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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM McCORMICK COUNTY
Court of Common Pleas

The Honorable Debra R. McCaslin
Circuit Court Judge

Appellate Case No. 2026-000514
Circuit Court Case No. 2024-CP-35-00086

Diane L. Shaffer and Daniel A. Higgins, …… Plaintiffs,

McCormick County Council and
McCormick County Office of Voter Registration and Elections, …… Respondent,

of whom Diane L. Shaffer is the …….. Appellant.

APPELLANT'S OPENING BRIEF

Respectfully submitted,

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March 30, 2026
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STATEMENT OF ISSUES

This case concerns fundamental issues regarding the citizenry's right to self-government, as expressly preserved by South Carolina's Home Rule Framework. Pursuant to South Carolina Code §§ 4-9-1210–1230, Appellant and the requisite number of McCormick County voters presented three proposed ordinances for McCormick County Council's consideration. One ordinance involved district boundaries, one involved notice of Council meetings, and one involved the citizenry's ability to speak at Council meetings. The Council passed the third ordinance regarding speaking at public Council meetings, but it refused to pass the other two. The Council and the McCormick County Election Commission (collectively "Respondents") then refused to present those remaining ordinances to the electorate for an up-or-down vote, as required by South Carolina law.

The Appellant, Mrs. Shaffer sued to enforce her right to the ordinance-via-ballot initiative process, which is expressly memorialized in South Carolina Code §§ 4-9-1210–1230. The circuit court affirmed the Council's and Election Commission's refusal to present these proposed ordinances to the voters when it denied Appellant's motion for summary judgment and granted Respondent's cross-motion The circuit court's order was erroneous and presents several important issues for appellate review:

1. Did the circuit court err by not enforcing the ordinance-via-ballot initiative process specifically provided for in South Carolina Code §§ 4-9-1210–1230 for each of the remaining two proposed ordinances?
2. Did the circuit court err in finding that Proposed Ordinance 23-10, which allows greater transparency before council meetings, conflict with South Carolina law?

3. Did the circuit court err in finding that Proposed Ordinance 23-11, which gives the electorate a voice in crafting voting district boundaries, conflict with South Carolina law?

STATEMENT OF THE CASE

This appeal concerns a county public's right to shape their local government through the statutorily endowed initiative and referendum process, and whether a county council may refuse to submit lawfully initiated ordinances to the electorate despite the General Assembly's express command that such ordinances "shall be submitted to the electors." S.C. Code Ann. § 4-9-1230.

I. Relevant Facts

A. McCormick County Redistricting and the Adoption of Map 2

On December 9, 2021, the General Assembly passed legislation adopting the results of the 2020 Census, which was signed into law the next day. 2021 S.C. Acts No. 117. McCormick County Council then undertook its redistricting process pursuant to S.C. Code Ann. § 4-9-90, which requires county councils to reapportion districts "within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census."

Using the 2020 census results, the South Carolina Revenue and Fiscal Affairs Office prepared three different potential maps to redistrict the McCormick County Council's five seats that would have followed South Carolina law concerning apportionment. (R. pp. ___–___; Proposed Maps.) On January 11, 2022, during a special meeting, the McCormick County Council unanimously approved the first reading of Ordinance 21-07, adopting a redistricting plan for county council districts. The motion was for the title only, and no specific adoption of any of the three maps developed by the South Carolina Revenue and Fiscal Affairs Office was made. A public hearing on the redistricting plan was tentatively scheduled for February 7, 2022.

On February 7, 2022, the County Council held a public hearing on redistricting. All three maps and supporting statistical data were made available for public review. Six individuals made

public appearances at the hearing, all supporting the adoption of Map 3, and one county resident submitted written comments also supporting Map 3.

Despite this unanimous public support for Map 3, on February 15, 2022, during the regular monthly county council meeting, the third and final reading of Ordinance 21-07, approving Map 2 as the county's redistricting plan, was adopted by a three-to-two majority. A motion to amend the ordinance to adopt Map 3 instead of Map 2 failed by a vote of two-to-three. Appellant and other McCormick County residents strongly disagreed with county council's decision to use Map 2 because Map 3 more appropriately apportioned the electors among the various single member districts and reduced the voter deviation between districts

B. The Initiative Petitions and Council's Refusal

Discontented with Council's selection of Map 2, Appellant and other citizens exercised their statutory right under S.C. Code Ann. § 4-9-1210 to propose ordinances via initiative petition. After gathering signatures from at least fifteen percent of the qualified electors, Appellant submitted three initiative petitions to the McCormick County Office of Voter Registration and Elections in August 2023.

Among the proposed ordinances were: (a) Proposed Ordinance 23-10, which would allow any County Council member to place items on the Council's meeting agenda and require agendas for regular Council meetings to be posted at least seven days before each meeting; and (b) Proposed

Ordinance 23-11, which would amend Ordinance 21-07 to substitute Map 3 for Map 2 as the County's reapportionment plan. (R. pp. ___–___; Proposed Ordinances.)

On November 21, 2023, McCormick County Council held its regular monthly meeting. During this meeting, the council approved first readings of Proposed Ordinances 23-09[1], 23-10, and 23-11. However, on December 19, 2023, County Council held another monthly meeting where it voted not to approve Proposed Ordinances 23-10 and 23-11. During the December 19, 2023, meeting, McCormick County Council's legal counsel stated that the council's decision on Proposed Ordinances 23-10 and 23-11 was final. The legal counsel further advised that, in a subsequent meeting, the council should adopt motions to ensure that neither ordinance would be referred to the McCormick County Office of Voter Registration and Elections for inclusion on the ballot for the November 2024 general election. Then, on January 16, 2024, Council held a final voted where it decided three-to-two against submitting the Proposed Ordinances 23-10 and 23-11 to the electorate.

In response, Appellant submitted a letter to the McCormick County Office of Voter Registration and Elections on March 20, 2024 demanding that the proposed ordinances be placed on the ballot for the next general election, as required by South Carolina Code § 4-9-1230 (R. p. ___.) On March 26, 2024, the County election agency notified Appellant that it would not place Proposed Ordinances 23-10 or 23-11 on any ballot for the electorate's consideration. (R. p. ___.)

II. Procedural History

In recognition of the time-sensitive nature of their request with the November 2024 general election looming, Appellant filed a Petition for Writ of Mandamus in the Original Jurisdiction of

[1] Proposed Ordinance 23-09 required an open public comment period at the beginning of the council's regular monthly meetings. This ordinance was approved by county council and is not in dispute as part of this appeal.

the South Carolina Supreme Court on May 3, 2024. The petition sought an order requiring Respondents to place the proposed ordinances on the ballot for the November 2024 general election. By Order dated June 20, 2024, the Supreme Court denied the Petition but left some uncertainty about whether the denial was a decision on the merits or procedural decision about the Supreme Court's original jurisdiction. In response, Appellant filed a Petition for Clarification about the basis of the Court's denial on June 20, 2024. The Court issued a subsequent order confirming that the denial of the extraordinary writ petition was not a ruling on the merits. (R. pp. ___–___; Supreme Court filings.)

On September 11, 2024, Appellant filed this action in the McCormick County Court of Common Pleas seeking injunctive and declaratory relief. (R. p. ___; Complaint.) On October 15, 2024, Respondents filed an Answer, Affirmative Defenses, and Counterclaim, denying Appellant's claims and asserting that the proposed initiative ordinances conflict with state law. (R. p. ___; Defendants' Answer.) On November 14, 2024, Appellant filed an Answer to Respondents' Counterclaim. (R. p. ___.) The November 2024 general election occurred without the proposed ordinances appearing on the ballot.

On September 2, 2025, Appellant moved to amend the complaint to seek a special election on the proposed ordinances—relief expressly authorized by S.C. Code Ann. § 4-9-1230, which provides that council "may, in its discretion, and if no regular election is to be held within such period, provide for a special election." The amendment was granted, and an Amended Complaint was filed on September 17, 2025. (R. p. ___; Order Granting Motion to Amend; R. p. ___; Amended Complaint.) On October 2, 2025, Respondents filed their Answer, Affirmative Defenses,

and Counterclaim to the Amended Complaint. (R. p. ___.) Then, on October 14, 2025, Appellant filed an Answer to Respondents' Amended Counterclaim. (R. p. ___.)

Both parties filed cross-motions for summary judgment. (R. pp. ___-___; Plaintiffs' Motion for Summary Judgment; R. pp. ___-___; Defendants' Motion for Summary Judgment.) A hearing was held on the summary judgment motions on November 3, 2025. On December 11, 2025, Appellant filed a Notice of Supplemental Authority directing the Court to *Abbott v. League of United Latin American Citizens*, No. 25A608, 607 U.S. ___, 2025 WL 3484863 (U.S. Dec. 4, 2025), a US Supreme Court relevant to issues presented here. Respondents filed a response to the supplemental on authority on January 5, 2026.

On January 6, 2026, the circuit court entered an order granting Respondents' motion for summary judgment, denying Appellant's motion, and declaring that "Defendants have no duty to hold a special election referendum on the proposed initiative ordinances." (R. pp. ___-___; Order Granting Summary Judgment.)

Appellant timely filed a Rule 59(e) motion for reconsideration on January 15, 2026. (R. p. ___; Plaintiffs' Motion for Reconsideration.) On January 28, 2026, the circuit court entered an order denying the motion for reconsideration. (R. p. ___; Order Denying Motion to Reconsider.)

Appellant timely filed her Notice of Appeal on February 27, 2027. This appeal followed.

SUMMARY OF ARGUMENT

This appeal presents the fundamental question of whether county officials may refuse to submit lawfully initiated ordinances to the electorate despite the General Assembly's express command that such ordinances "***shall be*** submitted to the electors." S.C. Code Ann. § 4-9-1230 (emphasis added).

Appellant Diane L. Shaffer and fellow citizens of McCormick County gathered signatures from more than fifteen percent of qualified electors to propose three ordinances to County Council—one concerning meeting agenda transparency, one concerning the citizenry's ability to speak during Council meetings, and another proposing an alternative redistricting map for councilmembers' districts. After Council declined to pass two of the three ordinances, they then refused to present those same ordinances to the electorate, in direct contravention of § 4-9-1230's mandatory directive.

Rather than ordering an election on the proposed ordinances, as required by South Carolina Code § 4-9-1230, the circuit court excused Respondents' noncompliance by concluding that both unpassed ordinances conflict with state law.

The circuit court's ruling effectively nullifies the initiative and referendum rights the General Assembly expressly granted to county electorates through the Home Rule Act. If allowed to stand, the decision would permit county councils across South Carolina to unilaterally veto citizen-initiated measures simply by declining to pass them—the very outcome § 4-9-1230 was designed to prevent. This Court should reverse and remand with instructions to order Respondents to conduct a special election on Proposed Ordinances 23-10 and 23-11.

STANDARD OF REVIEW

This case involves statutory construction. The proper interpretation of a statute is a question of law, which this Court reviews d*e novo* and "without any deference to the court below." *Powell v. Keel*, 433 S.C. 457, 462, 860 S.E.2d 344, 346 (2021).

ARGUMENT

I. The ordinance-via-ballot process is mandatory and is a self-government safeguard the General Assembly specifically created for the citizenry with respect to local governments.

South Carolina law grants county electorates the power to shape their local government. As a foundational point, the voters themselves choose the form of county government they wish to govern them. *See e.g.*, S.C. Code Ann. § 4-9-10 (allowing the county electorate to conduct a referendum "to change the form of government, number of council members, or methods of election.").

In addition to government structure, voters are allowed to play a role in local policymaking. The General Assembly has granted voters the authority to propose and then vote on county ordinances, as long as the proposed ordinance does not appropriate money or levy taxes: "The qualified electors of any county may propose ***any ordinance***, except an ordinance appropriating money or authorizing the levy of taxes and adopt or reject such ordinance at the polls." *Id.* § 4-9-1210 (emphasis added).

After a representative portion of the county electorate—fifteen percent—proposes a lawful referendum[2], a county council has two options: it can enact the ordinance, or it can put the

[2] As a threshold matter, there is no dispute about whether Appellant complied with the procedural requirements of the initiative and referendum process. Namely, Appellant "submitted to the council by a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county." S.C. Code Ann. § 4-9-1210. Upon Respondents' decision to not pass the proposed ordinances, Appellant timely petitioned for the

ordinance to a vote by the county electorate. "If the council shall fail to pass an ordinance proposed by initiative petition or shall pass it in a form substantially different from that set forth in the petition…the adoption or repeal of the ordinance concerned ***shall be submitted to the electors*** not less than thirty days nor more than one year from the date the council takes its final vote thereon." *Id.* § 4-9-1230 (emphasis added).

The results of the vote are binding: "All county councils shall be bound by the results of any such referendum." *Id.*

The only narrow circumstances when a council need not submit a proposed ordinance for an election is when either (1) the ordinance relates to "appropriating money or authorizing the levy of taxes" or (2) the proposed ordinance ***directly conflicts*** with State law. *Id.* § 4-9-1210; *see, e.g.*, *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000) (rejecting a ballot initiative that would override zoning procedures that are specifically governed by "the elaborate, detailed zoning procedures contained in Title 6" of the South Carolina Code); *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 456, 415 S.E.2d 801, 805 (1992) (concluding that a proposed ordinance that would block the collection of tolls on public roads was "facially defective in its entirety because it sets aside the structure and administration of the statewide highway scheme," as the tolls were designed by the State Department of Highways and Public Transportation to pay for those roads).

Appellants' proposed ordinances fit neither prohibited category for a citizen-led ordinance, and the circuit court erred in ruling otherwise.

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ordinances to be placed on the next available election. She then immediately sought involvement from the Judiciary—first the Supreme Court, and then the circuit court—once the local government entities refused to follow the law.

First, the proposed ordinances here have nothing to do with the public fisc, which is the only limitation actually stated in Section 4-9-1210 itself.

Second, and as discussed further below, Proposed Referendums 23-10 and 23-11 do not conflict with any existing state law. Indeed, the circuit court did not identify any actual statutory conflict. But mere generalized policy concerns or implied limitations untethered from statutory text cannot override the citizenry's ability to govern itself; that is the very point of the Section 4-9-1210's process. And, in fact, the proposed ordinances here are "consistent with the constitution and general laws of this State." *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010).

A. The circuit court erred in holding that proposed Ordinance 23-10 conflicts with the South Carolina Code.

Proposed Ordinance 23-10 concerns the inclusion of items on the County Council's agenda for regular meetings and how far before a meeting Council must post its agenda for public notice. Specifically, the proposed ordinance would (1) allow any County Council member to place items on the Council's meeting agenda, and (2) require agendas for regular Council meetings to be posted at least seven days before each meeting.

1. Proposed Ordinance 23-10 does not affect County Council's "rules" or "orders of business" under Section 4-9-110.

South Carolina Code § 4-9-110 states that "[t]he council shall determine its own rules and order of business." Based on this single sentence alone, the circuit court found that proposed Ordinance 23-10—which would affect agenda setting ***before*** a council meeting—is invalid because it attempts to change the rules of McCormick County Council.

But the "rules and order of business" clause in South Carolina Code § 4-9-110 addresses internal parliamentary mechanics like opening meetings in prayer, decorum in speaking, requests

to be heard, and the order of business. *See* McCormick County, SC, Code of Ordinances ch. 2 §§ 2-58 –2-60 (2023). Proposed Ordinance 23-10 does not affect such internal "rules" in any way. Instead, meeting agenda notice and placement concern how the public is informed before the meeting and how the public record is maintained. Those are distinct functions, and one has nothing to do with the other.

While South Carolina Code § 4-9-110 gives County Councils the authority to "determine its own rules and order of business," it does not give council all-encompassing power for pre-meeting agenda setting; agendas for public meetings of public bodies are governed by an entirely separate area of the State Code: Title 30's Freedom of Information Act.

The proposed ordinance simply allows Council members the chance to put issues on the table for the Council's consideration before a meeting. How those items are addressed during a meeting—that is, how Council's enforces its "rules" and "order of business"—are not impacted at all by the proposed ordinance.

Because Proposed Ordinance 23-10 does not regulate any internal "rule" or "order of business" of McCormick County Council, it is not preempted by or even addressed by South Carolina Code § 4-9-110. By conflating agenda notice and public-access requirements with internal parliamentary governance, the circuit court improperly expanded Section 4-9-110 beyond its text and legislative purpose and, in so doing, erred by blocking the self-government process.

2. Proposed Ordinance 23-10 does not seek to change any part of FOIA.

Furthermore, South Carolina Code § 4-9-110 states that "meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies." Among such "general laws of the state" is the South Carolina's Freedom of Information Act. The South Carolina Freedom of Information Act requires public bodies to post agendas for

their regular and special meetings "***at least*** twenty-four hours prior to such meetings." S.C. Code Ann. § 30-4-80(A) (emphasis added). The General Assembly has decided that twenty-four hours is the floor for public transparency, ***not*** the ceiling. There is no irreconcilable conflict between requiring at least twenty-four hours' notice (the State's general law) and requiring at least seven days' notice (as proposed). Compliance with both is not only possible, McCormick County Council would automatically comply with the State's general law if it posted its meeting agenda at least seven days before meetings (and gave the citizenry a full week, rather than a single day, to inform itself about the business of its governing body).

The Legislature's use of the term "at least" clearly implies that it did not expect the twenty-four-hour requirement to be unchangeable. The Legislature did not provide a single point in time when an agenda must be posted, but instead it identified the minimum amount of time a public body must give the public. Construing FOIA's notice provision without accounting for the "at least" clause within the statute improperly voids the express terms the General Assembly used within the statute itself. *See State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.") (internal quotation omitted).

Finally, it cannot possibly be true that requiring even more notice conflicts with the FOIA, as FOIA itself states that its purpose it to ensure the public is as informed as possible about the activity of its government: "[T]hat public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." S.C. Code Ann. § 30-4-15; *see generally N.Y. Times Co. v. Spartanburg Cty. Sch. Dist. No. 7*, 374 S.C. 307, 311, 649 S.E.2d 28, 30 (2007) ("FOIA must be construed so as to make it possible for citizens to learn and report fully

the activities of public officials."). Requiring County Council to publish its meeting agendas seven days before meetings does not conflict with FOIA, but it keeps with the very spirit of the law and better promotes public transparency and accountability.

Proposed Ordinance 23-10 does not seek to change state law. Accordingly, the circuit court erred by refusing to require this ordinance to be put to an up-or-down vote of the citizenry. Its ruling on this issue should be reversed accordingly.

B. The circuit court erred in holding that proposed Ordinance 23-11 conflicts with South Carolina law.

The second proposed ordinance would adopt Map 3, rather than Map 2, to establish the boundaries for McCormick County Council's single-member districts. The circuit court held that this proposed ordinance conflicts with state law; respectfully, it does not.

1. South Carolina Code § 4-9-90's timing mechanism places a limit on County Council, not the electorate.

South Carolina Code § 4-9-90 provides that "all County Council districts must be reapportioned as to population ***by the county council*** within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census." (emphasis added). Notably missing from S.C. Code Ann. § 4-9-90 is any mention of citizen-initiated-referenda.

Read properly, South Carolina Code § 4-9-90 regulates the rights and responsibilities of a county council. South Carolina Code § 4-9-90 does not regulate the rights and responsibilities of a county electorate; instead, those rights are preserved in §§ 4-9-1210–1230. South Carolina Code § 4-9-90 simply imposes a timing obligation on the county council when the council itself enacts its decennial reapportionment; it does not insulate the council from judicial relief or negate the electorate's independent statutory rights. The circuit court relied on this timing mechanism in the

statute to disregard the citizenry's right to self-government, but that reading misplaces the statute's focus and wrongly defeats the democratic values inherent to South Carolina laws by allowing a council to run out the clock on its legal obligations.

Nothing in § 4-9-90 purports to limit or displace the initiative and referendum authority expressly preserved in §§ 4-9-1210–1230. The circuit court's contrary reading improperly transforms a statutory timing obligation imposed on county councils into a restriction on the electorate itself—an interpretation unsupported by the statute's text.

And even if South Carolina Code § 4-9-90 imposed an obligation on a county electorate to petition for a referendum within a reasonable time before the next general election—which it doesn't—there can be no legitimate question that Appellant acted "reasonably" and dutifully in her exercise of the referendum process. McCormick County Council did not approve Map 2 as the county redistricting plan until February 2022. By August 2023—fourteen months before the November 2024 general election—Appellant had already drafted petitions and collected the required signatures of fifteen percent of the County's qualified electors. Nor did Appellant have a justiciable claim until January 2024 (after the Respondents refused to honor their statutory obligations to put these ordinances to a vote of the electorate), at which point Appellant promptly filed for relief in the South Carolina Supreme Court in March 2024—still well before the November general election.

2. South Carolina law provides a remedy for when a referendum is proposed outside of the normal election cycle.

South Carolina Code § 4-9-1230 expressly contemplates that voter-initiated ordinances may be approved or rejected at a special election when no regular election occurs within the prescribed period. The mere passage of a single general election therefore does not moot Appellant's claims or diminish the availability of relief. To the contrary, a vote on Appellant's

proposed reapportionment map would govern all subsequent county council elections until the next decennial census.

The very existence of the special election provision establishes that the General Assembly contemplated situations where the initiative and referendum process would operate outside the normal electoral cycle. By concluding otherwise, the circuit court effectively read the special-election provision out of § 4-9-1230, contrary to settled principles of statutory construction requiring courts to give effect to every word of a statute. *Sweat*, 386 S.C. at 351, 688 S.E.2d at 575.

3. The circuit court misapplied *Elliot v. Richland County*.

The circuit court relied heavily on *Elliott v. Richland County*, 322 S.C. 423, 472 S.E.2d 256 (1996), for the proposition that a county council has "one shot" to reapportion council districts. This reading of *Elliott* is overbroad and misapplied. No such "one-shot" rule exists.

Elliott has a tortured procedural history involving repeated ***county-council-initiated*** redistricting ordinances. Richland County Council passed ***three*** different redistricting ordinances over the course of two years. The ***third*** ordinance came eight months after a federal court ordered the second ordinance submitted to the Department of Justice for preclearance under the Voting Rights Act, and five months after DOJ issued a favorable preclearance decision. *Elliott*, 322 S.C. at 424–26, 472 S.E.2d at 257–58.

In *Elliot*, the Supreme Court found that the ***third*** reapportionment plan enacted by Richland County violated South Carolina Code § 4-9-90. In finding that the county's third plan was unlawful, the Court also found that the County's enactment of the second plan was lawful. If Section 4-9-90 truly imposed "one-shot" at reapportionment, then Richland County's second plan would also have been unlawful. However, the Court found just the opposite. "As we have declared

Plan 3 invalid under § 4–9–90, the question remains what, if any, action is necessary in order to assure that future elections are held under Plan 1 as amended by Plan 2." *Elliott* 322 S.C. at 427, 472 S.E.2d at 259. Though the scope of the second reapportionment plan in *Elliot* was more limited than the third, the fact remains that the county's second reapportionment plan—which was deemed valid by the Court—created material changes to the first plan, including creating a new minority district where none existed before. *Id.* at 247, 472 S.E.2d at 258.

By its terms, *Elliott* prohibits a county council itself from repeatedly enacting reapportionment ordinances. And that decision makes perfect sense: without such a limitation, incumbents could manipulate redistricting to protect themselves, and governing bodies could create confusion by repeatedly churning district lines.[3]

[3] The concept that districts cannot be reorganized except once every ten years is also no longer a viable position to take as a general matter. In a recent case, *Abbott v. League of United Latin American Citizens* No. 25A608, 607 U.S. ___, 2025 WL 3484863 (U.S. Dec. 4, 2025), the U.S. Supreme Court ruled on the legality of similar citizen-led redistricting efforts in Texas.

In *Abbott*, the U.S. Supreme Court considered the constitutionality of a new redistricting electoral map created by the Texas legislature in 2025 for use in the 2026 general election. Until 2026, Texas used an electoral map enacted in 2021 following the 2020 decennial census. Then, in August 2025, Texas approved a new electoral map that redistricted several voting districts throughout the state. Shortly after its passage, a group of plaintiffs challenged the 2025 map, arguing that the map was racially motivated and unconstitutional. In November, a three-judge district court ruled for the plaintiffs and enjoined Texas from using the new map. Texas promptly filed a petition with the Supreme Court for relief. On December 4th, the Supreme Court entered an order staying the district court's order, finding that Texas is likely to succeed on the merits of its claim that the district court erred when it enjoined use of the new map. The practical effect of the Supreme Court's recent order is that Texas electoral districts in the 2026 general election will be based on a 2025 map, created and enacted over five years after the last decennial census and four years after Texas validly approved its first electoral district map in 2021.

While the chief concern in *Abbot* was whether Texas's efforts were unconstitutionally motivated by race, implicit in the Supreme Court's order is that the law allows Texas to redistrict its electoral map for a second time using the prior census data. In other words, if Texas's 2025 map was unlawful for violating what the Respondents here have called the "one shot rule," the district court or the Supreme Court would have certainly enjoined it for such a simple reason and

This case presents the opposite situation. Here, the citizenry—not McCormick County Council—initiated the proposed redistricting plan. There are no concerns about incumbents manipulating the process to protect themselves or the governing body creating general confusion among voters. Instead, through their petition, the citizens of McCormick County are demanding the chance to make their local government more representative, perhaps the purest form of democracy and political expression.

Elliott never addressed the independent rights of the electorate under §§ 4-9-1210–1230. The Supreme Court's holding was limited to council-initiated reapportionment. Extending *Elliott* to bar citizen referenda would effectively insulate county councils from any electoral review of their reapportionment decisions and deprive electorates of any meaningful mechanism to challenge those decisions through the initiative process. Such an expansion cannot be reconciled with the statutory framework the General Assembly enacted to protect citizen initiative rights.

4. The Circuit Court's application of *Elliot* is inconsistent with other South Carolina law.

Not only is the notion of a so-called "one shot rule" unsupported by *Elliot*, but the concept (even if it did exist) is fundamentally inapplicable. South Carolina Code § 4-9-10 grants the electorate the right "to change the form of government, number of council members, or methods

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would not even have to consider the constitutionality of the legislature's motivations for redistricting the electoral map in the middle of a decade.

But instead of issuing such an injunction, the Supreme Court authorized the newly redrawn Texas maps to remain in place for the next election cycle while the litigation continues. And it even acknowledged that such redistricting was happening nationally, as the opening sentence of the opinion recites this reality: "With an eye on the upcoming 2026 midterm elections, several States have in recent months redrawn their congressional districts in ways that are predicted to favor the State's dominant political party."

of election" (i.e., whether the members of the county's governing body are elected from defined single member election districts or the county at large) every four years via referendum.[4]

In practice, this means that the qualified electors of McCormick County could vote on a proposed referendum that changes the county's form of government, changes the number of council seats, or changes how council members are elected to office, any of which referendums would unquestionably affect the county's reapportionment plan.[5] Not only could the McCormick County electorate vote on such a referendum, but they could then enact a second referendum materially altering the county's form of government and reapportionment plan four years later—or twice within a ten-year cycle between federal censuses.

If the citizenry can change the entire composition of a county council via the initiative and referendum process every four years, then it must also be true that the citizenry can change the voting districts for council members at least once every ten years.

II. The circuit court erred by reading restrictions on the referendum process that are not in the statute.

A core concern with the circuit court's order is that it misapplied the restrictions on when the ordinance-via-ballot is unavailable to voters. The General Assembly placed only a single restriction on when this self-government device is unavailable: when it would impact the public fisc via appropriation or taxation. S.C. Code Ann. § 4-9-1210. That is it.

The Judiciary has read into this process a further limitation: when compliance with both statewide law and the proposed ordinance is impossible. But unlike the city ordinance the circuit

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[4] The referendum process in South Carolina Code § 4-9-10 can be initiated by petition upon collecting the signatures of ten percent of a county's qualified electors, less than the fifteen percent of signatures Appellant needed to collect here.

[5] For example, changing from a five-member council to four members would require reapportioning the electoral districts for the remaining four members to account for the territory vacated by the eliminated seat.

court relied on when it considered *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456 (2021)—a Columbia ordinance requiring the use of facemasks in schools despite a State law forbidding schools from using state funds to require wearing facemasks in education facilities—the proposed ordinances do not here "hinder[] the accomplishment of [any] statute's purpose" or "conflict with [a] statute such that compliance with both is impossible." *Id.* at 218, 863 S.E.2d at 462. Instead, the proposed ordinances in this case relate to two touchstones of self-government: transparency in how county government functions, and reapportionment of single-member voting districts.

If the General Assembly intended to prohibit the citizenry from taking up either of these points through the initiative and referendum process, it certainly would have said so directly. But it did not, and that legislative silence is proof positive that these proposed ordinances are fully authorized for submission to the electorate. *See, e.g.*, *Rainey v. Haley*, 404 S.C. 320, 325, 745 S.E.2d 81, 84 (2013) (applying the canon of construction *expressio unius est exclusio alterius* to find that the express grant of jurisdiction to the circuit court for ethics complaints in one limited situation necessarily meant that jurisdiction over all other ethics matters was vested in the Ethics Committee); *Hampton Friends of the Arts v. S.C. DOR*, 401 S.C. 372, 376, 737 S.E.2d 628, 630 (2013) (applying this same canon of construction to find that the express grant of an exception from property tax liability specifically for churches meant that the same exception was not available for other organizations); *State v. Bolin*, 378 S.C. 96, 100, 662 S.E.2d 38, 39 (2008) (applying this same canon of construction to find that the specific provision in Article XVII, § 14 of the South Carolina Constitution that allowed the General Assembly to restrict the sale of alcoholic beverages for individuals under 21 meant the General Assembly could not restrict 18 to 20-year-olds from purchasing other items).

Absent these narrow exceptions for appropriations, taxation, or impossibility-of-compliance—none of which are present here—Council's obligation to submit the proposed referendums to the McCormick County electorate is mandatory. *See e.g.*, *Johnston v. S.C. LLR,* 365 S.C. 293, 296–97, 617 S.E.2d 363, 364 (2005) ("[t]he term 'shall' in a statute means that the action is mandatory."); *S.C. Dep't of Highways & Pub. Transp. v. Dickinson*, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986) ("Ordinarily, the use of the word 'shall' in a statute means that the action referred to is mandatory."). Simply put, when council fails to pass an initiative ordinance, the ordinance must be submitted to the voters. Council has no discretion to refuse. The circuit court's order affirming that refusal should be reversed.

CONCLUSION

Appellant respectfully requests that this Court reverse the circuit court's January 6, 2026 order granting summary judgment to Respondents, and remand with instructions to order Respondents to conduct a special election, as authorized by S.C. Code Ann. § 4-9-1230, at which the electorate shall vote on Proposed Ordinances 23-10 and 23-11.

[Signature page follows.]

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Appellant's Opening Brief

Parties Served:

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By: /s/ M. Todd Carroll

March 30, 2026