

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM McCORMICK COUNTY
Court of Common Pleas

SC Court of Appeals

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.

RECORD ON APPEAL

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 8, 2026

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF MCCORMICK) ELEVENTH JUDICIAL CIRCUIT

Diane L. Shaffer and Daniel A. Higgins,)
)
Plaintiffs,)
vs.) PROTECTION ORDER
)
McCormick County Council and) Case #2024CP3500086
McCormick County Office of Voter)
Registration and Elections,)
)
Defendants.)
)
)
)

This case is on the roster for the term of court in McCormick County beginning April 7, 2025.

The Defendants’ counsel requests protection from court appearances for the dates and reasons stated herein.

Monday, April 7, 2025

Counsel’s girlfriend of 13+ years is having a medical procedure under general anesthesia in Columbia, and he needs to be with her.

Tuesday, April 8, 2025

Thursday, April 10, 2025

Counsel teaches Business Law and Professional Development at Lander University and has in-person class instruction on these days.

THEREFORE, IT IS ORDERED that the Defendants’ attorney is hereby granted protection and may not be called for court in the Circuit Court of McCormick County during the above-mentioned dates.

AND IT IS SO ORDERED.

Signature page of Judge William P. Keesley to follow.



McCormick Common Pleas

Case Caption: Diane L. Shaffer , plaintiff, et al VS McCormick County Council ,
defendant, et al

Case Number: 2024CP3500086

Type: Order/Protection from Court Appearance

Circuit Judge (Code #2050)

s/ William P. Keesley

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Diane L. Shaffer et al
PLAINTIFF(S)

Mccormick County Council et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Two motions and a non-jury trial were listed on the non-jury rosters for the week of September 15, 2025. The plaintiff's motion to amend her Complaint is granted. The granting of that motion means that the trial must be continued (which neither party contested) and that defendants' motion for summary judgment is rendered moot since there will be a new Complaint. The Defendants may file a new summary judgment motion after the issues are joined. Please see page 2.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/16/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Plaintiff was represented by M. Todd Carroll. The defendants were represented by George P. (GP) Callison. Defense counsel initially objected to hearing the motion to amend on the ground that he only had notice of 8 days, but when the court offered to schedule the hearings for later in the week, the objection was withdrawn. This dispute arises over an election whereby citizen initiatives may be placed on the ballot. When the dispute was brought before the Supreme Court of South Carolina, the general election had not yet been held. The Supreme Court directed that the matter be raised to the circuit court. This lawsuit followed. The general election was held prior to a hearing in this court, so the plaintiff wishes to amend her Complaint to seek a special election. The court finds that the amendment must be allowed under the standards applicable to motions to amend. IT IS SO ORDERED.



McCormick Common Pleas

Case Caption: Diane L. Shaffer , plaintiff, et al VS McCormick County Council ,
defendant, et al

Case Number: 2024CP3500086

Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF MCCORMICK)	ELEVENTH JUDICIAL CIRCUIT
)	
)	
Diane L. Shaffer and Daniel A. Higgins,)	
)	
Plaintiffs,)	
vs.)	ORDER
)	
McCormick County Council and)	Case #2024CP3500086
McCormick County Office of Voter)	
Registration and Elections,)	
)	
Defendants.)	
)	
)	
)	

This matter is before the Court pursuant to Plaintiffs and Defendants motions for summary judgment. The facts are undisputed, and the case involves questions of law. A hearing was held on Monday, November 3, 2025, in the McCormick County Courthouse. Present and representing Plaintiffs was M. Todd Carroll, of Womble Bond Dickinson (US) LLP. Present and representing Defendants was G.P. Callison of Callison Dorn Law Firm, PA (McCormick County Attorney).

After careful review of the facts, submissions of the parties, arguments of counsel, and the applicable law, the Court finds that there is no genuine issue as to any material fact and Defendants are entitled to judgment in their favor as a matter of law.

FACTS

1. The United States Census for 2020 was adopted by the South Carolina General Assembly by 2021 Act No. 117 effective December 10, 2021 (SC Code Ann. §1-1-715).
2. On February 15, 2022, McCormick County Council adopted Map 2 as the reapportionment plan for McCormick County Council based on the Federal Census of 2020. Upon adoption of this Ordinance, McCormick County Council districts were adjusted in accordance with Map 2 and the related demographic statistics. (Ordinance 21-07 - Plaintiffs' Exhibit 4)
3. Since February 15, 2022, the election procedures for McCormick County Council districts (including candidate filings, primaries, and the general elections of 2022 and 2024) have been based on Map 2.
4. Map 2 is a valid reapportionment plan.
5. In mid-August 2023, the Defendants were presented with three proposed initiative petitions signed by at least 15% of the qualified electors of the County proposing the adoption of three ordinances. (Plaintiffs' Exhibits 4-6). One of the proposed initiative ordinances was adopted by the McCormick County Council. The other two proposed initiative ordinances were not adopted.
6. On January 16, 2024, the McCormick County Council voted not to hold a referendum on the two proposed initiative ordinances which were not adopted.
7. The proposed initiative ordinances in question are:
 - (1) **Proposed Ordinance 23-10** - An ordinance that allows any County Council member to place items on the Council's meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting.
 - (2) **Proposed Ordinance 23-11** - An ordinance amending Ordinance 21-07 adopted by the McCormick County Council on February 15, 2022, which approved and adopted Map 2 prepared by the South Carolina Revenue and Fiscal Affairs Office as the reapportionment/redistricting plan for McCormick County based on the 2020 Census.

PROCEDURAL HISTORY

On May 3, 2024, Plaintiffs filed a Petition for Writ of Mandamus in the Original Jurisdiction of the Supreme Court requesting that the Court issue a Writ of Mandamus requiring Defendants to place the proposed initiative ordinances on the ballot for the November 2024 general election. By Order dated June 20, 2024, the Supreme Court denied Plaintiffs' Petition for Writ of Mandamus. (Defendants' Exhibit 3) In denying the Petition for Writ of Mandamus, the Supreme Court did not rule on the merits of the case.

Plaintiffs filed this action on September 11, 2024, asking for injunctive and declaratory relief requiring Defendants to place these proposed initiative ordinances on the ballot for the November 2024 general election. The 2024 general election was held on November 5, 2024, and the two proposed initiative ordinances were not on the ballot. On August 28, 2025, Defendants filed a Motion for Summary Judgment to dismiss this case as being moot on the basis that the 2024 general election had long passed. In response, on September 2, 2025, Plaintiffs filed a Motion to Amend Complaint to change the focus from the November 2024 general election to requesting that Defendants be required to hold a special election on the proposed initiative ordinances. Plaintiffs' Motion to Amend was granted and an Amended Complaint was filed on September 17, 2025. Defendants filed an Answer, Affirmative Defenses and Counterclaim and Plaintiffs filed an Answer to Defendants' Counterclaim. After all pleadings had been filed, both parties filed motions for summary judgment. On December 11, 2025, Plaintiffs filed a Notice of Additional Authority and Defendants filed a Response on January 5, 2026.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper when it is clear there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Baird v. Charleston County*, 511 S.E.2d 69 (1999). The parties agree that there is no dispute as to any material fact.

DISCUSSION

State Law Preemption of Local Ordinances - This case involves the doctrine of State law preemption of a local initiative ordinance. “To determine the validity of a local ordinance, this Court's inquiry is twofold: (1) did the local government have the power to enact the local ordinance, and if so (2) is the ordinance consistent with the constitution and general law of this State.” *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 694 S.E.2d 213 (S.C. 2010). Of particular importance as relates to this case is conflict preemption which focuses on the second inquiry stated in *Aakjer*: “... is the ordinance consistent with the constitution and general law of this State.” This was discussed in the case of *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456 (S.C. 2021). In *Wilson*, the South Carolina Supreme Court considered whether an ordinance adopted by the City of Columbia was preempted by a proviso enacted by the South Carolina Legislature. The City of Columbia premised its authority to adopt local ordinances on the Home Rule Act. The Supreme Court rejected this argument stating: “This brings us to the real point of contention—may the City enact ordinances in direct conflict with state law ... The answer is unsurprisingly and unequivocally "no." The Home Rule doctrine in no manner serves as a license for local governments to countermand a legislative enactment by the General Assembly, nor has this Court ever construed it in that manner. See, e.g. , *City of N. Charleston* , 306 S.C. at 156, 410 S.E.2d at 571 (noting a grant of police power to local

governments is given with the caveat that the locality may not enact ordinances that conflict with state law); see also *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) (explaining Home Rule "bestow[s] upon municipalities the authority to enact regulations ... so long as such regulations are not inconsistent with the Constitution and general law of the state.")

The Court in *Wilson* then addressed conflict preemption: "The City's ordinances are in conflict with state law. Resolving a conflict between state law and a city (or county) ordinance invokes the principle of preemption. Conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible."

As further discussed herein, conflict preemption is applicable to this case and supports granting Defendants judgment in their favor as a matter of law.

Initiative and Referendum - The initiative and referendum provisions related to counties and municipalities are essentially the same and the case law applicable to one is, by implication, applicable to the other. [compare S.C. Code Ann. § 4-9-1210, et seq (counties) and S.C. Code 5-17-10, et seq (municipalities)]. The initiative and referendum provisions for both counties and municipalities provide that the qualified electors of any county or municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes and adopt or reject such ordinance at the polls. Any initiative ordinance may be submitted to the council by a petition signed by qualified electors equal in number to at least fifteen percent of the qualified electors. "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 therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, 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.“

Though the initiative and referendum process are quite broad, there are limits.¹ As stated in an Opinion of the Attorney General dated June 24, 1993: “As broad as this statutory language appears to be, there are additional, implied limitations inherent therein. For instance, such ordinance would be required to be constitutionally permissible and consistent with the general laws of the State”.² In *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992) the Supreme Court considered the power of the electorate to adopt an invalid initiative ordinance: “When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid. An electorate has no greater power to legislate than the municipality itself. An initiative ordinance which is facially defective cannot be cured by adoption by the electorate.” In the *Town of Hilton Head Island*, the Supreme Court held that if an initiative ordinance is facially defective in its entirety, there is “no obligation to place the initiative ordinance on the ballot” and there is “no right to obtain a vote to enact invalid legislation... Because the initiative ordinance is facially defective in its entirety, we find that the Town has no obligation to place the initiative ordinance on the ballot. Appellants possess no right to obtain a vote to enact invalid legislation.”

Proposed Initiative Ordinance 23-10 (Council Rules) – Plaintiffs request an order requiring Defendants to hold a referendum on a proposed initiative ordinance that allows any County Council

¹ Plaintiffs do not dispute that the Supreme Court has rejected initiative ordinances which conflict with existing statutory law. See Plaintiffs Motion for Summary Judgment, p. 5, lns. 5-10 and the cases cited by Plaintiffs - *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000) and *Town of Hilton Head v. Coalition of expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992).

² Op. Att’y Gen. (S.C.A.G. June 24, 1993)

member to place items on the Council’s meeting agenda and requires agendas for regular Council meetings to be posted at least seven days before each meeting.

Proposed initiative Ordinance 23-10 (Council Rules) is governed by SC Code Ann. § 4-9-110:

SECTION 4-9-110. Council shall select chairman and other officers; terms of office; appointment of clerk; frequency and conduct of meetings; minutes of proceedings.

The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice-chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. The council shall appoint a clerk to record its proceedings and perform such additional duties as the council may prescribe. The council, after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public. All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies. Special meetings may be called by the chairman or a majority of the members after twenty-four hours' notice.

The council shall determine its own rules and order of business. It shall keep a journal in which shall be recorded the minutes of its proceedings which shall be open to public inspection. (emphasis added)

Pursuant to this statute, the “council” – not electors - has the authority to determine its own rules. The proposed initiative Ordinance 23-10 (Council Rules) attempts to change the rules of the McCormick County Council. This is inconsistent with, and preempted by, state statutory law.

Regarding the posting of the agenda, the McCormick County Council follows S.C. Code Ann. § 30-4-80 which requires the posting of an agenda “as early as is practicable but not later than twenty-four hours before the meeting”. This is state statutory law followed by the McCormick County Council. The proposed initiative Ordinance 23-10 (Council Rules) attempts to substitute posting of an agenda “as early as is practicable but not later than twenty-four hours before the meeting” as provided by SC Code Ann. § 30-4-80 with posting an agenda for regular council meetings at least

seven days before each meeting. Not only is this inconsistent with state law, but it also attempts to change it. SC Code § 30-4-80 cannot be changed by the initiative and referendum process. Furthermore, this is a council rule and as provided by SC Code Ann. § 4-9-110: “The council shall determine its own rules and order of business.”

Plaintiffs requested relief requiring Defendants to hold a special election on Proposed Initiative Ordinance 23-10 (Council Rules) is denied and Defendants are granted judgment in their favor as a matter of law.

Proposed Ordinance 23-11 (Reapportionment) – Plaintiffs request an order requiring the Defendants to hold a special election referendum on a proposed initiative ordinance replacing Map 2 adopted as the reapportionment plan for McCormick County based on the 2020 Census with Map 3. There is no allegation or evidence that Map 2 adopted by McCormick County Council is invalid. Plaintiffs just “strongly” disagree with the adoption of Map 2 and want to replace it with Map 3.

State law governs proposed initiative Ordinance 23-11 (Reapportionment) and preempts local law. S.C. Code Ann. § 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. The population variance between defined election districts shall not exceed ten percent.” This statute applies to all counties in this state and establishes a uniform system of reapportionment.

Both Map 2 (adopted) and Map 3 (proposed initiative change) meet the population variance requirements. However, the proposed initiative ordinance substituting Map 3 for Map 2 does not – and cannot – comply with the timetable for the adoption of a reapportionment ordinance.

S.C. Code Ann. § 4-9-90 vests the authority to reapportion council districts in “the county council”. The McCormick County Council followed the specific requirements of S.C. Code Ann. § 4-9-90 in adopting its reapportionment plan.

1. The United States Census for 2020 was adopted by the General Assembly by 2021 Act No. 117 effective December 10, 2021 (See SC Code Ann. §1-1-715).
2. The reapportionment plan for McCormick County had to be adopted based on the 2020 Census within a reasonable time after December 10, 2021.
3. The McCormick County Council adopted Map 2 as the reapportionment plan on February 15, 2022, which is within a reasonable time after December 10, 2021.
4. The plan must be adopted prior to the “next scheduled general election” following the adoption of the Census.
5. McCormick County’s plan was adopted prior to the 2022 general election - which was the “next scheduled general election”.
6. The population variance of the plan (Map 2) adopted by the McCormick County Council does not exceed 10%.

The reapportionment plan (Map 2) adopted by the McCormick County Council is a valid reapportionment plan.³ The council district lines were redrawn based on the adopted plan and the 2022 – 2024 elections, and all procedures leading up to the 2022 and 2024 elections, were based on the adopted reapportionment plan and revised district lines.

The proposed initiative Ordinance 23-11 (Reapportionment) conflicts with, is inconsistent with, and is preempted by state statutory law. When a local ordinance is in direct conflict with state law,

³ Plaintiffs do not contest that Map 2 adopted by McCormick County Council is a “valid reapportionment plan”. See Plaintiffs’ Motion for Summary Judgment, p. 7, Ins, 8-9.

the local ordinance is void. *Wilson v. City of Columbia*, supra. This is a facially invalid ordinance, and the Defendants have no duty to hold a referendum on this initiative ordinance. *Town of Hilton Head Island v. Coalition of Expressway Opponents*, supra.

Case Precedent – In addition to being inconsistent with statutory law, the proposed initiative Ordinance 23-11 (Reapportionment) is contrary to binding case law precedent established by the South Carolina Supreme Court. In *Elliott vs Richland County*, 322 S.C. 423, 472 S.E.2d 256 (1996), the Supreme Court considered whether Richland County could adopt a new reapportionment plan almost two years after having adopted a valid plan. The facts in *Elliott* concerning reapportionment are similar to this case. In *Elliott*, Richland County adopted Plan 1 as its reapportionment plan in January 1992. It then discovered an error in the plan and in June 1992 adopted Plan 2, amending Plan 1. Both Plan 1 and Plan 2 were adopted before the November 1992 general election. Then, on February 9, 1994 (approximately 20 months later), Richland County Council passed another reapportionment ordinance (Plan 3).

Here is the South Carolina Supreme Court’s analysis:

“DISCUSSION

S.C. Code Ann. § 4-9-90 (1986 & Supp.1994) provides that:

All 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.

Appellant argues that under § 4-9-90, once a county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90. We agree.” (emphasis added)

The Supreme Court confirmed this in Elliott 2 stating: “In Elliott I this Court stated that Plan 3 was enacted in violation of state law because there was a valid reapportionment ordinance already in place, i.e., Plan 2. *Elliott v. Richland County*, 327 S.C. 175, 489 S.E.2d 195 (S.C. 1997).

This language is very direct. A county council has one shot to reapportion council districts. Once a valid plan has been adopted, it cannot be changed until the next decennial census.

Plaintiffs’ argument that SC Code § 4-9-10 permits the electorate - by initiative ordinance - to change a reapportionment plan every four (4) years is misplaced. SC Code § 4-9-10 does not apply to the requirements of reapportionment by county council. It focuses on the form of government, different number of council members, or method of election of council (single member districts or at large). Reapportionment is controlled by § 4-9-90 – not § 4-9-10. SC Code § 4-9-10 has no relevance to this case.

Plaintiffs concede that “... *Elliott* may prevent McCormick County Council itself from reapportioning its single-member districts more than once every ten years.”⁴ Defendants agree that having previously adopted a valid reapportionment plan, McCormick County Council cannot adopt another plan until after the 2030 census. This is what *Elliott* held. And, as stated by the Supreme Court in *Town of Hilton Head Island v. Coalition of Expressway Opponents*, supra, “**An electorate has no greater power to legislate than the municipality itself.**” (emphasis added)

If McCormick County Council cannot adopt a new reapportionment plan until after the 2030 census, the electorate, through the initiative and referendum process, cannot do so.

Plaintiffs also aver additional authority has arisen from the United States Supreme Court in *Abbott v. League of United Latin American Citizens* No. 25A608, 607 U.S. ___, 2025 WL 3484863

⁴ Plaintiffs’ Motion for Summary Judgment, p. 9, Ins. 8-9.

(U.S. Dec. 4, 2025). 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. However, *Abbott* involves federal congressional redistricting, specific to the state of Texas, to rectify alleged unconstitutional “coalition districts.” This does not apply to the reapportionment and redistricting of county council districts in South Carolina.

Accordingly, the McCormick County Council adopted a valid reapportionment plan in February 2022. This plan cannot be changed until the next decennial Census (2030). The McCormick County Council cannot change the adopted plan and the electors – who have no greater authority than Council – cannot change the plan by the initiative and referendum process.

Plaintiffs requested relief requiring Defendants to hold a special election on proposed initiative Ordinance 23-11 (Reapportionment) is denied and Defendants are granted judgment in their favor as a matter of law.

CONCLUSION AND ORDER

This Court has before it a request to require Defendants to hold a special election referendum on two proposed initiative ordinances.

The proposed initiative Ordinance 23-10 (Council Rules) changing the rules of McCormick County Council is inconsistent with SC Code Ann. § 4-9-110 which specifically grants to Council the authority to determine its own rules and S.C. Code § 30-4-80 which specifies the time for posting an agenda prior to meetings.

The proposed initiative Ordinance 23-11 (Reapportionment) changing the reapportionment plan for McCormick County from Map 2 to Map 3 is in direct conflict with S.C. Code Ann. § 4-9-90 and disregards binding case law precedent established by the South Carolina Supreme Court.

Therefore, it is hereby **ORDERED**:

1. Plaintiffs' Motion for Summary Judgment is denied.
2. Defendants' Motion for Summary Judgment is granted.
3. Defendants have no duty to hold a special election referendum on the proposed initiative ordinances.
4. This case is dismissed with prejudice.

AND IT IS SO ORDERED.

Signature page of Judge Debra R. McCaslin to follow.



McCormick Common Pleas

Case Caption: Diane L. Shaffer , plaintiff, et al VS McCormick County Council ,
defendant, et al
Case Number: 2024CP3500086
Type: Order/Summary Judgment

So Ordered

Debra R. McCaslin

Electronically signed on 2026-01-06 12:54:04 page 14 of 14

STATE OF SOUTH CAROLINA)
COUNTY OF MCCORMICK)
Diane L. Shaffer and Daniel A. Higgins,)
Plaintiffs,)
vs.)
McCormick County Council and)
McCormick County Office of Voter)
Registration and Elections,)
Defendants.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2024-CP-35-00086

**ORDER DENYING PLAINTIFF’S MOTION
TO RECONSIDER**

This matter came before this Court on the Plaintiff’s Motion to Reconsider pursuant to Rule 59(e), SCRCP filed on January 16, 2025. Specifically, the Plaintiff seeks this Court to reconsider and vacate its judgment entered on January 6, 2026.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded and finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby **DENIES** Plaintiff’s Motion to Reconsider pursuant to Rule 59(e) SCRCP to reconsider and vacate this Court’s Order entered on January 6, 2026.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW)



McCormick Common Pleas

Case Caption: Diane L. Shaffer , plaintiff, et al VS McCormick County Council ,
defendant, et al
Case Number: 2024CP3500086
Type: Order/Other

So Ordered

Debra R. McCaslin

Electronically signed on 2026-01-28 11:46:32 page 2 of 2

STATE OF SOUTH CAROLINA)
COUNTY OF McCORMICK)
DIANE L. SHAFFER and DANIEL A.)
HIGGINS,)
Plaintiffs,)
vs.)
McCORMICK COUNTY COUNCIL and)
McCORMICK COUNTY OFFICE OF)
VOTER REGISTRATION AND)
ELECTIONS,)
Defendants.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Civil Action No. _____

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Dated: September 11, 2024

WOMBLE BOND DICKINSON (US) LLP

By: /s/ Kevin A. Hall
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Todd Carroll
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Counsel for Plaintiffs

STATE OF SOUTH CAROLINA)
 COUNTY OF McCORMICK)
)
 DIANE L. SHAFFER and DANIEL A.)
 HIGGINS,)
)
 Plaintiffs,)
)
 vs.)
)
 McCORMICK COUNTY COUNCIL and)
 McCORMICK COUNTY OFFICE OF)
 VOTER REGISTRATION AND)
 ELECTIONS,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 Civil Action No. _____

**VERIFIED COMPLAINT FOR
 INJUNCTIVE AND DECLARATORY
 RELIEF**

Plaintiffs Diane L. Shaffer and Daniel A. Higgins (collectively, “Plaintiffs”) file this Verified Complaint against Defendants McCormick County Council and McCormick County Office of Voter Registration and Elections (collectively, “Defendants”) for temporary and permanent injunctive relief, allege as follows:

INTRODUCTION

1. Plaintiffs, who are citizens and registered voters of McCormick County, South Carolina, led an initiative to have McCormick County Council pass three ordinances as is more fully described below.
2. Even though the McCormick County Council declined to pass two ordinances that Plaintiffs proposed, the McCormick Office of Voter Registration and Elections has and continues to refuse to place the proposed ordinances on the ballot for the upcoming general election despite South Carolina law requiring that the referendum “shall be submitted to the electors.”

3. South Carolina Code § 4-9-1230 vests the citizenry with the power to pass an ordinance through a ballot referendum if enough electors propose the ordinance to county council but county council declines to pass it.

4. As a result, Plaintiffs now seek judicial intervention to compel Defendants to comply with their statutory obligations under South Carolina Code § 4-9-1230.

PARTIES

5. Diane L. Shaffer is a citizen and elector of McCormick County, South Carolina.

6. Daniel A. Higgins is a citizen and elector of McCormick County, South Carolina.

7. McCormick County Council is the governing body of McCormick County, South Carolina, located at 610 South Mine St, McCormick, South Carolina 29831, with the authority to adopt ordinances proposed by the citizenry pursuant to South Carolina Code § 4-9-1210 *et seq.*

8. McCormick County Office of Voter Registration and Elections is the governing body responsible for the administration of elections in McCormick County, South Carolina, located at 610 South Mine St, McCormick, South Carolina 29831.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the parties and subject matter of this dispute under South Carolina Code § 15-53-20, as this action involves the enforcement of statutory duties and the protection of Plaintiffs' legal rights.

10. Venue is proper in this Court because Plaintiffs reside in McCormick County, Defendants reside in McCormick County, and the events giving rise to this action occurred in McCormick County.

BACKGROUND

A. History of McCormick County Council and 2020 Census

11. Home Rule legislation was enacted following constitutional amendments in 1973, and these constitutional and legislative changes transferred significant power over local policymaking and administration away from county legislative delegations and to elected county bodies.

12. At the time the Home Rule was established, McCormick County was governed by a council-supervisor form of government.

13. Following a February 4, 1992, referendum held for its electors, McCormick County established and adopted the council-administrator form of government.

14. Under the council-administrator form of government, McCormick County Council consists of five members, with terms of four years each. The five council members are elected from five single-member election districts.

15. South Carolina law requires that single-member districts be reapportioned after the state adopts the then-completed federal census: “All 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.” S.C. Code Ann. § 4-9-90.

16. The General Assembly passed legislation adopting the results of the United States Census of 2020 on December 9, 2021, which Governor McMaster signed the next day. 2021 S.C. Acts No. 117.

B. McCormick County Redistricting and Referendum Petitions

17. 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. (See **Exhibits 1, 2, and 3** (McCormick County Council Proposed Redistricting Maps 1, 2, and 3).)

18. 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. (See **Exhibit 4** (Ordinance 21-07).)

19. On January 18, 2022, during a regular monthly McCormick County Council meeting, the council approved the second reading of Ordinance 21-07 by a vote of four to one. No specific adoption of any of the three maps was made. Councilman Charles Cook raised a point of order because the written ordinance did not comply with McCormick County Ordinance 2-84D, as it did not include any of the redistricting maps or accompanying information prepared by the South Carolina Revenue and Fiscal Affairs Office. The county's legal counsel advised that this requirement could be waived, and a motion to waive the requirement was approved by a vote of four to one.

20. On February 7, 2022, a public hearing on redistricting was conducted by the McCormick County Council at McCormick Middle School. 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, with one county resident submitting written comments in support of Map 3.

21. 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.

22. Plaintiffs strongly disagreed with the McCormick 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.

23. As a result, Plaintiffs set about collecting signatures from at least fifteen percent of the registered voters in McCormick County to support an initiative to amend the ordinance adopting Map 2 and replace it with Map 3 to define the single-member districts for McCormick County Council, as permitted by South Carolina Code § 4-9-1210 *et seq.*

24. After gathering the requisite signatures, Plaintiffs submitted three petitions to the McCormick County Office of Voter Registration and Elections in August 2023. After confirming that the statutory signature requirement had been met, the proposed ordinances were presented to the McCormick County Council.

25. One of the petitions proposed to adopt Map 3 to define the boundaries for McCormick County Council's single-member districts and became identified as Proposed Ordinance 23-11. The other two petitions involved meetings of the McCormick County Council: one proposed an ordinance requiring an open public comment period at the beginning of the council's regular monthly meetings, which became identified as Proposed Ordinance 23-09; and the other proposed an ordinance allowing any council member to place items on the meeting

agendas and to require agendas to be publicly available at least seven days before meetings, which became identified as Proposed Ordinance 23-10. (*See Exhibits 5, 6, and 7* (Proposed Ordinances 23-09, 23-10, and 23-11).)

26. On November 21, 2023, McCormick County Council held its regular monthly meeting. During this meeting, the council approved first readings to Proposed Ordinances 23-09, 23-10, and 23-11. (*See Exhibit 8* (McCormick County Council Meeting Agenda, November 21, 2023).)

27. On December 19, 2023, McCormick County Council held another regular monthly meeting. The council approved the second reading of Proposed Ordinance 23-09. But the council failed to approve the second readings of Proposed Ordinances 23-10 and 23-11. (*See Exhibit 9* (McCormick County Council Meeting Agenda, December 19, 2023).)

28. 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 fall 2024 general election. This recommendation was made despite the lack of any legal basis under South Carolina Code § 4-9-1230 to prevent these proposed ordinances from being presented to voters at the upcoming general election.

29. On January 16, 2024, McCormick County Council held its next regular monthly meeting. At that meeting, the council decided, by a vote of three to two, not to submit Proposed Ordinance 23-10 to the electors at the 2024 general election. The council also decided, by a vote

of three to two, not to submit Proposed Ordinance 23-11 to the electors at the 2024 general election. (See **Exhibit 10** (McCormick County Council Meeting Agenda, January 16, 2024).)

30. As a result, on March 20, 2024, Plaintiffs submitted a letter to the McCormick County Office of Voter Registration and Elections demanding that the county election commission comply with its obligations under South Carolina Code § 4-9-1230 and place Proposed Ordinances 23-10 and 23-11 on the ballot for the next general election on November 5, 2024. (See **Exhibit 11** (Letter from Diane L. Shaffer to Laurie Mattheis of McCormick County Office of Voter Registration and Elections, dated March 20, 2024).)

31. But on March 26, 2024, the McCormick County Office of Voter Registration and Elections notified Plaintiffs that it would not place Proposed Ordinances 23-10 and 23-11 on the ballot for the electorate's consideration, in direct violation of South Carolina Code § 4-9-1230.

32. To date, the McCormick County Council and the McCormick County Office of Voter Registration and Elections have not complied with their statutory obligations to present Proposed Ordinances 23-10 and 23-11 to the citizenry for an up-or-down vote during the upcoming general election.

PLAINTIFFS' FIRST CAUSE OF ACTION:
(Injunctive Relief)

33. Plaintiffs incorporate by reference all the allegations above.

34. Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, Plaintiffs are entitled to, and hereby petition for, preliminary and permanent injunctive relief. Specifically, Plaintiffs request an order compelling Defendants to place Proposed Ordinances 23-10 and 23-11 on the ballot for the November 2024 general election.

35. As a direct and proximate result of Defendants' refusal to put Proposed Ordinances 23-10 and 23-11 to the citizenry for an up-or-down vote, Plaintiffs are harmed and suffer an

immediate and irreparable injury to their statutory rights as set forth by South Carolina Code § 4-9-1210 *et seq.*

36. Plaintiffs have no adequate remedy at law. The General Assembly has specified a single remedy when a sufficient number of voters proposes a new ordinance, but the county council rejects that proposal – the power shifts back to the electorate to vote on the proposed ordinance, and council “shall be bound by the results of any such referendum.” S.C. Code Ann. § 4-9-1230. This statutory remedy is the only remedy available to Plaintiffs.

37. Because the McCormick County Council and the McCormick County Office of Voter Registration and Elections have refused to place Proposed Ordinances 23-10 and 23-11 on the ballot at the upcoming general election, injunctive relief is essential to enforce Plaintiffs’ right to have their proposed ordinances considered by the electorate.

38. Based on the clear and unambiguous meaning of South Carolina Code § 4-9-1230, Plaintiffs are likely to prevail on the merits of this Complaint. Equity also demands that Defendants be permanently enjoined against continuing to violate South Carolina Code § 4-9-1230. Defendants’ refusal to follow the law unjustifiably denies Plaintiffs their statutory right – as provided for by the General Assembly – to govern themselves through the initiative and referendum process.

39. Plaintiffs are further informed and believe that time is of the essence in resolving the issues now before the Court and to avoid further irreparable harm to Plaintiffs, Plaintiffs respectfully request that the Court order immediate injunctive relief.

40. Plaintiffs are further informed and believe that granting the relief sought by Plaintiffs cannot and does not work a hardship on Defendants; thus, the balance of equities and hardship are clearly in Plaintiffs’ favor.

PLAINTIFFS' SECOND CAUSE OF ACTION:
(Declaratory Relief)

41. Plaintiffs incorporate by reference all the allegations above.

42. Pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and South Carolina's Uniform Declaratory Judgments Act, South Carolina Code § 15-53-10 *et seq.*, Plaintiffs are entitled to, and hereby petition for, declaratory relief. Specifically, Plaintiffs request an order from this Court declaring that Defendants must place Proposed Ordinances 23-10 and 23-11 on the ballot for the November 2024 general election.

43. An actual controversy exists between the parties involving their legal rights and duties in connection with South Carolina Code § 4-9-1230.

44. A justiciable controversy exists between the parties because it is a real and substantial controversy concerning Defendants' statutory obligations under South Carolina Code § 4-9-1230 that is ripe and appropriate for this Court to determine.

45. As a result, Plaintiffs are entitled to an order from this Court declaring that Defendants are duty bound under South Carolina Code § 4-9-1230 to place Proposed Ordinances 23-10 and 23-11 on the ballot for the November 2024 general election.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a) Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and South Carolina Code § 4-9-1210 *et seq.*, order Defendants to place Proposed Ordinances 23-10 and 23-11 on the November 2024 general election ballot for an up-or-down vote by the electorate;
- b) Pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and South Carolina's Uniform Declaratory Judgments Act, South Carolina Code § 15-53-10

et seq., order Defendants must place Proposed Ordinances 23-10 and 23-11 on the ballot for the November 2024 general election in accordance with their duties under South Carolina Code § 4-9-1210 *et seq.*; and

- c) Award Plaintiffs such other and further as the Court deems necessary or proper.

Dated: September 11, 2024

WOMBLE BOND DICKINSON (US) LLP

By: /s/ Kevin A. Hall

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S.C. Bar No. 15063
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M. Todd Carroll
S.C. Bar No. 74000
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1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

Counsel for Plaintiffs

STATE OF SOUTH CAROLINA)
COUNTY OF McCORMICK)

DIANE L. SHAFFER and DANIEL A.)
HIGGINS,)

Plaintiffs,)

vs.)

McCORMICK COUNTY COUNCIL and)
McCORMICK COUNTY OFFICE OF)
VOTER REGISTRATION AND)
ELECTIONS,)

Defendants.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Civil Action No. _____

VERIFICATION

Diane L. Shaffer, being duly sworn, deposes and says:

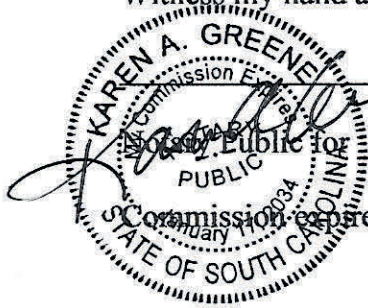
- 1. I am a plaintiff in this action.
- 2. I have read the Verified Complaint in the above-captioned action and know the contents thereof, and the same are true to my own knowledge, except as to those matters alleged therein upon information and belief, and, as to those matters, I believe them to be true.

Diane Louise Shaffer
Diane Louise Shaffer

State of South Carolina
County of McCormick

I, the undersigned Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this 30th day of August, 2024, and the document was executed by **Diane L. Shaffer** on her own free will.

Witness my hand and seal this 30th day of August, 2024.


Karen A. Greene
Notary Public for
STATE OF SOUTH CAROLINA
Commission Expires: 1/11/34

STATE OF SOUTH CAROLINA)
COUNTY OF McCORMICK)

DIANE L. SHAFFER and DANIEL A.)
HIGGINS,)

Plaintiffs,)

vs.)

McCORMICK COUNTY COUNCIL and)
McCORMICK COUNTY OFFICE OF)
VOTER REGISTRATION AND)
ELECTIONS,)

Defendants.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Civil Action No. _____

VERIFICATION

Daniel A. Higgins, being duly sworn, deposes and says:

1. I am a plaintiff in this action.
2. I have read the Verified Complaint in the above-captioned action and know the contents thereof, and the same are true to my own knowledge, except as to those matters alleged therein upon information and belief, and, as to those matters, I believe them to be true.

Daniel A. Higgins

Daniel A. Higgins

State of SC

County of Beaufort

I, the undersigned Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this 3 day of September, 2024, and the document was executed by **Daniel A. Higgins** on his own free will.

Witness my hand and seal this 3 day of September, 2024.

[Signature]

Notary Public for SC

Commission expires: 5/31/29

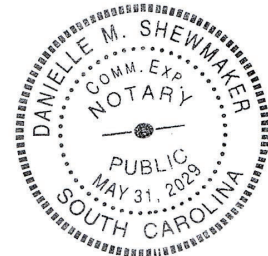
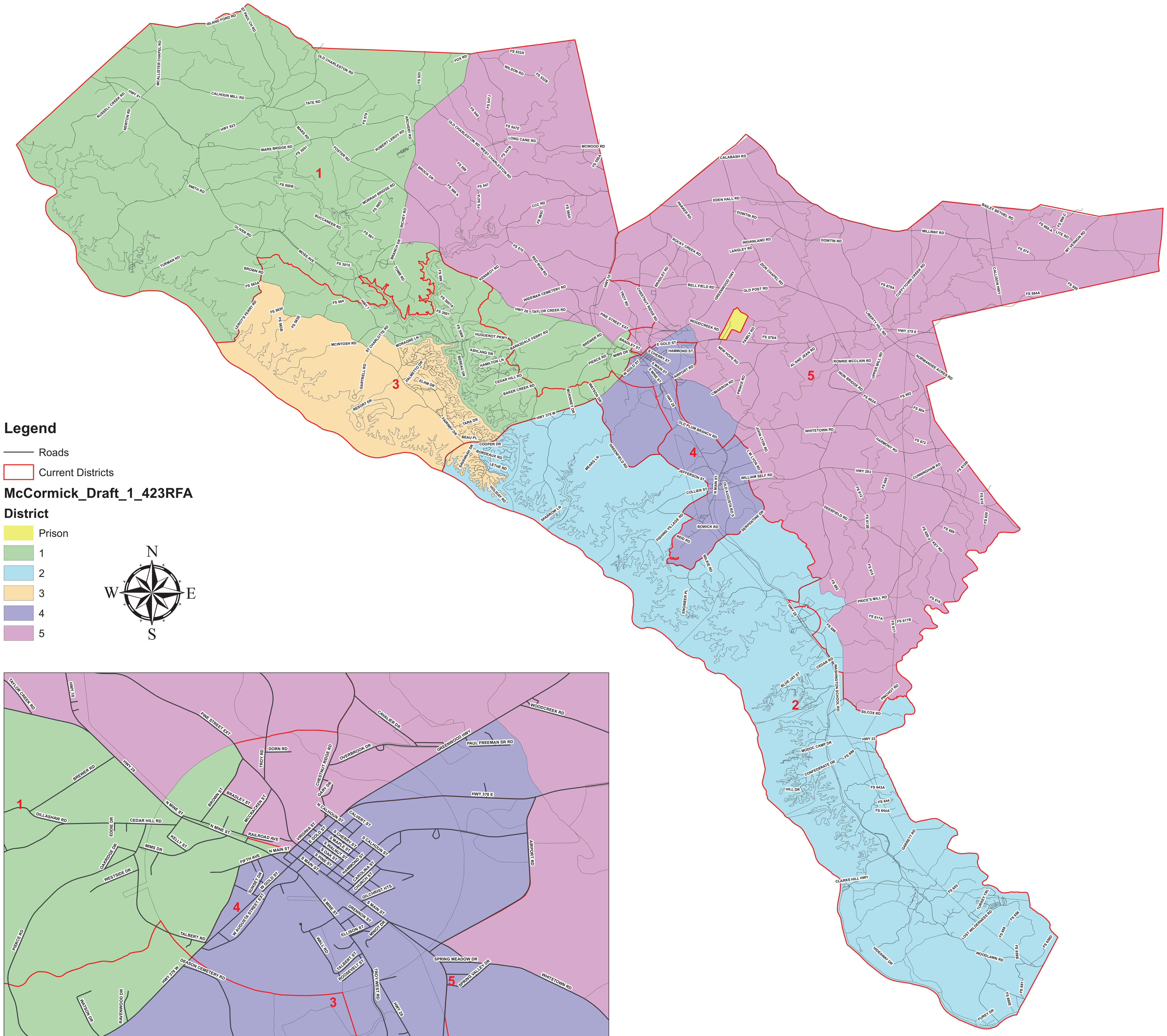


EXHIBIT “1”

McCormick County Council Redistricting Draft 1 (Deviation 4.23 RFA)



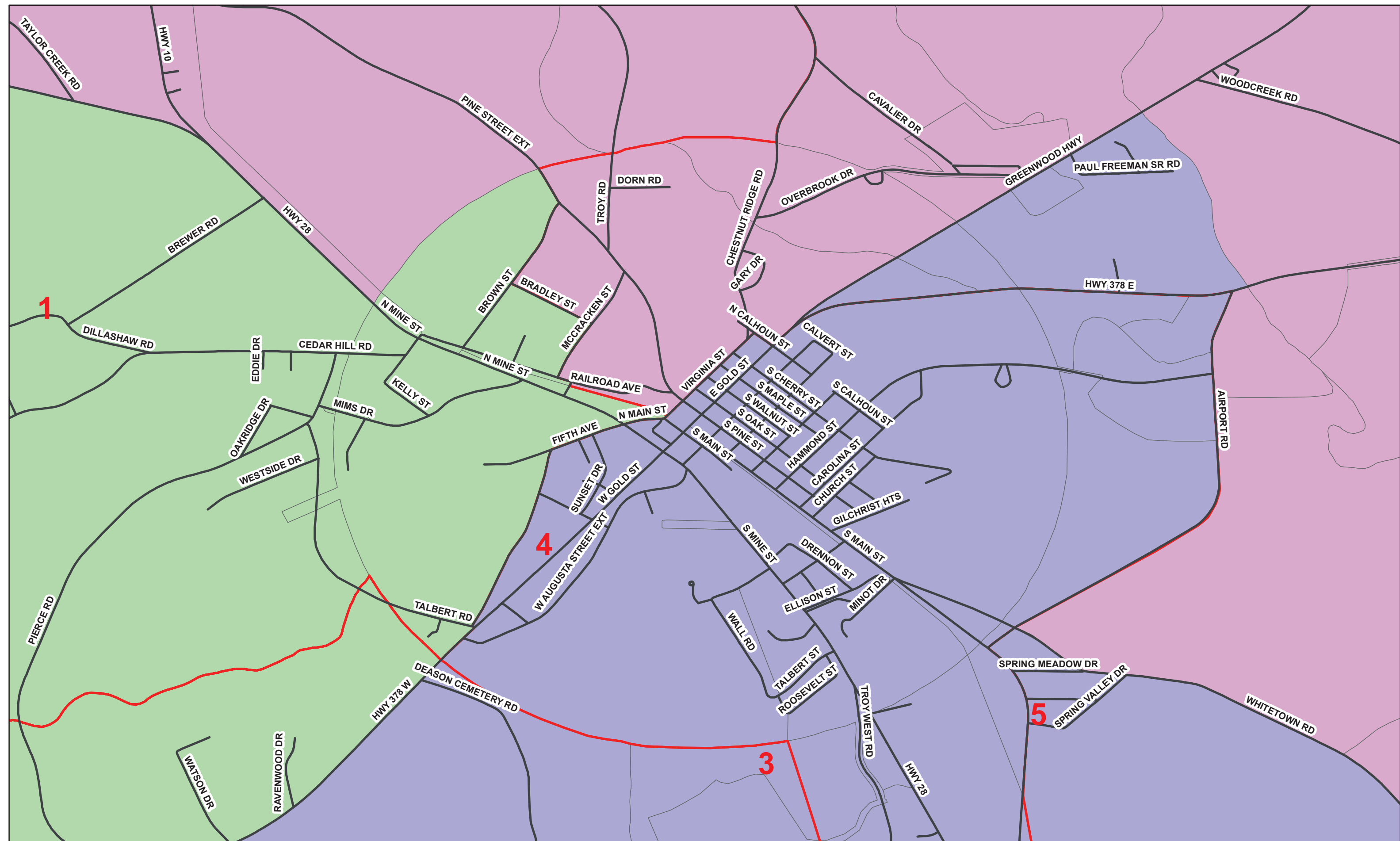
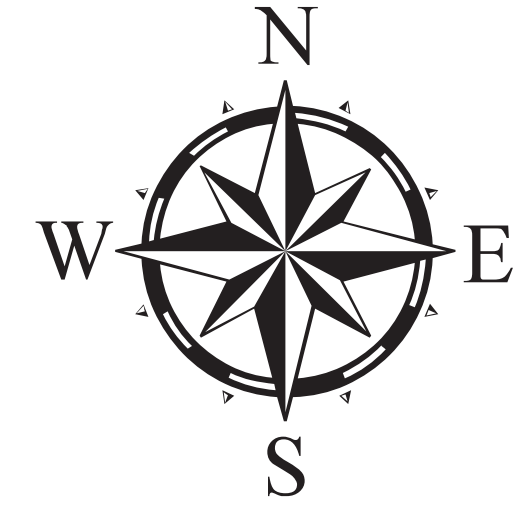
Legend

- Roads
- Current Districts

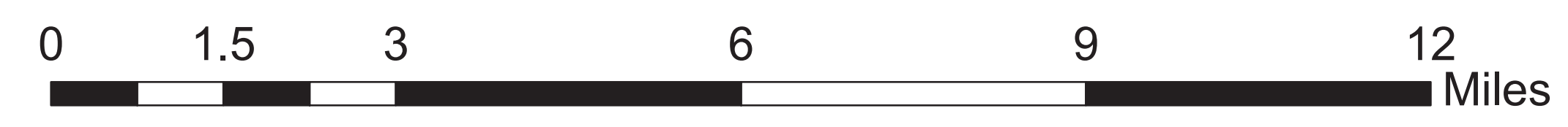
McCormick_Draft_1_423RFA

District

- Prison
- 1
- 2
- 3
- 4
- 5



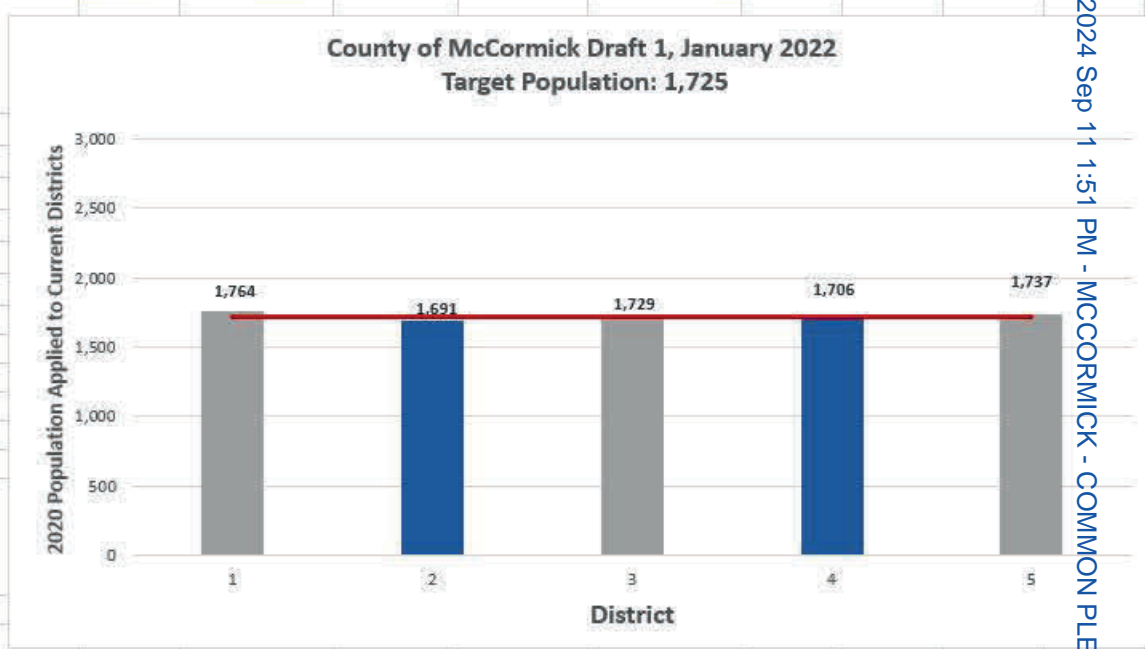
*The Population of 899 housed at McCormick CI has been removed from this analysis and denoted by district 0 - 1/7/2022



Total Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.											
County	District	Total	Hispanic	% Hispanic	NH White	% NH White	NH DOJ Black*	DOJ Black	Other Race	% NH Other Race	
McCormick	1	1,764	20	1.13%	835	47.34%	863	48.92%	46	2.61%	
McCormick	2	1,691	36	2.13%	1,190	70.37%	387	22.89%	78	4.61%	
McCormick	3	1,729	16	0.93%	1,569	90.75%	94	5.44%	50	2.89%	
McCormick	4	1,706	15	0.88%	532	31.18%	1,101	64.54%	58	3.40%	
McCormick	5	1,737	17	0.98%	732	42.14%	945	54.40%	43	2.48%	
	Total	8,627	104	1.21%	4,858	56.31%	3,390	39.30%	275	3.19%	

Draft Statistics, January 2022				
District	2020 Census	Goal	Over/ (Under)	% Deviation
1	1,764	1,725	39	2.24%
2	1,691	1,725	(34)	-1.99%
3	1,729	1,725	4	0.21%
4	1,706	1,725	(19)	-1.12%
5	1,737	1,725	12	0.67%
Lowest	-1.99%			
Highest	2.24%			
Range	4.23%			

Voting Age Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.											
County	District	Total VAP	Hispanic VAP	% Hispanic VAP	NH White VAP	% NH White VAP	NH DOJ Black* VAP	DOJ Black VAP	Other Race VAP	% NH Other Race VAP	
McCormick	1	1,508	16	1.06%	777	51.53%	674	44.69%	41	2.72%	
McCormick	2	1,465	28	1.91%	1,066	72.76%	310	21.16%	61	4.16%	
McCormick	3	1,701	16	0.94%	1,552	91.24%	84	4.94%	49	2.88%	
McCormick	4	1,404	10	0.71%	470	33.48%	878	62.54%	46	3.28%	
McCormick	5	1,465	14	0.96%	612	41.77%	802	54.74%	37	2.53%	
	Total	7,543	84	1.11%	4,477	59.35%	2,748	36.43%	234	3.10%	



Note: The population of 899 house at McCormick CI was removed for this analysis

MUNI_NAME McCormick

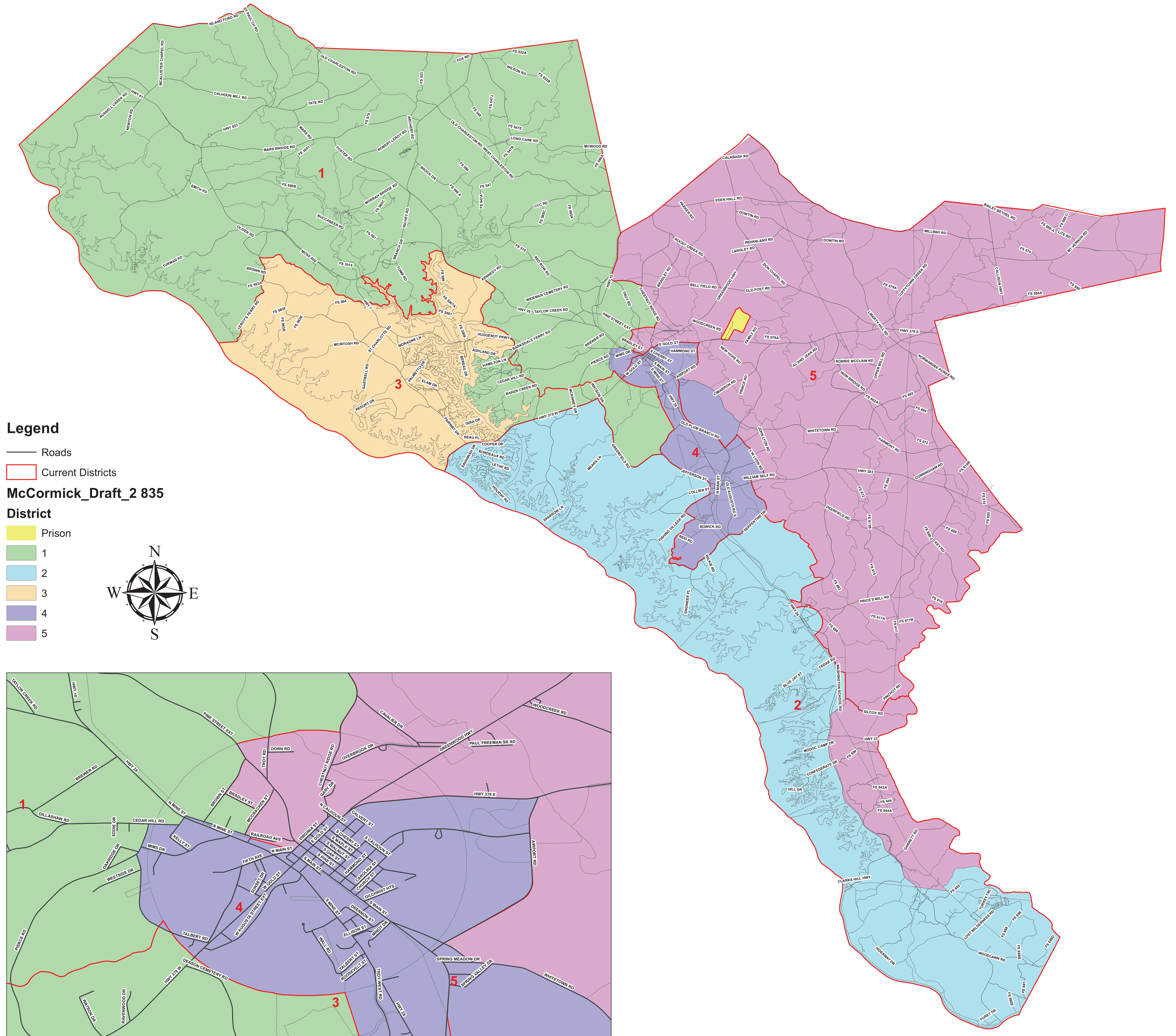
Row Labels	Sum of total	Sum of Hispanic_O	Sum of NH_WHT	Sum of NH_DOJ_B LK	Sum of NH_OTH ER	Sum of VAP_TOTL	Sum of VAP_HISP ANIC_O	Sum of VAP_NH_WHT	Sum of VAP_NH_DOJ_BLK	Sum of VAP_NH_OT HER
1	1,424	20	471	884	49	1,156	17	389	706	44
2	2,000	41	1,465	403	91	1,777	33	1,344	326	74
3	2,110	18	1,912	130	50	2,054	17	1,883	108	46
4	1,470	15	434	974	47	1,201	10	389	764	38
5	1,623	10	576	999	38	1,355	7	472	844	32
0	899	19	297	583	0	899	19	297	583	0
Grand Total	9,526	123	5,155	3,973	275	8,442	103	4,774	3,331	234

App. 003

Note: The above chart contains the total population within McCormick County

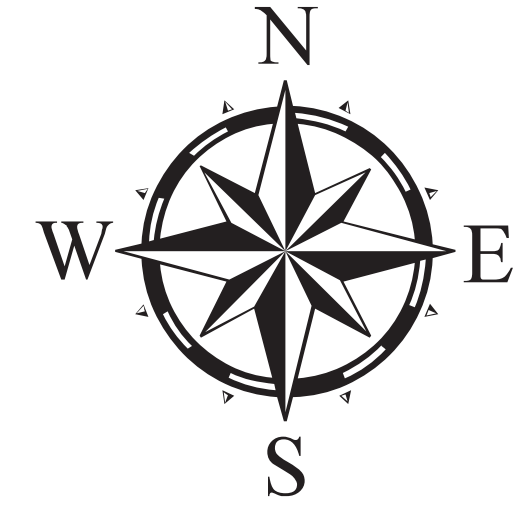
EXHIBIT “2”

McCormick County Council Redistricting Draft 2 (Deviation 8.35)

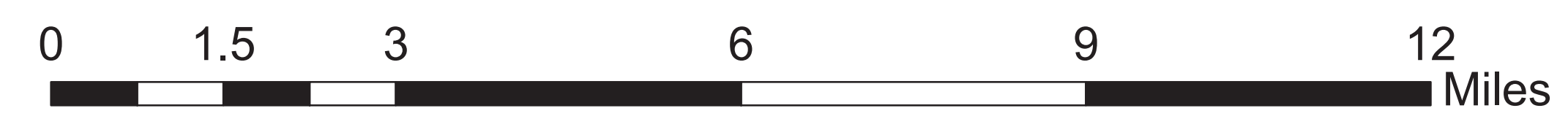


Legend

- Roads
- ▭ Current Districts
- McCormick_Draft_2 835**
- District**
- ▭ Prison
- ▭ 1
- ▭ 2
- ▭ 3
- ▭ 4
- ▭ 5



*The Population of 899 housed at McCormick CI has been removed from this analysis and denoted by district 0 - 1/7/2022



Total Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.											
County	District	Total	Hispanic	% Hispanic	NH White	% NH White	NH DOJ Black*	DOJ Black	Other Race	% NH Other Race	
McCormick	1	1,675	20	1.19%	811	48.42%	791	47.22%	53	3.16%	
McCormick	2	1,819	36	1.98%	1,393	76.58%	303	16.66%	87	4.78%	
McCormick	3	1,678	17	1.01%	1,544	92.01%	79	4.71%	38	2.26%	
McCormick	4	1,712	16	0.93%	473	27.63%	1,167	68.17%	56	3.27%	
McCormick	5	1,743	15	0.86%	637	36.55%	1,050	60.24%	41	2.35%	
	Total	8,627	104	1.21%	4,858	56.31%	3,390	39.30%	275	3.19%	

Draft Statistics, January 2022				
District	2020 Census	Goal	Over/(Under)	% Deviation
1	1,675	1,725	(50)	-2.92%
2	1,819	1,725	94	5.42%
3	1,678	1,725	(47)	-2.75%
4	1,712	1,725	(13)	-0.78%
5	1,743	1,725	18	1.02%
Lowest				-2.92%
Highest				5.42%
Range				8.35%

Voting Age Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.											
County	District	Total VAP	Hispanic VAP	% Hispanic VAP	NH White VAP	% NH White VAP	NH DOJ Black* VAP	DOJ Black VAP	Other Race VAP	% NH Other Race VAP	
McCormick	1	1,423	18	1.26%	726	51.02%	629	44.20%	50	3.51%	
McCormick	2	1,631	28	1.72%	1,281	78.54%	249	15.27%	73	4.48%	
McCormick	3	1,647	16	0.97%	1,528	92.77%	66	4.01%	37	2.25%	
McCormick	4	1,396	10	0.72%	413	29.58%	931	66.69%	42	3.01%	
McCormick	5	1,446	12	0.83%	529	36.58%	873	60.37%	32	2.21%	
	Total	7,543	84	1.11%	4,477	59.35%	2,748	36.43%	234	3.10%	

Note: The population of 899 house at McCormick CI was removed for this analysis

MUNI_NAME McCormick

Row Labels	Sum of total	Sum of Hispanic_O	Sum of NH_WHT	Sum of NH_DOJ_BLK	Sum of NH_OTH_ER	Sum of VAP_TOTAL	Sum of VAP_HISP_ANIC_O	Sum of VAP_NH_WHT	Sum of VAP_NH_DOJ_BLK	Sum of VAP_NH_OTH_ER
1	1,424	20	471	884	49	1,156	17	389	706	44
2	2,000	41	1,465	403	91	1,777	33	1,344	326	74
3	2,110	18	1,912	130	50	2,054	17	1,883	108	46
4	1,470	15	434	974	47	1,201	10	389	764	38
5	1,623	10	576	999	38	1,355	7	472	844	32
0	899	19	297	583	0	899	19	297	583	0
Grand Total	9,526	123	5,155	3,973	275	8,442	103	4,774	3,305	234

Note: The above chart contains the total population within McCormick County

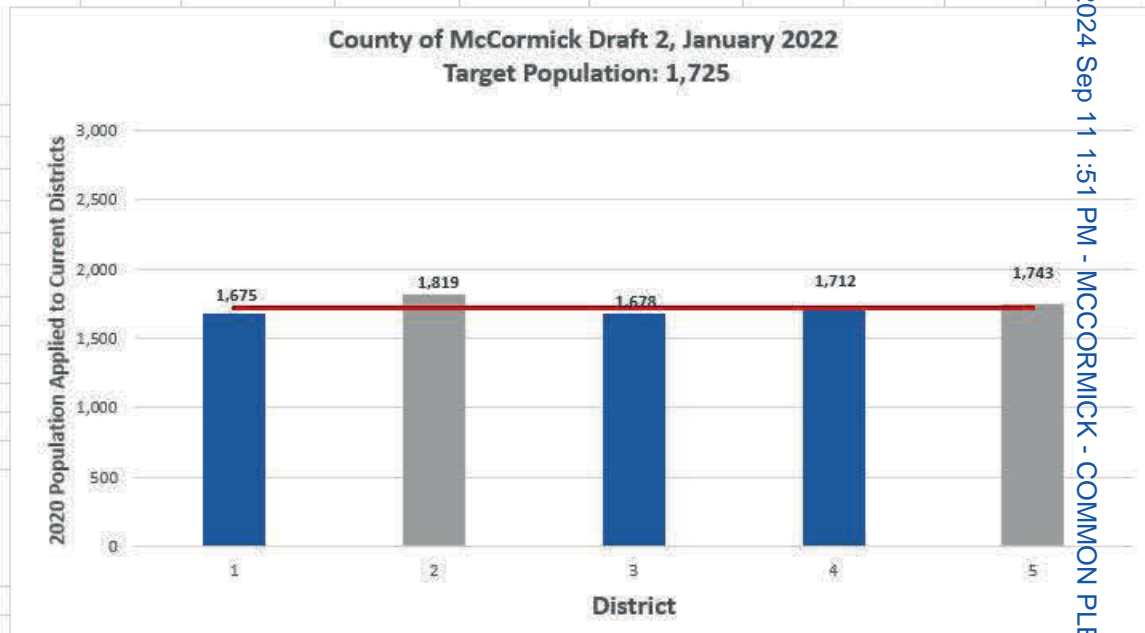
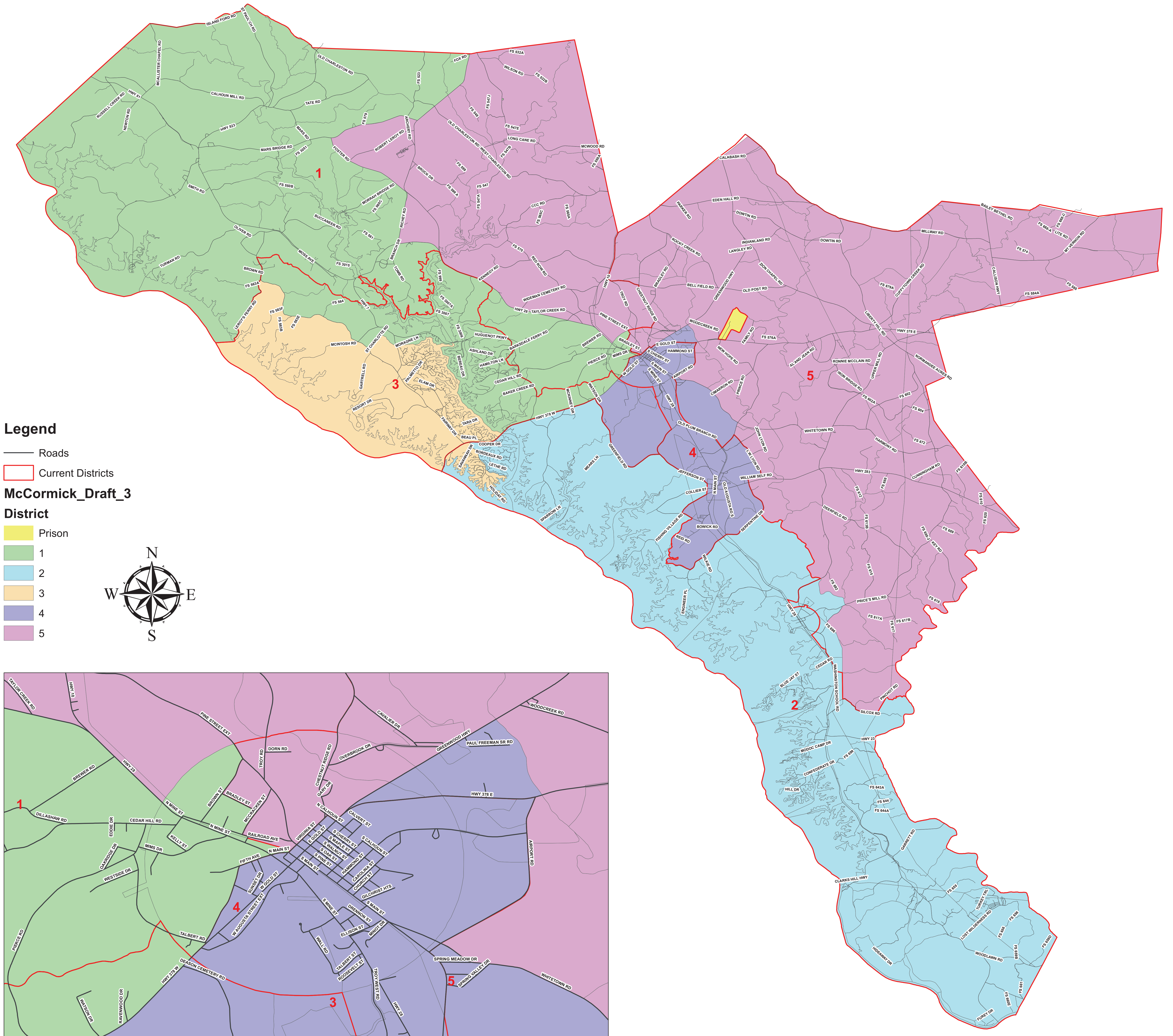


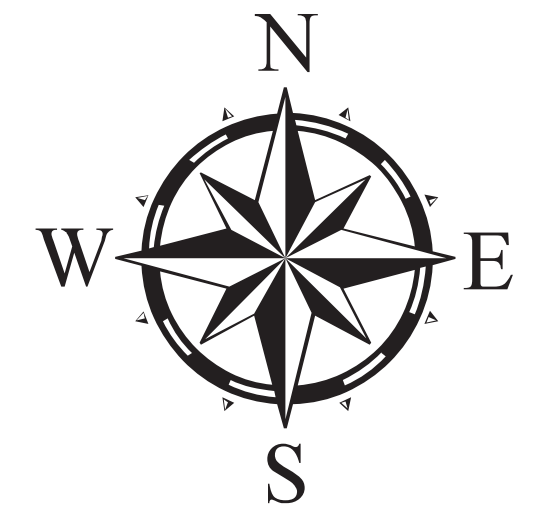
EXHIBIT “3”

McCormick County Council Redistricting Draft 3 (Deviation 5.68)

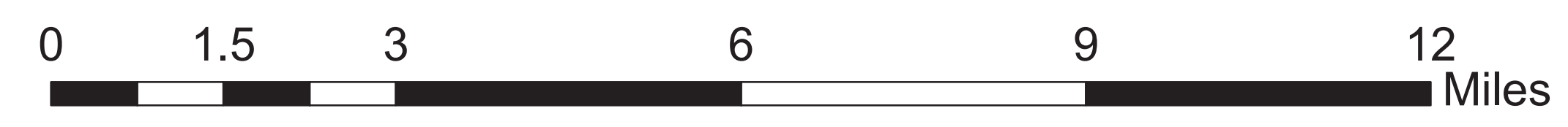


Legend

- Roads
- ▭ Current Districts
- McCormick_Draft_3**
- District**
- ▭ Prison
- ▭ 1
- ▭ 2
- ▭ 3
- ▭ 4
- ▭ 5



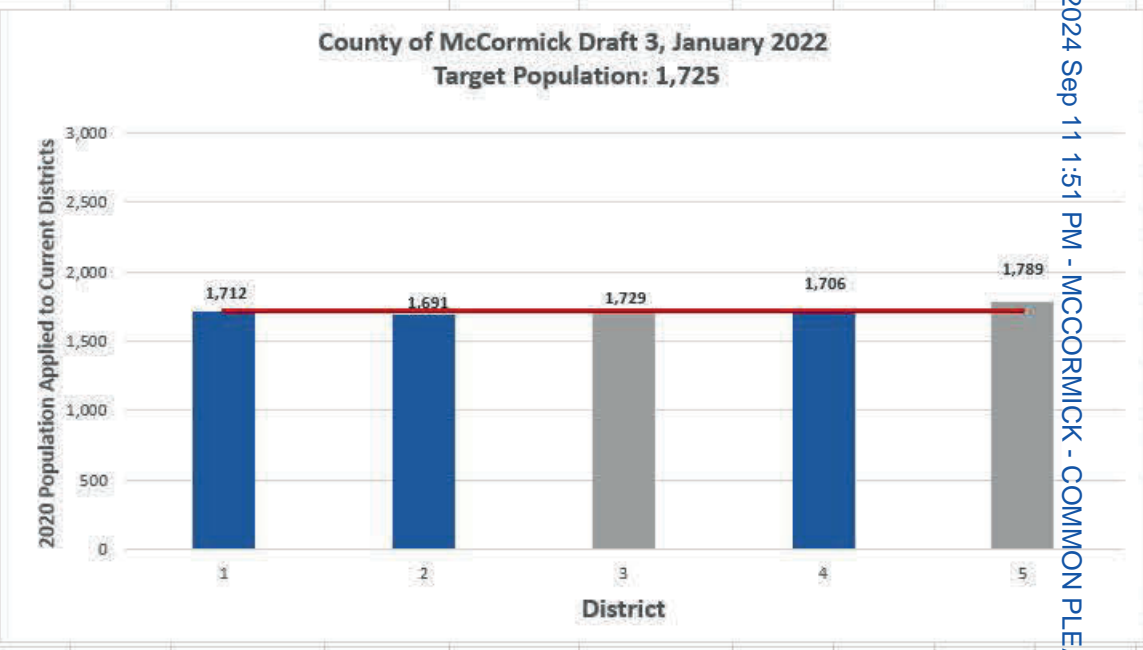
*The Population of 899 housed at McCormick CI has been removed from this analysis and denoted by district 0 - 1/7/2022



Total Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.											
County	District	Total	Hispanic	% Hispanic	NH White	% NH White	NH DOJ Black*	DOJ Black	Other Race	% NH Other Race	
McCormick	1	1,712	20	1.17%	804	46.96%	846	49.42%	42	2.45%	
McCormick	2	1,691	36	2.13%	1,190	70.37%	387	22.89%	78	4.61%	
McCormick	3	1,729	16	0.93%	1,569	90.75%	94	5.44%	50	2.89%	
McCormick	4	1,706	15	0.88%	532	31.18%	1,101	64.54%	58	3.40%	
McCormick	5	1,789	17	0.95%	763	42.65%	962	53.77%	47	2.63%	
	Total	8,627	104	1.21%	4,858	56.31%	3,390	39.30%	275	3.19%	

Draft Statistics, January 2022				
District	2020 Census	Goal	Over/ (Under)	% Deviation
1	1,712	1,725	(13)	-0.78%
2	1,691	1,725	(34)	-1.99%
3	1,729	1,725	4	0.21%
4	1,706	1,725	(19)	-1.12%
5	1,789	1,725	64	3.69%
Lowest	-1.99%			
Highest	3.69%			
Range	5.68%			

Voting Age Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.											
County	District	Total VAP	Hispanic VAP	% Hispanic VAP	NH White VAP	% NH White VAP	NH DOJ Black* VAP	DOJ Black VAP	Other Race VAP	% NH Other Race VAP	
McCormick	1	1,457	16	1.10%	747	51.27%	657	45.09%	37	2.54%	
McCormick	2	1,465	28	1.91%	1,066	72.76%	310	21.16%	61	4.16%	
McCormick	3	1,701	16	0.94%	1,552	91.24%	84	4.94%	49	2.88%	
McCormick	4	1,404	10	0.71%	470	33.48%	878	62.54%	46	3.28%	
McCormick	5	1,516	14	0.92%	642	42.35%	819	54.02%	41	2.70%	
	Total	7,543	84	1.11%	4,477	59.35%	2,748	36.43%	234	3.10%	



Note: The population of 899 house at McCormick CI was removed for this analysis

MUNI_NAME McCormick

Row Labels	Sum of total	Sum of Hispanic_O	Sum of NH_WHT	Sum of NH_DOJ_BLK	Sum of NH_OTH_ER	Sum of VAP_TOTAL	Sum of VAP_HISP_ANIC_O	Sum of VAP_NH_WHT	Sum of VAP_NH_DOJ_BLK	Sum of VAP_NH_OTH_ER
1	1,424	20	471	884	49	1,156	17	389	706	44
2	2,000	41	1,465	403	91	1,777	33	1,344	326	74
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4	1,470	15	434	974	47	1,201	10	389	764	38
5	1,623	10	576	999	38	1,355	7	472	844	32
0	899	19	297	583	0	899	19	297	583	0
Grand Total	9,526	123	5,155	3,973	275	8,442	103	4,774	3,331	234

App. 007

Note: The above chart contains the total population within McCormick County

EXHIBIT “4”

STATE OF SOUTH CAROLINA)
)
COUNTY OF MCCORMICK)

ORDINANCE 21-07

AN ORDINANCE ADOPTING A REDISTRICTING PLAN
FOR MCCORMICK COUNTY, SOUTH CAROLINA

FILED
GWENDOLYN B. CHILES
2022 MAR -1 P 12:28
MCCORMICK COUNTY
SOUTH CAROLINA, SC

WHEREAS, in compliance with the United States Constitution, the Constitution of the State of South Carolina, SC Code Ann. § 4-9-90 (1976) as amended, and the United States Voting Rights Act of 1965, as amended, McCormick County Council has determined that it is necessary to realign the electoral districts for the election of members of County Council in accordance with the Federal Census of 2020; and

WHEREAS, there presently exist five single-member districts for the election of McCormick County Council members; and

WHEREAS, this Ordinance is adopted for the purpose of re-defining the boundaries of these five single-member election districts; and

WHEREAS, the re-defining of the districts' boundaries is based on the Federal Census of 2020 for redistricting purposes in order that the population of such districts comply with the requirements set forth in the Voting Rights Act of 1965 and other applicable law; and

WHEREAS, the County Council has received three (3) proposed maps and supporting statistics (attached hereto) from the South Carolina Revenue and Fiscal Affairs Office (RFA) which may be considered by County Council as it proceeds with redistricting; and

WHEREAS, the final map and supporting statistics for redistricting will be determined by County Council after three (3) readings and a public hearing and will be attached to this Ordinance and incorporated herein by reference; and


WHEREAS, the County Council held a public hearing on the proposed redistricting on February 7, 2022 and received public comment at that time; and

WHEREAS, at the County Council meeting held February 15, 2022 the County Council voted to approve and adopt Map 2 and the supporting statistics as the as the redistricting plan for McCormick County Council districts based on the Federal Census of 2020.

NOW, THEREFORE, BE IT ORDAINED by the County Council of McCormick County, South Carolina that Map 2 and the supporting statistics approved by the County Council on Third Reading at the February 15, 2022 County Council meeting and attached hereto as Exhibit A (statistics) and Exhibit B (map), are hereby adopted as the redistricting plan for McCormick County Council districts based on the Federal Census of 2020. Upon adoption of this Ordinance, McCormick County Council districts will be adjusted in accordance with the demographic statistics and map attached hereto.

APPROVED AND ADOPTED this 15th day of February 2022.

MCCORMICK COUNTY COUNCIL

By: 
Charles Jennings, Chairman

1st Reading: January 11, 2022
2nd Reading: January 18, 2022
3rd Reading: February 15, 2022
Public Hearing: February 7, 2022

ATTEST:



Crystal B. Barnes, Clerk to Council

EXHIBIT “5”

**Charles H. Cook
424 Jasmine lane
McCormick, SC 29835**

August 16, 2023

**Mrs. Laurie Mattheis
Director, Office of Voter Registration
and Elections
610 South Mine Street, Room 124
Post Office Box 636
McCormick, SC 29835**

Dear Mrs. Mattheis:

Attached is the first of three (3) petitions seeking approval of revisions to county ordinances or, if not adopted by county council, a referendum to determine by public vote whether they should be adopted. Copies of the second and third petitions will follow shortly.

These petitions are filed on behalf of a group of county electors who have worked diligently to secure the required number of signatures to support the consideration of the measures proposed.

We believe there are signatures totaling at least 15 percent of the number of currently registered voters in the county, as required by state law.

If you have any questions regarding the petitions or the registered voters who have signed them please let me know.

Very truly yours,

/s/

**Charles H. Cook
chcook.cook@gmail.com**

COUNTY OF MCCORMICK
STATE OF SOUTH CAROLINA

PETITION FOR REFERENDUM

WHEREAS many public bodies in South Carolina, both state and local, provide in their laws, bylaws and/or regulations the requirement for a public comment period, normally at the beginning of their regular meetings; and

WHEREAS the McCormick County Council has voted on multiple occasions to deny public attendees at their regular monthly meetings the opportunity sign-up at the door and speak at these meetings; and

WHEREAS the McCormick County Council has established a deadline of 5:00 p.m. or close-of-business on the Thursday preceding their regular monthly meetings for the public to sign-up in advance to speak at these meetings, which are normally held on the following (third) Tuesday of the month; and

WHEREAS the McCormick County Council does not normally issue the agendas for their regular monthly meetings until the Friday after the deadline to sign-up to speak at these meetings has past; and

WHEREAS the only opportunity for McCormick County residents to sign-up at the door to address county council on issues and matters that are scheduled to come before council for a vote – as required by the South Carolina Code of Laws – is in the event of a public hearing on a proposed county ordinance or other matter that must be announced at least 15 days in advance of the hearing that immediately precedes the third and final council vote on the matter; and

WHEREAS other matters that come before council for decision with only one reading prior to approval – including proposed contracts, appointments to county boards and committees, and resolutions establishing county policies that do not require issuance by ordinances – are often not known or disclosed to the public prior to the issuance of the agendas of these meetings and for which they have had no opportunity to sign up in advance to speak to council and express their concerns –

NOW, THEREFORE, be it resolved that the following question be placed before McCormick County voters in an appropriate referendum:

“Shall the McCormick County Council adopt an ordinance that may not be waived that requires an open public comment period at the beginning of their regular monthly meetings, with sign-ups to speak accepted at the door until the regularly scheduled starting time of the meeting?”

PETITION

State of South Carolina

County McCormick

Page must contain signatures of voters from only one county

P U R P O S E	Candidate	n/a	If not candidate petition, enter statement of purpose: Referendum requiring the McCormick County Council to adopt an ordinance that requires open public comment periods at their regularly scheduled monthly meetings -- with sign-ups at the door until the scheduled starting times of the meetings.	
	Office	n/a		
	Election Date	TBD		
Signature & Printed Name		Residence Address & Phone #	Precinct	VR# & DOB
1	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
2	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
3	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
4	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
5	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
6	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
7	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
8	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
9	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
10	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>

ELECTRONICALLY FILED Sep 11 1:51 PM - MCCORMICK - COMMON PLEAS - CASE#2024CP3500086

EXHIBIT “6”

**Charles H. Cook
424 Jasmine lane
McCormick, SC 29835**

August 18, 2023

**Mrs. Laurie Mattheis
Director, Office of Voter Registration
and Elections
610 South Mine Street, Room 124
Post Office Box 636
McCormick, SC 29835**

Dear Mrs. Mattheis:

As I indicated in my letter of August 16, we are submitting the second and third petitions seeking approval of revisions to county ordinances or, if not adopted by county council, a referendum to determine by public vote whether they should be adopted. A copy of the first petition was submitted in our August 16 letter. The second and third petitions are attached herein.

These petitions are filed on behalf of a group of county electors who have worked diligently to secure the required number of signatures to support the consideration of the measures proposed.

We believe there are signatures totaling at least 15 percent of the number of currently registered voters in the county, as required by state law.

If you have any questions regarding the petitions or the registered voters who have signed them please let me know.

Very truly yours,

/s/

**Charles H. Cook
chcook.cook@gmail.com**

COUNTY OF MCCORMICK
STATE OF SOUTH CAROLINA

PETITION FOR REFERENDUM

WHEREAS the current McCormick County ordinance governing the conduct of county council meetings reserves to the council chair the unfettered right to establish the agendas for county council meetings – both regular monthly and special called meetings; and

WHEREAS the current McCormick County ordinance governing the conduct of county council meetings does not require the approval of the agendas for county council meetings – both regular monthly and special called meetings; and

WHEREAS the current South Carolina Code of Laws – in the state’s Freedom of Information Act – generally prohibits revisions to the agendas of the meetings of public bodies after they have been published or posted for public review; and

WHEREAS these requirements – both state and local – seriously inhibit, if not prohibit, the introduction by council members of motions on matters and issues that do not appear on the published/posted agendas of McCormick Council meetings, including the agenda items for future meetings; and

WHEREAS these conditions effectively prevent incumbent McCormick County council members from fully and faithfully presenting and representing their views and those of their constituents and the public at large during council meetings; and

WHEREAS these conditions are significant barriers to the openness and transparency of both the council’s proceedings and the conduct of county government –

NOW, THEREFORE, be it resolved that the following question be placed before McCormick County voters in an appropriate referendum:

“Shall the McCormick County Council adopt an ordinance that: (1) allows any council member to place an item of importance to the county or the constituents of any council district on the agendas of future council meetings, and (2) requires the posting and publication in appropriate media sources of regular monthly council agendas at least 7 days in advance to give the public the opportunity to review and provide input to council and council members on agenda items of concern to them?”

PETITION

State of South Carolina

County McCormick

Page must contain signatures of voters from only one county.

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P U R P O S E	Candidate	n/a	If not candidate petition, enter statement of purpose: Referendum that would allow county council members to place items on the agendas of council meetings and require the posting/publication of regular monthly council meetings at least 7 days in advance.		
	Office	n/a			
	Election Date	TBD			
Signature & Printed Name		Residence Address & Phone #	Precinct	VR# & DOB	
1	<i>Signature</i>			<i>Voter Registration #</i>	
	<i>Print Name</i>			<i>Date of Birth</i>	
2	<i>Signature</i>			<i>Voter Registration #</i>	
	<i>Print Name</i>			<i>Date of Birth</i>	
3	<i>Signature</i>			<i>Voter Registration #</i>	
	<i>Print Name</i>			<i>Date of Birth</i>	
4	<i>Signature</i>			<i>Voter Registration #</i>	
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	<i>Print Name</i>			<i>Date of Birth</i>	
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	<i>Print Name</i>			<i>Date of Birth</i>	
10	<i>Signature</i>			<i>Voter Registration #</i>	
	<i>Print Name</i>			<i>Date of Birth</i>	

EXHIBIT “7”

**Charles H. Cook
424 Jasmine lane
McCormick, SC 29835**

August 18, 2023

**Mrs. Laurie Mattheis
Director, Office of Voter Registration
and Elections
610 South Mine Street, Room 124
Post Office Box 636
McCormick, SC 29835**

Dear Mrs. Mattheis:

As I indicated in my letter of August 16, we are submitting the second and third petitions seeking approval of revisions to county ordinances or, if not adopted by county council, a referendum to determine by public vote whether they should be adopted. A copy of the first petition was submitted in our August 16 letter. The second and third petitions are attached herein.

These petitions are filed on behalf of a group of county electors who have worked diligently to secure the required number of signatures to support the consideration of the measures proposed.

We believe there are signatures totaling at least 15 percent of the number of currently registered voters in the county, as required by state law.

If you have any questions regarding the petitions or the registered voters who have signed them please let me know.

Very truly yours,

/s/

**Charles H. Cook
chcook.cook@gmail.com**

COUNTY OF MCCORMICK
STATE OF SOUTH CAROLINA

PETITION FOR REFERENDUM

WHEREAS the South Carolina Office of Revenue and Fiscal Affairs prepared three (3) separate options to implement the required decennial redistricting of McCormick County council districts – see attachments to this petition; and

WHEREAS the McCormick County Council – on February 15, 2022 – adopted by ordinance the second option developed by the Office of Revenue and Fiscal Affairs, by a vote of three members in favor versus two members against; and

WHEREAS the two council members who cast votes against the option adopted by council supported the third option developed by the Office of Revenue and Fiscal Affairs because, in their view, it provided a fairer and more equitable redistricting of county council districts, recognizing the changing demographics of the county and those areas of the county that had experienced the highest rates of growth during the past 10 years; and

WHEREAS there was widespread support among county residents for adopting the third option developed by the Office of Revenue and Fiscal Affairs; and

WHEREAS the Code of Laws of the State of South Carolina provide for public referenda to determine if certain ordinances adopted by county councils should be repealed and/or replaced by ordinances approved by the voters of the county; and

WHEREAS a significant number of county residents have indicated an interest in supporting a public referenda that would substitute the third option developed by the Office of Revenue and Fiscal Affairs for the second option adopted by council on February 15, 2022 in McCormick County Ordinance 21-07;

NOW, THEREFORE, be it resolved that the following question be placed before McCormick County voters in an appropriate referendum:

“Shall the McCormick County Council amend Ordinance 21-07, approved and adopted on February 15, 2022, by replacing Draft/Map 2 with Draft/Map 3, both of which were developed as county council member redistricting options by the South Carolina Revenue and Fiscal Affairs Office?”

Attachments – Redistricting options prepared by the South Carolina Revenue and Fiscal Affairs Office and signatures of McCormick County residents supporting this petition.

PETITION

State of South Carolina

County McCormick

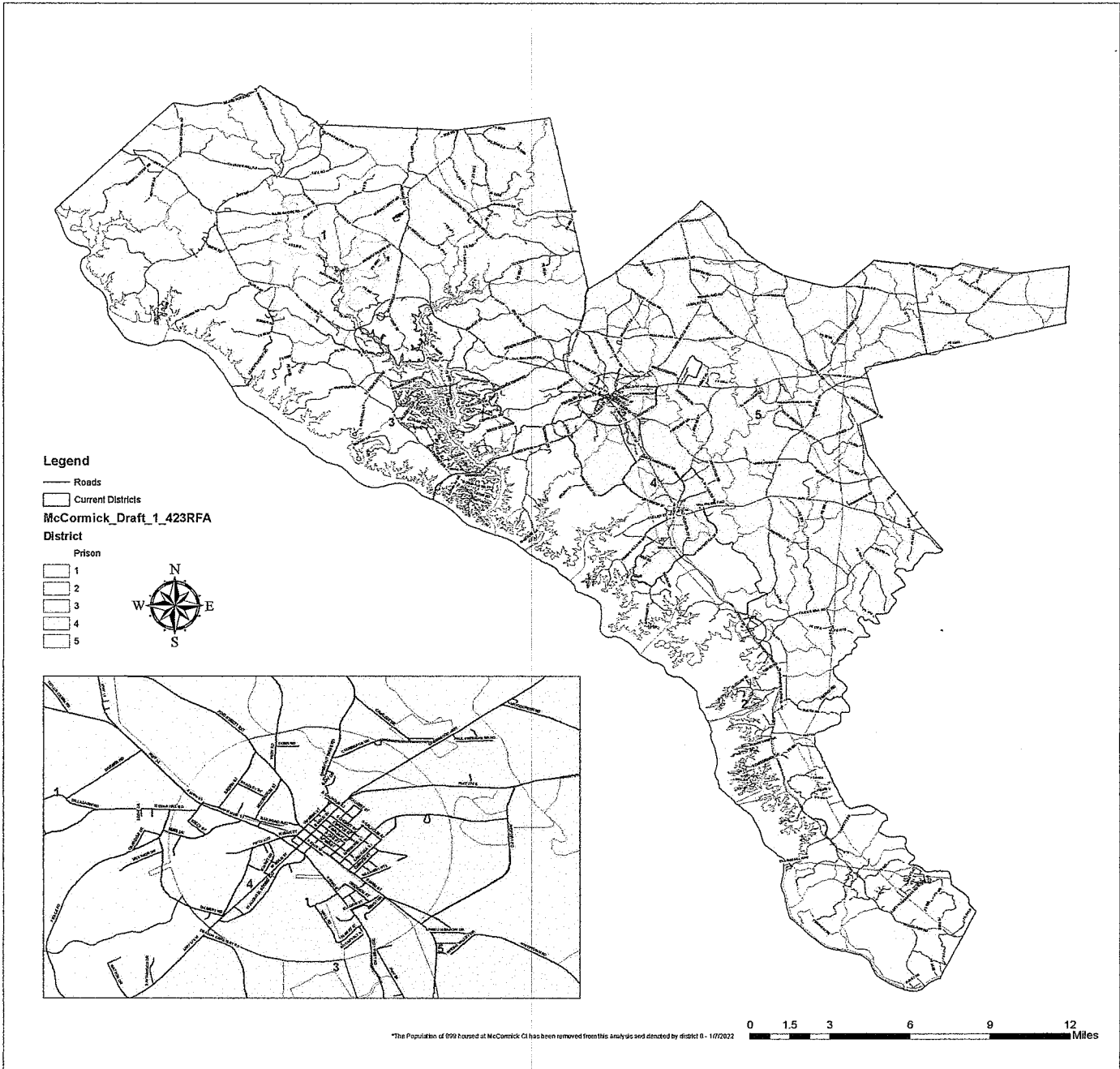
Page must contain signatures of voters from only one county.

PURPOSE	Candidate	n/a	If not candidate petition, enter statement of purpose: Referendum to amend McCormick County Ordinance 21-07, dated February 15, 2022, that adopted a county council redistricting plan.
	Office	n/a	
	Election Date	TBD	

	Signature & Printed Name	Residence Address & Phone #	Precinct	VR# & DOB
1	<i>Signature</i>			<i>Voter Registration #</i>
	<i>Print Name</i>			<i>Date of Birth</i>
2	<i>Signature</i>			<i>Voter Registration #</i>
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McCormick County Council Redistricting Draft 1 (Deviation 4.23 RFA)

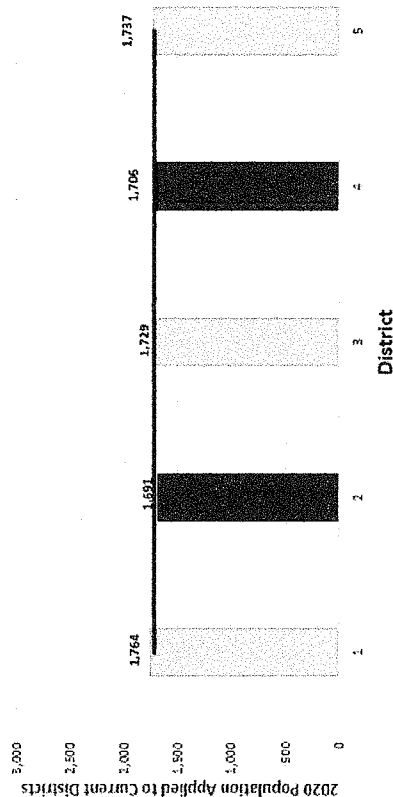


Draft Statistics, January 2022

Distric	Non-Hispanic	Global	Over/Under	% Deviation
1	1,764	1,725	39	2.24%
2	1,691	1,725	(34)	-1.99%
3	1,729	1,725	4	0.21%
4	1,706	1,725	(19)	-1.12%
5	1,737	1,725	12	0.67%

Lowest -1.99%
 Highest 2.24%
 Range 4.23%

County of McCormick Draft 1, January 2022
 Target Population: 1,725



County	Distric	Total	% Hispanic	NH	% NH	White	% White	NH	% NH	Black	% Black	Other	% Other	NH	% NH	Black	% Black	Other	% Other	NH	% NH	Black	% Black	Other	% Other
McCormick	1	1,764	20	1.13%	835	47.34%	863	48.92%	46	2.61%															
McCormick	2	1,691	36	2.13%	1,190	70.37%	387	22.89%	78	4.61%															
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	Total	8,627	104	1.21%	4,858	56.31%	3,390	39.30%	275	3.19%															

Voting Age Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.

County	Distric	Total	% Hispanic	NH	% NH	White	% White	NH	% NH	Black	% Black	Other	% Other	NH	% NH	Black	% Black	Other	% Other	NH	% NH	Black	% Black	Other	% Other
McCormick	1	1,508	16	1.06%	777	51.53%	674	44.69%	41	2.72%															
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McCormick	5	1,465	14	0.96%	612	41.77%	802	54.74%	37	2.53%															
	Total	7,543	84	1.11%	4,477	59.35%	2,748	36.43%	234	3.10%															

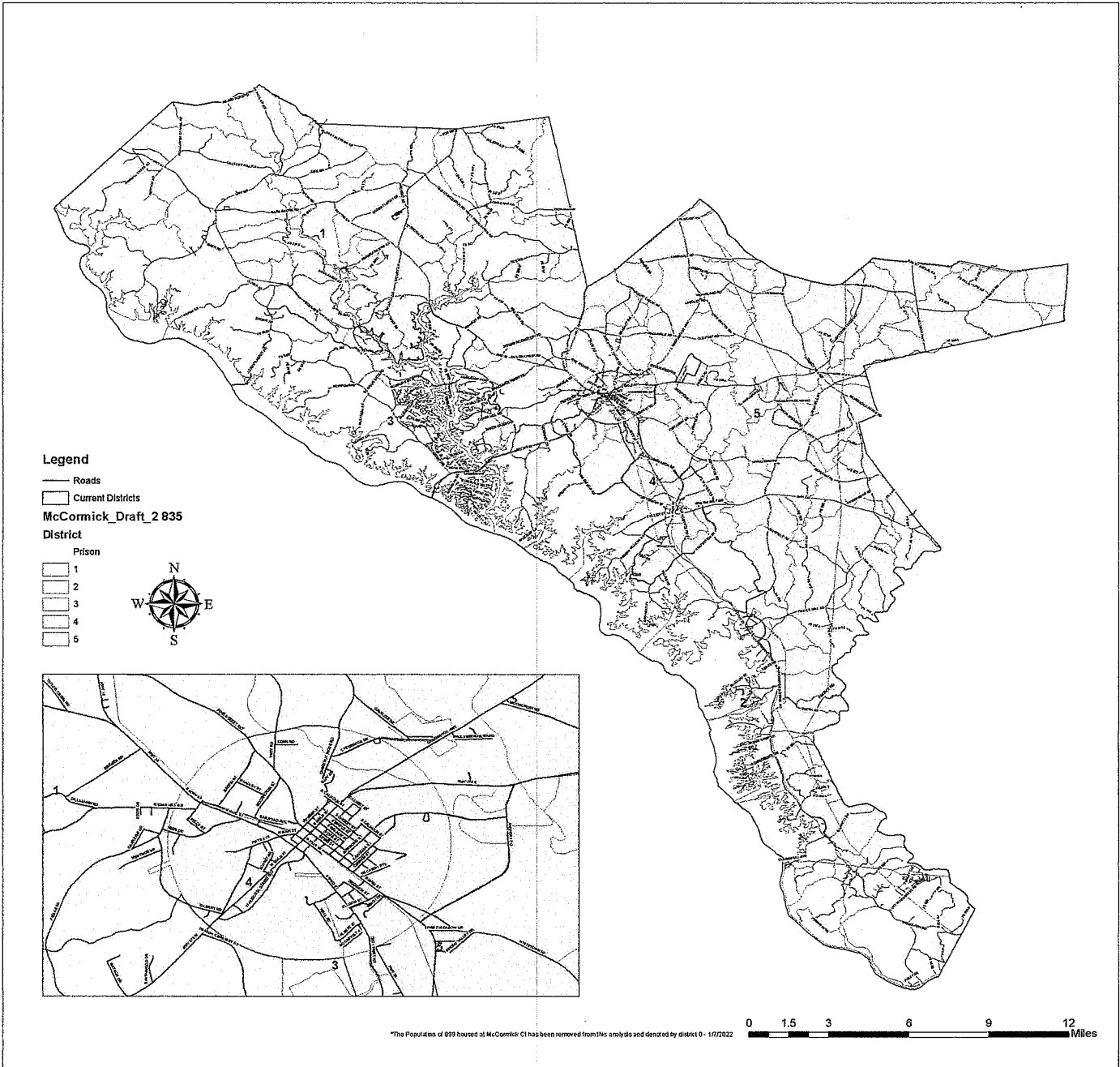
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MUNNAME McCormick

Row Labels	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total
1,424	20	471	884	49	1,156	17	389	706	44																	
2,000	41	1,465	403	91	1,777	33	1,344	326	74																	
2,110	18	1,912	130	50	2,054	17	1,883	108	46																	
1,470	15	434	974	47	1,201	10	389	764	38																	
1,623	10	576	999	38	1,355	7	472	844	32																	
899	19	297	583	0	899	19	297	583	0																	
9,526	123	5,155	3,973	275	8,442	103	4,774	3,331	234																	

Note: The above chart contains the total population within McCormick County

McCormick County Council Redistricting Draft 2 (Deviation 8.35)

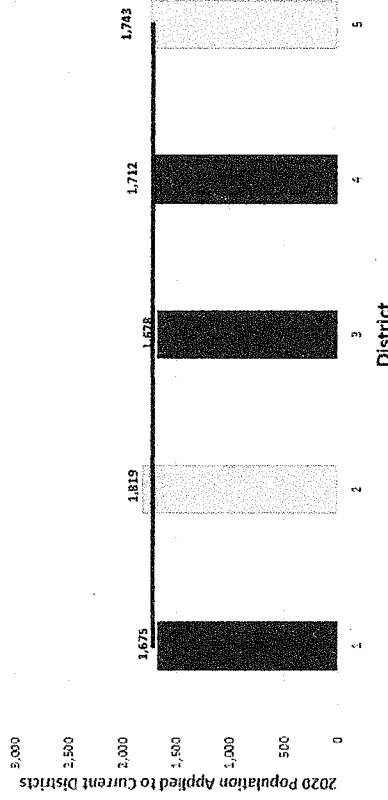


Draft Statistics, January 2022

District	2020 Census	Goal	Over/Under (Units)	% Deviation
1	1,675	1,725	(50)	-2.92%
2	1,819	1,725	94	5.42%
3	1,678	1,725	(47)	-2.75%
4	1,712	1,725	(13)	-0.78%
5	1,743	1,725	18	1.02%

Lowest -2.92%
 Highest 5.42%
 Range 8.35%

County of McCormick Draft 2, January 2022
 Target Population: 1,725



County	District	Total	Hispanic		White		NH		NH/DOJ		DOJ		Other		Other	
			%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count
McCormick	1	1,675	20	1.19%	811	48.42%	791	47.22%	53	3.16%	53	3.16%	53	3.16%	53	3.16%
McCormick	2	1,819	36	1.98%	1,393	76.58%	303	16.66%	87	4.78%	87	4.78%	87	4.78%	87	4.78%
McCormick	3	1,678	17	1.01%	1,544	92.01%	79	4.71%	38	2.26%	38	2.26%	38	2.26%	38	2.26%
McCormick	4	1,712	16	0.93%	473	27.63%	1,167	68.17%	56	3.27%	56	3.27%	56	3.27%	56	3.27%
McCormick	5	1,743	15	0.86%	637	36.55%	1,050	60.24%	41	2.35%	41	2.35%	41	2.35%	41	2.35%
Total		8,627	104	1.21%	4,858	56.31%	3,390	39.30%	275	3.19%	275	3.19%	275	3.19%	275	3.19%

Voting Age Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.

County	District	Total	Hispanic		White		NH		NH/DOJ		DOJ		Other		Other	
			%	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%	Count
McCormick	1	1,423	18	1.26%	726	51.02%	629	44.20%	50	3.51%	50	3.51%	50	3.51%	50	3.51%
McCormick	2	1,631	28	1.72%	1,261	76.54%	249	15.27%	73	4.48%	73	4.48%	73	4.48%	73	4.48%
McCormick	3	1,647	16	0.97%	1,528	92.77%	66	4.01%	37	2.25%	37	2.25%	37	2.25%	37	2.25%
McCormick	4	1,396	10	0.72%	413	29.58%	931	66.69%	42	3.01%	42	3.01%	42	3.01%	42	3.01%
McCormick	5	1,446	12	0.83%	529	36.58%	873	60.37%	32	2.21%	32	2.21%	32	2.21%	32	2.21%
Total		7,543	84	1.11%	4,477	59.35%	2,748	36.43%	234	3.10%	234	3.10%	234	3.10%	234	3.10%

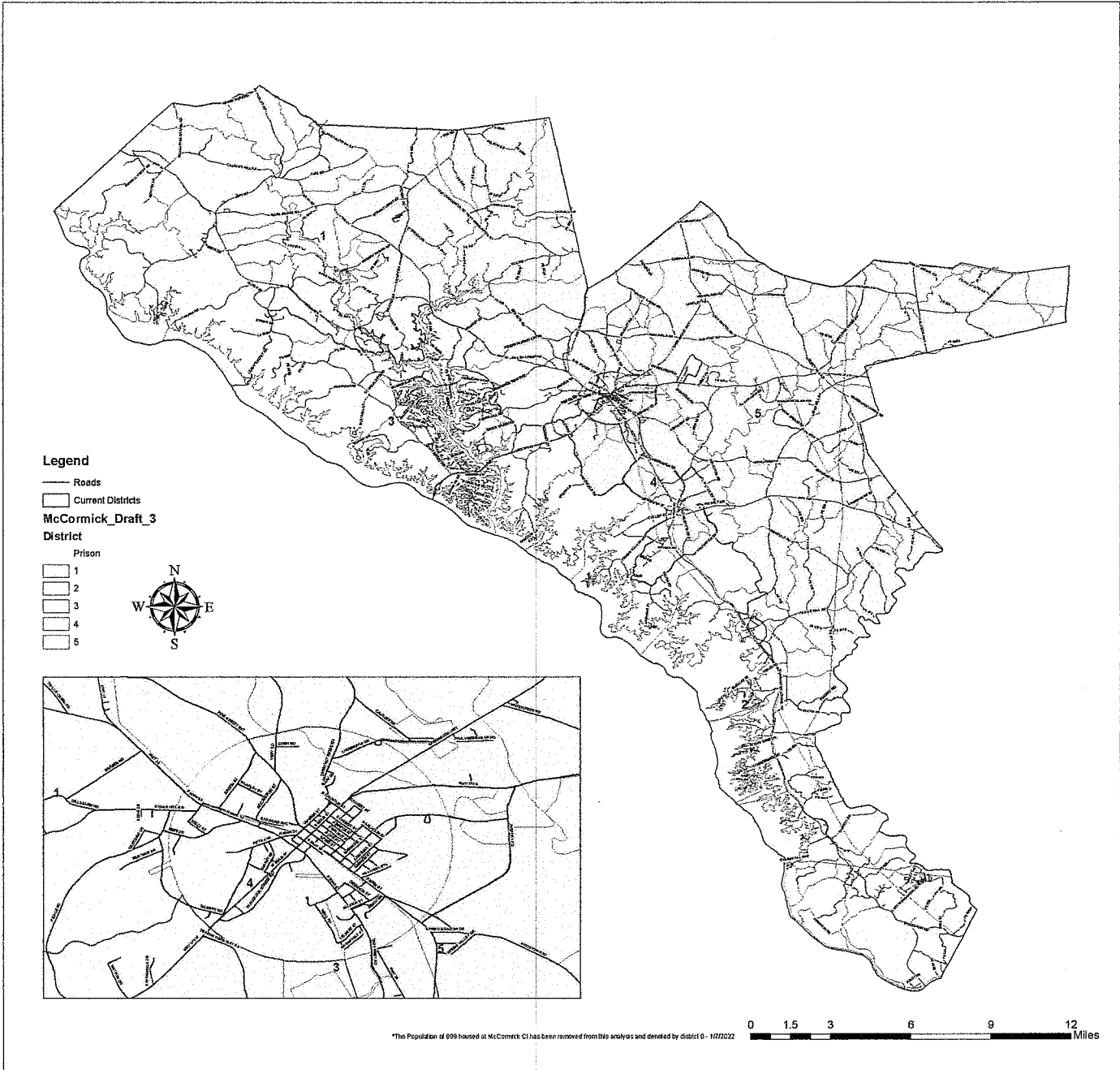
Note: The population of 899 house at McCormick CI was removed for this analysis

MUNI_NAME McCormick, MD

Row Labels	Sum of Hispanic	Sum of NH	Sum of NH/DOJ	Sum of DOJ	Sum of Other	Sum of Other
1	20	471	884	49	1,156	17
2	41	1,465	403	91	1,777	33
3	18	1,912	130	50	2,054	17
4	15	434	974	47	1,201	10
5	10	576	999	38	1,355	7
6	899	297	553	0	899	19
Grand Total	9,526	5,155	3,973	275	8,442	103

Note: The above chart contains the total population within McCormick County

McCormick County Council Redistricting Draft 3 (Deviation 5.68)



McCormick Total Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.

County	District	Total	Hispanic	%Hispanic	NH	%NH	NH/DOJ	White	%White	Black	%Black	Other	%Other	NH/Other	Race	%Race
McCormick	1	1,712	20	1.17%	804	46.96%	846	49.42%	42	2.45%						
McCormick	2	1,691	36	2.13%	1,190	70.37%	387	22.89%	78	4.61%						
McCormick	3	1,729	16	0.93%	1,569	90.75%	94	5.44%	50	2.89%						
McCormick	4	1,706	15	0.88%	532	31.18%	1,101	64.54%	58	3.40%						
McCormick	5	1,789	17	0.95%	763	42.65%	962	53.77%	47	2.63%						
Total		8,627	104	1.21%	4,858	56.31%	3,390	39.30%	275	3.19%						

Voting Age Population by Race *Race defined using DOJ definitions. Not Hispanic or Latino is abbreviated as NH.

County	District	Total	Hispanic	%Hispanic	NH	%NH	NH/DOJ	White	%White	Black	%Black	Other	%Other	NH/Other	Race	%Race
McCormick	1	1,457	16	1.10%	747	51.27%	657	45.09%	37	2.54%						
McCormick	2	1,465	28	1.91%	1,066	72.76%	310	21.16%	61	4.16%						
McCormick	3	1,701	16	0.94%	1,552	91.24%	84	4.94%	49	2.88%						
McCormick	4	1,404	10	0.71%	470	33.48%	878	62.54%	46	3.28%						
McCormick	5	1,516	14	0.92%	642	42.35%	819	54.02%	41	2.70%						
Total		7,543	84	1.11%	4,477	59.35%	2,748	36.43%	234	3.10%						

Note: The population of 899 house at McCormick CI was removed for this analysis

MUNI_NAME McCormick

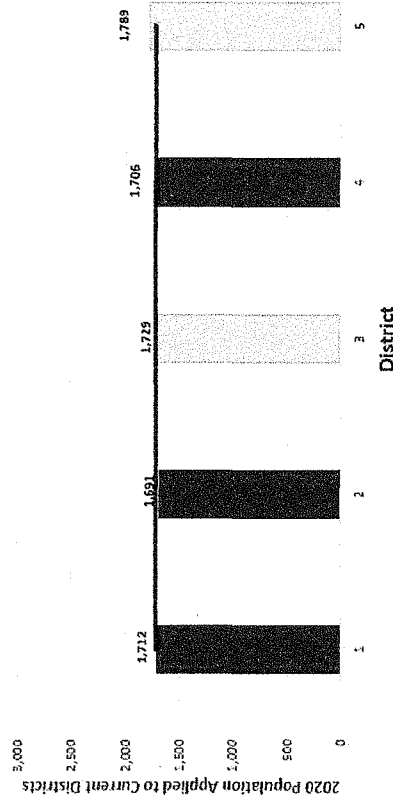
Row Labels	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total	Sum of total
1	1,424	20	471	884	49	1,156	17	389	706	44						
2	2,000	41	1,465	403	91	1,777	33	1,344	326	74						
3	2,110	18	1,912	130	50	2,054	17	1,853	108	46						
4	1,470	15	434	974	47	1,201	10	389	764	38						
5	1,623	10	576	999	38	1,155	7	472	844	32						
0	899	19	297	583	0	899	19	297	583	0						
Grand Total	9,526	123	5,155	3,973	275	8,442	603	4,774	3,331	234						

Note: The above chart contains the total population within McCormick County

Draft Statistics, January 2022

District	2020 Census	Goal	Over/Under	%Deviation
1	1,712	1,725	(13)	-0.78%
2	1,691	1,725	(34)	-1.99%
3	1,729	1,725	4	0.21%
4	1,706	1,725	(19)	-1.12%
5	1,789	1,725	64	3.69%
Lowest				-1.99%
Highest				3.69%
Range				5.68%

County of McCormick Draft 3, January 2022
Target Population: 4,725



STATE OF SOUTH CAROLINA)
)
COUNTY OF MCCORMICK)

ORDINANCE 21-07

AN ORDINANCE ADOPTING A REDISTRICTING PLAN
FOR MCCORMICK COUNTY, SOUTH CAROLINA

FILED
2022 MAR -1 P 12:28

WHEREAS, in compliance with the United States Constitution, the Constitution of the State of South Carolina, SC Code Ann. § 4-9-90 (1976) as amended, and the United States Voting Rights Act of 1965, as amended, McCormick County Council has determined that it is necessary to realign the electoral districts for the election of members of County Council in accordance with the Federal Census of 2020; and

WHEREAS, there presently exist five single-member districts for the election of McCormick County Council members; and

WHEREAS, this Ordinance is adopted for the purpose of re-defining the boundaries of these five single-member election districts; and

WHEREAS, the re-defining of the districts' boundaries is based on the Federal Census of 2020 for redistricting purposes in order that the population of such districts comply with the requirements set forth in the Voting Rights Act of 1965 and other applicable law; and

WHEREAS, the County Council has received three (3) proposed maps and supporting statistics (attached hereto) from the South Carolina Revenue and Fiscal Affairs Office (RFA) which may be considered by County Council as it proceeds with redistricting; and

WHEREAS, the final map and supporting statistics for redistricting will be determined by County Council after three (3) readings and a public hearing and will be attached to this Ordinance and incorporated herein by reference; and

WHEREAS, the County Council held a public hearing on the proposed redistricting on February 7, 2022 and received public comment at that time; and

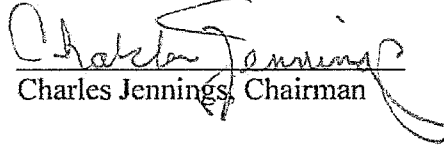
WHEREAS, at the County Council meeting held February 15, 2022 the County Council voted to approve and adopt Map 2 and the supporting statistics as the as the redistricting plan for McCormick County Council districts based on the Federal Census of 2020.

NOW, THEREFORE, BE IT ORDAINED by the County Council of McCormick County, South Carolina that Map 2 and the supporting statistics approved by the County Council on Third Reading at the February 15, 2022 County Council meeting and attached hereto as Exhibit A (statistics) and Exhibit B (map), are hereby adopted as the redistricting plan for McCormick County Council districts based on the Federal Census of 2020. Upon adoption of this Ordinance, McCormick County Council districts will be adjusted in accordance with the demographic statistics and map attached hereto.

APPROVED AND ADOPTED this 15th day of February 2022.

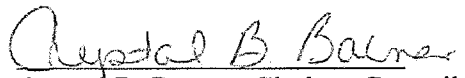
MCCORMICK COUNTY COUNCIL

By:


Charles Jennings, Chairman

1st Reading: January 11, 2022
2nd Reading: January 18, 2022
3rd Reading: February 15, 2022
Public Hearing: February 7, 2022

ATTEST:


Crystal B. Barnes, Clerk to Council

McCormick County Council Redistricting Draft 2 (Deviation 8.35)

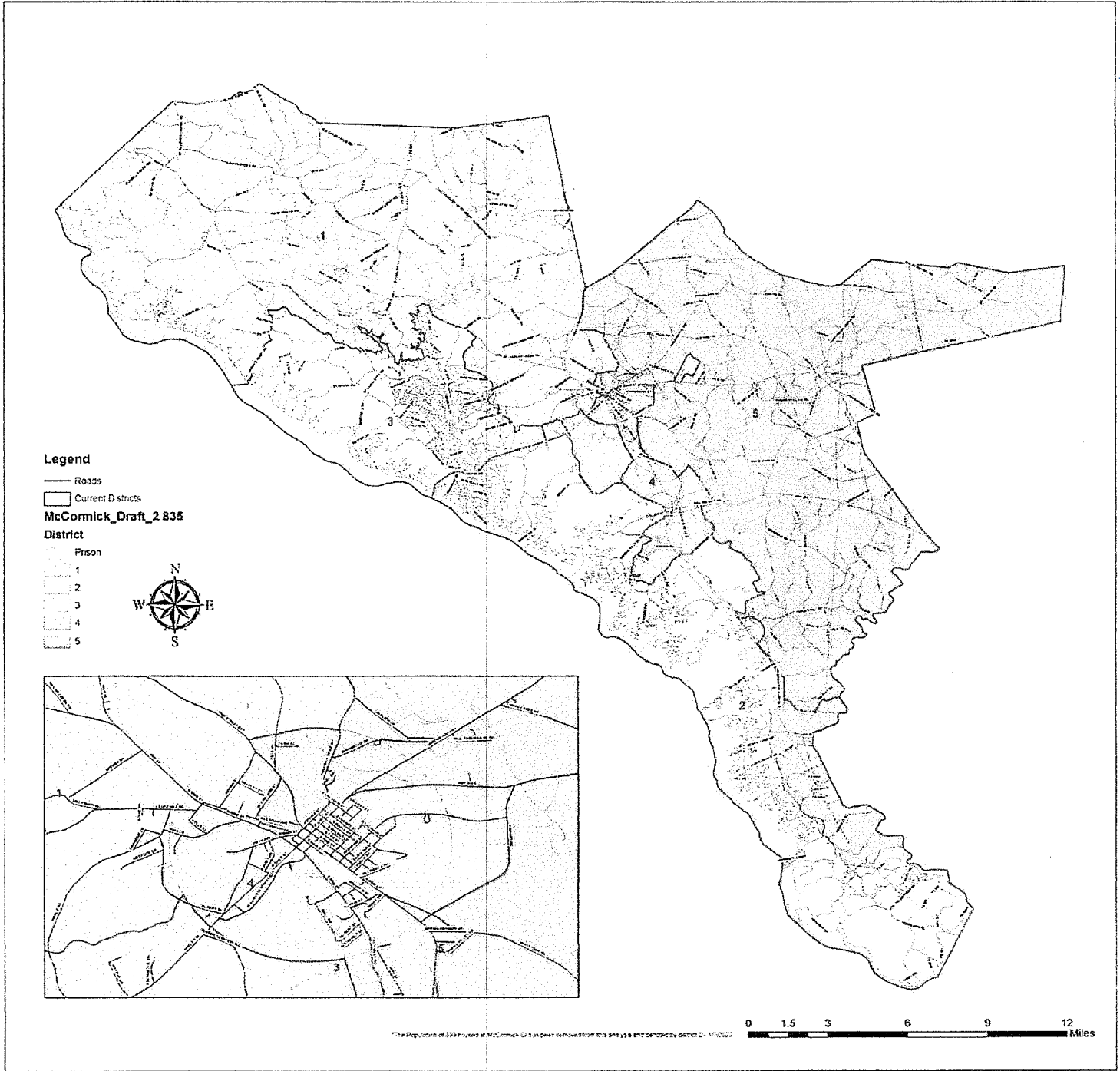


EXHIBIT “8”

MCCORMICK COUNTY COUNCIL MEETING
Administration Center
610 South Mine St., McCormick, SC 29835
November 21, 2023
6:00 P.M.
A G E N D A

CALL TO ORDER:

INVOCATION: Vice Chairman Bernard Hamby

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF MINUTES: Council to consider the approval of the October 17, 2023, meeting minutes.

SPEAKERS:

1. John McDill
2. Susan Heath
3. Jean Cameron
4. Ray Jones, Parker Poe
5. Shunna Jeter, GLEAMNS
6. Tamala White

DECISION ITEMS:

1. **Ordinance 23-06:** An Ordinance approving and authorizing the lease and sale of County property containing 11.19 acres, more or less, and the speculative building located thereon, identified as McCormick County Tax Map #155-00-00-051, to Project Squeeze. This Ordinance is an economic development initiative subject to the approval of a Lease Agreement and Option to Purchase between McCormick County and Project Squeeze and a Performance Agreement between McCormick County, Project Squeeze, and the South Carolina Coordinating Council for Economic Development which requires that Project Squeeze meet certain minimum investment requirements and minimum job creation requirements. The Lease Agreement and Option to Purchase and Performance Agreement will be attached to this Ordinance when finalized and prior to Third Reading and a Public Hearing. The company designated as “Project Squeeze” will be identified after the agreements are finalized. **Council to consider 2nd Reading**
2. **Ordinance 23-07:** An Ordinance amending Ordinance 23-02 to revise the section titled **NON-PAYMENT OF BILL** by changing the payment due date to the 15th of each month and the additional late fee and cut-off date to the 25th of each month to be effective starting in January 2024. **Council to consider 2nd Reading**
3. **Ordinance 23-08:** An Ordinance amending Ordinance 22-14 to make administrative and grammatical changes to pages 6-9 of the Comprehensive Plan. **Council to consider 2nd Reading**
4. **Ordinance 23-09:** An Ordinance proposed by initiative petition that establishes an open public comment period, on matters of interest to and within the jurisdiction of County Council, at the beginning of regularly scheduled County Council meetings, with sign-ups to speak accepted at the Council Chambers door

until the scheduled starting time of the meetings. **Council to consider 1st Reading (Title Only)**

5. **Ordinance 23-10:** An Ordinance proposed by initiative petition that would allow Council Members to place items, of importance to and within the jurisdiction of County Council, on the agendas of regularly scheduled County Council meetings and which requires the posting/publication of agendas for regularly scheduled County Council meetings at least 7 days in advance of meetings. **Council to consider 1st Reading (Title Only)**
6. **Ordinance 23-11:** An Ordinance proposed by initiative petition to amend Ordinance 21-07 adopted February 15, 2022, by replacing the adopted McCormick County Council Redistricting Draft 2 with McCormick County Council Redistricting Draft 3. **Council to consider 1st Reading (Title Only)**
7. **Resolution 07-23:** A Resolution authorizing McCormick County to opt out and/or file a request for exclusion from the nationwide class settlements related to PFAS and authorizing the County Administrator to execute all documents necessary to opt out and/or file a request for exclusion from the nationwide class settlements related to PFAS. **Council to consider passing Resolution 07-23**
8. Council to consider authorizing Administrator to sign Task Order #6 – IRT Technical Coordination and Local Bid Package Development. SC Share \$93,506; McCormick Share \$23,377.
9. Council to consider authorizing Administrator to sign agreement with Southern Health Partners to continue services as the on-site provider of inmate medical care, contract period January 1, 2023, to December 31, 2024, at a cost of \$44,498.76.
10. Council to consider authorizing Administrator to execute grant agreement with South Carolina Rural Infrastructure for the countywide drainage system study in the amount of \$237,800.
11. Council to consider approving the 2024 Holiday Schedule.

INFORMATION:

1. Copy of McCormick County Detention Center Inspection Report

COMMITTEE REPORTS:

EXECUTIVE SESSION:

Council may go into Executive Session, Pursuant to 30-4-70(1)(1) of the SC Code of Laws, 1976, as amended, to discuss contractual and personnel matters and to receive legal advice. **Council to go into Executive Session concerning personnel matter – Janitorial.**

Decision Item:

12. Council to consider authorizing the Administrator to award the contract to Contact Group Solutions in the amount of \$179,460 for three (3) years with annual review of services.

EXHIBIT “9”

MCCORMICK COUNTY COUNCIL MEETING
Administration Center
610 South Mine St., McCormick, SC 29835
December 19, 2023
6:00 P.M.
A G E N D A

CALL TO ORDER:

INVOCATION: Vice Chairman Bernard Hamby

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF MINUTES: Council to consider the approval of the November 21, 2023, meeting minutes.

SPEAKERS:

1. Charlotte Tallent, MC250 Committee
2. Stephen Taylor, WCTEL
3. Amanda Hill, MaesAwyr
4. Michael Robinson
5. Carol Cheek

PUBLIC HEARING:

1. **Ordinance 23-07:** An Ordinance amending Ordinance 23-02 to revise the section titled **NON-PAYMENT OF BILL** by changing the payment due date to the 15th of each month and the additional late fee and cut-off date to the 25th of each month to be effective starting in January 2024.
2. **Ordinance 23-08:** An Ordinance amending Ordinance 22-14 to make administrative and grammatical changes to pages 6-9 of the Comprehensive Plan.

DECISION ITEMS:

1. **Ordinance 23-07:** An Ordinance amending Ordinance 23-02 to revise the section titled **NON-PAYMENT OF BILL** by changing the payment due date to the 15th of each month and the additional late fee and cut-off date to the 25th of each month to be effective starting in January 2024. **Council to consider 3rd Reading**
2. **Ordinance 23-08:** An Ordinance amending Ordinance 22-14 to make administrative and grammatical changes to pages 6-9 of the Comprehensive Plan. **Council to consider 3rd Reading**
3. **Ordinance 23-09:** An Ordinance proposed by initiative petition that establishes an open public comment period, on matters of interest to and within the jurisdiction of County Council, at the beginning of regularly scheduled County Council meetings, with sign-ups to speak accepted at the Council Chambers door until the scheduled starting time of the meetings. **Council to consider 2nd Reading**
4. **Ordinance 23-10:** An Ordinance proposed by initiative petition that would allow Council Members to place items, of importance to and within the jurisdiction of County Council, on the agendas of regularly scheduled County Council meetings

and which requires the posting/publication of agendas for regularly scheduled County Council meetings at least 7 days in advance of meetings. **Council to consider 2nd Reading**

5. **Ordinance 23-11:** An Ordinance proposed by initiative petition to amend Ordinance 21-07 adopted February 15, 2022, by replacing the adopted McCormick County Council Redistricting Draft 2 with McCormick County Council Redistricting Draft 3. **Council to consider 2nd Reading**
6. Council to consider authorizing the County Administrator to sign the McCormick County Airport Capital Improvement Program 2025-2029. This is a plan only and does not commit the County to fund any of the projects and is not a request for funding. The implementation and funding of the plan is subject to approval by the County Council and must be included in the budget for each fiscal year.
7. Council to consider consenting to the Application to Amend a State-Issued Certificate of Franchise Authority filed by Spectrum Southeast, LLC to extend service in McCormick County and authorizing the Administrator to execute the attached Notice of Application for State-Issued Certificate of Franchise Authority and Request for information.
8. Council to consider appointing Stephen Shively to the McCormick County Library Board.
9. Council to consider approving the McCormick County Library 2024 Holiday Schedule.

INFORMATION:

1. Railroad Crossings Closures

COMMITTEE REPORTS:

ADJOURNMENT:

EXHIBIT “10”

MCCORMICK COUNTY COUNCIL MEETING
Administration Center
610 South Mine St., McCormick, SC 29835
January 16, 2024
6:00 P.M.
A G E N D A

CALL TO ORDER:

INVOCATION: Vice Chairman Bernard Hamby

PLEDGE OF ALLEGIANCE:

ROLL CALL:

APPROVAL OF MINUTES: Council to consider the approval of the December 19, 2023, meeting minutes.

SPEAKERS:

1. Shunna Jeter, GLEAMNS
2. David McAlister, Manley Garvin
3. Thomas Settles, OMEGA Group

DECISION ITEMS:

1. **Ordinance 23-09:** An Ordinance proposed by initiative petition that establishes an open public comment period, on matters of interest to and within the jurisdiction of County Council, at the beginning of regularly scheduled County Council meetings, with sign-ups to speak accepted at the Council Chambers door until the scheduled starting time of the meetings. The speaker must identify the item on which they will be speaking. No speaker will be allowed to speak on multiple items. At the discretion of the chairperson or presiding officer, the length of time for any speaker's presentation may be limited and the number of speakers also may be limited. **Council to consider 3rd Reading**
2. **Ordinance 23-10 (failed 2nd Reading):** An Ordinance proposed by initiative petition that would allow Council Members to place items, of importance to and within the jurisdiction of County Council, on the agendas of regularly scheduled County Council meetings and which requires the posting/publication of agendas for regularly scheduled County Council meetings at least 7 days in advance of meetings. **Council to consider voting to submit or not to submit initiated Ordinance 23-10 to the electors at the 2024 regular general election.**
3. **Ordinance 23-11 (failed 2nd Reading):** An Ordinance proposed by initiative petition to amend Ordinance 21-07 adopted February 15, 2022, by replacing the adopted McCormick County Council Redistricting Draft 2 with McCormick County Council Redistricting Draft 3. **Council to consider voting to submit or not to submit initiated Ordinance 23-11 to the electors at the 2024 regular general election.**
4. **Resolution 08-23:** A Resolution naming unnamed section of a dirt road that runs to the right off William Thurmond Sr. Dr. and ends at Hideaway Dr., Freedom Dr. **Council to consider passing Resolution 08-23**

5. Council to consider accepting the Fiscal Year 22-23 County Audit from Manley Garvin, LLC.
6. The chairperson considers referring to the study and analysis of developing and implementing a system to prioritize County roads for repair and/or maintenance to the Committee on Public Service and County Planning. The Committee is instructed to work with the County Transportation Committee (CTC) to develop a county transportation plan which, among other things, prioritizes County roads for repair and maintenance utilizing CTC funds and other funding sources.
7. Council to consider authorizing the Administrator to sign SC Coordinating Council for Economic Development Grant application for Mr. Cool. The grant amount is \$340,000 for building renovation and uplift.
8. Council to consider authorizing the Administrator to sign SC Department of Commerce Growing Rural Communities Grant Application for \$200,000 for Spec Building Storm Drain Correction. (20% match has already been met.)
9. Council to consider reappointing David Merrills to the Board of Commissioners for the Greenwood-Edgefield-McCormick-Abbeville Commission on Alcohol and Drug Abuse.
10. Council to consider appointing three (3) members to the Capital Project Sales and Use Tax Commission.
11. Council to set location and time of regular scheduled council meetings for 2024.

INFORMATION:

COMMITTEE REPORTS:

ADJOURNMENT:

EXHIBIT “11”

Diane L. Shaffer
374 Iethe Road
McCormick, SC 29835

March 20, 2024

BY HAND DELIVERY

Mrs. Laurie Mattheis
Director, Office of Voter Registration
and Elections
610 South Mine Street, Room 124
Post Office Box 636
McCormick, SC 29835

Dear Mrs. Mattheis:

We write pursuant to South Carolina Code § 4-9-1230 to request that the McCormick County Election Commission place on the ballot at the next regular election proposed Ordinances 23-10 and 23-11. Both ordinances were proposed to County Council by initiative petition.

At the McCormick County Council meeting of December 19, 2023, council voted not to approve the substance of two referendum petitions (as embodied in Proposed Ordinances 23-10 and 23-11) that had been filed with your office on August 18, 2023. We have been advised that your office reviewed the petitions and determined that both were supported by more than 15 percent of the registered voters in the county.

South Carolina state law, Section 4-9-1230, provides as follows:

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 therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, 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. The council may, in its discretion, and if no regular election is to be held within such period, provide for a special election. All county councils shall be bound by the results of any such referendum.

At the December 19, 2023 meeting, following the votes by council, the county's general counsel, G. P. Callison, confirmed that this was the final decision regarding the council's consideration of these two proposed ordinances. As such, state law requires your office to place Proposed Ordinances 23-10 and 23-11 on the ballot for either a special election of county electors or on the ballot for the next general election scheduled for November 5, 2024.

Please confirm by certified letter or dated and signed email (dls92650@gmail.com) to Diane L. Shaffer, **no later than Wednesday, March 27, 2024**, that Proposed Ordinances 23-10 and 23-11 will be placed on the ballot at an election for an appropriate decision by the County's electors. Please specify in your response whether your office will be conducting a special election to decide these two matters or whether they will be decided at the next general election on November 5, 2024. Failure to respond to this request on or before March 27, 2024, will be interpreted as a refusal on the Commission's part to comply with the applicable provisions in state law to schedule an election on the ordinances in question.

Very truly yours,

Diane L. Shaffer
Diane L. Shaffer

Ralph E. Deason Jr.
Ralph E. Deason, Jr.

Daniel A. Higgins
Daniel A. Higgins

All of the above were signatories to the two referendum petitions.

- cc: (by email)
- Kevin A. Hall, Esquire
- Larry M. Baker
- David J. Lorenzatti
- Martha L. Brown
- Amy K. Gay
- Laverne B. Moss
- Oscar M. New
- Mary L. Smith
- Rita B. Smith

*Y/L Higgins delivered to me
on 3/21/2024 at 1:05 PM
I noted request -
will take the request
under advisement -*

Laurie Mattheis

Received by: _____

Date Received: _____

*MRS. MATTHEIS REFUSED TO
ACKNOWLEDGE THE SECOND
ATTEMPT AT PERSONAL DELIVERY,
WHICH WAS SUCCESSFUL AT
APPROXIMATELY 1:35 P.M., THURSDAY,
MARCH 21, 2024.*

*MR. HIGGINS 3RD
DISTRICT COUNTY
COUNCILMAN*

App. 033

79

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF McCORMICK) ELEVENTH JUDICIAL CIRCUIT
Civil Action No. 2024-CP-35-00086

DIANE L. SHAFFER and DANIEL A.)
HIGGINS,)

Plaintiffs,)

vs.)

McCORMICK COUNTY COUNCIL and)
McCORMICK COUNTY OFFICE OF)
VOTER REGISTRATION AND)
ELECTIONS,)

Defendants.)

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

Pursuant to Rule 15(a), SCRCP, and the Court’s Order of September 16, 2025, Plaintiffs Diane L. Shaffer and Daniel A. Higgins (collectively, “Plaintiffs”) file this Amended Complaint against Defendants McCormick County Council and McCormick County Office of Voter Registration and Elections (collectively, “Defendants”) for temporary and permanent injunctive relief and declarative relief, and allege as follows:

INTRODUCTION

1. Plaintiffs, who are citizens and registered voters of McCormick County, South Carolina, led an initiative to have McCormick County Council pass three ordinances as is more fully described below.

2. Even though the McCormick County Council declined to pass two of Plaintiffs’ proposed ordinances, the McCormick Office of Voter Registration and Elections refused to place the proposed ordinances on the ballot for the November 2024 general election despite South Carolina law requiring that the referendum “shall be submitted to the electors.”

3. South Carolina Code § 4-9-1230 vests the citizenry with the power to pass an ordinance through a ballot referendum if enough electors propose the ordinance to county council but county council declines to pass it.

4. As a result, Plaintiffs now seek judicial intervention to compel Defendants to comply with their statutory obligations under South Carolina Code § 4-9-1230.

PARTIES

5. Diane L. Shaffer is a citizen and elector of McCormick County, South Carolina.

6. Daniel A. Higgins is a citizen and elector of McCormick County, South Carolina.

7. McCormick County Council is the governing body of McCormick County, South Carolina, located at 610 South Mine St., McCormick, South Carolina 29831, with the authority to adopt ordinances proposed by the citizenry pursuant to South Carolina Code § 4-9-1210 *et seq.*

8. McCormick County Office of Voter Registration and Elections is the governing body responsible for the administration of elections in McCormick County, South Carolina, located at 610 South Mine St., McCormick, South Carolina 29831.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the parties and subject matter of this dispute under South Carolina Code § 15-53-20, as this action involves the enforcement of statutory duties and the protection of Plaintiffs' legal rights.

10. Venue is proper in this Court because Plaintiffs reside in McCormick County, Defendants reside in McCormick County, and the events giving rise to this action occurred in McCormick County.

BACKGROUND

A. History of McCormick County Council and 2020 Census

11. Home Rule legislation was enacted following constitutional amendments in 1973, and these constitutional and legislative changes transferred significant power over local policymaking and administration away from county legislative delegations and to elected county bodies.

12. At the time the Home Rule was established, McCormick County was governed by a council-supervisor form of government.

13. Following a February 4, 1992, referendum held for its electors, McCormick County established and adopted the council-administrator form of government.

14. Under the council-administrator form of government, McCormick County Council consists of five members, with terms of four years each. The five council members are elected from five single-member election districts.

15. South Carolina law requires that single-member districts be reapportioned after the state adopts the then-completed federal census: “All 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.” S.C. Code Ann. § 4-9-90.

16. The General Assembly passed legislation adopting the results of the United States Census of 2020 on December 9, 2021, which Governor McMaster signed the next day. 2021 S.C. Acts No. 117.

B. McCormick County Redistricting and Referendum Petitions

17. 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. (See **Exhibits 1, 2, and 3** (McCormick County Council Proposed Redistricting Maps 1, 2, and 3).)

18. 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. (See **Exhibit 4** (Ordinance 21-07).)

19. On January 18, 2022, during a regular monthly McCormick County Council meeting, the council approved the second reading of Ordinance 21-07 by a vote of four to one. No specific adoption of any of the three maps was made. Councilman Charles Cook raised a point of order because the written ordinance did not comply with McCormick County Ordinance 2-84D, as it did not include any of the redistricting maps or accompanying information prepared by the South Carolina Revenue and Fiscal Affairs Office. The county's legal counsel advised that this requirement could be waived, and a motion to waive the requirement was approved by a vote of four to one.

20. On February 7, 2022, a public hearing on redistricting was conducted by the McCormick County Council at McCormick Middle School. 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, with one county resident submitting written comments in support of Map 3.

21. 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.

22. Plaintiffs strongly disagreed with the McCormick 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.

23. As a result, Plaintiffs set about collecting signatures from at least fifteen percent of the registered voters in McCormick County to support an initiative to amend the ordinance adopting Map 2 and replace it with Map 3 to define the single-member districts for McCormick County Council, as permitted by South Carolina Code § 4-9-1210 *et seq.*

24. After gathering the requisite signatures, Plaintiffs submitted three petitions to the McCormick County Office of Voter Registration and Elections in August 2023. After confirming that the statutory signature requirement had been met, the proposed ordinances were presented to the McCormick County Council.

25. One of the petitions proposed to amend Ordinance 21-07 to adopt Map 3 to define the boundaries for McCormick County Council's single-member districts and became identified as Proposed Ordinance 23-11. The other two petitions involved meetings of the McCormick County Council: one proposed an ordinance requiring an open public comment period at the beginning of the council's regular monthly meetings, which became identified as Proposed Ordinance 23-09; and the other proposed an ordinance allowing any council member to place items

on the meeting agendas and to require agendas to be publicly available at least seven days before meetings, which became identified as Proposed Ordinance 23-10. (See **Exhibits 5, 6, and 7** (Proposed Ordinances 23-09, 23-10, and 23-11).)

26. On November 21, 2023, McCormick County Council held its regular monthly meeting. During this meeting, the council approved first readings to Proposed Ordinances 23-09, 23-10, and 23-11. (See **Exhibit 8** (McCormick County Council Meeting Agenda, November 21, 2023).)

27. On December 19, 2023, McCormick County Council held another regular monthly meeting. The council approved the second reading of Proposed Ordinance 23-09. But the council failed to approve the second readings of Proposed Ordinances 23-10 and 23-11. (See **Exhibit 9** (McCormick County Council Meeting Agenda, December 19, 2023).)

28. 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. This recommendation was made despite the lack of any legal basis under South Carolina Code § 4-9-1230 to prevent these proposed ordinances from being presented to voters at the November 2024 general election.

29. On January 16, 2024, McCormick County Council held its next regular monthly meeting. At that meeting, the council decided, by a vote of three to two, not to submit Proposed Ordinance 23-10 to the electors at the 2024 general election. The council also decided, by a vote

of three to two, not to submit Proposed Ordinance 23-11 to the electors at the 2024 general election. (See **Exhibit 10** (McCormick County Council Meeting Agenda, January 16, 2024).)

30. As a result, on March 20, 2024, Plaintiffs submitted a letter to the McCormick County Office of Voter Registration and Elections demanding that the county election commission comply with its obligations under South Carolina Code § 4-9-1230 and place Proposed Ordinances 23-10 and 23-11 on the ballot for the next general election on November 5, 2024. (See **Exhibit 11** (Letter from Diane L. Shaffer to Laurie Mattheis of McCormick County Office of Voter Registration and Elections, dated March 20, 2024).)

31. But on March 26, 2024, the McCormick County Office of Voter Registration and Elections notified Plaintiffs that it would not place Proposed Ordinances 23-10 and 23-11 on the ballot for the electorate's consideration, in direct violation of South Carolina Code § 4-9-1230.

32. To date, the McCormick County Council and the McCormick County Office of Voter Registration and Elections have not complied with their statutory obligations to present Proposed Ordinances 23-10 and 23-11 to the citizenry for an up-or-down vote during either the November 2024 general election or any subsequent elections, special or otherwise.

PLAINTIFFS' FIRST CAUSE OF ACTION
(Injunctive Relief)

33. Plaintiffs incorporate by reference all the allegations above.

34. Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, Plaintiffs are entitled to, and hereby petition for, preliminary and permanent injunctive relief. Specifically, Plaintiffs request an order compelling Defendants to hold a special election, as soon as practicable, whereby the electors of McCormick County may vote on Proposed Ordinances 23-10 and 23-11 in an up-or-down vote.

35. As a direct and proximate result of Defendants' refusal to put Proposed Ordinances 23-10 and 23-11 to the citizenry for an up-or-down vote, Plaintiffs are harmed and suffer an immediate and irreparable injury to their statutory rights as set forth by South Carolina Code § 4-9-1210 *et seq.*

36. Plaintiffs have no adequate remedy at law. The General Assembly has specified a single remedy when a sufficient number of voters proposes a new ordinance, but the county council rejects that proposal – the power shifts back to the electorate to vote on the proposed ordinance, and council “shall be bound by the results of any such referendum.” S.C. Code Ann. § 4-9-1230. This statutory remedy is the only remedy available to Plaintiffs.

37. While S.C. Code Ann. § 4-9-1230 permits council to hold a special election “in its discretion,” council’s discretion is limited by the unambiguous statutory requirement that ordinances “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.” S.C. Code Ann. § 4-9-1230. As discussed above, Defendants’ “final vote” to deny Proposed Ordinances 23-10 and 23-11 occurred on December 19, 2023.

38. Because the McCormick County Council and the McCormick County Office of Voter Registration refused to timely comply with their statutory requirements under S.C. Code Ann. § 4-9-1230, an immediate special election is appropriate and essential to ensure Plaintiffs’ rights are no longer violated.

39. Because the McCormick County Council and the McCormick County Office of Voter Registration and Elections refused to place Proposed Ordinances 23-10 and 23-11 on the ballot during the 2024 general election, injunctive relief is essential to enforce Plaintiffs’ right to have their proposed ordinances considered by the electorate at the first available opportunity.

40. Based on the clear and unambiguous meaning of South Carolina Code § 4-9-1230, Plaintiffs are likely to prevail on the merits of this Complaint. Equity also demands that Defendants be permanently enjoined against continuing to violate South Carolina Code § 4-9-1230. Defendants' refusal to follow the law unjustifiably denies Plaintiffs their statutory right—as provided for by the General Assembly—to govern themselves through the initiative and referendum process.

41. Plaintiffs are further informed and believe that time is of the essence in resolving the issues now before the Court and to avoid further irreparable harm to Plaintiffs, Plaintiffs respectfully request that the Court order immediate injunctive relief, enjoining the Defendants from their sustained refusal to comply with their statutory obligation to conduct an election consistent with South Carolina Code § 4-9-1230.

42. Plaintiffs are further informed and believe that granting the relief sought by Plaintiffs cannot and does not work a hardship on Defendants; thus, the balance of equities and hardship are clearly in Plaintiffs' favor.

PLAINTIFFS' SECOND CAUSE OF ACTION
(Declaratory Relief)

43. Plaintiffs incorporate by reference all the allegations above.

44. Pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and South Carolina's Uniform Declaratory Judgments Act, South Carolina Code § 15-53-10 *et seq.*, Plaintiffs are entitled to, and hereby petition for, declaratory relief. Specifically, Plaintiffs request an order from this Court declaring that Defendants must hold a special election, as soon as practicable, whereby the electors of McCormick County may vote on Proposed Ordinances 23-10 and 23-11 in an up-or-down vote.

45. An actual controversy exists between the parties involving their legal rights and duties in connection with South Carolina Code § 4-9-1230.

46. A justiciable controversy exists between the parties because it is a real and substantial controversy concerning Defendants' statutory obligations under South Carolina Code § 4-9-1230 that is ripe and appropriate for this Court to determine.

47. As a result, Plaintiffs are entitled to an order from this Court declaring that Defendants are duty bound under South Carolina Code § 4-9-1230 to place Proposed Ordinances 23-10 and 23-11 on the ballot at a special election as soon as practicable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a) Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and South Carolina Code § 4-9-1210 *et seq.*, order Defendants to hold a special election, as soon as practicable, whereby the electors of McCormick County may vote on Proposed Ordinances 23-10 and 23-11 in an up-or-down vote;
- b) Pursuant to Rule 57 of the South Carolina Rules of Civil Procedure and South Carolina's Uniform Declaratory Judgments Act, South Carolina Code § 15-53-10 *et seq.*, order Defendants to hold a special election, as soon as practicable, whereby the electors of McCormick County may vote on Proposed Ordinances 23-10 and 23-11; and
- c) Award Plaintiffs such other and further relief as the Court deems necessary or proper, including their costs, expenses, and reasonable attorneys' fees.

Signature Page Attached

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ Kevin A. Hall

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September 17, 2025

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF MCCORMICK) ELEVENTH JUDICIAL CIRCUIT

Diane L. Shaffer and Daniel A. Higgins,)
Plaintiffs,)
vs.) ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIM

McCormick County Council and)
McCormick County Office of Voter)
Registration and Elections,)
Defendants.)

Case #2024CP3500086

Defendants McCormick County Council and McCormick County Office of Voter Registration and Elections (herein after collectively referred to as Defendants), answer and counterclaim to Plaintiffs’ Complaint as follows:

FIRST DEFENSE

- 1. All allegations of Plaintiffs’ Complaint not specifically admitted are denied.

SECOND DEFENSE

- 2. Defendants reallege their previous answers and allegations as if fully stated here.
- 3. Defendants reserve the right to amend their Answer, Affirmative Defenses, and

Counterclaim pursuant to Rule 15, SCRCP.

THIRD DEFENSE

4. Defendants reallege their previous answers and allegations as if fully stated here.

5. In response to Paragraph 1 of Plaintiffs' Complaint, Defendants admit that Plaintiffs are citizens and registered voters of McCormick County who participated in an effort to have McCormick County Council adopt three initiative ordinances.

6. In response to Paragraph 2 of Plaintiffs' Complaint, Defendants admit that McCormick County Council declined to pass two of the proposed initiative ordinances and the McCormick County Office of Voter Registration and Elections did not place the proposed initiated ordinances on the ballot for the 2024 general election. Defendants deny that South Carolina law requires that the proposed imitative ordinances must be submitted to the electors. Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law. Defendants have no duty or obligation to submit the proposed initiative ordinances to the electors through a ballot referendum.

7. Paragraph 3 of Plaintiffs' Complaint is a statement of law to which no response is necessary. Defendants refer to the S.C. Code §4-9-1230 and the cases and law of the State of South Carolina. Defendants deny that the interpretation of the law by Plaintiffs and/or Plaintiffs' attorneys is correct and/or that they apply to this case. Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law. Defendants have no duty or obligation to submit the proposed initiative ordinances to the electors through a ballot referendum.

8. In response to Paragraph 4 of Plaintiffs' Complaint, Defendants admit that Plaintiffs seek judicial intervention but deny that Plaintiffs are entitled to the judicial intervention which they seek. Defendants deny that the interpretation of the law by Plaintiffs and/or Plaintiffs' attorneys is correct and/or that they apply to this case. Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law and, therefore, are invalid. Defendants have no duty or obligation to submit the proposed initiative ordinances to the electors through a ballot referendum.

9. Defendants admit Paragraphs 5 and 6 of Plaintiffs' Complaint.

10. Defendants deny Paragraph 7 of Plaintiffs' Complaint as stated. McCormick County Council's authority to adopt proposed initiative ordinances applies only to proposed initiative ordinances which are not contrary to or inconsistent with "the Constitution and general law of this State,"¹ Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law. Defendants have no duty or obligation to submit the proposed initiative ordinances to the electors through a ballot referendum.

11. Defendants admit Paragraph 8 of Plaintiffs' Complaint.

12. In response to Paragraph 9 of Plaintiffs' Complaint, Defendants admit that this Court has jurisdiction over the parties. Defendants deny the remaining allegations of Paragraph 9 and require strict proof thereof.

13. Defendants admit Paragraph 10 of Plaintiffs' Complaint.

14. Defendants admit Paragraphs 11-16 of Plaintiff's Complaint.

¹ S.C. Code Ann. § 4-9-25

15. In response to Paragraphs 17-21 of Plaintiffs' Complaint, Defendants admit that on February 15, 2022, McCormick County Council properly adopted Ordinance 21-07 approving Map 2 as the County's redistricting plan. The adoption of Ordinance 21-07 was in accordance with S.C. Code Ann. § 4-9-90 which vests the authority to reapportion council districts in "the county council". The McCormick County Council followed the specific requirements of S.C. Code Ann. § 4-9-90 in adopting Ordinance 21-07 and Map 2 as its reapportionment/redistricting plan.

16. In response to Paragraph 22 of Plaintiffs' Complaint, Defendants admit that Plaintiffs may have "strongly disagreed" with the adoption of Map 2 as the redistricting plan for McCormick County. Defendants deny the remaining allegations of Paragraph 22.

17. In response to Paragraph 23 of Plaintiffs' Complaint, Defendants deny that S.C. Code § 4-9-1210 *et seq*, permits the adoption of the proposed initiative ordinance replacing Map 2 with Map 3 as this proposed initiative ordinance is contrary to and/or inconsistent with S.C. Code Ann. § 4-9-90 and the specific requirements for reapportionment set out therein.

18. In response to Paragraphs 24-32 of Plaintiffs' Complaint, Defendants admit that the McCormick County Council voted not to submit the proposed initiative ordinances for inclusion on the 2024 general election ballot. The remaining allegations of Paragraphs 24-32 are denied, and strict proof is required thereof. Defendants deny that the interpretation of the law by Plaintiffs and/or Plaintiffs' attorneys is correct and/or that they apply to this case. Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law. Defendants have no duty or obligation to submit the proposed initiative ordinances to the electors through a ballot referendum.

19. In response to Paragraph 33 of Plaintiffs' Complaint, Defendants reallege their previous answers and allegations as if fully stated here.

20. Defendants deny Paragraphs 34-40 of Plaintiffs' Complaint. Plaintiffs are not entitled to the requested relief under Plaintiffs' First Cause of Action (Injunctive Relief)

21. In response to Paragraph 41 of Plaintiffs' Complaint, Defendants reallege their previous answers and allegations as if fully stated here.

22. Defendants deny Paragraph 42-45 of Plaintiffs' Complaint. Plaintiffs are not entitled to the requested relief under Plaintiffs' Second Cause of Action (Declaratory Judgment).

23. Defendants deny Plaintiffs' prayer for relief.

**FOURTH DEFENSE
(Res Judicata)**

24. Defendants reallege their previous answers and allegations as if fully stated here.

25. On May 3, 2024, Plaintiffs (as Petitioners) filed a Petition for Writ of Mandamus with the South Carolina Supreme Court.² The relief requested by Plaintiffs in their Petition for Writ of Mandamus is the same relief requested in Plaintiffs' Complaint and Motion for Preliminary and Permanent Injunction filed in this case – namely an Order requiring the Defendants to place the proposed initiative ordinances on the ballot for the November 2024 general election. The Defendants filed a Return to the Petition for Writ of Mandamus³ and Plaintiffs filed a Reply.

26. By Order (Defendants Exhibit 3) issued June 20, 2024, the Supreme Court unanimously denied the Petition for Writ of Mandamus. Plaintiffs' Petition for Rehearing was denied.

27. Following the Supreme Court's dismissal of their Petition for Writ of Mandamus, Plaintiffs filed this action asking for the same relief.

² Defendants Exhibit 1

³ Defendants Exhibit 2

28. Defendants are informed and believe that the Supreme Court’s Order dismissing the Plaintiffs’ request for an Order requiring the Defendants to place the proposed initiative ordinances on the November 2024 general election ballot serves as res judicata and bars this action.

29. Defendants are informed and believe that Plaintiffs’ action – including the Plaintiffs’ Motion for a Preliminary and Permanent Injunction - should be dismissed.

**FIFTH DEFENSE
(Preemption)**

30. Defendants reallege their previous answers and allegations as if fully stated here.

31. The proposed initiative ordinances are preempted by state statutory law.

32. The proposed initiative ordinance (Ordinance 23-11) changing the redistricting plan adopted February 15, 2022, from Map 2 to Map 3 is preempted by S.C. Code Ann. § 4-9-90 which 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. The population variance between defined election districts shall not exceed ten percent.” Ordinance 21-07, which adopted Map 2 as the redistricting plan for McCormick County, complied with S.C. Code § 4-9-90:

a) The United States Census for 2020 was adopted by the General Assembly by 2021 Act No. 117 effective December 10, 2021 (See SC Code Ann. §1-1-715). The reapportionment plan for McCormick County had to be adopted based on the 2020 Census within a reasonable time after December 10, 2021. McCormick County Council adopted Map 2 as the reapportionment plan by Ordinance 21-07 on February 15, 2022.

b) The plan must be adopted prior to the “next scheduled general election” following the adoption of the Census. McCormick’s plan was adopted prior to the 2022 general election - which was the “next scheduled general election”.

c) The population variance of the plan (Map 2) adopted by McCormick County does not exceed 10%.

33. The redistricting plan (Map 2) adopted by McCormick County Council follows and complies with South Carolina statutory law. The proposed initiative ordinance changing Map 2 with Map 3 does not, and cannot, comply with South Carolina statutory law.

34. The proposed initiative ordinance (Ordinance 23-10) that allows any County Council member to place items on the Council's meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting is preempted by S.C. Code Ann. § 4-9-110 which provides that: "**The council shall determine its own rules and order of business.**" The proposed initiated ordinance attempts to change state law and take away the authority of "council" to determine its own rules and order of business.

35. State law preempts the proposed initiative ordinances, and the Defendants have no duty or obligation to submit the proposed initiative ordinances to the electors through a ballot referendum.

36. Defendants are informed and believe that Plaintiffs action – including the Plaintiffs' Motion for a Preliminary and Permanent Injunction - should be dismissed.

SIXTH DEFENSE (Election Calendar)

37. Defendants reallege their previous answers and allegations as if fully stated here.

38. The time for placing the initiative ordinances on the general election ballot has passed.⁴ **As stated by the Plaintiffs** in their Petition for Writ of Mandamus filed with the Supreme Court: "...the South Carolina Election Code requires that ballot initiatives will not be presented to the electorate for a vote "unless the question is submitted to the appropriate election commission

⁴ See Exhibit 4 – South Carolina Election Commission 2024 Election Calendar (page 5)

to be placed on the ballot no later than 12:00 noon on August fifteenth or, if August fifteenth falls on a Saturday or Sunday, not later than 12:00 noon on the following business day.” S.C. Code Ann. § 7-13-355. In an attempt to get the Supreme Court to grant their Petition for Writ of Mandamus, Plaintiffs stated: “If the Petitioners were required to seek recourse through the circuit court first, final resolution of this matter would almost certainly extend beyond the statutory deadline for presenting a referendum to the voters.” Thus, even the Plaintiffs recognize that the time for placing an initiative ordinance on the ballot for the 2024 general election has passed and they are not entitled to the relief requested in their Complaint and/or Motion.

39. Ballots for the 2024 general election have already been prepared and the deadline to mail absentee ballots to overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) was September 21, 2024. See Exhibit 4 – South Carolina Election Commission 2024 Election Calendar (page 6).

40. Defendants are informed and believe that Plaintiffs action – including the Plaintiffs’ Motion for a Preliminary and Permanent Injunction - should be dismissed.

SEVENTH DEFENSE

((No Judicial Power to Grant Requested Relief – Lack of Subject Matter Jurisdiction))

41. Defendants reallege their previous answers and allegations as if fully stated here.

42. Since the time for placing initiative ordinances on the 2024 general election ballots has passed and ballots have already been distributed, the Court is without power to grant the relief requested by the Plaintiffs in this litigation.

43. Defendants are informed and believe that Plaintiffs action – including the Plaintiffs’ Motion for a Preliminary and Permanent Injunction - should be dismissed.

**EIGHTH DEFENSE
(Laches-Waiver)**

44. Defendants reallege their previous answers and allegations as if fully stated here.

45. Ordinance 21-07 which approved Map 2 as the redistricting plan for McCormick County was adopted February 15, 2022. Plaintiffs were neglectful for an unreasonable and unexplained length of time in failing to pursue this matter earlier. Plaintiffs did not serve this case on the Defendants until September 17, 2024, which was over a month after the deadline for initiative ordinances to be submitted for inclusion on the 2024 general election ballot.

46. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver and/or laches

**NINTH DEFENSE
(Mootness-Standing)**

47. Defendants reallege their previous answers and allegations as if fully stated here.

48. Since the time for placing initiative ordinances on the 2024 general election ballots has passed and ballots have already been distributed, Plaintiffs' claims are moot and Plaintiffs no longer have any stake in this matter and, therefore, lack standing to pursue the requested relief any further.

49. Defendants are informed and believe that Plaintiffs action – including the Plaintiffs' Motion for a Preliminary and Permanent Injunction - should be dismissed.

**TENTH DEFENSE
(Injunction Elements Not Met)**

50. Defendants reallege their previous answers and allegations as if fully stated here.

51. Based on the allegations in Plaintiffs' Complaint and Motion, Plaintiffs do not meet the elements necessary for injunctive relief and are not entitled to the injunctive relief requested in this action.

52. Defendants are informed and believe that Plaintiffs action – including the Plaintiffs’ Motion for a Preliminary and Permanent Injunction - should be dismissed.

ELEVENTH DEFENSE
(Failure to State Facts Sufficient to Constitute a Cause of Action - Rule 12(b)(6), SCRCP)

53. Defendants reallege their previous answers and allegations as if fully stated here.

54. Since the time period for placing initiative ordinances on the 2024 general election ballots has passed and ballots have already been distributed, Plaintiffs fail to state a claim for relief under any theory of the case and, therefore, the Court should dismiss the Complaint under Rule 12(b)(6), SCRCP.

55. Defendants are informed and believe that Plaintiffs action – including the Plaintiffs’ Motion for a Preliminary and Permanent Injunction - should be dismissed.

TWELFTH DEFENSE
(Proposed Initiative Ordinances are Contrary to and Inconsistent with State Law)

56. Defendants reallege their previous answers and allegations as if fully stated here.

57. The proposed initiative ordinances are contrary to and/or inconsistent with state law and, therefore, the Defendants have no obligation or duty to place the proposed initiative ordinances on any referendum ballot.

COUNTERCLAIM
(Declaratory Relief)

58. Defendants reallege their previous answers and allegations as if fully stated here.

59. Pursuant Rule 57, SCRCP and S.C. Code Ann. §15-53-10 *et seq*, Defendants are entitled to an order declaring that Defendants have no duty or obligation to hold a referendum on the initiative ordinances which are the subject of this litigation.

WHEREFORE, Defendants McCormick County Council and McCormick County Office of Voter Registration and Elections pray for an Order of this Court:

1. Dismissing Plaintiffs' Complaint;
2. Dismissing Plaintiffs' Motion for Preliminary and Permanent Injunction;
3. Awarding Defendants all costs and attorney fees associated with this action; and
4. Granting Defendants such other relief as is just and equitable.

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Bradley, South Carolina
October 15, 2024

DEFENDANTS EXHIBIT 1

Petition for Writ of Mandamus

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2024-

Diane Louise Shaffer and Daniel A. Higgins Petitioners,

v.

McCormick County Council and McCormick County Office of
Voter Registration and Elections, Respondents,

PETITION FOR WRIT OF MANDAMUS

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May 3, 2024

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PETITION FOR WRIT OF MANDAMUS

This petition asks the Court to enforce the ordinance-by-initiative requirement of the South Carolina Code with respect to county ordinances. The facts which give rise to this petition are not in dispute, and the Petitioners respectfully request that the Court (1) accept this matter in its original jurisdiction pursuant to Rule 245(b), SCACR; and (2) issue the requested writ so that the citizenry will have an opportunity to vote on the proposed ordinances at the upcoming general election.

STATEMENT OF THE ISSUE

South Carolina Code § 4-9-1230 vests the citizenry with the power to pass an ordinance through a ballot referendum if a sufficient number of electors propose the ordinance to county council but county council declines to pass it. Here, the McCormick County Council declined to pass two ordinances that the Petitioners proposed, but the McCormick County Office of Voter Registration and Elections has refused to place the proposed ordinances on the ballot for the upcoming general election despite South Carolina law requiring that the referendum “shall be submitted to the electors.” *Id.* Are the Petitioners entitled to a writ of mandamus to timely enforce their statutory right to have the proposed ordinances presented to the voters?

BACKGROUND

I. The Parties

The Petitioners are citizens and electors of McCormick County, South Carolina, who led an initiative petition to have McCormick County Council pass three ordinances:

- (1) An ordinance creating an open public comment period at the beginning of County Council meetings (Proposed Ordinance 23-09);
- (2) An ordinance that allows any County Council member to place items on the Council's meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting (Proposed Ordinance 23-10); and
- (3) An ordinance amending Ordinance 21-07 and approving a districting map that was proposed by the South Carolina Revenue and Fiscal Affairs Office for establishing the boundaries for each County Council seat (Proposed Ordinance 23-11).

The Respondents are the relevant governing bodies that are involved in the ballot-initiative process: the McCormick County Council, which has authority to adopt ordinances proposed by the citizenry; and the McCormick County Office of Voter Registration and Elections, which is responsible for the administration of elections in McCormick County.

II. Relevant Facts

At the time Home Rule was established, McCormick County was assigned the council-supervisor form of government. S.C. Code Ann. § 4-9-10(b). However, following a February 4, 1992, referendum held for its electors, McCormick County has been governed by the council-administrator form of county government, with County Council comprised of five single-member districts. (App. 1, McCormick County Ord. § 2-1.)

The South Carolina Code requires single-member districts to be reapportioned after the State adopts the then-completed federal census. S.C. Code Ann. § 4-9-90. The General Assembly passed legislation adopting the results of the 2020 Census on December 9, 2021, which Governor McMaster signed the next day. 2021 S.C. Acts No. 117.

Using the 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 been in compliance with South Carolina law regarding apportionment. (App. 2–7, McCormick County Council Proposed Redistricting Maps 1, 2, & 3.) On February 15, 2022, County Council adopted Map 2 as its redistricting plan. (App. 8–10, McCormick County Ordinance 21-07.)

The Petitioners strongly disagree with County Council's decision to use Map 2 and believe that Map 3 would more appropriately apportion the electors among the various single-member districts and reduce the voter deviation between districts to approximately five percent, as recommended by the South Carolina Revenue and Fiscal Affairs Office. Accordingly, the Petitioners set about collecting signatures from at least fifteen percent of the registered voters in McCormick County to support an initiative to amend the ordinance adopting Map 2 and replace it with Map 3 to define the single-member districts for McCormick County Council, as permitted by South Carolina Code § 4-9-1210.

After gathering the requisite signatures, the Petitioners submitted three petitions to the McCormick County Office of Voters Registration and Elections in August 2023. After confirming that the statutory signature requirement had been met, the proposed ordinances were presented to County Council. One of the petitions proposed to adopt Map 3 to define the boundaries for County Council's single-member districts, as described above, and became identified as Proposed Ordinance 23-11. (App. 15–25.) The other two petitions involved meetings of County Council: one proposed an ordinance requiring an open public comment period at the beginning of County Council's regular monthly meetings, which became identified as Proposed Ordinance 23-09 (App. 11–12); and the other proposed an ordinance allowing any Council member to place items on the

meeting agendas and to require agendas to be publicly available at least seven days before meetings, which became identified as Proposed Ordinance 23-10 (App. 13–14).

McCormick County Council gave first reading to each of these ordinances during its November 21, 2023 meeting. (App. 26–27, County Council Meeting Agenda (Nov. 21, 2023).) Proposed Ordinance 23-09 passed second reading during the December 19, 2023 meeting, but proposed Ordinances 23-10 and 23-11 failed second reading and were voted down during that same meeting. (App. 30, County Council Meeting Agenda (Jan. 16, 2024).)

South Carolina Code § 4-9-1230 provides that if a county council “shall fail to pass an ordinance proposed by initiative petition,” or if it “shall fail to repeal an ordinance for which a petition for repeal has been presented, the adoption or repeal of the ordinance 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.” County Council declined to present the ordinances to the citizenry for a vote during its January 16, 2024 meeting. Accordingly, on March 20, 2024, the Petitioners submitted a letter to the McCormick County Office of Voter Registration and Elections demanding that the county election commission place Proposed Ordinances 23-10 and 23-11 on the ballot during the next general election on November 5, 2024. (App. 32–33.)

However, on March 26, 2024, the County election agency notified the Petitioners that it would not place Proposed Ordinances 23-10 or 23-11 on a ballot for the electorate’s consideration. Because South Carolina Code § 4-9-1230 requires that these proposed ordinances be presented to the citizenry for an up-or-down vote, the Petitioners respectfully file this petition and seek a writ of mandamus requiring the McCormick County Council and the McCormick County Office of Voter Registration and Elections to place these proposed ordinances on the ballot during the next general election.

JURISDICTIONAL STATEMENT

This Court has authority to issue the requested writ of mandamus pursuant to Article V, Section 5 of the South Carolina Constitution; South Carolina Code § 14-3-310; and Rule 245(b), SCACR.

The Petitioners seek such a writ in this Court's original jurisdiction because the South Carolina Election Code requires that ballot initiatives will not be presented to the electorate for a vote "unless the question is submitted to the appropriate election commission to be placed on the ballot no later than 12:00 noon on August fifteenth or, if August fifteenth falls on a Saturday or Sunday, not later than 12:00 noon on the following business day." S.C. Code Ann. § 7-13-355. If the Petitioners were required to seek recourse through the circuit court first, final resolution of this matter would almost certainly extend beyond the statutory deadline for presenting a referendum to the voters.

Because the facts of this matter are not subject to legitimate dispute and this case presents only legal issues for the Court's consideration, the Petitioners respectfully submit that this matter must be addressed in the Court's original jurisdiction in order to resolve these issues of public importance to the citizens of McCormick County within the timelines established by the South Carolina Election Code.

ARGUMENT

I. South Carolina law requires that these proposed ordinances be placed on the ballot for McCormick County electors to consider.

The Petitioners are aware of the gravity of their request: "Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy." *City of Rock Hill v. Thompson*, 349 S.C. 197, 199, 563 S.E.2d 101, 102 (2002). Despite this high hurdle, the Petitioners embrace the burden, as this case readily meets

the elements for issuance of a writ of mandamus: “(1) a duty to perform the act; (2) the ministerial nature of the act; (3) the petitioner’s specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.” *Sanford v. S.C. State Ethics Comm’n*, 385 S.C. 483, 494, 685 S.E.2d 600, 606 (2009).

Here, there is no dispute that the Petitioners gathered the necessary signatures to propose ordinances to the McCormick County Council. *See* S.C. Code Ann. § 4-9-1210 (“Any initiated ordinance may be 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.”). There is also no dispute that the McCormick County Council declined to pass two of those proposed ordinances. (App. 30.) Accordingly, South Carolina law requires that those ordinances must now be presented to the citizenry for its consideration at the next election:

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 therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, **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. The council may, in its discretion, and if no regular election is to be held within such period, provide for a special election. **All county councils shall be bound by the results of any such referendum.**

Id. § 4-9-1230 (emphasis added).

The statute’s use of the word “shall” makes clear that the Petitioners have a right to have their proposed ordinances presented to the voters, and that the McCormick County Council and McCormick County Office of Voter Registration and Elections have a ministerial duty to place these initiatives on the ballot at the next regular election. This is not a discretionary act for county government; it is mandatory. *See, e.g., Johnston v. S.C. Dep’t of Labor*, 365 S.C. 293, 296–97, 617 S.E.2d 363, 364 (2005) (“The term ‘shall’ in a statute means that the action is mandatory.”); *S.C.*

Dept' 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.”).¹

Nor is there any other potential legal remedy available to the Petitioners. The General Assembly has specifically designated the remedy when a sufficient number of voters proposes a new ordinance but county council rejects that proposal: the power shifts back to the electorate to vote on the proposed ordinance, and council “shall be bound by the results of any such referendum.” S.C. Code Ann. § 4-9-1230. That is the only available remedy, but because the McCormick County Council and the McCormick County Office of Voter Registration and Elections have refused to place Proposed Ordinances 23-10 and 23-11 on the ballot at the upcoming general election, mandamus is essential to enforce the Petitioners’ right to have their proposed ordinances considered by the electorate. The Court should issue a writ of mandamus accordingly.

II. There is nothing in the law that prevents the citizenry from passing these proposed ordinances.

The Petitioners concede that the ordinance-by-referendum process provided by the Home Rule Act is not boundless, but the two proposed ordinances at issue here—one to govern agendas for County Council meetings, and one to adopt a different redistricting map—do not fall within the General Assembly’s limitations on when the citizenry can propose and pass ordinances.

South Carolina Code § 4-9-1210 specifically excludes “an ordinance appropriating money or authorizing the levy of taxes” from this process. The Court has held that this limitation prohibits

¹ The only discretionary point of Section 4-9-1230 involves when to hold a special election on the ballot referendum “if no regular election is to be held within” a year after county council rejects the proposed ordinance. But that is not the case here; a regular election is scheduled for November 2024, so there is nothing left to the McCormick County Council’s discretion here.

ballot initiatives that would impair “County Council’s general authority over the County’s treasury.” *Focus on Beaufort County v. Beaufort County*, 318 S.C. 227, 231, 456 S.E.2d 910, 912 (1995). And in the municipal context, the Court has prohibited ballot initiatives that would override zoning procedures specifically governed by “the elaborate, detailed zoning procedures contained in Title 6” of the South Carolina Code. *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000).

But the ballot measures proposed here do not contain any of these prohibited elements. They have nothing to do with appropriating money, levying taxes, or the treasury. Nor do they irreconcilably conflict with an “elaborate, detailed” statutory process that the General Assembly has established. Instead, these proposed ordinances go to the very heart of self-government.

Proposed Ordinance 23-10 would allow any council member to place items on the County Council’s meeting agenda, and it would require the Council to post its meeting agendas at least seven days before any meeting. There is presently no McCormick County ordinance or state statute governing how items get placed on a public body’s meeting agenda, and the South Carolina Freedom of Information Act only requires notice of meetings to be posted “at least twenty-four hours prior to such meetings.” S.C. Code Ann. § 30-4-80(A). As such, Proposed Ordinance 23-10 would work hand-in-glove with existing law, as it would give some guidance as to how a meeting agenda is to be created, and it would give the public a full week, rather than a single day, to review an agenda in advance of a Council meeting. This proposed ordinance is fully consistent with the FOIA’s goal of ensuring “that 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.” *Id.* § 30-4-15.

Similarly, Proposed Ordinance 23-11 would replace the Council-selected redistricting map with one that the voters deem more appropriately aligned with voting constituencies. The proposed map was prepared by the South Carolina Revenue and Fiscal Affairs Office and meets the only redistricting criterion set by state law: “The population variance between defined election districts shall not exceed ten percent.” *Id.* § 4-9-90.² Just as Proposed Ordinance 23-10 aligns with state law regarding open-government issues, Proposed Ordinance 23-11 is consistent with the Home Rule Act’s insistence on self-government and allowing the electorate to determine how it will be governed. The General Assembly has empowered voters with authority to change via referendum the number of council members on a county council, whether council members will be elected at-large or from single-member districts, and even the entire form of county government. S.C. Code Ann. § 4-9-10(c). There is nothing irreconcilable between letting the voters select whether council members will be elected at-large or from single-member districts, on the one hand, and letting the voters select the boundaries of those single-member districts, on the other.

Because Proposed Ordinances 23-10 and 23-11 are consistent with South Carolina law, there is no impediment to the Court granting this petition and issuing a writ of mandamus directing the McCormick County Council and McCormick County Office of Voter Registration and Elections to place these proposed ordinances on the ballot for the voters’ consideration at the November 2024 general election.

² In fact, the redistricting map selected by Proposed Ordinance 23-11 has less of a population variance among the districts—5.68%—than does the map selected by Council—8.35%. (*Compare* App. 6–7 (Map 3—Deviation 5.68%) *with* App. 4–5 (Map 2—Deviation 8.35%).)

CONCLUSION

This case is a paradigm for when mandamus is necessary. *See Sanford*, 385 S.C. at 494, 685 S.E.2d at 606 (“Mandamus is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal.”). The General Assembly has vested the citizenry with the power to govern itself through the ordinance-by-referendum process, but the McCormick County Council and McCormick County Office of Voter Registration and Elections have refused to follow South Carolina Code § 4-9-1230’s mandate that they must present the proposed ordinances to the electorate for an up-or-down vote. Accordingly, the Petitioners respectfully request that the Court issue a writ of mandamus requiring McCormick County to place these proposed ordinances on the ballot for the November 2024 general election.

Respectfully submitted,

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May 3, 2024

DEFENDANTS EXHIBIT 2

Return to Petition for Writ of Mandamus

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2024-000737

Diane Louise Shaffer and Daniel A. Higgins Petitioners,

v.

McCormick County Council and McCormick County Office of
Voter Registration and Elections, Respondents.

RETURN TO PETITION FOR WRIT OF MANDAMUS

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JURISDICTION

The Respondents do not object to the consideration of this matter in the Court's original jurisdiction. The Respondents request that the Court review the subjects of the proposed initiated ordinances, find that they are inconsistent with state general law and/or case precedent, and deny the Petition for Writ of Mandamus.

STATEMENT OF ISSUES

The Petitioners have requested that this Court issue a writ of mandamus requiring the Respondents to hold a referendum on two proposed initiated ordinances. The writ of mandamus is an extraordinary writ which is limited to the enforcement of a merely ministerial duty. Mandamus will not be issued to enforce doubtful rights or compel the performance of an act prohibited by law. Gardner v. Blackwell, 167 S.C. 313, 166 S.E. 338 (1932). The issues to be resolved concern the duty and/or obligation of the Respondents to hold a referendum on the proposed initiated ordinances. Each proposed initiated ordinance is distinct and should be considered separately by the Court. As is shown herein, the Respondents do not have a duty or obligation to hold a referendum on these separate and distinct proposed initiated ordinances.

FACTS

The McCormick County Council was presented with three initiative petitions signed by at least 15% of the qualified electors of the County proposing the adoption of three ordinances. One of the initiated ordinances was adopted. The other two initiated ordinances were not adopted and at its meeting held on February 20, 2024, the McCormick County Council voted not to hold a referendum on these initiated ordinances.

The initiated ordinances in question are:

- (1) An ordinance amending Ordinance 21-07¹ adopted by the McCormick County Council on February 15, 2022, which approved and adopted Map 2 prepared by the South Carolina Revenue and Fiscal Affairs Office as the reapportionment/redistricting plan for McCormick County based on the 2020 Census.

The Petitioners disagree with the County Council's decision to use Map 2 and want to replace Map 2 with Map 3. The Petitioners want to change the existing valid reapportionment ordinance over two years after the plan was adopted and almost three years after the 2020 census was adopted by this state.² This proposed initiated ordinance is inconsistent with South Carolina statutory law and this Court's established case precedent.

- (2) An ordinance that allows any County Council member to place items on the Council's meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting.

The Petitioners want to change South Carolina statutory law and usurp County Council's authority to determine its own rules and order of business.

INITIATIVE AND REFERENDUM

The initiative and referendum provisions related to counties and municipalities are essentially the same and the case law applicable to one is, by implication, applicable to the other. [see and compare S.C. Code Ann. § 4-9-1210, et seq (counties) and S.C. Code 5-17-10, et seq (municipalities)]. The initiative and referendum provisions of both counties and municipalities provide that the qualified electors of any county or municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes and adopt or reject such ordinance at the polls. Any initiated ordinance may be submitted to the council by a petition signed by qualified

¹ Petitioners' Appendix – Appendix Page 8.

² The United States Census of 2020 was adopted December 10, 2021. See SC Code Ann. §1-1-715.

electors equal in number to at least fifteen percent of the qualified electors. 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 therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, 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.

Though the initiative and referendum process are quite broad, there are limits. As stated in an Opinion of the Attorney General dated June 24, 1993: “As broad as this statutory language appears to be, there are additional, implied limitations inherent therein. For instance, such ordinance would be required to be constitutionally permissible and consistent with the general laws of the State”.³ In Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992) this Court considered the power of the electorate to adopt an invalid initiated ordinance. “When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid. An electorate has no greater power to legislate than the municipality itself. An initiated ordinance which is facially defective cannot be cured by adoption by the electorate.” And as relates to this case, this Court in the Town of Hilton Head Island v. Coalition of Expressway Opponents, supra, held that if an initiated ordinance is facially defective in its entirety, there is “no obligation to place the initiated ordinance on the ballot” and there is “no right to obtain a vote to enact invalid legislation”.

³ Op. Att’y Gen. (S.C.A.G. June 24, 1993)

ARGUMENTS

I. BECAUSE THE INITIATED ORDINANCE CONCERNING CHANGING MCCORMICK COUNTY'S REAPPORTIONMENT PLAN IS INCONSISTENT WITH EXISTING STATUTORY LAW AND CASE PRECEDENT, THE RESPONDENTS HAVE NO DUTY OR OBLIGATION TO HOLD A REFERENDUM ON THE INITIATED ORDINANCE.

Petition 1 (Reapportionment) – Petitioners request a writ of mandamus requiring the Respondents to hold a referendum on an initiated ordinance amending Ordinance 21-07 adopted by the McCormick County Council on February 15, 2022, which approved and adopted Map 2 prepared by the South Carolina Revenue and Fiscal Affairs Office as the reapportionment/redistricting plan for McCormick County based on the 2020 Census. Petitioners do not allege that the Map 2 plan adopted by McCormick County is invalid. They just disagree with the adoption of Map 2 and want to replace it with Map 3.

State law governs this initiated ordinance. S.C. Code Ann. § 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. The population variance between defined election districts shall not exceed ten percent.” In their Petition for Writ of Mandamus, the Petitioners state: “The proposed map was prepared by the South Carolina Revenue and Fiscal Affairs Office and meets the only redistricting criterion set by state law: “The population variance between defined election districts shall not exceed ten percent.” Using the Petitioners’ theory, a different reapportionment plan could be adopted multiple times during the ten years following the adoption of the decennial census. This is unequivocally wrong. The Petitioners completely ignore the specific requirements of S.C. Code Ann. § 4-9-90 that reapportionment must be completed within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census.

Both Map 2 (adopted) and Map 3 (proposed initiated change) meet the population variance requirements. However, the initiated ordinance which proposes substituting Map 3 for Map 2 does not – and cannot – comply with the specific timetable for the adoption of a reapportionment ordinance as required by law; a timetable ignored by the Petitioners.

S.C. Code Ann. § 4-9-90 vests the authority to reapportion council districts in “the county council”. The McCormick County Council followed the specific requirements of S.C. Code Ann. § 4-9-90 in adopting its reapportionment plan.

1. The United States Census for 2020 was adopted by the General Assembly by 2021 Act No. 117 effective December 10, 2021 (See SC Code Ann. §1-1-715). The reapportionment plan for McCormick County had to be adopted based on the 2020 Census within a reasonable time after December 10, 2021. McCormick County adopted Map 2 as the reapportionment plan by Ordinance 21-07 on February 15, 2022.
2. The plan must be adopted prior to the “next scheduled general election” following the adoption of the Census. McCormick’s plan was adopted prior to the 2022 general election - which was the “next scheduled general election”.
3. The population variance of the plan (Map 2) adopted by McCormick County does not exceed 10%.

The reapportionment plan (Map 2) adopted by the McCormick County Council is a valid reapportionment plan. The council district lines were redrawn based on the adopted plan and the 2022 general election was held based on the adopted reapportionment plan and revised district lines. Now, over two years later, the Petitioners want a referendum to be held on an initiated ordinance to adopt a different reapportionment plan simply because they disagree with the plan adopted by the McCormick County Council.

The proposed initiative ordinance conflicts with and is inconsistent with state statutory law. When a local ordinance is in direct conflict with state law, the local ordinance is void. Wilson v. City of Columbia, 434 S.C. 206, 863 S.E. 2d 456 (2021). This is a facially invalid ordinance, and the Respondents have no duty to hold a referendum on this initiated ordinance. Town of Hilton Head Island v. Coalition of Expressway Opponents, supra.

Case Precedent – In addition to being inconsistent with statutory law, the proposed initiated ordinance is contrary to case law precedent established by this Court. In Elliott vs Richland County, 322 S.C. 423, 472 S.E.2d 256 (1996) this Court considered whether Richland County could adopt a new reapportionment plan almost two years after having adopted a valid plan. Here is this Court’s analysis:

“DISCUSSION

S.C. Code Ann. § 4-9-90 (1986 & Supp.1994) provides that:

All 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.

Appellant argues that under § 4-9-90, once a county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90. We agree.” (emphasis added)

This language is very direct. A county council has one shot to reapportion council districts. Once a valid plan has been adopted, it cannot be changed until the next decennial census. This makes complete sense. Reapportionment and redistricting are tied to the decennial census. Population constantly shifts. Redistricting must take place within a reasonable time after the decennial census is adopted.

The McCormick County Council adopted a valid reapportionment plan in February 2022. This plan cannot be changed until the next decennial Census (2030). The McCormick County Council cannot change the adopted plan and the electors – who have no greater authority than Council – cannot change the plan by the initiative and referendum process. The Respondents have no obligation or duty to hold a referendum on this invalid initiated ordinance.

The Petition for Writ of Mandamus should be denied.

II. BECAUSE THE INITIATED ORDINANCE CONCERNING ALLOWING COUNCIL MEMBERS TO PLACE ITEMS ON AGENDAS AND REQUIRING AGENDAS TO BE POSTED AT LEAST SEVEN DAYS IN ADVANCE OF COUNCIL MEETINGS IS INCONSISTENT WITH STATE LAW, THE RESPONDENTS HAVE NO DUTY OR OBLIGATION TO HOLD A REFERENDUM ON THE INITIATED ORDINANCE.

Petition 2 (Council Rules) – Petitioners request a writ of mandamus requiring Respondents to hold a referendum on an initiated ordinance that allows any County Council member to place items on the Council’s meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting.

This requested initiative ordinance is controlled by SC Code Ann. § 4-9-110:

SECTION 4-9-110. Council shall select chairman and other officers; terms of office; appointment of clerk; frequency and conduct of meetings; minutes of proceedings.

The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice-chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. The council shall appoint a clerk to record its proceedings and perform such additional duties as the council may prescribe. The council, after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public. All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies. Special meetings may be called by the chairman or a majority of the members after twenty-four hours' notice.

The council shall determine its own rules and order of business. It shall keep a journal in which shall be recorded the minutes of its proceedings which shall be open to public inspection. (emphasis added)

Pursuant to this statute, the “council” has the authority to determine its own rules. The proposed initiated ordinance is in direct conflict with state statutory law. Where does it stop? Could electors use the initiative and referendum process to amend S.C Code. § 4-9-110 to provide that no chairman or vice-chairman will be selected, that council does not have to appoint a clerk to record proceedings, that council does not have to meet at least once a month, that meetings do not have to be conducted in accordance with the general law of the State, and that a journal of recorded minutes does not have to be kept? I think not. However, the Petitioners propose to selectively amend this state statute and usurp the authority of a county council to determine its own rules.

Regarding the posting of the agenda, the McCormick County Council follows S.C. Code Ann. § 30-4-80 which requires the posting of an agenda at least twenty-four hours prior to a meeting. The Petitioners propose to amend this state statute and substitute “seven days” for “at least twenty-four hours” as required by S.C. Code § 30-4-80.

The proposed initiated ordinance attempts to change state law and take away the authority of “council” to determine its own rules and order of business. The Respondents have no duty or obligation to hold a referendum on this proposed initiated ordinance.

The Petition for Writ of Mandamus should be denied.

CONCLUSION

This Court has before it a petition for writ of mandamus to require the Respondents to hold referendums on two separate and distinct initiated ordinances. The Court should analyze each proposed initiated ordinance separately.

The proposed initiated ordinance changing the reapportionment plan for McCormick County from Map 2 to Map 3 is in direct conflict with S.C. Code Ann. § 4-9-90 and disregards case precedent established by this Court. The Respondents have no duty or obligation to hold a referendum on this facially invalid initiated ordinance.

The proposed initiated ordinance changing the rules of McCormick County Council is inconsistent with SC Code Ann. § 4-9-110 which specifically grants to Council the authority to determine its own rules and S.C. Code § 30-4-80 which specifies the time for posting an agenda. The Respondents have no duty or obligation to hold a referendum on this proposed initiated ordinance.

For the reasons stated herein and based on the established statutory and case law of this state, the Petition for Writ of Mandamus should be denied.

Respectfully submitted,

CALLISON DORN LAW FIRM, PA

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Attorney for Respondents

May 13, 2024

DEFENDANTS EXHIBIT 3

Supreme Court Order Denying Petition for Writ of Mandamus

The Supreme Court of South Carolina

Diana Louise Shaffer and Daniel A. Higgins, Petitioners,

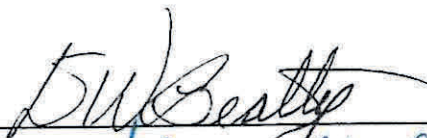

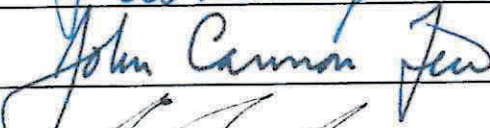
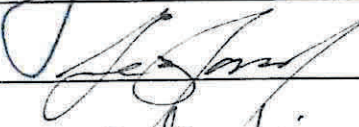

v.

McCormick County Council and McCormick County
Office of Voter Registration and Elections, Respondents.

Appellate Case No. 2024-000737

ORDER

Petitioners seek a writ of mandamus in this Court's original jurisdiction requiring the McCormick County Office of Voter Registration and Elections to place two ordinances proposed by initiative petition on the upcoming fall general election ballot. Because Petitioners have failed to make the requisite showing for a writ of mandamus, the petition is denied. *See City of Rock Hill v. Thompson*, 349 S.C. 197, 201, 563 S.E.2d 101, 102 (2002) (holding to obtain a writ of mandamus, the petitioner must show: (1) a duty of the respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy).

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
June 20, 2024

cc:

Kevin A. Hall

Matthew Todd Carroll

George P. Callison, Jr.

DEFENDANTS EXHIBIT 4

South Carolina Election Commission 2024 Election Calendar

SOUTH CAROLINA
ELECTION COMMISSION

2024 Election Calendar

This calendar is intended to be a reference to significant dates in the election year. Efforts were made to ensure calendar complies with applicable law. If in any case the calendar conflicts with state or federal law, applicable laws control. For complete information regarding dates and deadlines, be sure to consult applicable law. Calendar is subject to change.

Date	Event	Statutes
September 6	First day persons who will turn 18-years-old on or before November 5, 2024, may register to vote.	7-5-180
December 12	Deadline for candidates to withdraw and have name removed from Democratic PPP ballot.	
December 18	Deadline for SEC to provide the Democratic PPP database to county boards.	
December 20	Deadline for county boards to mail PPP absentee ballots to military and overseas citizens for Democratic PPP .	7-15-405
December 29	Deadline for SEC and county boards to create all known 2024 elections and add offices in VREMS.	
January 1, 2024	Voters may begin applying for absentee ballots for all 2024 elections.	7-15-330
January 2	Deadline for candidates to withdraw and have name removed from Republican PPP ballot.	
January 4	Deadline to register to vote for Democratic PPP . By mail applications must be postmarked by this date.	7-5-150
January 10	Deadline for county boards to mail PPP absentee ballots to military and overseas citizens for Republican PPP .	7-15-405
January 22 8:30 a.m.	Early voting for Democratic PPP begins at county voter registration offices and other early voting centers. <ul style="list-style-type: none"> • Hours: 8:30 a.m. to 6:00 p.m. • Closed Sunday, January 28. 	7-13-25
January 23 5:00 p.m.	Deadline for voters to apply for an absentee ballot for Democratic PPP .	7-15-330
January 25	Deadline to register to vote for Republican PPP . By mail applications must be postmarked by this date.	7-5-150
February 1 7:00 a.m.	Earliest possible time county boards can begin opening Democratic PPP absentee mailing envelopes and removing secrecy envelopes.	7-15-420
February 2 6:00 p.m.	Deadline to vote early in person for Democratic PPP .	7-13-25
February 3	Democratic Presidential Preference Primary . Polls open 7:00 a.m. until 7:00 p.m.	7-11-20
February 3 7:00 a.m.	Earliest possible time county boards can begin opening absentee secrecy envelopes and processing ballots for Democratic PPP .	7-15-420
February 3 7:00 p.m.	Deadline for county boards to receive absentee ballots for Democratic PPP (military and overseas voters' ballots accepted through 5:00 p.m., February 7).	7-15-420 7-15-700
February 3 After 7:00 p.m.	County boards begin reporting Democratic PPP election results locally and through scVOTES.gov.	7-13-1110 7-13-1160
February 5 5:00 p.m.	Deadline for county boards to conduct hand-count audit for Democratic PPP and provide results to SEC.	7-3- 20(D)(19)

July 23, 2024

Date	Event	Statutes
February 8 Before 1:00 p.m.	Democratic PPP deadline for county boards to: <ul style="list-style-type: none"> • Hold provisional ballot hearing. • Complete canvass of votes. • Certify results. 	7-17-510
February 8 3:00 p.m.	State Board of Canvassers meets to canvass votes and declare results of Democratic PPP .	7-17-510
February 12 8:30 a.m.	Early voting for Republican PPP begins at county voter registration offices and other early voting centers. <ul style="list-style-type: none"> • Hours: 8:30 a.m. to 6:00 p.m. • Closed Sunday, February 18 and Monday, February 19. 	7-13-25
February 13 5:00 p.m.	Deadline for voters to apply for an absentee ballot for Republican PPP .	7-15-330
February 22 7:00 a.m.	Earliest possible time county boards can begin opening Republican PPP absentee mailing envelopes and removing secrecy envelopes.	7-15-420
February 22 6:00 p.m.	Deadline to vote early in person for Republican PPP .	7-13-25
February 24	Republican Presidential Preference Primary . Polls open 7:00 a.m. until 7:00 p.m.	7-11-20
February 24 7:00 a.m.	Earliest possible time county boards can begin opening absentee secrecy envelopes and processing ballots for Republican PPP .	7-15-420
February 24 7:00 p.m.	Deadline for county boards to receive absentee ballots for Republican PPP (military and overseas voters' ballots accepted through 5:00 p.m., February 28).	7-15-420 7-15-700
February 24 After 7:00 p.m.	County boards begin reporting Republican PPP election results locally and through scVOTES.gov.	7-13-1110 7-13-1160
February 26 5:00 p.m.	Deadline for county boards to conduct hand-count audit for Republican PPP and provide results to SEC.	7-3- 20(D)(19)
February 29 Before 1:00 p.m.	Republican PPP deadline for county boards to: <ul style="list-style-type: none"> • Hold provisional ballot hearing. • Complete canvass of votes. • Certify results. 	7-17-510
February 29 3:00 p.m.	State Board of Canvassers meets to canvass votes and declare results of Republican PPP .	7-17-510
March 10	Deadline for county boards to provide early voting centers to be used for Primaries and General Election to SEC.	7-13-25
March 12	SEC provides Public Notice of Primaries template to county boards.	7-13-35
March 16 12:00 noon	Filing opens for candidates seeking political party nominations for: <ul style="list-style-type: none"> • U.S. House of Representatives • State Senate • State House of Representatives • Multi-county district offices • Solicitor (Circuits 1, 2, 4, 7, 8, 9, 10, 11, 14, 16) • Various countywide and less than countywide offices Candidates file Statement of Intention of Candidacy/Party Pledge (SICPP) and any filing fees with appropriate election office.	7-11-15 7-11-210 7-11-220 S.C. Constitution, Article IV
March 31	Deadline for political parties to hold county conventions.	7-9-70

Date	Event	Statutes
April 1 12:00 noon	Deadline for sheriff and coroner candidates to file affidavit with the county party executive committee.	17-5-130 23-11-110
April 1 12:00 noon	Candidate filing closes.	7-11-15
April 3 12:00 noon	Deadline for SEC and county boards to provide SICPP forms, filing fee receipts and filing fee checks to the appropriate state or county party executive committee.	7-11-15
April 5 12:00 noon	Deadline for political parties holding primaries to certify candidates to appropriate election office (SEC or county board).	7-13-40
April 11 12:00 noon	Deadline for county parties to file sheriff and coroner affidavits with county boards.	17-5-130 23-11-110
April 19 5:00 p.m.	Deadline for candidates to withdraw and have name removed from the Primary ballot.	
April 27	Deadline to mail Primary absentee ballots to military and overseas citizens.	7-15-650 7-15-680
April 27	Deadline for political parties to submit list of prospective poll managers for Primaries to county boards.	7-13-72
May 5	Latest possible date for parties to publicly announce date of state convention (must be publicly announced at least 10 days prior to state convention).	7-9-100
May 10 5:00 p.m.	Deadline to register to vote in person for Primaries (unless county board holds weekend hours).	7-5-150
May 12 11:59 p.m.	Deadline to register to vote online or by fax or email for Primaries.	7-5-155 7-5-185
May 13	Deadline to register to vote by mail for Primaries (must be postmarked by this date).	7-5-155
May 15	Deadline for political parties to hold state conventions.	7-9-100
May 28	Early voting for Primaries begins at county voter registration offices and other early voting centers. <ul style="list-style-type: none"> Hours: 8:30 a.m. to 5:00 p.m. (Monday – Friday). Closed weekends and state holidays. 	7-13-25
May 31 5:00 p.m.	Deadline for voters to apply for an absentee ballot for Primaries.	7-15-330
May 31 5:00 p.m.	Deadline for county boards to process voter registration applications to be included on Primary paper voter registration lists.	
June 7 5:00 p.m.	Deadline to vote early in person for Primaries.	7-13-25
June 9 7:00 a.m.	Earliest possible time county boards can begin opening absentee mailing envelopes and removing secrecy envelopes.	7-15-420
June 11	Statewide Primaries. Polls open 7:00 a.m. until 7:00 p.m.	7-13-40 7-13-60
June 11 7:00 a.m.	Earliest possible time county boards can begin opening absentee secrecy envelopes and processing ballots.	7-15-420
June 11 7:00 p.m.	Deadline for county boards to receive absentee ballots (military and overseas voters' ballots accepted through 5:00 p.m., June 12).	7-15-420 7-15-700

Date	Event	Statutes
June 11 After 7:00 p.m.	County boards begin reporting primary election results locally and through scVOTES.gov.	7-13-1110 7-13-1160
June 12 5:00 p.m.	Deadline for county boards to conduct hand-count audit and provide results to SEC.	7-3- 20(D)(19)
June 13 1:00 p.m.	Deadline for county boards to: <ul style="list-style-type: none"> • Hold provisional ballot hearing. • Complete canvass of votes. • Certify results. • Order any necessary runoffs and recounts for county-level offices 	7-17-510 7-17-610 7-17-280
June 14 12:00 noon	Deadline for county boards to: <ul style="list-style-type: none"> • Notify SEC VREMS team of any county-level runoffs and mark county-level offices for the Runoff in VREMS (do not mark state-level offices). • Update statuses of county-level candidates in VREMS (do not update state-level candidates). • Enter Primary provisional ballot data in VREMS. 	Help America Vote Act
June 14 3:00 p.m.	State Board of Canvassers meets to: <ul style="list-style-type: none"> • Complete canvassing of votes. • Certify results. • Order any necessary runoffs and recounts for state-level offices. 	7-17-510 7-17-610 7-17-280
June 14 5:00 p.m.	Deadline for voters to apply for an absentee ballot for Runoffs.	7-15-330
June 14 After SEC cert.	County boards may begin transmitting absentee ballots for Runoffs.	7-15-370
June 14	SEC generates e-pollbook files for Runoff	
June 17 12:00 noon	Deadline for filing protest of Primary with appropriate county or state party executive committee.	7-17-520 7-17-560
June 19	Early voting for Runoffs begins at county voter registration offices and other early voting centers. <ul style="list-style-type: none"> • Hours: 8:30 a.m. to 5:00 p.m. (Wednesday – Friday). 	7-13-25
June 20	Protest hearings for Primaries held by appropriate county or state party executive committee.	7-17-530 7-17-570
June 21 3:00 p.m.	Deadline for notice of appeal to the state party executive committee from decisions by county party executive committee.	7-17-540
June 21 5:00 p.m.	Deadline to vote early in person for Primary Runoffs.	7-13-25
June 22 12:00 noon	Deadline for state party executive committee to hear appeals.	7-17-550
June 23 7:00 a.m.	Earliest possible time county boards can begin opening absentee mailing envelopes and removing secrecy envelopes.	7-15-420
June 25	Primary Runoffs. Polls open 7:00 a.m. until 7:00 p.m.	7-13-40
June 25 7:00 a.m.	Earliest possible time county boards can begin opening absentee secrecy envelopes and processing ballots.	7-15-420
June 25 7:00 p.m.	Deadline for county boards to receive absentee ballots (military and overseas voters' ballots accepted through 5:00 p.m., June 26).	7-15-420 7-15-700

July 23, 2024

Date	Event	Statutes
June 25 After 7:00 p.m.	County boards begin reporting election results locally and through scVOTES.gov.	7-13-1110 7-13-1160
June 26 5:00 p.m.	Deadline for county boards to conduct hand-count audit and provide results to SEC.	7-3- 20(D)(19)
June 27 1:00 p.m.	Deadline for county boards to: <ul style="list-style-type: none"> • Hold provisional ballot hearing. • Complete canvass of votes. • Certify results. • Order any necessary runoffs and recounts for county-level offices. 	7-17-510 7-17-610 7-17-280
June 28 12:00 noon	Deadline for county boards to: <ul style="list-style-type: none"> • Notify SEC VREMS team of any county-level runoffs and mark county-level offices for the Runoff in VREMS (do not mark state-level offices). • Update statuses of county-level candidates in VREMS (do not update state-level candidates). • Enter Primary provisional ballot data in VREMS. 	Help America Vote Act
June 28 3:00 p.m.	State Board of Canvassers meets to: <ul style="list-style-type: none"> • Complete canvassing of votes. • Certify results. • Order any necessary runoffs and recounts for state-level offices. 	7-17-510 7-17-610 7-17-280
June 28	Deadline for Sheriff candidates to make fingerprints available to SLED for search of local, state, and federal files for any criminal record.	23-11-110
July 1 12:00 noon	Deadline for filing protest of Runoff with appropriate county or state party executive committee.	7-17-520 7-17-560
July 5	Protest hearings for Runoffs held by appropriate county or state party executive committee.	7-17-530 7-17-570
July 5 3:00 p.m.	Deadline for notice of appeal to the state party executive committee from decisions by county party executive committee.	7-17-540
July 6 12:00 noon	Deadline for state party executive committee to hear appeals.	7-17-550
July 8	Date on which number of signatures required for candidate petitions is determined.	7-11-70
July 15 12:00 noon	Deadline to submit petition to appropriate election official for name to be placed on General Election ballot.	7-13-351
July 25	Deadline for county board to submit election expense reimbursement request to the SEC for Runoff.	
August 6	SEC provides Public Notice of General Election template to county boards.	7-13-35
August 15 12:00 noon	<ul style="list-style-type: none"> • Deadline to check petitions and certify petition candidates. • Deadline to certify referendum questions to county boards to be placed on General Election ballot. • Deadline for political parties to certify candidates to appropriate county board or SEC. • Deadline for nonpartisan candidates to file and be certified for General Election ballot (actual filing deadlines for some non-partisan offices could differ according to local legislation). 	7-13-350 7-13-351 7-13-352 7-13-355

Date	Event	Statutes
September 3 12:00 noon	Deadline for political parties to certify candidates for President and Vice President.	7-13-350
September 6	Deadline to publish first public notice of General Election in newspaper of general circulation in county.	7-13-35
September 6 5:00 p.m.	Deadline for candidates to withdraw and have name removed from the General Election ballot.	
September 21	Deadline to mail General Election absentee ballots to UOCAVA voters (Uniformed and Overseas Citizens Absentee Voting Act).	7-15-650 7-15-680
October 4 5:00 p.m.	Deadline to register to vote in person for General Election (unless county board holds weekend hours).	7-5-150
October 6 11:59 p.m.	Deadline to register to vote online or by fax or email for General Election.	7-5-155 7-5-185
October 7	Deadline to register to vote by mail for General Election (must be postmarked by this date).	7-5-155
October 21	Early voting for General Election begins at county voter registration offices and other early voting centers. <ul style="list-style-type: none"> Hours: 8:30 a.m. to 6:00 p.m. (Monday – Saturday). Closed Sunday, October 27. 	7-13-25
October 25 5:00 p.m.	Deadline to apply for absentee ballot for General Election.	7-15-330
November 2 6:00 p.m.	Deadline to vote early in person for General Election.	7-13-25
November 3 7:00 a.m.	Earliest possible time county boards can begin opening absentee mailing envelopes and removing secrecy envelopes.	7-15-420
November 5	General Election Day. Polls open 7:00 a.m. until 7:00 p.m.	7-13-10 7-13-60
November 5 7:00 a.m.	Earliest possible time county boards can begin opening absentee secrecy envelopes and processing ballots.	7-15-420
November 5 7:00 p.m.	Deadline for county boards to receive absentee ballots (military and overseas voters' ballots accepted through 5:00 p.m., November 7).	7-15-420 7-15-700
November 5 After 7:00 p.m.	County boards begin reporting election results locally and through scVOTES.gov.	7-13-1110 7-13-1160
November 7 5:00 p.m.	Deadline for county boards to conduct hand-count audit and provide results to SEC.	7-3- 20(D)(19)
November 8 1:00 p.m.	Deadline for county boards to: <ul style="list-style-type: none"> Hold provisional ballot hearing. Complete canvass of votes. Certify results. Order any necessary recounts for county-level offices. 	7-17-10 7-17-280
November 13 12:00 noon	Deadline for filing protests of county-level offices with county boards.	7-17-30
November 14 3:00 p.m.	State Board of Canvassers meets to: <ul style="list-style-type: none"> Canvass votes. Certify results. Order any necessary recounts for state-level offices. 	7-17-220 7-17-280
November 18	Protest hearings held by county boards for countywide or less than countywide elections.	7-17-50

July 23, 2024

Date	Event	Statutes
November 19 12:00 noon	Deadline to file protests of federal, state or multi-county offices with the State Board of Canvassers.	7-17-260
November 25 12:00 noon	<ul style="list-style-type: none"> • Deadline to file appeal of county board decision to State Board of Canvassers. • Deadline for county board to submit transcript of protest hearing to the State Board of Canvassers. 	7-17-50 7-17-60
December 9 12:00 noon	Latest possible date for State Board to hear appeals. Appeals must be heard not later than noon, 14 days following filing of appeal.	7-17-70
December 14	Latest possible date for State Board to hear a protest of a federal, state or multi-county office. Protests must be heard not earlier than the fifth nor later than the 25th day following filing of protest.	7-17-270

THIRD DEFENSE

4. Defendants reallege their previous answers and allegations as if fully stated here.

5. In response to Paragraph 1 of Plaintiffs' First Amended Complaint, Defendants admit that Plaintiffs are citizens and registered voters of McCormick County who participated in an effort to have McCormick County Council adopt three initiative ordinances.

6. In response to Paragraph 2 of Plaintiffs' First Amended Complaint, Defendants admit that McCormick County Council declined to pass two of the proposed initiative ordinances and the McCormick County Office of Voter Registration and Elections did not place the proposed initiative ordinances on the ballot for the 2024 general election. Defendants deny that South Carolina law requires that the proposed imitative ordinances must be submitted to the electors. Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law and case law precedent and, therefore, are invalid. Defendants have no duty or obligation to submit the proposed invalid initiative ordinances to the electors through a ballot referendum.

7. Paragraph 3 of Plaintiffs' First Amended Complaint is a statement of law to which no response is necessary. Defendants refer to the S.C. Code §4-9-1230 and the cases and law of the State of South Carolina. Defendants deny that the interpretation of the law by Plaintiffs and/or Plaintiffs' attorneys is correct and/or that they apply to this case. Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law and case law precedent and, therefore, are invalid. Defendants have no duty or obligation to submit the proposed invalid initiative ordinances to the electors through a ballot referendum.

8. In response to Paragraph 4 of Plaintiffs' First Amended Complaint, Defendants admit that Plaintiffs seek judicial intervention but deny that Plaintiffs are entitled to the judicial intervention which they seek. Defendants deny that the interpretation of the law by Plaintiffs and/or Plaintiffs' attorneys is correct and/or that they apply to this case. Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law and case law precedent and, therefore, are invalid. Defendants have no duty or obligation to submit the proposed invalid initiative ordinances to the electors through a ballot referendum.

9. Defendants admit Paragraphs 5 and 6 of Plaintiffs' First Amended Complaint.

10. Defendants deny Paragraph 7 of Plaintiffs' First Amended Complaint as stated. McCormick County Council's authority to adopt proposed initiative ordinances applies only to proposed initiative ordinances which are not contrary to or inconsistent with "the Constitution and general law of this State,"¹ Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law and case law precedent and, therefore, are invalid. Defendants have no duty or obligation to submit the proposed invalid initiative ordinances to the electors through a ballot referendum.

11. Defendants admit Paragraph 8 of Plaintiffs' First Amended Complaint.

12. In response to Paragraph 9 of Plaintiffs' First Amended Complaint, Defendants admit that this Court has jurisdiction over the parties. Defendants deny the remaining allegations of Paragraph 9 and require strict proof thereof.

13. Defendants admit Paragraph 10 of Plaintiffs' First Amended Complaint.

14. Defendants admit Paragraphs 11-16 of Plaintiff's First Amended Complaint.

¹ S.C. Code Ann. § 4-9-25

15. In response to Paragraphs 17-21 of Plaintiffs' First Amended Complaint, Defendants admit that on February 15, 2022, McCormick County Council properly adopted Ordinance 21-07 approving Map 2 as the County's redistricting plan. The adoption of Ordinance 21-07 was in accordance with S.C. Code Ann. § 4-9-90 which vests the authority to reapportion council districts in "the county council". The McCormick County Council followed the specific requirements of S.C. Code Ann. § 4-9-90 in adopting Ordinance 21-07 and Map 2 as its reapportionment/redistricting plan.

16. In response to Paragraph 22 of Plaintiffs First Amended Complaint, Defendants admit that Plaintiffs may have "strongly disagreed" with the adoption of Map 2 as the redistricting plan for McCormick County. Defendants deny the remaining allegations of Paragraph 22.

17. In response to Paragraph 23 of Plaintiffs' First Amended Complaint, Defendants deny that S.C. Code § 4-9-1210 *et seq*, permits the adoption of the proposed initiative ordinance replacing Map 2 with Map 3 as this proposed initiative ordinance is contrary to and/or inconsistent with S.C. Code Ann. § 4-9-90 and the specific requirements for reapportionment set out therein.

18. In response to Paragraphs 24-32 of Plaintiffs' First Amended Complaint, Defendants admit that the McCormick County Council voted not to submit the proposed initiative ordinances for inclusion on the 2024 general election ballot. The remaining allegations of Paragraphs 24-32 are denied, and strict proof is required thereof. Defendants deny that the interpretation of the law by Plaintiffs and/or Plaintiffs' attorneys is correct and/or that it applies to this case. Defendants allege that the proposed initiative ordinances are contrary to and inconsistent with South Carolina statutory law and case law precedent and, therefore, are invalid. Defendants have no duty or obligation to submit the proposed initiative ordinances to the electors through a ballot referendum.

19. In response to Paragraph 33 of Plaintiffs' First Amended Complaint, Defendants reallege their previous answers and allegations as if fully stated here.

20. Defendants deny Paragraphs 34-42 of Plaintiffs' First Amended Complaint. Plaintiffs are not entitled to the requested relief under Plaintiffs' First Cause of Action (Injunctive Relief).

21. In response to Paragraph 43 of Plaintiffs' First Amended Complaint, Defendants reallege their previous answers and allegations as if fully stated here.

22. Defendants deny Paragraph 44-47 of Plaintiffs' First Amended Complaint. Plaintiffs are not entitled to the requested relief under Plaintiffs' Second Cause of Action (Declaratory Judgment).

23. Defendants deny Plaintiffs' prayer for relief.

FOURTH DEFENSE (Preemption)

24. Defendants reallege their previous answers and allegations as if fully stated here.

25. The proposed initiative ordinances are preempted by state statutory law.

26. The proposed initiative ordinance (Ordinance 23-11) changing the redistricting plan adopted February 15, 2022, from Map 2 to Map 3 is preempted by S.C. Code Ann. § 4-9-90 which 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. The population variance between defined election districts shall not exceed ten percent." Ordinance 21-07, which adopted Map 2 as the redistricting plan for McCormick County, complied with S.C. Code § 4-9-90:

a) The United States Census for 2020 was adopted by the General Assembly by 2021 Act No. 117 effective December 10, 2021 (See SC Code Ann. §1-1-715). The reapportionment plan for

McCormick County had to be adopted based on the 2020 Census within a reasonable time after December 10, 2021. McCormick County Council adopted Map 2 as the reapportionment plan by Ordinance 21-07 on February 15, 2022.

b) The plan must be adopted prior to the “next scheduled general election” following the adoption of the Census. McCormick’s plan was adopted prior to the 2022 general election - which was the “next scheduled general election”.

c) The population variance of the plan (Map 2) adopted by McCormick County does not exceed 10%.

27. The redistricting plan (Map 2) adopted by McCormick County Council follows and complies with South Carolina statutory law. The proposed initiative ordinance changing Map 2 with Map 3 does not, and cannot, comply with South Carolina statutory law.

28. The proposed initiative ordinance (Ordinance 23-10) that allows any County Council member to place items on the Council’s meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting is preempted by S.C. Code Ann. § 4-9-110 which provides that: “The council shall determine its own rules and order of business.” In addition, the proposed initiated ordinance requiring agendas for regular Council meetings to be posted at least seven days before each meeting is inconsistent with State statutory law which requires agendas to be posted at least twenty-four hours before meetings of County Council. Plaintiffs’ proposed initiative ordinance attempts to change state law and take away the authority of “council” to determine its own rules and order of business.

29. State law preempts the proposed initiative ordinances, and the Defendants have no duty or obligation to submit the proposed initiative ordinances to the electors through a ballot referendum.

30. Defendants are informed and believe that Plaintiffs action – including the Plaintiffs’ Motion for a Preliminary and Permanent Injunction - should be dismissed.

**FIFTH DEFENSE
(Laches-Waiver)**

31. Defendants reallege their previous answers and allegations as if fully stated here.

32. Ordinance 21-07 which approved Map 2 as the redistricting plan for McCormick County was adopted February 15, 2022. Plaintiffs’ petitions for initiative ordinances were not presented to Defendants until August 2023. This was over eighteen months after Plan 2 was approved by the McCormick County Council and almost a year after the 2022 general election. In fact, since the adoption of Map 2 on February 15, 2022, four elections have been held using the district lines established by Map 2 – 2022 primaries, 2022 general election, 2024 primaries, and 2024 general election. Plaintiffs were neglectful for an unreasonable and unexplained length of time in failing to pursue this matter earlier.

33. Plaintiff’s claims are barred, in whole or in part, by the doctrines of waiver and/or laches

**COUNTERCLAIM
(Declaratory Relief)**

34. Defendants reallege their previous answers and allegations as if fully stated here.

35. The initiative ordinances proposed by Plaintiffs are contrary to and inconsistent with South Carolina statutory law and case law precedent and, therefore, are invalid.

36. Pursuant to Rule 57, SCRCP, and S.C. Code Ann. §15-53-10 *et seq*, Defendants are entitled to a pre-election review of the initiative ordinances and an order declaring that Defendants have no duty or obligation to hold a referendum on the initiative ordinances which are the subject of this litigation..

WHEREFORE, Defendants McCormick County Council and McCormick County Office of Voter Registration and Elections pray for an Order of this Court:

1. Dismissing Plaintiffs' First Amended Complaint;
2. Dismissing Plaintiffs' Motion for Preliminary and Permanent Injunction;
3. Awarding Defendants the relief requested in their Counterclaim;
4. Awarding Defendants all costs and attorney fees associated with this action; and
5. Granting Defendants such other relief as is just and equitable.

CALLISON DORN LAW FIRM, PA

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Attorney for Defendants
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Bradley, South Carolina
October 2, 2025

6. Plaintiffs deny the allegations contained in the paragraph beginning with the word “Wherefore,” as Defendants are not entitled to the requested relief under Defendants’ Counterclaim (Declaratory Relief).

WHEREFORE, having fully answered the Defendants’ Answer, Affirmative Defenses, and Counterclaim, Plaintiffs respectfully requests that the Court dismiss the Defendants’ counterclaim with prejudice, issue the relief requested in the Plaintiffs’ complaint and pending motion for injunctive relief, and award Plaintiffs their costs and fees associated with this action, along with all such further relief as the Court deems just and appropriate.

Dated: November 14, 2024

WOMBLE BOND DICKINSON (US) LLP

By: /s/ Kevin A. Hall

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Counsel for Plaintiffs

STATE OF SOUTH CAROLINA)
 COUNTY OF McCORMICK)
)
 DIANE L. SHAFFER and DANIEL A.)
 HIGGINS,)
)
 Plaintiffs,)
)
 vs.)
)
 McCORMICK COUNTY COUNCIL and)
 McCORMICK COUNTY OFFICE OF)
 VOTER REGISTRATION AND)
 ELECTIONS,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 Civil Action No. 2024-CP-35-00086

**ANSWER TO DEFENDANTS’
 COUNTERCLAIM**

Plaintiffs Diane L. Shaffer and Daniel A. Higgins (collectively, “Plaintiffs”) file this Answer to the Counterclaim filed by Defendants McCormick County Council and McCormick County Office of Voter Registration and Elections (collectively, “Defendants”) as follows:

FIRST DEFENSE

1. Plaintiffs reallege their previous allegations in their Verified Complaint for Injunctive and Declaratory Relief as if fully stated here.
2. Plaintiffs reserve the right amend their Answer to Defendants’ Counterclaim under Rule 15, SCRCP.

SECOND DEFENSE

3. Responding to the allegations of Paragraph 34 of the Defendants’ Answer (Paragraph 1 of Counterclaim), Plaintiffs reallege their previous allegations and answers as if fully stated here.
4. Plaintiffs deny Paragraphs 35 and 36 of Defendants’ Answer (Paragraphs 2 and 3 of Counterclaim).

5. Plaintiffs deny the allegations contained in the paragraph beginning with the word “Wherefore,” as Defendants are not entitled to the requested relief under Defendants’ Counterclaim (Declaratory Relief).

WHEREFORE, having fully answered Defendants’ Counterclaim, Plaintiffs respectfully request that the Court dismiss the Counterclaim with prejudice, issue the relief requested in Plaintiffs’ Complaint and pending Motion for Injunctive Relief, and award Plaintiffs their costs and reasonable attorneys’ fees associated with this action as provided by South Carolina Code § 15-77-300, along with all such further relief as the Court deems just and appropriate.

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

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Counsel for Plaintiffs

October 15, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
*
COUNTY OF McCORMICK * TRANSCRIPT OF RECORD

-----X
DIANE L. SHAFFER and DANIEL A. *
HIGGINS, *
*
Plaintiffs, *
vs. * Case No. 2024-CP-35-00086
*
McCORMICK COUNTY COUNCIL and *
McCORMICK COUNTY OFFICE OF *
VOTER REGISTRATION AND *
ELECTIONS, *
*
Defendants. *
-----X

November 3, 2025

B E F O R E:

The Honorable Debra R. McCaslin, Presiding Judge

A P P E A R A N C E S:

Todd Carroll, Esq.
Attorney for the Plaintiff

George Callison, Jr., Esq.
Attorney for the Defendant

Recorded by: DCRP Court Monitor Julie Brown (BIS)

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

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E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word/unclear word
[sic]	Indicates the word is written as said
(Indiscernible)	Indicates word(s) is not known due to poor audio recording quality

P R O C E E D I N G S

(The proceedings commenced at 11:13 AM:)

1 THE COURT: All right. This was a really interesting
2 case. Let me make sure that I've got all this right. First,
3 let me call it. The case number is 2024-CP-35-00086.

4 All right. Now, I'm probably going to get some of this
5 wrong, so y'all just set me straight.

6 All right. There was a map -- three maps drawn up for
7 redistricting the County Council. There is Map 1, 2, and 3.
8 County Council -- and it's not like they drew up the map
9 themselves. They had somebody else do it for them, and they
10 looked at it and they picked Map 2.

11 Then, in this case, Shaffer says, "No, I think we ought
12 to go with Map 3" and goes around and gets signatures under
13 the ordinance that if you get -- I can't remember -- 10 or 15%
14 of the population that you can have an ordinance changed. And
15 changed -- and I mean by change, put it on the ballot to the
16 public. And they moved for an injunction. Then comes the
17 answer from the County Council.

18 Then there's a writ of mandamus that goes up to the
19 Supreme Court, and they said, "No, no, no, no, no. Send it
20 back down." And they did.

21 And somehow it found its way to be in front of me on an
22 Amended Complaint, because County Council says, "Look, y'all,
23 the election's over and done with. You have no remedy."
24
25

1 So they go back, amend their Complaint, and while they're
2 at it, they add this thing about the public agenda. They
3 want, I think, seven days before anything is published.

4 County Council says, "Look, we get to make up our own
5 rules. It's in the statute. What are y'all talking about?
6 Uh, no."

7 Basically, that's what I got out of this whole thing.
8 The Council is saying, "Y'all can't do this." You know,
9 there's a statute that says when, where, and why you have
10 redistricting. It comes every ten years. It comes with the
11 census.

12 I think the other side is saying, "Yeah, but this
13 ordinance."

14 Well, the Town's saying your ordinance doesn't trump this
15 statute that we have over here and you can't do that. If not,
16 we'd have everybody in the state wanting to be redistricted
17 all the time.

18 The ordinance -- even if I disagreed with that, the
19 ordinance itself says it's got to be within a reasonable
20 amount of time.

21 So what is reasonable once we've already passed one
22 reelection, and now they want a special election given?

23 I'd like to hear from the Shaffer side first, if I could.

24 MR. CARROLL: Yes, ma'am. Good morning, Your Honor.

25 Todd Carroll on behalf of the plaintiffs.

1 Your Honor, the most important thing I might say this
2 whole morning is that I'm joined by my colleague, Levi Wright,
3 who, like Mr. Comey (ph), passed the bar on Friday.

4 THE COURT: Oh, congratulations. Yay!

5 MR. CARROLL: This is his first time -- he gives a little
6 glow today. This is his first time in court as a -- not-sworn
7 in but --

8 THE COURT: Yeah, I had to give my law clerk Friday off
9 because I just couldn't stand to be around him if he had not
10 passed. But he did.

11 MR. CARROLL: I didn't see Mr. Wright on Friday either.
12 So...

13 THE COURT: He passed.

14 MR. CARROLL: Your Honor, you clearly have the flavor of
15 the case, but I do want to correct some of the procedural
16 history in your recitation of our timeline, because it -- the
17 way you recited it suggests some things that -- perhaps some
18 preconceived notions.

19 When the census came out, it was approved by the General
20 Assembly and then signed by the governor in 2021. That's when
21 the South Carolina Revenue and Fiscal Affairs Office, one of
22 the -- one of the --

23 THE COURT: Yeah, the RPD or something they called it.
24 They've got a little short name for it.

25 MR. CARROLL: Yeah. I'll call them the nerds of state

1 government sat down and started drawing up all these proposed
2 maps for all of the municipalities, counties, Senate
3 districts, House districts, and congressional districts.

4 For McCormick County, they produced three potential
5 redistricting maps that were presented to County Council.
6 County Council adopted Map No. 2, and promptly thereafter --
7 this isn't some (indiscernible) exercise. Promptly
8 thereafter, a critical mass of the citizenry said, "That is --
9 that's not the map that we think reflects the electorate. We
10 think Map 3 is more representative of the McCormick County--"

11 THE COURT: Like how long after?

12 MR. CARROLL: It was -- it was -- it was within -- it was
13 promptly. I don't have the exact timeline of when. It's in
14 our -- it's in our papers, and I'm going to have to, like,
15 look, but I can assure you it was -- the ordinance was passed
16 -- the collect- -- the fee -- not the fee, the signatures for
17 the petition were immediately collected in into County
18 Council, and the people said, "Hey, look, you need to adopt
19 Map 3 instead."

20 But, at that same time, they also presented two other
21 proposed ordinances. One was an ordinance to have a period
22 for public comment at County Council meetings. The other was
23 an ordinance to provide the public seven days' notice of
24 agendas. Your Honor acted like that was just kind of thrown
25 in with the Amended Complaint. It was not thrown in with the

1 Amended Complaint. It's been there.

2 THE COURT: Since the beginning.

3 MR. CARROLL: Since the beginning.

4 THE COURT: Okay.

5 MR. CARROLL: County Council then --

6 THE COURT: They passed one.

7 MR. CARROLL: They -- correct. They passed the -- the
8 one, the last for public comment. They declined to pass the
9 other two.

10 The plaintiffs and a cadre of citizens in McCormick
11 County then went to the McCormick County Election Commission
12 and said, "Well, under the statute, when the County Council
13 fails to pass a referendum that the people have brought to it,
14 it now goes back to the people to vote up or down. And the
15 people's vote is binding on the County Council." That's South
16 Carolina Code 4-9-1210 and 4-9-1230.

17 4-9-1210 puts two restrictions on what can be presented
18 to the citizenry in this regard: ordinances that involve
19 taxation and ordinances that involve appropriation.

20 The General Assembly has given this authority back to the
21 people with all issues other than those dealing with the
22 public (indiscernible). The statute identifies precisely what
23 cannot be given to the electorate for its consideration using
24 this ordinance by referendum process.

25 Now, of course, I certainly can see the Supreme Court has

1 also said, "Well, there's a third category. There's -- by
2 statute, there's taxation and appropriation." And then the
3 third category is, when the General Assembly itself has
4 created a statute that governs the whole state on the point, a
5 municipality or county -- the people of the county or
6 municipality cannot pass an ordinance by ballot box that is
7 contrary to state law. That's not present here either.

8 So in our timeline we had, County Council was presented
9 with three potential ordinances by the citizenry. It approved
10 one and refused to approve the other two. The citizenry then
11 went to the Election Commission and said, "Well, now we get to
12 vote." The Election Commission wouldn't put it on a ballot.

13 And so then we went to the Supreme Court. We didn't come
14 to the circuit court. We said, "Hey, look--" and this was in
15 the spring of 2024. We said, "Hey, look, there's a general
16 election coming up. We need an answer from the State's
17 highest court on this question of law. Do these two
18 ordinances -- do these two proposed ordinances go before the
19 electorate?"

20 The Supreme Court told us no on procedural grounds. And
21 I want to be very clear with the Court. We filed for a
22 petition -- we filed a petition for a writ of mandamus, the
23 highest writ known to law. They're super hard to get from our
24 Supreme Court. And the Supreme Court's response was:
25 Petition denied; you've not met the requirements of a writ of

1 mandamus.

2 So we then filed a Motion for Clarification. We said,
3 "Hey, look, your Order didn't give -- doesn't give much
4 explanation. Are you telling us that we're wrong on the law
5 or are you telling us that we need to go seek relief in the
6 circuit court?"

7 And, obviously, we're here now because the Supreme Court
8 actually answered our Motion for Clarification, and they said
9 this is not a substantive ruling.

10 So we then commenced these proceedings promptly, and we
11 were here before the general election of 2024. We were at the
12 Supreme Court before the 2024 general election and we were in
13 this court also before the 2024 general election.

14 But as Your Honor has noted a couple of times this
15 morning, the McCormick County roster doesn't fill up often.
16 There's not many terms of court here.

17 THE COURT: We don't have court very often in -- we're
18 lucky if we have it twice a year.

19 MR. CARROLL: That's right.

20 So we were in front of Judge Keesley, actually, I think
21 last month or maybe in September where we had this exact
22 conversation. And -- because the defendant's position in
23 September was, "Oh, you should grant summary judgment because
24 this whole thing is moot. The 2024 general election has
25 already happened."

1 And we said, "No, it's (indiscernible)." We were already
2 here in advance of that election, and it's not -- it's not the
3 plaintiff's fault that court just doesn't happen very often in
4 McCormick County. We did what we could to get in front of the
5 court, but fortunately for us, the statute says general
6 election or special election. But in either event, the
7 question shall be -- that's the language of 4-9-1230 -- the
8 question shall be submitted to the voters.

9 So we argued in front of Judge Keesley. He authorized us
10 to amend our pleading to modify our requested relief from the
11 2024 general election to having a special election on these
12 two questions.

13 So that walk through the procedural history I think is
14 important because, in Your Honor's recitation, it sounded like
15 you had this understanding that we were trying to sneak
16 something in at the last minute. Absolutely not true. We've
17 been -- we have been -- my clients have followed the statutory
18 process to a T, and they did so in a timely fashion. And then
19 we race to the Supreme Court and try to get an answer before
20 the 2024 general election. And when they told us to come back
21 to the circuit court -- to come to the circuit court, we did
22 and we did so promptly.

23 And sometimes -- sometimes the processes of justice just
24 turn a little slow and that's fine. It doesn't leave us
25 without a remedy. The remedy is right there in the statute:

1 Give us a special election.

2 I know Your Honor focused on the redistricting. That is
3 part of this and that is a big part of it. So I want to -- do
4 you want me to get into the --

5 THE COURT: Yeah. I want to know about the map. What is
6 y'all's position on the map?

7 MR. CARROLL: So our position on the map is, is that the
8 voters should be given an opportunity to vote up or down as to
9 whether Map 3 should be the district plan or the plan for how
10 to draw the district lines from McCormick County Council's
11 five seats.

12 THE COURT: And that's under 4-9-1230?

13 MR. CARROLL: Yes, ma'am. 4-9-1210 and 4-9-1230.

14 4-9-1210 tells us what subject matter is off limits for
15 such a proposal, and then 4-9-1230 tells us what to do when
16 County Council refuses to accept the proposed ordinance.

17 THE COURT: Let me hear to you on those two.

18 MR. CALLISON: Yes. May it please the Court.

19 G.P. Callison, McCormick County attorney for the defendant.

20 First of all, you asked something about when was this
21 petition presented for the -- to have a proposed referendum.
22 It was not until August 2023. That's according to Plaintiff's
23 paragraph 24 of the plaintiff's Amended Complaint. August
24 2023.

25 THE COURT: And this went in -- we're talking about the

1 2021 for the redistricting?

2 MR. CALLISON: Yes. Yes. The census was adopted, and
3 it's passed by an act of the legislature, signed by the
4 governor on December 10, 2021.

5 So, at that point on this particular issue -- of course,
6 at that point, McCormick County Council had to adopt a map
7 within a reasonable time after the census was adopted before
8 the next general election. The next general election was not
9 in 2024. It's 2022.

10 And so that plan was put into effect before the 2022
11 election. So you had 2022 elections, primary elections, 2024
12 election. They have all taken place based on Map No. 2.

13 THE COURT: And then you're telling me that the petition
14 -- and they needed the petition to even argue it that -- to
15 even argue that, "Hey, you've got the wrong map. Let's put
16 this to the public." They didn't get -- you got to have the
17 petition first to do that; right?

18 MR. CALLISON: The petition for what now? I'm trying --

19 THE COURT: The petition with all the signatures.

20 MR. CALLISON: It would -- it's really -- the structure
21 of it makes it very difficult for this to be decided on a
22 referendum process, because the statute's clear. The statute
23 is very clear. The statute says within a reasonable time
24 after the census is adopted, which was December 10, 2021.
25 McCormick adopted their plan, February 2022. It went into

1 effect, and that was before the general election in 2022.

2 I mean, that's your timeline.

3 THE COURT: And then you said their petition was August
4 of 2023.

5 MR. CALLISON: August 2023, after the election had
6 already been held.

7 Now, I would say this about the initiative referendum
8 process. It is -- it is a broad concept, but they're implied
9 limitations, not just the financial aspects mentioned by
10 Mr. Carroll. There are implied limitations. In other words,
11 the initiative petitions -- the proposed initiative ordinance
12 cannot be inconsistent with state law, with statutory law.

13 THE COURT: And the ordinance can't preempt a state
14 statute.

15 MR. CALLISON: Right. That's a preemption issue really,
16 you know, to some extent, because if an ordinance, a county --
17 a local county government ordinance is in conflict or
18 inconsistent with state law, it's void.

19 THE COURT: Right.

20 MR. CALLISON: It's invalid.

21 THE COURT: I think all of us would agree with that.

22 MR. CALLISON: That's -- that's basic law.

23 And then I've got a couple of points here on that, that
24 I'm getting ahead of myself. Well, not really, but I would
25 mention, in the Town of Hilton Head vs. Coalition of

1 Expressway Opponents, that was an initiative situation. It
2 involved a state law. It was a -- it was more detailed state
3 law than this, probably multiple sections about constructing
4 highways and that kind of thing involving the DOT.

5 But this is what the court said, and it was talking about
6 a municipality, but the law or municipality initiative and the
7 law on county initiatives is identical. It's absolutely
8 identical.

9 Here's what the Court said: "When a municipality enacts
10 an ordinance which conflicts with state law, the ordinance is
11 invalid. An electorate has no greater power to legislate than
12 the municipality itself. An initiative ordinance, which is
13 facially defective, cannot be cured by adoption by the
14 electorate."

15 So if it's facially ineffective, if it's void because it
16 conflicts with state law, it can't be remedied by adopting at
17 the ballot.

18 THE COURT: Right.

19 MR. CALLISON: Then it goes on to say -- and this is big
20 for this particular issue. It says there is no obligation to
21 place the initiative ordinance on the ballot, and there is no
22 right to obtain a vote to enact invalid legislation. That is
23 shown on my -- in my memorandum of law, which we provided to
24 you, page 4, Town of Hilton Head. Very important case.

25 Now, since we're focusing on the apportionment -- because

1 there are two aspects to this. There are two separate
2 ordinances that are being proposed. The apportionment
3 ordinance is the big one. That really is the most important
4 focus, big case on this. And that is Elliott vs. Richland
5 County. And that is cited on page 7 of my Memorandum of Law,
6 Elliott vs. Richland County, 472 S.E.2d 256.

7 That developed what is called the one-shot rule and
8 apportion -- reapportionment. I didn't realize it, you know,
9 when I started looking at this case -- I would have found it
10 eventually, but I found it through the Fiscal Affairs. They
11 had a PowerPoint presentation, their general counsel did, and
12 it said one-shot rule, Richland -- you know, Richland vs. --
13 or Elliott vs. Richland.

14 So I looked it up and here's what happened in that case.
15 Richland County adopted a plan, then it was amended. It had
16 to be approved by the Justice Department back then. It was
17 approved before the general election -- before the first
18 general election, after the decennial census was adopted. And
19 they adopted it. It was a valid ordinance, just as in this
20 case.

21 McCormick County's ordinance is a valid ordinance that
22 was adopted. Map 2, that's valid. Plaintiffs concede that.
23 They aren't attacking the validity of it.

24 THE COURT: Right.

25 MR. CALLISON: They just disagree with it.

1 But in Elliott, this is what the Court said. And this is
2 important. And they cited 4-9-90. They cited the timeline.
3 Gotta be done before the next general election.

4 Then they said this: "Appellate argues that, under
5 4-9-90, once the County Council has enacted a valid
6 reapportionment ordinance, it may not subsequently enact
7 another such ordinance until after the next regular
8 apportionment period prescribed by 4-9-90."

9 Here's what the Supreme Court says: "We agree."

10 THE COURT: Well, they made them wait to the census.

11 MR. CALLISON: Gotta wait until the 2030 census.

12 And then they confirmed it again in Elliott II. That was
13 a second come-up of the Elliott case after this first one.

14 And here's what they said again. In Elliott I, this
15 Court stated that "Plan 3 was enacted in violation of state
16 law because there was a valid reapportionment ordinance
17 already in place." You can't do it. You have to wait till
18 2030.

19 Interestingly, that Elliott decision -- the Elliott I
20 cited a California case. And we know what's going on with
21 reapportionment all over California in different places. But
22 they cited a California case, the Legislature vs. Deukmejian.
23 And in that case, that was actually -- was an initiative
24 trying to change the reapportionment plan. That was cited by
25 the Elliott case. Supreme Court cited it. And that holding

1 was that the Court can -- that redistricting -- the Court held
2 that redistricting could only take place once within the
3 ten-year period following a federal census. Period.
4 Therefore, the -- it applies not only to the County Council or
5 the legislature. It applies to the electorate.

6 The electorate -- under the Hilton Head Island case I
7 mentioned, the electorate has no power greater than the County
8 Council itself to enact an ordinance.

9 THE COURT: So, therefore, 49-12-30 doesn't apply to
10 this.

11 MR. CALLISON: It doesn't apply to it because it would be
12 contrary to state mandated law. And it's also a part of the
13 statewide uniformity. I mean, that applies -- as said, maps
14 were prepared for all the counties, all the municipalities.
15 McCormick County didn't prepare that. That came from Revenue.

16 THE COURT: Right.

17 MR. CALLISON: They prepared. They did it for all of
18 them. You couldn't have situations where, all right, we do
19 that now; we're going to change it again. Now, we're going to
20 change it again.

21 The law is very specific on that. Two points on that:
22 Number one, you've got that timetable on the 4-9-30. You've
23 got the timetable. And then you have Elliott saying, once you
24 adopt a valid reapportionment plan, which McCormick County
25 Council did, it's one shot. You don't get to do it again

1 because we're starting with the next general election. It
2 starts right then. You know? Can't come back and file
3 something in August 2023, almost a year after the election was
4 held.

5 So that's my point on that.

6 THE COURT: Right.

7 MR. CALLISON: And I can address the other ordinance.
8 It's very similar but it's very simple.

9 THE COURT: Well, you know, on the other one, as far as
10 the seven-day notice, I read -- and I know that there's
11 something in there that says County Council makes up its own
12 rules; that -- I guess the start time they want their
13 meetings. I guess it's how you want to define what rules are,
14 is the way I looked at it.

15 MR. CALLISON: Right.

16 THE COURT: I mean, you know, I think, you know, if I
17 want to start at 7:00 in the morning, I can start at 7:00 in
18 the morning if you got the consensus of the Council.

19 I think the rule is now is that they give 24 hours and
20 post it on the door? Is that -- did I read that right?

21 MR. CARROLL: So the State Freedom of Information Act
22 sets the baseline. And it says for any public body, which
23 would obviously include County Councils, that they have to
24 give at least 24 hours' notice.

25 THE COURT: And they fit in that baseline, do they not,

1 for FOIA?

2 MR. CARROLL: I don't know. But I know that FOIA --
3 there's -- you can't possibly say it's a conflict when FOIA
4 says you gotta do it no later than 24 hours, and the proposed
5 ordinance says, "Well, let's give the public a week to know
6 about County Council business." That's not -- that's not in
7 conflict in any way.

8 If they said, "Let's pass an ordinance that says you have
9 12 hours' notice," well, then you've got a conflict. But when
10 folks in Columbia say, you gotta say -- you gotta give notice
11 at least one day, and the citizenry has said, "Let's make it
12 seven so we can actually inform our County Council--"

13 THE COURT: Right. County Council has said, "One day is
14 good enough for us," is that right, under their rules?

15 MR. CARROLL: Well, that wouldn't be a rule. That would
16 be a question of open government under the State Freedom of
17 Information Act.

18 THE COURT: Okay. Let me hear from you on that.

19 MR. CALLISON: I disagree with that. It is a rule. And
20 it's incorporated in the McCormick County Rules of Procedure
21 with -- I mean, with their ordinance -- code of ordinances.

22 We adopt the Freedom of Information Act, and it
23 specifically -- I mean, it applies to 24-hour notice. We post
24 it at the location of the administration building. We put it
25 on the website. And that's what you follow. That is one of

1 their rules.

2 So the law -- it's under Section 4-9-110. It says,
3 "County Council shall make their own rules," which is what you
4 referenced.

5 But if you look at that statute, it also applies to
6 things like, the number of County Council members you have,
7 the -- you need to appoint a chairman, you need to appoint a
8 vice chairman, you need to appoint a clerk to council to take
9 notes.

10 THE COURT: It tells them what to do.

11 MR. CALLISON: It tells them what to do. I mean, it sets
12 the framework. You can't just pick out certain areas and say,
13 "Well, we don't want to enforce that. We're going to violate
14 the state statute by doing this."

15 I mean, you couldn't go in and say, "Well, we aren't
16 going to have a chairman." You know? "We're going to do an
17 ordinance where you don't have to have a clerk to council take
18 minutes." I mean, you're violating that statute. It sets the
19 scheme. And that's what we follow.

20 So, on both of these issues, we've got a conflict and
21 inconsistency with state law, which takes precedent over local
22 law. And with regard to that reapportionment again, I mean,
23 it's -- it's strong. Not only is it statutory law, but it's
24 binding case law precedent set out in Elliott. It says you
25 can't do it. You know?

1 Thank you, Your Honor.

2 MR. CARROLL: So we took a little buoyant detour. I want
3 to address the reappointment issue as well.

4 Your Honor, we cite Elliott favorably for us because, as
5 Mr. Callison, in his recitation of Elliott's background, you
6 had to listen closely because you may have missed it. But he
7 said Richland County Council passed an ordinance adopting a
8 reapportionment plan. Then they amended it. Then that got
9 approved through the Voting Rights Act preclearance process
10 with the Department of Justice back then. That was still part
11 of our national law.

12 And then, after all that had happened, after the DOJ
13 approved the second ordinance for Richland County, then they
14 tried -- the County Council tried to pass a third ordinance.
15 And that's what the Supreme Court said -- with no analysis
16 other than the two words "we agree," that that couldn't come
17 into play.

18 So we've cited Elliott as proof positive that, indeed,
19 once an ordinance has been passed that sets the apportionment,
20 that it can, in fact, be changed by County Council. And we
21 all do this in the Supreme Court, and we put it on our papers
22 to Your Honor as well.

23 Elliott comes from a weird procedural background. I
24 mean, that's -- it's not our procedural background. We don't
25 have -- we don't have County Council trying to pass three

1 reapportionment ordinances or redistricting ordinances. We
2 don't have the Voting Rights Act overlay on top of everything
3 that, back then, made a significant difference in all kinds of
4 litigation arising out of any kind of election process.

5 I don't know if Your Honor ever had to deal with any of
6 this stuff, but, at the beginning of my career, that was a
7 constant thing that I was having to deal with on behalf of
8 clients like, "Hey, does this amount to a change in the voting
9 process? If so, you have to go get pre-approved by the United
10 States Department of Justice, and then we're going to have
11 litigation about whether this is a change or not and whether
12 the preclearance was valid or not."

13 All of those issues permeate Elliott. None of them are
14 present here. What we have here is County Council adopting
15 Map 2. Enough of the citizenry sees this happening and says,
16 "We disagree. We don't think that accurately represents the
17 electorate of McCormick County."

18 So there's -- of course, there is a period of time where
19 they have to go get the signatures. You don't show up with
20 the signature until you know that there's something that you
21 want to try to change by way of a ballot initiative and a
22 referendum. You go get signatures. They then present it to
23 County Council, County Council says no, and then that sets the
24 process in motion.

25 If I -- I have a couple other points that I think are

1 very critical.

2 THE COURT: But let me ask you, though: What about the
3 statute?

4 MR. CARROLL: The statute doesn't have anything to do
5 with this. And I say that with great respect because County
6 Council did what they were supposed to do under the statute,
7 but that has nothing to do with our issue.

8 County Council -- if Elliott stands for anything, it's
9 that County Council cannot keep redrawing the district lines
10 once they've been set. And I think that's very important
11 because, if that was not the law, in addition to all the
12 procedural stuff that -- procedural baggage that Elliott had
13 with it, you'd have a scenario where County Council could see
14 an upcoming election and say, "Hey, this council member is
15 vulnerable to a challenger within his or her district. Let's
16 just redraw the lines and draw that challenger right back
17 out." That could happen. And in South Carolina, I dare say
18 it probably would happen if there was -- if the Elliott rule
19 wasn't in place, which I heard him call it a one-shot rule; I
20 would suggest that it's a two-shot rule, because, in Elliott,
21 there were two shots at the ordinance -- at the redistricting
22 ordinance.

23 But, nevertheless, if Elliott stands for anything, it's
24 that the County Council itself or Town Council itself cannot
25 redraw the district lines once they set it in place. That's

1 an entirely different question than the people themselves
2 saying, "Hey, incumbents, we see what you've done. We don't
3 think that accurately represents us, the people. So why don't
4 you put it to a vote of us, the people, and we'll tell you how
5 we think the lines should be drawn."

6 That is like -- that is representative democracy to its
7 core. And that's what 4-9-1210 is designed to get.

8 And the only things that are carved out of 4-9-1210 are
9 things that involve the public fisc (ph): taxes and
10 appropriations. Anything else is fair game as long as there's
11 not an actual statute in place.

12 THE COURT: Well, they put this -- they put this plan in
13 effect in February of 2022.

14 MR. CARROLL: Yes, ma'am.

15 THE COURT: We have an election in November of 2022.
16 Then y'all get a petition in August of 2023.

17 MR. CARROLL: Yes, ma'am.

18 THE COURT: And then we got another election that was
19 missed. I think there was one continuance. I looked it up.
20 I think there might have been one continuance. And here I am,
21 sitting at the end. As a matter of fact, tomorrow's election
22 day. It was this September, and that was only to amend the
23 Complaint, I think, by Judge Keesley, wasn't it?

24 MR. CARROLL: No. We had Mr -- I'm not faulting him for
25 this, but we had this set for a hearing a long time ago.

1 Counsel for the defendants asked for a continuance; I think it
2 was a medical issue in his family. Of course we had no issue
3 with that. But I can't -- that's not the September hearing we
4 had with Judge Keesley. That was -- the only other time this
5 was up was probably less than a year ago.

6 THE COURT: I'm looking three years down the road here.

7 MR. CALLISON: Well, Your Honor, we --

8 THE COURT: That doesn't sound too reasonable to me.

9 MR. CARROLL: Well, we've been diligent. If you look at
10 our milestones all along the way, we have been reasonable.
11 And I don't think the law punishes the citizenry.

12 Mind you, Your Honor, we're not asking the Court to make
13 Map 3 the map. We're not asking Your Honor to say --

14 THE COURT: No, you want me to put -- you want me to have
15 a special election and let people vote on it. That's -- it's
16 now three years old, and I don't know who's all on this
17 petition now. It's not fresh. It might not be representative
18 of the population of McCormick three years later.

19 MR. CARROLL: Well, Your Honor, that's up to the -- I
20 would suggest that would be up for the people to decide. If
21 it's not -- if it's no longer representative of the people,
22 then they can vote it down in the ballot box. That's what
23 4-9-1210 and 1230 provides.

24 But I -- respectfully, I don't think that my client
25 should be punished by the passage of time when we stepped on

1 the gas, we went to the state Supreme Court and said, "Please
2 help."

3 They said, "Go to the circuit court."

4 So we came to the circuit court. And the passage of time
5 has not been our fault. And I can't imagine that our legal
6 rights under 1210 and 1230 could just blow away like
7 dandelions in the wind because we've been waiting for our day
8 in court and it just -- and today is the day that it finally
9 got here.

10 THE COURT: And y'all got me.

11 MR. CARROLL: Well, Your Honor, I want to -- on this idea
12 that -- you asked me what about the statute, and I said,
13 "Well, the statute doesn't have anything to do with it."

14 I want to add, there are other statutes that I think
15 should help inform the Court's analysis of the situation.
16 This idea that, once a County Council member's district is
17 drawn following the census, that those boundaries are
18 sacrosanct and can never be touched again for a decade, it is
19 wrong as a matter of law, and I'll tell you why.

20 4-9-10 is the statute that says, "Hey, counties have
21 different forms of government that they can pick from." I
22 think there's five different forms of government: Council,
23 Council supervisor, Council manager, Council administrator,
24 and like a board of council members or something like that.
25 There's five different forms of government.

1 Each form of government can have anywhere from two,
2 three, or five, up to 12 council members. And the people can
3 change their form of government every four years. That's in
4 4-9-10, Subsection C.

5 So my point of that is, it can't possibly be true that
6 these five districts have got to stay in place until 2030 or
7 after the census of 2030 is done because the people of
8 McCormick County could have changed -- they can change their
9 form of government. Between now and 2030, they can change it
10 two times, and each time they change it, they can change the
11 number of council members. And if they do that, well, then of
12 course these boundaries, they go away.

13 So it can't possibly be true that these boundaries have
14 got to stay in place for ten years just as a matter of law.
15 That is not true. It's not true in Elliott, because we know,
16 in Elliott, the Richland County Council changed their --
17 changed their ordinance. They passed one and they changed it.

18 But under 4-9-10, subsection C, the whole form of
19 government and the number of council members can also change
20 every four years.

21 THE COURT: All right. Well, tell me this: If this --
22 y'all get the plans in December of 2021, County Council adopts
23 Map 2 in February of 2022, why does it take all the way to
24 August of 2023 to get a petition?

25 MR. CARROLL: Your Honor, I mean, it just -- it takes

1 time to go get signatures and to explain to people what's
2 going on.

3 THE COURT: Well, I mean --

4 MR. CARROLL: And there were also three ordinances, not
5 just -- not just this one. So there was -- there's,
6 obviously, a grassroots effort happening in McCormick County
7 with disparate issues and having to go get signatures. And
8 it's not -- I mean, when you have to go get 15% of the
9 citizenry's signature from the county --

10 THE COURT: But by the time you filed the suit, you've
11 missed two elections.

12 MR. CARROLL: I think we missed one.

13 THE COURT: You missed the 2022.

14 MR. CARROLL: Yes, ma'am.

15 THE COURT: And then, if you file a suit in August or get
16 your petition in August of 2023, I mean, that's just months
17 away from Election Day; right?

18 MR. CARROLL: Right, but the --

19 THE COURT: Three months, to be exact.

20 MR. CARROLL: Well, but the petition goes to County
21 Council, and they can vote up or down. I mean, this is -- it
22 would have been entirely conceivable that --

23 THE COURT: Well, I'm just telling you, it's two
24 elections gone.

25 MR. CARROLL: At the time it was handed to -- at the time

1 this process was initiated, only one general election had
2 passed. And I don't think it's fair to say, well, that
3 passage of time -- the General Assembly, when they created
4 this whole process, they, obviously, envisioned there being
5 some period of time where people could go get signatures. You
6 don't just -- they don't just show up, you know, overnight.
7 You have to go, you know, wear out the shoe leather knocking
8 on doors, explaining to people, "Hey, this is what has
9 happened. We think this should happen. If you agree, sign
10 here, and we're going to take this to County Council."

11 The General Assembly has given us, the people, this
12 power, and we're trying to exercise it. It can't happen
13 overnight.

14 They have it in to the County Council for its up-or-down
15 vote before the 2023 -- whenever there was an election in
16 2023. This was presented to them in advance of that. They
17 turned it away. We then went to the Supreme Court and said,
18 you know, "Time is of the essence. You need to help us out."

19 They sent us back to the circuit court. We came to the
20 circuit court and said, "Time is of the essence," and here we
21 are today.

22 THE COURT: Okay. Anything else?

23 MR. CALLISON: Just very briefly. I will address -- this
24 Elliott case is really important. I mean, it really is. It
25 creates the one-shot rule.

1 THE COURT: I've read the Elliott case. I read it this
2 weekend.

3 MR. CALLISON: And if you look at the procedural history,
4 we talk about -- well, he mentions that Richland County did
5 adopt two plans. Well, they adopted one plan, Map 1, and then
6 realized it was -- had an error in it. So they came back and
7 adopted Map 2 before the 1992 general election. They did all
8 of that before, in compliance with 4-9 -- they adopted it
9 before.

10 The third map that they adopted was two years later in
11 1994. They then passed a new ordinance to adopt a different
12 plan. That's the one the Court said, "No, you had a valid
13 plan. You can't--"

14 THE COURT: You gotta keep it.

15 MR. CALLISON: "You can't do it again. You just can't do
16 it again."

17 And then one quick point about 4-9-10 -- and I've --
18 that's in my argument in the memorandum -- it doesn't have
19 anything to do with reapportionment. It's got to do with the
20 number of council seats that you have, whether it's at-large
21 or by districts, the type of government you have -- county
22 administrator, county manager, county supervisor, council
23 mayor. That's what it focuses on, not reapportionment.
24 That's completely separate.

25 So I think -- I think I've argued my points, and that's

1 -- I'll have a seat.

2 THE COURT: Okay. All right. This is what I'm going to
3 do. I'm going to take it under advisement. I am going to ask
4 you-all to submit proposed orders. I think y'all are going to
5 need more than Friday.

6 MR. CALLISON: I would ask at least more than Friday
7 would be good.

8 THE COURT: I am. Y'all think 30 days is --

9 MR. CALLISON: That's fine, yes.

10 THE COURT: Is that fine?

11 MR. CALLISON: Very good.

12 THE COURT: And, listen, if you need more than 30 days,
13 I'd like to know.

14 I'll tell you, Mr. Callison, I'm really interested in
15 between -- the difference between the -- I'm telling both of
16 y'all -- the statute and the ordinance preempting state -- a
17 state statute. I'm very much interested in that argument.

18 MR. CALLISON: Okay. Yes.

19 Do you want us to send the orders directly to you or
20 through e-file system?

21 THE COURT: No. To me.

22 MR. CALLISON: Okay.

23 THE COURT: Send it to me.

24 MR. CALLISON: And copy each other.

25 THE COURT: Don't send it to my law clerk. You can copy

1 him on it, but you send it to me. I'm kind of a hands-on. I
2 like to do my own stuff.

3 And please send it in Word, because I also know that I
4 usually, once I get an Order, I am known to put my own stuff
5 in it.

6 MR. CALLISON: Okay.

7 THE COURT: Okay?

8 MR. CALLISON: Absolutely. Yes.

9 THE COURT: Thank you.

10 MR. CALLISON: Yep. Thank you, Your Honor.

11 MR. CARROLL: Thank you, Judge.

12 THE COURT: And thank y'all. Good arguments.

13 (The above hearing concluded at 11:56 AM.)
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Certificate of Transcriber

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CASE NAME: Diane Shaffer, et al., v. McCormick County Council

DATE OF HEARING: 11/3/25

RECORDING METHOD: DCRP Court Monitor Julie Brown (BIS)

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

/s/ Bobbi Fisher _____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 2/27/26

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STATE OF SOUTH CAROLINA)
 COUNTY OF McCORMICK)
 DIANE L SHAFFER and DANIEL)
 A. HIGGINS,)
 Plaintiffs,)
 vs.)
 McCORMICK COUNTY COUNCIL and)
 McCORMICK COUNTY OFFICE OF)
 VOTER REGISTRATION AND)
 ELECTIONS,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 Civil Action No. 2024-CP-35-00086

**CORRECTED NOTICE OF AND
 MOTION FOR PRELIMINARY
 AND PERMANENT INJUNCTION**

Plaintiffs Diane L. Shaffer and Daniel A. Higgins (collectively, “Plaintiffs”) hereby move for a preliminary and permanent injunction under Rule 65 of the South Carolina Rules of Civil Procedure against Defendants McCormick County Council and McCormick County Office of Voter Registration and Elections (collectively, “Defendants”), and state as follows:

1. This Motion seeks injunctive relief to compel Defendants to place Proposed Ordinances 23-10 and 23-11 on the November 2024 general election ballot for an up-or-down vote by the electorate.
2. This Motion is supported by the Verified Complaint filed together with this Motion.
3. As discussed more fully in the Verified Complaint, Plaintiffs, who are citizens and registered voters of McCormick County, South Carolina, led an initiative to have McCormick County Council pass several ordinances, including Proposed Ordinances 23-10 and 23-11.
4. Even though the McCormick County Council declined to pass Proposed Ordinances 23-10 and 23-11, the McCormick County Council and the McCormick Office of Voter Registration and Elections have and continue to refuse to place the proposed ordinances on the

ballot for the upcoming general election despite South Carolina law requiring that the referendum “shall be submitted to the electors.”

5. To date, the McCormick County Council and the McCormick County Office of Voter Registration and Elections have not complied with their statutory obligations under South Carolina Code § 4-9-1230 to present Proposed Ordinances 23-10 and 23-11 to the citizenry for an up-or-down vote during the upcoming general election.

6. As a direct and proximate result of Defendants’ refusal to put Proposed Ordinances 23-10 and 23-11 to the citizenry for an up-or-down vote, Plaintiffs are harmed and suffer an immediate and irreparable injury to their statutory rights as set forth by South Carolina Code § 4-9-1210 *et seq.*

7. Plaintiffs have no adequate remedy at law. The General Assembly has specified a single remedy when a sufficient number of voters proposes a new ordinance, but if the county council rejects that proposal, the power shifts back to the electorate to vote on the proposed ordinance, and council “shall be bound by the results of any such referendum.” S.C. Code Ann. § 4-9-1230. This statutory remedy is the only remedy available to Plaintiffs.

8. Because the McCormick County Council and the McCormick County Office of Voter Registration and Elections have refused to place Proposed Ordinances 23-10 and 23-11 on the ballot for the upcoming general election, injunctive relief is essential to enforce Plaintiffs’ right to have the proposed ordinances considered by the electorate.

9. Based on the clear and unambiguous meaning of South Carolina Code § 4-9-1230, Plaintiffs are likely to prevail on the merits in this action. Equity also demands that Defendants be permanently enjoined against continuing to violate South Carolina Code § 4-9-1230. Defendants’

refusal to follow the law unjustifiably denies Plaintiffs their statutory right – as provided for by the General Assembly – to govern themselves through the initiative and referendum process.

10. Plaintiffs are further informed and believe that time is of the essence in resolving the issues now before the Court and to avoid further irreparable harm to Plaintiffs, Plaintiffs respectfully request that the Court order immediate injunctive relief.

11. Plaintiffs are further informed and believe that granting the relief sought by Plaintiffs cannot and does not work a hardship on Defendants; thus, the balance of equities and hardship are clearly in Plaintiffs' favor.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a) Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and South Carolina Code § 4-9-1210 *et seq.*, order Defendants to place Proposed Ordinances 23-10 and 23-11 on the November 2024 general election ballot for an up-or-down vote by the electorate; and
- b) Award Plaintiffs such other and further as the Court deems necessary or proper, including all costs and attorneys' fees associated with this action.

Dated: September 16, 2024

WOMBLE BOND DICKINSON (US) LLP

By: */s/ Kevin A. Hall*

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Counsel for Plaintiffs

STATE OF SOUTH CAROLINA)
 COUNTY OF McCORMICK)
)
 DIANE L SCAFFER and DANIEL A.)
 HIGGINS,)
)
 Plaintiffs,)
)
 vs.)
)
 McCORMICK COUNTY COUNCIL and)
 McCORMICK COUNTY OFFICE OF)
 VOTER REGISTRATION AND)
 ELECTIONS,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT
 Civil Action No. 2024-CP-35-00086

**AMENDED NOTICE OF AND MOTION
 FOR PRELIMINARY AND
 PERMANENT INJUNCTION**

Plaintiffs Diane L. Shaffer and Daniel A. Higgins (collectively, “Plaintiffs”) hereby amend their pending Motion for a Preliminary and Permanent Injunction under Rule 65 of the South Carolina Rules of Civil Procedure against Defendants McCormick County Council and McCormick County Office of Voter Registration and Elections (collectively, “Defendants”), and state as follows:

1. This Motion seeks injunctive relief to compel Defendants to hold a special election, as soon as practicable, whereby the electors of McCormick County may vote on Proposed Ordinances 23-10 and 23-11 in an up-or-down vote.
2. As discussed more fully in the Verified Complaint, Plaintiffs, who are citizens and registered voters of McCormick County, South Carolina, led an initiative to have McCormick County Council pass several ordinances, including Proposed Ordinances 23-10 and 23-11.
3. Even though the McCormick County Council declined to pass Proposed Ordinances 23-10 and 23-11, the McCormick County Council and the McCormick Office of Voter Registration and Elections refused to place the proposed ordinances on the ballot for the November

2024 general election despite South Carolina law requiring that the referendum “shall be submitted to the electors.”

4. To date, the McCormick County Council and the McCormick County Office of Voter Registration and Elections have not complied with their statutory obligations under South Carolina Code § 4-9-1230, which requires Defendants to present Proposed Ordinances 23-10 and 23-11 to the citizenry for an up-or-down vote.

5. As a direct and proximate result of Defendants’ refusal to present Proposed Ordinances 23-10 and 23-11 to the McCormick County electorate, Plaintiffs are harmed and suffer an immediate and irreparable injury to their statutory rights as set forth by South Carolina Code § 4-9-1210 *et seq.*

6. Plaintiffs have no adequate remedy at law. The General Assembly has specified a single remedy when a sufficient number of voters proposes a new ordinance, but if the county council rejects that proposal, the power shifts back to the electorate to vote on the proposed ordinance, and council “shall be bound by the results of any such referendum.” S.C. Code Ann. § 4-9-1230. This statutory remedy is the only remedy available to Plaintiffs.

7. While S.C. Code Ann. § 4-9-1230 permits council to hold a special election “in its discretion,” council’s discretion is limited by the unambiguous statutory requirement that ordinances “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.” S.C. Code Ann. § 4-9-1230.

8. Because the McCormick County Council and the McCormick County Office of Voter Registration refused to timely comply with their statutory requirements under S.C. Code Ann. § 4-9-1230, an immediate special election is appropriate and essential to ensure Plaintiffs’ rights are no longer violated any more than necessary.

9. Because the McCormick County Council and the McCormick County Office of Voter Registration and Elections refused to place Proposed Ordinances 23-10 and 23-11 on the ballot for the November 2024 general election, injunctive relief is essential to prevent Defendants from continuing to ignore their obligations to hold an election and to enforce Plaintiffs' right to have the proposed ordinances considered by the electorate.

10. Based on the clear and unambiguous meaning of South Carolina Code § 4-9-1230, Plaintiffs are likely to prevail on the merits in this action. Equity also demands that Defendants be permanently enjoined against continuing to violate South Carolina Code § 4-9-1230. Defendants' refusal to follow the law unjustifiably denies Plaintiffs their statutory right – as provided by the General Assembly – to govern themselves through the initiative and referendum process.

11. Plaintiffs are further informed and believe that time is of the essence in resolving the issues now before the Court and to avoid further irreparable harm to Plaintiffs; thus, Plaintiffs respectfully request that the Court order immediate injunctive relief.

12. Granting the requested relief will not work a hardship on Defendants, as they have an independent obligation to follow the law that they are presently ignoring. Accordingly, the balance of equities and hardship are clearly in Plaintiffs' favor.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a) Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and South Carolina Code § 4-9-1210 *et seq.*, order Defendants to hold a special election, as soon as practicable, whereby the electors of McCormick County may vote on Proposed Ordinances 23-10 and 23-11 in an up-or-down vote.
- b) Award Plaintiffs such other and further relief as the Court deems necessary or proper, including all costs and attorneys' fees associated with this action.

[Signature on the following page.]

WOMBLE BOND DICKINSON (US) LLP

By: */s/ Kevin A. Hall*

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Counsel for Plaintiffs

September 2, 2025

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF MCCORMICK) ELEVENTH JUDICIAL CIRCUIT

Diane L. Shaffer and Daniel A. Higgins,)

Plaintiffs,)

vs.)

McCormick County Council and)
McCormick County Office of Voter)
Registration and Elections,)

Defendants.)

RESPONSE TO NOTICE AND)
CORRECTED NOTICE OF AND)
MOTION FOR PRELIMINARY AND)
PERMANENT INJUNCTION)

Case #2024CP3500086

Defendants McCormick County Council and McCormick County Office of Voter Registration and Elections (herein after collectively referred to as Defendants), respond to Plaintiffs' Notice and Corrected Notice of and Motion for Preliminary and Permanent Injunction (Motion) as follows:

1. All allegations of Plaintiffs' Motion not specifically admitted are denied.
2. Defendants incorporate the answers and defenses alleged in their Answer, Affirmative Defenses, and Counterclaim as if fully stated here.
3. Plaintiffs are not entitled to the requested relief and their Motion should be denied.

WHEREFORE, Defendants request that this Court:

1. Deny Plaintiffs' Motion for Preliminary and Permanent Injunction;
2. Award Defendants all costs and attorney fees associated with this action; and
3. Grant Defendants such other relief as is just and equitable.

Bradley, South Carolina
October 15, 2024

CALLISON DORN LAW FIRM, PA

s/G.P. Callison, Jr.
SC Bar #1084
Attorney for Defendants
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Bradley, SC 29819-2648
864.980.1836
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF MCCORMICK) ELEVENTH JUDICIAL CIRCUIT

Diane L. Shaffer and Daniel A. Higgins,)
)
Plaintiffs,)
vs.)
McCormick County Council and)
McCormick County Office of Voter)
Registration and Elections,)
)
Defendants.)

MOTION FOR
SUMMARY JUDGMENT AND
NOTICE OF HEARING

Case #2024CP3500086

TO: PLAINTIFFS AND ATTORNEYS, KEVIN A. HALL AND M. TODD CARROLL

MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that pursuant to Rule 56, SCRPC, the Defendants hereby move for an Order of the Court granting them Summary Judgment and dismissing Plaintiffs' Complaint, Notice and Corrected Notice of and Motion for Preliminary and Permanent Injunction, and this case as a matter of law.

This Motion is made on the following grounds:

1. There is no genuine issue as to any material fact and Defendants are entitled to judgment in their favor as a matter of law.

2. In their Complaint and Notice and Corrected Notice of and Motion for Preliminary and Permanent Injunction, the only relief requested by Plaintiffs is an order requiring Defendants to place Proposed Ordinances 23-10 and 23-11 on the November 2024 general election ballot. The 2024 general election was held on November 5, 2024, and Proposed Ordinances 23-10 and

23-11 were not included on the November 5, 2024, general election ballot. Therefore, Plaintiffs' prayer or demand for judgment for the relief to which they deem themselves entitled is moot and Plaintiffs' Complaint and Motion and this case should be dismissed as a matter of law.

This Motion is based on the pleadings filed in this case and the applicable law.

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing on Defendants' Motion for Summary Judgment has been scheduled for September 15, 2025, at 10:00 a.m. in the McCormick County Courthouse, 133 South Mine Street, McCormick, SC 29835.

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August 28, 2025

place the proposed ordinances on the ballot in the November 2024 general election. South Carolina Code § 4-9-1230 requires that “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.” (emphasis added). To date, despite the pendency of this litigation, Defendants have still yet to submit the proposed referendums to the electors of McCormick County. Because the McCormick County Council and the McCormick County Office of Voter Registration refused to timely comply with their statutory requirements under S.C. Code Ann. § 4-9-1230, an immediate special election is appropriate and essential to ensure Plaintiffs’ rights (and the rights of the entire McCormick County electorate) are no longer violated any more than necessary.

Without a special election, Plaintiffs and the entire electorate will continue to be deprived of their right to have the proposed referendums presented to the electors of McCormick County, and ultimately deprived of their right to govern themselves through the initiative-and-referendum process.

Under Rule 15(a), leave to amend a complaint “shall be freely given where justice so requires and does not prejudice the other party.” Rule 15(a), SCRPC. Rule 15(a) “strongly favors amendments and the Court is encouraged to freely grant leave to amend.” *Patton v. Miller*, 420 S.C. 471, 489, 804 S.E.2d 252, 261 (2017) (quoting *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005)).

As stated above, absent leave to amend their complaint, Plaintiffs will be unjustly deprived of their rights under S.C. Code Ann. § 4-9-1230. The period for the relief sought in Plaintiffs’ initial complaint (November 2024) has come and gone with no resolution—and not as a result of any undue delay or bad faith on behalf of Plaintiffs. *Forrester v. Smith & Steele Builders, Inc.*, 295

S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (“In the absence of a proper reason, such as bad faith, undue delay, or prejudice, a denial of leave to amend is an abuse of discretion.”).

Furthermore, Defendants will suffer no prejudice because of the amended complaint. “Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.” *Patton*, 420 S.C. at 491, 804 S.E.2d at 262–63. *See also Lee v. Bunch*, 373 S.C. 654, 661, 647 S.E.2d 197, 201 (2007) (“The prejudice that would warrant denial of a motion to amend the pleadings is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it.”).

Here, Plaintiffs’ amended complaint does not disadvantage Defendants in any way. The amended complaint does not add any new claims or raise new issues. Instead, the amended complaint merely seeks to preserve Plaintiffs’ right to present the referendums to the electors of McCormick County—a right that was deprived because of Defendants’ failure to present the referendums in the 2024 general election.

Therefore, due to the timeliness of the relief sought and in the interest of justice, Plaintiffs respectfully request that this Court enter an order granting its motion to amend its complaint.

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September 2, 2025

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McCORMICK)	
DIANE L. SHAFFER and DANIEL A. HIGGINS,)	Civil Action No. 2024-CP-35-00086
)	
Plaintiffs,)	
vs.)	
)	PLAINTIFFS’ MOTION FOR
McCORMICK COUNTY COUNCIL and)	SUMMARY JUDGMENT
McCORMICK COUNTY OFFICE OF)	
VOTER REGISTRATION AND)	
ELECTIONS,)	
)	
Defendants.)	

South Carolina law is clear: the residents of a county possess the right to shape their local government through the ordinance process. S.C. Code Ann. § 4-9-1210. When a county council fails to pass an ordinance as proposed by the county electorate—the very people county council is appointed to represent—the council *shall* submit the ordinance to the public for an up or down vote. S.C. Code Ann. § 4-9-1230.

Plaintiffs’ proposed ordinances (Proposed Ordinance 23-10 and Proposed Ordinance 23-11) do not conflict with any provision of state law. In fact, the proposed ordinances embody values essential to South Carolina law: self-government Home Rule and government transparency.

Defendants’ continued refusal to submit the proposed ordinances for a vote is against state law. Every day Defendants refuse their statutory obligations, the people of McCormick County are deprived of the rights granted to them by the South Carolina Legislature. Accordingly, the Court should grant this motion and enter judgment in Plaintiffs’ favor.

UNDISPUTED FACTS

The material facts of this case are simple and not in dispute:

1. Plaintiffs, who are citizens and registered voters of McCormick County, South Carolina, led an initiative to have McCormick County Council pass three ordinances as is more fully described below.

2. In February 2022, Defendant, McCormick County Council, approved a redistricting map to redistrict McCormick County Council's five seats. The redistricting efforts were made pursuant to South Carolina law requiring reapportionment "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." S.C. Code Ann. § 4-9-90.

3. At the time of Defendants approval, three maps were considered. Defendants eventually approved the Map 2 as the county's redistricting plan.

4. Displeased with Defendants approval of Map 2, Plaintiffs submitted three proposed ordinances to the McCormick County Office of Voter Registration and Elections in August 2023. Plaintiffs' submissions were pursuant to, and in compliance with, the procedures set forth in S.C. Code Ann. § 4-9-1220.

5. Proposed Ordinance 23-10 concerns the inclusion of items on the County Council's agenda for regular meetings and how far in advance of a meeting the agenda must be posted for the public's consumption.

6. Proposed Ordinance 23-11 would adopt the aforementioned Map 3, rather than Map 2, for the county's reapportionment plan to establish the boundaries for County Council's single-member districts.

7. In December 2023, after submission of the proposed ordinances, Defendants

approved Proposed Ordinance 23-09 but declined to approve Proposed Ordinances 23-10 and 23-11.

8. In January 2024, Defendants decided by a vote of three to two, not to submit Proposed Ordinances 23-10 and 23-11 to the electors at the 2024 general election.

9. To date, Defendants continue to refuse placing Proposed Ordinances 23-10 and 23-11 to the citizenry for an up-or-down vote during either the November 2024 general election or any subsequent elections, special or otherwise.

STANDARD OF REVIEW

Summary judgment should be issued when the evidence collectively shows that “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. A party opposing summary judgment is required to come forward with admissible evidence, and “may not rest upon the mere allegations or denials of his pleadings” to overcome a motion. *Id.* Rule 56(e). Courts agree that “[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

ARGUMENTS AND AUTHORITIES

I. The proposed ordinances are not prohibited by South Carolina Code § 4-9-1210.

Defendants generally oppose this motion on grounds that the proposed ordinances are “contrary to and inconsistent with” South Carolina law. (*See e.g.*, Def.s’ Answer ¶. at 6,7,10). But the South Carolina Code specifically rejects such a generalized argument.

Rather than the sweeping proscriptions suggested by Defendants, the General Assembly has placed only narrow restrictions on the citizenry’s ability to affect change through referenda.

The enabling statute provides that “[t]he 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.” S.C. Code Ann. § 4-9-1210 (emphasis added).

The proposed ordinances here have nothing to do with the public fisc, but instead 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 referenda, 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).

Because Plaintiffs’ proposed ordinances are outside of the narrow subjects that are statutorily prohibited from citizen-led referenda, the General Assembly has authorized them to be submitted to the electorate for a vote. The Court should grant summary judgment accordingly.

II. Nothing in the South Carolina Code implicitly prohibits these ordinances, either.

Faced with the obstacle that these ordinances are beyond the scope of Section 4-9-1210's limitations, Defendants argue that these proposed ordinances are inconsistent with other areas of South Carolina law. Those arguments fare no better.

Plaintiffs do not dispute that the Court has previously rejected ordinances-through-referenda where the proposed local ordinance would directly conflict with an existing South Carolina statute. *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).

But this case does not share any of those characteristics, as the proposed ordinances here are fully aligned with existing state law.

Proposed Ordinance 23-10 (Meeting Agendas): The first proposed ordinance concerns the inclusion of items on the County Council's agenda for regular meetings and how far in advance of a meeting the agenda must be posted for the public's consumption. In their opposition, Defendants argue that such an ordinance somehow conflicts with a single sentence in South Carolina Code § 4-9-110: "The council shall determine its own rules and order of business." (*See e.g., Def.s' Answer ¶¶* at 6,7,10). Absent from the Defendants' argument, though, is any discernible way that Proposed Ordinance 23-10 actually conflicts with this sentence.

Authorizing County Council members to place items on a meeting agenda does not change McCormick County Council’s “rules” or its “order of business.” The proposed ordinance simply allows Council members the chance to put issues on the table for the Council’s consideration in advance of 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.

Nor does this proposed ordinance conflict with any other provision of state law. In fact, the very same statute on which Defendants base their opposition specifically requires that County Council’s “meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies.” S.C. Code Ann. § 4-9-110. That “general law” is, among others, the South Carolina Freedom of Information Act, and it requires public bodies to post agendas for their regular and special meetings “*at least* twenty-four hours prior to such meetings.” *Id.* § 30-4-80(A) (emphasis added). Proposed Ordinance 23-10 would require the McCormick County Council to post an agenda a full week before its meetings—which, of course, is “at least twenty-four hours prior to such meetings.” The General Assembly has decided that twenty-four hours is the floor for public transparency, not the ceiling as suggested by Defendants.

Moreover, the proposed ordinance squares with FOIA’s overall purpose: “[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.” *Id.* § 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 the McCormick County Council to publish its meeting agendas seven days in advance of its

meetings does not conflict with FOIA; in fact, it keeps with the very spirit of the law and better promotes public transparency and accountability.

Proposed Ordinance 23-11 (Citizen-Led Redistricting): The second proposed ordinance would adopt Map 3, rather than Map 2, to establish the boundaries for County Council’s single-member districts. Both maps were generated by the South Carolina Revenue and Fiscal Affairs Office. In opposing the Plaintiffs’ request to let this question go to the citizenry for a vote, Defendants argue that Council’s decision to use Map 2 was authorized by state law. (Def.s’ Ans ¶ 15). This misses the point. Plaintiffs have not contested whether the Council’s decision was a “valid reapportionment plan” in the first place. Instead, Plaintiffs disagree with Council’s decision as a political matter and have marshaled sufficient signatures from the electorate to put the proposal for a different reapportionment plan to a vote of the entire citizenry, precisely as South Carolina Code § 4-9-1230 authorizes.

Defendants previously argued *Elliott v. Richland County*, 322 S.C. 423, 472 S.E.2d 256 (1996), forecloses Proposed Ordinance 23-11. It does no such thing.

Elliott has a tortured procedural history. There, the Richland County Council passed three different redistricting ordinances over the course of two years, the third of which came eight months after a panel of federal judges ordered the second redistricting ordinance to be submitted to the United States Department of Justice for preclearance under the Voting Rights Act, and five months after the Department of Justice issued a favorable preclearance decision. *Id.* at 424–26, 472 S.E.2d at 257–58. The third redistricting ordinance was challenged, and this Court held that the third plan was inoperable. But the Court did not provide any particular analysis, stating only:

Appellant argues that under § 4-9-90, once county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90. We agree.

Id. at 426–27, 472 S.E.2d at 258 (citing case law from California and Kansas). The remainder of the Court’s decision addressed only whether the second redistricting ordinance was an unlawful “new” apportionment plan or a lawful “amendment” to the first redistricting ordinance. *Id.* at 427, 472 S.E.2d at 258–59.

It is impossible to divorce *Elliott*’s result from the peculiar procedural history from which it arose. The Court was forced to wrangle with and bring finality to a situation where a county council was passing and re-passing redistricting ordinances with conflicting goals, each of which required the engagement of the Department of Justice. There are no such considerations here; this case simply involves a potential political disagreement between McCormick County Council and the voters it represents regarding how single-member districts should be apportioned.

But *Elliott* is inapplicable here for other, more fundamental reasons. On its face, *Elliott* prohibits a county council *itself* from consistently changing the composition of single-member voting districts. And this makes perfect sense, as—among other potential political mischief—an incumbent could always avoid viable opposition in a primary or general election by consistently “redistricting” opponents out of the incumbent’s district. Instead of allowing the governing body to keep moving the goalposts from election to election, *Elliott* rightly restricted the Richland County Council from repeatedly churning its redistricting maps.

This case presents the inverse of such concerns. 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 the citizenry. Instead, through their petition, the citizens of McCormick County are demanding the chance to make their local government more representative of the voters, which

is perhaps the purest form of democracy and political expression. Regardless of the concerns that motivated *Elliott*, they simply are not present here.

Moreover, Proposed Ordinance 23-11 is fully consistent with governing statutes and general norms of Home Rule. The General Assembly has specifically pushed to the citizenry questions about how they wish to be governed at the local level. South Carolina Code § 4-9-10(c) expressly allows the electors to petition for a referendum “to change the form of government, number of council members, or methods of election,” and it allows such changes to occur every four years.¹ In short, while *Elliott* may prevent McCormick County Council itself from reapportioning its single-member districts more than once every ten years, the General Assembly trusts the voters to select how they want to be governed at the local level, including where to draw the boundaries for electoral districts, up to once every four years.² This is the very essence of local self-government Home Rule was designed to create, and Proposed Ordinance 23-11 is consistent with, not contrary to, state law. The Court should grant summary judgment accordingly.

CONCLUSION

South Carolina law guarantees the people of McCormick County the right to shape their local government through the ordinance process. Plaintiffs’ request does not compel the County Council to adopt any change—it simply ensures that the electorate can exercise the choice the Legislature has granted them. The proposed ordinances align with core principles of state law: Home Rule and transparency. By refusing to submit these measures for a vote, Defendants deny

¹ Proposed Ordinance 23-11 is the first proposed referendum on this specific reapportionment plan, and no other referenda have been held in the past four years. Section 4-9-10(c)’s timing limit is not an impediment here.

² Nor is there anything inherently problematic or undemocratic about having different legislative districts within a single ten-year cycle. In March, a three-judge panel of the federal court directed a congressional election in South Carolina to proceed during the 2024 election cycle based on a districting map that will likely be modified before the next Census. *S.C. State Conf. of the NAACP v. Alexander*, Case No. 3:21-cv-03302-MGL-TJH-RMG, 2024 U.S. Dist. LEXIS 56366, at *8–9 (D.S.C. Mar. 28, 2024).

citizens the rights explicitly provided under §§ 4-9-1210 and 4-9-1230. This case is not about forcing policy; it is about restoring the people's voice. The Court should uphold that right, grant this motion, and enter judgment for Plaintiffs.

Respectfully submitted,

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October 24, 2025
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF MCCORMICK) ELEVENTH JUDICIAL CIRCUIT

Diane L. Shaffer and Daniel A. Higgins,)
)
Plaintiffs,)
vs.)
McCormick County Council and)
McCormick County Office of Voter)
Registration and Elections,)
)
Defendants.)

MOTION FOR
SUMMARY JUDGMENT

Case #2024CP3500086

TO: PLAINTIFFS AND ATTORNEYS, KEVIN A. HALL, AND M. TODD CARROLL

MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that pursuant to Rule 56, SCRPC, the Defendants hereby move for an Order of the Court granting them summary judgment and dismissing this case as a matter of law.

This Motion is made on the following grounds:

1. There is no genuine issue as to any material fact and Defendants are entitled to judgment in their favor as a matter of law.
2. The proposed initiated ordinance changing the reapportionment plan for McCormick County from Map 2 to Map 3 is in direct conflict with S.C. Code Ann. § 4-9-90 and disregards binding case precedent. The Defendants have no duty or obligation to hold a referendum on this facially invalid initiated ordinance.

3. The proposed initiated ordinance changing the rules of McCormick County Council is inconsistent with SC Code Ann. § 4-9-110 which specifically grants to Council the authority to determine its own rules and S.C. Code § 30-4-80 which specifies the time for posting an agenda. The Defendants have no duty or obligation to hold a referendum on this proposed initiated ordinance.

This Motion for Summary Judgment is based on the pleadings filed in this case, affidavits, and briefs to be filed concerning this matter, and the law applicable to this case. Defendant will submit a brief in support of this Motion for Summary Judgment.

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October 24, 2025

PROCEDURAL HISTORY

Plaintiffs' quest started in the South Carolina Supreme Court. On May 3, 2024, Plaintiffs filed a Petition for Writ of Mandamus requesting that the Supreme Court issue a writ of Mandamus requiring Defendants to place these proposed ordinances on the ballot for the November 2024 general election. By Order dated June 20, 2024, the Supreme Court denied Plaintiffs' Petition for Writ of Mandamus.

Having been denied by the Supreme Court, Plaintiffs filed this action on September 11, 2024, asking for Injunctive and Declaratory Relief requiring Defendants to place these proposed ordinances on the ballot for the November 2024 general election. On August 28, 2025, Defendants filed a Motion for Summary Judgment to dismiss this case as being moot. In response, on September 2, 2025, Plaintiffs filed a Motion to Amend Complaint to change the focus from the November 2024 general election to requesting that Defendants be required to hold a special election on the initiative ordinances. Plaintiffs' Motion to Amend was granted and an Amended Complaint was filed on September 17, 2025. Defendants filed an Answer, Affirmative Defenses and Counterclaim and Plaintiffs filed an Answer to Defendants' Counterclaim. The pleadings are now complete, and this case is ripe for adjudication.

INITIATIVE AND REFERENDUM

The initiative and referendum provisions related to counties and municipalities are essentially the same and the case law applicable to one is, by implication, applicable to the other. [see and compare S.C. Code Ann. § 4-9-1210, et seq (counties) and S.C. Code 5-17-10, et seq (municipalities)]. The initiative and referendum provisions of both counties and municipalities provide that the qualified electors of any county or municipality may propose any ordinance, except

an ordinance appropriating money or authorizing the levy of taxes and adopt or reject such ordinance at the polls. Any initiative ordinance may be submitted to the council by a petition signed by qualified electors equal in number to at least fifteen percent of the qualified electors. 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 therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, 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.

Though the initiative and referendum process are quite broad, there are limits.¹ As stated in an Opinion of the Attorney General dated June 24, 1993: “As broad as this statutory language appears to be, there are additional, implied limitations inherent therein. **For instance, such ordinance would be required to be constitutionally permissible and consistent with the general laws of the State**”.² In Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992) the Supreme Court considered the power of the electorate to adopt an invalid initiative ordinance.

“When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid. **An electorate has no greater power to legislate than the municipality itself. An initiative ordinance which is facially defective cannot be cured by adoption by the electorate.**” And as relates to this case, the Supreme Court, in the Town of Hilton Head Island v. Coalition of Expressway

¹ Plaintiffs do not dispute that the Supreme Court has rejected initiative ordinances which conflict with existing statutory law. See Plaintiffs Motion for Summary Judgment, p. 5, lns. 5-10 and the cases cited by Plaintiffs - *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000) and *Town of Hilton Head v. Coalition of expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992).

² Op. Att’y Gen. (S.C.A.G. June 24, 1993)

Opponents, supra, held that if an initiative ordinance is facially defective in its entirety, there is “**no obligation to place the initiative ordinance on the ballot**” and there is “**no right to obtain a vote to enact invalid legislation**... Because the initiative ordinance is facially defective in its entirety, we find that the Town has no obligation to place the initiative ordinance on the ballot. Appellants possess no right to obtain a vote to enact invalid legislation.”

ARGUMENTS

Proposed Ordinance 23-10 (Council Rules) – Plaintiffs request an order requiring Defendants to hold a referendum on an initiative ordinance that allows any County Council member to place items on the Council’s meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting.

This requested initiative ordinance is controlled by SC Code Ann. § 4-9-110:

SECTION 4-9-110. Council shall select chairman and other officers; terms of office; appointment of clerk; frequency and conduct of meetings; minutes of proceedings.

The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice-chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. The council shall appoint a clerk to record its proceedings and perform such additional duties as the council may prescribe. The council, after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public. All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies. Special meetings may be called by the chairman or a majority of the members after twenty-four hours' notice.

The council shall determine its own rules and order of business. It shall keep a journal in which shall be recorded the minutes of its proceedings which shall be open to public inspection. (emphasis added)

Pursuant to this statute, the “council” – not electors - has the authority to determine its own rules. The proposed initiative ordinance is in direct conflict with state statutory law. Could electors use the initiative and referendum process to amend S.C Code. § 4-9-110 to provide that no chairman

or vice-chairman will be selected, that council does not have to appoint a clerk to record proceedings, that council does not have to meet at least once a month, that meetings do not have to be conducted in accordance with the general law of the State, and that a journal of recorded minutes does not have to be kept? I think not. However, the Plaintiffs propose to selectively amend this state statute and usurp the authority of a county council to determine its own rules.

Regarding the posting of the agenda, the McCormick County Council follows S.C. Code Ann. § 30-4-80 which requires the posting of an agenda at least twenty-four hours prior to a meeting.

The proposed initiative ordinance attempts to change state law and take away the authority of “council” to determine its own rules and order of business. The Defendants have no duty or obligation to hold a referendum on this proposed initiative ordinance.

The Plaintiffs requested relief requiring the Defendant to hold a special election on this issue should be denied and Plaintiffs’ case dismissed.

Proposed Ordinance 23-11 - (Reapportionment) – Plaintiffs request an order requiring the Defendants to hold a referendum on an initiative ordinance amending Ordinance 21-07 adopted by the McCormick County Council on February 15, 2022, which approved and adopted Map 2 prepared by the South Carolina Revenue and Fiscal Affairs Office as the reapportionment/redistricting plan for McCormick County based on the 2020 Census. Plaintiffs do not allege that the Map 2 plan adopted by McCormick County is invalid. They just disagree with the adoption of Map 2 and want to replace it with Map 3.

State law governs this initiative ordinance and preempts local law. S.C. Code Ann. § 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. The population variance between defined election districts shall not exceed ten percent.”

Both Map 2 (adopted) and Map 3 (proposed initiative change) meet the population variance requirements. However, the initiative ordinance which proposes substituting Map 3 for Map 2 does not – and cannot – comply with the specific timetable for the adoption of a reapportionment ordinance as required by law; a timetable ignored by the Plaintiffs.

S.C. Code Ann. § 4-9-90 vests the authority to reapportion council districts in “the county council”. The McCormick County Council followed the specific requirements of S.C. Code Ann. § 4-9-90 in adopting its reapportionment plan.

1. The United States Census for 2020 was adopted by the General Assembly by 2021 Act No. 117 effective December 10, 2021 (See SC Code Ann. §1-1-715). The reapportionment plan for McCormick County had to be adopted based on the 2020 Census within a reasonable time after December 10, 2021. McCormick County adopted Map 2 as the reapportionment plan by Ordinance 21-07 on February 15, 2022.
2. The plan must be adopted prior to the “next scheduled general election” following the adoption of the Census. McCormick’s plan was adopted prior to the 2022 general election - which was the “next scheduled general election”.
3. The population variance of the plan (Map 2) adopted by McCormick County does not exceed 10%.

The reapportionment plan (Map 2) adopted by the McCormick County Council is a valid reapportionment plan.³ The council district lines were redrawn based on the adopted plan and the 2022 – 2024 elections were held based on the adopted reapportionment plan and revised district lines. Now, over

³ Plaintiffs do not contest that Map 2 adopted by McCormick County Council is a “valid reapportionment plan”. See Plaintiffs’ Motion for Summary Judgment, p. 7, Ins, 8-9.

three and one-half (3 ½) years after Map 2 was adopted as the reapportionment plan, the Plaintiffs want a referendum to be held on an initiative ordinance to adopt a different reapportionment plan simply because they disagree with the plan adopted by the McCormick County Council.

The proposed initiative ordinance conflicts with and is inconsistent with state statutory law. When a local ordinance is in direct conflict with state law, the local ordinance is void. Wilson v. City of Columbia, 434 S.C. 206, 863 S.E. 2d 456 (2021). This is a facially invalid ordinance, and the Defendants have no duty to hold a referendum on this initiative ordinance. Town of Hilton Head Island v. Coalition of Expressway Opponents, supra.

Case Precedent – In addition to being inconsistent with statutory law, the proposed initiative ordinance is contrary to binding case law precedent established by the Supreme Court. In Elliott vs Richland County, 322 S.C. 423, 472 S.E.2d 256 (1996), the Supreme Court considered whether Richland County could adopt a new reapportionment plan almost two years after having adopted a valid plan. Here is the Supreme Court’s analysis:

“DISCUSSION

S.C. Code Ann. § 4-9-90 (1986 & Supp.1994) provides that:

All 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.

Appellant argues that under § 4-9-90, once a county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90. We agree.” (emphasis added)

The Supreme Court confirmed this in Elliott 2 stating: “In Elliott I this Court stated that Plan 3 was enacted in violation of state law because there was a valid reapportionment ordinance already in place, i.e., Plan 2. Elliott v. Richland County, 327 S.C. 175, 489 S.E.2d 195 (S.C. 1997).

This language is very direct. A county council has one shot to reapportion council districts. Once a valid plan has been adopted, it cannot be changed until the next decennial census.

NOTE: The Supreme Court in *Elliott 1* cited Legislature of State of California v. Deukmejian, 34 Cal.3d 658, 194 Cal.Rptr. 781, 669 P.2d 17 (1983) in support of its ruling that “once a county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90.” In *Legislature of State of California v. Deukmejian*, supra, the California Supreme Court was faced with an initiative petition to change a valid reapportionment plan which was adopted after the federal decennial census. This is what the California Supreme Court held:

We are asked by the proponents of the initiative to create an exception to the constitutionally mandated and long-established rule that redistricting may occur only once within the 10-year period following a federal census. We conclude, based upon the principle that in the enactment of statutes the constitutional limitations that bind the Legislature apply with equal force to the people's reserved power of initiative, that such an exception cannot be justified. Therefore, the proposed initiative is constitutionally impermissible.

Plaintiffs’ analysis of *Elliott* is misdirected and incorrect. Plaintiffs focus on the “tortured procedural history” of this case but ignore the clear and direct holding by the Supreme Court:

“...once a county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90.” Of course, the apportionment period prescribed by § 4-9-90 is “...within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census”. The Supreme Court rendered this opinion – not once but twice!⁴

⁴ See Elliott 1 And Elliott 2 referenced and cited herein.

Plaintiffs then segue into an analysis of SC Code § 4-9-10 and argue that – somehow – this statute permits the electorate - by initiative ordinance - to change a reapportionment plan every four (4) years. SC Code § 4-9-10 has nothing to do with the requirements of redistricting (reapportionment) by county council. It focuses on the form of government, different number of council members, or method of election of council (single member or at large). Reapportionment is controlled by § 4-9-90 – not § 4-9-10. SC Code § 4-9-10 has no relevance to this case.

NOTE: Plaintiffs concede that “... *Elliott* may prevent McCormick County Council itself from reapportioning its single-member districts more than once every ten years.”⁵ Defendants agree that having previously adopted a valid reapportionment plan, McCormick County Council cannot adopt another plan until after the 2030 census. As stated by the Supreme Court in *Town of Hilton Head Island v. Coalition of Expressway Opponents*, supra, “**An electorate has no greater power to legislate than the municipality itself. An initiative ordinance which is facially defective cannot be cured by adoption by the electorate.**” If McCormick County Council cannot adopt a new reapportionment plan until after the 2030 census – which Plaintiffs concede - the electorate, through the initiative and referendum process, cannot do it.

The McCormick County Council adopted a valid reapportionment plan in February 2022. This plan cannot be changed until the next decennial Census (2030). The McCormick County Council cannot change the adopted plan and the electors – who have no greater authority than Council – cannot change the plan by the initiative and referendum process. The Defendants have no obligation or duty to hold a referendum on this invalid initiative ordinance.

⁵ Plaintiffs’ Motion for Summary Judgment, p. 9, lns. 8-9.

The Plaintiffs requested relief requiring the Defendant to hold a special election on this proposed initiative ordinance should be denied, the Plaintiffs' case dismissed, and the Defendants granted the requested relief in their Answer, Affirmative Defenses, and Counterclaim.

CONCLUSION

This Court has before it a request to require the Defendants to hold referendums on two separate and distinct proposed initiative ordinances. The Court should analyze each proposed initiative ordinance separately.

The proposed initiative ordinance changing the rules of McCormick County Council is inconsistent with SC Code Ann. § 4-9-110 which specifically grants to Council the authority to determine its own rules and S.C. Code § 30-4-80 which specifies the time for posting an agenda. The Defendants have no duty or obligation to hold a referendum on this proposed initiative ordinance.

The proposed initiative ordinance changing the reapportionment plan for McCormick County from Map 2 to Map 3 is in direct conflict with S.C. Code Ann. § 4-9-90 and disregards binding case precedent established by the Supreme Court. The Defendants have no duty or obligation to hold a referendum on this facially invalid proposed initiative ordinance.

For the reasons stated herein and based on the established statutory and case law of this state, Plaintiffs case should be dismissed, and Defendants granted the relief requested in their Answer, Affirmative Defenses, and Counterclaim. Defendants request that they be granted judgment in their favor.

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have a justiciable claim until January 16, 2024, when the McCormick County Council voted not to submit Proposed Ordinances 23-10 and 23-11 to the electorate. (*Id.* ¶ 29.) Shortly after Council’s refusal, Plaintiffs wrote to Defendants in March 2024, demanding that Defendants place the proposed ordinance on the 2024 general-election ballot. (*Id.* ¶ 30.) When Defendants again refused, Plaintiffs sought relief from the South Carolina Supreme Court.

Recognizing the urgency of the issue, the Plaintiffs filed a Petition for Writ of Mandamus seeking to require Defendants to place the proposed ordinances on the November 2024 general election ballot. After the petition was denied without prejudice on procedural grounds, the Plaintiffs promptly filed this action in September 2024—still before the 2024 general election.

If the procedural posture of this case shows anything, it is this: the Plaintiffs have, at all times, diligently and reasonably pursued their rights under the law. Dismissing the Plaintiffs’ claims on the theory that the Court’s relief will not be issued “within a reasonable time” penalizes the Plaintiffs—and ultimately the people of McCormick County—for the Defendants’ longstanding violation of the law.

Nor did the passage of the November 2024 general election extinguish Plaintiffs’ rights. South Carolina Code § 4-9-1230 expressly provides that initiatives can be approved or rejected during a special election, which is precisely the remedy that Judge Keesley recently authorized the Plaintiffs to include in an amendment to their pleading.

At bottom, Section 4-9-90’s instruction to county councils to reapportion districts “within a reasonable time prior to the next scheduled general election” does not excuse the Defendants from complying with their obligations in S.C. Code Ann. § 4-9-1230. “Reasonableness” is not stifling the lawfully initiated measures of the county public; “reasonableness” is adherence to the law.

[Signature on the following page.]

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STATE OF SOUTH CAROLINA
COUNTY OF McCORMICK

Diane L. Shaffer and Daniel A. Higgins,

Plaintiffs,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No. 2024-CP-35-00086

PLAINTIFFS' RULE 59 MOTION FOR
RECONSIDERATION

Pursuant to Rule 59(e), SCRCP, Plaintiffs Diane L. Shaffer and Daniel A. Higgins (collectively "Plaintiffs") move the Court to reconsider and vacate its January 6, 2026, order granting Defendants' summary judgment motion and denying Plaintiffs' summary judgment motion.

BACKGROUND

This case challenges Defendants' refusal to submit two duly initiated ordinances to the McCormick County electorate pursuant to S.C. Code Ann. §§ 4-9-1210–1230: (1) Proposed Ordinance 23-10, which would allow any council member to place items on the Council's meeting agenda and would require agendas for regular meetings to be posted at least seven days in advance; and (2) Proposed Ordinance 23-11, which would substitute the map used for the County's reapportionment plan.

On September 11, 2024, Plaintiffs filed their first complaint in this Court.¹ Then, on September 17, 2025, Plaintiffs filed their amended complaint, requesting a special election—as

¹ Prior to filing their action in the Circuit Court, Plaintiffs—recognizing the urgency of their request—sought relief in this state's highest court through a Petition for Writ of Mandamus.

permitted by S.C. Code Ann. § 4-9-1230 (“The council may, in its discretion, and if no regular election is to be held within such period, provide for a special election.) Defendants filed their amended answer on October 2, 2025. The parties agreed that this dispute involves no questions of fact and should therefore should be determined on cross-motions for summary judgment. Both parties promptly filed their respective motions for summary judgment. Oral arguments on the motions were heard by the honorable Judge McCaslin in the McCormick County Courthouse on November 3, 2025.

After the hearing, Plaintiffs filed a Notice of Supplemental Authority on December 11, 2025, directing the Court to a recent supreme court decision, *Abbott v. League of United Latin American Citizens No. 25A608*, 607 U.S. ___, 2025 WL 3484863 (U.S. Dec. 4, 2025), which Plaintiffs contend is influential to the outcome of this case. Defendants submitted their response to Plaintiffs’ supplemental authority on January 5, 2026.

On January 6, 2026, the Court entered an order granting Defendants motion for summary judgment, denying Plaintiffs’ motion, dismissing this case with prejudice, and declaring that Defendants have no duty to conduct a special election on Proposed Ordinances 23-10 and 23-11.

DISCUSSION

Rule 59(e), SCRCP, provides that “[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” “A motion under Rule 59(e) long has been viewed as [a] ‘motion for reconsideration’ despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider

On June 20, 2024, the Supreme Court denied Plaintiffs’ Petition on procedural grounds, leaving the merits of Plaintiffs’ claim unresolved.

its decision even if it means rehashing all or part of an argument previously presented.” *Elam v. S.C. Dep’t of Transp*, 361 S.C. 9, 21, 602 S.E.2d 772, 778–79 (2004).

The Court’s January 6, 2026, Order contains several errors of law that independently and collectively warrant reconsideration under Rule 59(e):

1. The Court erred in construing S.C. Code Ann. §§ 4-9-1210–1230 to permit Defendants to refuse submission of duly initiated ordinances to the electorate, despite the statute’s mandatory language.
2. The Court erred as a matter of law in holding that Proposed Ordinances 23-10 and 23-11 are preempted by state law, where no South Carolina statute expressly or impliedly prohibits the subject matter of either ordinance.
3. The Court erred by extending *Elliott v. Richland County*, 322 S.C. 423, 472 S.E.2d 256 (1996), beyond its holding and applying it to citizen-initiated action, even though *Elliott* addressed only repeated county-council-initiated reapportionment.
4. The Court erred in concluding that the passage of the November 2024 general election extinguished Plaintiffs’ statutory rights, contrary to the express special-election provision in S.C. Code Ann. § 4-9-1230.

Each of these errors presents a pure question of law and warrants reconsideration to prevent manifest injustice.

Rule 59(e), SCRCPP, permits a court to alter or amend a judgment to correct manifest errors of law or to prevent manifest injustice. Plaintiffs seek reconsideration to correct manifest errors of law in the Court’s January 6, 2026 Order, to prevent manifest injustice arising from the misapplication of governing statutes, and to ensure that the initiative and referendum rights expressly granted by the General Assembly are given full legal effect.

Plaintiffs respectfully request that the Court reconsider its decision. For all the reasons stated in Plaintiffs’ motion for summary judgment, reply in support, notice of supplemental authority, and supporting papers—which are incorporated in full herein—Plaintiffs’ motion for summary judgment should be granted, and Defendants’ motion should be dismissed with prejudice.

I. THE COURT ERRED AS A MATTER OF LAW IN HOLDING THAT PROPOSED ORDINANCES 23-10 AND 23-11 ARE PREEMPTED BY STATE LAW.

A. The Court Erred in Concluding That State Law Expressly Prohibits the Proposed Ordinances.

The South Carolina Legislature has granted county electorates the right to organize and direct their own governing body. *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.”) The mechanism for the electorate’s power is the initiative and referendum process. “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.” S.C. Code Ann. § 4-9-1210.

The text of S.C. Code Ann. § 4-9-1210 only restricts the public’s authority to petition for a referendum in two ways: “appropriating money [and] authorizing the levy of taxes.” *Id.* Neither situation is applicable here. Because Plaintiffs’ proposed ordinances are outside the narrow scope of subjects that are statutorily prohibited from citizen-led referenda, the General Assembly has authorized them to be submitted to the electorate for a vote.

B. The Court Erred in Concluding That the Proposed Ordinances Are Implicitly Preempted by State Law.

Plaintiffs do not contend that the initiative and referendum power is unlimited. South Carolina courts have properly invalidated voter-initiated ordinances where the measure would *directly conflict* with an existing state statute. *See, e.g., I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000); *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992). But those cases turn on an actual statutory conflict—not on generalized policy concerns or implied limitations untethered from the statutory text. Whether such a conflict exists here is a pure question of statutory construction, and the Court’s contrary conclusion presents a legal issue reviewed *de novo* on appeal.

As discussed further below, Proposed Referendums 23-10 and 23-11 do not conflict with any existing state law. In fact, Plaintiffs’ proposed ordinances 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 (S.C. 2010). Unlike the city ordinance the Court considered in *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456 (S.C. 2021)—a City 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.

The two proposed ordinance in question are fully aligned with core, democratic principles deeply rooted in South Carolina law: Home Rule and government transparency. Because neither ordinance conflicts with State law, expressly or impliedly, they are not preempted and should be the subject of a special election.

II. THE COURT ERRED IN HOLDING THAT PROPOSED ORDINANCE 23-10 IS PREEMPTED BY S.C. CODE ANN. § 4-9-110.

A. Proposed Ordinance 23-10 does not affect County Council’s “rules” or “orders of business.”

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, Defendants argue that Proposed Ordinance 23-10—which would affect agenda setting *before* a council meetings—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 “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.

Because Proposed Ordinance 23-10 does not regulate any internal “rule” or “order of business” of McCormick County Council, it is not preempted by S.C. Code Ann. § 4-9-110. Nor does the ordinance conflict with any other provision of state law; accordingly, it is a proper subject for the initiative and referendum process. By conflating agenda notice and public-access requirements with internal parliamentary governance, the Court expanded § 4-9-110 beyond its text and legislative purpose, resulting in a manifest error of law.

B. Proposed Ordinance 23-10 does not seek to change any state law.

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). The General Assembly has decided that twenty-four hours is the floor for public transparency, not the ceiling.

Proposed Ordinance 23-10 does not seek to change S.C. Code § 30-4-80; it enforces it. The Legislature’s use of the term “at least” clearly implies that it did not expect the twenty-four-hour requirement to be unchangeable. If the Legislature had simply stated that agenda “must be posted twenty-four hours prior to such meetings,” then there would be no question that Proposed Ordinance 23-10 contradicts with state law. But that is not the language of the statute. “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (internal quotation omitted).

Again, Proposed Ordinance 23-10 does not seek to change state law, it simply seeks to enforce the county electorate’s statutorily endowed authority to determine how its county council will govern.

III. THE COURT ERRED IN HOLDING THAT S.C. CODE ANN. § 4-9-90 PRECLUDES SUBMISSION OF PROPOSED ORDINANCE 23-11 TO THE ELECTORATE.

A. 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 sections 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 statutory rights. Defendants’ reading misplaces the statute’s focus and would defeat the democratic values inherent to South Carolina laws by allowing a council to run out the clock on its legal obligations.

The redistricting process and the initiative and referendum process are intended to work in tandem, not to be mutually exclusive. Evidence of the complimentary nature of the statutes can be seen by the relief available for the electorate in South Carolina Code § 4-9-1230. When a general election is not scheduled within a year of council’s decision to not adopt a proposed ordinance, council must hold a special election. If the electorate’s rights under South Carolina Code § 4-9-1230 were limited by § 4-9-90’s “reasonable time” language, then the special election provision would be meritless. In other words, the fact that the legislature provided relief in the form of a special election shows that it contemplated that the initiative and referendum process might result in action outside the normal electoral cycle.

Nothing in § 4-9-90 purports to limit or displace the initiative and referendum authority expressly preserved in §§ 4-9-1210–1230. The 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.

B. Similarly, *Elliott* restricts only County Council-initiated redistricting and is inapplicable here.

The Court further erred by extending *Elliott v. Richland County*, 322 S.C. 423, 472 S.E.2d 256 (1996) beyond its holding and factual context. *Elliott* addressed repeated, discretionary reapportionment initiated by a county council itself—not a single, voter-initiated referendum

invoking the electorate’s independent statutory authority. Defendants allege that *Elliott* established a “one-shot rule” for reapportioning council districts. *Elliott* did no such thing.

In *Elliott*, the Supreme Court found that the *third* reapportionment plan enacted by Richland County violated S.C. Code Ann § 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 § 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 (1996).

Granted, the scope of the second reapportionment plan in *Elliott* was more limited than the third. But the fact remains, 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.

But *Elliott* is inapplicable here for other, more fundamental reasons. On its face, *Elliott* prohibits a county council itself from consistently changing the composition of single-member voting districts. And this makes perfect sense, as—among other potential political mischief—an incumbent could always avoid viable opposition in a primary or general election by consistently “redistricting” opponents out of the incumbent’s district. Rather than allowing the governing body to keep moving the goalposts from election to election, *Elliott* rightly restricted the Richland County Council from repeatedly churning its redistricting maps.

This case presents the inverse of such concerns. 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 the citizenry. Instead, through their petition, the citizens of McCormick County are demanding the chance to make their local government more representative of the voters, which is perhaps the purest form of democracy and political expression. Regardless of the concerns that motivated *Elliott*, they simply are not present here.

Reading *Elliott* to apply in this context would effectively insulate county councils from electoral review of their reapportionment decisions and deprive the county electorate of any meaningful mechanism to challenge those decisions through the initiative process. Such a reading nullifies the initiative rights expressly granted by the General Assembly and cannot be reconciled with the statutory framework governing citizen-initiated ordinances.

IV. THE COURT ERRED IN CONCLUDING THAT THE PASSAGE OF THE NOVEMBER 2024 ELECTION EXTINGUISHED PLAINTIFFS' STATUTORY RIGHTS.

Finally, the passage of the November 2024 general election did not extinguish Plaintiffs' statutory rights. 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 Plaintiffs' claims or diminish the availability of relief. To the contrary, a vote on Plaintiffs' proposed reapportionment map would govern all subsequent county council elections until the next decennial census. By concluding otherwise, the 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. *See e.g., State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010).

CONCLUSION

Reconsideration is warranted to correct manifest errors of law that, if left unaddressed, would undermine the initiative and referendum framework enacted by the General Assembly and deny the McCormick County electorate the rights expressly conferred by statute. Neither Proposed Ordinance 23-10 nor Proposed Ordinance 23-11 conflicts with, or is preempted by, any provision of state law. Because Plaintiffs satisfied the statutory requirements for initiating both measures, Defendants are legally obligated to submit them to the electorate. Plaintiffs therefore respectfully request that the Court reconsider and vacate its January 6, 2026 Order and require Defendants to conduct a special election, as authorized by S.C. Code Ann. § 4-9-1230.

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<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF MCCORMICK</p> <p>Diane L. Shaffer and Daniel A. Higgins,</p> <p style="padding-left: 40px;">Plaintiffs,</p> <p>vs.</p> <p>McCormick County Council and</p> <p>McCormick County Office of Voter</p> <p>Registration and Elections,</p> <p style="padding-left: 40px;">Defendants.</p> <hr style="width: 40%; margin-left: 0;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>IN THE COURT OF COMMON PLEAS</p> <p>ELEVENTH JUDICIAL CIRCUIT</p> <p>RESPONSE TO PLAINTIFFS’ RULE 59</p> <p>MOTION FOR RECONSIDERATION</p> <p>CASE #2024CP3500086</p>
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In responding to Plaintiffs’ Motion for Reconsideration, Defendants incorporate the arguments raised in their Answer and Counterclaim, oral argument on November 3, 2025, Memorandum/Briefs, Motion for Summary Judgment, Response to Additional Authority, and any other documents submitted in support of Defendants’ case.

Plaintiffs allege that the Court’s Order of January 6, 2026, finding in favor of Defendants, contains these errors of law:

1. The Court erred in construing S.C. Code Ann. §§ 4-9-1210–1230 to permit Defendants to refuse submission of duly initiated ordinances to the electorate, despite the statute’s mandatory language.

RESPONSE: S.C. Code Ann. §§ 4-9-1210–1230 is not mandatory. An initiative ordinance must comply with South Carolina law. This issue was fully argued and briefed. The Court made its decision. Nothing has changed. There is no error of law. The Court’s Order should stand, and Plaintiffs’ Motion for Reconsideration denied.

2. The Court erred as a matter of law in holding that Proposed Ordinances 23-10 and 23-11 are preempted by state law, where no South Carolina statute expressly or impliedly prohibits the subject matter of either ordinance.

RESPONSE: The Court found that the proposed initiative Ordinance 23-10 (Council Rules) changing the rules of McCormick County Council is inconsistent with SC Code Ann. § 4-9-110 and S.C. Code § 30-4-80. The proposed initiative Ordinance 23-11 (Reapportionment) is in direct conflict with S.C. Code Ann. § 4-9 90 and disregards binding case law precedent established by the South Carolina Supreme Court. These issues were fully argued and briefed. The Court made its decision. Nothing has changed. There is no error of law. The Court’s Order should stand, and Plaintiffs’ Motion for Reconsideration denied.

3. The Court erred by extending *Elliott v. Richland County*, 322 S.C. 423, 472 S.E.2d 256 (1996), beyond its holding and applying it to citizen-initiated action, even though *Elliott* addressed only repeated county-council-initiated reapportionment.

RESPONSE: This issue was fully argued and briefed. The Court made its decision. Nothing has changed. There is no error of law. The Court’s Order should stand, and Plaintiffs’ Motion for Reconsideration denied. ¹

4. The Court erred in concluding that the passage of the November 2024 general election extinguished Plaintiffs’ statutory rights, contrary to the express special-election provision in S.C. Code Ann. § 4-9-1230.

¹ Plaintiffs overlook *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992) which expressly held: “**An electorate has no greater power to legislate than the municipality itself. An initiative ordinance which is facially defective cannot be cured by adoption by the electorate.**” Therefore, there is “**no obligation to place the initiative ordinance on the ballot**”

RESPONSE: This is not what the Court ruled. The Court found that “Defendants have no duty to hold a special election referendum on the proposed initiative ordinances.”

CONCLUSION

Plaintiffs Motion for Reconsideration simply rehashes the same arguments previously presented. This case has been fully argued and briefed. There are no errors of law which justify reconsideration of the Court’s Order of January 6, 2026. Plaintiffs Motion for Reconsideration should be denied and the Court’s Order reaffirmed.

Respectfully submitted,

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January 19, 2026

STATE OF SOUTH CAROLINA
COUNTY OF MCCORMICK

DIANE L. SHAFFER and DANIEL A.
HIGGINS,

Plaintiffs,

vs.

MCCORMICK COUNTY COUNCIL AND
MCCORMICK COUNTY OFFICE OF
VOTER REGISTRATION and
ELECTIONS,

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No. 2024-CP-35-00086

NOTICE OF ADDITIONAL AUTHORITY

Plaintiffs respectfully notify the Court of additional authority issued on December 4, 2025, by the United States Supreme Court in *Abbott v. League of United Latin American Citizens* No. 25A608, 607 U.S. ___, 2025 WL 3484863 (U.S. Dec. 4, 2025). A copy of the opinion is attached.

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 this year, 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 in favor of 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 Defendants 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 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 has 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."

The Plaintiffs believe that this new authority supports entry of their proposed order in this matter. It directly rebuts the Defendants' argument that the citizens of McCormick County are legally barred from invoking the legislation-via-referendum process created by the General Assembly to potentially redraw the electoral boundaries of their representatives on County Council (even though those same citizens can use the very same legislation-via-referendum process to change their entire form of county government every four years if they so desire).

Respectfully submitted,

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December 11, 2025

SUPREME COURT OF THE UNITED STATES

No. 25A608

GREG ABBOTT, ET AL. *v.* LEAGUE OF UNITED LATIN
AMERICAN CITIZENS, ET AL.

ON APPLICATION FOR STAY

[December 4, 2025]

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. Texas adopted the first new map, then California responded with its own map for the stated purpose of counteracting what Texas had done. North Carolina followed suit, and other States are also considering new maps.

Respondents in this case challenged the new Texas map, contending that the legislature's motive was predominantly racial. A divided three-judge District Court agreed and enjoined the use of the new map in the 2026 elections. With the 2026 campaign underway, the State of Texas and several of its officials applied to this Court for a stay.

Based on our preliminary evaluation of this case, Texas satisfies the traditional criteria for interim relief. See *Indiana State Police Pension Trust v. Chrysler LLC*, 556 U. S. 960 (2009) (*per curiam*). Texas is likely to succeed on the merits of its claim that the District Court committed at least two serious errors. First, the District Court failed to honor the presumption of legislative good faith by construing ambiguous direct and circumstantial evidence against the legislature. *Contra, Alexander v. South Carolina State Conference of the NAACP*, 602 U. S. 1, 10 (2024). Second, the District Court failed to draw a dispositive or near-dispositive adverse inference against respondents even

though they did not produce a viable alternative map that met the State’s avowedly partisan goals. *Contra, id.*, at 34–35.

Texas has also made a strong showing of irreparable harm and that the equities and public interest favor it. “This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican National Committee v. Democratic National Committee*, 589 U. S. 423, 424 (2020) (*per curiam*). The District Court violated that rule here. The District Court improperly inserted itself into an active primary campaign, causing much confusion and upsetting the delicate federal-state balance in elections.

The application for stay presented to JUSTICE ALITO and by him referred to the Court is granted. The November 18, 2025 order entered by the United States District Court for the Western District of Texas, case No. 3:21–cv–259, is stayed pending the timely filing of an appeal in this Court. Should a notice of appeal and jurisdictional statement be timely filed, this order shall remain in effect pending this Court’s action on the appeal. If the appeal is dismissed, or the judgment is affirmed, this order will terminate automatically. In the event that jurisdiction is noted or postponed, this order will remain in effect pending the sending down of the judgment of this Court.

JUSTICE ALITO, with whom JUSTICE THOMAS and JUSTICE GORSUCH join, concurring in the grant of the application for stay.

I join the order issued by the Court. Texas needs certainty on which map will govern the 2026 midterm elections, so I will not delay the Court’s order by writing a detailed response to each of the dissent’s arguments. Instead, I offer two short points which for me are decisive.

First, the dissent does not dispute—because it is indisputable—that the impetus for the adoption of the Texas

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map (like the map subsequently adopted in California) was partisan advantage pure and simple.

Second, the clear-error standard of review does not apply here because the “trial court base[d] its findings upon a mistaken impression of applicable legal principles.” *Alexander v. South Carolina State Conference of the NAACP*, 602 U. S. 1, 18 (2024). Because of the correlation between race and partisan preference, litigants can easily use claims of racial gerrymandering for partisan ends. *Cooper v. Harris*, 581 U. S. 285, 335 (2017) (ALITO, J., concurring in judgment in part and dissenting in part). To prevent this, our precedents place the burden on the challengers “to disentangle race and politics.” *Alexander*, 602 U. S., at 6. Thus, when the asserted reason for a map is political, it is critical for challengers to produce an alternative map that serves the State’s allegedly partisan aim just as well as the map the State adopted. *Id.*, at 34; *Easley v. Cromartie*, 532 U. S. 234, 258 (2001). Although respondents’ experts could have easily produced such a map if that were possible, they did not, giving rise to a strong inference that the State’s map was indeed based on partisanship, not race. Neither the duration of the District Court’s hearing nor the length of its majority opinion provides an excuse for failing to apply the correct legal standards as set out clearly in our case law.

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SUPREME COURT OF THE UNITED STATES

No. 25A608

GREG ABBOTT, ET AL. *v.* LEAGUE OF UNITED LATIN
AMERICAN CITIZENS, ET AL.

ON APPLICATION FOR STAY

[December 4, 2025]

JUSTICE KAGAN, with whom JUSTICE SOTOMAYOR and JUSTICE JACKSON join, dissenting from the grant of the application for stay.

Over the course of three months, a three-judge District Court in Texas undertook to resolve the factual dispute at issue in this application: In enacting an electoral map slanted toward Republicans, did Texas predominantly use race to draw its new district lines? Or said otherwise, did Texas accomplish its partisan objectives by means of a racial gerrymander? The District Court conducted a nine-day hearing, involving the testimony of nearly two dozen witnesses and the introduction of thousands of exhibits. It sifted through the resulting factual record, spanning some 3,000 pages. It assessed the credibility of each of the witnesses it had seen and heard in the courtroom. And after considering all the evidence, it held that the answer was clear. Texas largely divided its citizens along racial lines to create its new pro-Republican House map, in violation of the Constitution's Fourteenth and Fifteenth Amendments. The court issued a 160-page opinion recounting in detail its factual findings.

Yet this Court reverses that judgment based on its perusal, over a holiday weekend, of a cold paper record. We are a higher court than the District Court, but we are not a better one when it comes to making such a fact-based decision. That is why we are supposed to use a clear-error

standard of review—why we are supposed to uphold the District Court’s decision that race-based line-drawing occurred (even if we would have ruled differently) so long as it is plausible. Without so much as a word about that standard, this Court today announces that Texas may run next year’s elections with a map the District Court found to have violated all our oft-repeated strictures about the use of race in districting. Today’s order disrespects the work of a District Court that did everything one could ask to carry out its charge—that put aside every consideration except getting the issue before it right. And today’s order disserves the millions of Texans whom the District Court found were assigned to their new districts based on their race. Because this Court’s precedents and our Constitution demand better, I respectfully dissent.

I

Recall the state of the world last spring, before mid-decade, overtly partisan redistricting (in both red and blue States) became *de rigueur*. In those months, President Trump and his political team urged Texas officials to redraw their House map, with the goal of creating more Republican seats and protecting that party’s vulnerable majority. The project was on no one’s legislative agenda. Texas officials had created a new map, per usual, in response to the population shifts revealed in the 2020 census. And those officials expected that the State’s next map, again per usual, would follow the 2030 count. A mid-decade redistricting, absent some legal need, was then nearly unheard of. And although no one could challenge a partisan gerrymander in court—our decision in *Rucho v. Common Cause*, 588 U. S. 684 (2019), saw to that—voters could hold those supporting it to political account. (Again, this was in those innocent days—prior to Texas’s redistricting—when partisan gerrymanders seemed undemocratic or at least unsavory, rather than a mark of political conviction or

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loyalty.) For those reasons (and perhaps for fear of dumymandering too), the Trump Administration’s campaign for a new, partisan redistricting got little traction. See App. to Application for Stay 2, 15–17. On June 10, State Senator Joan Huffman—the sponsor of the 2021 map—testified in a judicial proceeding that the legislature was not considering redrawing its map. See *id.*, at 17. And on June 23, Governor Greg Abbott announced that he was calling a special legislative session to address various matters—but redistricting was conspicuously not among them. *Id.*, at 16.

With so little to show for its efforts, the Trump Administration switched tacks—converting its political importuning into a legal demand. On July 7, the Department of Justice’s Civil Rights Division sent the Texas Governor and Attorney General a letter—to serve, it said, “as formal notice”—describing the office’s “serious concerns regarding the legality of four of Texas’s congressional districts.” *Id.*, at 17. The letter focused on those districts’ racial composition. Each was described as a “coalition district”—meaning a district in which two or more minority groups (say, Blacks and Hispanics) can *together* form a majority and elect a candidate of their choice. (In racially diverse places like Texas, such districts are not uncommon.) The letter stated—quite incorrectly (no one now tries to defend the proposition)—that the creation of those districts was unlawful: “It is well-established that so-called ‘coalition districts’ run afoul [of] the Voting Rights Act and the Fourteenth Amendment.” *Id.*, at 18. Accordingly, the letter maintained, they “must now be corrected”—“rectified immediately by [the] state legislature[.]” *Ibid.* The letter concluded that Texas should bring its current districting scheme “into compliance” with the (supposed) law, or else risk the U. S. Attorney General “seek[ing] legal action against the State.” *Id.*, at 19.

With that letter, Texas’s attitude changed. Once the Administration’s redistricting proposal came packaged as a legal ultimatum to change various districts’ racial

composition, Texas embraced it. Two days after receiving DOJ's letter, the until-then-reluctant Governor Abbott issued a proclamation adding the following to the agenda for the upcoming special legislative session: "Legislation that provides a revised congressional redistricting plan in light of constitutional concerns raised by the U. S. Department of Justice." *Id.*, at 30–31. And in late August, the legislature enacted a new map—one that *both* secured five more Republican-leaning seats *and* "achieved all but one of the racial objectives that DOJ demanded." *Id.*, at 3. The map "dismantled and left unrecognizable" the districts that DOJ's letter had identified, along with several similar coalition districts. *Ibid.* And it made three of those districts into majority-Black or majority-Hispanic districts by the smallest amount possible, with the majority in each coming in at between 50.2 and 50.5 percent. *Id.*, at 97.

II

The plaintiffs here challenged Texas's new map as a racial gerrymander, in violation of the Fourteenth and Fifteenth Amendments. They did not contest that politics motivated the Trump Administration's redistricting scheme, or that politics made Republican state legislators glad to vote for the map eventually developed. But it was race, the plaintiffs argued, that gave the redistricting plan life—by enabling state officials to present it as a legal necessity rather than a partisan gambit. And most important, they contended, it was race that mainly accounted for where the new, Republican-friendly lines were drawn.

The law respecting a racial-gerrymander claim is well settled. The Constitution forbids a State, absent a compelling justification, from "separat[ing] its citizens into different voting districts on the basis of race." *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U. S. 178, 187 (2017). To prove such racial sorting, the plaintiffs must show that race was the "predominant factor motivating the

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legislature’s decision to place a significant number of voters within or without a particular district.” *Alexander v. South Carolina State Conference of the NAACP*, 602 U. S. 1, 7 (2024). They can do so through “‘direct evidence’ of legislative intent, ‘circumstantial evidence of a district’s shape and demographics,’ or a mix of both.” *Cooper v. Harris*, 581 U. S. 285, 291 (2017) (quoting *Miller v. Johnson*, 515 U. S. 900, 916 (1995)). And notably here, nothing changes just because the legislature has drawn race-based lines “in order to advance [non-race-based] goals, including political ones.” *Cooper*, 581 U. S., at 291, n. 1. So it is unconstitutional (sans a compelling interest) for “legislators [to] use race as their predominant districting criterion with the end goal of advancing their partisan interests.” *Id.*, at 308, n. 7.

Texas’s only defense to the racial-gerrymander claim here is that no such gerrymander happened. In other words, Texas does not assert a compelling interest in drawing lines based on race. Texas has never argued in this litigation that the DOJ letter was right—that it had to redistrict according to race in order to correct an existing legal violation. And Texas of course does not contend that the pursuit of partisan advancement is itself a compelling interest. (It is not.) All Texas has ever said in response to the plaintiffs’ suit is that race had nothing to do with its redistricting process. According to the State, its officials acted only to protect Republican incumbents in the House and to pick up another five predictably Republican seats. In particular, Texas says, racial data never entered into the line-drawing process, even though the mapmaker had that data available at the press of a key on his redistricting software. Any striking racial features of the new map were mere happenstance, Texas contends—a coincidence born of the correlation between race and partisan preference.

The District Court’s task, then, was a singularly factual one: It had to choose between the plaintiffs’ “race predominated” account and the State’s “race never entered the

picture” story. To do so, it held a nine-day hearing during which it heard from 23 witnesses, received into evidence thousands of exhibits, and watched many hours of video footage of legislators and Governor Abbott discussing the proposed map as it was under consideration. After assessing the credibility of the witnesses and weighing all the competing evidence, the District Court decided that the merits were “clearcut” in favor of the plaintiffs. App. 152. True, the ultimate goal of Texas’s redistricting was to pick up Republican seats. But “[s]ubstantial evidence” revealed that race predominated in the actual drawing of district lines. *Id.*, at 2. So, the District Court concluded, in acting to advance partisan interests, “Texas racially gerrymandered the 2025 Map.” *Ibid.*

In support of that conclusion, the District Court described three kinds of direct evidence, cumulatively “strong,” that race had played a predominant role in redistricting. *Id.*, at 59. First, “[w]hat triggered the redistricting process” was the “Administration reframing the request” to do partisan districting “in exclusively racial terms.” *Id.*, at 62. Here, the crucial fact was the DOJ letter. That letter, to be sure, did not specify exactly how Texas should “rectify” and “correct[]” its supposedly illegal coalition districts. *Id.*, at 59. But (the court explained) “there’s only one way to remedy a district whose only ‘objectionable’ characteristic is that no single racial group constitutes a 50% majority”: to “redraw [the district] so a single racial group constitutes a 50% majority.” *Ibid.* The DOJ letter thus “impos[ed] a 50% racial target for Texas to meet when redrawing” certain districts. *Ibid.* And it thereby “directed Texas to engage in racial gerrymandering.” *Ibid.*

Second, the District Court described how the Governor promptly “ask[ed] the Legislature to give DOJ the racial rebalancing it wanted—and for the reasons that DOJ cited.” *Id.*, at 31. Although he had resisted redistricting for months, it took the Governor just two days from receipt of

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the DOJ letter to add to the legislative agenda a proposal for responding to the “constitutional concerns raised” about certain districts’ racial composition. *Ibid.*; see *supra*, at 3–4. And the court noted that, from that point on, the Governor consistently expressed support for the new map in those same racial terms: as a means to convert coalition districts into majority-Hispanic or majority-Black districts. See App. 31–34. In one interview, for example, he stated that “we wanted to remove those coalition districts and draw them in ways that, in fact, turned out to provide more seats for Hispanics.” *Id.*, at 32; see also *id.*, at 33, n. 115 (“[W]e want to make sure that we have maps that don’t impose coalition districts”; “we’re able to take the people who were in those coalition districts and make sure they are going to be in districts that really represent the[ir] voting preferences”). And conversely, the District Court related, Governor Abbott consistently “rejected the idea that Texas was redistricting to fulfill President Trump’s demand for additional Republican districts.” *Id.*, at 64. The Governor maintained, for example, that the map drew Hispanic seats, not Republican ones: “It just coincides it’s going to be Hispanic Republicans elected to those seats” given that more Hispanics were “align[ing] with Republicans.” *Id.*, at 32; see also *id.*, at 34, n. 117 (The “districts we are drawing, they would be Hispanic districts” that just so “happen to be Hispanic Republican districts”).

And third, the District Court found that legislators, including the redistricting bill’s primary sponsors, repeatedly spoke in the same way: They “suggest[ed] that they had intentionally manipulated the districts’ lines to create more majority-Hispanic and majority-Black districts.” *Id.*, at 3. The legislator who introduced the bill, for example, crowed: “[W]e created four out of five new seats” to have a “Hispanic majority. I would say that’s great. That doesn’t ensure that a political party wins them, but the Hispanic—four out of five Hispanic majority out of those new districts—that’s a

pretty strong message, and it's good." *Id.*, at 73, n. 258; see also *id.*, at 75, n. 265 (another legislator boasting that "previously, Black voters in that district did not hold a majority, but under [the new plan], they actually do"); *id.*, at 76, n. 267 (yet another legislator noting that one district was "purposely altered to [be] a Black [Citizen Age Voting Population (CVAP)] majority district" and another was "purposely changed to increase its Hispanic CVAP"). The District Court, in reviewing the legislative evidence, well understood that partisan motivations underlay the new plan. See, e.g., *id.*, at 76. But the bill's backers, the court explained, "strategized that a map that eliminated coalition districts and increased the number of majority-Hispanic and majority-Black districts would be more 'sellable' than a nakedly partisan map." *Ibid.* Such a map would allow legislators to "deny they were redistricting for purely partisan reasons" and to gain more public support for the endeavor, especially among Hispanic Texans. *Ibid.*

Circumstantial evidence, the court continued, confirmed what the direct evidence showed: that race predominated in the drawing of district lines. The new plan "fulfilled" almost all the racial goals "that DOJ and the Governor desired"; indeed, the map dismantled even more coalition districts than the DOJ letter had identified. *Id.*, at 105; see *id.*, at 50. And most strikingly, the court noted, the map's conversion of three of those coalition districts into majority-Black or majority-Hispanic districts was accomplished by the barest of margins—half a percentage point or still less. So, the District Court recounted, one district went from 25.6% to 50.3% Hispanic; another went from 38.8% to 50.5% Black; and yet a third went from 46.0% to 50.2% Black. See *id.*, at 97. The court found it "very unlikely" that a mapmaker relying only on race-neutral criteria and using only non-racial data would "have hit a barely 50% CVAP *three times* by pure chance." *Id.*, at 98. It was uncontested that racial data came preloaded into the mapmaker's

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redistricting software, so he could look at it anytime he wanted. The mapmaker testified to the court that he had not done so. See *id.*, at 91. But the court, noting that the mapmaker was “well aware” of the DOJ letter—indeed, that he had been shown a draft by White House officials before it was sent—“question[ed] [his] veracity” and “discredit[ed]” his testimony. *Id.*, at 96, 98, 99. It was, the court concluded, “far more plausible that [the mapmaker] had both racial and partisan data turned on while drawing the 2025 Map and that he used the former to achieve the racial targets that DOJ and the Governor had explicitly announced as he simultaneously used the latter to achieve his partisan goals.” *Id.*, at 99.

And that conclusion was confirmed by expert testimony. One of the expert witnesses testified that she had “generated tens of thousands of congressional maps that follow traditional districting criteria and favor Republicans by various metrics”—in other words, that eschewed racial goals and racial data. *Id.*, at 127. The result? “[N]ot one of them had racial demographics that looked anything like those in the 2025 Map.” *Ibid.* The expert’s analysis thus supported what the raw numbers (*e.g.*, those three 50% districts) showed: It was—once again—“highly unlikely” that a legislature drawing a map based on “partisan and other race-neutral considerations” would have arrived at the one Texas enacted. *Id.*, at 121.

Put all of that together—the direct and circumstantial evidence alike—and the District Court’s conclusion followed: The plaintiffs were likely to succeed on their racial-gerrymandering claim. The desire for more Republican seats no doubt motivated the redistricting project: It was, as this Court has said, the officials’ “end goal.” *Cooper*, 581 U. S., at 308, n. 7. But the district lines drawn resulted predominantly “from the intentional manipulation of the districts’ racial makeup.” App. 127. Race provided the excuse for the partisan effort. And yet more critically, race provided the

key means of implementing it. And that, the District Court held, is a violation of the Fourteenth and Fifteenth Amendments.

III A

This Court owes, though today has not given, “significant deference” to the District Court’s marshaling and weighing of so much evidence. *Cooper*, 581 U. S., at 293. You would never guess it from the majority’s order, but under this Court’s precedents, a district court’s factfinding about electoral districting—“most notably, as to whether racial considerations predominated in drawing district lines”—is reversible “only for clear error.” *Ibid.*; see *Alexander*, 602 U. S., at 18 (describing that test as “demanding”). Under that standard, “we may not reverse just because we would have decided the matter differently.” *Cooper*, 581 U. S., at 293. If a district court’s factual determination is “‘plausible’ in light of the full record—even if another is equally or more so”—that determination “must govern.” *Ibid.* (quoting *Anderson v. Bessemer City*, 470 U. S. 564, 574 (1985)). And in deciding what is thus “plausible,” we must “give singular deference to a trial court’s judgment about the credibility of witnesses.” *Cooper*, 581 U. S., at 309. The district court has conducted the hearing and knows the whole record. It is better positioned than this Court to decide what evidence to credit about the drawing of district lines.

Taking that standard seriously calls for denying Texas’s stay application. In its 160-page opinion, the District Court marched methodically through the entirety of the trial record. The court considered with care the evidence supporting Texas, as well as that supporting the plaintiffs. See, e.g., App. 79–104, 128–134. The court explained each of the credibility judgments it rendered—noting, to take just one example, how one witness’s testimony conflicted with other evidence, including another witness’s testimony. See, e.g.,

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id., at 96–99 (discussing the mapmaker’s testimony). Ultimately, the court weighed all the evidence and made findings, summarized above, about how Texas’s map was constructed. I do not say that those findings were inescapable; a court coming out the opposite way could well have deserved this Court’s deference too. What they were—and this is the thing that matters on clear-error review—is plausible. It was “plausible”—perfectly plausible “in light of the full record”—that Texas drew its new map mainly on racial lines. *Cooper*, 581 U. S., at 293. (Indeed, I think—though this is not necessary—that the court’s conclusion was right.)

In asserting instead that the court’s conclusion was “implausible,” Texas argues that because it was trying to “maximize[] partisan advantage,” it would have relegated all racial considerations to the sidelines. Application 11. But that claim is too simple by half, as this Court has previously recognized. Because of the “strong correlation[s] between race and voting behavior,” we have explained, States may well avail themselves of “race-based districting for ultimately political reasons”—that is, “to advance their partisan interests.” *Cooper*, 581 U. S., at 319, n. 15; see *id.*, at 291, n. 1. So, for example, legislators may “think[] that a proposed district is more ‘sellable’ as a race-based VRA compliance measure than as a political gerrymander and will accomplish much the same thing.” *Id.*, at 308, n. 7. That is just what the District Court found that key Texas lawmakers thought in creating and supporting the redistricting plan. See App. 3, 76; see *supra*, at 8. The District Court knew—explained repeatedly—that partisan motives lay beneath the new map. See, *e.g.*, App. 2–3, 76–77. But so too the court found that race was all over it. The lawmakers created new Republican seats while—indeed, by means of—converting coalition districts into single-race majority-minority districts. And once again, because that conclusion

is “plausible in light of the full record,” it “must govern.” *Cooper*, 581 U. S., at 293.

For its part, the majority complains—just as wrongly—that the District Court made a “serious error[]” in “fail[ing] to honor the presumption of legislative good faith.” *Ante*, at 1. That presumption is, to be sure, a well-settled part of our districting law. Because of the complexity of electoral districting, we have explained, the State’s good faith must be presumed “until a claimant makes a showing” of “race-based decisionmaking.” *Miller*, 515 U. S., at 915. But contra the majority, the District Court properly extended Texas that presumption. It explained that federal courts “must exercise extraordinary caution in adjudicating” racial-gerrymandering claims. App. 57 (quoting *Alexander*, 602 U. S., at 7). And it then stated what that caution entails in much the same terms as today’s majority uses: When considering evidence that could support either a racial or a non-racial account of a districting action, the court had to “draw the inference that cuts in the legislature’s favor.” App. 58 (quoting *Alexander*, 602 U. S., at 10); compare *ante*, at 1 (calling for “ambiguous” evidence to be “constru[ed]” in the legislature’s favor). In line with that understanding, the District Court found that certain legislators’ statements were too ambiguous to “clear the presumption of legislative good faith.” App. 71–72, and n. 251 (again quoting *Alexander*, 602 U. S., at 10). But other evidence, direct and circumstantial alike, was not; and as all the record evidence piled up, the court concluded that state officials “purposefully manipulated the districts’ racial numbers.” App. 77. Presumptions, after all, can be simultaneously “honor[ed]” and overcome. *Ante*, at 1. And so it was here, as the District Court assessed credibility and found facts—as, in the end, district courts must.

The majority likewise is wrong to say that the District Court erred in “fail[ing] to draw a dispositive or near-dispositive adverse inference” against the plaintiffs for

KAGAN, J., dissenting

their failure to “produce a viable alternative map” that met the State’s partisan goals without the enacted map’s racial features. *Ante*, at 1–2 (citing *Alexander*, 602 U. S., at 34–35). In fact, the District Court’s treatment of the “alternative map” issue fully accords with our instructions in *Alexander*—a case which, like this one, involved the “disentabl[ing]” of race and politics in redistricting. 602 U. S., at 6. We first stated in *Alexander* that the absence of a substitute map merits an adverse inference in a racial gerrymander case. See *id.*, at 34–35. And in line with that edict, the District Court drew one. See App. 132. We next said in *Alexander* that the inference thus drawn would be “dispositive” (*i.e.*, fatal) only some of the time. *Alexander*, 602 U. S., at 35. When would it be so? *Alexander* answered: “The adverse inference may be dispositive in many, if not most, cases where the plaintiff lacks direct evidence.” *Ibid.* The District Court quoted that language, and explained why it did not force a dispositive inference here. In short, because there was lots of direct evidence. See App. 132. Or as the District Court stated more fully: “Unlike the challengers in *Alexander*, who ‘provided no direct evidence of a racial gerrymander,’ the Plaintiff Groups here have produced substantial direct evidence indicating that race was the predominant driver in the 2025 redistricting process.” *Ibid.* (quoting *Alexander*, 602 U. S., at 18). So a racial gerrymander could be found, under *Alexander*’s own terms, despite the lack of a map. That is because the map’s absence does not make the direct evidence of race-based decision-making go away.*

*After explaining why the adverse inference was not dispositive in this case, the District Court also speculated that it might not have had to draw the inference at all because the case was at such an early stage. App. 132. (Here, the court noted that the expert testimony suggested that the plaintiffs would have had no trouble coming up with a map, so that their failure to do so likely reflected a lack of time. See *id.*, at 134.) This Court has not specifically opined on that matter one way or another.

What, then, does the majority think is wrong? One possibility lies in the word “near-dispositive” in today’s order. *Ante*, at 1. Perhaps the majority has a theory about why, despite all the direct evidence, a “near-dispositive” inference was still appropriate? If so, that is made up for the occasion. The word “near-dispositive” does not appear in *Alexander*, which everyone agrees is the critical decision addressing alternative maps. Nor does that term appear in any other of this Court’s decisions respecting adverse inferences (of any type). (Actually, the word appears only three times in the whole U. S. Reports. See, e.g., *Rogers v. Tennessee*, 532 U. S. 451, 473, n. 2 (2001) (Scalia, J., dissenting) (referring to “[t]he near-dispositive strength Blackstone accorded *stare decisis*”).) So it is hardly surprising that the District Court did not address whether a “near-dispositive” inference was called for; and the court’s “fail[ure]” to do so can play no proper role in today’s order. *Ante*, at 1–2. The remaining possibility—no more excusable for an appellate court—is that the majority is simply second-guessing the District Court’s factfinding. That court, to repeat, rejected treating the adverse interest as dispositive (as *Alexander* permits) because of the “substantial direct evidence” of race-based districting. So maybe the majority is just saying that it sees no such evidence—that it interprets all the facts differently, as reflective of only partisan districting, with no racial component. But on clear-error review, what basis does the majority have to thus substitute its understanding of the direct evidence for the District Court’s? The short answer is: It has none.

But even assuming the adverse inference is appropriate at every stage of the litigation, the primary rationale of the District Court stands: The adverse inference was not dispositive because of all the direct evidence in the case.

KAGAN, J., dissenting

B

Nor does the majority have any warrant to stay the District Court’s order for “alter[ing] the election rules on the eve of an election.” *Ante*, at 2. Here, the majority invokes (though without naming) the so-called *Purcell* principle. See *Purcell v. Gonzalez*, 549 U. S. 1, 4–5 (2006) (*per curiam*). Under that decision, courts deciding whether to enjoin an election rule or map in the lead-up to an election must consider, among other relevant equitable factors, the order’s potential for causing “voter confusion.” *Ibid*. It is an important caution. And it is one the District Court took seriously, considering how everything this Court has said on the subject applied to the facts at hand. See App. 140–156. In then going ahead, the court was right.

Texas is not on “the eve of an election,” as was true in the case the majority cites. *Republican National Committee v. Democratic National Committee*, 589 U. S. 423, 424 (2020) (*per curiam*); see *ante*, at 2. The election there was five days after the injunction. Similarly, the election in *Purcell* was “just weeks” away. 549 U. S., at 4. Here, Election Day is eleven months from now. Even the primary election (which Texas could change) is in March. The District Court carefully listed the various “election preparations” underway to switch to the 2025 map. App. 144. On the other hand, the court noted how the 2021 map—which the injunction reinstated—was, in a real sense, the status quo. See *id.*, at 145. Officials, candidates, and voters are all familiar with it from the last two election cycles. Until late last summer, everyone expected that map to govern 2026 too. And indeed, it will be used in a special runoff election in the State’s largest county on January 31, 2026. So, the District Court properly concluded, “[a]n injunction in this case would not cause significant disruption.” *Id.*, at 144. Except to the extent all of us live in election season all the time, the 2026 congressional election is not well underway.

And even supposing it is now the ninth or tenth hour, whose choice was that? It was of course the Texas legislature that decided to change its map six months before a March primary. The plaintiffs could not have moved any faster: They requested an injunction before the new law was even signed. And to try to speed the litigation, they declined discovery. (That decision, by the way, probably accounted for their failure to submit an alternative map, which to be probative must be based on the State’s particular districting criteria. See *supra*, at 13 n.) The District Court moved expeditiously too, issuing its 160-page opinion (on November 18) just a month after post-hearing briefing concluded. No one dilly-dallied in this case. The District Court ruled as “late” as it did because the legislature enacted a new map less than three months before.

If *Purcell* prevents such a ruling, it gives every State the opportunity to hold an unlawful election. The District Court, once again aptly, made the point: Were judicial review so broadly foreclosed, then to implement even a “blatantly unconstitutional map,” the “Legislature would need only to pass” it on a schedule like this one. App. 154–155. That cannot be the law—except of course that today it is. According to the majority, Texas had a free pass to redistrict in August 2025 for the 2026 House elections. See *ante*, at 2. All that the plaintiffs can hope for is better luck in 2028.

IV

The majority today loses sight of its proper role. It is supposed to review the District Court’s factfinding only for clear error. But under that deferential standard, the District Court’s “plausible” (actually, quite careful) factfinding must survive. The majority can reach the result it does—overturning the District Court’s finding of racial line-drawing, even if to achieve partisan goals—only by

arrogating to itself that court's rightful function. We know better, the majority declares today. I cannot think of a reason why.

And this Court's eagerness to playact a district court here has serious consequence. The majority calls its "evaluation" of this case "preliminary." *Ante*, at 1. The results, though, will be anything but. This Court's stay guarantees that Texas's new map, with all its enhanced partisan advantage, will govern next year's elections for the House of Representatives. And this Court's stay ensures that many Texas citizens, for no good reason, will be placed in electoral districts because of their race. And that result, as this Court has pronounced year in and year out, is a violation of the Constitution.

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF MCCORMICK</p> <p>Diane L. Shaffer and Daniel A. Higgins,</p> <p style="padding-left: 40px;">Plaintiffs,</p> <p>vs.</p> <p>McCormick County Council and McCormick County Office of Voter Registration and Elections,</p> <p style="padding-left: 40px;">Defendants.</p> <hr style="width: 40%; margin-left: 0;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>IN THE COURT OF COMMON PLEAS</p> <p>ELEVENTH JUDICIAL CIRCUIT</p> <p>RESPONSE TO NOTICE OF ADDITIONAL AUTHORITY</p> <p>CASE #2024CP3500086</p>
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Plaintiffs submitted a Notice of Additional Authority arguing that *Abbott v. League of United Latin American Citizens No. 25A608*, 607 U.S. ____, 2025 WL 3484863 (U.S. Dec. 4, 2025) supports entry of their proposed order in this matter. The *Abbott* case does no such thing. *Abbott* has no impact on this case.

1. Factual/Procedural Background of *Abbott* – The *Abbott* case involves an attempt by the Texas state legislature to redraw congressional (U.S. House of Representatives) district boundaries in way that is predicted to favor the Republican Party. This mid-decade redistricting was initiated by a letter sent by the U.S. Department of Justice to Texas Governor Greg Abbott and Texas Attorney General Ken Paxton.¹ The letter dated July 7, 2025, asserts that four of Texas’ congressional districts “constitute unconstitutional ‘coalition districts’”. The U.S. Department of Justice urged the State of Texas to rectify these “race-based considerations” and redraw the congressional district boundaries.

¹ See Exhibit 1

The Department of Justice threatened legal action against Texas if the congressional district boundaries were not redrawn and Texas succumbed, adopting a new redistricting plan which revised congressional district boundaries.

The Respondents in *Abbott*, “challenged the new Texas map, contending that the legislature’s motive was predominantly racial. A divided three-judge District Court agreed and enjoined the use of the new map in the 2026 elections. The State of Texas, and several of its officials, applied to the U.S. Supreme Court for a stay which was granted pending the timely filing of an appeal in the U.S. Supreme Court.

2. Congressional Districts vs. McCormick County Council Districts – Plaintiffs apparently argue that *Abbott* permits any governmental entity (federal, state, or local) to redistrict at any time regardless of the applicable law. This is not what *Abbott* held. The application of *Abbott* is limited to mid-decade redistricting of congressional districts in the State of Texas. It does not apply to the required reapportionment of county council districts in the State of South Carolina which must “be reapportioned within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census”.² Different rules of law apply to congressional redistricting, the redistricting of state legislatures, and local government redistricting. Article I, Section 2, of the U.S. Constitution, as amended by Section 2 of the Fourteenth Amendment, requires that representation in the U.S House of Representatives be based on population determined by a national census conducted within each 10-year period. Based on the decennial census, Congress determines the number of members of the U.S. House of Representatives that each state is entitled to. It is then up to the individual states to redraw congressional district boundaries to meet the

² S.C. Code Ann. § 4-9-90

population requirements. There is no time frame under federal law related to the redistricting of congressional districts and mid-decade redistricting of congressional districts is not prohibited by the U.S. Constitution or federal law. Some states, such as Tennessee, prohibit mid-decade redistricting congressional districts³. Other states, including South Carolina, do not.⁴ But these laws apply only to redistricting of congressional districts for determination of the number of members of the U.S. House of Representatives that each state is entitled to. Federal and state laws concerning the redistricting of congressional districts do not apply to the reapportionment of county council districts in South Carolina. Likewise, the established law concerning the reapportionment of county council districts in South Carolina does not apply to congressional redistricting. The reapportionment of county council districts in South Carolina is dictated by S.C. Code § 4-9-90; which unlike the redistricting of congressional districts, does include a time frame which specifically prohibits mid-decade redistricting of county council districts. *Abbott* has absolutely no impact on the redistricting of McCormick County Council districts.

3. Racial Gerrymandering vs. “Strongly Disagree” – The focus in *Abbott* was on “racial gerrymandering” – the intentional manipulation of congressional districts based on race. This was a constitutional challenge which the U.S. Supreme Court agreed to entertain. In our case, there are no allegations that the redistricting plan adopted by the McCormick County Council is improper or unconstitutional. Indeed, Defendants challenge is simply that they “strongly disagree” with the plan.

³ Tenn. Code Ann. § 2-16-102 provides: “The general assembly shall establish the composition of districts for the election of members of the house of representatives in congress after each enumeration and apportionment of representation by the congress of the United States. **The districts may not be changed between apportionments.**”

⁴ S.C. Code Ann. § 7-19-50 provides: “Until the next apportionment be made by the Congress of the United States, each of such congressional districts shall be entitled to elect one member to represent this State in the Congress of the United States. After such new apportionment by Congress the General Assembly shall divide the State into as many congressional districts as the State is entitled to members in the House of Representatives.”

This does not justify mid-decade redistricting of county council districts which is prohibited by State statutory law and binding caselaw precedent.

4. **No Time Frame vs. Time Frame** – Congressional reapportionment and redistricting is concerned with seats in the U.S. House of Representatives. This is what the *Abbott* case involved. As stated, there is no time frame for congressional redistricting so that was not an issue in *Abbott*. There is, however, a specific time frame for the reapportionment of South Carolina county council districts. S.C. Code Ann. § 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.”** McCormick County Council followed this specific time frame by adopting Map 2 as its reapportionment plan. Bottom line – in South Carolina, mid-decade redistricting of county council districts because someone “strongly disagrees” with the legally adopted plan is not permitted.

RECAPITULATION

1. *Abbott v. League of United Latin American Citizens No. 25A608*, 607 U.S. ___, 2025 WL 3484863 (U.S. Dec. 4, 2025) involves congressional (U.S. House of Representatives) redistricting in the state of Texas to rectify alleged unconstitutional “coalition districts”. It does not apply to the reapportionment and redistricting of county council districts in South Carolina.
2. The reapportionment and redistricting of county council districts in South Carolina is subject to the time frame established by S.C Code Ann. § 4-9-90. It must be done within a reasonable time prior to the next scheduled general election which follows the adoption of the decennial census. The 2020 decennial census was adopted by South Carolina on December 10, 2021. McCormick County adopted Map 2 as its reapportionment plan on February 15, 2022, which was prior to the next

scheduled general election (November 8, 2022⁵). Thus, McCormick County complied with all requirements of the specific time frame for the reapportionment and redistricting of county council districts established by South Carolina statutory law.

3. McCormick County Council cannot engage in mid-decade reapportionment and redistricting of county council districts. The electors of McCormick County through the initiative and referendum process cannot engage in mid-decade reapportionment and redistricting of county council districts. **“An electorate has no greater power to legislate than the municipality itself. An initiative ordinance which is facially defective cannot be cured by adoption by the electorate.”** Defendants have **“no obligation to place the initiative ordinance on the ballot”**.⁶

4. Binding caselaw precedent establishes that **“...once a county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90”**.⁷ This rule of law also applies to the initiative and referendum process.

5. Since the adoption of the McCormick County reapportionment plan in February 2022, all candidate filings, primary elections, and general elections have been based on Map 2. Under South Carolina law, a new reapportionment plan and redistricting of McCormick County Council districts cannot occur until after the 2030 decennial census is officially adopted by the State of South Carolina.

⁵ See 2022 Election Calendar at [2022-Election-Calendar-scVOTES-2022-10-21.pdf](#)

⁶ *Town of Hilton Head Island v. Coalition of Expressway Opponents*, 307 S.C. 449, 415 S.E.2d 801 (1992)

⁷ *Elliott vs Richland County*, 322 S.C. 423, 472 S.E.2d 256 (1996)

CONCLUSION

Plaintiffs' argument regarding the impact of *Abbott* on the reapportionment and redistricting of county council districts in South Carolina fails in its entirety. Defendants believe that they are entitled to entry of their proposed order in this matter.

Respectfully submitted,

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January 5, 2026

Exhibit 1

U.S. Department of Justice Letter to Texas

July 7, 2025



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 7, 2025

The Honorable Gregory Abbott
Office of the Governor
Texas Capitol
1100 Congress Avenue, 2S.1
Austin, Texas 78701

[REDACTED]

The Honorable Ken Paxton
Office of the Attorney General of Texas
Attention: Austin Kinghorn/Ryan Walters
Post Office Box 12548
Austin Texas 78711-2548

[REDACTED]

Re: Unconstitutional Race-Based Congressional Districts
TX-09, TX-18, TX-29 and TX-33

Dear Governor Abbott and Attorney General Paxton,

This letter will serve as formal notice by the Department of Justice to the State of Texas of serious concerns regarding the legality of four of Texas's congressional districts. As stated below, Congressional Districts TX-09, TX-18, TX-29 and TX-33 currently constitute unconstitutional "coalition districts" and we urge the State of Texas to rectify these race-based considerations from these specific districts.

In *Allen v. Milligan*, 599 U.S. 1, 45 (2023), Justice Kavanaugh noted that "even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future." 599 U.S. 1, (Kavanaugh, J., concurring). In *SFFA v. Harvard*, the Supreme Court reiterated that "deviation from the norm of equal treatment" on account of race "must be a temporary matter." 600 U.S. 181, 228 (2023). When race is the predominant factor above other traditional redistricting considerations including compactness, contiguity, and respect for political subdivision lines, the State of Texas must demonstrate a compelling state interest to survive strict scrutiny.

It is well established that so-called “coalition districts” run afoul the Voting Rights Act and the Fourteenth Amendment. In *Petteway v. Galveston County*, No. 23-40582 (5th Cir. 2024), the en banc Fifth Circuit Court of Appeals made it abundantly clear that “coalition districts” are not protected by the Voting Rights Act. This was a reversal of its previous decision in *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir. 1988). In *Petteway*, the Fifth Circuit aligned itself with the Supreme Court’s decision in

Bartlett v. Strickland, 556 U.S. 1 (2009), and determined that a minority group must be geographically compact enough to constitute more than 50% of the voting population in a single-member district to be protected under the Voting Rights Act. See also *Thornburg v. Gingles*, 478 U.S. 30 (1986). Opportunity and coalition districts are premised on either the combining of two minority groups or a minority group with white crossover voting to meet the 50% threshold. Neither meets the first *Gingle*’s precondition. Thus, the racial gerrymandering of congressional districts is unconstitutional and must be rectified immediately by state legislatures.

It is the position of this Department that several Texas Congressional Districts constitute unconstitutional racial gerrymanders, under the logic and reasoning of *Petteway*. Specifically, the record indicates that TX-09 and TX-18 sort Houston voters along strict racial lines to create two coalition seats, while creating TX 29, a majority Hispanic district. Additionally, TX-33 is another racially-based coalition district that resulted from a federal court order years ago, yet the Texas Legislature drew TX-33 on the same lines in the 2021 redistricting. Therefore, TX-33 remains as a coalition district.

Although the State’s interest when configuring these districts was to comply with Fifth Circuit precedent prior to the 2024 *Petteway* decision, that interest no longer exists. Post-*Petteway*, the Congressional Districts at issue are nothing more than vestiges of an unconstitutional racially based gerrymandering past, which must be abandoned, and must now be corrected by Texas.

Please respond to this letter by July 7, 2025, and advise me of the State’s intention to bring its current redistricting plans into compliance with the U.S. Constitution. If the State of Texas fails to rectify the racial gerrymandering of TX-09, TX-18, TX-29 and TX 33, the Attorney General reserves the right to seek legal action against the State, including without limitation under the 14th Amendment.

Respectfully,



HARMEET K. DILLON
Assistant Attorney General
Civil Rights Division

MICHAEL E. GATES
Deputy Assistant Attorney General
Civil Rights Division

RECEIVED
Feb 27 2026
SC Court of Appeals

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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. _____
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, Respondents,
of which Diane L. Shaffer is the Appellant.

NOTICE OF APPEAL

Please take notice that Diane L. Shaffer (“Appellant”) appeals the attached orders issued by the circuit court: (1) the circuit court’s January 6, 2026, order, which denied Appellant’s Motion for Summary Judgment and granted Respondents’ Motion for Summary Judgment; and (2) the circuit court’s January 28, 2026, order denying Appellant’s Rule 59 Motion for Reconsideration of the January 6, 2026, ruling.

Appellant has ordered the transcript associated with the motions, and that correspondence is attached as well.

Signature Page Attached

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): Notice of Appeal

Parties Served:

G.P. Callison, Jr. (gpcallison@gmail.com)
Counsel for the Respondents

By: /s/ M. Todd Carroll

February 27, 2026

STATE OF SOUTH CAROLINA
COUNTY OF McCORMICK

Diane L. Shaffer and Daniel A. Higgins,

Plaintiffs,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No. 2024-CP-35-00086

NOTICE OF NOTICE OF APPEAL

Pursuant to Rule 203(d)(1)(B), SCACR, the Plaintiff Diane L. Shaffer hereby files a copy of a Notice of Appeal, which was served on counsel for the Defendants and filed in the Court of Appeals on February 27, 2026,

Respectfully submitted,

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February 27, 2026
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THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2024-

Diane Louise Shaffer and Daniel A. Higgins Petitioners,

v.

McCormick County Council and McCormick County Office of
Voter Registration and Elections, Respondents,

PETITION FOR WRIT OF MANDAMUS

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May 3, 2024

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PETITION FOR WRIT OF MANDAMUS

This petition asks the Court to enforce the ordinance-by-initiative requirement of the South Carolina Code with respect to county ordinances. The facts which give rise to this petition are not in dispute, and the Petitioners respectfully request that the Court (1) accept this matter in its original jurisdiction pursuant to Rule 245(b), SCACR; and (2) issue the requested writ so that the citizenry will have an opportunity to vote on the proposed ordinances at the upcoming general election.

STATEMENT OF THE ISSUE

South Carolina Code § 4-9-1230 vests the citizenry with the power to pass an ordinance through a ballot referendum if a sufficient number of electors propose the ordinance to county council but county council declines to pass it. Here, the McCormick County Council declined to pass two ordinances that the Petitioners proposed, but the McCormick County Office of Voter Registration and Elections has refused to place the proposed ordinances on the ballot for the upcoming general election despite South Carolina law requiring that the referendum “shall be submitted to the electors.” *Id.* Are the Petitioners entitled to a writ of mandamus to timely enforce their statutory right to have the proposed ordinances presented to the voters?

BACKGROUND

I. The Parties

The Petitioners are citizens and electors of McCormick County, South Carolina, who led an initiative petition to have McCormick County Council pass three ordinances:

- (1) An ordinance creating an open public comment period at the beginning of County Council meetings (Proposed Ordinance 23-09);
- (2) An ordinance that allows any County Council member to place items on the Council's meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting (Proposed Ordinance 23-10); and
- (3) An ordinance amending Ordinance 21-07 and approving a districting map that was proposed by the South Carolina Revenue and Fiscal Affairs Office for establishing the boundaries for each County Council seat (Proposed Ordinance 23-11).

The Respondents are the relevant governing bodies that are involved in the ballot-initiative process: the McCormick County Council, which has authority to adopt ordinances proposed by the citizenry; and the McCormick County Office of Voter Registration and Elections, which is responsible for the administration of elections in McCormick County.

II. Relevant Facts

At the time Home Rule was established, McCormick County was assigned the council-supervisor form of government. S.C. Code Ann. § 4-9-10(b). However, following a February 4, 1992, referendum held for its electors, McCormick County has been governed by the council-administrator form of county government, with County Council comprised of five single-member districts. (App. 1, McCormick County Ord. § 2-1.)

The South Carolina Code requires single-member districts to be reapportioned after the State adopts the then-completed federal census. S.C. Code Ann. § 4-9-90. The General Assembly passed legislation adopting the results of the 2020 Census on December 9, 2021, which Governor McMaster signed the next day. 2021 S.C. Acts No. 117.

Using the 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 been in compliance with South Carolina law regarding apportionment. (App. 2–7, McCormick County Council Proposed Redistricting Maps 1, 2, & 3.) On February 15, 2022, County Council adopted Map 2 as its redistricting plan. (App. 8–10, McCormick County Ordinance 21-07.)

The Petitioners strongly disagree with County Council's decision to use Map 2 and believe that Map 3 would more appropriately apportion the electors among the various single-member districts and reduce the voter deviation between districts to approximately five percent, as recommended by the South Carolina Revenue and Fiscal Affairs Office. Accordingly, the Petitioners set about collecting signatures from at least fifteen percent of the registered voters in McCormick County to support an initiative to amend the ordinance adopting Map 2 and replace it with Map 3 to define the single-member districts for McCormick County Council, as permitted by South Carolina Code § 4-9-1210.

After gathering the requisite signatures, the Petitioners submitted three petitions to the McCormick County Office of Voters Registration and Elections in August 2023. After confirming that the statutory signature requirement had been met, the proposed ordinances were presented to County Council. One of the petitions proposed to adopt Map 3 to define the boundaries for County Council's single-member districts, as described above, and became identified as Proposed Ordinance 23-11. (App. 15–25.) The other two petitions involved meetings of County Council: one proposed an ordinance requiring an open public comment period at the beginning of County Council's regular monthly meetings, which became identified as Proposed Ordinance 23-09 (App. 11–12); and the other proposed an ordinance allowing any Council member to place items on the

meeting agendas and to require agendas to be publicly available at least seven days before meetings, which became identified as Proposed Ordinance 23-10 (App. 13–14).

McCormick County Council gave first reading to each of these ordinances during its November 21, 2023 meeting. (App. 26–27, County Council Meeting Agenda (Nov. 21, 2023).) Proposed Ordinance 23-09 passed second reading during the December 19, 2023 meeting, but proposed Ordinances 23-10 and 23-11 failed second reading and were voted down during that same meeting. (App. 30, County Council Meeting Agenda (Jan. 16, 2024).)

South Carolina Code § 4-9-1230 provides that if a county council “shall fail to pass an ordinance proposed by initiative petition,” or if it “shall fail to repeal an ordinance for which a petition for repeal has been presented, the adoption or repeal of the ordinance 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.” County Council declined to present the ordinances to the citizenry for a vote during its January 16, 2024 meeting. Accordingly, on March 20, 2024, the Petitioners submitted a letter to the McCormick County Office of Voter Registration and Elections demanding that the county election commission place Proposed Ordinances 23-10 and 23-11 on the ballot during the next general election on November 5, 2024. (App. 32–33.)

However, on March 26, 2024, the County election agency notified the Petitioners that it would not place Proposed Ordinances 23-10 or 23-11 on a ballot for the electorate’s consideration. Because South Carolina Code § 4-9-1230 requires that these proposed ordinances be presented to the citizenry for an up-or-down vote, the Petitioners respectfully file this petition and seek a writ of mandamus requiring the McCormick County Council and the McCormick County Office of Voter Registration and Elections to place these proposed ordinances on the ballot during the next general election.

JURISDICTIONAL STATEMENT

This Court has authority to issue the requested writ of mandamus pursuant to Article V, Section 5 of the South Carolina Constitution; South Carolina Code § 14-3-310; and Rule 245(b), SCACR.

The Petitioners seek such a writ in this Court’s original jurisdiction because the South Carolina Election Code requires that ballot initiatives will not be presented to the electorate for a vote “unless the question is submitted to the appropriate election commission to be placed on the ballot no later than 12:00 noon on August fifteenth or, if August fifteenth falls on a Saturday or Sunday, not later than 12:00 noon on the following business day.” S.C. Code Ann. § 7-13-355. If the Petitioners were required to seek recourse through the circuit court first, final resolution of this matter would almost certainly extend beyond the statutory deadline for presenting a referendum to the voters.

Because the facts of this matter are not subject to legitimate dispute and this case presents only legal issues for the Court’s consideration, the Petitioners respectfully submit that this matter must be addressed in the Court’s original jurisdiction in order to resolve these issues of public importance to the citizens of McCormick County within the timelines established by the South Carolina Election Code.

ARGUMENT

I. South Carolina law requires that these proposed ordinances be placed on the ballot for McCormick County electors to consider.

The Petitioners are aware of the gravity of their request: “Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy.” *City of Rock Hill v. Thompson*, 349 S.C. 197, 199, 563 S.E.2d 101, 102 (2002). Despite this high hurdle, the Petitioners embrace the burden, as this case readily meets

the elements for issuance of a writ of mandamus: “(1) a duty to perform the act; (2) the ministerial nature of the act; (3) the petitioner’s specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.” *Sanford v. S.C. State Ethics Comm’n*, 385 S.C. 483, 494, 685 S.E.2d 600, 606 (2009).

Here, there is no dispute that the Petitioners gathered the necessary signatures to propose ordinances to the McCormick County Council. *See* S.C. Code Ann. § 4-9-1210 (“Any initiated ordinance may be 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.”). There is also no dispute that the McCormick County Council declined to pass two of those proposed ordinances. (App. 30.) Accordingly, South Carolina law requires that those ordinances must now be presented to the citizenry for its consideration at the next election:

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 therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, **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. The council may, in its discretion, and if no regular election is to be held within such period, provide for a special election. **All county councils shall be bound by the results of any such referendum.**

Id. § 4-9-1230 (emphasis added).

The statute’s use of the word “shall” makes clear that the Petitioners have a right to have their proposed ordinances presented to the voters, and that the McCormick County Council and McCormick County Office of Voter Registration and Elections have a ministerial duty to place these initiatives on the ballot at the next regular election. This is not a discretionary act for county government; it is mandatory. *See, e.g., Johnston v. S.C. Dep’t of Labor*, 365 S.C. 293, 296–97, 617 S.E.2d 363, 364 (2005) (“The term ‘shall’ in a statute means that the action is mandatory.”); *S.C.*

Dept' 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.”).¹

Nor is there any other potential legal remedy available to the Petitioners. The General Assembly has specifically designated the remedy when a sufficient number of voters proposes a new ordinance but county council rejects that proposal: the power shifts back to the electorate to vote on the proposed ordinance, and council “shall be bound by the results of any such referendum.” S.C. Code Ann. § 4-9-1230. That is the only available remedy, but because the McCormick County Council and the McCormick County Office of Voter Registration and Elections have refused to place Proposed Ordinances 23-10 and 23-11 on the ballot at the upcoming general election, mandamus is essential to enforce the Petitioners’ right to have their proposed ordinances considered by the electorate. The Court should issue a writ of mandamus accordingly.

II. There is nothing in the law that prevents the citizenry from passing these proposed ordinances.

The Petitioners concede that the ordinance-by-referendum process provided by the Home Rule Act is not boundless, but the two proposed ordinances at issue here—one to govern agendas for County Council meetings, and one to adopt a different redistricting map—do not fall within the General Assembly’s limitations on when the citizenry can propose and pass ordinances.

South Carolina Code § 4-9-1210 specifically excludes “an ordinance appropriating money or authorizing the levy of taxes” from this process. The Court has held that this limitation prohibits

¹ The only discretionary point of Section 4-9-1230 involves when to hold a special election on the ballot referendum “if no regular election is to be held within” a year after county council rejects the proposed ordinance. But that is not the case here; a regular election is scheduled for November 2024, so there is nothing left to the McCormick County Council’s discretion here.

ballot initiatives that would impair “County Council’s general authority over the County’s treasury.” *Focus on Beaufort County v. Beaufort County*, 318 S.C. 227, 231, 456 S.E.2d 910, 912 (1995). And in the municipal context, the Court has prohibited ballot initiatives that would override zoning procedures specifically governed by “the elaborate, detailed zoning procedures contained in Title 6” of the South Carolina Code. *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000).

But the ballot measures proposed here do not contain any of these prohibited elements. They have nothing to do with appropriating money, levying taxes, or the treasury. Nor do they irreconcilably conflict with an “elaborate, detailed” statutory process that the General Assembly has established. Instead, these proposed ordinances go to the very heart of self-government.

Proposed Ordinance 23-10 would allow any council member to place items on the County Council’s meeting agenda, and it would require the Council to post its meeting agendas at least seven days before any meeting. There is presently no McCormick County ordinance or state statute governing how items get placed on a public body’s meeting agenda, and the South Carolina Freedom of Information Act only requires notice of meetings to be posted “at least twenty-four hours prior to such meetings.” S.C. Code Ann. § 30-4-80(A). As such, Proposed Ordinance 23-10 would work hand-in-glove with existing law, as it would give some guidance as to how a meeting agenda is to be created, and it would give the public a full week, rather than a single day, to review an agenda in advance of a Council meeting. This proposed ordinance is fully consistent with the FOIA’s goal of ensuring “that 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.” *Id.* § 30-4-15.

Similarly, Proposed Ordinance 23-11 would replace the Council-selected redistricting map with one that the voters deem more appropriately aligned with voting constituencies. The proposed map was prepared by the South Carolina Revenue and Fiscal Affairs Office and meets the only redistricting criterion set by state law: “The population variance between defined election districts shall not exceed ten percent.” *Id.* § 4-9-90.² Just as Proposed Ordinance 23-10 aligns with state law regarding open-government issues, Proposed Ordinance 23-11 is consistent with the Home Rule Act’s insistence on self-government and allowing the electorate to determine how it will be governed. The General Assembly has empowered voters with authority to change via referendum the number of council members on a county council, whether council members will be elected at-large or from single-member districts, and even the entire form of county government. S.C. Code Ann. § 4-9-10(c). There is nothing irreconcilable between letting the voters select whether council members will be elected at-large or from single-member districts, on the one hand, and letting the voters select the boundaries of those single-member districts, on the other.

Because Proposed Ordinances 23-10 and 23-11 are consistent with South Carolina law, there is no impediment to the Court granting this petition and issuing a writ of mandamus directing the McCormick County Council and McCormick County Office of Voter Registration and Elections to place these proposed ordinances on the ballot for the voters’ consideration at the November 2024 general election.

² In fact, the redistricting map selected by Proposed Ordinance 23-11 has less of a population variance among the districts—5.68%—than does the map selected by Council—8.35%. (*Compare* App. 6–7 (Map 3—Deviation 5.68%) *with* App. 4–5 (Map 2—Deviation 8.35%).)

CONCLUSION

This case is a paradigm for when mandamus is necessary. *See Sanford*, 385 S.C. at 494, 685 S.E.2d at 606 (“Mandamus is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal.”). The General Assembly has vested the citizenry with the power to govern itself through the ordinance-by-referendum process, but the McCormick County Council and McCormick County Office of Voter Registration and Elections have refused to follow South Carolina Code § 4-9-1230’s mandate that they must present the proposed ordinances to the electorate for an up-or-down vote. Accordingly, the Petitioners respectfully request that the Court issue a writ of mandamus requiring McCormick County to place these proposed ordinances on the ballot for the November 2024 general election.

Respectfully submitted,

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PROOF OF SERVICE

I do hereby certify that I have served all parties to this matter with a copy of the pleading(s) specific below by delivering them at the addresses below via United States mail, first-class postage prepaid:

Pleading(s): Petition for Writ of Mandamus and Accompanying Appendix

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2024-000737

Diane Louise Shaffer and Daniel A. Higgins Petitioners,

v.

McCormick County Council and McCormick County Office of
Voter Registration and Elections, Respondents.

RETURN TO PETITION FOR WRIT OF MANDAMUS

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JURISDICTION

The Respondents do not object to the consideration of this matter in the Court's original jurisdiction. The Respondents request that the Court review the subjects of the proposed initiated ordinances, find that they are inconsistent with state general law and/or case precedent, and deny the Petition for Writ of Mandamus.

STATEMENT OF ISSUES

The Petitioners have requested that this Court issue a writ of mandamus requiring the Respondents to hold a referendum on two proposed initiated ordinances. The writ of mandamus is an extraordinary writ which is limited to the enforcement of a merely ministerial duty. Mandamus will not be issued to enforce doubtful rights or compel the performance of an act prohibited by law. Gardner v. Blackwell, 167 S.C. 313, 166 S.E. 338 (1932). The issues to be resolved concern the duty and/or obligation of the Respondents to hold a referendum on the proposed initiated ordinances. Each proposed initiated ordinance is distinct and should be considered separately by the Court. As is shown herein, the Respondents do not have a duty or obligation to hold a referendum on these separate and distinct proposed initiated ordinances.

FACTS

The McCormick County Council was presented with three initiative petitions signed by at least 15% of the qualified electors of the County proposing the adoption of three ordinances. One of the initiated ordinances was adopted. The other two initiated ordinances were not adopted and at its meeting held on February 20, 2024, the McCormick County Council voted not to hold a referendum on these initiated ordinances.

The initiated ordinances in question are:

- (1) An ordinance amending Ordinance 21-07¹ adopted by the McCormick County Council on February 15, 2022, which approved and adopted Map 2 prepared by the South Carolina Revenue and Fiscal Affairs Office as the reapportionment/redistricting plan for McCormick County based on the 2020 Census.

The Petitioners disagree with the County Council's decision to use Map 2 and want to replace Map 2 with Map 3. The Petitioners want to change the existing valid reapportionment ordinance over two years after the plan was adopted and almost three years after the 2020 census was adopted by this state.² This proposed initiated ordinance is inconsistent with South Carolina statutory law and this Court's established case precedent.

- (2) An ordinance that allows any County Council member to place items on the Council's meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting.

The Petitioners want to change South Carolina statutory law and usurp County Council's authority to determine its own rules and order of business.

INITIATIVE AND REFERENDUM

The initiative and referendum provisions related to counties and municipalities are essentially the same and the case law applicable to one is, by implication, applicable to the other. [see and compare S.C. Code Ann. § 4-9-1210, et seq (counties) and S.C. Code 5-17-10, et seq (municipalities)]. The initiative and referendum provisions of both counties and municipalities provide that the qualified electors of any county or municipality may propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes and adopt or reject such ordinance at the polls. Any initiated ordinance may be submitted to the council by a petition signed by qualified

¹ Petitioners' Appendix – Appendix Page 8.

² The United States Census of 2020 was adopted December 10, 2021. See SC Code Ann. §1-1-715.

electors equal in number to at least fifteen percent of the qualified electors. 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 therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, 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.

Though the initiative and referendum process are quite broad, there are limits. As stated in an Opinion of the Attorney General dated June 24, 1993: “As broad as this statutory language appears to be, there are additional, implied limitations inherent therein. For instance, such ordinance would be required to be constitutionally permissible and consistent with the general laws of the State”.³ In Town of Hilton Head Island v. Coalition of Expressway Opponents, 307 S.C. 449, 415 S.E.2d 801 (1992) this Court considered the power of the electorate to adopt an invalid initiated ordinance. “When a municipality enacts an ordinance which conflicts with state law, the ordinance is invalid. An electorate has no greater power to legislate than the municipality itself. An initiated ordinance which is facially defective cannot be cured by adoption by the electorate.” And as relates to this case, this Court in the Town of Hilton Head Island v. Coalition of Expressway Opponents, supra, held that if an initiated ordinance is facially defective in its entirety, there is “no obligation to place the initiated ordinance on the ballot” and there is “no right to obtain a vote to enact invalid legislation”.

³ Op. Att’y Gen. (S.C.A.G. June 24, 1993)

ARGUMENTS

I. BECAUSE THE INITIATED ORDINANCE CONCERNING CHANGING MCCORMICK COUNTY'S REAPPORTIONMENT PLAN IS INCONSISTENT WITH EXISTING STATUTORY LAW AND CASE PRECEDENT, THE RESPONDENTS HAVE NO DUTY OR OBLIGATION TO HOLD A REFERENDUM ON THE INITIATED ORDINANCE.

Petition 1 (Reapportionment) – Petitioners request a writ of mandamus requiring the Respondents to hold a referendum on an initiated ordinance amending Ordinance 21-07 adopted by the McCormick County Council on February 15, 2022, which approved and adopted Map 2 prepared by the South Carolina Revenue and Fiscal Affairs Office as the reapportionment/redistricting plan for McCormick County based on the 2020 Census. Petitioners do not allege that the Map 2 plan adopted by McCormick County is invalid. They just disagree with the adoption of Map 2 and want to replace it with Map 3.

State law governs this initiated ordinance. S.C. Code Ann. § 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. The population variance between defined election districts shall not exceed ten percent.” In their Petition for Writ of Mandamus, the Petitioners state: “The proposed map was prepared by the South Carolina Revenue and Fiscal Affairs Office and meets the only redistricting criterion set by state law: “The population variance between defined election districts shall not exceed ten percent.” Using the Petitioners’ theory, a different reapportionment plan could be adopted multiple times during the ten years following the adoption of the decennial census. This is unequivocally wrong. The Petitioners completely ignore the specific requirements of S.C. Code Ann. § 4-9-90 that reapportionment must be completed within a reasonable time prior to the next scheduled general election which follows the adoption by the State of each federal decennial census.

Both Map 2 (adopted) and Map 3 (proposed initiated change) meet the population variance requirements. However, the initiated ordinance which proposes substituting Map 3 for Map 2 does not – and cannot – comply with the specific timetable for the adoption of a reapportionment ordinance as required by law; a timetable ignored by the Petitioners.

S.C. Code Ann. § 4-9-90 vests the authority to reapportion council districts in “the county council”. The McCormick County Council followed the specific requirements of S.C. Code Ann. § 4-9-90 in adopting its reapportionment plan.

1. The United States Census for 2020 was adopted by the General Assembly by 2021 Act No. 117 effective December 10, 2021 (See SC Code Ann. §1-1-715). The reapportionment plan for McCormick County had to be adopted based on the 2020 Census within a reasonable time after December 10, 2021. McCormick County adopted Map 2 as the reapportionment plan by Ordinance 21-07 on February 15, 2022.
2. The plan must be adopted prior to the “next scheduled general election” following the adoption of the Census. McCormick’s plan was adopted prior to the 2022 general election - which was the “next scheduled general election”.
3. The population variance of the plan (Map 2) adopted by McCormick County does not exceed 10%.

The reapportionment plan (Map 2) adopted by the McCormick County Council is a valid reapportionment plan. The council district lines were redrawn based on the adopted plan and the 2022 general election was held based on the adopted reapportionment plan and revised district lines. Now, over two years later, the Petitioners want a referendum to be held on an initiated ordinance to adopt a different reapportionment plan simply because they disagree with the plan adopted by the McCormick County Council.

The proposed initiative ordinance conflicts with and is inconsistent with state statutory law. When a local ordinance is in direct conflict with state law, the local ordinance is void. Wilson v. City of Columbia, 434 S.C. 206, 863 S.E. 2d 456 (2021). This is a facially invalid ordinance, and the Respondents have no duty to hold a referendum on this initiated ordinance. Town of Hilton Head Island v. Coalition of Expressway Opponents, supra.

Case Precedent – In addition to being inconsistent with statutory law, the proposed initiated ordinance is contrary to case law precedent established by this Court. In Elliott vs Richland County, 322 S.C. 423, 472 S.E.2d 256 (1996) this Court considered whether Richland County could adopt a new reapportionment plan almost two years after having adopted a valid plan. Here is this Court’s analysis:

“DISCUSSION

S.C. Code Ann. § 4-9-90 (1986 & Supp.1994) provides that:

All 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.

Appellant argues that under § 4-9-90, once a county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90. We agree.” (emphasis added)

This language is very direct. A county council has one shot to reapportion council districts. Once a valid plan has been adopted, it cannot be changed until the next decennial census. This makes complete sense. Reapportionment and redistricting are tied to the decennial census. Population constantly shifts. Redistricting must take place within a reasonable time after the decennial census is adopted.

The McCormick County Council adopted a valid reapportionment plan in February 2022. This plan cannot be changed until the next decennial Census (2030). The McCormick County Council cannot change the adopted plan and the electors – who have no greater authority than Council – cannot change the plan by the initiative and referendum process. The Respondents have no obligation or duty to hold a referendum on this invalid initiated ordinance.

The Petition for Writ of Mandamus should be denied.

II. BECAUSE THE INITIATED ORDINANCE CONCERNING ALLOWING COUNCIL MEMBERS TO PLACE ITEMS ON AGENDAS AND REQUIRING AGENDAS TO BE POSTED AT LEAST SEVEN DAYS IN ADVANCE OF COUNCIL MEETINGS IS INCONSISTENT WITH STATE LAW, THE RESPONDENTS HAVE NO DUTY OR OBLIGATION TO HOLD A REFERENDUM ON THE INITIATED ORDINANCE.

Petition 2 (Council Rules) – Petitioners request a writ of mandamus requiring Respondents to hold a referendum on an initiated ordinance that allows any County Council member to place items on the Council’s meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting.

This requested initiative ordinance is controlled by SC Code Ann. § 4-9-110:

SECTION 4-9-110. Council shall select chairman and other officers; terms of office; appointment of clerk; frequency and conduct of meetings; minutes of proceedings.

The council shall select one of its members as chairman, except where the chairman is elected as a separate office, one as vice-chairman and such other officers as are deemed necessary for such terms as the council shall determine, unless otherwise provided for in the form of government adopted. The council shall appoint a clerk to record its proceedings and perform such additional duties as the council may prescribe. The council, after public notice shall meet at least once each month but may meet more frequently in accordance with a schedule prescribed by the council and made public. All meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies. Special meetings may be called by the chairman or a majority of the members after twenty-four hours' notice.

The council shall determine its own rules and order of business. It shall keep a journal in which shall be recorded the minutes of its proceedings which shall be open to public inspection. (emphasis added)

Pursuant to this statute, the “council” has the authority to determine its own rules. The proposed initiated ordinance is in direct conflict with state statutory law. Where does it stop? Could electors use the initiative and referendum process to amend S.C Code. § 4-9-110 to provide that no chairman or vice-chairman will be selected, that council does not have to appoint a clerk to record proceedings, that council does not have to meet at least once a month, that meetings do not have to be conducted in accordance with the general law of the State, and that a journal of recorded minutes does not have to be kept? I think not. However, the Petitioners propose to selectively amend this state statute and usurp the authority of a county council to determine its own rules.

Regarding the posting of the agenda, the McCormick County Council follows S.C. Code Ann. § 30-4-80 which requires the posting of an agenda at least twenty-four hours prior to a meeting. The Petitioners propose to amend this state statute and substitute “seven days” for “at least twenty-four hours” as required by S.C. Code § 30-4-80.

The proposed initiated ordinance attempts to change state law and take away the authority of “council” to determine its own rules and order of business. The Respondents have no duty or obligation to hold a referendum on this proposed initiated ordinance.

The Petition for Writ of Mandamus should be denied.

CONCLUSION

This Court has before it a petition for writ of mandamus to require the Respondents to hold referendums on two separate and distinct initiated ordinances. The Court should analyze each proposed initiated ordinance separately.

The proposed initiated ordinance changing the reapportionment plan for McCormick County from Map 2 to Map 3 is in direct conflict with S.C. Code Ann. § 4-9-90 and disregards case precedent established by this Court. The Respondents have no duty or obligation to hold a referendum on this facially invalid initiated ordinance.

The proposed initiated ordinance changing the rules of McCormick County Council is inconsistent with SC Code Ann. § 4-9-110 which specifically grants to Council the authority to determine its own rules and S.C. Code § 30-4-80 which specifies the time for posting an agenda. The Respondents have no duty or obligation to hold a referendum on this proposed initiated ordinance.

For the reasons stated herein and based on the established statutory and case law of this state, the Petition for Writ of Mandamus should be denied.

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May 13, 2024

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2024-000737

Diane Louise Shaffer and Daniel A. Higgins Petitioners,

v.

McCormick County Council and McCormick County Office of
Voter Registration and Elections, Respondents,

REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

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REPLY IN SUPPORT OF PETITION

The parties agree that the Court should exercise its original jurisdiction here. The parties only differ as to whether the proposed ordinances for which the Petitioners seek a referendum are consistent with South Carolina law. They undoubtedly are, as the Freedom of Information Act places a floor, not a ceiling, on how the citizenry can inform itself on governmental activity; and Home Rule vests the citizenry with the ability to shape its own local government. Because South Carolina Code § 4-9-1230 provides that these proposed ordinances “shall be submitted to the electors” for an up-or-down vote, the Court should issue the requested writ so that the ballots can be prepared and the citizenry fully informed in advance of the November 2024 Election..

ARGUMENT

I. The proposed ordinances are not prohibited by the South Carolina Code § 4-9-1210.

McCormick County generally opposes this Petition on grounds that the proposed ordinances are “facially defective.” (Op. at 6.) But the South Carolina Code specifically rejects such a generalized argument.

Rather than the sweeping proscriptions suggested by the County’s opposition, the General Assembly has placed only narrow restrictions on the citizenry’s ability to affect change through referenda. The enabling statute provides that “[t]he 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.” S.C. Code Ann. § 4-9-1210 (emphasis added).

The proposed ordinances here have nothing to do with the public fisc, but instead 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 referenda, 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).

Because these proposed ordinances are outside of the narrow subjects that are statutorily prohibited from citizen-led referenda, the General Assembly has authorized them to be submitted to the electorate for a vote. The writ should issue accordingly.

II. Nothing in the South Carolina Code implicitly prohibits these ordinances, either.

Faced with the obstacle that these ordinances are beyond the scope of Section 4-9-1210's limitations, McCormick County resorts to arguing that these proposed ordinances are inconsistent with other areas of South Carolina law. Those arguments fare no better.

The Petitioners do not dispute that the Court has previously rejected ordinances-through-referenda where the proposed local ordinance would directly conflict with an existing South Carolina statute. *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).

But this case does not share any of those characteristics, as the proposed ordinances here are fully aligned with existing state law.

Proposed Ordinance 23-10 (Meeting Agendas): The first proposed ordinance concerns the inclusion of items on the County Council’s agenda for regular meetings and how far in advance of a meeting the agenda must be posted for the public’s consumption. In opposing the Petition, McCormick County argues that such an ordinance somehow conflicts with a single sentence in South Carolina Code § 4-9-110: “The council shall determine its own rules and order of business.” (Op. at 10.) Absent from the County’s argument, though, is any discernible way that Proposed Ordinance 23-10 actually conflicts with this sentence.

Authorizing County Council members to place items on a meeting agenda does not change McCormick County Council’s “rules” (which seemingly do not exist, as the McCormick County Code is silent on this point) or its “order of business” (which also is not contained anywhere within the McCormick County Code). The proposed ordinance simply allows Council members the chance to put issues on the table for the Council’s consideration in advance of 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.

Nor does this proposed ordinance conflict with any other provision of state law. In fact, the very same statute on which McCormick County bases its opposition specifically requires that County Council’s “meetings shall be conducted in accordance with the general law of the State of South Carolina affecting meetings of public bodies.” S.C. Code Ann. § 4-9-110. That “general law” is, among others, the South Carolina Freedom of Information Act, and it requires public bodies to post agendas for their regular and special meetings “*at least* twenty-four hours prior to such meetings.” *Id.* § 30-4-80(A) (emphasis added). Proposed Ordinance 23-10 would require the McCormick County Council to post an agenda a full week before its meetings—which, of course, is “at least twenty-four hours prior to such meetings.” The General Assembly has decided that twenty-four hours is the floor for public transparency, not the ceiling as suggested by McCormick County’s opposition brief.

What’s more, the proposed ordinance squares with FOIA’s overall purpose: “[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.” *Id.* § 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 the McCormick County Council to publish its meeting agendas seven days in advance of its meetings does not conflict with FOIA; in fact, it keeps with the very spirit of the law and better promotes public transparency and accountability.

Proposed Ordinance 23-11 (Citizen-Led Redistricting): The second proposed ordinance would adopt Map 3, rather than Map 2, to establish the boundaries for County Council’s single-member districts. Both maps were generated by the South Carolina Revenue and Fiscal Affairs

Office. In opposing the Petitioners' request to let this question go to the citizenry for a vote, McCormick County argues that Council's decision to use Map 2 was authorized by state law. (Op. at 8.) This misses the point. The Petitioners have not contested whether the Council's decision was a "valid reapportionment plan" in the first place. Instead, the Petitioners disagree with Council's decision as a political matter and have marshaled sufficient signatures from the electorate to put the proposal for a different reapportionment plan to a vote of the entire citizenry, precisely as South Carolina Code § 4-9-1230 authorizes.

In addition to making a strawman argument, McCormick County cites *Elliott v. Richland County*, 322 S.C. 423, 472 S.E.2d 256 (1996), as foreclosing Proposed Ordinance 23-11. It does no such thing.

Elliott has a tortured procedural history. There, the Richland County Council passed three different redistricting ordinances over the course of two years, the third of which came eight months after a panel of federal judges ordered the second redistricting ordinance to be submitted to the United States Department of Justice for preclearance under the Voting Rights Act, and five months after the Department of Justice issued a favorable preclearance decision. *Id.* at 424–26, 472 S.E.2d at 257–58. The third redistricting ordinance was challenged, and this Court held that the third plan was inoperable. But the Court did not provide any particular analysis, stating only:

Appellant argues that under § 4-9-90, once county council has enacted a valid reapportionment ordinance, it may not subsequently enact another such ordinance until after the next regular apportionment period prescribed by § 4-9-90. We agree.

Id. at 426–27, 472 S.E.2d at 258 (citing case law from California and Kansas). The remainder of the Court's decision addressed only whether the second redistricting ordinance was an unlawful "new" apportionment plan or a lawful "amendment" to the first redistricting ordinance. *Id.* at 427, 472 S.E.2d at 258–59.

It is impossible to divorce *Elliott*'s result from the peculiar procedural history from which it arose. The Court was forced to wrangle with and bring finality to a situation where a county council was passing and re-passing redistricting ordinances with conflicting goals, each of which required the engagement of the Department of Justice. There are no such considerations here; this case simply involves a potential political disagreement between McCormick County Council and the voters it represents regarding how single-member districts should be apportioned.

But McCormick County's reliance on *Elliott* fails for other, more fundamental reasons. On its face, *Elliott* prohibits a county council itself from consistently changing the composition of single-member voting districts. And this makes perfect sense, as—among other potential political mischief—an incumbent could always avoid viable opposition in a primary or general election by consistently “redistricting” opponents out of the incumbent's district. Instead of allowing the governing body to keep moving the goalposts from election to election, *Elliott* rightly restricted the Richland County Council from repeatedly churning its redistricting maps.

This case presents the inverse of such concerns. 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 the citizenry. Instead, through this Petition, the citizens of McCormick County are demanding the chance to make their local government more representative of the voters, which is perhaps the purest form of democracy and political expression. Regardless of the concerns that motivated *Elliott*, they simply are not present here.

Moreover, Proposed Ordinance 23-11 is fully consistent with governing statutes and general norms of Home Rule. The General Assembly has specifically pushed to the citizenry questions about how they wish to be governed at the local level. South Carolina Code § 4-9-10(c)

expressly allows the electors to petition for a referendum “to change the form of government, number of council members, or methods of election,” and it allows such changes to occur every four years.¹ In short, while *Elliott* may prevent McCormick County Council itself from reapportioning its single-member districts more than once every ten years, the General Assembly trusts the voters to select how they want to be governed at the local level, including where to draw the boundaries for electoral districts, up to once every four years.² This is the very essence of local self-government Home Rule was designed to create, and Proposed Ordinance 23-11 is consistent with, not contrary to, state law. The Court should issue the request writ of mandamus accordingly.

CONCLUSION

McCormick County concludes its opposition brief by rhetorically lamenting: “Where does it stop?” (Op. at 11.) That’s easy: the ballot box. Once on the ballot, the people of McCormick County determine what will become of the proposed ordinances, and the County Council “shall be bound by the results of any such referendum.” S.C. Code Ann. § 4-9-1230.

To be clear, through this Petition, the Petitioners do not ask this Court to alter or impair state law, to take away the authority of the McCormick County Council, or to make the proposed ordinances the law of McCormick County. The request here is narrow and seeks a writ of mandamus directing McCormick County to present these proposed ordinances to the citizenry in November 2024 for an up-or-down vote on two issues at the heart of self-government.

¹ Proposed Ordinance 23-11 is the first proposed referendum on this specific reapportionment plan, and no other referenda have been held in the past four years. Section 4-9-10(c)’s timing limit is not an impediment here.

² Nor is there anything inherently problematic or undemocratic about having different legislative districts within a single ten-year cycle. In March, a three-judge panel of the federal court directed a congressional election in South Carolina to proceed during the 2024 election cycle based on a districting map that will likely be modified before the next Census. *S.C. State Conf. of the NAACP v. Alexander*, Case No. 3:21-cv-03302-MGL-TJH-RMG, 2024 U.S. Dist. LEXIS 56366, at *8–9 (D.S.C. Mar. 28, 2024).

Because South Carolina Code § 4-9-1230 provides that these proposed ordinances “shall be submitted to the electors,” the Petitioners respectfully request that the Court grant the Petition and issue a writ of mandamus to McCormick County directing it to place these two proposed ordinances on the ballot for the upcoming general election.

Respectfully submitted,

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May 20, 2024

PROOF OF SERVICE

I do hereby certify that all parties to this matter have been served with a copy of the pleading(s) specified below by sending them via at the address(es) below:

Pleading(s): Reply in Support of Petition for Writ of Mandamus

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By: /s/ Kevin A. Hall
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May 20, 2024

The Supreme Court of South Carolina

Diana Louise Shaffer and Daniel A. Higgins, Petitioners,

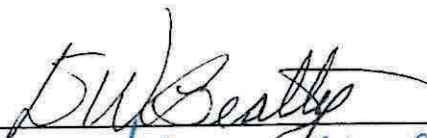

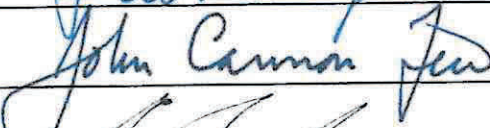
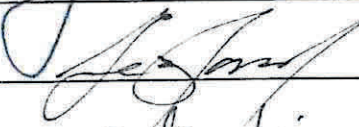

v.

McCormick County Council and McCormick County
Office of Voter Registration and Elections, Respondents.

Appellate Case No. 2024-000737

ORDER

Petitioners seek a writ of mandamus in this Court's original jurisdiction requiring the McCormick County Office of Voter Registration and Elections to place two ordinances proposed by initiative petition on the upcoming fall general election ballot. Because Petitioners have failed to make the requisite showing for a writ of mandamus, the petition is denied. *See City of Rock Hill v. Thompson*, 349 S.C. 197, 201, 563 S.E.2d 101, 102 (2002) (holding to obtain a writ of mandamus, the petitioner must show: (1) a duty of the respondent to perform the act; (2) the ministerial nature of the act; (3) the petitioner's specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy).

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
June 20, 2024

cc:

Kevin A. Hall

Matthew Todd Carroll

George P. Callison, Jr.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE SUPREME COURT'S ORIGINAL JURISDICTION

Appellate Case No. 2024-000737

Diane Louise Shaffer and Daniel A. Higgins Petitioners,

v.

McCormick County Council and McCormick County Office of
Voter Registration and Elections, Respondents,

PETITION FOR REHEARING AND CLARIFICATION

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PETITION FOR REHEARING AND CLARIFICATION

Petitioners most respectfully file this petition for rehearing and clarification so that they can appropriately assess their next steps, if any, with respect to this litigation.

On May 3, 2024, the Petitioners filed a petition with this Court seeking a writ of mandamus directing the Respondents to place on the upcoming ballot two proposed ordinances resulting from the ordinance-by-initiative process the General Assembly has created to ensure that local government remains responsive to the citizenry. S.C. Code Ann. §§ 4-9-1210, 1230. Though they recognized the high bar required for a writ of mandamus, the Petitioners believed that they had met the elements for such a writ. On June 20, 2024, the Court denied the petition, stating that the “Petitioners have failed to make the requisite showing for a writ of mandamus.”

The Petitioners file this request for rehearing and clarification to respectfully seek additional guidance as to which element of the mandamus analysis the Petitioners failed to satisfy. The Petitioners are concerned that if they seek relief from the circuit court regarding this same situation without further engagement with this Court, the circuit court may look to this Court’s June 20th Order and treat that ruling as conclusive on the merits of this dispute when the Court may not have intended such an understanding.

As it stands, the Petitioners read the Court’s June 20th Order as instructing them to seek further relief at the circuit court, as the first three elements of the mandamus analysis appear to have been conclusively met. *See* S.C. Code Ann. § 4-9-1230 (providing that if the Council refuses to pass a proposed ordinance for which an initiative petition has been presented, “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”) (emphasis added); *Johnston v. S.C. Dep’t of Labor*, 365 S.C. 293, 296–97, 617 S.E.2d 363, 364 (2005) (“The term ‘shall’ in a statute means that the action is mandatory.”).

There is no dispute that the Petitioners have marshaled the requisite signatures from the electorate for McCormick County Council to consider new ordinances; that Council declined to pass the proposed ordinances; that Section 4-9-1230 directs that if Council does not pass the ordinances, then they “shall be submitted to the electors”; and that the County Election Commission had declined to put these proposed ordinances on the ballot for the upcoming general election. Accordingly, it appears that the only element that may have been unsatisfied in the initial petition was the final one—“a lack of any other legal remedy”—and the Petitioners are prepared to argue the same to a circuit court through commencement of new litigation. But before doing so, they respectfully seek rehearing and clarification to ensure that the parties and circuit court all understand the basis for the Court’s order denying the petition for a writ of mandamus.¹

Respectfully submitted,

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July 2, 2024

¹ The Petitioners are aware of Rule 221(a), SCACR, and its prohibition against seeking rehearing when this Court “declin[es] to entertain a matter under Rule 245, SCACR.” Because the Court’s June 20th Order denied the Petitioners’ relief for failing to meet the elements of a writ of mandamus, the Petitioners do not believe that the Court “declined to entertain” this case, but instead issued a ruling on the actual question presented. If they have misunderstood the Court’s June 20th ruling, such a misunderstanding is an honest mistake.

PROOF OF SERVICE

I do hereby certify that all parties to this matter have been served with a copy of the pleading(s) specified below by delivering them at the addresses below via email as indicated below:

Pleading(s): Petition for Rehearing and Clarification

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July 2, 2024

The Supreme Court of South Carolina

Diana Louise Shaffer and Daniel A. Higgins, Petitioners,


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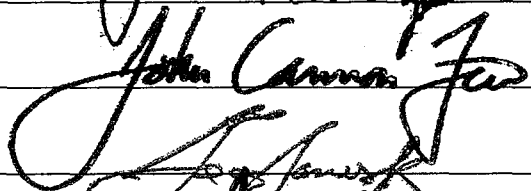
Appellate Case No. 2024-000737

ORDER


By order dated June 20, 2024, we denied Petitioners' request for a writ of mandamus. Petitioners now seek rehearing and clarification of that order. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded. *See* Rule 221(a), SCACR (providing a petition for rehearing must state with particularity the points supposed to have been overlooked or misapprehended by the court). Therefore, the petition for rehearing is denied. Further, we take the time to clarify that we declined to exercise original jurisdiction in our June 20th order and did not reach the merits of Petitioners' underlying dispute.



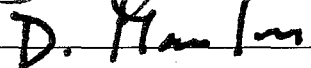
C.J.



J.



J.



J.

Verdin, J., not participating

Columbia, South Carolina
August 13, 2024

cc:

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