

**RECEIVED**

**Jun 09 2026**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Honorable Circuit Court Judge Benjamin H. Culbertson

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Court of Appeals Case No. 2026-001286

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Dr. Brian McClure,

Appellant,

v.

Charleston County School District, Charleston County  
School District Education Foundation, Leah Whatley,  
Michelle Leber, Keith Grybowski, Carlote Bailey, and  
Pamela Mckinney,

Respondents.

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**APPELLANT'S MOTION FOR EXTENSION OF TIME AND FOR LEAVE TO FILE  
NOTICE OF APPEAL WITH THE CLERK OF THE COURT OF APPEALS**

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TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Appellant Dr. Brian McClure, by and through undersigned counsel, respectfully moves this Court, pursuant to Rules 240 and 263(b), SCACR, for an extension of time and for leave to file with the Clerk of the Court of Appeals Appellant's Notice of Appeal, proof of service, the orders challenged on appeal, and the required filing fee out of time.

This motion does not seek an extension of time to serve the Notice of Appeal. The Notice of Appeal was timely served on all Respondents and timely filed with the Charleston County Clerk of Court. The only issue addressed by this motion is the filing of the Notice of Appeal and related appellate filing materials with the Clerk of the Court of Appeals.

In support of this motion, Appellant respectfully shows the Court as follows:

1. On April 6, 2026, the Charleston County Court of Common Pleas entered an order denying Appellant's Motion for Temporary Restraining Order and Preliminary Injunction.

2. Appellant timely moved for reconsideration, alteration, or amendment of the April 6, 2026 order.

3. On May 1, 2026, the circuit court entered an order denying Appellant's Motion to Reconsider, Alter, or Amend.

4. Appellant thereafter prepared and served a Notice of Appeal seeking review of the April 6, 2026 order denying injunctive relief and the May 1, 2026 order denying reconsideration.

5. On May 22, 2026, Appellant timely filed the Notice of Appeal in the Charleston County Court of Common Pleas. A filed copy of the Notice of Appeal is attached as Exhibit A.

6. On May 22, 2026, Appellant timely served the Notice of Appeal on Respondents by U.S. Mail, first-class postage prepaid, and by email. A copy of the Certificate of Service is attached as Exhibit B.

7. Based on the May 22, 2026 service date, Appellant calculated the deadline for filing the Notice of Appeal with the Clerk of the Court of Appeals under Rule 203(d)(1)(B), SCACR, as June 1, 2026.

8. Counsel for Appellant intended for the Notice of Appeal, fee, and required appellate filing materials to be mailed to the Clerk of the Court of Appeals. However, on June 8, 2026, counsel learned that there appears to have been an issue with outgoing mail in counsel's office suite, such that some outgoing mail was not sent out as intended.

9. Specifically, the mailing that was to be sent to the Court of Appeals in the matter was intended to be sent on May 22, 2026, along with the notice send to Respondent. However, this

mailing did not go out as intended under the mistaken belief it was to be submitted electronically.

10. Upon learning of the issue, counsel promptly investigated the matter and prepared this motion seeking leave to cure the filing issue. Appellant respectfully submits this motion in good faith and not for purposes of delay.

11. All deadlines that cannot be extended have been met. Rule 263(b), SCACR, authorizes the appellate court to extend the time prescribed by the appellate rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243, SCACR. Here, **Appellant does not seek any extension of the time to serve the Notice of Appeal.** The Notice of Appeal was timely served on Respondents.

12. Respondents have suffered no prejudice. Respondents were timely served with the Notice of Appeal on May 22, 2026, and therefore had timely notice that Appellant intended to appeal. The appeal concerns orders entered in the lower court, and Respondents have been aware of the appeal since service of the Notice of Appeal on May 22, 2026.

13. Appellant has also taken steps to move the appeal forward. The transcripts of the April 1, 2026 and April 30, 2026 hearings have already been ordered. Copies of the transcript-order confirmations are attached as Exhibits C and D.

14. The requested relief will not alter the issues on appeal, will not expand the appeal, and will not prejudice Respondents. It will merely allow the appeal to proceed where the jurisdictional act of timely service was completed, the Notice of Appeal was timely filed in the lower court, Respondents received timely notice, and the failure to file with the Clerk of the Court of Appeals appears to have resulted from an inadvertent office-mail issue.

15. To the extent the Court determines that additional relief is necessary under Rule 203(d)(3), SCACR, Appellant respectfully asks the Court to accept the Notice of Appeal, proof of

service, challenged orders, and filing fee as tendered and to allow the appeal to proceed.

### **MEMORANDUM IN SUPPORT**

Rule 203(d)(1)(B), SCACR, provides that the notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten days after the notice of appeal is served. The rule further provides that the appellate filing shall be accompanied by proof of service, a copy of the challenged order or judgment, and the filing fee.

Rule 263(b), SCACR, authorizes this Court to extend the time prescribed by the appellate rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243. This motion falls squarely within Rule 263(b). Appellant is not asking the Court to enlarge the time to serve the Notice of Appeal. Service was timely completed. Rather, Appellant asks only for leave to complete the appellate-court filing after the calculated June 1, 2026 deadline.

Good cause supports the requested relief. Appellant timely served Respondents and timely filed the Notice of Appeal in the lower court. Counsel calculated the appellate filing deadline as June 1, 2026, and intended to mail the Notice of Appeal and required filing materials to the Clerk of the Court of Appeals. On June 8, 2026, counsel learned that there appears to have been an issue with outgoing mail in counsel's office suite, such that some mail was not sent out as intended. Counsel acted promptly after learning of the issue.

There is no prejudice to Respondents. Respondents were timely served with the Notice of Appeal and have had notice since May 22, 2026 that Appellant seeks appellate review. No non-extendable deadline has been missed. The transcripts have already been ordered, and Appellant has taken steps to perfect the appeal. Allowing the filing out of time will preserve review on the merits and will not impair Respondents' ability to respond.

For these reasons, Appellant respectfully requests that the Court grant this motion, extend

the time for filing the Notice of Appeal and required appellate materials with the Clerk of the Court of Appeals, accept the Notice of Appeal, proof of service, appealed orders, and filing fee as tendered, and allow the appeal to proceed.

WHEREFORE, Appellant respectfully requests that this Court:

- A. Grant Appellant an extension of time under Rule 263(b), SCACR;
- B. Accept Appellant's Notice of Appeal, proof of service, challenged orders, and filing fee out of time;
- C. Deem Appellant's appellate-court filing timely upon acceptance by the Clerk of the Court of Appeals, or otherwise excuse the late appellate-court filing for good cause shown; and
- E. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Emmanuel J. Ferguson

Emmanuel J. Ferguson

S.C. Bar # 81431

FERGUSON LAW AND MEDIATION, LLC

171 Church Street, Suite 160

Charleston, South Carolina 29401

Telephone 843.491.4890

[emmanuel@fergusonlaborlaw.com](mailto:emmanuel@fergusonlaborlaw.com)

Attorney for Respondent

Charleston, South Carolina

Date: June 9, 2025

2026-001286

Exhibit A - Notice of Appeal

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
Case No.: 2025-CP-10-01436

Dr. Brian McClure,

Appellant,

vs.

Charleston County School District, Charleston  
County School District Education Foundation,  
Leah Whatley, Michelle Leber, Keith  
Grybowski, Carlote Bailey, and Pamela  
Mckinney,

Respondent.

**NOTICE OF APPEAL**

TO: THE CLERK OF COURT FOR CHARLESTON COUNTY AND  
COUNSEL FOR RESPONDENT:

PLEASE TAKE NOTICE that the Appellant, Dr. Brian McClure, by and through his undersigned counsel, hereby appeals to the South Carolina Court of Appeals from the Order entered in the above-captioned matter on April 6, 2026, affirming the termination decision of the Respondent, Charleston County School District. This appeal is taken pursuant to Rule 203(b)(1), South Carolina Appellate Court Rules, and includes all issues preserved in the Appellant's Motion to Reconsider filed April 6, 2026, and the underlying Order of May 1, 2026, which affirmed the Charleston County School District Board of Trustees' February 25, 2026 termination decision.

A copy of the April 6, 2026, Order affirming the termination decision of the Respondent is attached as Exhibit A.

A copy of the May 1, 2026, Order denying Appellant's Motion to Reconsider, Alter, or Amend is attached as Exhibit B.

Specifically, the Court's April 6, 2026, and May 1, 2026, Orders were in error for the

following, general reasons:

1. The Court's April 6, 2026, Order states that Appellant failed to demonstrate irreparable harm and the absence of an adequate remedy at law. Appellant established both of these elements factually during the hearing on his Motion. Further, Appellant respectfully submits that, because the operative claim arises under the South Carolina Freedom of Information Act, at S.C. Code Ann. § 30-4-100(A), a violation of FOIA, "must be considered to be an irreparable injury for which no adequate remedy at law exists."

2. The Court's Order failed to address whether the Board's vote on Michelle Faust was a new action item requiring compliance with S.C. Code Ann. § 30-4-80(A). The publicly posted agendas identified specific nominees by district, including Appellant as the District 8 nominee. On February 25, 2026, after Appellant's nomination failed, the Board then moved to a different nominee who was not identified on the agenda and whose materials were not publicly posted in advance. Appellant respectfully submits that this was not merely continued consideration of the same item, but the addition of a distinct nominee for final action without the notice, vote, and findings required by FOIA.

3. Appellant alternatively requested that the Court, Pursuant to Rule 52(a) of the South Carolina Rules of Civil Procedure, amend its Order to set forth more specific findings or reasoning concerning (a) irreparable harm, (b) lack of an adequate remedy at law, and (c) the basis for concluding that Appellant has not established a likelihood of success on the merits. The Court's May 1, 2026, Order failed to address Appellant's request.

Therefore, Appellant submits this Notice of Appeal and seeks reversal of the Circuit Court's April 6, 2026, Order denying Appellant's Motion for Injunctive Relief.

RESPECTFULLY SUBMITTED,

s/Emmanuel J. Ferguson, Sr.

Emmanuel J. Ferguson, Sr., SC Bar No.

81431 FERGUSON LAW AND

MEDIATION, LLC

171 Church Street, Suite 160

Charleston, South Carolina

29401 (843) 491-4890

[emmanuel@fergusonlaborlaw.com](mailto:emmanuel@fergusonlaborlaw.com)

*Attorney for Appellant*

Charleston, South Carolina  
May 22, 2026

# Exhibit A

Brian McClure  
PLAINTIFF(S)

School District Charleston County 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:

On April 1, 2026, Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction filed March 19, 2026, was heard by this Court in Charleston County. This was the only motion before the Court. After carefully considering and evaluating the arguments presented by counsel, the several memoranda filed with the court, and the applicable law, the Court finds that Plaintiff has failed to meet its burden of demonstrating (1) that irreparable harm would occur without the injunction; (2) a likelihood of success on the merits of the underlying litigation; and (3) that no adequate remedy at law exists. Therefore, Plaintiff's motion is respectfully DENIED.

**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 04/06/2026 .

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.

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Charleston Common Pleas

**Case Caption:** Brian McClure VS School District Charleston County , defendant, et al  
**Case Number:** 2026CP1001436  
**Type:** Order/Electronic Form 4

So Ordered

s/ Robert Bonds, 2770

# Exhibit B

Brian McClure  
PLAINTIFF(S)

School District Charleston County 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:

This matter came before the Court by WebEx on April 30, 2026, upon Plaintiff's Motion to Reconsider, Alter, or Amend this Court's April 6, 2026, order, which respectfully denied Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. Plaintiff now asks the Court to reconsider its ruling.

Based upon a review of the memoranda filed by the parties and after hearing the arguments from counsel, the Court declines to reconsider its April 6, 2026 order. Therefore, Plaintiff's Motion to Reconsider, Alter, or Amend filed April 6, 2026, is respectfully DENIED.

**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 05/01/2026 .

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.

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Charleston Common Pleas

**Case Caption:** Brian McClure VS School District Charleston County , defendant, et al  
**Case Number:** 2026CP1001436  
**Type:** Order/Electronic Form 4

So Ordered

s/ Robert Bonds, 2770

2026-001286

Exhibit B - Certificate of Service of Notice of Appeal

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Dr. Brian McClure,

Appellant,

vs.

Charleston County School District, Charleston  
County School District Education Foundation,  
Leah Whatley, Michelle Leber, Keith  
Grybowski, Carlote Bailey, and Pamela  
Mckinney,

Respondent.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
Case No.: 2025-CP-10-01436

**CERTIFICATE OF SERVICE**

I do hereby certify, on this date, that a copy of the foregoing **Notice of Appeal** in this matter **was served by U.S. Mail, first-class postage prepaid, and by email** to the following address:

Charleston County School District  
Office of Legal Counsel  
75 Calhoun Street  
Charleston, South Carolina 29401

**and**

Alice F Paylor  
SAXTON & STUMP  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
[afp@saxtonstump.com](mailto:afp@saxtonstump.com)

*s/Emmanuel J. Ferguson, Sr.*  
Emmanuel J. Ferguson, Sr.

Charleston, South Carolina  
May 22, 2026



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

June 9, 2026

Mr. Emmanuel Joseph Ferguson, Sr., Esquire  
171 Church Street  
Suite 160  
Charleston SC 29401

Re: Dr. Brian McClure v. Charleston County School District  
Appellate Case No. 2026-001286

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The document has not been timely filed pursuant to Rule 203(d)(1)(B), SCACR. A motion to allow the late filing will have to be made.

Very truly yours,

  
CLERK

cc: Elizabeth Janelle Palmer, Esquire  
Alice F Paylor, Esquire

**RECEIVED**

**Jun 09 2026**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
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Honorable Circuit Court Judge Benjamin H. Culbertson

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Dr. Brian McClure,

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Michelle Leber, Keith Grybowski, Carlote Bailey, and  
Pamela Mckinney,

Respondents.

**CERTIFICATE OF SERVICE OF APPELLANT'S MOTION FOR EXTENSION OF  
TIME AND FOR LEAVE TO FILE NOTICE OF APPEAL WITH THE CLERK OF THE  
COURT OF APPEALS**

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned counsel for Respondent, Stephanie Lehman, does hereby certify that service of the **APPELLANT'S MOTION FOR EXTENSION OF TIME AND FOR LEAVE TO FILE NOTICE OF APPEAL WITH THE CLERK OF THE COURT OF APPEALS** and Memorandum in Support in the above-captioned matter was made upon Respondent by email on this date as follows:

**ATTORNEY FOR APPELLANT:**

Alice F Paylor  
SAXTON & STUMP  
151 Meeting Street, Suite 400  
Charleston, SC 29401  
afp@saxtonstump.com

Respectfully submitted,

s/ Emmanuel J. Ferguson

Emmanuel J. Ferguson

S.C. Bar # 81431

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Telephone 843.491.4890

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Attorney for Respondent

Charleston, South Carolina

Date: June 9, 2025