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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Bentley D. Price
The Honorable Milton G. Kimpson
The Honorable Alex Kinlaw, Jr.

Appellate Case No. 2025-001292
Circuit Court Civil Action Case No. 2024-CP-10-01489

Michael D. Royal,

Appellant,

v.

Ashley House Council of Co-Owners, Inc.

Respondent.

REPLY BRIEF OF APPELLANT MICHAEL ROYAL

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pro se Appellant

March 2, 2026

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INTRODUCTION

This appeal concerns the permanent elimination of a condominium co-owner's statutory right to call meetings and make motions at his own homeowners association. The Kinlaw Order of April 28, 2025—the primary order on appeal—permanently enjoins Appellant Michael D. Royal from "calling any special meetings or bringing any motions to be considered or resolutions without showing compliance with the Master Deed, By-laws, and the applicable statutes referenced herein." Order at 7. That restraint is enforceable by contempt, imposes no time limit, defines no compliance standard, and identifies no process by which Royal could ever satisfy it. It rests on an "Advance Notice Rule" that three circuit court judges adopted across three orders without ever identifying a specific statute or bylaw provision as its source—and it protects an incumbent Board that 97% of voting Co-Owners sought to remove. Royal Mem. Opp. TRO at 2, 4.

Respondent's brief responds primarily with procedural objections: Royal's issues are abandoned because his initial brief was not sufficiently detailed (Resp. Br. at 19); the challenged events are moot because the April 28, 2025 annual meeting has passed (Resp. Br. at 19–20); and the circuit court did not abuse its discretion. None of these defenses withstands scrutiny. The abandonment doctrine requires a bare assertion with no argument—not a less-than-exhaustive one. The mootness doctrine does not extinguish a live permanent injunction simply because a single meeting date has passed. And the abuse-of-discretion standard does not immunize an injunction that rests on erroneous legal premises and fails the required elements.

On the merits, three points resolve this appeal. First, the "Advance Notice Rule"—which prohibits Royal from raising any matter at an annual meeting without prior written notice to all Co-Owners—has no basis in the South Carolina Nonprofit Corporation Act or the Council's governing documents. Section 33-31-701(d)(2) expressly provides that notice of an annual

meeting "need not include a description of the purpose," and no bylaw provision restricts member floor motions. *Greenville Bistro, LLC v. Greenville County*, 435 S.C. 146, 154, 866 S.E.2d 562, 566 (2021), requires courts to clearly articulate the legal basis for equitable relief; the Kinlaw Order cites none. Second, Royal's 748 noticed motions were not defiance of prior orders. They were a direct response to Judge Kimpson's holding that the August 2024 meeting notice was defective for failing to name the specific directors threatened with removal under § 33-31-808(e). Royal submitted motions covering all 511 possible combinations of the eight Kimpson Board members precisely to satisfy that requirement. The Board did not engage with Royal's compliance effort; it cancelled the annual meeting and sought an injunction. Third, the permanent injunction fails every element of the injunction standard—no irreparable harm was shown, adequate legal remedies existed, and the injunction itself is impermissibly vague and overbroad under Rule 65(d), SCRCP.

The Kinlaw Order and the June 2, 2025 Order Denying Reconsideration should be reversed along with the portions of the Price Order and Kimson Order which support it.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN IMPOSING AN "ADVANCE NOTICE RULE" THAT HAS NO BASIS IN SOUTH CAROLINA STATUTE OR IN THE COUNCIL'S GOVERNING DOCUMENTS.

This Court reviews questions of law de novo. *Lollis v. Dutton*, 421 S.C. 467, 471, 807 S.E.2d 723, 725 (Ct. App. 2017). Whether the Kinlaw Order correctly identified any legal basis for the so-called "Advance Notice Rule" is a question of law reviewed without deference. In equity actions, this Court may find facts in accordance with its own view of the preponderance of the evidence. *West v. Newberry Elec. Coop., Inc.*, 357 S.C. 537, 541, 593 S.E.2d 500, 502 (Ct. App. 2004).

A. Section 33-31-701(d)(2) of the Nonprofit Corporation Act Expressly Permits Business to Be Raised at Annual Meetings.

The South Carolina Nonprofit Corporation Act distinguishes sharply between annual meetings and special meetings when it comes to advance notice of agenda items. For special meetings called for the purpose of director removal, the legislature specifically required the meeting notice to "state that the purpose, or one of the purposes of the meeting is removal of the director." S.C. Code Ann. § 33-31-808(e). For annual meetings, the legislature took the opposite approach: under § 33-31-701(d)(2), "[u]nless this chapter or the articles of incorporation or bylaws require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called." The contrast is deliberate and dispositive. The legislature knows how to mandate advance notice of specific agenda items when it chooses to. By expressly excusing annual meeting notices from any such requirement, the legislature signaled that annual meetings are not confined to pre-noticed business. The canon that "the enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded" applies here. *Hodges v. Rainey*, 341 S.C. 79, 86–87, 533 S.E.2d 578, 582 (2000). The legislature's enumeration of specific advance-notice requirements in §§ 808(e) and 705(c)(2)—and its express exemption of annual meetings under § 701(d)(2)—means the absence of a blanket notice requirement is deliberate, not an oversight.

Section 33-31-701(e) reinforces this reading. It provides that "[a]t regular meetings, the members shall consider and act upon matters as raised consistent with provisions of the articles of incorporation or bylaws and, in addition, with the notice requirements of this chapter." S.C. Code Ann. § 33-31-701(e). The statute does not limit regular meetings to pre-noticed business; it permits any matter to be considered so long as it is "raised consistent with" the governing documents and the chapter's notice requirements. This reading is consistent with § 33-31-706(b)(2), which

operates in tandem with § 33-31-701(d)(2). Under § 701(d)(2), the corporation's obligation to include notice of purpose does not require that notice state the purpose—members may transact business even if purpose is not stated. Section 706(b)(2) addresses the alternative scenario: if notice does state a purpose, then members may raise matters outside that stated purpose at the meeting, subject only to their duty to allow other members to object when such matters are presented. The two provisions work together to ensure that whether or not the meeting notice describes a particular purpose, business may be transacted. Members have flexibility either way: the corporation is not required to state a purpose (§ 701(d)(2)), but if it does, that statement does not limit floor motions (§ 706(b)(2)). Indeed, if the Advance Notice Rule were correct—if the legislature meant to prohibit any matter not described in advance—§ 706(b)(2) would be surplusage, for it would address an impossible scenario. Instead, § 706(b)(2) confirms that notice of purpose and floor motion authority are distinct concepts. Courts may not "engraft [a] prohibition onto [a statute] based on [the court's] subjective view of the 'spirit' and 'purpose'" of the law when the statute's plain text does not contain it. *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 8, 760 S.E.2d 785, 789 (2014).

Respondent argues that §§ 701(d)(2) and (e) defer to governing documents, so that if the Bylaws require the meeting notice to state "the purpose," all business must be pre-noticed. That argument assumes its conclusion. The question is whether the Bylaws actually displace the statutory default. As demonstrated in Part C below, they do not. The Bylaws' "purpose" requirement refers to the purpose of the meeting itself, not to an itemized business agenda. The statutory default permitting floor motions at annual meetings therefore remains in full force. "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581.

B. Respondent's Section 33-31-705(e) Argument Inverts the Statute.

Respondent's principal new statutory argument is that § 33-31-705(e) imposes on members

a duty to give advance written notice of motions to all other members before any motion may be raised at a meeting. Resp. Br. at 9. AH has the provision backwards. Section 33-31-705(e) creates a right running *to* the member, not a restriction *on* the member. It provides that if a member entitled to call a special meeting requests in writing, at least ten days before the corporation sends the meeting notice, that a particular matter be included in that notice, the corporation must include it. The statute's subject is the corporation; the obligation is the corporation's; the right is the member's. Nothing in § 705(e) states that a member who does not invoke this pathway is thereby barred from raising business at the meeting.

Respondent's own characterization of the statute identifies the corporation as the actor and "shall give notice" as the obligation of the corporation. AH Mem. Opp. M. Reconsider at 5 (citing S.C. Code Ann. § 33-31-705(c)). Respondent offers no explanation for how it inverts the statute to impose the notice burden on the member.

C. The Bylaws Do Not Prohibit Member Motions at Annual Meetings.

Three bylaw provisions, read together, foreclose Respondent's position. Section 3.1 authorizes the annual meeting for elections and "such other business … as may properly come before" the members. (Bylaws § 3.1; First Am. Compl. Ex. B at 48.) Section 3.6 prescribes a "New Business" item in the order of business. (Bylaws § 3.6.) And Section 3.4 imposes a subject-matter lock only on special meetings: "[n]o business shall be transacted at a special meeting except as stated in the notice." (Bylaws § 3.4.) That the drafters confined this restriction to special meetings, while authorizing open-ended "other business" at annual meetings, is dispositive. If "stat[ing] the purpose" of a meeting notice meant that every discrete motion at an annual meeting must be pre-noticed, the "such other business" clause would be gutted, the "New Business" agenda item would become surplusage, and Section 3.4's special-meeting limitation would do no independent work. (Bylaws §§ 3.1, 3.6, 3.4.) The bylaws cannot be read to render their own provisions meaningless.

Section 3.4's requirement that the notice "stat[e] the purpose thereof," read in context and in harmony with the rest of Article III, does not require members to pre-notice general matters they wish to raise at their annual meeting. The bylaws separately authorize the annual meeting for elections and "such other business … as may properly come before" the members—language that presupposes a meeting at which members may raise ordinary governance matters without first filing an itemized bill of particulars. (Bylaws § 3.1; First Am. Compl. Ex. B at 48.) Section 3.4, by contrast, is the notice provision that supplies the limiting principle for special meetings: it not only directs that notice state the "purpose," it immediately adds that "[n]o business shall be transacted at a special meeting except as stated in the notice." (Bylaws § 3.4.) That adjoining sentence is the tell. If "stating the purpose" meant that every discrete motion at an annual meeting must be pre-noticed—every policy tweak, every proposed rule, every resolution—then the bylaws would be internally incoherent: the "such other business" clause would be gutted, the "New Business" portion of the prescribed order of business would become surplusage, and Section 3.4's special-meeting limitation would do no work at all because every meeting would be equally constrained. (Bylaws §§ 3.1, 3.6, 3.4.) The only sensible reading is the ordinary one: "purpose" in a notice functions at a general level—identifying the meeting as annual (elections and member business) or special (a specified subject)—while the bylaws impose the stricter, subject-matter lock only for special meetings, precisely because special meetings are convened for a particular object and thus demand advance notice of that object. (Bylaws § 3.4.)

The plain-language canon confirms this reading. Restrictive covenants must be construed according to their "plain and ordinary meaning." *Penny Creek Assocs., LLC v. Fenwick Tarragon Apartments, LLC*, 375 S.C. 267, 271, 651 S.E.2d 617, 620 (Ct. App. 2007). Section 3.4's plain meaning is a notice-of-meeting provision governing the Secretary's obligations—not a floor-

motion restriction.

Respondent's own Answer confirms that member floor motions were a recognized practice at the Ashley House: Respondent admitted that Royal "presented" a resolution "at the 2023 Annual Meeting for a vote," that the Board was "prepared to count ballot votes on director elections" but "not Plaintiff's 2023 Resolution," and that the only objection was that the resolution was "not on the 2023 Annual Meeting notice." AH Answer ¶¶ 23, 25–26. The Board's complaint was not that floor motions were prohibited—it was that this one caught them unprepared.

Indeed, Respondent's own counsel conceded at the Kinlaw hearing: "The bylaws don't provide for motions from the floor." Kinlaw Tr. at 53. That admission is fatal to Respondent's position. If the bylaws do not "provide for" floor motions, they equally do not prohibit them—they are silent. And silence cannot be the source of the Advance Notice Rule. Respondent's argument assumes that anything not expressly permitted in the bylaws is forbidden, but that inverts the presumption: under South Carolina law, restrictions on member rights must be express. *Queen's Grant II*, 368 S.C. at 353. What is not prohibited is permitted. § 33-31-701(d)(2) establishes a default, and no bylaw displaces it.

Respondent's remaining bylaw arguments fare no better. Bylaws § 2.2 grants the Board authority to "manage the affairs of the Council," but that management power coexists with the members' separate statutory rights to remove directors under § 33-31-808(a) and to transact business at meetings under § 33-31-701(e). The Board's management authority and the members' governance rights are not mutually exclusive constructs that must be reconciled by curtailing one to preserve the other. Rather, the statute provides for both: the Board manages day-to-day affairs, and the members retain ultimate authority to call meetings, make motions, and remove directors. These are complementary governance functions, not competing claims. The Bylaws' grant of

authority to the Board does not work an implicit limitation on statutory member rights.

D. Three Circuit Court Orders Imposed a Broad Advance Notice Rule Without Identifying Any Statutory or Bylaw Authority for It.

Over the course of three orders spanning more than a year of litigation, the circuit courts imposed an increasingly broad prohibition on member floor motions at annual meetings. Not one of these orders identified any specific statute or bylaw provision as the legal basis for this prohibition. That is not an oversight—it is because no such statute or bylaw provision exists.

Judge Price found that Royal "has not shown where the Bylaws or the Nonprofit Code permit a single Co-Owner to raise an issue for a vote by the Co-Owners at an Annual Meeting without prior notice." Price Order at 5. But the proper question was not whether Royal could identify a statute affirmatively *permitting* floor motions—it was whether any statute or bylaw *prohibits* them. The default under parliamentary law and the Nonprofit Corporation Act is that members may transact business at meetings. A restriction on that right must come from somewhere.

The burden falls on the party seeking to enforce a restriction on member rights to prove the restriction was properly adopted. *See Callawassie Island Members Club, Inc. v. Dennis*, 429 S.C. 493, 839 S.E.2d 101 (Ct. App. 2019) (holding that restrictions on member rights under S.C. Code Ann. § 33-31-611(c) must be properly approved). Judge Price cited no statute and no bylaw provision creating such a restriction. Notably, by the time of the Kinlaw Order, Price's holding had been recast still more broadly: Kinlaw paraphrased Price as having "ruled that a Co-Owner cannot raise an issue for a vote without prior notice and without circulating that notice and any resolutions regarding them to the entire ownership prior to any meeting according to the Master Deed and Bylaws." Order at 2–3.

The Price Order adopted Respondent's framing, finding that Royal "has not shown where

the Bylaws or the Nonprofit Code permit a single Co-Owner to raise an issue for a vote." Price Order at 5. But the absence of an express permission is not a prohibition. The default rule under parliamentary law and the Nonprofit Corporation Act is that members may transact business at meetings; it is a restriction on that right that must be expressly created. Royal raised this exact objection in his Motion for Reconsideration, arguing that the Price Order's finding was "entirely without support" and that "the Order does not even attempt to ground this language with any reference to any specific provision of the Master Deed or the Bylaws." MR M. Reconsider at 3.

The true genesis of the Advance Notice Rule is revealed by Respondent's own admission that the Board was "unprepared and unable to process ballot votes" on a member resolution properly presented at the 2023 Annual Meeting. AH Mem. Supp. M. Dismiss at 3. Unable to manage member participation in the annual member meeting, the Board sought a judicial prohibition on it.

Judge Kimpson went further, characterizing the Price holding as establishing that "the governing documents of Ashley House limit the ability of a Co-Owner to make a motion at a meeting to require a vote" and that "[p]rior notice is required." Kimpson Order at 8. Yet the only statutory authority Kimpson analyzed was § 33-31-808(e)'s requirement that director-removal meeting notices identify the specific directors threatened with removal—a narrow, context-specific requirement that says nothing about general floor motions at annual meetings. Kimpson cited no other statute and no bylaw provision for a broader rule.

Judge Kinlaw adopted the broadest version of all—permanently enjoining Royal from "calling any special meetings or bringing any motions" without "showing compliance." Order at 7. And he, too, cited no specific statute or bylaw provision as the source of this sweeping prohibition. Indeed, Kinlaw's Order explicitly grounded this prohibition in the theory that statutes

and governing documents require advance notice, finding that Royal had offered "no proof" that "the 'motions' had been sent to all Co-owners as required by the statutes and governing documents." Order at 5. The Order adopted Ashley House's argument that Royal's motions violated "the Master Deed, Bylaws, the South Carolina Horizontal Property Act … and the South Carolina Nonprofit Corporations Act," *id.*—yet it never identified which specific provision of any of these sources actually requires blanket advance notice of member motions.

The result is a judicially created restriction on member governance rights that the South Carolina legislature never enacted. The Master Deed goes further than silence: it affirmatively designates the Council of Co-Owners—the members acting as a deliberative body—as "the form of administration of the Condominium" and vests it with "the rights, powers, privileges and duties necessary or incidental to the proper administration of the Condominium." Master Deed, Art. XI(a). An injunction that silences one member of that body from making motions at meetings is not merely unsupported by the governing documents; it contradicts their foundational governance structure. The only statutory advance-notice requirement that exists in the context of this case is § 808(e)'s requirement of notice for removal of directors and § 33-31-702(d) and (e)'s requirement for notices of special meetings, and the parties disagree about whether Royal's notice for the special meeting to remove directors was effective. No South Carolina statute makes a blanket notice requirement for all meetings and all issues which may arise at meetings, and which might have been implicated in the two annual meetings Judge Price and Judge Kinlaw addressed in their orders.

To the contrary, § 33-31-705(c)(2) enumerates the specific matters that must be described in the notice of an annual or regular meeting: matters requiring member approval under §§ 33-31-831 (director conflicts of interest), 33-31-856 (indemnification), 33-31-1003 (amendment of

articles), 33-31-1021 (amendment of bylaws), 33-31-1104 (merger), 33-31-1202 (sale of assets), 33-31-1401 (dissolution), and 33-31-1402 (revocation of dissolution). None of these enumerated matters encompasses a blanket requirement that every item of member business at an annual meeting be pre-noticed.

Respondent attempts to reframe this appeal as a dispute about the special meeting to remove directors. Resp. Br. at 17–18. But this appeal does not challenge the validity of any special meeting. (Appellant reserves his right to appeal in that matter.) It challenges the broader Advance Notice Rule that the circuit courts imposed on annual meetings—the type of meetings that both Judge Price and Judge Kinlaw addressed in their orders. The question is whether any South Carolina statute or bylaw requires blanket advance notice of member motions at annual meetings. The § 705(c)(2) enumeration answers that question: the legislature specified the matters requiring advance notice, and a blanket requirement for all member business is not among them. See *Hodges*, 341 S.C. at 86–87 ("the enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded"). The legislature affirmatively chose the opposite position for annual meetings generally: Section 33-31-701(d)(2) says that annual meeting notices "need not include a description of the purpose." This Court reviews questions of statutory interpretation de novo. *Lollis*, 421 S.C. at 471. The circuit courts' creation of a broad Advance Notice Rule without statutory or bylaw authority is an error of law that this Court should correct. See *Lambries*, 409 S.C. at 8, 760 S.E.2d at 789 (courts may not engraft prohibitions onto a statute based on the court's subjective view of the statute's spirit and purpose).

E. The Orders on Appeal Fail *Greenville Bistro*'s Requirement That Courts Clearly State the Legal Basis for an Injunction's Scope.

Rule 65(d), SCRCP, requires that a permanent injunction "be specific in terms" and "describe in reasonable detail … the act or acts sought to be restrained." In *Greenville Bistro, LLC*

v. Greenville County, 435 S.C. 146, 154, 866 S.E.2d 562, 566 (2021), this Court held that circuit courts must clearly communicate the legal basis for an injunction's scope. The Kinlaw Order permanently enjoins Appellant from "calling any special meetings or bringing any motions to be considered or resolutions without showing compliance with the Master Deed, By-laws, and the applicable statutes referenced herein." *Kinlaw Order* at 6–7. But the Kinlaw Order identifies no specific statute, no specific bylaw provision, and no articulable standard for what "compliance" requires. A permanent injunction that enjoins a party from violating "applicable statutes" — without identifying which statutes or what they require — is not "specific in terms" as Rule 65(d) demands.

Respondent argues that *Greenville Bistro* does not require reversal for a "one sentence" failure to cite a statute, and that Rule 220(c), SCACR, permits this Court to affirm on any ground in the record. Resp. Br. at 6–7. Both arguments fail. The deficiency here is not a citation omission in an otherwise-sound legal analysis. It is a total absence of any identified legal authority — across three orders spanning more than a year of litigation — for the proposition that a member of this Council may not make a floor motion at an annual meeting. No statute. No bylaw. No case. The Kinlaw Order listed seven grounds from Respondent's amended motion and stated simply: "The Court agrees." Order at 5. It then imposed a permanent injunction without conducting any independent legal analysis of which specific provision of law requires advance notice of member motions. Rule 220(c) permits affirmance on any ground *appearing in the record*, but it does not authorize this Court to supply a legal basis that no court below ever identified. The question is not whether Respondent can now construct a post-hoc argument; it is whether the courts below applied the correct legal standard. They did not, because they never identified one.

Nor does *In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 568 S.E.2d 338 (2002),

save the orders. *Luckabaugh* addressed whether a trial court's order substantially complied with the formal requirements of Rule 52, SCRCP, when it provided findings of fact and conclusions of law. It did not hold that an injunction may permanently restrict a party's statutory rights without identifying the statute or bylaw provision that creates the restriction. The Kinlaw Order's failure is not one of formal compliance with Rule 52 — it is a failure to identify the substantive legal standard being applied, which is what *Greenville Bistro* requires. Accordingly, the Advance Notice Rule as imposed by the Kinlaw Order rests on no identified legal foundation, and the Court should reverse.

II. THE CIRCUIT COURT ERRED IN TREATING ROYAL'S COMPLIANCE EFFORTS AS VIOLATIONS OF PRIOR ORDERS, AND ITS FINDINGS AND CONCLUSIONS ARE UNSUPPORTED BY THE RECORD.

This Court reviews questions of law de novo. *Lollis v. Dutton*, 421 S.C. 467, 471, 807 S.E.2d 723, 725 (Ct. App. 2017). Whether the circuit court abused its discretion in granting a permanent injunction is reviewed for abuse of discretion; an abuse occurs when the decision is "controlled by an error of law" or "unsupported by the evidence." *Ledford v. Pa. Life Ins. Co.*, 267 S.C. 671, 676, 230 S.E.2d 900, 902 (1976). In equity, this Court may make its own findings of fact. *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

A. Royal's Challenge to Specific Errors in the Order Is Not Abandoned, and the Permanent Injunction Is Not Moot.

Respondent contends that Royal abandoned his challenge to the Order's specific findings by citing insufficient authority. Resp. Br. at 28–29. *See Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006). That argument misapplies the abandonment doctrine. An issue is abandoned when a party offers only a bare assertion without argument or authority. *Id.*; *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994) (issue "deemed abandoned" only where appellant "fails to provide arguments or supporting authority for his

assertion"); *Lollis v. Dutton*, 421 S.C. 467, 475–76, 807 S.E.2d 723, 730–31 (Ct. App. 2017) (same). Royal's motion for reconsideration identified numerous errors in the Order with quotations, page citations, and explanations of the inaccuracies. His initial brief carried forward the most consequential of those errors with analytical support. That is not a bare assertion; it is preserved, argued error. The proper inquiry is not whether every possible authority has been marshalled, but whether the appellant has presented enough for this Court to identify the alleged error and evaluate it. Royal has done so.

Respondent invokes mootness because the April 28, 2025 annual meeting has passed. Resp. Br. at 29. *See Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). The TRO provision targeting that specific meeting may be moot. The permanent injunction is not. The Order permanently restrains Royal from "calling any special meetings or bringing any motions to be considered or resolutions without showing compliance with the Master Deed, By-laws, and the applicable statutes referenced herein." Order at 7. That injunction remains in force, is enforceable by contempt, and rests on the same erroneous findings Royal challenges here. A live permanent injunction curtailing a member's statutory governance rights is not mooted by the passage of a single meeting date.

B. Royal's Noticed Motions Were a Good-Faith Effort to Comply with the Kimpson Order, Not to Circumvent It.

The central premise of the Kinlaw Order is that Royal's pre-meeting notices were an impermissible "end-run" around the Kimpson Order. Order at 5–6. That characterization inverts the record. Judge Kimpson voided the August 17, 2024 special meeting because the notice failed to name each director threatened with removal, as § 33-31-808(e) requires. Royal took that holding seriously. With the eight-member board in place, and with the understanding that Co-Owners might wish to remove any combination of one or more directors under a single motion, a compliant

notice must account for every non-empty subset of those eight directors creating many possible combiations. Royal submitted notices covering those combinations precisely so that whichever motion a Co-Owner wished to make at the annual meeting, it would be backed by a pre-meeting notice naming the specific directors at issue in compliance with the Kimpson Order. The proliferation of notices was the direct mathematical consequence of the Kimpson Order's own director-identification requirement. Royal made his intent clear before the circuit court: the noticed motions were designed to "create the opportunity for Co-Owners to bring any one of those motions to the floor," not to present them all. MR M. Reconsider at 6. The Kinlaw Order's contrary characterization—that Royal planned to present all of the motions and render the Ashley House "ungovernable for an entire year," Order at 4–5—is contradicted by this unrebutted statement in the record.

Royal did not act in secret. On April 14, 2025, he delivered his written notice to the Board and explicitly asked the Board to "please inform me immediately" of any deficiency so that he could cure it. Royal Mem. Opp. TRO at 8, Ex. A. The Board did not respond. On April 15, 2025, Royal followed up in writing, again asking the Board to identify all notice deficiencies and to advise how many motions Co-Owners are permitted to notice. Royal Mem. Opp. TRO at 8, Ex. B. Again, the Board did not respond. On April 16, 2025, Royal published a revised and substantially reduced notice directly to all Co-Owners, addressing every deficiency Respondent had identified in its TRO Motion. Royal Mem. Opp. TRO at 9, Ex. C. That same day the Board cancelled the annual meeting — not by engaging with Royal's compliance efforts, but by going to court. The Order makes no mention of Royal's April 14 and April 15 communications and provides no explanation for treating a member's good-faith compliance attempt as a violation.

The Board's cancellation of the annual meeting itself underscores the pattern of

obstruction. Under § 33-31-701(a) and Bylaws § 3.1, the annual meeting is a right of the membership, not a discretionary act of the Board. As Royal testified at the Kinlaw hearing: "Neither the statute nor the bylaws creates any mechanism by which the board may unilaterally cancel or indefinitely delay the annual meeting." Kinlaw Tr. at 45. When the Board cancelled, co-owners independently reserved a room at the Charleston Marriott to hold the meeting themselves—an exercise of their statutory self-help rights under § 33-31-702(c). The Board's response was not to work with the membership but to seek an injunction preventing the meeting from occurring at all.

Respondent now argues there was a "simple" statutory pathway — §§ 33-31-808(e), 705(e), and 702(a)(2) — that Royal failed to follow. Resp. Br. at 17–18. That argument confirms Royal's position. Section 705(e) requires the *corporation*, after receiving a member's written demand, to include the matter in the meeting notice sent to all members. Royal's April 14 written submission to the Board was precisely that demand. Royal, together with other co-owners whose combined interest exceeds five percent of the voting power, satisfies § 33-31-702(a)(2)'s threshold, and his written request was delivered more than ten days before the Board would have sent its meeting notice — satisfying both trigger conditions of § 705(e). Under Respondent's own theory of the statute, the obligation to distribute notice to the Co-Owners fell on the Board—not on Royal. The statute says "the corporation shall give notice"; the plain meaning of that text assigns the duty to the corporation, not the requesting member. *Hodges*, 341 S.C. at 85; *Peake*, 375 S.C. at 598. The Board's refusal to engage with Royal's submission was the obstacle to proper notice. An injunction that silences Royal for the Board's own non-performance of its statutory duty has no equitable basis. The court "must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent

with justice and equity under the circumstances." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). An injunction that punishes a member for the corporation's refusal to perform its own statutory duty is inconsistent with justice and equity.

Respondent's counsel made the contradiction explicit at the Kinlaw hearing, telling the court that "the board is not required to shepherd Mr. Royal's motions. That is for him to do." Kinlaw Tr. at 52. But § 705(e) says "the corporation shall give notice"—not "the member shall give notice." Respondent cannot simultaneously disclaim any obligation to process Royal's submissions while faulting him for the resulting notice deficiencies. The Board's refusal to "shepherd" Royal's motions is precisely the non-performance of its statutory duty that created the compliance obstacle.

C. Key Findings in the Order Are Contradicted by the Record.

Several specific findings in the Order are contradicted by the record or unsupported by any evidence presented to the Court. Where factual conclusions are "without evidentiary support," the court has abused its discretion. *Ledford*, 267 S.C. at 676; see also *Stanley v. Atl. Title Ins. Co.*, 377 S.C. 405, 409, 661 S.E.2d 62, 64 (2008) ("findings of fact will not be disturbed unless found to be without evidence which reasonably supports the court's findings"). Four findings are of particular consequence on this appeal.

First, the Order states that Royal "attempted to conduct his own meeting of the Ashley House." Order at 2. The Board of Directors — not Royal — formally noticed the April 28, 2025 annual meeting. Royal's position was that he and other Co-Owners were entitled to attend and conduct Co-Owner business at the Board-noticed annual meeting, and that the Board had no authority to cancel it. Characterizing a Board-noticed annual meeting as "Plaintiff's own meeting" is contradicted by the undisputed record. The Order compounded this error by finding that "there can be no meeting of the Council of Co-owners on April 28, 2025, called by the Plaintiff as he

[h]as presented no proof that he has met the statutory requirements for such a meeting." Order at 6. But Royal was not calling the April 28 meeting—the Board had already noticed it as the annual meeting. The Order's premise that the burden was on Royal to justify a meeting the Board itself had scheduled has no basis in the governing documents or the Nonprofit Corporation Act.

Second, the Order states that Respondent cancelled the annual meeting because of Royal's notice of motions. Order at 4–5. At the April 23, 2025 hearing, Respondent's counsel stated that the Board cancelled the meeting because Judge Kimpson had not yet ruled on Royal's pending motion for reconsideration of the March 17, 2025 Kimpson Order. Tr. at 21. These are materially different and contradictory explanations. The Order credits the explanation most adverse to Royal without any evidentiary basis for doing so and without acknowledging the discrepancy.

Third, the Order finds that Royal submitted an "excessive amount of potential motions" and that allowing them would "render the Ashley House ungovernable for an entire year." Order at 4–5. The Order identifies no statutory, bylaw, or common law standard by which any number of properly noticed motions becomes "excessive." It states no permissible number. The Board itself, when asked directly by Royal on April 15, 2025, refused to advise how many motions Co-Owners are permitted to notice. No court can enforce a limit of zero when no law establishes one, and no injunction can lawfully prohibit the noticing of director-removal motions that S.C. Code Ann. § 33-31-808(a) expressly authorizes. A permanent injunction must "be specific in terms" and "describe in reasonable detail . . . the act or acts sought to be restrained." *Greenville Bistro*, 435 S.C. at 154; see also *Knohl v. Duke Power Co.*, 260 S.C. 374, 377, 196 S.E.2d 115, 117 (1973) (injunction inappropriate where adequate remedy at law exists). A prohibition based on an undefined, standardless concept of "excessive" satisfies neither requirement.

III. THE CIRCUIT COURT ERRED IN GRANTING A PERMANENT INJUNCTION BECAUSE RESPONDENT FAILED TO DEMONSTRATE IRREPARABLE HARM OR

INADEQUACY OF LEGAL REMEDY, THE INJUNCTION IS OVERBROAD AND IMPERMISSIBLY VAGUE, AND THE BALANCE OF EQUITIES FAVORS REVERSAL.

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm." *Scratch Golf Co. v. Dunes West Residential Golf Props., Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004). The grant of a permanent injunction is reviewed for abuse of discretion. *Gilley v. Gilley*, 327 S.C. 8, 12, 488 S.E.2d 310, 312 (1997); *MailSource, L.L.C. v. M.A. Bailey & Assocs.*, 356 S.C. 363, 368, 588 S.E.2d 635, 637 (Ct. App. 2003). An abuse of discretion occurs when the decision is "unsupported by the evidence or controlled by an error of law." *Ledford v. Pa. Life Ins. Co.*, 267 S.C. 671, 676, 230 S.E.2d 900, 902 (1976). Questions of law embedded in the injunction ruling—including whether the required elements were legally satisfied—are reviewed de novo. *Lollis v. Dutton*, 421 S.C. 467, 471, 807 S.E.2d 723, 725 (Ct. App. 2017).

A. This Issue Is Neither Abandoned Nor Moot.

Respondent contends that Royal "appears to have abandoned" this issue. An issue is abandoned only when a party offers a bare assertion with no argument or authority. *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006); *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994). Royal's initial brief argued specifically that the injunction was overbroad, that it rested on erroneous legal premises, and that the balance of equities did not support it. App. Br. at 26–27. A specific, substantive argument on the merits—even a concise one—is not abandonment.

Respondent also invokes mootness because the April 28, 2025 meeting has passed. *See Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). The TRO provisions restraining Royal from presenting his 748 noticed motions at that specific meeting, and from calling a meeting on that specific date, may be moot. The permanent injunction is not. The third operative paragraph of the Kinlaw Order permanently restrains Royal "from calling any special meetings or bringing

any motions to be considered or resolutions without showing compliance with the Master Deed, By-laws, and the applicable statutes referenced herein." Order at 7. That restraint operates every day. It is enforceable by contempt. It permanently curtails Royal's exercise of membership rights expressly guaranteed by S.C. Code Ann. § 33-31-808(a). A live permanent injunction is not mooted by the passage of a single meeting date.

B. Respondent Failed to Establish Irreparable Harm or Inadequacy of Legal Remedy.

To obtain a permanent injunction, a party must establish "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The circuit court found that allowing the motions "would constitute irreparable harm as there is no adequate remedy at law for the Defendant whose Board has been confirmed by Court order." Order at 6. Neither finding is supported by the evidence.

The irreparable harm AH identified was its allegation—repeated in its Amended Motion and adopted by the court—that the noticed motions "would render the Ashley House ungovernable for an entire year." Order at 5. AH offered no evidence to support this prediction: no testimony, no financial analysis, no operational record. Royal raised this point below: "The Court has no grounds in law or fact to make such a finding and offers no support for its finding in the Order." MR M. Reconsider at 10. The mere prospect that addressing numerous motions at a meeting would be time-consuming is not irreparable harm. Speculative or conjectural injury cannot support equitable intervention. *See MailSource*, 356 S.C. at 370, 588 S.E.2d at 638; *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002) (injunctive relief improper where proof of harm is insufficient and equities unbalanced). And neither the court nor AH

explained why a cumbersome meeting could not be adjourned and continued—a remedy far less drastic than a permanent injunction.

The court's own stated rationale undermines the irreparable harm finding. The court was concerned that allowing the motions "could overturn Judge Kimpson's ruling which is not the proper way to challenge a court order." Order at 6. That is a concern about procedural propriety, not irreparable harm. More fundamentally, as shown above in Issue II, Royal's noticed motions were not an attempt to relitigate the Kimpson Order. They were a good-faith attempt to satisfy its director-identification requirement by giving the Board every combination of named directors for a future properly-noticed meeting.

That Co-Owners might vote at a future compliant meeting—and that the vote might favor removal—is not irreparable harm. It is the statutory governance process that S.C. Code Ann. § 33-31-808(a) expressly authorizes. The exercise of a statutory right to remove directors cannot itself constitute the "irreparable harm" that justifies enjoining the very right the statute confers. The harm AH identified was that members might actually exercise their removal rights; that is the statutory governance process working as intended, not irreparable injury.*Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 908.

C. The Permanent Injunction Is Overbroad and Impermissibly Vague Under Rule 65(d), SCRCP.

Rule 65(d), SCRCP requires every injunction to "describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." The operative permanent paragraph restrains Royal "from calling any special meetings or bringing any motions to be considered or resolutions without showing compliance with the Master Deed, By-laws, and the applicable statutes referenced herein." Order at 7. That paragraph fails Rule 65(d)'s specificity requirement in three independent respects, each of which independently requires reversal.

Greenville Bistro, LLC v. Greenville County, 435 S.C. 146, 156, 866 S.E.2d 562, 568 (2021) (courts must clearly articulate the basis and terms of equitable relief). The deficiency is compounded by the injunction's enforceability by contempt. "[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct." *Floyd v. Floyd*, 365 S.C. 56, 76–77, 615 S.E.2d 465, 476 (Ct. App. 2005) (quoting *Spartanburg Cnty. Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 83, 370 S.E.2d 872, 874 (1988)). An injunction that is too vague to allow compliance cannot be enforced through contempt. The Kinlaw Order's undefined "showing compliance" precondition creates exactly this problem: Royal cannot know what conduct is required, and a court cannot determine whether he has failed to perform it.

First, "showing compliance" is defined nowhere in the Order. The Order specifies no procedure by which compliance is demonstrated, no tribunal to which it must be shown, no timeframe, and no substantive standard. Before Royal may call a meeting or notice a motion, must he obtain a judicial pre-approval ruling? Submit documentation to the Board? Obtain a written acknowledgment from Respondent's counsel? The Order is wholly silent. An injunction that conditions the exercise of a statutory right on an undefined precondition cannot be obeyed with reasonable certainty and cannot be enforced with fair notice of what compliance requires. Rule 65(d)'s specificity requirement exists precisely to prevent this problem.

Second, the phrase "the applicable statutes referenced herein" incorporates by reference an undefined body of the Order's text, which itself cites multiple statutes in varying contexts without specifying which provisions establish the compliance standard. Rule 65(d) bars incorporation by reference to other documents. An injunction that tells Royal he must comply with "applicable statutes" without identifying which statutes, which provisions, and what they require of him in this context does not give fair notice of the prohibited conduct.

Third, the permanent paragraph contains no time limit, no subject-matter limitation, no mechanism for dissolution, and no sunset provision. Royal is permanently enjoined—for as long as he owns a unit at the Ashley House—from exercising any statutory right to call a meeting or make a motion, absent satisfaction of an undefined compliance showing. An injunction of such unlimited temporal and substantive reach, entered on the basis of a single procedural dispute about a single set of noticed motions, is overbroad as a matter of law. If the court's concern was compliance with specific notice requirements for director-removal motions, the injunction should have been tailored to those specific requirements—not drafted to gag Royal from all membership governance activity indefinitely.

The scope of the injunction's overbreadth is demonstrated by what it actually encompasses. Respondent's own Amended Motion for TRO catalogued Royal's notices as including motions numbered 669 through 691—standard parliamentary procedure motions such as "motion to adjourn," "motion for point of order," "motion to recess," and "motion for parliamentary inquiry." AH Am. M. TRO at 3–4. The Kinlaw Order restrains Royal from "bringing any motions." Order at 7. Read literally—as it must be for contempt purposes, *Floyd*, 365 S.C. at 76–77—this injunction bars Royal from making a motion to adjourn his own homeowners association meeting. An injunction that prevents a member from exercising basic parliamentary rights at a meeting he is otherwise entitled to attend is not "specific in terms" as Rule 65(d) demands; it is an undifferentiated prohibition on all participation in democratic governance.

This is not a hypothetical concern. At the 2024 Annual Meeting, Respondent's counsel took the position that a co-owner who stood up during the meeting to make a procedural objection to the chair was acting improperly because the objection had not been submitted to the Board ten days in advance. Kimpson Tr. at 73–74. In other words, on Respondent's view, "no motion can

ever be made by a member of the corporation in a member meeting unless that motion has been noticed to the board of directors ten days in advance. And that includes … any procedural motion." Kimpson Tr. at 72. The Advance Notice Rule, as Respondent applies it, makes it impossible to conduct a meeting at all—no member could move to adjourn, raise a point of order, or call the question without ten days' advance written notice. That result confirms the rule's overbreadth.

D. The Balance of Equities Overwhelmingly Favors Reversal.

The circuit court was required to balance the equities of the parties before issuing a permanent injunction. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). The balance here tips sharply against the injunction. On one side sits a speculative, unsubstantiated prediction that a compliant future meeting would be cumbersome. On the other sits the permanent elimination of a co-owner's statutory right to call meetings and make motions—rights expressly granted by S.C. Code Ann. § 33-31-808(a)—and the suppression of the collective governance preferences of a supermajority of the Ashley House membership.

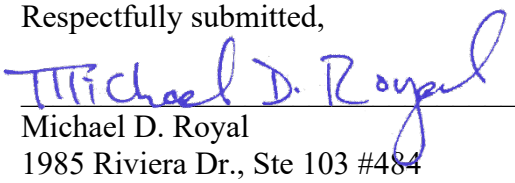
If the court's genuine concern was procedural compliance, the equitable remedy was specific: order that any future director-removal meeting comply with § 33-31-808(e)'s notice requirements, and provide Royal with a clear statement of what that compliance requires. Instead, the court issued an open-ended permanent injunction that offers no path for Royal to restore his membership rights by any identifiable act of compliance. He is permanently gagged unless and until some undefined showing satisfies some undefined standard to some unidentified decision-maker. The balance of equities does not support that result, and the abuse of discretion standard does not shield it. *Ledford*, 267 S.C. at 676, 230 S.E.2d at 902. This Court should reverse the grant of the permanent injunction and remand for entry of an order, if any, tailored to the specific procedural deficiencies actually identified.

CONCLUSION

For the foregoing reasons, Appellant Michael D. Royal respectfully requests that this Court reverse the Order Granting Temporary Restraining Order, Restraining Order, and Permanent Injunction entered by the Honorable Alex Kinlaw, Jr. on April 28, 2025, and the Order Denying Reconsideration entered on June 2, 2025, and remand this matter to the circuit court for further proceedings consistent with this Court's ruling.

Should this Court determine that any injunctive relief remains appropriate, Royal further requests that the Court direct entry of a narrowly tailored order that (1) identifies the specific statutory or bylaw provision on which any restriction rests, (2) describes in reasonable detail the precise act or acts restrained, and (3) provides a clear and defined process by which Royal may demonstrate compliance—as Rule 65(d), SCRCP requires.

Respectfully submitted,



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March 2, 2026