not qualified for the Pocotaligo Council Seat because he did not live in the Pocotaligo District at the time of his election. *See* Ordinance 2-31 (imposing residency as a qualification for the Pocotaligo Council Seat); S.C. Const. art. VI, § 1 and S.C. Const. art. XVII, § 1 (public officeholders must possess the "qualifications of an elector"); S.C. Code Ann. § 7-5-120 (qualifications of an elector include that the officer must be a "resident in the county and in the polling precinct in which [he] offers to vote . . . ."); § 4-9-90 (providing "a council member will be deemed a resident of the district he represents as long as he resides in any part of the district as constituted *at the time of his election*") (emphasis added). **(R. pp.)** (Order at 18-20).[4] The trial court

[4] The trial court also adopted the analysis of a 1997 Attorney General's Opinion regarding office holder qualifications requested by the Town of Ridgeville. *See* S.C. Op. Att'y Gen., 1997 WL 811900 (S.C.A.G. Nov. 20, 1997).

further found that because Adkins was required to qualify for office at the time of his election, the Redistricting Ordinance could not qualify him for office after the fact**. (R. pp.)** (Order at 21-22).

Because Adkins was not qualified for the Pocotaligo Council Seat, the trial court determined pursuant to § 4-9-90 that a vacancy existed on the Pocotaligo Council Seat and a special election was required to fill Adkins' unexpired term on Council. **(R. pp.)** (Order at 20-21). The trial court ordered a special election for the Pocotaligo Council Seat to be conducted in the manner required by S.C. Code Ann. § 7-13-190 (setting timelines for special elections to fill vacancies). **(R. pp.)** (Order at 21).[5] Finally, the trial court found Adkins was a *de facto* officer and could remain in the office as a *de facto* member of Council "until he or his successor comes to office after a Court-ordered election." **(R. pp.)** (Order at 22-24)**.** On December 15, 2023, Adkins filed a Motion to Reconsider. **(R. pp).** On December 19, 2023, the trial court denied the Motion to Reconsider. **(R. pp.).**

5. Special election for Pocotaligo Council Seat

Because the trial court declaring a vacancy and ordering the special election was injunctive in nature, this relief took effect immediately when the Order was entered on December 5, 2023. *See* Rule 62(c), SCRCP. Adkins served his Notice of Appeal on January 5, 2024. **(R. pp.).** Because the relief was injunctive in nature, an exception to the usual automatic stay under Rule 241(a), SCACR, applies. *See* Rule 241(b)(8), SCACR. Jasper BVRE proceeded to conduct the special election in accordance with the trial court's order.

Under S.C. Code Ann. § 7-13-190(B)(2), a special election to fill a vacancy must be scheduled for "the twentieth Tuesday after the vacancy occurs," except when the 20th Tuesday

[5] In its Answer, the Jasper BVRE submitted that if the court were to order a special election, it should be scheduled in accordance with S.C. Code Ann. § 7-13-190. **(R. pp.)** (Jasper BVRE Answer ¶ 19).

occurs within 60 days of the general election. That exception is not applicable here because the vacancy occurred on December 5, 2023, and the next general election will be November 5, 2024. **(R. p.)** (Order at 21). Thus, the special election was set for the 20th Tuesday thereafter, which was April 23, 2024. Additionally, pursuant to § 7-13-350(A), the deadlines for certification of candidates in special elections is "by at least twelve o'clock noon on the sixtieth day prior to the date of holding the election, or if the sixtieth day falls on Sunday, by twelve o'clock noon on the following Monday." That candidate certification deadline was February 23, 2024. The April 23, 2024 Pocotaligo special election has now occurred.[6]

Standard of Review

"The standard of review in a declaratory action is determined by the underlying issues." *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Com.*, 423 S.C. 295, 300, 814 S.E.2d 513, 516 (2018) (citing *Nationwide Mut. Ins. Co. v. Rhoden*, 398 S.C. 393, 398, 728 S.E.2d 477, 479 (2012)). In this case, all the contested issues are matters of law and there are no disputed issues of fact. The Supreme Court "undertakes a de novo review of all issues of law, and is free to decide matters of law with no particular deference to the trial court." *Menezes v. WL Ross & Co., LLC*, 403 S.C. 522, 530, 744 S.E.2d 178, 182 (2013).

Argument

Because the court-ordered Pocotaligo special election at issue has already happened, the Court should dismiss the appeal as moot because no effectual relief is now available to Adkins. Alternatively, the Court should affirm the trial court's ruling that Ordinance 2-31 imposes a

[6] Adkins ran in, but did not prevail in, the special election. *See* State Election Commission Candidate Listing, April 23, 2024 Jasper County Special Election, found at https://vrems.scvotes.sc.gov/Candidate/CandidateSearch?electionId=22164 (accessed May 20, 2024).

residency requirement on Adkins and that the County's "at-large with a residency requirement" method of election does not violate the Home Rule Act. Finally, under the two-issue rule, this Court is also required to uphold as the law of the case the trial court's unappealed ordering of the special election and its finding that Adkins' urged interpretation of Ordinance 2-31 is an unreviewable political question.

1. Because the court-ordered special election has now occurred, this matter is now moot.

A matter becomes moot if this Court cannot grant effectual relief. *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief."). That is so here because, as discussed *supra*, the trial court's order of a special election went into effect immediately upon entry of the Order because of the injunctive relief issued. *See* Rule 62(c), SCRCP. Specifically, On January 5, 2024, Adkins served his Notice of Appeal in this matter, but the trial court's order granting injunctive relief was not stayed. Rule 241(b)(8), SCACR. Adkins did not seek either supersedeas or expedited consideration. Rule 241(c)(1), (c)(2), (d)(1), SCACR; Rule 263(b), SCACR. The special election was scheduled for April 23, 2024, *see* § 7-13-190(B)(2), and the deadline for candidate certification in that election was 60 days prior to the election date, or February 23, 2024. *See* § 7-13-350(A). The special election occurred on April 23, 2024.

In *Sasser v. S.C. Democratic Party*, this Court dismissed an appeal as moot on an election contest which came before it after the deadline for candidate certification in § 7-13-350 had passed, stating "[a]s a general rule, courts have held that they are without power to grant substantial relief once the time passes for the name of a contestant to be certified for the election of officers to be placed on the official ballot." 277 S.C. 67, 69, 282 S.E.2d 602, 603 (1981). The Court held that,

"[i]n the instant case, the election has already occurred. It is therefore our determination that the issues raised by this action have been rendered moot. Accordingly, the appeal must be dismissed with prejudice." *Id.* at 69, 282 S.E.2d 602, 603. Later, in *Willis v. Wukela*, this Court applied *Sasser* when dismissing an appeal of a municipal election matter as moot, ruling that it could grant no effectual relief after the certification deadline had passed. 379 S.C. 126, 128, 665 S.E.2d 171, 172 (2008). In both *Sasser* and *Willis*, the appeals were moot because the time for certifying candidates for primaries had passed under § 7-13-350, although in *Sasser* the Court also noted that the election at issue had already occurred.[7] Here, the Pocotaligo special election primary certification deadline passed on February 23, 2024, and the special general election occurred on April 23, 2024. The appeal therefore is moot because the Court cannot grant any effectual relief as to the election and any ruling on Adkins' qualifications would be a purely academic exercise with no effect on any live controversy.

2. The trial court correctly determined that Ordinance 2-31 unambiguously imposes a district residency requirement in order to serve in the Pocotaligo Council seat and that Jasper County's electing Councilmembers at-large with a residency requirement does not violate the Home Rule Act.

A. Ordinance 2-31 unambiguously imposes a district residency requirement

The trial court correctly recognized that Adkins' urged interpretation of Ordinance 2-31 to not impose a residency requirement cannot possibly be reconciled with its plain language. "When

[7] *See also Wood v. Raffensperger*, 981 F.3d 1307, 1317 (11th Cir. 2020) ("Because Georgia has already certified its results, Wood's requests to delay certification and commence a new recount are moot. We cannot turn back the clock and create a world in which the 2020 election results are not certified. And it is not possible for us to delay certification nor meaningful to order a new recount when the results are already final and certified.") (internal citation omitted); *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015) ("[B]ecause the election has passed and we cannot grant any effective relief, the appeal is moot.") (collecting cases); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 720 (D. Ariz. 2020) ("Because this Court cannot de-certify the results, it would be meaningless to grant Plaintiffs any of the remaining relief they seek.").

interpreting an ordinance, legislative intent must prevail if it can be reasonably discovered in the language used." *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (internal citation omitted). "[T]he language used in the [ordinance] is generally considered to be the best evidence of the [legislative] intent." *Connelly v. Main St. Am. Grp.*, 439 S.C. 81, 89, 886 S.E.2d 196, 200 (2023). The words of the legislative body "must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* (*quoting State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991)). "Where the [ordinance's] language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Put another way, "[u]nder longstanding rules of statutory construction, . . . the [ordinance] means what it says." *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 554, 725 S.E.2d 704, 705 (2012).

Although a bench trial was held and witness testimony was taken,[8] no material facts were disputed and Adkins' arguments mostly hinged on convincing the trial court to adopt a meaning of Ordinance 2-31 that is contrary to its plain language. The trial court correctly rejected these arguments because Ordinance 2-31 is unambiguous.[9] It provides that Council "shall consist of five (5) members elected at-large; provided, that at least one member of the council shall be a resident of each of the four townships of the county and one member having no residency requirement."

[8] It is unclear what Adkins means when he argues that "Jasper County's Elections Commissioner was unable to articulate any way Adkins failed to satisfy the conditions set forth in Ordinance 2-31," Appellant's Br. at 4, given that neither the Jasper BVRE Director Jeanine Bostick nor anyone else from her office testified at the trial. Regardless, "[t]he construction of a statute is a judicial function and responsibility," *Anderson,* 397 S.C. at 555, 725 S.E.2d at 706, not the function and responsibility of fact witnesses. Moreover, it is undisputed that Adkins did not reside in the Pocotaligo District.

[9] To be clear, Adkins has never argued that the ordinance is ambiguous. He argues that it unambiguously says something it does not.

Under a plain and ordinary reading, the Ordinance has a residency requirement for four Council seats (including Pocotaligo) and no residency requirement for one Council seat (the At-Large Seat). This Court should "decline Appellant's invitation to construe the [ordinance] in a manner inconsistent with its unambiguous terms." *In re Est. of Cretzmeyer*, 365 S.C. 12, 14, 615 S.E.2d 116, 116 (2005).

Adkins' argument that he can qualify at-large should be rejected because it defies the principle that statutes "should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous…." *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (internal citation omitted). Adkins focuses on the language that Council "shall consist of five (5) members elected at-large" and ignores and would render superfluous the language that "at least one member of the council shall be a resident of each of the four townships of the county and one member having no residency requirement." Had the County intended for Ordinance 2-31 to provide for at-large countywide voting as Adkins urges, there would have been no need for the drafters to use the word "residency" at all and they would have stopped after providing that Council "shall consist of five (5) members elected at-large …." *See Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 134, 492 S.E.2d 103, 106 (1997) ("[I]f [the] Legislature had intended [a] certain result in statute, it would have said so.").

B. Jasper County's "at-large with a residency requirement" method of election does not violate the Home Rule Act.

Although not stated clearly, Adkins' second and final argument on appeal appears to be that *if* Jasper County is electing Councilmembers through at-large voting and a residency requirement (which it is), the County is violating S.C. Code Ann. §§ 4-9-10, 4-9-90, and 4-9-610, all of which are a part of the Home Rule Act. Like his statutory construction argument, this argument is without merit and the trial court so recognized.

The trial court acknowledged that this Court's decision in *Infinger* conclusively resolved that an "at large with a residency requirement" method of election does not violate the Home Rule Act.[10] *Infinger* concerned a challenge to Charleston County's then-existing "at large with a residency requirement" method of election. 268 S.C. at 381, 234 S.E.2d at 216. Rejecting the challenge, the Court found, *inter alia,* that § 4-9-90 requires that "Council members must be elected from defined single-member election districts *unless otherwise determined* under the provisions of subsection (a), (b), or (c) of [§] 4-9-10," Charleston qualifies under the "unless otherwise determined" exception in § 4-9-10(b), Charleston did not conduct a referendum to change its method of election prior to July 1, 1976, Charleston adopted the identical method of election in place prior to July 1, 1976 (the "at-large with a residency requirement" method of election), and accordingly § 4-9-10(b) mandates that preexisting method of election must continue unless and until a successful referendum of the voters occurs. **(R. pp.)** (Order at12-15).

Applying *Infinger* to this case, the trial court correctly found there were no factual distinctions on the record between the Charleston County elections in 1977 and those in Jasper County today. **(R. p.)** (Order at 14). Adkins has never clearly explained why this case is different than *Infinger*, just as the trial court found. Adkins does not and cannot argue that *Infinger* was incorrectly decided, so he instead attempts to discuss a statute—§ 4-9-610—which is factually and legally irrelevant to any issue in this case.

Section 4-9-610 is irrelevant to Jasper County's method of election, Adkins' qualification, or any issue before the Court because that statute involves general requirements for *membership*

[10] *Infinger* analyzed the statutory predecessors to several provisions of the Home Rule Act which are in all relevant respects identical to the statutes today. *See Horry Cnty. v. Cooke*, 275 S.C. 19, 20, 267 S.E.2d 82, 82–83 (1980) (noting that "the home rule enabling legislation set forth at [§§] 14-3701, *et seq*., S.C. Code Ann. (1962)" was "recodified as [§§] 4-9-10, *et seq.*, S.C. Code Ann. (1976)"). For ease of reference, Jasper County refers to the recodified version of the statutory cites.

on council in the council-administrator form of government (between three and 12 members) and councilmembers' terms in office (two or four years). Section 4-9-610 has nothing to do with the process for adopting and making changes to a council's *method of election*, as that process is governed by § 4-9-10.

Adkins also erroneously contends that Jasper County adopted some other method of election than the one it already had when passing Ordinance 2-31 on June 25, 1976. *See* Appellant's Br. at 4-5. This contention is refuted by the Jasper County Resolution adopting the Council-Administrator form of government on June 25, 1976, including the method of election. (Resolution) **(R. p.)** (Trial Ex. 6 at 2). The Resolution specifically cites to Section 14-370, the statutory predecessor to § 4-9-10, and explicitly provides that that the County is adopting "the form of government including the method of election . . . most nearly corresponding to the form in effect in the county immediately prior to [July 1, 1976]." **(*Id.*)** That was the "at–large with a residency requirement" method of election.

In any event, *Infinger* is controlling precedent and, just as the trial court correctly found, Adkins has advanced no basis for factually distinguishing this case from *Infinger* and no credible basis for interpreting the statute any differently. Moreover, *stare decisis* precludes Adkins' argument that Jasper County's method of election violates state law. *See Wehle v. S.C. Ret. Sys.*, 363 S.C. 394, 402, 611 S.E.2d 240, 244 (2005) ("The doctrine of *stare decisis* enjoys particular efficacy in the context of challenges concerning the construction of statutes and determination of legislative intent."). Accordingly, the Court should affirm the trial court decision on these grounds.

3. The two-issue rule requires the Court to uphold the trial court's decision applying the political question doctrine and to order a special election.

"Under the two-issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will

become law of the case." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) (*citing Jones v. Lott,* 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)).

A. Because Adkins did not appeal from the trial court's ruling that Adkins' argument presented a nonjusticiable political question, the decision below should be affirmed on the basis of the two-issue rule.

The trial court ruled that reinterpreting Ordinance 2-31 in the manner suggested by Adkins presented a nonjusticiable political question. The court found that to interpret the Ordinance to allow Adkins to qualify for office regardless of residence would effectively be changing Jasper County's method of election, placing it in conflict with the Home Rule Act in which the General Assembly determined that a county's method of election could only be changed by a successful referendum of the voters. **(R. pp.)** (Order at 6-9); *see also S.C. Pub. Int. Found. v. Jud. Merit Selection Comm'n*, 369 S.C. 139, 142–43, 632 S.E.2d 277, 278 (2006) ("The fundamental characteristic of a nonjusticiable 'political question' is that its adjudication would place a court in conflict with a coequal branch of government," and for this reason "the courts will not rule upon questions which are exclusively or predominantly political in nature rather than judicial."). Adkins did not challenge this portion of the trial court's ruling in his appellate brief because he did not raise it as an issue and did not even address it in his argument. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007) (holding that, to preserve an issue for appeal, it must be: "(1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity") (*quoting* Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002)). Thus, Adkins has not appealed the ruling on this issue, nor identified it as an issue on appeal, and the Court should affirm on this ground. *See Atl. Coast Builders*, 398 S.C. at 328, 730

S.E.2d at 284 ("Under the two-issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds . . . ."[11]

B. Because Adkins did not appeal from the trial court's grant of injunctive relief ordering a special election, the decision below should be affirmed on the basis of the two-issue rule.

Similarly, the trial court's ordering of the special election is not preserved for appeal under the two-issue rule. In its Complaint, Jasper County sought injunctive relief ordering a special election and, after the hearing, the trial court granted that relief. Adkins has not challenged the ordering of the special election in his initial appellate brief, nor even mentioned the fact that the special election was ordered, nor identified it as an issue on appeal. *See Greenville Bistro, LLC v. Greenville Cnty.,* 435 S.C. 146, 164, 866 S.E.2d 562, 171 (2021) ("Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue.") (internal citation omitted). Further, as discussed *supra,* Part 1, the election already happened on April 23, 2024. Therefore, Adkins has not appealed all the issues that would be necessary for this Court to grant the complete relief that he seeks even assuming that he is correct and the decision below should be affirmed. *See Atl. Coast Builders*, 398 S.C. at 328, 730 S.E.2d at 284; *Daufuskie Island Util. Co., Inc. v. S.C. Off. of Regul. Staff,* 440 S.C. 523, 531, 892 S.E.2d 302, 306 (2023) ("[A]n unappealed ruling, right or wrong, is the law of the case.") (*citing Atl. Coast Builders*, 398 S.C. at 329, 730 S.E.2d at 285).

[11] If the Court believes this issue has been preserved despite Adkins' complete failure to raise or argue it, the Court should affirm for the reasons stated by the trial court's finding Adkins' proposed reinterpretation of Ordinance 2-31 to be nonjusticiable.

Conclusion

For the reasons stated above, the Court should dismiss the appeal on the grounds of mootness or affirm the trial court.

Respectfully submitted,

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