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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
The Honorable Teasa K. Weaver

Case No. 2023-CP-46-01467
Appellate Case No. 2025-002054

Midway Baptist Church of York,

Respondent-Appellant,

v.

County of York,

Appellant-Respondent.

RECORD ON APPEAL
(VOLUME 2 of 2)

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In the Matter Of:

MIDWAY BAPTIST CHURCH vs COUNTY OF YORK

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TRANSCRIPTION OF AUDIO FILE

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THE COURT: So this is Case Number 2023-CP-461467, Midway Baptist Church of York vs. York County.

This is defendant's motion under Rule 59E. And present on behalf of the defendant is Mr. Michael Kendry and also Ms. Laura Dover. Present on behalf of plaintiff is Ms. Emily Brown.

And so, Mr. Kendry or Ms. Dover, whenever you're ready.

MR. KENDRY: First, I would like to Court with the memorandum (inaudible). (Inaudible)?

THE COURT: Yes, please.

MS. DOVER: (Inaudible).

THE COURT: I feel like I'm a world away now. Was this filed in response to plaintiff's --

MR. KENDRY: (Inaudible).

THE COURT: Okay. Okay.

MR. KENDRY: (Inaudible).

THE COURT: Okay.

MS. DOVER: (Inaudible).

THE COURT: Actually, it might be better that you stay here. And I'm going to note, I don't know what they've done with the microphones. You can tell they do not project, but my -- my hope is that they still

record. We tested it and they were still recording.

I'm afraid if you step too far away from them, they may not record you. So I -- now, if you need the podium, you could pull it maybe between counsel.

MS. DOVER: That's quite all right.

THE COURT: Or you can remain seated, if you'd like.

MS. DOVER: (Inaudible).

THE COURT: You're fine. You can remain seated.

MS. DOVER: So Your Honor, the South Carolina building codes provide a clear guide for classifying uses within this state. And that would support an amended order from this Court requiring Midway to comply with the educational group occupancy requirements of the building code.

And I apologize, I'm having some allergy issues. So if I start tearing up, it is not a result of the arguments.

695 of South Carolina law states that it is the public policy of this state to maintain reasonable construction standards for buildings that are consistent with the public health, safety, and welfare of its citizens.

Reasonable construction standards that will promote and protect the health, safety, and welfare of

the citizens, including minor children, is achieved by the orderly classification of buildings based on their occupancy type.

Those occupancy types are formulated by a broad group of professionals who, in looking at different uses, take into account the risks and hazards that are unique to each.

So this case involved two primary occupancy groups, educational and assembly. Neither of those occupancy groups is subordinate to the other.

The County submits that that was the error in the order in this case. The Court's order found that both uses will exist for the buildings in question.

If that is the case, we would submit that the building code clearly and plainly addresses how to handle such a situation.

Section 302.1 states: Structures containing multiple occupancy groups shall comply with Section 508.

Section 508 is -- I won't delve any further into it except to say that it takes into account whether there are separation requirements, whether there not separation requirements, where a -- whether a building is used for different purposes at different times, and how to comply with the applicable standards of safety

and risk that have been associated with those occupancy groups.

So the error in the order was a reworking of an exception under the education occupancy, which results in an educational occupancy being relegated to a subordinate accessory use to an assembly occupancy, instead of addressing those in the way that the building code clearly states they should be treated. Two occupancy types, go to Section 508 to deal with those multiple occupancy types.

So the County has no issue with the operation of a religious school or any other school. Would welcome it the same way we would welcome a variety of uses under the building code.

The County does have a duty to meet and charge it is dealt in Title 6, as does the building official, which is to interpret and enforce the building code in a way that promotes the health, safety, and welfare of citizens of the County.

When an occupancy type is educational, the work has gone in to determine that you have a ratio of minor children to adults that is far different than what is expected in an assembly occupancy setting.

And that -- the fact that those two things might coexist is already contemplated in the building code,

and the County would stand by that.

Plaintiff's motion has suggested in its reply that requiring a school to comply with the appropriate fire and safety building codes is a burden. It's a nonsensical position to take.

Compliance with the codes is a critical health and safety factor intended to ensure that minor children are protected to a reasonable degree in a school setting where there are six or more students.

The County asserts that is the only logical conclusion for the Court to reach in its (inaudible) and would ask it to amend its decision to provide for the safety requirements called for by the building code in a group (inaudible) educational classification.

There were a couple of arguments presented by -- by plaintiff the County asserts are in error and would like to address those.

First is the creation and adoption of the term religious education. Religious education is a term that's not defined in the building code, and it's not used in the applicable provisions of the building code.

Religious educational rooms and religious auditoriums are, and those connote something entirely

different than use of the phrase "religious education."

The County believes the Court erroneously adopted this phraseology in synonymous use of the term "religious education" to create an exception which did not otherwise exist.

Education is a purpose, regardless of whether it is religion -- religious in nature because the health and safety hazards to the group of minors who are there on a consistent daily basis remains the same, regardless of whether a school is secular or religious.

Plaintiff pointed out Alpine Christian Fellowship v. County Commissioners of Pitkin County, a federal case from 1994.

I would assert that that case supports the position of the County as it plainly resolves the question of multiple occupancies and the governmental interest in applying applicable codes to the school that was sought to be operated in that case.

The issue in Alpine had to do with the zoning matter. And the Court's concern was that the county commissioners in that case decided whether the school could operate within the religious structures of the church based on negative reactions from the community,

and that was inappropriate.

However, specifically, the parties in that case stipulated, and I'm quoting: Several county departments' approval included compliance and all requirements of their building codes for fire protection and safety, sanitation, and health.

They also stipulated, and I'm quoting again: The building is safe under the fire code and building code for the occupancies contemplated.

The Court went on to note, after pointing out its belief or its finding that the negative reaction of residents is what led to the denial of the special permit to operate the school, that in that case -- and I'm quoting the Court: All of the safety and other legitimate government interests have been satisfied.

Certainly, the South Carolina building code makes clear that the health and safety standards are a compelling government interest and are required to be adopted by local governments throughout this state as they affect health and safety of the residents.

MR. KENDRY: Yes, please. May it please the Court, Your Honor?

THE COURT: Yes.

MR. KENDRY: Michael Kendry. We wanted to distill what we thought was the essence of the issue

we want the motion to reconsider for the Court. We do stand by our objections to the order or concerns about the order that were addressed in the motion itself and the arguments therein. We do stand by those.

We felt there were numerous items we had to point out in order to preserve for the record those issues and submit those in conjunction with the arguments presented here today.

But we wanted to let that writing stand on its own as part of the record while we try to crystallize the concern and the potential for injustice if assembly grouping is allowed to be attached as -- and as the Court suggested in the order, associated with any religious institution of the County.

If you take it to the nth degree and extrapolate it to all institutions of the County, the injustice and concern for safety gets exponentially compounded and believe that's a concern that the Court should redress in modifying its order and requiring Class E use classification so that the health, safety, and welfare of children are protected, not only at Midway Academy, (inaudible) Midway Academy, but any other school where this type of decision would apply for York County.

So we're very concerned that the -- the

extrapolation and use of that wording in the order would have a detrimental fact -- effect to the health and safety of any child going to any religious school that sought to be located in York County. (Inaudible). Thank you.

MS. DOVER: I would just simply add to that the reasons we stated here, as well as the reasons that are noted in the notice and motion to alter or amend and the memo that was submitted to the Court this morning, that the Court would modify its order as requested, and directly rule that the educational use classification is appropriate for the operation of (inaudible). Thank you.

THE COURT: Thank you.

Ms. Brown?

MS. BROWN: (Inaudible). I'm going to -- first, I'm going to address I believe what they (inaudible) said this morning here, and I'm going to address what they have already said in their motion, as well as (inaudible). (Inaudible).

So first, I'd like to say talk a lot in this memo. It appears -- this is the first time I've seen it, but also their argument, about the basis of the codes and what they're designed to do, and none of that (inaudible).

And there is nothing in here that (inaudible) codes on the basis (inaudible). And there was no -- there was no discussion, really, about the ratio of student to child.

As a matter of fact, in the exemption in the County and in its initial motion objected to the requirement to (inaudible) not to (inaudible).

So I think that this action (inaudible). (Inaudible) requesting (inaudible). Their contention that it should be viewed as a multiple occupancy use is the issue before the Court. (Inaudible). It's multiple (inaudible). Multiple (inaudible).

And so according to the plain language of the regulation, if look at (inaudible) which is (inaudible) in that there is (inaudible) for religious education classrooms.

And so that exemption would need to be (inaudible) (inaudible) apply (inaudible) a multiple occupancy (inaudible). If the exemption applies, then rooms are classified as A3, which is the same as the church. There is no (inaudible).

And then (inaudible) is they keep talking about (inaudible). And yet in the order and (inaudible), they don't (inaudible). They don't detail of this (inaudible). The only basis (inaudible) exception to

(inaudible) Midway Christian Academy is teaching education with religion, from a religious point of view, and not provide any other basis for why they would deny that exemption or why the occupancy limitation would not apply.

There's no -- no other facts presented at the (inaudible) for health and safety. (Inaudible) claim (inaudible). (Inaudible) health and safety issue out in the world that we can't specify. It is not truly a health and safety issue.

Essentially, in its initial motion, Your Honor, they're asking for a few things related to the order. The first is they're asking you to ignore that 305.1.1 is within the educational occupancy classification section.

They're asking you to ignore that and then look at other portions of the codes in determining what the plain language is.

They're also asking you to accept the building official's determination of the definition of religious education without an inquiry into the basis for that determination.

And they're asking you to find that the Mickel case that was cited in the order does not apply, and yet the Doe v. Keel case does apply.

So I would submit to the court that Doe v. Keel and the Mickel case do not contradict each other. As a matter of fact, if we don't accept just the County's truncated quote in its motion, but Doe says that if the statute or regulation is silent or ambiguous with respect to a specific issue, the Court must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference.

And then the case goes on to say that if the agency's interpretation is arbitrary, capricious, or manifestly contrary to the statute or regulation, then the Court must look further at -- into the plain language of the statute and hold that the agency's interpretation is arbitrary or capricious.

So what we're asking the Court today is to hold an additional sustaining ground that the building official's determination that Midway Christian Academy did not qualify for the religious education exemption is arbitrary and capricious.

And in Blackman v. DHEC, the Court -- the Court of Appeals for South Carolina defined arbitrary. And it says a decision is arbitrary if it is without a rational basis, is based alone on one's will, not upon any course of reasoning or exercise of judgment, is

made a pleasure without adequate determining principles, or is governed by no fixed rules (inaudible).

At trial, the building official stated that religion -- in his mind, what the academy was doing was education from a religious point of view, essentially education with religion.

And when asked why that did not qualify as religious education, his only answer was it -- because it complied with the state education requirements because, in his mind, religious education could not comply with state education requirements.

He did not base it on any South Carolina law. He did not base it on any particular rules. It was just simply his own opinion.

But, in fact, if we look at cases in South Carolina law, so in Hunt v. McNair, the South Carolina Supreme Court has stated that religious schools pursued two goals, religious instruction and secular education, and that religious schools are wholly or in part under the direction or control of any church or any -- of any religious or sectarian denomination, society, or organization. And that was in Hartness v. Patterson, and there they were quoting the South Carolina constitution.

There is a long history in this state of churches intertwining their faith beliefs -- of any religion, really, intertwining their faith beliefs with secular education, and that is -- is religious education.

And what are -- what would be the definition of religious educational classrooms, but for the place that you teach religious education?

And so, Your Honor, we're asking that the Court find that the building official's determination that the exemption did not apply because his definition of religious education did not include any education that met secular state educational requirements was arbitrary and capricious, and we're asking the Court to specifically state that.

The second thing we're asking is for the Court to deny plaintiff's motion and then just reaffirm the finding that the plain reading of the building codes supports the Court's interpretation, that the exemption within the educational occupancy classification applies to Midway Christian Academy.

As the Court has stated in its order, the exemption in 305.1.1 states religious educational rooms and religious auditoriums which are accessory to places of religious worship in accordance with Section 303.1.4 and have occupant loads of less than 100 per

room or space shall be classified as Group A3 occupancies.

If these rooms were solely meant to apply to religious education that did not at all include any secular education or meet secular state requirements, there would be no reason to list this exemption in the educational occupancy section, as the Court pointed out in its order.

And so when the Court looks at the code, it is within the Court's purview to read the code and determine what the plain meaning of the code is because, as Mickel has stated, the determination of a legislative intent is a matter of law.

The County in its memo has -- has gone on to say that the Court's interpretation did not comply with legislative intent, but it really provided no support for that and talked in circles, referring to a lot of different areas of the code, but ignored and failed to address why such an exemption would be within the religious educational occupancy section if it did not apply to religious education where that religion was intertwined with the secular education.

And so we're asking the Court today to just affirm that the plain reading is that the religious education exemption applies to Midway Christian

Academy.

And then the County also addressed several issues just in its initial memorandum in Section 7. That just seemed to be rather unimportant, but I'm going to address those for the Court.

So in A and B, they talked about Findings 17 and 18, and they objected to the inclusion of the -- the fire marshal's testimony. You know, that's the County's witness. I don't know that they -- they can put the fire marshal on the stand, elicit the testimony they elicited, and then object to it being in the order.

I would agree that the occupancy classification is governed by the building code. And the fire marshal did state that, you know, as it exists, there is really no limitation on what Midway Baptist Church can do in its building under the A3 design.

In C there and in other places, they are objecting to the Court's finding that Midway Christian Academy conforms with the occupancy requirement of 100 or fewer students.

And Midway has testified they currently (inaudible) 100, and the County's provided no evidence contrary. So I don't know how they -- they can relate (inaudible) that particular (inaudible).

And then in D and E, they talk about how the Court is confusing the definition of academy. I really think about reading -- you know, they're harping on context.

Reading the order in context, I really fail to see what is in any way confusing about page 6 where the -- where the Court discusses how the academy fits within that exemption.

And then they also go on to talk about how the Court didn't fail to define "associated." I really feel like, you know, this is grasping at straws at this point. "Associated" within the context of the order, it's clear that, you know, it's part of the church building. All a part of the church building would be associated (inaudible) classrooms that are accessory to the church.

And then they also go on to say that object to the occupancy load. That is written in (inaudible) fail to see (inaudible) of the (inaudible).

The final issue that the County raises is they are asking the Court to hold that Texas Christian Academy -- I'm sorry, Christian Academy of Abilene v. City of Abilene, which is a Texas case, applies.

And looking at that case, that case actually since then (inaudible) and provided the Court

memorandum yesterday and also (inaudible). And in the Barr case, Barr v. (Inaudible), they go on to (inaudible). (Inaudible) history of (inaudible) through the United States (inaudible) and -- and then the (inaudible) Act passed by Congress, and then how the states have -- have since, many of them, including Texas and South (inaudible), (inaudible) their own version of (inaudible).

And Barr vs. City of (inaudible) specifically states that (inaudible). (Inaudible) by the Texas Religious Freedom Restoration Act.

In South Carolina, we also have a (inaudible). And the State may not (inaudible) religion (inaudible) unless the State demonstrates that (inaudible) to the person (inaudible) organization is the (inaudible).

And it -- the Act defines certain terms. And one of those things (inaudible) and that means it meets the burden (inaudible) evidence and (inaudible).

So, therefore, the County must provide evidence (inaudible). In looking at the substantial burden, (inaudible) quoted several cases in its (inaudible), specifically (inaudible) where Amish children were (inaudible) school during eighth grade in Wisconsin. (Inaudible).

And then in the Alpine case, a special needs

(inaudible) religious (inaudible) substantial burden.

And in the cases including Alpine which was (inaudible), the viewpoint of the burden is from the persons (inaudible). That is the Midway (inaudible).

So the first question under the (inaudible) analysis (inaudible). And in this case (inaudible). (Inaudible) establish a Christian school that (inaudible) both (inaudible) and qualifies for secular education departments. (Inaudible).

And that is their sincere belief (inaudible). And so they also testified to the substantial burden and application of the (inaudible) of the education occupancy (inaudible) has placed on them. They have had to (inaudible). Cannot use the existing building. They have spent money on multiple attempts submitting plans to the County, having an architect for all -- at least three different (inaudible). (Inaudible).

And the -- what the County is requiring, they've said, (inaudible) is to consider each other. That would completely bar them from opening their school on their campus.

Now, so I think there's a substantial burden that exists here on Midway Baptist Church. And so, therefore, the burden then shifts to the County to provide some kind of evidence of a compelling state

interest.

And this compelling state interest cannot just be some general interest. It's got to be actual evidence of why this requirement should apply to Midway. And the County's provided none of that.

The building official, the deputy building official both took the stand and testified that Midway Baptist Church, in their view, can do anything on its campus that it wants except teach anything that qualifies for state education requirements.

They cited no particular safety issues. They did not evaluate the occupancy load, they did not evaluate the ratios. They did not evaluate any of those facts. They merely based it on the subject matter that Midway was teaching.

So here, the County not only -- I don't even think we need to reach the second prong of whether this is the least restrictive means of furthering the compelling state interest because there is no compelling state interest.

The County has not stated any specific compelling state interest to substantially burden Midway's free exercise of its religion. And on top of that, the building code provides an exception for Midway to conduct its school in its building.

In the Fourth Circuit case, which I have quoted in my order, Herlish Renzi vs. Connolly School of the Holy Child, the Court looked at this issue of whether an exemption violates the establishment clause.

And in fact, I did not quote in the order, but as part of the -- of the South Carolina Religious Freedom Act, it specifically states in there that any -- granting an exemption does not -- that does not burden -- or, I'm sorry, violate the establishment clause is permissible.

And in this case, this exemption does not violate the establishment clause because, as the Fourth Circuit says, the State does not engage in any of these establishment activities when it exempts religious institutions from land use regulations.

Rather, such an exemption removes the state from forums in which religious conflict might otherwise require improper state action.

In its motion, and the County contends that the Court's order requires it to look into the religion of whatever organization is asking to use its facilities for religious education.

And in fact, that's not true. In fact, that exemption relieves that burden of even having to look into that issue, because where the religion exists and

is intertwined with those -- you know, that education, then the County need not look any further because it is a religious institution, and they are seeking to operate, you know, a religious school in the religious educational classrooms.

And so, Your Honor, what we're asking today is that you find that the County is actually violating the South Carolina freedom of -- Religious Freedom Act by applying this general education occupancy to Midway Baptist Church.

And that -- we're asking you -- and that it's burdening -- they're -- they're substantially burdening their free exercise of religion. The County is -- has provided no compelling interest for that.

We're -- so we're asking you to find that violation and then also award attorney's fees and costs as required by (inaudible).

THE COURT: Any -- any support of how the Court can consider that issue at this stage in the process?

MS. BROWN: Well, Your Honor, I believe the County raised that issue when they asked the Court in their motion to essentially hold that the Texas case, Christian Academy of Abilene v. City of, Abilene applied. And that case does address the Texas Religious Freedom Restoration Act.

And then also we did raise the issue of a potential First Amendment violation during (inaudible) arguments. And so we're -- we are just, you know, fleshing that out more so and asking for additional (inaudible).

THE COURT: All right. Mr. Kendry, (inaudible).

MR. KENDRY: (Inaudible) address (inaudible) response (inaudible). Abilene (inaudible) was not presented for any shape or form to address religious freedom issues. In fact, (inaudible) if it wasn't alleged at all, failed to preserve it in any motion for reconsideration. (Inaudible) the Court alluded to is inappropriate under this juncture (inaudible) consider that issue. We contend that would be (inaudible).

That Abilene case was simply to show the A3 and educational distinction was reported one time in a nationwide search of the issue. It was solely for the purpose that the Court quite readily concluded as the case that we addressed --

UNIDENTIFIED SPEAKER: Alpine.

MR. KENDRY: Alpine suggests that the fire requirements, the building code requirements, are paramount in operating a school.

The reason there are no decisional law on that is

because the Courts as -- as Alpine and Abilene address, those are -- those are concerns that they conceded in Alpine. And the Court summarily concluded they're separate and distinct uses.

There's no religious freedom debate argument in this trial at all. The order is silent on that fact, so it would be inappropriate to -- to consider it now at this late juncture.

With regards to attorney's fees, that -- that motion isn't being heard today. It was filed by Ms. Brown. It hasn't been scheduled. It hasn't been responded to. We're preparing to do that. So I think that's a hearing for another day, Your Honor, (inaudible). Submit (inaudible).

THE COURT: Ms. Dover?

MS. DOVER: And I would follow up on that ever so briefly, for purposes of the Alpine case. I failed to mention earlier that in their stipulations where they stipulated to the building and safety requirements, specifically in those stipulations it's pointed out that what they stipulated to was an A and E occupancy classification.

So they -- they dealt with it through multiple occupancies in that case. That was what was stipulated to by the parties.

I won't -- I won't get into everything that Ms. Brown covered. I will make a couple of points here. The first being that the County strongly objects to the mischaracterization of the reason for the building code official's determination of why the building should be an educational occupancy.

Ms. Brown characterized that in a way that made it seem as if the building official made that determination because the school was religious.

That was not the testimony at the trial in this case, and the County strongly objects to that assertion.

The health and safety aspects of the building in question, for purposes of an educational occupancy, was thoroughly addressed at the hearing. Fire marshal works in conjunction with the building official.

Building official, in his professional role or her professional role, classifies a building based on primary use for that building or portion thereof.

That talks about the type of structure, materials, the fire rating, and the fire protections that go into a building for the use for which it is designated.

And the final point that I wanted to make on Abilene was that Ms. Brown offered no authority that

that case was overruled. The County looked at that case. And even as of last night, there is nothing indicating Abilene has been overruled.

The last point I will address is the discussion about the exception that is under educational occupancy that is also under the assembly occupancy, which is a point I believe that was -- was made in our notice and motion when it was first filed.

And that is that Ms. Brown asserted that her reading of the exception and how that applies to religious -- a religious education program is really the only reading of those exceptions.

The County disagrees. The point of those exceptions being an assembly and education occupancies -- the point of using a phrase religious educational rooms and religious auditoriums is not to connote a purpose.

The purpose is religious worship. A religious educational room and a religious auditorium that are part of the religious activity that is the primary use of assembling of persons for purposes of civic, social, religious worship, or other assembly-like occupancies fits squarely.

Taking that same language and putting it under an educational occupancy is not to create an exception

that says certain types of schools do not have to comply with educational occupancies. It is to say, hey, building officials, don't go too far and start saying because they want to have church schools and their -- their church Sunday services, their Bible studies that they have, their men's groups, their women's groups, those all now have to comply with the educational occupancy requirements.

No. The health and safety standards that would -- would follow those situations belong under an assembly. That's not the same thing as an educational program, which has religious or secular underpinnings.

Hazards and risks remain when you have a group of children, more than six, in a place on a daily basis for purposes of education, whether it's religious or secular.

The assembling of persons, where you're naturally going to envision situations that have a -- an entirely different ratio of adults to children, should something happen, belongs in an assembly occupancy.

Thank you.

THE COURT: Anything further, Ms. Brown?

MS. BROWN: Yes, Your Honor. I do have a couple of things. In addressing the Abilene case, that does not state what the code is that is needed being

addressed. We don't even know if Texas has that exemption. It's not been provided. It's not within the case.

So I just want to point out that we don't really know what the Court's addressing, but it does address that the fact that the Texas Religious Freedom Act was enacted after the cause of action in that case (inaudible).

And then in Barr vs. (Inaudible), they do go on to explain that the, you know, outcome may have been different given that act.

And then they talk about the Alpine case. You know, there was -- there was no dispute, and we don't even know what the Colorado building codes are related to the educational occupancy and religious education classrooms in that case.

That particular case, the issue was whether they needed a permit to operate the school within the church. And I think that's very similar to the situation here is -- and whether that violated their free expression of religion.

And then, finally, I do want to address the educational occupancy exemption. So they're trying to say that that exemption is within the educational occupancy classification because they don't want there

to be confusion about men's and women's Bible study groups and that kind of thing meeting in the church.

Well, the educational occupancy classification only applies to K through 12th grade. So I don't think there's going to be any kind of confusion if the code is being applied according to the plain language that it's going to apply to men's and women's Bible study groups or a lot of other groups within the church.

Furthermore, they talk about how it's important to -- there's a safety issue when you have more than six kids. Well, Midway Baptist Church testified there's often more than six kids in these rooms. They have vacation Bible school. They have Sunday school. They often have more than six children on their campus in their in these rooms as they exist.

And the County has said that's not an issue, it does not present a safety issue, and the church can continue to operate.

So if those are not safety issues and those are the reasons the County is giving, then there's really no other reason this exception is within the educational occupancy, unless it require -- unless it applies to educating students in K through 12th grade.

THE COURT: Okay. Thank you.

Thank you, all.

I'm going to take this under advisement. I'd like to read -- I haven't had an opportunity to read the County's reply to plaintiff's response, so thank you.

MS. BROWN: Your Honor, We don't want to rush the court, but school is starting soon. And so there are parents waiting to know if they can enroll, and the school needs to kind of figure out its location. So we certainly would appreciate the Court devoting time to it.

THE COURT: Okay. Thank you. This hearing is concluded.

* End of Audio Recording *

CERTIFICATE OF TRANSCRIPTIONIST

I, ROBIN L. DEAL, hereby certify that I was authorized to and did transcribe the provided recording and that the foregoing transcript is a true transcript of said electronic recording to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 18th day of December, 2025.

_____

ROBIN L. DEAL

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Hunt v. McNair

Supreme Court of South Carolina

March 2, 1972

No. 19378

Reporter

258 S.C. 97 *; 187 S.E.2d 645 **; 1972 S.C. LEXIS 310 ***

Richard W. HUNT, Individually and representing all of the taxpayers of the State of South Carolina, Appellant, v. Robert E. McNAIR, Governor of the State of South Carolina, et al., Respondents

Disposition: [***1] Affirmed.

Counsel: *Messrs. Bryant & Fanning*, of Orangeburg, and *Robert McC. Figg, Jr.*, of *Robinson, McFadden, Moore & Pope*, Columbia, *for Appellant.*

Messrs. Daniel R. McLeod, Atty. Gen., and *C. Pinckney Roberts*, Columbia, and *Sinkler, Gibbs & Simons*, Charleston, for Respondents.

Opinion by: PER CURIAM

Opinion

[*98] [**646] This case was initially decided by the Court of Common Pleas for Charleston County. The order of that court was appealed. This Court heard the same, and by opinion filed on October 22, 1970, affirmed the order of the lower court. See *Hunt v. McNair, et al.*, 255 S.C. 71, 177 S.E. (2d) 362 (1970).

Thereafter an appeal was taken to the Supreme Court of the United States. On June 28, 1971, 403 U.S. 945, 91 S. Ct. 2276, 29 L. Ed. (2d) 854, that Court remanded the case to us for "reconsideration in the light of . . . decisions in *Lemon, et al. v. Kurtzmann et al.*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. (2d) 745; *Tilton et al. v. Richardson et al.*, 403 U.S. 672, 91 S. Ct. 2091, 29 L. Ed. (2d) 790; *Earley et al. v. DiCenso et al.*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. (2d) 745, and *Robinson et al. v. DiCenso et al.* [***2] , 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. (2d) 745, decided June 28, 1970." All of these cases deal with freedom of religion, the establishment clause and the first amendment to the Constitution of the United States.

By reason of the directive of the Supreme Court of the United States we must now determine in the light of these cases whether the Educational Facilities Authority Act (enacted by the General Assembly of South Carolina in 1969) and its proposed use and application, violates the first amendment to the Constitution of the United States.

Under the provisions of the Educational Facilities Authority Act (herein referred to as the Act), the Budget and Control Board of the State of South Carolina (the Board), acting as the Educational Facilities Authority (the Authority) is authorized to provide financing for institutions of higher learning by its issuance of revenue bonds [*99] payable solely out of the revenues derived by the Authority from the particular project or institution for which they are issued. The bonds are secured by a mortgage on the project so financed.

The Act states that it shall not include "any facility used or to be used for sectarian instruction [***3] or as a place of religious worship nor any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination."

The Act declares the Authority to be a body politic, and declares its purpose to be "to assist institutions for higher education in the construction, financing and refinancing of projects." It empowers the Authority to adopt rules and regulations for the conduct of its affairs.

The defendant, Baptist College at Charleston, a South Carolina eleemosynary corporation (the College) has petitioned the Authority seeking the preliminary approval of the Authority for the issuance of revenue bonds not exceeding $ 3,500,000.00 pursuant to the said Act for the purpose of (a) paying off outstanding indebtedness of the Baptist College Foundation incurred for the purposes of acquiring certain equipment and trailers utilized as a part of the College's educational plant (the payment for which the College is responsible) in the amount of approximately $ 275,000.00; (b) reimbursing in part the College's Current Fund for moneys advanced to the College's Plant Fund used to purchase school equipment [***4] and other capital improvements and for the payment of the aforesaid obligation of the Baptist College Foundation; and (c) refunding an outstanding indebtedness of the College in the amount of approximately $ 2,500,000.00 represented by the College's first mortgage serial bonds dated July 1, 1966.

In accordance with the provisions of the Act the College proposes to convey substantially all of its campus to the State of South Carolina at no cost to the State. The Authority [*100] would then lease the property so conveyed to the College under a lease agreement [**647] by which the College would be obligated to operate and maintain it as an institution of higher learning and to pay to the Authority or a designee, rentals in an amount sufficient to meet

the payments of principal and interest as they become due on the proposed revenue bonds. The Authority would issue the revenue bonds and make the proceeds available to the College for the purposes aforesaid and the bonds would be repayable solely from the rentals to be paid by the Baptist College under the lease agreement. The bonds would be further secured by a Trust Indenture (mortgage) between the Authority and a bank, as [***5] trustee (acting in lieu of the Authority), which would constitute a foreclosable lien on the property conveyed to the State. When the bonds are paid the Authority would deed the property back to the College subject to restrictions as required by the rules set forth hereinafter. The debt is not a debt or obligation of the State.

Excluded from the property to be conveyed by the College to the State is the library which is being financed in part by a loan from the Department of Health, Education and Welfare; a dormitory which is being financed in part by a loan from the Department of Housing and Urban Development; a dormitory which is currently under lease to the College, and the Physical Education Building where facilities which are used for religious worship are located. Excluded also are approximately 50 acres of land forming a part of the College campus.

By petition to the Authority the College has sought to avail itself of the Act. The Authority, by resolution, has given preliminary approval to the financing arrangement. Thereafter, this action was commenced by the plaintiff to enjoin the defendants from further pursuit of the plan.

The overall purpose of the Act is to [***6] permit colleges to borrow funds advantageously by using the State's income tax-free basis as relates to the issuance of bonds. Bondholders are not required to pay income tax on dividends or [*101] interest from bonds issued by the State; accordingly, a lower rate of interest is available which inures to the benefit of the College. Under the plan the State issues the bonds, but the money goes to the College. The College, and not the State, pays the bonds through rentals paid the Authority or trustee. There is no cost to the State incident to the entire plan of financing.

Pursuant to the power given to the Authority to adopt rules, the Authority has adopted rules as follows:

"1. Each Lease Agreement must contain a covenant obligating the Institution that neither the leased land, nor the facility located thereon, shall be used for sectarian instruction or as a place of religious worship, or in connection with any part of the program of a school or department of divinity of any religious denomination.

"2. Each Lease Agreement shall contain a provision permitting the Authority or any agent of the Authority to conduct such inspections as may be necessary to determine whether [***7] the leased premises, or any portion thereof, or any facility located thereon, is being used or has been used for sectarian instruction or as a place of

religious worship, or in connection with any part of the program of a school or department of divinity for any religious denomination.

"3. Each Lease Agreement shall contain an appropriately worded provision providing that the covenant referred to in Paragraph 1 above may be enforced at the instance of the Authority, the Attorney General of South Carolina, or any taxpayer of South Carolina by a proceeding in any court of competent jurisdiction, by injunction, *mandamus* or other means.

"4. If the Lease Agreement contains a provision permitting the Institution to repurchase the project upon payment of the bonds, then in such instance the Lease Agreement shall provide that the Deed of [**648] reconveyance from the Authority to the Institution shall be made subject to the condition that so long as the Institution, or any voluntary [*102] grantee of the Institution, shall own the leased premises, or any part thereof, that no facility thereon, financed in whole or in part with the proceeds of the bonds, shall be used for [***8] sectarian instruction or as a place of religious worship, or used in connection with any part of the program of a school or department of divinity of any religious denomination. The condition may provide, at the option of the Institution, that if the leased premises shall become the subject of an involuntary judicial sale, as a result of any foreclosure of any mortgage, or sale pursuant to any order of any court, that the title to be vested in any purchaser at such judicial sale, other than the Institution, shall be in fee simple and shall be free of the condition applicable to the Institution or any voluntary grantee thereof."

In our previous opinion, *Hunt, supra*, we said: "Having held that neither the credit of the State nor the property of the State is involved, it follows that this constitutional provision [the establishment clause] is not violated. There is no conflict between the preservation of religious freedom and the preservation of higher education under the Educational Facilities Authority Act."

Pursuant to the ruling of the Supreme Court of the United States on June 28, 1971, counsel for plaintiff and defendants have re-argued the case and submitted additional [***9] briefs in the light of *Lemon, Tilton, Earley* and *Robinson.*

Plaintiff now submits three questions for the consideration of this Court:

"QUESTION I

"Under the Educational Facilities Authority Act and the proposed transaction thereunder between the Baptist College at Charleston and the State of South Carolina acting through the State Budget and Control Board, is the

State impermissibly involved in the Institution's affairs in contravention of the Religion Clauses of the First Amendment?

[*103] "QUESTION II

"Does the proposed transaction afford State sponsorship and financial support to the Baptist College at Charleston's total program of sectarian as well as secular purposes in contravention of the Religion Clauses of the First Amendment?

"QUESTION III

"Does the proposed transaction constitute State financial support of the Baptist College at Charleston in contravention of the Religion Clauses of the First Amendment, insofar as the project facilities may be authorized to be used for religious purposes by a purchaser at a judicial sale under foreclosure of a mortgage given thereon by the Authority or by the Institution itself subsequent to its repurchase thereof?"

[***10] The language of the first amendment to the Constitution of the United States and the language of Article 1, Section 4, of the Constitution of South Carolina are, for all intents and purposes, the same. Accordingly, our reasoning is applicable to both constitutional provisions. The establishment clauses are intended to afford protection against sponsorship, financial support and active involvement of the government in religious activity. *Walz v. Tax Commission*, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. (2d) 697 (1970).

The legislative intent is set forth in the Act as follows:

"To Create an Educational Facilities Authority

"(A) It is hereby declared that for the benefit of the people of the State, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that this and future generations of youth be given the fullest opportunity to learn [**649] and to develop their intellectual and mental capacities; that it is essential that institutions for higher education within the State be provided with appropriate additional means to [*104] assist such youth in achieving the required levels of learning [***11] and development of their intellectual and mental capacities; and that it is the purpose of this section to provide a measure of assistance and an alternative method to enable institutions for higher education in the State to provide the facilities and structures which are sorely needed to accomplish the purposes of this act, all to the public benefit and good, to the extent and manner provided herein."

We find nothing in the case before us that undermines the State's legislative intent; it is therefore accorded appropriate deference.

Though three questions are posed, there is in actuality only one basic question for our determination: Is the Act legislation respecting an establishment of religion or prohibiting the free exercise thereof in contravention of the establishment clause? We think it is not.

Prior to *Lemon, Tilton, Earley* and *Robinson*, there were three significant cases decided by the Supreme Court of the United States on the point. In *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711 (1947), the Court held that a New Jersey statute providing bus transportation for school children attending Catholic schools was in the nature of general [***12] welfare legislation, and that the assistance provided was neutral in its relations with groups of religious believers and non-believers, and that the statute had a secular legislative purpose, the effect of which was to neither advance nor inhibit religion.

In *Board of Education of Central School District No. 1 v. Allen*, 392 U.S. 236, 88 S. Ct. 1923, 20 L. Ed. (2d) 1060 (1968), the Court upheld the loan of secular books to students attending parochial schools, holding: ". . . this Court has long recognized that religious schools pursue two goals, religious instruction and secular education. . . ." In determining the validity of the challenged statute, the Court utilized the secular purpose and primary effect test under which, to withstand the strictures of the establishment [*105] clause, there must be a secular legislative purpose and a primary effect which neither advances nor inhibits religion. The statute was upheld on the ground that its stated legislative purpose clearly was secular, and the primary effect of the loan of secular textbooks could not be said either to advance or inhibit religion.

In *Abington Tp. School District v. Schempp*, 374 U.S. 203, 83 S. [***13] Ct. 1560, 10 L. Ed. (2d) 844 (1963), the Court fashioned a test for distinguishing between forbidden involvement of the State with religion and those which the establishment clause permits:

"The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be secular legislative purpose and a primary effect that neither advances nor inhibits religion."

On June 28, 1971, the Supreme Court of the United States decided the four cases referred to hereinabove. In *Earley* and *Robinson*, citizens and taxpayers of Rhode Island brought suit against state officials to enjoin, as

repugnant to the religion clauses of the first amendment and the due process clause of the fourteenth amendment, the operation of a Rhode Island statute providing for payment of up to 15% annual salary supplements to teachers of secular subjects in non-public elementary schools.

In *Lemon*, a similar action against State officials was instituted [***14] by Pennsylvania residents and taxpayers challenging the constitutionality of a statute which provided for State reimbursement of non-public elementary and secondary schools for costs of [**650] teachers' salaries, textbooks and instructional materials in specified secular subjects, but prohibiting reimbursement for any course that contained any [*106] subject matter expressing religious teaching or the morals or forms of worship of any sect.

The Court held that both the Rhode Island and Pennsylvania statutes were unconstitutional under the religion clauses of the first amendment, as fostering, by their cumulative impact, excessive entanglement between government and religion. In so holding the Court considered:

(1) the religious purpose and operation of church related elementary and secondary schools, (2) the enhancement of the process of religious indoctrination resulting from the impressionable age of the pupils, particularly in elementary schools, (3) the necessity of state surveillance to insure that the teachers, who were subject to control by religious organizations, observed the restrictions as to purely secular instruction, (4) the states' examination of the parochial [***15] schools' financial records to determine which expenditures were religious and which were secular, (5) the probable intensification of political divisiveness along religious lines resulting from the annual appropriations required under the statutes, benefiting relatively few religious groups, and (6) the self-perpetuating and self-expanding propensities of the innovative statutory programs.

We think our case easily distinguishable from these three cases. Under the Rhode Island statute, in order to receive the 15% supplement, teachers were required to be employed in a non-public school at which the average per-pupil expenditure on secular education was less than the public school average. Schools' financial records were subjected to audit by the State. The teacher was required to teach only those subjects offered in the public schools, using teaching materials used in the public schools. Upon applying for the salary supplement the teacher was required to agree in writing not to teach a course in religion while receiving salary supplements. Only teachers in Catholic schools applied.

Under the Pennsylvania statute, participating schools were required to maintain prescribed accounting [***16] procedures [*107] to identify the cost of secular education services; the accounts were subjected to State audit;

reimbursement was limited to courses presented in the public school curricula; and textbooks and materials were subjected to approval by the State.

In the light of the cumulative impact of such plans, the Court held:

"A comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed and the First Amendment otherwise respected. Unlike a book, a teacher cannot be inspected once so as to determine the extent and intent of his or her personal beliefs and subjective acceptance of the limitations imposed by the First Amendment. These prophylactic contacts will involve excessive and enduring entanglement between state and church."

In discussing the Pennsylvania statute the Court said:

"As we noted earlier, the very restrictions and surveillance necessary to ensure that teachers play a strictly non-ideological role give rise to entanglements between church and state. The Pennsylvania statute, like that of Rhode Island, fosters this kind of relationship."

The surveillance on the part of the [***17] State, obviously abhorred by the Court, is not necessary under the proposed financing plan of the college. The Court contemplates execution of a contract which definitely establishes the rights of all parties to the agreement. The State plays a passive and very limited role in the implementation of the Act, serving principally as a mere conduit through [**651] which institutions may borrow funds for the purposes of the Act on a tax-free basis. There is in no sense a banking relationship between the Authority and institutions which utilize the Act. The plan of financing is patterned closely after that successfully functioning under the South Carolina Industrial Revenue Bond Act approved by this Court in *Elliott v. McNair*, 250 S.C. 75, 156 S.E. (2d) 421 (1967). The Authority would [*108] take title to the property by deed, issue revenue bonds to finance the project, mortgage the project property to a trustee bank, lease the project back to the College, and simultaneously assign all of the Authority's rights under the lease to the trustee in order to provide for the payment of the bonds. The trustee would disburse them on the order of the institution (subject to proper [***18] safeguards assuring a proper application of the proceeds to the purpose for which the bonds were issued) so that upon delivery of the bonds the interest of the Authority would, for all practical purposes, cease.

Counsel for plaintiff argues that the broad language of the Act causes the State, of necessity, to become excessively involved in the operation, management and administration of the College. We do not so construe the Act. A reading of the Act and the proposal of the College as submitted to the Authority by petition for approval,

indicates that the basic function of the Authority is to see that religion is not promoted on the leased premises, and that fees are charged sufficient to meet the bond payments. The decisions recognize that some involvement between church and State is not constitutionally obnoxious. It is a question of degree and each case must be judicially determined on its own facts, taking into consideration all of the relevant factors.

When one considers the character and purpose of the College and the nature of the assistance provided, and the resulting relationship between the government and the College, it necessarily follows that there is less potential [***19] for experiencing the substantive evils which the religious clauses were intended to protect than in *Tilton.*

Tilton also related to the establishment clause of the Constitution of the United States, but arose on a different factual basis. Taxpayers and residents of Connecticut challenged the constitutionality of the Higher Educational Facilities Act of 1963, alleging that it violated the first amendment. That Act authorized federal grants to institutions of [*109] higher education for construction of academic facilities, *except those to be used for sectarian instruction or worship*, or in connection with the program of a divinity school or department. Under the Act the government would retain only a 20-year interest in the financed facilities, and if a facility should be used other than as a secular academic facility during such period, the United States government would be entitled to recover back a proportionate part of the federal grant. Five members of the Court agreed that the religion clause of the first amendment was not violated by the Act insofar as it authorized grants to church-related colleges for construction of buildings and facilities to be used [***20] exclusively for secular educational purposes. Eight members of the Court agreed that the first amendment was violated by the act's provision limiting the government's interest in covered facilities to a 20-year period. The Court found constitutionally objectionable only the 20-year provision which allowed use of the facilities for sectarian purposes after that period. The Court said:

"Limiting the prohibition for religious use of the structure to 20 years obviously opens the facility to use for any purpose at the end of that period. It cannot be assumed that a substantial structure has no value after that period and hence the unrestricted use of a valuable property is in effect a contribution of some value to a religious body. Congress did not base the 20-year provision on any contrary conclusion. If, at the end of 20 [**652] years the building is, for example, converted into a chapel or otherwise used to promote religious interests, the original federal grant will in part have the effect of advancing religion.

"To this extent the Act therefore trespasses on the Religion Clauses. . . ."

We think the facts in *Tilton* are greatly similar to the facts in this case, [***21] but the 20-year limitation involved in *Tilton* is absent in the case before us. As pointed out hereinabove, facilities used or to be used for sectarian instruction [*110] or as a place of worship are excluded under the Act. In addition, the rules issued by the Authority specifically provide that the properties conveyed, and later re-conveyed, may not be used for sectarian instruction or as a place of worship, and provide that when the property is deeded back to the college the deed shall contain a restriction that the premises and facilities shall not be used for sectarian instruction or a place of worship or in connection with a program of a school of divinity. Accordingly, we find and conclude that the objection sustained in *Tilton* is not present here.

From a study of the whole of the record, including the Act itself, we conclude that the Act is a valid exercise of the legislative power of the General Assembly of South Carolina. It has a secular legislative purpose. It neither advances nor inhibits religion. There is no fostering of an excessive government entanglement with religion.

We have considered all issues in the light of *Lemon, Robinson, Earley* and [***22] *Tilton*, and conclude that the relief sought by the plaintiff must be denied. The establishment clause of neither the United States Constitution nor the Constitution of South Carolina is violated. The defendants constituting the Budget and Control Board, and the defendant, Baptist College at Charleston, may proceed with the proposed issuance of revenue bonds pursuant to the Act.

The judgment of the lower court is

Affirmed.

End of Document

Hartness v. Patterson

Supreme Court of South Carolina

March 10, 1971

No. 19186

Reporter

255 S.C. 503 *; 179 S.E.2d 907 **; 1971 S.C. LEXIS 392 ***

George B. HARTNESS, for himself and all other resident taxpayers of the State of South Carolina, Appellant, v. Grady L. PATTERSON, Jr., as State Treasurer for the State of South Carolina, et al., Respondents

Disposition: [***1] The judgment of the lower court is accordingly reversed, and respondents are permanently restrained from expending public funds under the Act in question for tuition grants to students attending any college or other institution which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

Counsel: *Augustus T. Graydon, Esq., Graydon & Suber*, of Columbia, *for Appellant*, cites: *As to grants of state funds to students attending selected private schools being discriminatory and therefore invalid*: 47 American Jurisprudence, Schools No. 222, pages 460-461. *As to act appropriating state funds for disbursement to students attending schools controlled by religious sects being a law "respecting an establishment of religion"*: 242 Md. 645, 220 A. (2d) 51; 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. (2d) 844; 330 U.S. 15; 91 L. Ed. 720, 67 S. Ct. 504, 168 A.L.R. 1392; 392 U.S. 236, 20 L. Ed. (2d) 1060, 88 S. Ct. 1923; 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649; 25 L. Ed. (2d) 697. *As to act authorizing tuition grants to students attending schools controlled by religious sects constituting indirect aid* [***2] *to such schools within the meaning of the state constitutional prohibition against such aid*: 216 S.C. 52, 56 S.E. (2d) 723; 42 American Jurisprudence 767, Public Funds No. 66; 310 Ky. 3551, 220 S.W. (2d) 836; 2 S.D. 336, 50 N.W. 632; Section 3, Article 6, South Dakota Constitution; 197 Va. 419, 89 S.E. (2d) 851; 364 Mo. 121, 260 S.W. (2d) 573; 16 Nev. 373; 125 Ill. 540, 1 L.R.A. 437; 132 Conn. 194, 43 A. (2d) 455; 102 Ariz. 448, 468, 432 P. (2d) 460; 56 Miss. 758.

Messrs. Daniel R. McLeod, Atty. Gen., Michael W. Tighe, Asst. Atty. Gen., of Columbia, and *Thomas H. Pope*, of Newberry, *for Respondents*, cite: *As to act's not being discriminatory and violative of due process and the equal protection of the laws*: 177 S.E. (2d) 362; 330 U.S. 1, 7, 9, 67 S. Ct. 504, 91 L. Ed. 711 at 719; 250 S.C. 75, 156 S.E. (2d) 421; 63 S.C. 525, 41 S.E. 521; 68 S.C. 35, 45 S.E. 122; 68 S.C. 140, 46 S.E. 939; 68 S.C. 403, 47 S.E.

695; 201 S.C. 523, 23 S.E. (2d) 735. *As to the act's not violating the constitutional prohibition against support of religion*: 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711, 168 A.L.R. 1392;Speers Equity 87, 120; 374 U.S. 203, 83 S. Ct. 1563, 10 L. Ed. (2d) 844; [***3] 392 U.S. 236, 88 S. Ct. 1923, 20 L. Ed. (2d) 1060; 281 U.S. 370, 74 L. Ed. 913, 50 S. Ct. 335; 25 L. Ed. (2d) 697, 90 S. Ct. 1409. *As to the tuition grants' not constituting indirect aid to the private colleges of the state*: Section 9, Article 11, of the State Constitution; 177 S.E. (2d) 362; 216 S.C. 52, 56 S.E. (2d) 723. *As to the act's properly delegating legislative power*: 152 S.C. 455, 150 S.E. 269; 170 S.C. 362, 170 S.E. 435; 177 S.C. 399, 181 S.E. 476; 177 S.C. 427, 181 S.E. 481; 180 S.C. 19, 185 S.E. 25; 181 S.C. 379, 187 S.E. 821; 202 S.C. 273, 24 S.E. (2d) 496; 209 S.C. 41, 39 S.E. (2d) 117; 219 S.C. 485, 66 S.E. (2d) 33; 223 S.C. 526, 77 S.E. (2d) 195; 226 S.C. 585, 86 S.E. (2d) 466; 240 S.C. 347, 126 S.E. (2d) 15; 252 S.C. 64, 165 S.E. (2d) 355; 248 S.C. 183, 149 S.E. (2d) 437; 95 S.C. 403, 79 S.E. 247; 211 S.C. 77, 44 S.E. (2d) 88, 173 A.L.R. 397; 220 S.C. 414, 68 S.E. (2d) 334; 2234 S.C. 526, 77 S.E. (2d) 195.

Judges: Lewis, Justice. Moss, C.J., and Bussey, Brailsford, and Littlejohn, JJ., concur.

Opinion by: LEWIS

Opinion

[*505] [**907] At issue is the constitutionality of Act No. 1191 of the 1970 Acts of the General Assembly, 56 Stat. 2579, under which the State [***4] makes public funds available to provide financial aid for students attending independent institutions of higher learning. This appeal is from an order of the lower court upholding the constitutionality of the Act.

[**908] The title of the Act in question states that it is one "to provide tuition grants to students attending independent institutions of higher learning." The act creates a committee to administer the tuition grants; sets forth the eligibility requirements for students to receive aid; makes unavailable a tuition grant to any student "enrolled in a course of study leading to a degree in theology, divinity, or religious education"; and sets forth the standards to be met by any participating independent institution of higher learning. An appropriation [*506] of $ 5,000.00 was made for the year 1970-71 to provide tuition grants authorized under the Act.

It is conceded that there are twenty-one schools in South Carolina which meet the statutory definition of an "independent institution of higher learning." Of these, at least sixteen are operated under the direction or control of

religious groups or denominations. The remaining schools are privately owned and [***5] are not controlled in any manner by any religious or sectarian group.

While the constitutionality of the Act is attacked upon several grounds, in view of the statements in the briefs of the questions involved and the conclusions which we have reached, we need only determine whether the tuition grants to students attending institutions, controlled by religious or sectarian organizations constitute the use of public funds to aid such institutions, in violation of Article XI, Section 9, of the South Carolina Constitution.

The pertinent portions of Article XI, Section 9, are as follows:

"The property or credit of the State of South Carolina, * * *, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization."

Admittedly, the foregoing constitutional provision prohibits the use of public money, directly or indirectly, [***6] in aid of the sixteen institutions of higher learning controlled by sectarian groups. The aid does not have to be direct but is prohibited if it *indirectly* benefits the religious schools.

Article XI, Section 9, does not attempt to distinguish between aid which is designed primarily to benefit the religious [*507] function of a school and that which is intended to benefit the school in other capacities. This was no doubt in recognition of the evident fact that, if the use of public funds aids the institution, it necessarily aids its religious function in some degree. The degree of aid is immaterial. If the use of the public funds aids the religious institution, it is prohibited.

Under the terms of the Act, the tuition grant is made available to the student only after he has been accepted by or is registered in the particular eligible institution of his choice. After the tuition grant has been made, it is unlawful for the student to expend the funds for any purpose other than in payment of his tuition at the institution he is authorized to attend under the tuition grant. It is conceded that the tuition grant is not made directly to the school, but is made to the student [***7] who is required to pay it to the school selected by him. The funds are paid to the student only as a member of the selected school.

The close tie of the participating schools to the tuition grant is further demonstrated by the administrative control provided by the Act. The administration of the tuition grants is placed in a committee consisting of eight

representatives of the participating institutions, plus two *ex officio* members from the General Assembly, with the power to make rules and regulations within the terms of the Act. The method of appointment of the members of the committee from the institutions is not stated. [**909] However, since sixteen of the twenty-one eligible schools are religious schools, quite conceivably all, and most likely a majority, of the committee controlling the administration of the Act would come from schools controlled by the religious groups.

We reject the argument that the tuition grants provided under the Act do not constitute aid to the participating schools. Students must pay tuition fees to attend institutions of higher learning and the institutions depend upon the payment of such fees to aid in financing their operations. While [***8] it is true that the tuition grant aids the student, it is also [*508] of material aid to the institution to which it is paid. The fact that only a portion of the tuition costs are covered by the grants from the State affects the matter only in degree. If State funds can be used to provide a portion of the tuition costs for attendance at religious schools, all could just as legally be paid, resulting in the support of such institutions entirely with State funds.

The record, in our opinion, demonstrates that the tuition grants were also intended as aid to the institution. The Stipulation of Facts shows that the private colleges have space available for approximately 5313 additional students without increasing existing facilities or additional capital outlays. It is apparent that one of the main purposes of the tuition grant is to reduce the cost to a student for attending the private colleges and thereby attract additional students to their campuses so as to fill the vacancies in their student body. Such would have the effect of adding additional funds to their treasuries and thereby improve their financial status. It is perhaps better stated in respondent's brief as follows: [***9] "The indirect benefit accruing to the private colleges will consist of their being able to attract sufficient students to their campuses to continue to function." Such constitutes aid to the religious schools.

We therefore hold that the use of public funds under the Act to provide tuition grants to students attending the participating religious institutions constitutes aid to such institutions within the meaning of, and prohibited by, Article XI, Section 9, of the Constitution of South Carolina.

The judgment of the lower court is accordingly reversed, and respondents are permanently restrained from expending public funds under the Act in question for tuition grants to students attending any college or other institution which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

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Blackmon v. S.C. Dep't of Health & Env't Control

Court of Appeals of South Carolina

December 9, 2020, Heard; May 25, 2022, Filed

Opinion No. 5911

Reporter

436 S.C. 529 *; 873 S.E.2d 774 **; 2022 S.C. App. LEXIS 52 ***

Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices, Appellants, v. South Carolina Department of Health and Environmental Control, and David Coggins Broilers, Respondents,Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices, Appellants, v. South Carolina Department of Health and Environmental Control, and Heath Coggins Broilers, Respondents,Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices, Appellants, v. South Carolina Department of Health and Environmental Control, and Jim Young Broilers, Respondents.

Subsequent History: Rehearing denied by Blackmon v. SCDHEC, 2023 S.C. App. LEXIS 6 (S.C. Ct. App., Jan. 13, 2023)

Prior History: [***1] Appeal From The Administrative Law Court. Ralph King Anderson, III, Administrative Law Judge. Appellate Case No. 2017-002598.

Disposition: REVERSED AND REMANDED.

Counsel: Robert Guild, of Robert Guild, Attorney at Law, of Columbia, for Appellants.

Mitchell Willoughby and Tracey Colton Green, both of Willoughby & Hoefer, PA, of Columbia, for Respondents David Coggins Broilers, Heath Coggins Broilers, and Jim Young Broilers.

Sara Volk Martinez and Stephen Philip Hightower, both of the South Carolina Department of Health and Environmental Control, of Columbia; both for Respondent South Carolina Department of Health and Environmental Control.

Judges: LOCKEMY, A.J. KONDUROS and MCDONALD, JJ., concur.

Opinion by: LOCKEMY

Opinion

[**776] [*532] **LOCKEMY, A.J.**: In this contested case, Charles S. Blackmon and South Carolinians for Responsible Agricultural Practices (collectively, Appellants) appeal the order of the Administrative Law Court (the ALC) affirming the South Carolina Department of Health and Environmental Control's (the Department's) issuance of agricultural permits to David Coggins Broilers, Heath Coggins Broilers, and Jim Young Broilers (collectively, Broilers). Appellants argue the ALC erred [***2] in (1) deferring to the Department's interpretation of regulations 61-9.122 and 61-43 Part 200 of the South Carolina Code[1] and concluding that, as a matter of law, Broilers were not required to apply for a separate National Pollutant Discharge Elimination System (NPDES) permit or obtain an exemption from the Department; (2) deferring to the Department's interpretation of regulation 61-43 that allowed it to avoid mandated aspects of permit evaluation and precluded a meaningful review of the permit application; and (3) requiring Appellants to establish actual discharges of pollutants by existing permittees. We reverse and remand to the Department.

FACTS AND PROCEDURAL HISTORY

In 2016, Broilers each submitted an application to the Department for new agricultural animal facilities permits to construct and operate their proposed broiler facilities. Broilers collectively proposed to construct eighteen broiler houses on a 255-acre tract located in the Little River watershed in the [*533] Mountville area of Laurens County. David Coggins Broilers' facility proposed to house 162,000 broilers, and Heath Coggins Broilers and Jim Young Broilers each proposed to house 237,600 broilers in their respective facilities. [***3]

As part of the application process, public notices were sent to neighboring property owners notifying them of Broilers' intent to apply for agricultural permitting. At the request of several Mountville citizens, the Department held public meetings in September and October of 2016. Blackmon and several other property owners in the Mountville area, including Margaret Sparrow, Mary Basel, Kathy Lowman, and Eugene Ross Stewart, formed an unincorporated association called "South Carolinians for Responsible Agricultural Practices" to challenge Broilers' proposed facilities.

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[1] S.C. Code Ann. Regs. 61-9.122 to 61-9.125 (2011 & Supp. 2021) (implementing the National Pollutant Discharge Elimination System (NPDES) program); S.C. Code Ann. Regs. 61-43.200.10 to 200.200 (2011 & Supp. 2021) (setting forth the standards for permitting of agricultural facilities other than swine).

After reviewing the applications and completing "Agricultural Permitting Review Checklists," the Department issued Bureau of Water Agricultural Permits to all Broilers in November and December of 2016. Each permit provided for the operation of "no-discharge" facilities and contained a special condition that required Broilers to "[o]perate and maintain [a] waste management system in accordance with State and Federal law so as to prevent discharges to the environment." Public notices were circulated in a local publication after the Department issued the permits.

After the Department declined Appellants' requests to hold a [***4] final review conference as to Broilers' permits, Appellants filed a request for a contested case hearing with the ALC as to each permit.[2] The ALC granted [**777] the parties' request to consolidate the three cases for purposes of the contested case hearing.

Broilers moved for partial summary judgment, arguing they were not required to seek NPDES permits for the facilities because the agricultural permits the Department issued to them prohibited the discharge of pollutants into the waters of the state. Broilers asserted the Department was therefore not required to follow the procedure set forth in regulation 61-9.122.23(d)(2)[3] [*534] for determining whether the facilities had "no potential to discharge."

The ALC held a merits hearing. Appellants presented the testimony of several witnesses, including Dr. David Hargett, who testified as an expert in soil and water resource management; William Chaplin, an employee of the Department, who testified he reviewed Broilers' permit applications; and Christopher Mosley, a staff member of Agri-Waste Technology, Inc., who testified he prepared the Comprehensive Nutrient Management Plans (CNMPs) for each of the three applications. Mosley explained that in drafting each of the CNMPs, his team [***5] used soil maps, topographical maps, and satellite imagery, and conducted site visits. The CNMPs provided the number of broilers to be housed at the facilities, the amount of litter that would be produced, Broilers' plan for disposing of that litter, and the setback distances for the facilities.

The ALC accepted proposed orders from Appellants, Broilers, and the Department. The ALC granted partial summary judgment in favor of Broilers and the Department (collectively, Respondents), concluding an NPDES permit was not required and the Department was not required to determine whether the facilities had no potential to discharge.

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[2] Appellants challenged each of the permits on five grounds. The only ground raised on appeal concerns the discharge of pollutants into waters of the state.

[3] Regs. 61-9.122.23(d)(2) (providing "[a]n owner or operator of a Large [concentrated animal feeding operation (CAFO)] need not seek coverage under an NPDES permit otherwise required by this section once the owner or operator has received from the Department notification of a determination under paragraph (f) of this section that the CAFO has 'no potential to discharge' manure, litter, or process wastewater").

Although the ALC found "the plain language of [regulation] 61-9.122.23 define[d]" Broilers as concentrated animal feeding operations (CAFOs), it concluded "the Department's application of [regulation] 61-43 part 200 in keeping with the regulation of CAFOs under the NPDES provisions [wa]s entitled to deference." Specifically, the ALC deferred to the Department's interpretation of regulations 61-43.200 and 61-9.122.23 that by issuing an agricultural permit pursuant to regulation 61-43.200, the Department also determined the facility had no potential to discharge into the waters of the state under regulation 61-9.122.23. The ALC reasoned that because [***6] permits issued pursuant to regulation 61-43.200 were "no-discharge" permits—and as such did not allow the facilities to [*535] discharge pollutants—there was an inherent determination the facilities had "no potential to discharge." *See* Regs. 61-43.200.20(B) ("Permits issued under this regulation are no-discharge permits."). The ALC thus concluded the permits prohibited Broilers from discharging pollutants into waters of the state and because Broilers did not seek to discharge pollutants into waters of the state, they were not required to apply for or obtain an NPDES permit as a matter of law. Additionally, the ALC opined, "Even if facts later reflect that [Broilers] are obligated to seek or obtain an NPDES permit because they are 'new source' CAFOs, that obligation would not occur until 'at least 180 days prior to the time that the CAFO[s] commence[d] operation'" and therefore, this issue was not ripe for consideration. The ALC considered Appellants' remaining arguments and affirmed the Department's issuance of the permits. The ALC found the Department complied with the regulatory requirements in reviewing and issuing the permits. However, the ALC increased the setbacks of the facilities to move them farther from the Little River. [***7] [4] Finally, the [**778] ALC added a condition to the permits that provided, "The Permits shall be conditioned upon each of the permittees obtaining a stormwater permit that addresses whether the setback limitation should exceed the minimum requirements." This appeal followed.

ISSUES ON APPEAL

1. Did the ALC err in deferring to the Department's interpretation of regulations 61-9 and 61-43 in concluding Broilers were not required either to obtain an NPDES permit or request a determination by the Department that their operations had "no potential to discharge"?

[4] To address the complaints Basel—one of the property owners—raised during the public comment period, Chaplin required David Coggins and Jim Young to move their proposed facilities farther from Basel's property, which would have resulted in the facilities being closer to the Little River. The ALC's ruling reversed this accommodation and required the facilities to be moved back to their originally proposed location, farther from the Little River.

2. Did the ALC err in deferring to the Department's interpretation of regulation 61-43 that allowed the Department to avoid mandated aspects of permit evaluation, thus precluding meaningful review of agricultural permit applications?

[*536] 3. Did the ALC err in imposing a burden upon Appellants to prove actual discharges of pollutants into waters of the state by existing agricultural permittees?

STANDARD OF REVIEW

This court may reverse a decision of the ALC "if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is . . . affected by [an] error of law . . . [or is] arbitrary or capricious or characterized by abuse [***8] of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-610(B)(d),(f) (Supp. 2021). This court reviews questions of law de novo. *S.C. Dep't of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 260, 725 S.E.2d 480, 483 (2012). "The construction of a regulation is a question of law . . . ." *Id.* (quoting 2 Am. Jur. 2d *Administrative Law* § 245). "[W]e will reject [an] agency's interpretation if it is contrary to the regulation's plain language." *Id.* at 261, 725 S.E.2d at 483.

LAW AND ANALYSIS

I. NPDES Permits

Regulation 61-9.122.1(b)(1) defines the scope of the NPDES permit requirement and provides it "requires permits for the discharge of 'pollutants' from any 'point source' into 'waters of the State.'" Regs. 61-9.122.1(b)(1). Paragraph (b)(4) provides that a "concentrated animal feeding operation [(CAFO)] as defined in section 122.23" is a "point source[]" that requires an NPDES permit "for discharges." Regs. 61-9.122.1(b)(4)(i). Regulation 61-9.122.23(a) provides CAFOs, as defined in regulation 61-9.122.23(b), are point sources "that require NPDES permits for discharges *or potential discharges*," and regulation 61-9.122.21(a)(1) states, "All [CAFOs] . . . have a duty to seek coverage under an NPDES permit, as described in section 122.23(d)." (emphasis added); *see also* Regs. 61-9.122.2(b) (stating a "[d]ischarge of a pollutant" means "[a]ny addition of any pollutant or combination of pollutants to waters of the State from any point source"); *id.* (providing a "point source" includes "any . . . [CAFO] from which pollutants are *or may be discharged*" (emphasis added)); [***9] *id.* ("'Point source discharge' means a discharge

[that] is released to the waters of the State by a discernible, confined and [*537] discrete conveyance, including but not limited to a . . . [CAFO] . . . from which waste is or may be discharged.").

Paragraph (d) of this regulation states a CAFO owner or operator "must seek coverage under an NPDES permit" unless it has "received from the Department notification of a determination under paragraph (f)" that it "has 'no potential to discharge' manure, litter, or process wastewater." Regs. 61-9.122.23(d)(1)-(2).

Paragraph (f)(1) provides,

> The Department, *upon request*, may make *a case-specific determination* that a Large CAFO has "no potential to discharge" pollutants to waters of the State. In making this determination, *the Department must consider the potential for discharges* from both the production area and any land application areas. . . . For purposes of this section, the term "no potential to discharge" means that there is *no potential* for any CAFO manure, litter, or process [**779] wastewater to be added to waters of the State *under any circumstance or climatic condition*. A determination that there is "no potential to discharge" for purposes of this section only relates to discharges of manure, litter, [***10] and process wastewater covered by this section.

Regs. 61-9.122.23(f)(1) (emphases added).

The CAFO owner or operator must seek coverage under an NPDES permit at least 180 days before commencing operations and must include the information specified in regulations 61-9.122.21(f) and 61-9.122.21(i)(1)(i) to (ix) with its request. *See* Regs. 61-9.122.23(f)(2), (g)(4); Regs. 61-9.122.21(f),(i). Regulation 61-9.122.21(f) requires basic information concerning the CAFO's geographical location, its contact information, its business activities, its principal products or services, and any permits or construction approvals it has received or for which it has applied. Regulation 61-9.122.21(i)(1)(i) to (ix) requires that a CAFO provide the following in addition to basic contact information:

> (iii) Latitude and longitude of the production area (entrance to production area);
>
> (iv) A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area . . . ;
>
> [*538] (v) Specific information about the number and type of animals, whether in open confinement or housed under roof . . . ;
>
> (vi) The type of containment and storage . . . and total capacity for manure, litter, and process wastewater storage . . . ;

(vii) The total number of acres under control of the applicant available for land application of manure, litter, or process [***11] wastewater;

(viii) Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); [and]

(ix) Estimated amounts of manure, litter, and process wastewater transferred to other persons per year (tons/gallons) . . . .

The NPDES permitting requirements also specify that a "'no potential to discharge' determination does not relieve the CAFO from the consequences of an actual discharge." Regs. 61-9.122.23(f)(5). Further, the Department retains the authority to subsequently require an NPDES permit if circumstances at the facility change. *See* Regs. 61-9.122.23(f)(6).

Part 200 of Regulation 61-43 governs the permitting of animal facilities. "Permits issued under this regulation are no-discharge permits." Regs. 61-43.200.20(B). In making permitting decisions, "The Department shall act on all permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the [s]tate from any new or enlarged sources." Regs. 61-43.200.70(E).

Appellants contend the ALC erred by deferring to the Department's interpretation that its issuance of a "no-discharge" permit pursuant to part 200 of regulation 61-43 constituted "an inherent determination that the facilities ha[d] no 'potential to discharge'" in keeping [***12] with regulation 61-9.122.23(f). Appellants argue that because the plain language of regulations 61-9 and part 200 of 61-43 are contrary to the Department's interpretation, this court should reverse the ALC's decision. They assert that, by definition, large CAFOs have a potential to discharge and the Department's interpretation that Broilers were not large CAFOs was contrary to the plain language of regulation 61-9. In addition, Appellants [*539] argue the ALC erred by finding as an additional sustaining ground that the issue was not ripe for judicial determination. We agree.

"[O]ur deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations 'unless there is a compelling reason to differ.'" *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014) (quoting *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 363 S.C. 67, 75, 610 S.E.2d 482, 486 (2005)). "We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" *Id.* at 34-35, 766 S.E.2d at 718 (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council Inc.*, 467 U.S. 837, 844, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984)); *see also Murphy [**780] v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 640-41, 723 S.E.2d 191, 195 (2012) (deferring to the Department's "construction and application" of

a regulation when it was "both reasonable and consistent with the plain language of the regulation"). "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise [***13] of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Converse Power Corp. v. S.C. Dep't of Health & Envtl. Control*, 350 S.C. 39, 47, 564 S.E.2d 341, 345 (Ct. App. 2002) (quoting *Deese v. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985)).

"Regulations are interpreted using the same rules of construction as statutes." *Murphy*, 396 S.C. at 639, 723 S.E.2d at 195. "When interpreting a regulation, we look for the plain and ordinary meaning of the words of the regulation, without resort to subtle or forced construction to limit or expand the regulation's operation." *Id.* at 639-40, 723 S.E.2d at 195 (quoting *Converse Power Corp.*, 350 S.C. at 47, 564 S.E.2d at 346)). "Whe[n] the language of a regulation is plain, unambiguous, and conveys a clear and definite meaning, interpretation of the regulation is unnecessary and improper." *Kiawah Dev. Partners, II*, 411 S.C. at 39, 766 S.E.2d at 720-21. "However, if applying the regulation's plain language would lead to an [*540] absurd result, we will interpret the regulation in a manner which avoids the absurdity." *Blue Moon of Newberry, Inc.*, 397 S.C. at 261, 725 S.E.2d at 483.

As an initial matter, we address Respondents' procedural arguments. We reject Respondents' assertions that Appellants failed to preserve the arguments they raise on appeal and that the issues are not ripe for judicial determination. As to preservation, Appellants advanced their arguments to the ALC that Broilers were required to either seek an NPDES permit or obtain an exception from the Department and that the Department improperly [***14] interpreted its regulations and failed to conduct a site-specific evaluation to determine whether Broilers had a potential to discharge and thus contribute to the pollution of waters of the state. The ALC ruled on these issues. We therefore conclude Appellants' arguments are preserved for our review. *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("[I]ssue preservation requires that an issue be raised to and ruled upon by the trial judge."). As to ripeness, the regulations require CAFOs to apply for an NPDES permit at least 180 days before the CAFO begins operation; however, nothing prevents a party from applying sooner. *See* Regs. 61-9.122.23(g). Further, Respondents contend Broilers were not required to apply for such permit, regardless of timing. Thus, we find the issue is ripe for judicial determination. *See Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 227, 467 S.E.2d 913, 917-18 (1996) ("A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." (quoting *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983)).

On the merits, we find the ALC erred in deferring to the Department's interpretation of regulation 61-9.122 and part 200 of regulation 61-43 and in concluding Broilers were not required to apply for an NPDES permit or obtain an exemption. *See* § 1-23-610(B) (providing this court may reverse the decision [***15] of the ALC when the decision is affected by an error of law). The Department determined that because it issued Broilers a no-discharge permit—which prohibits Broilers [*541] from discharging pollutants into the waters of the state—Broilers were neither required to apply for an NPDES permit nor request a determination that they had no potential to discharge. According to the plain language of the regulations, Broilers are large CAFOs by definition because they proposed to house between 162,000 and 237,000 broiler chickens, using a dry manure handling system. *See* Regs. 61-9.122.23(b)(2) (stating a CAFO means an animal feeding operation (AFO) "that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph," or that the Department designates as a CAFO); Regs. 61-9.122.23(b)(4)(x) [**781] (providing a large CAFO is an AFO that stables or confines 125,000 chickens or more and uses other than a liquid manure handling system). Regulation 61-9.122.2 states a CAFO comprises a point source and thus requires an NPDES permit for discharges. *See* Regs. 61-9.122.1(b)(4)(i). Under regulation 61-9.122.23(d), large CAFOs are required to apply for an NPDES permit unless they obtain a determination from the Department pursuant to regulation 61-9.122.23(f) that they have "no potential to discharge." *See* Regs. 61-9.122.23(d)-(f). Paragraph (f) provides "the term 'no potential to [***16] discharge' means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the State *under any circumstance or climactic condition*." Regs. 61-9.122.23(f)(1) (emphasis added). The Department's conclusion that a "no discharge" permit—which prohibits a facility from discharging pollutants into the waters of the state—is the equivalent of a determination under regulation 61-9.122.23(f) that the facility has "no potential to discharge" is manifestly contrary to the language of the regulation, which requires the Department to make a case-specific evaluation. *See* Regs. 61-9.122.23(f)(1). The Department's issuance of a no-discharge permit did not satisfy this requirement because the Department did not specifically consider whether there was no potential for any CAFO manure, litter, or process wastewater from Broilers' proposed facilities to be added to the waters of the State "under any circumstance or climactic condition." *See id.* Simply because the no-discharge permit prohibited Broilers from discharging pollutants into the waters of the state did not mean they had no *potential* to discharge pollutants within the meaning of regulation 61-9. Rather, the Department was required to evaluate [*542] Broilers' proposed facilities to determine [***17] whether there was any potential to discharge. Thus, we conclude the ALC erred in deferring to the Department's interpretation of regulation 61-9 and in finding Broilers had "no potential to discharge" because the Department issued them no-discharge permits.

Further, we reject the Department's argument that as a result of the *Waterkeeper* decision, it no longer has authority under regulation 61-9.122.23 to require a large CAFO to obtain an NPDES permit and that such CAFOs have no obligation to seek the Department's determination that the CAFO has no potential to discharge. *See Waterkeeper Alliance, Inc. v. United States EPA*, 399 F.3d 486 (2d Cir. 2005). In *Waterkeeper*, the Second Circuit Court of Appeals concluded that, with respect to CAFOs, "unless there is a 'discharge of any pollutant,' there is no violation of the [Clean Water] Act, and point sources are, accordingly, . . . [not] statutorily obligated to seek or obtain an NPDES permit." *Id.* at 504. The court explained that "in the absence of an actual addition of any pollutant to navigable waters from any point, there is no point source discharge, no statutory violation, . . . and no statutory obligation of point sources to seek or obtain an NPDES permit in the first instance." *Id.* at 505. The South Carolina regulations at issue are based not only on the federal NPDES [***18] regulations but also upon the South Carolina Pollution Control Act, which specifically authorizes the Department to "prevent pollution." *See* Regs. 61-9.122.1(a)(1) (stating "[t]he regulatory provisions contained in [regulations] 61-9.122 and 124 implement the . . . []NPDES[] Program under . . . the Clean Water Act . . . and the South Carolina Pollution Control Act"); *see also* S.C. Code Ann. §§ 48-1-10 to - 350 (2008 & Supp. 2021) (setting forth South Carolina's Pollution Control Act); § 48-1-20 (declaring it is "the public policy of the State to maintain reasonable standards of purity of the air and water resources of the State" and authorizing the Department to "abate, control[,] *and prevent* pollution" (emphasis added)). We acknowledge the CAFO regulation in the federal NPDES section of the Clean Water Act has since been amended and now provides that a CAFO must seek an NPDES permit only if it either discharges or proposes to discharge a pollutant. 40 C.F.R. § 122.23 (2008). Here, the ALC determined *Waterkeeper* was not controlling, and as Broilers acknowledge, neither [*543] the Department nor the state has taken any action since the 2005 *Waterkeeper* decision to repeal or amend our state regulatory scheme with respect to CAFOs. South Carolina's NPDES regulations therefore remain in effect and *Waterkeeper* and the subsequent revisions to [**782] the federal regulations [***19] did not abrogate or otherwise repeal them.[5]

We acknowledge regulation 61-9.122.23 provides that even when the Department determines there is no potential to discharge, Broilers would still be in violation of the regulation if they in fact contributed pollutants to the waters of the state. Regulation 61-43 likewise prohibits discharges and provides the Department authority to enforce

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[5] As to the Department's contention the regulations contained in regulation 61-9.122 are unenforceable because they were enacted without legislative approval, the Department raises this argument for the first time on appeal. Therefore, we decline to consider this argument as an additional sustaining ground. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000) ("[A] respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it.").

compliance with the no-discharge permit. The Pollution Control Act provides for criminal and civil penalties when a person "throw[s], drain[s], run[s], or allow[s] to seep, or otherwise discharges organic or inorganic matter into the waters of the [s]tate" unless that discharge is "in compliance with a permit issued by the [D]epartment." *See* § 48-1-90. Nevertheless, none of these measures equal a finding by the Department that Broilers had no potential to discharge, which our regulations require to excuse a CAFO from obtaining an NPDES permit.

Based on the foregoing, we find the ALC erred in deferring to the Department's interpretation of the regulations and in concluding Broilers were not required to apply for an NPDES permit because the issuance of a no-discharge permit constituted a determination by the Department that Broilers had no potential [***20] to discharge. We therefore reverse as to this issue and remand to the Department for further evaluation pursuant to regulation 61-9.

II. Permit Evaluation

Appellants next contend the ALC erred by accepting DHEC's interpretation of certain provisions within part 200 of [*544] regulation 61-43 and requiring Appellants to show actual discharges from other facilities. Appellants assert that in 2004, the Department issued a "Total Maximum Daily Load" (TMDL) for the Little River because its watershed had impaired water quality due to excessive levels of fecal bacteria and it identified poultry facilities as possible contributors to the impairment. Appellants argue the Department unreasonably interpreted regulation 61-43.200.70(F) and 61-43.200.140(B) to (C) when it concluded no additional requirements or setbacks were needed because "ag[riculatural] facilities are not considered as contributors to TMDL." Appellants contend the Department therefore failed to meaningfully evaluate the factors set forth in regulations 61-43.200.70(E) to (F) and 61-43.200.140(C) in issuing permits to Broilers and that the ALC erred by deferring to the Department's interpretation of the regulations. We agree.

Part 200 of regulation 61-43 governs the permitting of animal facilities. Regulation 61-43.200.70(F) provided,[6]

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[6] In May 2021, part 200.70(F) was revised and now provides:

> The setback limits given in Part 200 are siting requirements. The Department shall evaluate the following factors to determine if any special conditions are necessary:
>
> 1. Latitude and Longitude;
>
> 2. Down-wind [***22] receptors; and
>
> 3. Nutrient Management Plan.

S.C. Code Ann. Regs. 61-43.200.70(F) (Supp. 2021).

The setback limits given in this part are minimum siting requirements [***21] . . . On a case-by-case basis the Department may require additional separation distances applicable to animal facilities . . . The Department shall evaluate the proposed site including, but not limited to, the following factors when determining if additional distances are necessary:

1. Proximity to 100-year floodplain;

2. Geography and soil types on the site;

3. Location in a watershed;

4. Classification or impairment of adjacent waters;

5. Proximity to a State Designated Focus Area; Outstanding Resource Water; Heritage Corridor; Historic Preservation District; State Approved Source Water [**783] Protection Area; state or national park or forest; state or federal [*545] research area; and privately-owned wildlife refuge, park, or trust property;

6. Proximity to other known point source discharges and potential nonpoint sources;

7. Slope of the land;

8. Animal manure application method and aerosols;

9. Runoff prevention;

10. Adjacent groundwater usage;

11. Down-wind receptors; and

12. Aquifer vulnerability.

Regulation 61-43.200.140 provides:

A. There shall be no discharge of pollutants from the operation into surface [w]aters of the [s]tate (including ephemeral and intermittent streams). . . .

B. *On a case-by-case basis, the Department may impose additional or more stringent requirements for the management, handling, treatment, storage, or utilization of animal manure and other animal by-products.*

C. The following cases *shall be evaluated* for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a state approved source water protection area.

2. 303(d) Impaired Waterbodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.

. . . .

(emphases added); *see also* Regs. 61-43.200.70(E) (providing that, in making permitting decisions, "[t]he Department shall act on all permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources").

Chaplin, the Department's permit reviewer, testified regarding his review of the proposed facilities. The record contains the [***23] checklist summaries he completed. Chaplin testified, and the checklist summaries reflect, that in making the permitting decision, the Department considered the proximity of the projects to the Little River—an impaired waterbody located [*546] downstream from the proposed facilities. Chaplin testified, however, that agricultural facilities were not considered to contribute to the TMDL and therefore he determined no additional requirements or setbacks were needed because Broilers' facilities would not increase pollution of the waters of the state. As the ALC recognized, the regulations require the Department to evaluate sensitive areas, including areas on the impaired water bodies list, to determine if more stringent requirements or setbacks are needed. *See* Regs. 61-43.200.140(C)(2). The Department bypassed this case-specific evaluation by concluding agricultural facilities are not considered to contribute to the TMDL. This interpretation was arbitrary because the regulations required the Department to evaluate specific factors to determine whether additional setbacks were required or additional or more stringent requirements were needed. We therefore find the ALC erred in deferring to the Department's interpretation. [***24] The Department should have evaluated the factors set forth in regulations 61-43.200.70(F) and 61-43.200.140(C). *See* Regs. 61-43.200.70(E) ("The Department shall act on all permits to prevent, so far as reasonably possible, . . . an increase in pollution of the waters and air of the State from any new or enlarged sources.").[7] Thus, we conclude the ALC erred in finding the Department complied with the regulatory requirements in issuing the permits.[8]

[**784] Based on the foregoing, we conclude the ALC erred in affirming the Department's issuance of the agricultural permits when it failed to consider all factors set forth in part 200 of regulation 61-43 in evaluating

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[7] We acknowledge Broilers' facilities, as proposed, comply with the minimum setback requirements. Thus, we question whether Appellants' arguments concerning additional setbacks are now moot under the current regulatory scheme. This amendment, however, did not affect Appellants' arguments concerning whether additional or more stringent requirements were needed under regulation 61-43.200.140(C).

[8] We decline to address Appellants' remaining argument the ALC erred in requiring "evidence proving that existing permitted facilities actually increased pollution to waters of the State" because our decisions as to the prior issues are dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating the court need not address the appellant's remaining issues when the disposition of a prior issue is dispositive).

Broilers' permit applications. [*547] We therefore reverse and remand to the Department for further evaluation pursuant to regulation 61-43.

CONCLUSION

For the foregoing reasons, we reverse the ALC's decision to uphold the Department's issuance of the permits to Broilers and remand to the Department for further evaluation pursuant to regulations 61-9 and 61-43.

REVERSED AND REMANDED.

KONDUROS and MCDONALD, JJ., concur.

End of Document

Mikell v. County of Charleston

Supreme Court of South Carolina

May 12, 2009, Heard; December 21, 2009, Filed

Opinion No. 26749

Reporter

386 S.C. 153 *; 687 S.E.2d 326 **; 2009 S.C. LEXIS 567 ***

I. Jenkins Mikell, Jr. and Pinkney V. Mikell, Petitioners, v. County of Charleston and Timothy E. Scott, A.D. Jordan, Curtis E. Bostic, Carolyn Condon, Ed Fava, Barrett Lawrimore, Francis J. Roberts, Leon E. Stavrinakis, and Charles T. Wallace in their capacity as Members of Charleston County Council, George Lee Mikell, Julia Mikell Flowers, Daisy Mikell Pedrick, Mary Mikell, John Mikell, and Peters Point Associates, LP, Defendants, of whom George Lee Mikell, Julia Mikell Flowers, Daisy Mikell Pedrick, Mary Mikell, John Mikell, and Peters Point Associates, LP are the, Respondents.

Prior History: [***1] Appeal From Charleston County. Mikell R. Scarborough, Circuit Court Judge.

Mikell v. County of Charleston, 375 S.C. 552, 654 S.E.2d 92, 2007 S.C. App. LEXIS 193 (S.C. Ct. App., 2007)

Disposition: REVERSED.

Counsel: Capers G. Barr, III, of Barr, Unger & McIntosh, of Charleston, Frances I. Cantwell, and William B. Regan, both of Regan & Cantwell, of Charleston, for Petitioners.

Carolyn H. Blue, of Tecklenburg Law Firm, of Charleston, Morris A. Ellison, of Buist, Moore, Smythe & McGee, of Charleston, Perrin O. Dargan, III, of Hagood & Kerr, of Mount Pleasant, for Respondents.

James M Brailsford, III, of Edisto Island, for Amicus Curiae.

Judges: JUSTICE WALLER. TOAL, C.J., PLEICONES, J., and Acting Justice James E. Moore, concur. Acting Justice G. Thomas Cooper dissenting in a separate opinion.

Opinion by: WALLER

Opinion

[*155] [**327] **ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

JUSTICE WALLER: We granted a writ of certiorari to review Mikell v. County of Charleston, 375 S.C. 552, 654 S.E.2d 92 (Ct. App. 2007), in which the Court of Appeals held Charleston County [**328] Council (County) properly enacted a zoning ordinance for a Planned Development (PD) on Edisto Island. We reverse.

FACTS

The property in question is a 160 acre tract of land on Edisto Island which is known as Peters Point Plantation, a former cotton plantation owned by the Mikell family since [*156] 1715. Peters [***2] Point forms a point, or peninsula, at the intersection of two tidal creeks: St. Pierre's Creek on the north, and Fishing Creek on the south.

Peters Point is intersected in the middle by Peters Point Road. Petitioners are I. Jenkins Mikell, Jr. and Pinkney V. Mikell, who own land on the north side of Peters Point Road; Respondents, distant family members of Petitioners, own six tracts of land, a total of 161 acres, on the north and south of Peters Point Road. The furthermost tract borders Fishing Creek.

In 1999, Charleston County enacted a Comprehensive Land Use Plan (Plan). The Plan describes that the "Agricultural Area is the outmost portion of the Rural Landscape in Charleston County. Included within it are Wadmalaw Island, Edisto Island [and others]." The Plan calls for preservation of the rural community character. The preferred uses of agricultural areas include "farming and resource management, along with preservation of existing rural settlements, compatible low-density residential development, and small-scale neighborhood commercial development." Id. The recommended development densities within such Agricultural Areas of Charleston County are as follows:

-Agricultural Residential [***3] (AGR) - 1 dwelling per acre to 1 dwelling per 5 acres.

-Agricultural Preservation (AG-10) - 1 dwelling per 5 acres to 1 dwelling per 10 acres.

The Plan states "the designation of Agricultural Areas is also intended to direct residential development to existing settlement areas and to avoid the scattering of development into . . . Agricultural Preservation Areas."

In 2001, County enacted Zoning and Land Development Regulations (ZLDR) in order to implement the Plan. The ZLDR incorporate the Agricultural Areas of the Plan, and reiterate that an AG-10 Agricultural Preservation District is

subject to a maximum density of 1 dwelling per 10 acres. ZLDR § 4.5. However, an AG-10 district may be increased to a "highest allowed density" of 1 dwelling unit per 5 acres, if a request is processed through the Planned Development process of § 3.5 of the ZLDR. The ZLDR sets the maximum [*157] density for AGR districts at 1 dwelling per acre, in accordance with the Plan.

Under the Plan and the ZLDR, of the six tracts of land owned by Respondents, four of the tracts were zoned AGR, and the remaining two tracts were zoned AG-10, such that the total parcel of 161 acres was subject to maximum densities as follows:

-106.64 [***4] Acres (2 tracts)- Zoned AG-10- 1 unit per 10 acres = total 10 units [1]

-55 Acres (4 tracts)- Zoned AGR- 1 unit per acre = 54 total units.

Accordingly, as initially zoned, the tracts were subject to a total maximum of 65 units.

In 2003, Respondents filed an application with County to rezone their Peters Point property to a Planned Development (PD) District. The stated purpose of the application was to allow family members to construct homes for themselves and their children at Peter's Point Plantation; they do not intend to permit commercial or multi-family development. On May 4, 2004, County Council enacted Ordinance # 1300 rezoning the parcels from AGR and AG-10 to a PD-103 District. The Planned Development submitted by Respondents (and approved by Ordinance # 1300) had the effect of reducing the total number of units on the entire tract from a maximum of 64, to a total maximum of 55 units. However, the Ordinance also had the effect of increasing the overall density to 1 dwelling unit per 3.8 acres. As to the 106 acre tract of land which [***5] was zoned AG-10, the PD had the effect of increasing to a maximum density of 1 unit per 2.4 acres.

[**329] Petitioners instituted this declaratory judgment action, contending the ordinance conflicted with County's Comprehensive Plan and the ZLDR. Petitioners' motion for summary judgment was granted by the Master. The Master held Ordinance # 1300 conflicted with the clear, unambiguous requirements of § 4.5.3(B) of the ZLDR limiting the density in an AG-10 district to a maximum of one dwelling per five acres. The Master found § 4.5.3 was, at best, inconsistent with § 3.5.7 of [*158] the ZLDR, such that the more specific regulation, § 4.5.3, controlled.

The Court of Appeals reversed. Mikell v. County of Charleston, 375 S.C. 552, 654 S.E.2d 92 (Ct. App. 2007). It held County Council's decision to allow the PD was at least fairly debatable, and was neither arbitrary nor unreasonable.

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[1] This number could be increased to a maximum of 1 unit per 5 acres if done through Planned Development process, allowing a total maximum of 20 units.

It found § 3.5.2 and § 3.5.7 of the ZLDR authorized County's exercise of discretion in approving a PD with a higher density than base zoning districts would have allowed. The Court of Appeals found no conflict existed between §§ 3.5.2, 3.5.7 and § 4.5.3(B). We reverse.

ISSUE

Did the Court of Appeals err in reversing the Master's [***6] grant of summary judgment to Petitioners and reinstating Ordinance # 1300?

STANDARD OF REVIEW

Although summary judgment issues are generally reviewed under a fact-based inquiry, issues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact. Eagle Container LLC v. County of Newberry, 379 S.C. 564, 666 S.E.2d 892 (2008). Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, "a broader and more independent review is permitted when the issue concerns the construction of an ordinance." Id. at 568, 666 S.E.2d at 894 *citing* Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). The determination of legislative intent is a matter of law. Id. [2]

DISCUSSION

County's Comprehensive Land Use Plan establishes four distinct areas within County, and sets forth the general types and intensities of development [***7] which should occur in [*159] each. The only areas pertinent to this case are those designated as Agricultural, for which there are two categories:

- Agricultural Residential (AGR) - 1 dwelling per acre to 1 dwelling per 5 acres.
- Agricultural Preservation (AG-10) - 1 dwelling per 5 acres to 1 dwelling per 10 acres.

The ZLDR passed by County to implement the Plan requires an AG-10 District to have a maximum density of 1 dwelling per 10 acres. ZLDR § 4.5.2. However, this density may be increased to a "**highest allowed density**" of 1

[2] As to fact based issues, an appellate court applies the same standard as the trial court under Rule 56(c), SCRCP; Englert, Inc. v. LeafGuard USA, Inc., 377 S.C. 129, 659 S.E.2d 496 (2008).

dwelling unit per 5 acres, if a request is processed through the Planned Development process of § 3.5 of the ZLDR. ZLDR § 4.5.3.B.

Section 3.5.7 of the ZLDR states:

> Unless expressly stated in this section or approved at the time of a Planned Development approval, all applicable standards of this Ordinance shall apply . . . . **Planned Developments may provided for variations from other ordinances and the regulations of the other established zoning districts concerning use, setbacks, lot area, density,** bulk and other requirements to accommodate flexibility in the arrangement of uses for the general purpose of promoting and protecting the public health, safety, and general [***8] welfare.

(Emphasis supplied). [3]

The Court of Appeals held that inasmuch as § 3.5.7 permits the Commission to approve [**330] a PD with a higher density than other established zoning districts, the action of the Commission in approving respondents' application was at least "fairly debatable." The Court of Appeals also held that, because County has the legislative power to amend its general zoning ordinance and rezone small areas, it acted within its authority. This was error.

[*160] The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). When interpreting an ordinance, the legislative intent must prevail if it can be reasonably discovered in the language used. Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). [***9] Further, where two provisions deal with the same issue, one in a general and the other in a more specific and definite manner, the more specific prevails. Capco of Summerville v. J.H. Gayle Constr. Co., Inc., 368 S.C. 137, 628 S.E.2d 38 (2006). See also Wooten ex rel. Wooten v. S.C. Dep't of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (specific statutory provision prevails over a more general one); Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) (general rule of statutory construction is that a specific statute prevails over a more general one). When reviewing issues involving the construction of an ordinance, the determination of legislative intent is a matter of law. Eagle Container, supra.

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[3] County also relies upon S.C. Code Ann. § 6-29-740, which mimics the language of § 3.5.7, relating to planned developments and allows variations from other ordinances and regulations concerning use, setbacks, lot size, and density. For the reasons set forth below, we find the provisions specifically relating to County's planned developments, as set forth in § 4.5.3B of the ZLDR, control.

We find the legislative intent, as it relates to AG-10 districts, was to ensure a **maximum** density of 1 dwelling unit per 5 acres on AG-10 districts. This intent is clearly reflected in the Comprehensive Land Use Plan and the ZLDR.

We find it highly implausible that, in setting forth a maximum density of 1 unit per 10 acres for AG-10 Districts, and then allowing for an increase of **up to** 1 unit per 5 acres for [***10] a Planned Development, the County intended to authorize the approval of a Planned Development which would completely vitiate the maximum density requirements set forth in § 4.5.3B. Had County intended such a result, § 4.5.3B would have permitted a **higher density** to be approved if processed as a Planned Development, without restricting it to a "**highest allowed density of 1 unit per 5 acres.**" We find County clearly intended to limit those tracts zoned AG-10 to a maximum density of one dwelling per 5 acres, and intended to preserve "existing rural settlements" and "compatible low-density residential development." It was, therefore, error to authorize maximum densities in excess of those specifically [*161] outlined by the ZLDR. The Court of Appeals' opinion is reversed, and the order of the Master is reinstated.

REVERSED.

TOAL, C.J., PLEICONES, J., and Acting Justice James E. Moore, concur. Acting Justice G. Thomas Cooper dissenting in a separate opinion.

Dissent by: G. Thomas Cooper

Dissent

Acting Justice G. Thomas Cooper, (dissenting): This Court would reverse not only the Court of Appeals, but also the Charleston County Planning and Zoning Commission and the Charleston County Council for enactment of Ordinance # [***11] 1300, the Peters Point Planned Development. Ordinance # 1300 created a Planned Development, an entity described and authorized in Section 6-29-740 of the South Carolina Code as an independent, distinct zoning district. In doing so, the majority finds:

> ... it highly implausible that, in setting forth a maximum density of 1 unit per 10 acres for AG-10 Districts, and then allowing for an increase of up to 1 unit per 5 acres for a Planned Development, the County intended to authorize the approval of a Planned Development which would completely vitiate the maximum density requirements set forth in Section 4.5.3B.

However, that is exactly what the Act and the Charleston County Zoning and Land Development Regulations (ZLDR) allows the [**331] Charleston County Council to do. Its decision is supported by the State statute and the Charleston County Comprehensive Plan and the Charleston County ZLDR. To reverse the action of County Council flies in the face of this Court's frequent pronouncement that it will acknowledge and respect the actions of the pertinent legislative body if its actions are "fairly debatable." Bear Enterprises v. County of Greenville, 319 S.C. 137, 459 S.E.2d 883 (S.C. Ct. App. 1995); [***12] Rush v. City of Greenville, 246 S.C. 268, 143 S.E.2d 527 (1965).

> Courts have no prerogative to pass upon the wisdom of the municipality's decision unless such decision is "so unreasonable as to impair or destroy citizen's constitutional rights"; and the decision should not be overturned by a court so long [*162] as the decision is "fairly debatable." This policy of judicial restraint has been echoed in a recent decision.
>
> We have long recognized the principal that the power to zone is exclusively for the legislature and that zoning decisions will not be interfered with when made in the exercise of the governing body's police power to accomplish the desired end unless there is a plain violation of the citizens" constitutional rights.

Knowles v. City of Aiken, 305 S.C. 219, 224, 407 S.E.2d 639, 642 (1991) (internal citations omitted). Modern legal treatises frequently define a "Planned District" as a "Planned Unit Development."

> "Planned unit development" means an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, and commercial and industrial uses, if any, the plan for which does not correspond in lot size, bulk, or type of dwelling or commercial [***13] or industrial use, density, lot coverage and required open space to the regulations established in any one or more districts created, from time to time, under the provisions of a municipal zoning ordinance enacted pursuant to the conventional zoning enabling act of the state.

Julian Conrad Juergensmeyer & Thomas E. Roberts, Land Use Planning and Development Regulation Law 283 (2007). This definition is not dissimilar to South Carolina Code Section 6-29-740.

The essential question is, therefore, does the Charleston County Ordinance # 1300 conflict with the Charleston County Comprehensive Plan or with the ZLDR? And, if so, can the County Council enact an Ordinance which overrides the perceived conflict?

> Because of its flexibility as a land use approval mechanism, the PUD may create a conflict with the formal land use and intensity designations of a comprehensive land use plan. The extent to which such a conflict is fatal

> depends on whether the comprehensive plan in the particular jurisdiction is considered advisory only, or whether state legislation mandates that local zoning regulations be consistent with the comprehensive plan. In those states in which the comprehensive plan is advisory [***14] only, the courts have rejected [*163] arguments that approval of a PUD was invalid because it was inconsistent with the comprehensive plan or amounted to spot zoning.

Brian W. Blaesser, Discretionary Land Use Controls: Avoiding Invitations to Abuse of Discretion 288-289 (2009 Ed.).

Code Section 6-29-720 (B) requires that in adopting a zoning ordinance, the regulations must be made in accordance with the comprehensive plan for the jurisdiction. The comprehensive plan for Charleston County clearly states that the land use plan area designations and residential density guidelines are **recommendations** to the County Council (see County of Charleston Comprehensive Plan Section 3-2-5b and Section 3-2-8(4)). Similarly, in Evans v. Teton County, 73 P.2d 84, 139 Idaho 71, 73 P.3d 84 (Idaho 2003), a neighbor challenged approval of a planned unit development and subdivision on the basis of nonconformity with the local plan. The Supreme Court of Idaho discussed the relationship as follows:

> A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making zoning decisions .... The "in accordance with" language of [the zoning enabling legislation] does not require zoning [***15] decisions to strictly conform to the land use designations of the [**332] comprehensive plan .... However, a board of county commissioners cannot ignore their comprehensive plan when adopting or amending zoning ordinances .... Whether approval of a zone change is "in accordance with" the comprehensive plan is a question of fact, which can only be overturned when the factual findings supporting the zone change are clearly erroneous.

Julian Conrad Juergensmeyer & Thomas E. Roberts, Land Use Planning and Development Regulation Law 283 (2007).

The court conducted its review on the basis of a strong presumption of validity and proceeded on the basis that it must affirm the Board of Commissioners unless it violated constitutional or statutory standards, exceeded its statutory authority, followed unlawful procedures, was not supported by substantial evidence, or was arbitrary and capricious. In other words the courts used the "fairly debatable" standard accorded to legislative decisions.

[*164] I disagree with the majority's holding that the Charleston County Council cannot modify or supersede its own zoning ordinance, if done within the confines of South Carolina Code Section 6-29-740. [***16] The statute plainly states:

> Planned development districts may provide for variations from other ordinances and the regulations of other established zoning districts concerning use, setbacks, lot size, density, bulk, and other requirements to accommodate flexibility in the arrangement of uses for the general purpose of promoting and protecting the public health, safety, and general welfare.

And, when adopted, the planned development district becomes a new and distinct zoning district.

Ordinance # 1300 found "...after thorough consideration, the County Planning Commission recommended in favor of the proposed rezoning;...the rezoning complies in all respects with Article 3.4 of the Charleston County Zoning and Land Development Regulations;...the development plan meets the objectives of Article 3.5 the Charleston County Zoning and Land Development Regulations;...and the development plan conforms to and implements the Charleston County Comprehensive Plan."

In [***17] my opinion, the Court of Appeals correctly ruled that the County Council's actions were authorized and not arbitrary, unreasonable, or in devious abuse of its discretion if the action of the Council in adopting the ordinance was fairly debatable.

End of Document

Reed v. Town of Gilbert

Supreme Court of the United States

January 12, 2015, Argued; June 18, 2015, Decided

No. 13-502

Reporter

576 U.S. 155 *; 135 S. Ct. 2218 **; 192 L. Ed. 2d 236 ***; 2015 U.S. LEXIS 4061 ****; 83 U.S.L.W. 4444; 25 Fla. L. Weekly Fed. S 383

CLYDE REED, et al., Petitioners v. TOWN OF GILBERT, ARIZONA, et al.

Notice: The LEXIS pagination of this document is subject to change pending release of the final published version.

Prior History: [****1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Reed v. Town of Gilbert, 707 F.3d 1057, 2013 U.S. App. LEXIS 2715 (9th Cir. Ariz., 2013)

Disposition: Judgment reversed and case remanded. 9-0 Decision; 3 concurrences.

Syllabus

[*155] [**2221] [***240] Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here. "Ideological Signs," defined as signs "communicating a message or ideas" that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions. "Political Signs," defined as signs "designed to influence the outcome of an election," may be up to 32 square feet and may only be displayed during an election season. "Temporary Directional Signs," defined as signs directing the public to a church or other "qualifying event," have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the "qualifying event" and 1 hour after.

Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church [****2] name and the time and location of the next service and did not remove the signs until

around [**2222] midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed, ultimately concluding that the Code's sign categories were content neutral, and that the Code satisfied the intermediate scrutiny accorded to content-neutral regulations of speech.

Held: The Sign Code's provisions are content-based regulations of speech that do not survive strict scrutiny. Pp. 163-174, 192 L. Ed. 2d, at 245-251.

(a) Because content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *E.g., R. A. V.* v. *St. Paul*, 505 U. S. 377, 395, 112 S. Ct. 2538, 120 L. Ed. 2d 305. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell* v. *IMS Health, Inc.*, 564 U. S. 552, 563-565, 131 S. Ct. 2653, 2663-2664, 180 L. Ed. 2d 544, 555-556. [*156] And courts are required [****3] to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Id.*, at 564, 131 S. Ct. 2653, 180 L. Ed. 2d 544. Whether laws define regulated speech by particular subject matter or by its function or purpose, they are subject to strict scrutiny. The same is true for laws that, though facially content neutral, cannot be " 'justified without reference to the content of the regulated speech,' " or were adopted by the government "because of disagreement with the message" conveyed. *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661. Pp. 163-164, 192 L. Ed. 2d, at 245.

(b) The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages [***241] and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign's communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. Pp. 164-165, 192 L. Ed. 2d, at 245.

(c) None of the Ninth Circuit's theories for its contrary holding is persuasive. Its conclusion that the Town's regulation was not based on a disagreement with the message conveyed skips [****4] the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or

lack of "animus toward the ideas contained" in the regulated speech. *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. 410, 429, 113 S. Ct. 1505, 123 L. Ed. 2d 99. Thus, an innocuous justification cannot transform a facially content-based law into one that is content neutral. A court must evaluate each question--whether a law is content based on its face and whether the purpose and justification for the law are content based--before concluding that a law is content neutral. *Ward* does not require otherwise, for its framework applies only to a content-neutral statute.

The Ninth Circuit's conclusion that the Sign Code does not single out any idea or viewpoint for discrimination conflates two distinct but related limitations that the First Amendment places on government [**2223] regulation of speech. Government discrimination among viewpoints is a "more blatant" and "egregious form of content discrimination," *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829, 115 S. Ct. 2510, 132 L. Ed. 2d 700, but "[t]he First Amendments hostility to content-based regulation [also] extends . . . to prohibition of public discussion of an entire topic," [****5] *Consolidated Edison Co. of N. Y.* v. *Public Service Comm'n*, 447 U. S. 530, 537, 100 S. Ct. 2326, 65 L. Ed. 2d 319. The Sign Code, a paradigmatic example of content-based discrimination, singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.

[*157] The Ninth Circuit also erred in concluding that the Sign Code was not content based because it made only speaker-based and event-based distinctions. The Code's categories are not speaker-based--the restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. And even if the sign categories were speaker based, that would not automatically render the law content neutral. Rather, "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 658, 114 S. Ct. 2445, 129 L. Ed. 2d 497. This same analysis applies to event-based distinctions. Pp. 165-171, 192 L. Ed. 2d, at 246-250.

(d) The Sign Code's content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code's differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. [***242] See [****6] *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 564 U. S. 721, 734, 131 S. Ct. 2806, 180 L. Ed. 2d 664. Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code's distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network*, *supra*, at 425, 113 S. Ct. 1505, 123 L. Ed. 2d 99 507 U.S. 410, 113 S. Ct. 1505, 123 L. Ed. 2d 99. Nor has it shown that temporary

directional signs pose a greater threat to public safety than ideological or political signs. Pp. 171-172, 192 L. Ed. 2d, at 250-251.

(e) This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner. See *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 817, 104 S. Ct. 2118, 80 L. Ed. 2d 772. An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers-- *e.g.*, warning signs marking hazards on private property or signs directing traffic--might also survive strict scrutiny. Pp. 172-173, 192 L. Ed. 2d, at 251.

707 F. 3d 1057, reversed and remanded.

Counsel: David A. Cortman argued the cause for petitioners.

Eric J. Feigin argued the cause for the United States, as amicus curiae, by special leave of court.

Philip W. Savrin argued the cause for respondents.

Judges: Thomas, J., delivered the [****7] opinion of the Court, in which Roberts, C. J., and Scalia, Kennedy, Alito, and Sotomayor, JJ., joined. Alito, J., filed a concurring opinion, in which Kennedy and Sotomayor, JJ., joined. Breyer, J., filed an opinion concurring in the judgment. Kagan, J., filed an opinion concurring in the judgment, in which Ginsburg and Breyer, JJ., joined

Opinion by: Thomas

Opinion

[*159] [**2224] Justice **Thomas** delivered the opinion of the Court.

The town of Gilbert, Arizona (or Town), has adopted a comprehensive code governing the manner in which people may display outdoor signs. Gilbert, Ariz., Land Development Code (Sign Code or Code), ch. 1, §4.402 (2005). [1] The Sign Code identifies various categories of signs based on the type of information they convey, then subjects each category to different restrictions. One of the categories is "Temporary Directional Signs Relating to a Qualifying Event," loosely defined as signs directing the public to a meeting of a nonprofit group. §4.402(P). The Code imposes more stringent restrictions on these signs than it does on signs conveying other messages. We hold that these provisions are content-based regulations of speech that cannot survive strict scrutiny.

I

A

The Sign Code prohibits the display of outdoor signs anywhere within the Town without a permit, but it then [***243] exempts 23 categories of signs from that requirement. These exemptions include everything from bazaar signs to flying banners. Three categories of exempt signs are particularly relevant here.

The first is "Ideological Sign[s]." This category includes any "sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency." Sign Code, Glossary of General Terms (Glossary), p. 23 (emphasis deleted). Of the three categories discussed here, the Code treats ideological signs most favorably, allowing them to be up to 20 square [*160] feet in area and to be placed in all "zoning districts" without time limits. §4.402(J).

The second category is "Political Sign[s]." This includes any "temporary sign designed to influence the outcome of an election called by a public body." Glossary 23. [2] The Code treats these signs less favorably than ideological signs. [****9] The Code allows the placement of political signs up to 16 square feet on residential property and up to 32 square feet on nonresidential property, undeveloped municipal property, and "rights-of-way." [**2225] §4.402(I). [3] These signs may be displayed up to 60 days before a primary election and up to 15 days following a general election. *Ibid.*

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[1] The Town's Sign Code is available online at http://www.gilbertaz.gov/departments/development-service/planning-development/land development-code [****8] (as visited June 16, 2015, and available in Clerk of Court's case file).

[2] A "Temporary Sign" is a "sign not permanently attached to the ground, a wall or a building, and not designed or intended for permanent display." Glossary 25.

[3] The Code defines "Right-of-Way" as a "strip of publicly owned land occupied by or planned for a street, utilities, landscaping, sidewalks, trails, and similar facilities." *Id.*, at 18.

The third category is "Temporary Directional Signs Relating to a Qualifying Event." This includes any "Temporary Sign intended to direct pedestrians, motorists, and other passersby to a 'qualifying event.'" Glossary 25 (emphasis deleted). A "qualifying event" is defined as any "assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization." *Ibid.* The Code treats temporary directional signs even less favorably than political signs. [****10] [4] Temporary directional signs may be [*161] no larger than six square feet. §4.402(P). They may be placed on private property or on a public right-of-way, but no more than four signs may be placed on a single property at any time. *Ibid.* And, they may be displayed no more than 12 hours before the "qualifying event" and no more than 1 hour afterward. *Ibid.*

B

Petitioners Good News Community Church (Church) and its pastor, Clyde Reed, wish to advertise the time and location of their Sunday [****11] church services. The Church is a small, cash-strapped entity that owns no building, so it holds its services at [***244] elementary schools or other locations in or near the Town. In order to inform the public about its services, which are held in a variety of different locations, the Church began placing 15 to 20 temporary signs around the Town, frequently in the public right-of-way abutting the street. The signs typically displayed the Church's name, along with the time and location of the upcoming service. Church members would post the signs early in the day on Saturday and then remove them around midday on Sunday. The display of these signs requires little money and manpower, and thus has proved to be an economical and effective way for the Church to let the community know where its services are being held each week.

This practice caught the attention of the Town's Sign Code compliance manager, who twice cited the Church for violating the Code. The first citation noted that the Church exceeded the time limits for displaying its temporary directional signs. The second citation referred to the same problem, along with the Church's failure to include the date of the event on the signs. Town [****12] officials even confiscated one of the Church's signs, which Reed had to retrieve from the municipal offices.

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[4] The Sign Code has been amended twice during the pendency of this case. When litigation began in 2007, the Code defined the signs at issue as "Religious Assembly Temporary Direction Signs." App. 75. The Code entirely prohibited placement of those signs in the public right-of-way, and it forbade posting them in any location for more than two hours before the religious assembly or more than one hour afterward. *Id.*, at 75-76. In 2008, the Town redefined the category as "Temporary Directional Signs Related to a Qualifying Event," and it expanded the time limit to 12 hours before and 1 hour after the "qualifying event." *Ibid.* In 2011, the Town amended the Code to authorize placement of temporary directional signs in the public right-of-way. *Id.*, at 89.

Reed contacted the Sign Code Compliance Department in an attempt to reach an accommodation. His efforts proved unsuccessful. The Town's Code compliance manager informed the Church that there [**2226] would be "no leniency under the Code" and promised to punish any future violations.

[*162] Shortly thereafter, petitioners filed a complaint in the United States District Court for the District of Arizona, arguing that the Sign Code abridged their freedom of speech in violation of the First and Fourteenth Amendments. The District Court denied the petitioners' motion for a preliminary injunction. The Court of Appeals for the Ninth Circuit affirmed, holding that the Sign Code's provision regulating temporary directional signs did not regulate speech on the basis of content. 587 F. 3d 966, 979 (2009). It reasoned that, even though an enforcement officer would have to read the sign to determine what provisions of the Sign Code applied to it, the "'kind of cursory examination'" that would be necessary for an officer to classify it as a temporary directional sign was "not akin to an officer synthesizing the expressive content of the sign." *Id.*, at 978. It then [****13] remanded for the District Court to determine in the first instance whether the Sign Code's distinctions among temporary directional signs, political signs, and ideological signs nevertheless constituted a content-based regulation of speech.

On remand, the District Court granted summary judgment in favor of the Town. The Court of Appeals again affirmed, holding that the Code's sign categories were content neutral. The court concluded that "the distinctions between Temporary Directional Signs, Ideological Signs, and Political Signs . . . are based on objective factors relevant to Gilbert's creation of the specific exemption from the permit requirement and do not otherwise consider the substance of the sign." 707 F. 3d 1057, 1069 (CA9 2013). Relying on this Court's decision in *Hill* v. *Colorado*, 530 U. S. 703, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (2000), the Court of Appeals concluded that the Sign Code is content neutral. 707 F. 3d, at 1071-1072. As the court explained, "Gilbert did not adopt its regulation of speech because [***245] it disagreed with the message conveyed" and its "interests in regulat[ing] temporary signs are unrelated to the content of the sign." *Ibid.* Accordingly, the court believed that the Code was [*163] "content-neutral as that term [has been] defined by the Supreme Court." *Id.*, at 1071. In light of that determination, it applied [****14] a lower level of scrutiny to the Sign Code and concluded that the law did not violate the First Amendment. *Id.*, at 1073-1076.

We granted certiorari, 573 U. S. 957, 134 S. Ct. 2900, 189 L. Ed. 2d 854 (2014), and now reverse.

II

A

[1] The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U. S. Const., Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chicago* v. *Mosley*, 408 U. S. 92, 95, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972). Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *R. A. V.* v. *St. Paul*, 505 U. S. 377, 395, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992); *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 115, 118, 112 S. Ct. 501, 116 L. Ed. 2d 476 (1991).

[**2227] [2] Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g., Sorrell* v. *IMS Health, Inc.*, 564 U. S.552, 263-565, 131 S. Ct. 2653, 2663-2664, 180 L. Ed. 2d 544 555-556 (2011) ; *Carey* v. *Brown*, 447 U. S. 455, 462, 100 S. Ct. 2286, 65 L. Ed. 2d 263 (1980); *Mosley, supra,* at 95, 92 S. Ct. 2286, 33 L. Ed. 2d 212. This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. *Sorrell, supra,* at 564, 131 S. Ct. 2653, 2663, 180 L. Ed. 2d 544, 555. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, [****15] defining regulated speech by its function or purpose. Both are distinctions [*164] drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Our precedents have also recognized a separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be "'justified without reference to the content of the regulated speech,'" or that were adopted by the government "because of disagreement with the message [the speech] conveys," *Ward* v. *Rock Against Racism*, 491 U. S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). Those laws, like those that are content based on their face, must also satisfy strict scrutiny.

B

The Town's Sign Code is content based on its face. It defines "Temporary Directional Signs" on the basis of whether a sign conveys the message of directing the public to church or some other "qualifying event." Glossary [***246] 25. It defines "Political Signs" on the basis of whether a sign's message is "designed to influence the outcome of an election." *Id.,* at 24. And it defines "Ideological Signs" on the basis of whether a sign "communicat[es]

a message or ideas" that do not fit within the Code's other categories. *Id.*, at 23. It then subjects each of these categories to different restrictions.

The [****16] restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government. More to the point, the Church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas. On its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider [*165] the government's justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.

C

In reaching the contrary conclusion, the Court of Appeals offered several theories to explain why the Town's Sign Code should be deemed content neutral. None is persuasive.

1

The Court of Appeals first determined that the Sign Code was content neutral because the Town "did not adopt its regulation of speech [based on] [****17] disagree[ment] with the message conveyed," and its justifications for regulating temporary directional signs were "unrelated to the content of the sign." 707 F. 3d, at 1071-1072. [**2228] In its brief to this Court, the United States similarly contends that a sign regulation is content neutral—even if it expressly draws distinctions based on the sign's communicative content—if those distinctions can be "'justified without reference to the content of the regulated speech.'" Brief for United States as *Amicus Curiae* 20, 24 (quoting *Ward, supra*, at 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661; emphasis deleted).

But this analysis skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. [3] A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. 410, 429, 113 S. Ct. 1505, 123 L. Ed. 2d 99 (1993). We have thus made clear that "'[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment,'" and a party opposing the government "need adduce 'no evidence of an improper censorial motive.'" *Simon & Schuster, supra,* at 117, 112 S. Ct. 501, 116 L. Ed. 2d 476. Although "a content-based purpose may be

sufficient in certain circumstances to show that a regulation [****18] is content based, it is not necessary." [*166] *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 642, 114 S. Ct. 2445, 129 L. Ed. 2d 497 (1994). In other words, an innocuous justification [***247] cannot transform a facially content-based law into one that is content neutral.

That is why we have repeatedly considered whether a law is content neutral on its face *before* turning to the law's justification or purpose. See, *e.g., Sorrell, supra,* at 563-565, 131 S. Ct. 2653, 2663-2664, 180 L. Ed. 2d 544, 555-556 (statute was content based "on its face," and there was also evidence of an impermissible legislative motive); *United States* v. *Eichman*, 496 U. S. 310, 315, 110 S. Ct. 2404, 110 L. Ed. 2d 287 (1990) ("Although the [statute] contains no explicit content-based limitation on the scope of prohibited conduct, it is nevertheless clear that the Government's asserted *interest* is related to the suppression of free expression" (internal quotation marks omitted)); *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 804, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984) ("The text of the ordinance is neutral," and "there is not even a hint of bias or censorship in the City's enactment or enforcement of this ordinance"); *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984) (requiring that a facially content-neutral ban on camping must be "justified without reference to the content of the regulated speech"); *United States* v. *O'Brien*, 391 U. S. 367, 375, 377, 88 S. Ct. 1973, 20 L. Ed. 2d 672 (1968) (noting that the statute "on its face deals with conduct having no connection with speech," but examining whether the "the governmental interest is unrelated to the suppression of free expression"). [****19] [4] Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny.

The Court of Appeals and the United States misunderstand our decision in *Ward* as suggesting that a government's purpose is relevant even when a law is content based on its face. That is incorrect. *Ward* had nothing to say about facially content-based restrictions because it involved [*167] a facially content-*neutral* ban on the use, in a city-owned music venue, of sound amplification systems not provided by the city. 491 U. S., at 787, 109 S. Ct. 2746, 105 L. Ed. 2d 661, and n. 2. In that context, we looked to [**2229] governmental motive, including whether the government had regulated speech "because of disagreement" with its message, and whether the regulation was "'justified without reference to the content of the speech.'" *Id.,* at 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661. But *Ward*'s framework "applies only if a statute is content neutral." *Hill*, 530 U. S., at 766, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (Kennedy, J., dissenting). Its rules thus operate "to protect speech," not "to restrict it." *Id.,* at 765, 120 S. Ct. 2480, 147 L. Ed. 2d 597.

The First Amendment requires no less. [5] Innocent motives do not eliminate the danger of censorship [****20] presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech. That is why the First Amendment expressly targets the operation of the laws—*i.e.,* the "abridg[ement] of speech"—rather than merely the motives of those who enacted them. U. S. Const., Amdt. 1. "'The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, [***248] but that it lends itself to use for those purposes.'" *Hill, supra,* at 743, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (Scalia, J., dissenting).

For instance, in *NAACP* v. *Button*, 371 U. S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963), the Court encountered a State's attempt to use a statute prohibiting "'improper solicitation'" by attorneys to outlaw litigation-related speech of the National Association for the Advancement of Colored People. *Id.,* at 438, 83 S. Ct. 328, 9 L. Ed. 2d 405. Although *Button* predated our more recent formulations of strict scrutiny, the Court rightly rejected the State's claim that its interest in the "regulation of professional conduct" rendered the statute consistent with the First Amendment, observing that "it is no answer . . . to say . . . that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression." *Id.,* at 438-439, 83 S. Ct. 328, 9 L. Ed. 2d 405. Likewise, one could easily imagine a Sign Code compliance manager [*168] who [****21] disliked the Church's substantive teachings deploying the Sign Code to make it more difficult for the Church to inform the public of the location of its services. Accordingly, we have repeatedly "rejected the argument that 'discriminatory . . . treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas.'" *Discovery Network,* 507 U. S., at 429, 113 S. Ct. 1505, 123 L. Ed. 2d 99. We do so again today.

2

The Court of Appeals next reasoned that the Sign Code was content neutral because it "does not mention any idea or viewpoint, let alone single one out for differential treatment." 587 F. 3d, at 977. It reasoned that, for the purpose of the Code provisions, "[i]t makes no difference which candidate is supported, who sponsors the event, or what ideological perspective is asserted." 707 F. 3d, at 1069.

The Town seizes on this reasoning, insisting that "content based" is a term of art that "should be applied flexibly" with the goal of protecting "viewpoints and ideas from government censorship or favoritism." Brief for Respondents 22. In the Town's view, a sign regulation that "does not censor or favor particular viewpoints or ideas" cannot be content based. *Ibid.* The Sign Code allegedly passes this test because its treatment of temporary directional signs does not raise [****22] any concerns that the government is "endorsing or suppressing 'ideas or viewpoints,'" *id.,* at

27, and the provisions for political signs and ideological signs "are neutral as to particular ideas or viewpoints" within those categories. *Id.*, at 37.

This analysis conflates two distinct but related limitations that the First Amendment [**2230] places on government regulation of speech. [6] Government discrimination among viewpoints—or the regulation of speech based on "the specific motivating ideology or the opinion or perspective of the speaker"—is a "more blatant" and "egregious form of content discrimination." *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, [*169] 515 U. S. 819, 829, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995). But it is well established that "[t]he First Amendment's hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic." *Consolidated Edison Co.* v. *Public Service Comm'n*, 447 U.S. 530, 537, 100 S. Ct. 2326, 65 L. Ed. 2d 319 (1980).

[***249] Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. *Ibid.* For example, a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed. [****23] See *Discovery Network, supra,* at 428, 113 S. Ct. 1505, 123 L. Ed. 2d 99. The Town's Sign Code likewise singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter. Ideological messages are given more favorable treatment than messages concerning a political candidate, which are themselves given more favorable treatment than messages announcing an assembly of like-minded individuals. That is a paradigmatic example of content-based discrimination.

3

Finally, the Court of Appeals characterized the Sign Code's distinctions as turning on "'the content-neutral elements of who is speaking through the sign and whether and when an event is occurring.'" 707 F. 3d, at 1069. That analysis is mistaken *on* both factual and legal grounds.

To start, the Sign Code's distinctions are not speaker based. The restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. If a local business, for example, sought to put up signs advertising the Church's meetings, those signs would be subject to the same limitations as such signs placed by the Church. And if Reed had decided to display signs in support of a particular candidate, he could have made [****24] those signs far [*170] larger—and kept them up for far longer—than signs inviting people to attend his church services. If the Code's distinctions were truly speaker based, both types of signs would receive the same treatment.

In any case, [7] the fact that a distinction is speaker based does not, as the Court of Appeals seemed to believe, automatically render the distinction content neutral. Because "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content," *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310, 340, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010), we have insisted that "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference," *Turner,* 512 U. S., at 658, 114 S. Ct. 2445, 129 L. Ed. 2d 497. Thus, a law limiting the content of newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based. Likewise, a content-based law that restricted the political speech of all corporations would not become content neutral just because it singled out corporations as a class of speakers. See *Citizens United, supra,* at 340-341, 130 S. Ct. 876, 175 L. Ed. 2d 753. Characterizing a distinction [**2231] as speaker based is only the beginning—not the end—of the inquiry.

Nor do the Sign Code's distinctions hinge on "whether [****25] and when an event is occurring." The Code does not permit citizens to post signs on any topic whatsoever within a set period leading up to an election, for example. Instead, come election time, it requires Town officials to determine whether a sign is "designed to influence the outcome of an election" (and [***250] thus "political") or merely "communicating a message or ideas for noncommercial purposes" (and thus "ideological"). Glossary 24. That obvious content-based inquiry does not evade strict scrutiny review simply because an event (*i.e.,* an election) is involved.

And, just as with speaker-based laws, the fact that a distinction is event based does not render it content neutral. The Court of Appeals cited no precedent from this Court [*171] supporting its novel theory of an exception from the content-neutrality requirement for event-based laws. As we have explained, [8] a speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. *Supra,* at 163-164, 192 L. Ed. 2d, at 245. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea. Here, the [****26] Code singles out signs bearing a particular message: the time and location of a specific event. This type of ordinance may seem like a perfectly rational way to regulate signs, but [9] a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem "entirely reasonable" will sometimes be "struck down because of their content-based nature." *City of Ladue* v. *Gilleo,* 512 U. S. 43, 60, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994) (O'Connor, J., concurring).

III

[10] Because the Town's Sign Code imposes content-based restrictions on speech, those provisions can stand only if they survive strict scrutiny, "'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest,'" *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 564 U. S. 721, 734, 131 S. Ct. 2806, 2817, 180 L. Ed. 2d 664, 675 (2011)) (quoting *Citizens United*, 558 U. S., at 340, 130 S. Ct. 876, 175 L. Ed. 2d 753). Thus, it is the Town's burden to demonstrate that the Code's differentiation between temporary directional signs and other types of signs, such as political signs and ideological signs, furthers a compelling governmental interest and is narrowly tailored to that end. See *ibid.*

The Town cannot do so. It has offered only two governmental interests in support of the distinctions the Sign Code draws: preserving the Town's aesthetic [****27] appeal and traffic safety. Assuming for the sake of argument that those are compelling governmental interests, the Code's distinctions fail as hopelessly underinclusive

[*172] Starting with the preservation of aesthetics, temporary directional signs are "no greater an eyesore," *Discovery Network*, 507 U. S., at 425, 113 S. Ct. 1505, 123 L. Ed. 2d 99, than ideological or political ones. Yet the Code allows unlimited proliferation of larger ideological signs while strictly limiting the number, size, and duration of smaller directional ones. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.

[**2232] The Town similarly has not shown that limiting temporary directional signs is necessary to eliminate threats to traffic safety, but that limiting other types of signs is not. The Town has offered no reason to believe [***251] that directional signs pose a greater threat to safety than do ideological or political signs. If anything, a sharply worded ideological sign seems more likely to distract a driver than a sign directing the public to a nearby church meeting.

In light of this underinclusiveness, the Town has not met its [****28] burden to prove that its Sign Code is narrowly tailored to further a compelling government interest. Because [11] a "'law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited,'" *Republican Party of Minn.* v. *White*, 536 U. S. 765, 780, 122 S. Ct. 2528, 153 L. Ed. 2d 694 (2002), the Sign Code fails strict scrutiny.

IV

Our decision today will not prevent governments from enacting effective sign laws. The Town asserts that an "'absolutist'" content-neutrality rule would render "virtually all distinctions in sign laws . . . subject to strict scrutiny," Brief for Respondents 34-35, but that is not the case. [12] Not "all distinctions" are subject to strict scrutiny, only *content-based* ones are. Laws that are *content neutral* are instead subject to lesser scrutiny. See *Clark*, 468 U. S., at 295, 104 S. Ct. 3065, 82 L. Ed. 2d 221.

[*173] The Town has ample content-neutral options available to resolve problems with safety and aesthetics. For example, its current Code regulates many aspects of signs that have nothing to do with a sign's message: size, building materials, lighting, moving parts, and portability. See, *e.g.*, §4.402(R). And on public property, the Town may go a long way toward entirely forbidding the posting of signs, [****29] so long as it does so in an evenhanded, content-neutral manner. See *Taxpayers for Vincent*, 466 U. S., at 817, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (upholding content-neutral ban against posting signs on public property). Indeed, some lower courts have long held that similar content-based sign laws receive strict scrutiny, but there is no evidence that towns in those jurisdictions have suffered catastrophic effects. See, *e.g.*, *Solantic, LLC* v. *Neptune Beach*, 410 F. 3d 1250, 1264-1269 (CA11 2005) (sign categories similar to the town of Gilbert's were content based and subject to strict scrutiny); *Matthews* v. *Needham*, 764 F. 2d 58, 59-60 (CA1 1985) (law banning political signs but not commercial signs was content based and subject to strict scrutiny).

We acknowledge that a city might reasonably view the general regulation of signs as necessary because signs "take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." *City of Ladue*, 512 U. S., at 48, 114 S. Ct. 2038, 129 L. Ed. 2d 36. At the same time, the presence of certain signs may be essential, both for vehicles and pedestrians, to guide traffic or to identify hazards and ensure safety. A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street [****30] numbers associated with private houses—well might survive strict scrutiny. The signs at issue in this case, including political and ideological signs and signs for events, are far removed from those purposes. As [***252] discussed above, they are facially content based and are neither justified by traditional safety concerns nor narrowly tailored.

* * *

[*174] [**2233] We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

It is so ordered.

Concur by: Alito; Breyer; Kagan

Concur

Justice **Alito**, with whom Justice **Kennedy** and Justice **Sotomayor** join, concurring.

I join the opinion of the Court but add a few words of further explanation.

As the Court holds, what we have termed "content-based" laws must satisfy strict scrutiny. Content-based laws merit this protection because they present, albeit sometimes in a subtler form, the same dangers as laws that regulate speech based on viewpoint. Limiting speech based on its "topic" or "subject" favors those who do not want to disturb the status quo. Such regulations may interfere with democratic self-government and the search for truth. See *Consolidated Edison Co.* v. *Public Service Comm'n*, 447 U.S. 530, 537, 100 S. Ct. 2326, 65 L. Ed. 2d 319 (1980).

As the Court shows, the regulations [****31] at issue in this case are replete with content-based distinctions, and as a result they must satisfy strict scrutiny. This does not mean, however, that municipalities are powerless to enact and enforce reasonable sign regulations. I will not attempt to provide anything like a comprehensive list, but here are some rules that would not be content based:

Rules regulating the size of signs. These rules may distinguish among signs based on any content-neutral criteria, including any relevant criteria listed below.

Rules regulating the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.

Rules distinguishing between lighted and unlighted signs.

Rules distinguishing between signs with fixed messages and electronic signs with messages that change.

[*175] Rules that distinguish between the placement of signs on private and public property.

Rules distinguishing between the placement of signs on commercial and residential property.

Rules distinguishing between on-premises and off-premises signs.

Rules restricting the total number of signs allowed per mile of roadway.

Rules imposing time restrictions on signs advertising a one-time event. [****32] [***253] Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed. *

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. See *Pleasant Grove City* v. *Summum*, 555 U. S. 460, 467-469, 129 S. Ct. 1125, 172 L. Ed. 2d 853 (2009). They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Properly understood, today's decision will not prevent cities from regulating signs in a way that fully protects public [**2234] safety and serves legitimate esthetic objectives.

Justice Breyer, concurring in the judgment.

I join Justice Kagan's separate opinion. Like Justice Kagan I believe that categories alone cannot satisfactorily resolve the legal problem before us. The First Amendment requires greater judicial sensitivity both [****33] to the Amendment's expressive objectives and to the public's legitimate need for regulation than a simple recitation of categories, such as [*176] "content discrimination" and "strict scrutiny," would permit. In my view, the category "content discrimination" is better considered in many contexts, including here, as a rule of thumb, rather than as an automatic "strict scrutiny" trigger, leading to almost certain legal condemnation.

To use content discrimination to trigger strict scrutiny sometimes makes perfect sense. There are cases in which the Court has found content discrimination an unconstitutional method for suppressing a viewpoint. *E.g.*, *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828-829, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995); see also *Boos* v. *Barry*, 485 U. S. 312, 318-319, 108 S. Ct. 1157, 99 L. Ed. 2d 333 (1988) (plurality opinion) (applying strict scrutiny where the line between subject matter and viewpoint was not obvious). And there are cases where the Court has found content discrimination to reveal that rules governing a traditional public forum are, in fact, not a neutral way of fairly managing the forum in the interest of all speakers. *Police Dep't of Chicago* v. *Mosley*, 408 U.S. 92, 96, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972) ("Once a forum is opened up to assembly or speaking by

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*Of course, content-neutral restrictions on speech are not necessarily consistent with the First Amendment. Time, place, and manner restrictions "must be narrowly tailored to serve the government's legitimate, content-neutral interests." *Ward* v. *Rock Against Racism*, 491 U. S. 781, 798, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). But they need not meet the high standard imposed on viewpoint- and content-based restrictions.

some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say"). In these types of cases, strict [****34] scrutiny is often appropriate, and content discrimination has thus served a useful purpose.

But content discrimination, while helping courts to identify unconstitutional suppression of expression, cannot and should not *always* trigger strict scrutiny. To say that it is not an automatic "strict scrutiny" trigger is not to argue against that concept's use. I readily concede, for example, that content discrimination, as a conceptual tool, can sometimes reveal weaknesses in the government's rationale [***254] for a rule that limits speech. If, for example, a city looks to litter prevention as the rationale for a prohibition against placing newsracks dispensing free advertisements on public property, why does it exempt other newsracks causing similar litter? Cf. *Cincinnati* v. *Discovery Network, Inc.*, 507 U. S. 410, 113 S. Ct. 1505, 123 L. Ed. 2d 99 (1993). I also concede that, whenever government disfavors [*177] one kind of speech, it places that speech at a disadvantage, potentially interfering with the free marketplace of ideas and with an individual's ability to express thoughts and ideas that can help that individual determine the kind of society in which he wishes to live, help shape that society, and help define his place within it.

Nonetheless, in these latter instances to use the presence [****35] of content discrimination automatically to trigger strict scrutiny and thereby call into play a strong presumption against constitutionality goes too far. That is because virtually all government activities involve speech, many of which involve the regulation of speech. Regulatory programs almost always require content discrimination. And to hold that such content discrimination triggers strict scrutiny is to write a recipe for judicial management of ordinary government regulatory activity.

Consider a few examples of speech regulated by government that inevitably involve [**2235] content discrimination, but where a strong presumption against constitutionality has no place. Consider governmental regulation of securities, *e.g.*, 15 U. S. C. §78*l* (requirements for content that must be included in a registration statement); of energy conservation labeling-practices, *e.g.*, 42 U. S. C. §6294 (requirements for content that must be included on labels of certain consumer electronics); of prescription drugs, *e.g.*, 21 U. S. C. §353(b)(4)(A) (requiring a prescription drug label to bear the symbol "Rx only"); of doctor-patient confidentiality, *e.g.*, 38 U. S. C. §7332 (requiring confidentiality of certain medical records, but allowing a physician to disclose that the patient has [****36] HIV to the patient's spouse or sexual partner); of income tax statements, *e.g.*, 26 U. S. C. §6039F (requiring taxpayers to furnish information about foreign gifts received if the aggregate amount exceeds $10,000); of commercial airplane briefings, *e.g.*, 14 CFR §136.7 (2015) (requiring pilots to ensure that each passenger has been

briefed on flight procedures, such as seatbelt fastening); of signs at petting zoos, [*178] *e.g.*, N. Y. Gen. Bus. Law Ann. §399-ff(3) (West Cum. Supp. 2015) (requiring petting zoos to post a sign at every exit "'strongly recommend[ing] that persons wash their hands upon exiting the petting zoo area'"); and so on.

Nor can the majority avoid the application of strict scrutiny to all sorts of justifiable governmental regulations by relying on this Court's many subcategories and exceptions to the rule. The Court has said, for example, that we should apply less strict standards to "commercial speech." *Central Hudson Gas & Elec. Corp.* v. *Public Service Comm'n,* 447 U.S. 557, 562-563, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980). But I have great concern that many justifiable instances of "content-based" regulation are noncommercial. And, worse than that, the Court has applied the heightened "strict scrutiny" standard even in cases where the less stringent "commercial speech" standard was [****37] appropriate. See *Sorrell* v. *IMS Health Inc.*, [***255] 564 U. S. 552, 580, 131 S. Ct. 2653, 2667, 180 L. Ed. 2d 544, 559 (2011) (Breyer, J., dissenting). The Court has also said that "government speech" escapes First Amendment strictures. See *Rust* v. *Sullivan*, 500 U. S. 173, 193-194, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991). But regulated speech is typically private speech, not government speech. Further, the Court has said that, "[w]hen the basis for the content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, no significant danger of idea or viewpoint discrimination exists." *R. A. V.* v. *St. Paul*, 505 U. S. 377, 388, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992). But this exception accounts for only a few of the instances in which content discrimination is readily justifiable.

I recognize that the Court could escape the problem by watering down the force of the presumption against constitutionality that "strict scrutiny" normally carries with it. But, in my view, doing so will weaken the First Amendment's protection in instances where "strict scrutiny" should apply in full force.

The better approach is to generally treat content discrimination as a strong reason weighing against the constitutionality of a rule where a traditional public forum, or where [*179] viewpoint discrimination, is threatened, but elsewhere treat it as a rule of thumb, finding it a helpful, but not determinative legal tool, in an appropriate case, to determine the strength [****38] of a justification. I would use content discrimination as a supplement to a more basic analysis, which, tracking most of our First Amendment cases, asks whether the regulation at issue works harm to First Amendment interests that is disproportionate in light of [**2236] the relevant regulatory objectives. Answering this question requires examining the seriousness of the harm to speech, the importance of the countervailing objectives, the extent to which the law will achieve those objectives, and whether there are other, less restrictive ways of doing so. See, *e.g., United States* v. *Alvarez*, 567 U.S. 709, 730-732, 132 S. Ct. 2537, 2541-

2544, 183 L. Ed. 2d 574, 584-587 (2012) (Breyer, J., concurring in judgment); *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 400-403, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000) (Breyer, J., concurring). Admittedly, this approach does not have the simplicity of a mechanical use of categories. But it does permit the government to regulate speech in numerous instances where the voters have authorized the government to regulate and where courts should hesitate to substitute judicial judgment for that of administrators.

Here, regulation of signage along the roadside, for purposes of safety and beautification is at issue. There is no traditional public forum nor do I find any general effort to censor a particular viewpoint. Consequently, the specific regulation at issue does not warrant "strict scrutiny." [****39] Nonetheless, for the reasons that Justice Kagan sets forth, I believe that the Town of Gilbert's regulatory rules violate the First Amendment. I consequently concur in the Court's judgment only.

Justice Kagan, with whom Justice Ginsburg and Justice Breyer join, concurring in the judgment.

Countless cities and towns across America have adopted ordinances regulating the posting of signs, while exempting [*180] certain categories of signs based on their subject matter. For example, some municipalities generally [***256] prohibit illuminated signs in residential neighborhoods, but lift that ban for signs that identify the address of a home or the name of its owner or occupant. See, *e.g.*, City of Truth or Consequences, N. M., Code of Ordinances, ch. 16, Art. XIII, §§11-13-2.3, 11-13-2.9(H)(4) (2014). In other municipalities, safety signs such as "Blind Pedestrian Crossing" and "Hidden Driveway" can be posted without a permit, even as other permanent signs require one. See, *e.g.*, Code of Athens-Clarke County, Ga., Pt. III, §7-4-7(1) (1993). Elsewhere, historic site markers—for example, "George Washington Slept Here"—are also exempt from general regulations. See, *e.g.*, Dover, Del., Code of Ordinances, Pt. II, App. B, Art. 5, §4.5(F) (2012). And similarly, the federal Highway Beautification Act limits [****40] signs along interstate highways unless, for instance, they direct travelers to "scenic and historical attractions" or advertise free coffee. See 23 U. S. C. §§131(b), (c)(1), (c)(5).

Given the Court's analysis, many sign ordinances of that kind are now in jeopardy. See *ante*, at 171, 192 L. Ed. 2d, at 250 (acknowledging that "entirely reasonable" sign laws "will sometimes be struck down" under its approach (internal quotation marks omitted)). Says the majority: When laws "single[ ] out specific subject matter," they are "facially content based"; and when they are facially content based, they are automatically subject to strict scrutiny. *Ante*, at 169, 173, 192 L. Ed. 2d, at 249, 251-252. And although the majority holds out hope that some sign laws with subject-matter exemptions "might survive" that stringent review, *ante*, at 173, 192 L. Ed. 2d, at 251, the likelihood is that most will be struck down. After all, it is the "rare case[ ] in which a speech restriction withstands

strict scrutiny." *Williams-Yulee* v. *Florida Bar*, 575 U. S. 433, 444, 135 S. Ct. 1656, 1666, 191 L. Ed. 2d 570, 584 (2015). To clear that high bar, the government must show that a content-based distinction "is necessary to serve a compelling state interest and is narrowly drawn to achieve that end." [**2237] *Arkansas Writers' [*181] Project, Inc.* v. *Ragland*, 481 U. S. 221, 231, 107 S. Ct. 1722, 95 L. Ed. 2d 209 (1987). So on the majority's view, courts would have to determine that a town has a compelling interest in informing [****41] passersby where George Washington slept. And likewise, courts would have to find that a town has no other way to prevent hidden-driveway mishaps than by specially treating hidden-driveway signs. (Well-placed speed bumps? Lower speed limits? Or how about just a ban on hidden driveways?) The consequence—unless courts water down strict scrutiny to something unrecognizable—is that our communities will find themselves in an unenviable bind: They will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter. *

Although the majority insists that applying strict scrutiny to all such [***257] ordinances is "essential" to protecting First Amendment freedoms, *ante*, at 171, 192 L. Ed. 2d, at 250, I find it challenging to understand why that is so. This Court's decisions articulate two important and related reasons for subjecting content-based speech regulations to the most exacting standard of review. The first is "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *McCullen* v. *Coakley*, 573 U. S. 464, 476, 134 S. Ct. 2518, 2529, 189 L. Ed. 2d 502, 514 (2014) (internal quotation marks omitted). The second is to ensure that the government has not regulated speech "based on hostility—or favoritism—towards the underlying message expressed." *R. A. V.* v. *St. Paul*, 505 U. S. 377, 386, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992). Yet the subject-matter [*182] exemptions included in many sign ordinances do not implicate those concerns. Allowing residents, say, to install a light bulb over "name and address" signs but no others does not distort the marketplace of ideas. Nor does that different treatment give rise to an inference of impermissible government motive.

We apply strict scrutiny to facially content-based regulations of speech, in keeping [****43] with the rationales just described, when there is any "realistic possibility that official suppression of ideas is afoot." *Davenport* v. *Wash. Educ. Ass'n*, 551 U.S. 177, 189, 127 S. Ct. 2372, 168 L. Ed. 2d 71 (2007) (quoting *R. A. V.*, 505 U. S., at 390, 112

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* Even in trying (commendably) to limit today's decision, Justice Alito's concurrence highlights its far-reaching effects. According to Justice Alito, the majority does not subject to strict scrutiny regulations of "signs advertising a one-time event." *Ante*, at 175, 192 L. Ed. 2d, at 252 (Alito, J., concurring). But of course it does. On the majority's view, a law with an exception for such signs "singles out specific subject matter for differential treatment" and "defin[es] regulated speech by particular subject matter." *Ante*, at 163, 169, 192 L. Ed. 2d, at 245, 249 (majority opinion). Indeed, the precise reason the majority [****42] applies strict scrutiny here is that "the Code singles out signs bearing a particular message: the time and location of a specific event." *Ante*, at 171, 192 L. Ed. 2d, at 250.

S. Ct. 2538, 120 L. Ed. 2d 305). That is always the case when the regulation facially differentiates on the basis of viewpoint. See *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995). It is also the case (except in non-public or limited public forums) when a law restricts "discussion of an entire topic" in public debate. *Consolidated Edison Co.* v. *Public Service Comm'n*, 447 U.S. 530, 537, 539-540, 100 S. Ct. 2326, 65 L. Ed. 2d 319 (1980) (invalidating a limitation on speech about nuclear power). We have stated that "[i]f the marketplace of ideas is to remain free and open, governments must not be allowed to choose 'which issues are worth discussing or debating.'" *Id.*, at 537-538, 100 S. Ct. 2326, 65 L. Ed. 2d 319 (quoting [**2238] *Police Dep't of Chicago* v. *Mosley*, 408 U.S. 92, 96, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972)). And we have recognized that such subject-matter restrictions, even though viewpoint-neutral on their face, may "suggest[ ] an attempt to give one side of a debatable public question an advantage in expressing its views to the people." *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 785, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978); accord, *ante*, at 174, 192 L. Ed. 2d, at 252 (Alito, J., concurring) (limiting all speech on one topic "favors those who do not want to disturb the status quo"). Subject-matter regulation, in other words, may have the intent or effect of favoring some ideas over others. When that is realistically possible—when [****44] the restriction "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace"—we insist that the law pass the most demanding [*183] constitutional test. *R. A. V.*, 505 U. S., at 387, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (quoting *Simon & Schuster, Inc.* v. *Members of N. Y. [***258] State Crime Victims Bd.*, 502 U. S. 105, 116, 112 S. Ct. 501, 116 L. Ed. 2d 476 (1991)).

But when that is not realistically possible, we may do well to relax our guard so that "entirely reasonable" laws imperiled by strict scrutiny can survive. *Ante*, at 171, 192 L. Ed. 2d, at 250. This point is by no means new. Our concern with content-based regulation arises from the fear that the government will skew the public's debate of ideas—so when "that risk is inconsequential, . . . strict scrutiny is unwarranted." *Davenport*, 551 U. S., at 188, 127 S. Ct. 2372, 168 L. Ed. 2d 71; see *R. A. V.*, 505 U. S., at 388, 112 S. Ct. 2538, 120L. Ed. 2d 305 (approving certain content-based distinctions when there is "no significant danger of idea or viewpoint discrimination"). To do its intended work, of course, the category of content-based regulation triggering strict scrutiny must sweep more broadly than the actual harm; that category exists to create a buffer zone guaranteeing that the government cannot favor or disfavor certain viewpoints. But that buffer zone need not extend forever. We can administer our content-regulation doctrine with a dose of common sense, so as to leave standing laws that in no way implicate its intended [****45] function.

And indeed we have done just that: Our cases have been far less rigid than the majority admits in applying strict scrutiny to facially content-based laws—including in cases just like this one. See *Davenport*, 551 U. S., at 188, 127 S. Ct. 2372, 168 L. Ed. 2d 71 (noting that "we have identified numerous situations in which [the] risk" attached to content-based laws is "attenuated"). In *Members of City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U. S. 789, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984), the Court declined to apply strict scrutiny to a municipal ordinance that exempted address numbers and markers commemorating "historical, cultural, or artistic event[s]" from a generally applicable limit on sidewalk signs. *Id.*, at 792, n. 1, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (listing exemptions); see *id.*, at 804-810, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (upholding ordinance under intermediate scrutiny). After all, we explained, the law's enactment and enforcement revealed "not even a hint of bias or censorship." [*184] *Id.*, at 804, 104 S. Ct. 2118, 80 L. Ed. 2d 772; see also *Renton* v. *Playtime Theatres, Inc.*, 475 U. S. 41, 48, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986) (applying intermediate scrutiny to a zoning law that facially distinguished among movie theaters based on content because it was "designed to prevent crime, protect the city's retail trade, [and] maintain property values . . ., not to suppress the expression of unpopular views"). And another decision involving a similar law provides an alternative model. In *City of Ladue* v. *Gilleo*, 512 U. S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994), the Court assumed *arguendo* that a sign ordinance's exceptions for address [**2239] signs, [****46] safety signs, and for-sale signs in residential areas did not trigger strict scrutiny. See *id.*, at 46-47, 114 S. Ct. 2038, 129 L. Ed. 2d 36, and n. 6 (listing exemptions); *id.*, at 53, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (noting this assumption). We did not need to, and so did not, decide the level-of-scrutiny question because the law's breadth made it unconstitutional under any standard.

The majority could easily have taken *Ladue*'s tack here. The Town of Gilbert's defense of its sign ordinance—most notably, the law's distinctions between directional signs and others—does not pass strict scrutiny, [***259] or intermediate scrutiny, or even the laugh test. See *ante*, at 171-172, 192 L. Ed. 2d, at 250 (discussing those distinctions). The Town, for example, provides no reason at all for prohibiting more than four directional signs on a property while placing no limits on the number of other types of signs. See Gilbert, Ariz., Land Development Code, ch. I, §§4.402(J), (P)(2) (2014). Similarly, the Town offers no coherent justification for restricting the size of directional signs to 6 square feet while allowing other signs to reach 20 square feet. See §§4.402(J), (P)(1). The best the Town could come up with at oral argument was that directional signs "need to be smaller because they need to guide travelers along a route." Tr. of Oral Arg. 40. [****47] Why exactly a smaller sign better helps travelers get to where they are going is left a mystery. The absence of any sensible basis for these and other distinctions dooms the Town's ordinance under even the intermediate scrutiny that the Court typically applies to "time, place, or

manner" speech regulations. [*185] Accordingly, there is no need to decide in this case whether strict scrutiny applies to every sign ordinance in every town across this country containing a subject-matter exemption.

I suspect this Court and others will regret the majority's insistence today on answering that question in the affirmative. As the years go by, courts will discover that thousands of towns have such ordinances, many of them "entirely reasonable." *Ante*, at 171, 192 L. Ed. 2d, at 250. And as the challenges to them mount, courts will have to invalidate one after the other. (This Court may soon find itself a veritable Supreme Board of Sign Review.) And courts will strike down those democratically enacted local laws even though no one—certainly not the majority—has ever explained why the vindication of First Amendment values requires that result. Because I see no reason why such an easy case calls for us to cast a constitutional pall on reasonable [****48] regulations quite unlike the law before us, I concur only in the judgment.

References

U.S.C.S., Constitution, Amendment 1

2 Antieau on Local Government Law § 29D.04 (Matthew Bender 2d ed.)

Moore's Federal Practice §§101.60, 101.61 (Matthew Bender 3d *ed.*)

L Ed Digest, Constitutional Law §§936, 971

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Supreme Court's views as to overbreadth of legislation in connection with First Amendment rights. 45 L. Ed. 2d 725.

Comment Note.--What provisions of the Federal Constitution's Bill of Rights are applicable to the states. 18 L. Ed. 2d 1388, 23 L. Ed. 2d 985.

The Supreme Court and the right of free speech and press. 93 L. Ed. 1151, 2 L. Ed. 2d 1706, 11 L. Ed. 2d 1116, 16 L. Ed. 2d 1053, 21 L. Ed. 2d 976.

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Ward v. Rock Against Racism

Supreme Court of the United States

February 27, 1989, Argued ; June 22, 1989, Decided

No. 88-226

Reporter

491 U.S. 781 *; 109 S. Ct. 2746 **; 105 L. Ed. 2d 661 ***; 1989 U.S. LEXIS 3129 ****; 57 U.S.L.W. 4879

WARD ET AL. v. ROCK AGAINST RACISM

Prior History: [****1] CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Disposition: 848 F. 2d 367, reversed.

Syllabus

Respondent Rock Against Racism (RAR), furnishing its own sound equipment and technicians, has sponsored yearly programs of rock music at the Naumberg Acoustic Bandshell in New York City's Central Park. The city received numerous complaints about excessive noise at RAR's concerts from users of the nearby Sheep Meadow, an area designated by the city for passive recreation, from other users of the park, and from residents of areas adjacent to the park. Moreover, when the city shut off the power after RAR ignored repeated requests to lower the volume at one of its concerts, the audience became abusive and disruptive. The city also experienced problems at bandshell events put on by other sponsors, who, due to their use of inadequate sound equipment or sound technicians unskilled at mixing sound for the bandshell area, were unable to provide sufficient amplification levels, resulting in disappointed or unruly audiences. Rejecting various other solutions to the excessive noise and inadequate amplification problems, the city adopted a Use Guideline for the bandshell [****2] which specified that the city would furnish high quality sound equipment and retain an independent, experienced sound technician for all performances. After the city implemented this guideline, RAR amended a pre-existing District Court complaint against the city to seek damages and a declaratory judgment striking down the guideline as facially invalid under the First Amendment. The court upheld the guideline, finding, *inter alia,* that performers who had used the city's sound system and technician had been uniformly pleased; that, although the city's technician ultimately controlled both sound volume and mix, the city's practice was to give the sponsor autonomy as to mix and to confer with him

before turning the volume down; and that the city's amplification system was sufficient for RAR's needs. Applying this Court's three-part test for judging the constitutionality of governmental regulation of the time, place, and manner of protected speech, the court found the guideline valid. The Court of Appeals reversed on the ground that such regulations' method and extent must be the least intrusive upon the freedom of expression as is reasonably necessary to achieve the regulations [****3] purpose, finding that there were various less restrictive means by which the city could control excessive volume without also intruding on RAR's ability to control sound mix.

Held: The city's sound-amplification guideline is valid under the First Amendment as a reasonable regulation of the place and manner of protected speech. Pp. 790-803.

(a) The guideline is content neutral, since it is justified without reference to the content of the regulated speech. The city's principal justification -- the desire to control noise in order to retain the sedate character of the Sheep Meadow and other areas of the park and to avoid intrusion into residential areas -- has nothing to do with content. The city's other justification, its interest in ensuring sound quality, does not render the guideline content based as an attempt to impose subjective standards of acceptable sound mix on performers, since the city has expressly disavowed any such intent and requires its technician to defer to the sponsor's wishes as to mix. On the record below, the city's sound quality concern extends only to the clearly content-neutral goals of ensuring adequate amplification and avoiding volume problems [****4] associated with inadequate mix. There is no merit to RAR's argument that the guideline is nonetheless invalid on its face because it places unbridled discretion in the hands of city enforcement officials. Even granting the doubtful proposition that this claim falls within the narrow class of permissible facial challenges to allegedly unconstrained grants of regulatory authority, the claim nevertheless fails, since the guideline's own terms in effect forbid officials purposely to select an inadequate system or to vary sound quality or volume based on the performer's message. Moreover, the city has applied a narrowing construction to the guideline by requiring officials to defer to sponsors on sound quality and confer with them as to volume problems, and by mandating that amplification be sufficient for the sound to reach all concert ground listeners. Pp. 791-796.

(b) The guideline is narrowly tailored to serve significant governmental interests. That the city has a substantial interest in protecting citizens from unwelcome and excessive noise, even in a traditional public forum such as the park, cannot be doubted. Moreover, it has a substantial interest in ensuring the sufficiency [****5] of sound amplification at bandshell events in order to allow citizens to enjoy the benefits of the park, in light of the evidence that inadequate amplification had resulted in the inability of some audiences to hear performances. The Court of Appeals erred in requiring the city to prove that the guideline was theleast intrusive means of furthering these

legitimate interests, since a "less-restrictive-alternative analysis" has never been -- and is here, again, specifically rejected as -- a part of the inquiry into the validity of a time, place, or manner regulation. See *Clark* v. *Community for Creative Non-Violence,* 468 U.S. 288, 293; *Regan* v. *Time, Inc.*, 468 U.S. 641. The requirement of narrow tailoring is satisfied so long as the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation, and the means chosen are not substantially broader than necessary to achieve that interest. If these standards are met, courts should defer to the government's reasonable determination. Here, the city's substantial interest in limiting sound volume is served in a direct [****6] and effective way by the requirement that its technician control the mixing board. Absent this requirement, the city's interest would have been served less well, as is evidenced by the excessive noise complaints generated by RAR's past concerts. The city also could reasonably have determined that, overall, its interest in ensuring that sound amplification was sufficient to reach all concert ground listeners would be served less effectively without the guideline than with it, since, by providing competent technicians and adequate equipment, the city eliminated inadequate amplification problems that plagued some performers in the past. Furthermore, in the absence of evidence that the guideline had a substantial deleterious effect on the ability of performers to achieve the quality of sound they desired, there is no merit to RAR's contention that the guideline is substantially broader than necessary to achieve the city's legitimate ends. Pp. 796-802.

(c) The guideline leaves open ample alternative channels of communication, since it does not attempt to ban any particular manner or type of expression at a given place and time. Rather, it continues to permit expressive activity in [****7] the bandshell and has no effect on the quantity or content of that expression beyond regulating the extent of amplification. That the city's volume limitations may reduce to some degree the potential audience for RAR's speech is of no consequence, since there has been no showing that the remaining avenues of communication are inadequate. Pp. 802-803.

Counsel: Leonard J. Koerner argued the cause for petitioners. With him on the brief were Peter L. Zimroth, Larry A. Sonnenshein, and Julian L. Kalkstein.

William M. Kunstler argued the cause for respondent. With him on the brief was Noah A. Kinigstein. *

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* Briefs of *amici curiae* urging reversal were filed for the United States by *Solicitor General Fried, Assistant Attorney General Bolton, Deputy Solicitor General Ayer, Stephen L. Nightingale,* and *John F. Cordes;* and for the National League of Cities by *Benna Ruth Solomon, Joyce Holmes Benjamin,* and *Ogden N. Lewis.*

Judges: Kennedy, J., delivered the opinion of the Court, in which Rehnquist, C. J., and White, O'Connor, and Scalia, JJ., joined. Blackmun, J., concurred in the result. Marshall, J., filed a dissenting opinion, in which Brennan and Stevens, JJ., joined, post, [****8] p. 803.

Opinion by: KENNEDY

Opinion

[*784] [***670] [**2750] JUSTICE KENNEDY delivered the opinion of the Court.

[1A]In the southeast portion of New York City's Central Park, about 10 blocks upward from the park's beginning point at 59th Street, there is an amphitheater and stage structure known as the Naumberg Acoustic Bandshell. The bandshell faces west across the remaining width of the park. In close proximity to the bandshell, [***671] and lying within the directional path of its sound, is a grassy open area called the Sheep Meadow. The city has designated the Sheep Meadow as a quiet area for passive recreations like reclining, walking, and reading. Just beyond the park, and also within the potential sound range of the bandshell, are the apartments and residences of Central Park West.

This case arises from the city's attempt to regulate the volume of amplified music at the bandshell so the performances are satisfactory to the audience without intruding upon those who use the Sheep Meadow or live on Central Park West and in its vicinity.

The city's regulation requires bandshell performers to use sound-amplification equipment and a sound technician provided by the city. The challenge to this volume control [****9] technique comes from the sponsor of a rock concert. The trial court sustained the noise control measures, but the Court of Appeals for the Second Circuit reversed. We granted certiorari to resolve the important First Amendment issues presented by the case.

I

Rock Against Racism, respondent in this case, is an unincorporated association which, in its own words, is "dedicated to the espousal and promotion of antiracist views." App. to Pet. for Cert. 3. Each year from 1979 through 1986, RAR has sponsored a program of speeches and rock music at the [*785] bandshell. RAR has furnished the sound equipment and sound technician used by the various performing groups at these annual events.

Over the years, the city received numerous complaints about excessive sound amplification at respondent's concerts from park users and residents of areas adjacent to the park. On some occasions RAR was less than cooperative when city officials asked that the volume be reduced; at one concert, police felt compelled to cut off the power to the sound system, an action that caused the audience to become unruly and hostile. App. 127-131, 140-141, 212-214, 345-347.

Before the 1984 concert, city officials [****10] met with RAR representatives to discuss the problem of excessive noise. It was decided that the city would monitor sound levels at the edge of the concert ground, and would revoke respondent's event permit if specific volume limits were exceeded. Sound levels at the concert did exceed acceptable levels for sustained periods of time, despite repeated warnings and requests that the volume be lowered. Two citations for excessive volume were issued to respondent during the concert. When the power was eventually shut off, the audience became abusive and disruptive.

[**2751] The following year, when respondent sought permission to hold its upcoming concert at the bandshell, the city declined to grant an event permit, citing its problems with noise and crowd control at RAR's previous concerts. The city suggested some other city-owned facilities as alternative sites for the concert. RAR declined the invitation and filed suit in United States District Court against the city, its mayor, and various police and parks department officials, seeking an injunction directing issuance of an event permit. After respondent agreed to [***672] abide by all applicable regulations, the parties reached agreement [****11] and a permit was issued.

[1B]The city then undertook to develop comprehensive New York City Parks Department Use Guidelines for the Naumberg Bandshell. A principal problem to be addressed by [*786] the guidelines was controlling the volume of amplified sound at bandshell events. A major concern was that at some bandshell performances the event sponsors had been unable to "provide the amplification levels required and 'crowds unhappy with the sound became disappointed or unruly.'" Brief for Petitioners 9. The city found that this problem had several causes, including inadequate sound equipment, sound technicians who were either unskilled at mixing sound outdoors or unfamiliar with the acoustics of the bandshell and its surroundings, and the like. Because some performers compensated for poor sound mix by raising volume, these factors tended to exacerbate the problem of excess noise. [1] App. 30, 189, 218-219.

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[1] The amplified sound heard at a rock concert consists of two components, volume and mix. Sound produced by the various instruments and performers on stage is picked up by microphones and fed into a central mixing board, where it is combined into one signal and then amplified through speakers to the audience. A sound technician is at the mixing board to select the appropriate mix, or balance, of the various sounds produced on stage, and to add other effects as desired by the performers. In addition to controlling the sound mix, the sound technician also controls the overall volume of sound reaching the audience.

[****12] The city considered various solutions to the sound-amplification problem. The idea of a fixed decibel limit for all performers using the bandshell was rejected because the impact on listeners of a single decibel level is not constant, but varies in response to changes in air temperature, foliage, audience size, and like factors. *Id.*, at 31, 220, 285-286. The city also rejected the possibility of employing a sound technician to operate the equipment provided by the various sponsors of bandshell events, because the city's technician might have had difficulty satisfying the needs of sponsors while operating unfamiliar, and perhaps inadequate, sound equipment. *Id.*, [*787] at 220. Instead, the city concluded that the most effective way to achieve adequate but not excessive sound amplification would be for the city to furnish high quality sound equipment and retain an independent, experienced sound technician for all performances at the bandshell. After an extensive search the city hired a private sound company capable of meeting the needs of all the varied users of the bandshell.

The Use Guidelines were promulgated on March 21, 1986. [2] After [***673] learning that it [****13] [**2752] would be expected to comply with the guidelines at its upcoming annual concert in May 1986, respondent returned to the District Court and filed a motion for an injunction against the enforcement of certain aspects of the guidelines. The District Court preliminarily enjoined enforcement of the sound-amplification rule on May 1, 1986. See 636 F. Supp. 178 (SDNY 1986). Under the protection of the injunction, and alone among users of the bandshell in the 1986 season, RAR was permitted to use its own sound equipment [*788] and technician, just as it had done in prior years. RAR's 1986 concert again generated complaints about excessive noise from park users and nearby residents. App. 127, 138.

During the course of a performance, the sound technician is continually manipulating various controls on the mixing board to provide the desired sound mix and volume. The sound technician thus plays an important role in determining the quality of the amplified sound that reaches the audience.

[2] In pertinent part, the Use Guidelines provide:

"SOUND AMPLIFICATION

"To provide the best sound for all events Department of Parks and Recreation has leased a sound amplification system designed for the specific demands of the Central Park Bandshell. To insure appropriate sound quality balanced with respect for nearby residential neighbors and the mayorally decreed quiet zone of Sheep Meadow, all sponsors may use only the Department of Parks and Recreation sound system. DEPARTMENT OF PARKS AND RECREATION IS TO BE THE SOLE AND ONLY PROVIDER OF SOUND AMPLIFICATION, INCLUDING THOUGH NOT LIMITED TO AMPLIFIERS, SPEAKERS, MONITORS, MICROPHONES, AND PROCESSORS.

"Clarity of sound results from a combination of amplification equipment and a sound technician's familiarity and proficiency with that system. Department of Parks and Recreation will employ a professional sound technician [who] will be fully versed in sound bounce patterns, daily air currents, and sound skipping within the Park. The sound technician must also consider the Bandshell's proximity to Sheep Meadow, activities at Bethesda Terrace, and the New York City Department of Environmental Protection recommendations." App. 375-376.

[****14] After the concert, respondent amended its complaint to seek damages and a declaratory judgment striking down the guidelines as facially invalid. After hearing five days of testimony about various aspects of the guidelines, the District Court issued its decision upholding the sound-amplification guideline. [3] The court found that the city had been "motivated by a desire to obtain top-flight sound equipment and experienced operators" in selecting an independent contractor to provide the equipment and technician for bandshell events, and that the performers who did use the city's sound system in the 1986 season, in performances "which ran the full cultural gamut from grand opera to salsa to reggae," were uniformly pleased with the quality of the sound provided. 658 F. Supp. 1346, 1352 (SDNY 1987).

Although the city's sound technician controlled both sound volume and sound mix by virtue [****15] of his position at the mixing board, the court found that "[t]he City's practice for events at the Bandshell is to give the sponsor autonomy with respect to the sound mix: balancing treble with bass, highlighting a particular instrument or voice, and the like," and that the city's sound technician "does all he can to accommodate the sponsor's desires in those regards." *Ibid.* Even with respect to volume control, the city's practice was to confer with the sponsor before making any decision to turn the volume down. *Ibid.* In some instances, as with a New York Grand Opera performance, the sound technician accommodated the performers' unique needs by integrating special microphones with the city's equipment. The court specifically found that "[t]he City's implementation of the Bandshell guidelines provides for a sound amplification system capable of meeting [*789] RAR's technical needs and leaves control of the sound 'mix' in the hands of RAR." *Id.*, at 1353. Applying this Court's three-part test for judging the constitutionality of government regulation of the time, [***674] place, or manner of protected speech, the court found the city's regulation [****16] valid.

The Court of Appeals reversed. 848 F. 2d 367 (CA2 1988). After recognizing that "[c]ontent neutral time, place and manner regulations are permissible so long as they are narrowly tailored to serve a substantial government interest and do not unreasonably limit alternative avenues of expression," the court added the proviso that "the method and extent of such regulation must be reasonable, that is, it must be the least intrusive upon the freedom of expression as is reasonably necessary to achieve a legitimate purpose of the regulation." *Id.*, at 370 (citing *United States* v. *O'Brien*, 391 U.S. 367, 377 (1968)). Applying this test, the court determined that the city's guideline was valid only to the extent necessary to achieve the city's legitimate interest in controlling excessive volume, but found there were various alternative means of controlling volume without also intruding on respondent's ability to control the

[3] The court invalidated certain other aspects of the Use Guidelines, but those provisions are not before us.

sound mix. For example, the city could have directed [**2753] respondent's sound technician to keep the volume below specified levels. Alternatively, a volume-limiting device could [****17] have been installed; and as a "last resort," the court suggested, "the plug can be pulled on the sound to enforce the volume limit." 848 F. 2d, at 372, n. 6. In view of the potential availability of these seemingly less restrictive alternatives, the Court of Appeals concluded that the sound-amplification guideline was invalid because the city had failed to prove that its regulation "was the least intrusive means of regulating the volume." *Id.*, at 371.

[1C]We granted certiorari, 488 U.S. 816 (1988), to clarify the legal standard applicable to governmental regulation of the time, place, or manner of protected speech. Because the Court of Appeals erred in requiring the city to prove that its regulation was the least intrusive means of furthering its legitimate [*790] governmental interests, and because the ordinance is valid on its face, we now reverse.

II

[2]Music is one of the oldest forms of human expression. From Plato's discourse in the Republic to the totalitarian state in our own times, rulers have known its capacity to appeal to the intellect and to the emotions, and have censored musical compositions [****18] to serve the needs of the state. See 2 Dialogues of Plato, Republic, bk. 3, pp. 231, 245-248 (B. Jowett transl., 4th ed. 1953) ("Our poets must sing in another and a nobler strain"); Musical Freedom and Why Dictators Fear It, N. Y. Times, Aug. 23, 1981, section 2, p. 1, col. 5; Soviet Schizophrenia toward Stravinsky, N. Y. Times, June 26, 1982, section 1, p. 25, col. 2; Symphonic Voice from China Is Heard Again, N. Y. Times, Oct. 11, 1987, section 2, p. 27, col. 1. The Constitution prohibits any like attempts in our own legal order. Music, as a form of expression and communication, is protected under the First Amendment. In the case before us the performances apparently consisted of remarks by speakers, as well as rock music, but the case has been presented as one in which the constitutional challenge is to the city's regulation of the musical aspects of the concert; and, based on the principle we have stated, the [***675] city's guideline must meet the demands of the First Amendment. The parties do not appear to dispute that proposition.

[3][4]We need not here discuss whether a municipality which owns a bandstand or stage facility may exercise, in some circumstances, a proprietary [****19] right to select performances and control their quality. See *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U.S. 546, 570-574 (1975) (Rehnquist, J., dissenting). Though it did demonstrate its own interest in the effort to insure high quality performances by providing the equipment in question, the city justifies its guideline as a regulatory measure to limit and control noise. Here the bandshell was open, apparently, to

all performers; and we decide [*791] the case as one in which the bandshell is a public forum for performances in which the government's right to regulate expression is subject to the protections of the First Amendment. *United States* v. *Grace*, 461 U.S. 171, 177 (1983); see *Frisby* v. *Schultz*, 487 U.S. 474, 481 (1988); *Perry Education Assn.* v. *Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983). Our cases make clear, however, that even in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions "are justified without reference to the content [****20] of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Clark* v. *Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984); see *Heffron* v. *International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 648 (1981) (quoting *Virginia Pharmacy Bd.* v. *Virginia* [**2754] *Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976)). We consider these requirements in turn.

A

[5]The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. *Community for Creative Non-Violence, supra*, at 295.The government's purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others. See *Renton* v. *Playtime Theatres, Inc.*, 475 U.S. 41, 47-48 (1986). [****21] Government regulation of expressive activity is content neutral so long as it is "*justified* without reference to the content of the regulated speech." *Community for Creative Non-Violence, supra*, at 293 (emphasis added); *Heffron, supra*, at 648 (quoting *Virginia Pharmacy Bd., supra*, at [*792] 771); see *Boos* v. *Barry*, 485 U.S. 312, 320-321 (1988) (opinion of O'Connor, J.).

[1D]The principal justification for the sound-amplification guideline is the city's desire to control noise levels [***676] at bandshell events, in order to retain the character of the Sheep Meadow and its more sedate activities, and to avoid undue intrusion into residential areas and other areas of the park. This justification for the guideline "ha[s] nothing to do with content," *Boos* v. *Barry, supra*, at 320, and it satisfies the requirement that time, place, or manner regulations be content neutral.

The only other justification offered below was the city's interest in "ensur[ing] the quality of sound at Bandshell events." 658 F. Supp., at 1352; [****22] see 848 F. 2d, at 370, n. 3. Respondent urges that this justification is not

content neutral because it is based upon the quality, and thus the content, of the speech being regulated. In respondent's view, the city is seeking to assert artistic control over performers at the bandshell by enforcing a bureaucratically determined, valueladen conception of good sound. That all performers who have used the city's sound equipment have been completely satisfied is of no moment, respondent argues, because "[t]he First Amendment does not permit and cannot tolerate state control of artistic expression merely because the State claims that [its] efforts will lead to 'top-quality' results." Brief for Respondent 19.

[1E][6]While respondent's arguments that the government may not interfere with artistic judgment may have much force in other contexts, they are inapplicable to the facts of this case. The city has disclaimed in express terms any interest in imposing its own view of appropriate sound mix on performers. To the contrary, as the District Court found, the city requires its sound technician to defer to the wishes of event sponsors concerning sound mix. 658 F. Supp., at 1352-1353. [****23] On this record, the city's concern with sound quality extends only to the clearly content-neutral goals of ensuring adequate [*793] sound amplification and avoiding the volume problems associated with inadequate sound mix. [4] Any governmental attempt to serve purely esthetic goals by imposing subjective standards of acceptable sound mix on performers would raise serious First Amendment concerns, but this case provides us with no opportunity to address those questions. As related [**2755] above, the District Court found that the city's equipment and its sound technician could meet all of the standards requested by the performers, including RAR.

Respondent argues [****24] further that the guideline, even if not content based in explicit terms, is nonetheless invalid on its face because it places unbridled discretion in the hands of city officials charged with enforcing it. See *Lakewood* v. *Plain Dealer Publishing Co.*, 486 U.S. 750, 769-772 (1988) (4-to-3 decision); *Heffron* v. *International Society for Krishna Consciousness, Inc., supra*, at 649; *Freedman* v. *Maryland*, 380 U.S. 51, 56 (1965); *Thornhill* v. *Alabama*, 310 U.S. 88, 97 [***677] (1940). According to respondent, there is nothing in the language of the guideline to prevent city officials from selecting wholly inadequate sound equipment or technicians, or even from varying the volume and quality of sound based on the message being conveyed by the performers.

As a threshold matter, it is far from clear that respondent should be permitted to bring a facial challenge to this aspect of the regulation. Our cases permitting facial challenges to regulations that allegedly grant officials

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[4] As noted above, there is evidence to suggest that volume control and sound mix are interrelated to a degree, in that performers unfamiliar with the acoustics of the bandshell sometimes attempt to compensate for poor sound mix by increasing volume. App. 218, 290-291. By providing adequate sound equipment and professional sound mixing, the city avoids this problem.

unconstrained authority to regulate speech have generally involved licensing [****25] schemes that "ves[t] unbridled discretion in a government official over whether to permit or deny expressive activity." *Plain Dealer, supra*, at 755. The grant of discretion that respondent [*794] seeks to challenge here is of an entirely different, and lesser, order of magnitude, because respondent does not suggest that city officials enjoy unfettered discretion to deny bandshell permits altogether. Rather, respondent contends only that the city, by exercising what is concededly its right to regulate amplified sound, could choose to provide inadequate sound for performers based on the content of their speech. Since respondent does not claim that city officials enjoy unguided discretion to deny the right to speak altogether, it is open to question whether respondent's claim falls within the narrow class of permissible facial challenges to allegedly unconstrained grants of regulatory authority. Cf. 486 U.S., at 787 (White, J., dissenting) (arguing that facial challenges of this type are permissible only where "the local law at issue require[s] licenses -- not for a narrow category of expressive conduct that could be prohibited [****26] -- but for a sweeping range of First Amendment protected activity").

[1F][7A]We need not decide, however, whether the "extraordinary doctrine" that permits facial challenges to some regulations of expression, see *id.*, at 772 (White, J., dissenting), should be extended to the circumstances of this case, for respondent's facial challenge fails on its merits. The city's guideline states that its goals are to "provide the best sound for all events" and to "insure appropriate sound quality balanced with respect for nearby residential neighbors and the mayorally decreed quiet zone of [the] Sheep Meadow." App. 375. While these standards are undoubtedly flexible, and the officials implementing them will exercise considerable discretion, perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity. See *Grayned* v. *City of Rockford*, 408 U.S. 104, 110 (1972) ("Condemned to the use of words, we can never expect mathematical certainty in our language"); see also *Kovacs* v. *Cooper*, 336 U.S. 77, 79 (1949) (rejecting vagueness challenge to city ordinance [****27] forbidding "loud and raucous" sound amplification) (opinion of Reed, J.). By its own terms the [*795] city's sound-amplification guideline must be interpreted to forbid city officials purposely to select inadequate sound systems or to vary the sound quality or volume based on the message being delivered by performers. The guideline is [**2756] not vulnerable [***678] to respondent's facial challenge. [5]

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[5] The dissent's suggestion that the guideline constitutes a prior restraint is not consistent with our cases. See *post*, at 808-809. As we said in *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U.S. 546 (1975), the regulations we have found invalid as prior restraints have "had this in common: they gave public officials the power to deny use of a forum in advance of actual expression." *Id.*, at 553. The sound-amplification guideline, by contrast, grants no authority to forbid speech, but merely permits the city to regulate volume to the extent necessary to avoid excessive noise. It is true that the city's sound technician theoretically possesses the power to shut off the volume for any particular performer, but that hardly distinguishes this regulatory scheme from any other, government will *always* possess the raw power to suppress speech through force, and indeed it was in

[7B]

[****28] [1G][8]Even if the language of the guideline were not sufficient on its face to withstand challenge, our ultimate conclusion would be the same, for the city has interpreted the guideline in such a manner as to provide additional guidance to the officials charged with its enforcement. The District Court expressly found that the city's policy is to defer to the sponsor's desires concerning sound quality. 658 F. Supp., at 1352. With respect to sound volume, the city retains ultimate control, but city officials "mak[e] it a practice to confer with the sponsor if any questions of excessive sound arise, before taking any corrective action." *Ibid.* The city's goal of ensuring that "the sound amplification [is] sufficient to reach all listeners within the defined concertground," *ibid.*, serves to limit further the discretion of the officials on the scene. Administrative interpretation and implementation of a regulation are, of course, highly relevant to our analysis, for "[i]n evaluating a facial [*796] challenge to a state law, a federal court must . . . consider any limiting construction that a state court or enforcement agency has proffered." *Hoffman Estates* v. *The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494, n. 5 (1982); [****29] see *Plain Dealer*, 486 U.S., at 769-770, and n. 11; *United States* v. *Grace*, 461 U.S., at 181, n. 10; *Grayned* v. *City of Rockford, supra*, at 110; *Poulos* v. *New Hampshire*, 345 U.S. 395 (1953). Any inadequacy on the face of the guideline would have been more than remedied by the city's narrowing construction.

B

[1H][9]The city's regulation is also "narrowly tailored to serve a significant governmental interest." *Community for Creative Non-Violence*, 468 U.S., at 293.Despite respondent's protestations to the contrary, it can no longer be doubted that government "ha[s] a substantial interest in protecting its citizens from unwelcome noise." *City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U.S. 789, 806 (1984) (citing *Kovacs* v. *Cooper, supra*); see *Grayned, supra*, at 116. This interest is perhaps at its greatest when government seeks to protect "'the [***679] well-being, tranquility, and privacy of the home,'" *Frisby* v. *Schultz*, 487 U.S., at 484 [****30] (quoting *Carey* v. *Brown*, 447 U.S. 455, 471 (1980)), but it is by no means limited to that context, for the government may act to protect even such traditional public forums as city streets and parks from excessive noise. *Kovacs* v. *Cooper*, 336 U.S., at 86-87 (opinion of Reed, J.); *id.*, at 96-97 (Frankfurter, J., concurring); *id.*, at 97 (Jackson, [**2757] J., concurring); see

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part to avoid the necessity of exercising its power to "pull the plug" on the volume that the city adopted the sound-amplification guideline. The relevant question is whether the challenged regulation *authorizes* suppression of speech in advance of its expression, and the sound-amplification guideline does not.

Community for Creative Non-Violence, supra, at 296 (recognizing the government's "substantial interest in maintaining the parks . . . in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them").

[1I][10]We think it also apparent that the city's interest in ensuring the sufficiency of sound amplification at bandshell events is a substantial one. The record indicates that inadequate [*797] sound amplification has had an adverse affect on the ability of some audiences to hear and enjoy performances at the bandshell. The city enjoys a substantial interest in ensuring the ability of its citizens to enjoy whatever [****31] benefits the city parks have to offer, from amplified music to silent meditation. See *Community for Creative Non-Violence, supra*, at 296.

The Court of Appeals recognized the city's substantial interest in limiting the sound emanating from the bandshell. See 848 F. 2d, at 370. The court concluded, however, that the city's sound-amplification guideline was not narrowly tailored to further this interest, because "it has not [been] shown . . . that the requirement of the use of the city's sound system and technician was the *least intrusive means* of regulating the volume." *Id.*, at 371 (emphasis added). In the court's judgment, there were several alternative methods of achieving the desired end that would have been less restrictive of respondent's First Amendment rights.

The Court of Appeals erred in sifting through all the available or imagined alternative means of regulating sound volume in order to determine whether the city's solution was "the least intrusive means" of achieving the desired end. This "less-restrictive-alternative analysis . . . has never been a part of the inquiry into [****32] the validity of a time, place, and manner regulation." *Regan* v. *Time, Inc.*, 468 U.S. 641, 657 (1984) (opinion of White, J.). Instead, our cases quite clearly hold that restrictions on the time, place, or manner of protected speech are not invalid "simply because there is some imaginable alternative that might be less burdensome on speech." *United States* v. *Albertini*, 472 U.S. 675, 689 (1985).

The Court of Appeals apparently drew its least-intrusivemeans requirement from *United States* v. *O'Brien*, 391 U.S., at 377, the case in which we established the standard for judging the validity of restrictions on expressive conduct. See 848 F. 2d, at 370. The court's reliance was misplaced, [*798] however, for we have held that the *O'Brien* test "in the [***680] last analysis is little, if any, different from the standard applied to time, place, or manner restrictions." *Community for Creative Non-Violence, supra*, at 298. Indeed, in *Community for Creative Non-Violence*, we squarely rejected reasoning identical to that of [****33] the court below:

"We are unmoved by the Court of Appeals' view that the challenged regulation is unnecessary, and hence invalid, because there are less speech-restrictive alternatives that could have satisfied the Government interest in preserving park lands. . . . We do not believe . . . that either *United States* v. *O'Brien* or the time, place, or manner decisions assign to the judiciary the authority to replace the [parks department] as the manager of the [city's] parks or endow the judiciary with the competence to judge how much protection of park lands is wise and how that level of conservation is to be attained." 468 U.S., at 299.

[11A] [12A] [13A]Lest any confusion on the point remain, we reaffirm today that a regulation of the time, place, or manner of protected speech must be narrowly tailored to serve the government's legitimate, content-neutral interests but that it need not be the least restrictive or least intrusive means of [**2758] doing so. [6] [*799] Rather, the requirement of narrow tailoring is satisfied "so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *United States* v. *Albertini, supra*, at 689; [****34] see also *Community for Creative Non-Violence, supra*, at 297. [***681] To be sure, this standard does not mean that a time, place, or manner regulation may burden substantially more speech than is necessary to further the government's legitimate interests. Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals. [7] See *Frisby* [*800] v. *Schultz*,

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[6] Respondent contends that our decision last Term in *Boos* v. *Barry*, 485 U.S. 312 (1988), supports the conclusion that "a regulation is neither precisely drawn nor 'narrowly tailored' if less intrusive means than those employed are available." Brief for Respondent 27. In *Boos* we concluded that the government regulation at issue was "not narrowly tailored; a less restrictive alternative is readily available." 485 U.S., at 329 (citing *Wygant* v. *Jackson Bd. of Ed.*, 476 U.S. 267, 280, n. 6 (1986) (plurality opinion)). In placing reliance on *Boos*, however, respondent ignores a crucial difference between that case and this. The regulation we invalidated in *Boos* was a content-based ban on displaying signs critical of foreign governments; such content-based restrictions on political speech "must be subjected to the most exacting scrutiny." 485 U.S., at 321. While time, place, or manner regulations must also be "narrowly tailored" in order to survive First Amendment challenge, we have never applied strict scrutiny in this context. As a result, the same degree of tailoring is not required of these regulations, and least-restrictive-alternative analysis is wholly out of place. For the same reason, the dissent's citation of *Richmond* v. *J. A. Croson Co.*, 488 U.S. 469 (1989), is beside the point. See *post*, at 806, n. 4. *Croson*, like *Boos*, is a strict-scrutiny case; even the dissent does not argue that strict scrutiny is applicable to time, place, or manner regulations.

Our summary affirmance of *Watseka* v. *Illinois Public Action Council*, 796 F. 2d 1547 (CA7 1986), aff'd, 479 U.S. 1048 (1987), is not to the contrary. Although the Seventh Circuit in that case did adopt the least-restrictive-alternative approach, see 796 F. 2d, at 1553-1554, its judgment was also supported by the alternative grounds that the regulation at issue did not serve to further the stated governmental interests and did not leave open alternative channels of communication. *Id.*, at 1555-1558. As we have noted on more than one occasion: "A summary disposition affirms only the judgment of the court below, and no more may be read into our action than was essential to sustain that judgment." *Anderson* v. *Celebrezze*, 460 U.S. 780, 785, n. 5 (1983).

[7] The dissent's attempt to analogize the sound-amplification guideline to a total ban on distribution of handbills is imaginative but misguided. See *post*, at 806-807. The guideline does not ban all concerts, or even all rock concerts, but instead focuses on the source of the evils the city seeks to eliminate -- excessive and inadequate sound amplification -- and eliminates them without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils. This is the essence of narrow tailoring. A ban on handbilling, of course, would suppress a great quantity of speech that does not cause the evils that it seeks to eliminate, whether they be fraud, crime, litter, traffic congestion, or noise. See *Martin* v. *Struthers*, 319 U.S.

487 U.S., at 485 ("A complete ban can be narrowly tailored but only if each activity within the proscription's scope is an appropriately targeted evil"). So long as the means chosen are not substantially broader than necessary to achieve the government's interest, however, the regulation will not be invalid simply because a court concludes that the government's interest could be adequately served by some less-speech-restrictive alternative. "The validity of [time, place, or manner] regulations does not turn on a judge's agreement with the responsible decisionmaker concerning the most appropriate method for promoting significant government interests" or the degree to which those interests [****35] should be promoted. *United States* v. *Albertini*, 472 U.S., at 689; see *Community for Creative Non-Violence, supra*, at 299.

[11B] [12B]

[****36] [13B]

[**2759] [1J]It is undeniable that the city's substantial interest in limiting sound volume is served in a direct and effective way by the [****37] requirement that the city's sound technician control the mixing board during performances. Absent this requirement, the city's interest would have been served less well, as is evidenced by the complaints about excessive volume generated by respondent's past concerts. The alternative regulatory methods hypothesized by the Court of Appeals reflect nothing more than a disagreement with the city over how much control of volume is appropriate or how that level of control is to be achieved. See *Community for Creative Non-Violence, supra*, at 299. The Court of Appeals erred in failing to defer to the city's reasonable determination that its interest in controlling volume would be best served by requiring bandshell performers to utilize the city's sound technician.

[1K][14]The city's second content-neutral justification for the guideline, that of ensuring "that the sound amplification [is] sufficient to reach all listeners within the defined concert-ground," [*801] 658 F. Supp., at 1352, also supports the city's choice of regulatory methods. By providing competent sound technicians and adequate amplification equipment, the city eliminated [****38] the problems of inexperienced technicians and insufficient [***682] sound volume that had plagued some bandshell performers in the past. No doubt this concern is not applicable to respondent's concerts, which apparently were characterized by more-than-adequate sound amplification. But that fact is beside the point, for the validity of the regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interests in an individual case. Here, the regulation's effectiveness must be judged by considering all the varied groups that

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141, 145-146 (1943). For that reason, a complete ban on handbilling would be substantially broader than necessary to achieve the interests justifying it.

use the bandshell, and it is valid so long as the city could reasonably have determined that its interests overall would be served less effectively without the sound-amplification guideline than with it. *United States* v. *Albertini, supra*, at 688-689; *Community for Creative Non-Violence*, 468 U.S., at 296-297. Considering these proffered justifications together, therefore, it is apparent that the guideline directly furthers the city's legitimate governmental interests and that those interests would have [****39] been less well served in the absence of the sound-amplification guideline.

Respondent nonetheless argues that the sound-amplification guideline is not narrowly tailored because, by placing control of sound mix in the hands of the city's technician, the guideline sweeps far more broadly than is necessary to further the city's legitimate concern with sound volume. According to respondent, the guideline "targets . . . more than the exact source of the 'evil' it seeks to remedy." *Frisby* v. *Schultz, supra*, at 485.

[1L]If the city's regulatory scheme had a substantial deleterious effect on the ability of bandshell performers to achieve the quality of sound they desired, respondent's concerns would have considerable force. The District Court found, [*802] however, that pursuant to city policy, the city's sound technician "give[s] the sponsor autonomy with respect to the sound mix . . . [and] does all that he can to accommodate the sponsor's desires in those regards." 658 F. Supp., at 1352.The court squarely rejected respondent's claim that the city's "technician is not able properly to implement a sponsor's instructions as [****40] to sound quality or mix," finding that "[n]o evidence to that effect was offered at trial; as noted, the evidence is to the contrary." App. to Pet. for Cert. 89. In view of these findings, which were not disturbed by the Court of Appeals, we must conclude that the city's guideline has no material impact on any performer's ability to exercise complete artistic control over sound quality. Since the guideline allows the city to control volume without interfering with the [**2760] performer's desired sound mix, it is not "substantially broader than necessary" to achieve the city's legitimate ends, *City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U.S., at 808, and thus it satisfies the requirement of narrow tailoring.

C

[1M][15]The final requirement, that the guideline leave open ample alternative channels of communication, is easily met. Indeed, in this respect the guideline is far less restrictive than regulations we have upheld in other cases, for it does not attempt to ban any particular manner [***683] or type of expression at a given place or time. Cf. *Frisby, supra*, at 482-484;*Community for Creative Non-Violence, supra*, at 295; [****41] *Renton* v. *Playtime Theatres, Inc.*, 475 U.S., at 53-54.Rather, the guideline continues to permit expressive activity in the bandshell, and has no effect

on the quantity or content of that expression beyond regulating the extent of amplification. That the city's limitations on volume may reduce to some degree the potential audience for respondent's speech is of no consequence, for there has been no showing that the remaining avenues of communication are inadequate. See *Taxpayers* [*803] *for Vincent, supra*, at 803, and n. 23, 812, and n. 30; *Kovacs*, 336 U.S., at 88-89 (opinion of Reed, J.).

III

[1N]The city's sound-amplification guideline is narrowly tailored to serve the substantial and content-neutral governmental interests of avoiding excessive sound volume and providing sufficient amplification within the bandshell concert ground, and the guideline leaves open ample channels of communication. Accordingly, it is valid under the First Amendment as a reasonable regulation of the place and manner of expression. The judgment of the Court of Appeals is

Reversed.

JUSTICE BLACKMUN concurs [****42] in the result.

Dissent by: MARSHALL

Dissent

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE STEVENS join, dissenting.

No one can doubt that government has a substantial interest in regulating the barrage of excessive sound that can plague urban life. Unfortunately, the majority plays to our shared impatience with loud noise to obscure the damage that it does to our First Amendment rights. Until today, a key safeguard of free speech has been government's obligation to adopt the least intrusive restriction necessary to achieve its goals. By abandoning the requirement that time, place, and manner regulations must be narrowly tailored, the majority replaces constitutional scrutiny with mandatory deference. The majority's willingness to give government officials a free hand in achieving their policy ends extends so far as to permit, in this case, government control of speech in advance of its dissemination. Because New York City's Use Guidelines (Guidelines) are not narrowly tailored to serve its interest in regulating loud noise, and because they constitute an impermissible prior restraint, I dissent.

[*804] I

The majority sets forth the appropriate standard for assessing the constitutionality [****43] of the Guidelines. A time, place, and manner regulation of expression must be content neutral, serve a significant government interest, be narrowly tailored to serve that interest, and leave open ample alternative channels of communication. See *Frisby* v. *Schultz*, 487 U.S. 474, 481-482 (1988); *Perry Education Assn.* v. *Perry Local Educators'* [***684] *Assn.*, 460 U.S. 37, 44 (1983). The Guidelines indisputably are content [**2761] neutral as they apply to all bandshell users irrespective of the message of their music. App. 375; see *Pacific Gas & Electric Co.* v. *Public Utilities Comm'n of Cal.*, 475 U.S. 1, 20 (1985). [1] They also serve government's significant interest in limiting loud noise in public places, see *Grayned* v. *Rockford*, 408 U.S. 104, 116 (1972), by giving the city exclusive control of all sound equipment.

[****44] My complaint is with the majority's serious distortion of the narrow tailoring requirement. Our cases have not, as the majority asserts, "clearly" rejected a less-restrictive-alternative test. *Ante*, at 797. On the contrary, just last Term, we held that a statute is narrowly tailored only "if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby* v. *Schultz, supra*, at 485. While there is language in a few opinions which, taken out of [*805] context, supports the majority's position, [2] [****46] in practice, the Court has interpreted the narrow tailoring requirement to mandate an examination of alternative methods of serving the asserted governmental interest and a determination whether the greater efficacy of the challenged regulation outweighs the increased burden it places on protected speech. See, *e. g., Martin* v. *Struthers*, 319 U.S. 141, 147-148 (1943); *Schneider* v. *State*, 308 U.S. 147, 162 (1939). In *Schneider*, for example, the Court invalidated a ban on handbill distribution on public streets, notwithstanding that it was the [****45] most effective means of serving government's legitimate interest in minimizing litter, noise, and traffic congestion, and in preventing fraud. The Court concluded that punishing those who actually litter or perpetrate frauds was a much less intrusive, albeit not quite as effective, means to serve those significant interests. *Id.*, at 162, 164; see also *Martin, supra*, at 148 (invalidating ban on door-

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[1] The majority's reliance on *Renton* v. *Playtime Theatres, Inc.*, 475 U.S. 41 (1986), is unnecessary and unwise. That decision dealt only with the unique circumstances of "businesses that purvey sexually explicit materials," *Id.*, at 49, and n. 2. Today, for the first time, a majority of the Court applies *Renton* analysis to a category of speech far afield from that decision's original limited focus. Given the serious threat to free expression posed by *Renton* analysis, see *Boos* v. *Barry*, 485 U.S. 312, 335-337 (1988) (Brennan, J., concurring in part and concurring in judgment); *Renton, supra*, at 55 (Brennan, J., concurring in part and concurring in judgment), I fear that its broad application may encourage widespread official censorship.

[2] *United States* v. *Albertini*, 472 U.S. 675 (1985), for example, involved a person's right to enter a military base, which, unlike a public park, is not a place traditionally dedicated to free expression. *Id.*, at 687 (commanding officer's power to exclude civilians from a military base cannot "be analyzed in the same manner as government regulation of a traditional public forum"). Nor can isolated language from Justice White's opinion in *Regan* v. *Time, Inc.*, 468 U.S. 641, 657 (1984), which commanded the votes of only three other Justices, be construed as this Court's definitive explication of the narrow tailoring requirement.

to-door distribution of handbills because directly punishing fraudulent solicitation was a less intrusive, yet still [***685] effective, means of serving government's interest in preventing fraud). [3]

[*806] The Court's past concern for the extent to which a regulation burdens speech [**2762] more than would a satisfactory alternative is noticeably absent from today's decision. The majority requires only that government show that its interest cannot be served as effectively without the challenged restriction. *Ante*, at 799. It will be enough, therefore, that the challenged regulation advances the government's interest only in the slightest, [****47] for any differential burden on speech that results does not enter the calculus. Despite its protestations to the contrary, the majority thus has abandoned the requirement that restrictions on speech be narrowly tailored in any ordinary use of the phrase. [4] Indeed, after today's decision, a city could claim that bans on handbill distribution or on door-to-door solicitation are the most effective means of avoiding littering and fraud, or that a ban on loudspeakers and radios in a public park is the most effective means of avoiding loud noise. Logically extended, the majority's analysis would permit such far-reaching restrictions on speech.

True, the majority states that "[g]overnment may not regulate expression in such a manner that a substantial portion of the burden on [****48] speech does not serve to advance its goals." *Ibid.* But this means that only those regulations that "engage in the gratuitous inhibition of expression" will be invalidated. Ely, Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis, 88 Harv. L. Rev. 1482, 1485 (1975). Moreover, the majority has robbed courts of the necessary analytic tools to make even this limited inquiry. The Court of Appeals examined "how much control of volume is appropriate [and] how that level of control is to be achieved," *ante*, at 800, but the majority admonishes that court for doing so, stating that it should [*807] have "defer[red] to the city's reasonable determination." *Ibid.* The majority thus instructs courts to refrain from examining how much speech may be restricted to serve an asserted interest and how that level of restriction is to be achieved. If a court cannot engage in such inquiries, I am at a loss to understand how a court can ascertain whether the government has adopted a regulation that burdens substantially more speech than is necessary.

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[3] The majority relies heavily on *Clark* v. *Community for Creative Non-Violence*, 468 U.S. 288 (1984), but in that case, the Court engaged in an inquiry similar to the one the majority now rejects; it considered whether the increased efficacy of the challenged regulation warranted the increased burden on speech. *Id.*, at 299 ("[P]reventing overnight sleeping will avoid a measure of actual or threatened damage"; however, "minimiz[ing] the possible injury by reducing the size, duration, or frequency of demonstrations would still curtail the total allowable expression in which demonstrators could engage").

[4] In marked contrast, Members of the majority recently adopted a far more stringent narrow tailoring requirement in the affirmative-action context. See *Richmond* v. *J. A. Croson Co.*, 488 U.S. 469, 507-508 (1989).

Had the majority not abandoned the narrow tailoring requirement, [****49] the Guidelines could not possibly survive constitutional scrutiny. Government's interest in avoiding loud sounds cannot justify giving government [***686] total control over sound equipment, any more than its interest in avoiding litter could justify a ban on handbill distribution. In both cases, government's legitimate goals can be effectively and less intrusively served by directly punishing the evil -- the persons responsible for excessive sounds and the persons who litter. Indeed, the city concedes that it has an ordinance generally limiting noise but has chosen not to enforce it. See Tr. of Oral. Arg. 5-6. [5]

[****50] By holding that the Guidelines are valid time, place, and manner restrictions, notwithstanding the availability of less intrusive but effective means of controlling volume, the majority deprives the narrow tailoring requirement of all meaning. [6] Today, [**2763] the majority enshrines efficacy but sacrifices free speech.

[*808] II

The majority's [****51] conclusion that the city's exclusive control of sound equipment is constitutional is deeply troubling for another reason. It places the Court's *imprimatur* on a quintessential prior restraint, incompatible with fundamental First Amendment values. See *Near* v. *Minnesota ex rel. Olson*, 283 U.S. 697 (1931). Indeed, just as "[m]usic is one of the oldest forms of human expression," *ante*, at 790, the city's regulation is one of the oldest forms of speech repression. In 16th- and 17th-century England, government controlled speech through its monopoly on printing presses. See L. Levy, Emergence of a Free Press 6 (1985). Here, the city controls the volume and mix of sound through its monopoly on sound equipment. In both situations, government's exclusive control of the means of communication enables public officials to censor speech in advance of its expression. See *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U.S. 546, 553 (1975). Under more familiar prior restraints, government officials censor speech "by a simple stroke of the pen," Emerson, The Doctrine of Prior Restraint, 20 Law & Contemp. Prob. 648, 657 (1955). [****52] Here, it is done by a single turn of a knob.

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[5] Significantly, the National Park Service relies on the very methods of volume control rejected by the city -- monitoring sound levels on the perimeter of an event, communicating with event sponsors, and, if necessary, turning off the power. Brief for United States as *Amicus Curiae* 21. In light of the Park Service's "experienc[e] with thousands of events over the years," *ibid.*, the city's claims that these methods of monitoring excessive sound are ineffective and impracticable are hard to accept.

[6] Because I conclude that the Guidelines are not narrowly tailored, there is no need to consider whether there are ample alternative channels for communication. I note only that the availability of alternative channels of communication outside a public park does not magically validate a government restriction on protected speech within it. See *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U.S. 546, 556 (1975) ("'[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place,'" quoting *Schneider* v. *State*, 308 U.S. 147, 163 (1939)).

The majority's implication that government control of sound equipment is not a prior restraint because city officials do not "enjoy unguided discretion to deny the right to speak altogether," *ante*, at 794, is startling. In the majority's view, this case involves a question of "different and lesser" magnitude -- the discretion to provide inadequate [***687] sound for performers. But whether the city denies a performer a bandshell permit or grants the permit and then silences or [*809] distorts the performer's music, the result is the same -- the city censors speech. In the words of Chief Justice Rehnquist, the First Amendment means little if it permits government to "allo[w] a speaker in a public hall to express his views while denying him the use of an amplifying system." *FEC* v. *National Conservative Political Action Committee*, 470 U.S. 480, 493 (1985); see also *Southeastern Promotions, supra*, at 556, n. 8 ("A licensing system need not effect total suppression in order to create a prior restraint").

As a system of prior restraint, the Guidelines are presumptively [****53] invalid. See *Southeastern Promotions, supra*, at 558; *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 70 (1963). They may be constitutional only if accompanied by the procedural safeguards necessary "to obviate the dangers of a censorship system." *Freedman* v. *Maryland*, 380 U.S. 51, 58 (1965). The city must establish neutral criteria embodied in "narrowly drawn, reasonable and definite standards," in order to ensure that discretion is not exercised based on the content of speech. *Niemotko* v. *Maryland*, 340 U.S. 268, 271 (1951); see also *Lakewood* v. *Plain Dealer Publishing Co.*, 486 U.S., 750, 758 (1988); *Shuttlesworth* v. *Birmingham*, 394 U.S. 147, 150-151 (1969). Moreover, there must be "an almost immediate judicial determination" that the restricted material was unprotected by the First Amendment. *Bantam Books, supra*, at 70; see also *Southeastern Promotions, supra*, at 560.

The Guidelines contain neither of these procedural [****54] safeguards. First, there are no "narrowly drawn, reasonable and definite standards" guiding the hands of the city's sound technician as he mixes the sound. [**2764] The Guidelines state that the goals are "to provide the best sound for all events" and to "insure appropriate sound quality balanced with respect for nearby residential neighbors and the mayorally decreed quiet zone." App. 375; see also *ante*, at 794. But the city never defines "best sound" or "appropriate sound quality." The bandshell program director-manager testified that quality of [*810] sound refers to tone and to sound mix. App. 229, 230. Yet questions of tone and mix cannot be separated from musical expression as a whole. See The New Grove Dictionary of Music and Musicians 51-55 (S. Sadie ed. 1980) (tonality involves relationship between pitches and harmony); F. Everest, Successful Sound System Operation 173 (1985) ("The mixing console . . . must be considered as a creative tool"). Because judgments that sounds are too loud, noiselike, or discordant can mask

disapproval of the music itself, [7] government control of the sound-mixing equipment necessitates [***688] detailed and neutral standards.

[****55] The majority concedes that the standards in the Guidelines are "undoubtedly flexible" and that "the officials implementing them will exercise considerable discretion." *Ante*, at 794. Nevertheless, it concludes that "[b]y its own terms the city's sound-amplification guideline must be interpreted to forbid city officials purposefully to select inadequate sound systems or to vary the sound quality or volume based on the message being delivered by performers." *Ante*, at 794-795. Although the majority wishes it were so, the language of the Guidelines simply does not support such a limitation on the city's discretion. Alternatively, the majority finds a limitation in the city's practice of deferring to the sponsor with respect to sound mix, and of conferring "with the sponsor if any questions of excessive sound arise, before taking any corrective action." 658 F. Supp. 1346, 1352 (SDNY 1987). A promise to consult, however, does not provide the detailed [*811] "neutral criteria" necessary to prevent future abuses of discretion any more than did the city's promise in *Lakewood* to deny permit applications only for reasons related to the health, safety, [****56] or welfare of Lakewood citizens. Indeed, a presumption that city officials will act in good faith and adhere to standards absent from a regulation's face is "the very presumption that the doctrine forbidding unbridled discretion disallows." *Lakewood, supra*, at 770. [8]

Second, even if there were narrowly drawn guidelines limiting the city's discretion, the Guidelines would be fundamentally flawed. For the requirement [****57] that there be detailed standards is of value only so far as there is a judicial mechanism to enforce them. Here, that necessary safeguard is absent. The city's sound technician consults with the performers for several minutes before the performance and then decides how to present each song or piece of music. During the performance itself, the technician makes hundreds of decisions affecting the mix and volume of sound. Tr. of Oral Arg. 13. The music is played immediately after each decision. There is, of [**2765] course, no time for appeal in the middle of a song. As a result, no court ever determines that a particular

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[7] "New music always sounds loud to old ears. Beethoven seemed to make more noise than Mozart; Liszt was noisier than Beethoven; Schoenberg and Stravinsky, noisier than any of their predecessors." N. Slonimsky, Lexicon of Musical Invective: Critical Assaults on Composers Since Beethoven's Time 18 (1953). One music critic wrote of Prokofiev: "Those who do not believe that genius is evident in superabundance of noise, looked in vain for a new musical message in Mr. Prokofiev's work. Nor in the *Classical Symphony*, which the composer conducted, was there any cessation from the orgy of discordant sounds." *Id.*, at 5 (internal quotations omitted).

[8] Of course, if the city always defers to a performer's wishes in sound mixing, then it is difficult to understand the need for a city technician to operate the mixing console. See Tr. of Oral. Arg. 12 (city concedes that the possibilities for a confrontation over volume are the same whether the city technician directly controls the mixing console or sits next to a performer's technician who operates the equipment). Conversely, if the city can control sound only by using its own equipment and technician, then it must not be heeding all the performer's wishes on sound mixing.

restraint on speech is necessary. The city's admission that it does not impose sanctions on violations of its general sound ordinance because the necessary litigation is too costly and time consuming only underscores its contempt for the need for judicial review of restrictions on speech. *Id.*, at 5. With neither prompt judicial [***689] review nor detailed and neutral standards fettering the city's discretion to restrict protected [*812] speech, the Guidelines constitute a quintessential, and unconstitutional, prior restraint.

III

Today's decision has significance [****58] far beyond the world of rock music. Government no longer need balance the effectiveness of regulation with the burdens on free speech. After today, government need only assert that it is most effective to control speech in advance of its expression. Because such a result eviscerates the First Amendment, I dissent.

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USCS, Constitution, Amendment 1

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Index to Annotations, Freedom of Speech and Press; Overbreadth; Parks and Playgrounds

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Restriction of use of public parks as violating freedom of speech or press under First Amendment of Federal Constitution. 82 L Ed 2d 958.

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[****59] Public regulation of use of sound trucks in streets or highways -- Federal cases. 93 L Ed 532.

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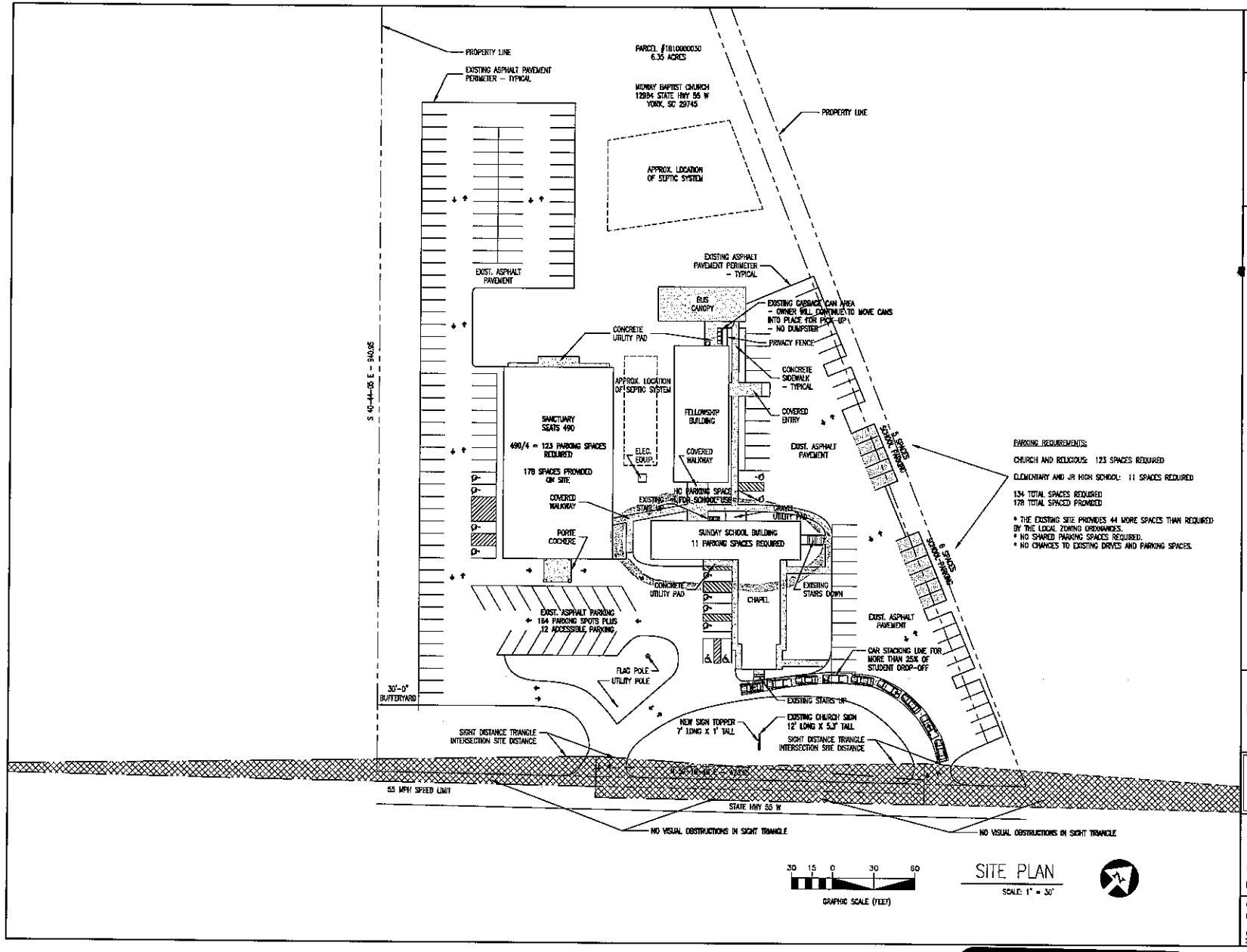

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tabbies PLAINTIFF'S EXHIBIT 1

SECTION 302
OCCUPANCY CLASSIFICATION AND USE DESIGNATION

302.1 Occupancy classification.

Occupancy classification is the formal designation of the primary purpose of the building, structure or portion thereof. Structures shall be classified into one or more of the occupancy groups specified in this section based on the nature of the hazards and risks to building occupants generally associated with the intended purpose of the building or structure. An area, room or space that is intended to be occupied at different times for different purposes shall comply with all applicable requirements associated with such potential multipurpose. Structures containing multiple occupancy groups shall comply with Section 508. Where a structure is proposed for a purpose that is not specified in this section, such structure shall be classified in the occupancy it most nearly resembles based on the fire safety and relative hazard. Occupied roofs shall be classified in the group that the occupancy most nearly resembles, according to the fire safety and relative hazard, and shall comply with Section 503.1.4.

1. Assembly (see Section 303): Groups A-1, A-2, A-3, A-4 and A-5.
2. Business (see Section 304): Group B.
3. Educational (see Section 305): Group E.
4. Factory and Industrial (see Section 306): Groups F-1 and F-2.
5. High Hazard (see Section 307): Groups H-1, H-2, H-3, H-4 and H-5.
6. Institutional (see Section 308): Groups I-1, I-2, I-3 and I-4.
7. Mercantile (see Section 309): Group M.
8. Residential (see Section 310): Groups R-1, R-2, R-3 and R-4.
9. Storage (see Section 311): Groups S-1 and S-2.
10. Utility and Miscellaneous (see Section 312): Group U.

302.2 Use designation.

Occupancy groups contain subordinate uses having similar hazards and risks to building occupants. Uses include, but are not limited to, those functional designations specified within the occupancy group descriptions in Section 302.1. Certain uses require specific limitations and controls in accordance with the provisions of Chapter 4 and elsewhere in this code.

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SECTION 303
ASSEMBLY GROUP A

303.1 Assembly Group A.

Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption or awaiting transportation.

303.1.1 Small buildings and tenant spaces.

A building or tenant space used for assembly purposes with an *occupant load* of less than 50 persons shall be classified as a Group B occupancy.

303.1.2 Small assembly spaces.

The following rooms and spaces shall not be classified as Assembly occupancies:

1. A room or space used for assembly purposes with an *occupant load* of less than 50 persons and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.
2. A room or space used for assembly purposes that is less than 750 square feet (70 m^2) in area and accessory to another occupancy shall be classified as a Group B occupancy or as part of that occupancy.

303.1.3 Associated with Group E occupancies.

A room or space used for assembly purposes that is associated with a Group E occupancy is not considered a separate occupancy.

303.1.4 Accessory to places of religious worship.

Accessory religious educational rooms and religious auditoriums with *occupant loads* of less than 100 per room or space are not considered separate occupancies.

303.1.5 Special amusement areas.

Special amusement areas shall comply with Section 411.

303.2 Assembly Group A-1.

Group A-1 occupancy includes assembly uses, usually with fixed seating, intended for the production and viewing of the performing arts or motion pictures including, but not limited to:

Motion picture theaters
Symphony and concert halls
Television and radio studios admitting an audience
Theaters

303.3 Assembly Group A-2.

Group A-2 occupancy includes assembly uses intended for food and/or drink consumption including, but not limited to:

Banquet halls
Casinos (*gaming areas*)
Nightclubs
Restaurants, cafeterias and similar dining facilities (including associated commercial kitchens)
Taverns and bars

303.4 Assembly Group A-3.

Group A-3 occupancy includes assembly uses intended for worship, recreation or amusement and other assembly uses not classified elsewhere in Group A including, but not limited to:

Amusement arcades
Art galleries
Bowling alleys
Community halls
Courtrooms
Dance halls (not including food or drink consumption)
Exhibition halls
Funeral parlors
Greenhouses for the conservation and exhibition of plants that provide public access
Gymnasiums (without spectator seating)

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Indoor *swimming pools* (without spectator seating)
Indoor tennis courts (without spectator seating)
Lecture halls
Libraries
Museums
Places of religious worship
Pool and billiard parlors
Structures, without a commercial kitchen, used in agritourism activity as defined by S.C. Code Ann. 46-53-10(1)
Waiting areas in transportation terminals

303.5 Assembly Group A-4.

Group A-4 occupancy includes assembly uses intended for viewing of indoor sporting events and activities with spectator seating including, but not limited to:

Arenas
Skating rinks
Swimming pools
Tennis courts

303.6 Assembly Group A-5.

Group A-5 occupancy includes assembly uses intended for participation in or viewing outdoor activities including, but not limited to:

Amusement park structures
Bleachers
Grandstands
Stadiums

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SECTION 305
EDUCATIONAL GROUP E

305.1 Educational Group E.

Educational Group E occupancy includes, among others, the use of a building or structure, or a portion thereof, by six or more persons at any one time for educational purposes through the 12th grade.

305.1.1 Accessory to places of religious worship.

Religious educational rooms and religious auditoriums, which are accessory to *places of religious worship* in accordance with Section 303.1.4 and have *occupant loads* of less than 100 per room or space, shall be classified as Group A-3 occupancies.

305.2 Group E, day care facilities.

This group includes buildings and structures or portions thereof occupied by more than five children older than $2\frac{1}{2}$ years of age who receive educational, supervision or *personal care services* for fewer than 24 hours per day.

305.2.1 Within places of religious worship.

Rooms and spaces within *places of religious worship* providing such day care during religious functions shall be classified as part of the primary occupancy.

305.2.2 Five or fewer children.

A facility having five or fewer children receiving such day care shall be classified as part of the primary occupancy.

305.2.3 Five or fewer children in a dwelling unit.

A facility such as the above within a *dwelling unit* and having five or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the *South Carolina Residential Code*.

305.3 Storm shelters in Group E occupancies.

Storm shelters shall be provided for Group E occupancies where required bySection 423.5.

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SECTION 508
MIXED USE AND OCCUPANCY

508.1 General.

Each portion of a building shall be individually classified in accordance with Section 302.1. Where a building contains more than one occupancy group, the building or portion thereof shall comply with the applicable provisions of Section 508.2, 508.3, 508.4 or 508.5, or a combination of these sections.

Exceptions:

1. Occupancies separated in accordance with Section 510.
2. Where required by Table 415.6.5, areas of Group H-1, H-2 and H-3 occupancies shall be located in a *detached building* or structure.

508.2 Accessory occupancies.

Accessory occupancies are those occupancies that are ancillary to the main occupancy of the building or portion thereof. Accessory occupancies shall comply with the provisions of Sections 508.2.1 through 508.2.4.

508.2.1 Occupancy classification.

Accessory occupancies shall be individually classified in accordance with Section 302.1. The requirements of this code shall apply to each portion of the building based on the occupancy classification of that space.

508.2.2 Allowable building height.

The allowable height and number of *stories* of the building containing accessory occupancies shall be in accordance with Section 504 for the main occupancy of the building.

508.2.3 Allowable building area.

The allowable area of the building shall be based on the applicable provisions of Section 506 for the main occupancy of the building. Aggregate accessory occupancies shall not occupy more than 10 percent of the floor area of the story in which they are located and shall not exceed the tabular values for nonsprinklered buildings in Table 506.2 for each such accessory occupancy.

508.2.4 Separation of occupancies.

No separation is required between accessory occupancies and the main occupancy.

Exceptions:

1. Group H-2, H-3, H-4 and H-5 occupancies shall be separated from all other occupancies in accordance with Section 508.4.
2. Group I-1, R-1, R-2 and R-3 *dwelling units* and *sleeping units* shall be separated from other *dwelling* or *sleeping units* and from accessory occupancies contiguous to them in accordance with the requirements of Section 420.

508.3 Nonseparated occupancies.

Buildings or portions of buildings that comply with the provisions of this section shall be considered as nonseparated occupancies.

508.3.1 Occupancy classification.

Nonseparated occupancies shall be individually classified in accordance with Section 302.1. The requirements of this code shall apply to each portion of the building based on the occupancy classification of that space. In addition, the most restrictive provisions of Chapter 9 that apply to the nonseparated occupancies shall apply to the total nonseparated occupancy area.

508.3.1.1 High-rise buildings.

Where nonseparated occupancies occur in a *high-rise building*, the most restrictive requirements of Section 403 that apply to the nonseparated occupancies shall apply throughout the *high-rise building*.

508.3.1.2 Group I-2, Condition 2 occupancies.

Where one of the nonseparated occupancies is Group I-2, Condition 2, the most restrictive requirements of Sections 407, 509 and 712 shall apply throughout the *fire area* containing the Group I-2 occupancy. The most restrictive requirements of Chapter 10 shall apply to the path of egress from the Group I-2, Condition 2 occupancy up to and including the *exit discharge*.

508.3.2 Allowable building area, height and number of stories.

The allowable *building area*, *height* and number of *stories* of the building or portion thereof shall be based on the most restrictive allowances for the occupancy groups under consideration for the type of construction of the building

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in accordance with Section 503.1.

508.3.3 Separation.

No separation is required between nonseparated occupancies.

Exceptions:

1. Group H-2, H-3, H-4 and H-5 occupancies shall be separated from all other occupancies in accordance with Section 508.4.
2. Group I-1, R-1, R-2 and R-3 *dwelling units* and *sleeping units* shall be separated from other *dwelling* or *sleeping units* and from other occupancies contiguous to them in accordance with the requirements of Section 420.

508.4 Separated occupancies.

Buildings or portions of buildings that comply with the provisions of this section shall be considered as separated occupancies.

TABLE 508.4
REQUIRED SEPARATION OF OCCUPANCIES (HOURS)[f]

OCCUPANCY	A, E		I-1[a], I-3, I-4		I-2		R[a]		F-2, S-2[b], U		B[e], F-1, M,S-1		H-1		H-2		H-3, H-4		H-5	
	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS	S	NS
A, E	N	N	1	2	2	NP	1	2	N	1	1	2	NP	NP	3	4	2	3	2	NP
I-1[a], I-3, I-4	1	2	N	N	2	NP	1	NP	1	2	1	2	NP	NP	3	NP	2	NP	2	NP
I-2	2	NP	2	NP	N	N	2	NP	2	NP	2	NP	NP	NP	3	NP	2	NP	2	NP
R[a]	1	2	1	NP	2	NP	N	N	1[c]	2[c]	1	2	NP	NP	3	NP	2	NP	2	NP
F-2, S-2[b], U	N	1	1	2	2	NP	1[c]	2[c]	N	N	1	2	NP	NP	3	4	2	3	2	NP
B[e], F-1, M, S-1	1	2	1	2	2	NP	1	2	1	2	N	N	NP	NP	2	3	1	2	1	NP
H-1	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	N	NP	NP	NP	NP	NP	NP	NP
H-2	3	4	3	NP	3	NP	3	NP	3	4	2	3	NP	NP	N	NP	1	NP	1	NP
H-3, H-4	2	3	2	NP	2	NP	2	NP	2	3	1	2	NP	NP	1	NP	1[d]	NP	1	NP
H-5	2	NP	2	NP	2	NP	2	NP	2	NP	1	NP	NP	NP	1	NP	1	NP	N	NP

S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.

NS = Buildings not equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.

N = No separation requirement.

NP = Not Permitted.

a. See Section 420.

b. The required separation from areas used only for private or pleasure vehicles shall be reduced by 1 hour but not to less than 1 hour.

c. See Section 406.3.2 and 406.6.4.

d. Separation is not required between occupancies of the same classification.

e. See Section 422.2 for ambulatory care facilities.

f. Occupancy separations that serve to define fire area limits established in Chapter 9 for requiring fire protection systems shall also comply with Section 707.3.10 and Table 707.3.10 in accordance with Section 901.7.

508.4.1 Occupancy classification.

Separated occupancies shall be individually classified in accordance with Section 302.1. Each separated space shall comply with this code based on the occupancy classification of that portion of the building. The most restrictive provisions of Chapter 9 that apply to the separate occupancies shall apply to the total nonfire-barrier-separated occupancy areas. Occupancy separations that serve to define *fire area* limits established in Chapter 9 for requiring a *fire protection system* shall also comply with Section 901.7.

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508.4.2 Allowable building area.

In each *story*, the *building area* shall be such that the sum of the ratios of the actual *building area* of each separated occupancy divided by the allowable *building* area of each separated occupancy shall not exceed 1.

508.4.3 Allowable building height and number of stories.

Each separated occupancy shall comply with the *building height limitations* and *story* limitations based on the type of construction of the building in accordance with Section 503.1.

Exception: Special provisions of Section 510 shall permit occupancies at *building heights* and number of *stories* other than provided in Section 503.1.

508.4.4 Separation.

Individual occupancies shall be separated from adjacent occupancies in accordance with Table 508.4.

508.4.4.1 Construction.

Required separations shall be *fire barriers* constructed in accordance with Section 707 or *horizontal assemblies* constructed in accordance with Section 711, or both, so as to completely separate adjacent occupancies. *Mass timber* elements serving as *fire barriers* or *horizontal assemblies* to separate occupancies in Type IV-B or IV-C construction shall be separated from the interior of the building with an *approved* thermal barrier consisting of *gypsum board* that is not less than $1/2$ inch (12.7 mm) in thickness or a material that is tested in accordance with and meets the acceptance criteria of both the Temperature Transmission Fire Test and the Integrity Fire Test of NFPA 275.

Relocated

508.5 Live/work units.

A *live/work* unit shall comply with Sections 508.5 through 508.5.11.

Exception: *Dwelling or sleeping units* that include an office that is less than 10 percent of the area of the *dwelling unit* are permitted to be classified as *dwelling units* with accessory occupancies in accordance with Section 508.2.

508.5.1 Limitations.

The following shall apply to live/work areas:

1. The *live/work* unit is permitted to be not greater than 3,000 square feet (279 m^2) in area.
2. The nonresidential area is permitted to be not more than 50 percent of the area of each *live/work unit*.
3. The nonresidential area function shall be limited to the first or main floor only of the *live/work unit*.
4. Not more than five nonresidential workers or employees are allowed to occupy the nonresidential area at any one time.

508.5.2 Occupancies.

Live/work units shall be classified as a Group R-2 occupancy. Separation requirements found in Sections 420 and 508 shall not apply within the *live/work unit* where the *live/work unit* is in compliance with Section 508.5. Nonresidential uses that would otherwise be classified as either a Group H or S occupancy shall not be permitted in a *live/work unit*.

Exception: Storage shall be permitted in the *live/work unit* provided that the aggregate area of storage in the nonresidential portion of the *live/work unit* shall be limited to 10 percent of the space dedicated to nonresidential activities.

508.5.3 Means of egress.

Except as modified by this section, the *means of egress* components for a *live/work unit* shall be designed in accordance with Chapter 10 for the function served.

508.5.4 Egress capacity.

The egress capacity for each element of the *live/work unit* shall be based on the *occupant* load for the function served in accordance with Table 1004.5.

508.5.5 Spiral stairways.

Spiral stairways that conform to the requirements of Section 1011.10 shall be permitted.

508.5.6 Vertical openings.

Floor openings between floor levels of a *live/work unit* are permitted without enclosure.

[F] 508.5.7 Fire protection.

The *live/work unit* shall be provided with a monitored *fire alarm* system where required by Section 907.2.9 and an *automatic sprinkler system* in accordance with Section 903.2.8.

508.5.8 Structural.

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Floors within a *live/work unit* shall be designed for the *live loads* in Table 1607.1, based on the function within the space.

508.5.9 Accessibility.

Accessibility shall be designed in accordance with Chapter 11 for the function served.

508.5.10 Ventilation.

The applicable ventilation requirements of the *South Carolina Mechanical Code* shall apply to each area within the *live/work unit* for the function within that space.

508.5.11 Plumbing facilities.

The nonresidential area of the *live/work unit* shall be provided with minimum plumbing facilities as specified by Chapter 29, based on the function of the nonresidential area. Where the nonresidential area of the *live/work unit* is required to be accessible by Section 1108.6.2.1, the plumbing fixtures specified by Chapter 29 shall be accessible.

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SECTION 201
GENERAL

201.1 Scope.

Unless otherwise expressly stated, the following words and terms shall, for the purposes of this code, have the meanings shown in this chapter.

201.2 Interchangeability.

Words used in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

201.3 Terms defined in other codes.

Where terms are not defined in this code and are defined in the *International Energy Conservation Code*, *South Carolina Fuel Gas Code*, *South Carolina Fire Code*, *South Carolina Mechanical Code* or *South Carolina Plumbing Code*, such terms shall have the meanings ascribed to them as in those codes.

201.4 Terms not defined.

Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

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SUBCHAPTER J: DEFINITIONS AND ACRONYMS

PART 1: DEFINITIONS

§ 155.1300 PURPOSE.

The purpose of this Subpart is to provide a common meaning for terms used in this Chapter.

§ 155.1301 DEFINED TERMS.

For the purpose of this Chapter, the definitions in this Section shall apply unless the context clearly indicates or requires a different meaning.

(A)

A-FRAME SIGN. A temporary, portable, freestanding sign in the shape of the letter "A" with back-to-back sign faces, an easel, or a similar configuration.

ABUTTING ADJOINING, OR ADJACENT. Located immediately next to each other or sharing a common wall or lot line, including properties separated only by land within the public rights-of-way or easements.

ACCESSORY BUILDING. A building subordinate to and separated from the principal building on a lot, which is used for purposes customarily incidental to those of the main building.

ACCESSORY BUILDING, AGRICULTURAL. A building subordinate to and separated from the principal building on a lot in a district in which agricultural use is a principal use and which is used for purposes customarily incidental to agricultural use, including animal shelters, pens, kennels, barns, silos, farm equipment sheds, manure stockpiles, and troughs.

ACCESSORY DWELLING UNIT (ADU). A secondary dwelling established in conjunction with, and clearly subordinate to, a primary dwelling unit on the same lot, whether a part of the same building as the primary dwelling unit or in a detached building.

ACCESSORY STRUCTURE. A structure subordinate to and separated from the principal building on a lot, which is used for purposes customarily incidental to those of the main building. Structures will be considered accessory only when a principal structure has been constructed or permitted on the parcel where the accessory structure is to be located.

ACCESSORY USE. A subordinate use which is incidental to, separated from, and customarily associated with the principal building or use and which is located on the same lot with the principal use. ***ACCESSORY USES*** are prohibited on vacant lots unless otherwise specified in Subchapter C, Part 4: *Accessory Uses*.

PLAINTIFF'S EXHIBIT 3

(5) Graves and graveyards; and

(6) Abandoned cemeteries.

CHEMICAL MANUFACTURING. A land use category for industrial establishments engaged in the transformation of organic and inorganic raw materials by a chemical process and the formulation of products.

CHURCHES AND RELIGIOUS INSTITUTIONS. A building used for public assembly or worship regardless of denomination or religious affiliation, including other ancillary activities, such as parsonages, offices, classrooms, day care, and recreation facilities.

CLEAR CUTTING. The clearing, cutting, or removal of all or a majority of trees and vegetation from a lot or portion of a lot.

CLUB. Buildings and facilities used for social, educational, or recreational purposes operated by an organization that requires membership for participation, is primarily non-profit, and does not render a service which is customarily carried on as a business.

CLUSTER SUBDIVISION. A form of development that provides reduced lot area while maintaining the same number of lots and overall density. Buildings are clustered on parts of the site, permitting the remaining land area to be devoted to open space, active recreation areas, environmentally-sensitive land preserves, or agriculture.

COLLEGES AND UNIVERSITIES. Academic institutions of higher education that are accredited or recognized by the State Department of Education and that offer a program or series of programs of academic study.

COLLOCATE OR COLLOCATION. A situation in which one or more antennas are placed on a communications tower or pole, or the addition or the replacement of antennas on an existing communications tower or pole. Collocation includes combined antennas but does not include roof- or surface-mounted small wireless facilities, or the placement of any personal wireless service antenna on an amateur radio antenna within a residential district.

COMMERCIAL FILMING AND FILM PRODUCTION ACTIVITIES (OUTDOOR). Outdoor video and audio recording of performers for motion pictures, television, and other media.

COMMERCIAL KITCHEN, CATERERS, AND BANQUET SERVICES. Kitchen facilities for the preparation or catering of food to be served off-site and ancillary offices and other support facilities. This definition includes ghost kitchens, commissary kitchens, and delivery-only restaurants.

COMMISSARY. A permitted retail food establishment that is authorized and permitted by SCDHEC to provide a servicing area for mobile food units or mobile food pushcarts for the purposes of storage of food, supplies, and single-service articles. A commissary supports the following operations:

(1) Food preparation;

CHAPTER 150: BUILDING REGULATIONS

Section

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GENERAL PROVISIONS

§ 150.01 PURPOSE.

The purpose of this chapter is to establish the minimum requirements to provide a reasonable level of safety, public health, and general welfare to life and property from hazards attributed to the building environment within the county.

(Ord. 822, passed 2-7-22)

§ 150.02 APPLICATION AND JURISDICTION.

The applicability of this chapter shall apply only to unincorporated areas of the county.

(Ord. 822, passed 2-7-22)

§ 150.03 COUNTY BUILDING AND CODES DIVISION CREATED.

Within the York County planning and development services department, there is created a county building and codes division, which shall administer and enforce the provisions of this chapter under the supervision and direction of the planning and development services director. Any property owner may appeal a decision of any representative of the building codes division directly to the building board of appeals within the time and upon the terms and conditions and subject to the limitations contained in § 150.51 and § 150.52 of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.04 BUILDING CODE.

(A) Except as herein amended, the installation, workmanship, construction, maintenance or repair of new non-residential construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2018 Edition of the International Building Code with modifications and Appendix H (signs), as modified by the South Carolina Codes Council is hereby adopted by reference and made an integral part of this chapter.

(B) Except as herein amended, the installation, workmanship, construction, maintenance or repair of new residential construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2018 Edition of the International Residential Code with modifications and Appendices H (patio covers), J (existing buildings), and Q (tiny homes), as modified by the South Carolina Codes Council, is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

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§ 150.05 ELECTRICAL CODE.

Except as herein amended, the installation, workmanship, construction, maintenance or repair of all electrical work shall conform to the National Electrical Code, 2017 Edition, with modifications, no appendices, as modified by the South Carolina Codes Council, which is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.06 ELECTRICITY NOT TO BE FURNISHED WITHOUT PERMIT.

It shall be unlawful for any public utility company or rural electric cooperative to make a new connection of electrical energy to a building, manufactured home or structure requiring a permit unless the structure shall have acquired the necessary building or manufactured home permit from the Building Official.

(Ord. 822, passed 2-7-22)

§ 150.07 GAS CODE.

Except as herein amended, the installation, workmanship, construction, maintenance or repair of all new fuel construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2018 Edition of the International Fuel Gas Code with modifications, as modified by the South Carolina Codes Council, which chapter is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.08 PLUMBING CODE.

Except as herein amended, the installation, workmanship, construction, maintenance or repair of all plumbing work shall be administered as provided in Chapter 1 of the 2018 Edition of the International Plumbing Code, as modified by the South Carolina Codes Council, which chapter is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.09 MECHANICAL CODE.

Except as herein amended, the installation, workmanship, construction, maintenance and repair of all heating, air conditioning, refrigeration and ventilation equipment shall be administered as provided in Chapter 1 of the 2018 Edition of the International Mechanical Code, as modified by the South Carolina Codes Council, which chapter is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

§ 150.10 INTERNATIONAL ENERGY CONSERVATION CODE.

Except as herein amended, the installation, workmanship, construction, maintenance and repair of all heating, air conditioning, refrigeration and ventilation equipment shall be administered as provided in Chapter 1 of the 2009 International Energy Conservation Code, which chapter is hereby adopted by reference and made an integral part of this chapter.

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(Ord. 822, passed 2-7-22)

§ 150.11 INTERNATIONAL EXISTING BUILDING CODE.

Except as herein amended, the installation, workmanship, construction, maintenance or repair of existing residential and non-residential construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2018 Edition of the International Existing Building Code, which is hereby adopted by reference and made an integral part of this chapter.

(Ord. 822, passed 2-7-22)

BUILDING PERMITS

§ 150.20 PERMITS REQUIRED.

Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace and electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or to cause any such work To be performed, shall first make application to the building and codes division and obtain the required permit.

(Ord. 822, passed 2-7-22)

§ 150.21 APPLICATION.

Application for a permit shall be made on the form provided by the Building and Codes Division. The applicant shall furnish information as may be required to complete the application.

(Ord. 822, passed 2-7-22)

§ 150.22 CONSTRUCTION DOCUMENTS.

When required by the building and codes division, specifications and drawings shall accompany the application for permit. The drawings and specifications shall contain information as to the quality of materials, where quality is essential to conformity with this chapter. The building official may require details, computations, diagrams and other data necessary to describe the construction or installation and basis of calculations. The plans submitted shall apply with all applicable state architecture and engineering licenses and boards.

(Ord. 822, passed 2-7-22)

§ 150.23 ZONING COMPLIANCE.

If proposed construction, for which a building permit is applied, is required to comply with zoning regulations, the zoning division shall also check the application for compliance with the York County Zoning and Land Development codes before the permit shall be issued. Refer to Chapters 154 and 155, of the York County Code of Ordinances for specific requirements. If the application does not comply with these regulations, the permit shall not be issued.

(Ord. 822, passed 2-7-22)

§ 150.24 FLOODPLAIN AREAS.

A permit shall not be issued for any construction on lands that are deemed to be situated within a

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floodplain area unless the conditions of Chapter 151, Floodplain Management, of the York County Code of Ordinances have been met. It shall be the responsibility of the applicant to provide ample information to meet these requirements. All final documentation, which maybe required as a result of meeting Chapter 151 stipulations, shall be submitted prior to a certificate of occupancy being issued for the permitted area.

(Ord. 822, passed 2-7-22)

§ 150.25 FEES.

(A) No permit shall be issued until the required fees are paid, nor shall an amendment to a permit be approved until the additional fee, if any, due to an increase in the estimated cost of the building or structure is paid.

(B) Fees for permits, inspections, appeals, amendments and other matters pertaining to this subchapter shall be paid in accordance with the fee schedule in Chapter 31 - County Policies Section 31.01.

(C) *Refunds*. If work has not commenced, a refund may be requested in writing within six months of permit issuance (but not thereafter) by submitting a completed York County Refund Request form. York County will deduct applicable administrative fees from the balance. If a refund is received, the permit is void.

(D) When the county shall review plans for commercial construction, the person or entity submitting the plans or applying for the review shall pay a fee for the review of the plans in an amount equal to 50% of the building permit fee under this code for a building permit for the improvements for which the commercial plans were submitted. Refer to the fee table within Chapter 31, § 31.01(A) of the York County Code of Ordinances.

(Ord. 822, passed 2-7-22)

§ 150.26 ISSUANCE OF PERMIT; SCOPE; REVOCATION; EXPIRATION; TERMINATION OF WORK.

(A) The building and codes division shall act upon an application for a permit without unreasonable or unnecessary delay.

(B) A permit issued shall be construed to be an authorization to proceed with the work and shall not be construed as authority to violate, conceal, alter or set aside any of the provisions of this chapter, nor shall the issuance of a permit prevent the department from thereafter requiring correction of errors in plans or in construction or of violations of this chapter.

(C) The building official is authorized to suspend or revoke a permit issued under the provisions of this chapter wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.

(D) Revoke permits. In case of false statements or misrepresentation as to a material fact in the application or plans on which a permit or approval is based, the building official may revoke the permit or approval issued under the provisions of this chapter. In such cases, no permit fee shall be refunded.

(E) All permits issued shall become invalid unless the work authorized by it is commenced and the initial inspection is made within 180 days after its issuance, or, if following the initial inspection,

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the work authorized by the permit is suspended, abandoned or no inspection is performed for a period of 180 days after the time the work is commenced; provided, that for cause, one or more extensions of time periods not exceeding 180 days each may be allowed in writing by the building official.

(F) Should any person to whom a permit is issued quit the construction or installation for any reason, the person shall notify the department and state the reason. If the construction or installation is partially completed, the person to whom the permit was issued, upon quitting the construction or installation, shall notify the department and request an inspection. Acceptance of, or violations against, the work shall be recorded by the inspector on the permit record, No refund of the permit shall be granted.

(G) If the holder of a permit quits an installation or construction and fails to notify the department, the owner or the owner's agent may notify the department and request inspection. Upon inspection, the holder of the permit shall be sent a notice of any violation. The owner may then secure another qualified person to proceed with the work.

(Ord. 822, passed 2-7-22)

§ 150.27 POSTING OF PERMIT.

Work requiring a building permit shall not begin until the permit holder or the permit holder's agent shall have the building permit on site of a permitted activity. The permit shall be protected from the weather and in such position as to allow an inspector to conveniently review. The permit, or a copy, shall be kept on the site of work by the permit holder until completion of the permitted work.

(Ord. 822, passed 2-7-22)

INSPECTIONS

§ 150.40 INSPECTIONS; REQUIRED, INTERVALS.

(A) The building official or a representative of the building and codes department shall inspect or cause to be inspected all construction, installations or work for compliance with the provisions of this chapter.

(B) The inspections shall be made at the minimum following specified intervals:

(1) *Footing, slab, and foundation inspection.* This inspection is to be made after trenches are excavated and forms erected and any required reinforcing steel is in place.

(2) *Concrete slab and under-floor inspection.* This inspection shall be made after inslab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

(3) *Lowest floor elevation.* In flood hazard areas, upon placement of the lowest floor, including the basement or crawl-space, and prior to further vertical construction, the elevation certification shall be submitted to the floodplain manager.

(4) *Framing inspection.* This inspection is to be made after the roof, all framing, fire-blocking, draft-stopping and bracing are in place and all pipes, chimneys and vents are complete.

(5) *Rough-in inspection.* This inspection is to be made before any framing, electrical, gas, heating, air conditioning, plumbing or other work regulated by this chapter is covered or concealed.

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(6) *Other inspections.* In addition to inspections required in this section, the building official shall have the authority to make or require any other inspections to ascertain compliance with this code and other laws enforced by the building official.

(7) *Final inspection.* This inspection is to be made upon completion of all work and prior to occupancy.

(C) *Inspections.* It shall be the duty of the permit holder to give reasonable advance notice to the department when work is ready for inspection and testing. A log of all requests for inspections shall be kept by the department so that a permanent record can be had of the times and dates when the requests for inspections were made.

(Ord. 822, passed 2-7-22)

§ 150.41 CERTIFICATE OF COMPLETION OR OCCUPANCY.

(A) Upon completion of building or installation in accordance with approved plans and after the final inspection herein referred to, the building and codes division shall issue a certificate of completion or occupancy.

(1) No new building shall be lawfully occupied and no change in occupancy of a building or part of a building shall be made until after a certificate of occupancy has been issued.

(B) The building official may issue a temporary certificate of occupancy, which shall only be valid for the period stated on the certificate, for a specified portion or portions of a building, which may safely be occupied prior to final completion of the entire building and/or site. Any conditions that are attached to the temporary certificate of occupancy must be completed prior to the expiration of the certificate. When such conditions have not been completed prior to the expiration date of the conditional certificate, the certificate of occupancy shall immediately expire. Upon receipt of a written application to the building official stating satisfactory reasons for the failure to complete work within the given time period, the building official may renew the certificate for a specified period of time, not to exceed 90 days.

(Ord. 822, passed 2-7-22)

ADMINISTRATION AND ENFORCEMENT

§ 150.50 BUILDING OFFICIAL.

The duties of the building official are expanded to include:

(A) Administering and enforcing the provisions of this chapter through the building and codes division and its personnel; and

(B) Performing any related duties as directed by the planning and development services director.

(Ord. 822, passed 2-7-22)

§ 150.51 POWERS AND AUTHORITY OF BUILDING OFFICIAL AND BUILDING AND CODES DIVISION PERSONNEL.

In the performance of the duties set forth in § 150.26, the Building Official or an authorized agent or representative of the Building and Codes Division shall have and may exercise the following powers:

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(A) *Issue building permits.* This division is charged with the responsibility of issuing building permits in accordance with the provisions of this chapter.

(B) *Perform inspections.* This division shall inspect or cause to be inspected all construction, installation or work for compliance with the provisions of this chapter.

(C) *Right-of-entry.* Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or on a premises a condition that is contrary to or in violation of this code that makes the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that is such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

(D) *Issue stop work orders.* Upon notice from the building official that work on any building, structure or installation is being done contrary to the provisions of this chapter or in a dangerous or unsafe manner, the work shall be stopped immediately. Stop notices shall be in writing and shall be given to the owner of the property, to the owner's agent or to the person doing the work and shall state the conditions under which work may be resumed. Where an emergency exists, a written notice shall not be required. Any work that continues in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by § 150.99.

(E) *Approve alternate materials, design, and alternate methods of construction.* Alternate materials, design, and methods of construction not specifically prescribed by this chapter must be approved and authorized by the building official. The building official shall approve any such alternative materials, design, or alternate methods of construction, provided they comply with the intent and purpose of this chapter and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed by this chapter in quality, strength, effectiveness, fire-resistance, durability and safety. The building official shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding its use. Where an alternative material, design or method of construction is not approved, the building official shall respond in writing, stating the reasons why the alternative was not approved.

(F) *Records and reports.* The Building Official shall maintain comprehensive records of building permit applications, of permits issued, of certificates of occupancy or completion of all inspections made, of reports rendered and of notices or orders issued. Written reports covering the activities of the division shall be submitted at the request of the county manager. All records of the building and codes division shall be open to public inspection for good and sufficient reasons during stated office hours, but shall not be removed from the office without the written consent of the building official or planning and development services director. Records are to be maintained in accordance with county retention policies.

(Ord. 822, passed 2-7-22)

§ 150.52 VARIANCES AND APPEALS; CONDITIONS FOR APPEAL.

Whenever the building official shall reject or refuse to approve the mode or manner of construction proposed to be followed or materials to be used, when it is claimed that the provisions of this chapter do not apply or that an equally good or more desirable form of construction can be

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employed in any specific case, or when it is claimed that the true intent and meaning of this chapter or any of the regulations thereunder were misconstrued or wrongly interpreted, the owner of the building or structure, or the owner's duly authorized agent, may appeal the decision to the building board of appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered. If an appeal involves the issuance of civil fine pursuant to § 150.99, the building board of appeals may not reduce or waive the fine if the board affirms the building official's determination that the owner or authorized representative violated this chapter.

(Ord. 822, passed 2-7-22)

§ 150.53 APPEALS BOARD.

(A) *Membership; alternates.*

(1) The building codes appeals board is established and shall consist of seven members and three alternates. The board shall consist of one architect, one engineer, one contractor and one member each from the building, electrical, gas and plumbing industry. Two alternates shall be selected from the building industry at large and one alternate shall be selected from the general public. All members and alternates shall be residents of the county and shall be appointed by the County Council to serve without compensation. Of the members first appointed, two shall be appointed for two-year terms; two shall be appointed for three-year terms; and three shall be appointed for four-year terms. Of the alternates first appointed, one shall be appointed for a two-year term; one shall be appointed for a three-year term; and one shall be appointed for a four-year term. Vacancies in the membership of the board and in board alternates shall be filled for the unexpired term in the manner in which the original appointment was required to be made.

(2) Alternate members of the board may attend all meetings of the board, but shall be permitted to vote only in the absence of a member of the board. Alternates shall be entitled to vote on matters coming before the board on a rotating basis.

(3) No member or alternate member shall be appointed to serve more than two full consecutive terms. Previous service for a full term as a member or alternate shall be counted in determining a member's service on the board for purposes of the limitations established by this section, but partial terms of service as a member or alternate member shall not be considered for purposes of the limitation contained in this section. No member or alternate member shall be reappointed to the board after serving two consecutive terms as a member of the board until a minimum of one year has elapsed since the last service of the member or alternate member upon the board.

(B) *Quorum.* Four members of the board shall constitute a quorum. In varying the application of any provision of this chapter or in modifying an order of the Building Official, affirmative votes of the majority present, but not less than three affirmative votes, shall be required. No board member shall act in a case in which the member has a personal interest.

(C) *Secretary, records.* An official from the Planning and Development Services Department, designated by the Building Official or Planning and Development Services Director, shall act as secretary of the Appeals Board and shall make a detailed record of all its proceedings, which shall set forth the reasons for its decisions, the vote of each member participating therein, the absence of a member and any failure of a member to vote.

(D) *Procedures.* The board shall establish rules and regulations for its own procedures not inconsistent with the provisions of this chapter. The board shall meet at regular intervals, to be determined by the chairperson, or in any event, the board shall meet within 15 days after notice of

ELECTRONICALLY FILED - 2023 May 11 2:01 PM - YORK - COMMON PLEAS - CASE#2023CP4601467

appeal is received from the department.

(E) *Decisions of the appeals board*. The appeals board, when so appealed to and after a duly advertised hearing, may vary the application of any provision of this chapter to any particular case when, in its opinion, the enforcement thereof would not do manifest injustice and would not be contrary to the spirit and purpose of this chapter or the public interest, or when, in its opinion, the interpretation of the Building Official should be modified or reversed. A decision of the appeals board to vary the application of any provision of this chapter or to modify an order of the building official shall specify in what manner the variation or modification is made, the conditions upon which it is made and the reasons therefor. Every decision of the appeals board shall be final, subject, however, to such remedy as any aggrieved party may have at law or in equity. It shall be in writing and shall indicate the vote upon the decision. Every decision shall be promptly filed in the office of the building and codes division and shall be open to public inspection; a certified copy shall be sent by mail or otherwise to the appellant. The appeals board shall, in every case, reach a decision, without unreasonable or unnecessary delay. If a decision of the appeals board reverses or modifies a refusal, order or disallowance of the department or varies the application of any provision of this chapter, the department shall immediately take action in accordance with the decision.

(Ord. 822, passed 2-7-22)

§ 150.99 PENALTY.

(A) Any person found to be in violation of any provision of this chapter shall be issued a civil fine in an amount not exceeding $200. If the building official or other authorized code enforcement officer determines a second violation has occurred, the person found in violation of this chapter shall be provided seven calendar days to remedy the violation or submit a plan to correct the violation. If the violation has not been remedied or the plan has not been submitted within the seven calendar days, the building official or other authorized code enforcement officer must issue a civil fine in an amount not to exceed $2,000. Each day a violation continues is a separate offense.

(B) In the event of any violation or proposed violation of this chapter, the county manager, or other appropriate county representative or any adjacent or neighboring property owner who would be damaged by the violation, in addition to other remedies, may apply to a court of competent jurisdiction for injunctive relief, mandamus or other appropriate proceeding to prevent, correct, or abate the violation or threatened violation.

(Ord. 822, passed 2-7-22)

ELECTRONICALLY FILED, 2023 May 11 2:01 PM - YORK - COMMON PLEAS - CASE#2023CP4601467

Planning & Development Services
18 W. Liberty Street
York, SC 29745
(803) 909-7200
www.yorkcountygov.com

Letter of Notification for Plan Review

Midway Baptist

Review of:
Upfit

Status:
Not Approved

To:
Robert Smith
Talley & Smith Architecture, Inc.
Bob@TalleySmithArch.com
704-487-7082

Project:
20221626
Midway Baptist
12984 HIGHWAY 55 W YORK
Change of Occupancy, all work proposed is for compliance with Change of Occupancy Requirements. Create 1-hr rated corridor. Improve wall finishes. New electrical.

We have completed our review of the plan identified above. The comments listed on the attached report must be addressed and revised plans submitted with a response letter.

If your plans were uploaded through the online York County Development portal any applicable document markups by reviewers will be available through your login under My Projects at www.yorkcountygov.com/permitting.

If the attached comments require changes to the plans, please upload your dwg or pdf plan under the associated project at www.yorkcountygov.com/permitting. Please contact us with any questions at 803-909-7200.

Once revised plans are received, they will be submitted to staff for review.

Please be aware that plans will not be routed for review without a response letter. Any re-review fees (if applicable) will need to be paid prior to the plan being re-opened for review.

Sincerely,

Bea McCarter
Development Coordinator
Planning & Development Services
803-909-7200

Review Comments — Upfit

The following comments are grouped as "Review Comments" or "Advisory Comments". "Review Comments" are items related to your plan review that require action on your part. "Advisory Comments" are informational notes that may be important in the future and are for your information.

Building & Codes - Nicole Troutman - nicole.troutman@yorkcountygov.com - 803-909-7205 — Not Approved

Review Comments:

1. Please provide the revised occupant load to calculate the plumbing count for the overall building according to Chapter 29 of the 2018 SC IBC. Verify the required number of shared fixtures are provided, as the new school occupancy has different requirements than the existing A-3 church use.

NOTE: If the school intends to expand and use the second floor, application for permit must be submitted for the change of use to verify the second floor meets the applicable code requirements.

Once the above comments are addressed, please provide a 'response letter' that details the location on the plan.

Fire Safety - Donnie Helms - donnie.helms@yorkcountygov.com - — Not Approved

Review Comments:

1. The 2018 SC Fire Code, section 506.1 requires where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or fire-fighting purposes, the fire code official is authorized to require a key box to be installed in an approved location. The key box shall be of an approved type listed in accordance with UL 1037, and shall contain keys to gain necessary access as required by the fire code official. Please contact York County Department of Fire Safety at (803) 620-2270 for information regarding the required key box or order on-line at www.knoxbox.com

2. The 2018 SC Fire Code, section 1013.4 requires a sign stating EXIT in visual characters, raised characters and braille and complying with ICC A117.1 to be provided adjacent to each door to an area of refuge, an exterior area for assisted rescue, an exit stairway or ramp, an exit passageway and the exit discharge. Signs shall be placed on the wall, on the latch side of the door, 48 to 60 inches off of the floor.

3 The 2018 SC Fire Code section 915.1.1 requires carbon monoxide detection shall be provided in Group I-1, I-2, I-4 and R occupancies and in classrooms in Group E occupancies in the locations specified in Section 915.2 where any of the conditions in Sections 915.1.2 through 915.1.6 exist. Please provide type of appliances that are installed.

4. The 2018 SC Fire Code, section 907.1.2 requires shop drawings for fire alarm systems to be submitted for review and approval prior to system installation. Please submit fire alarm plans to this office for review and approval.

Zoning - Jeff Kirchner - jeff.kirchner@yorkcountygov.com - 803-909-7232 — Not Approved

Review Comments:

LOCATION: 12984 HIGHWAY 55 W YORK
TM: 1810000030
ZONING DISTRICT: RUD
ZONING USES: Existing Church – Proposed School (Grades?)

1.) NEW USE: The proposed project is a change of zoning use, adding a school to the existing church property and building. Any zoning code requirements which will apply to the new school will have to be shown to be in compliance. A site plan will need to be submitted with the building plans showing the existing conditions of the site and note the site issues that apply to adding the school use. Proposed changes to the site may require a full civil site plan review. Will there be additional changes to the site for this project?

2.) OFF-STREET PARKING & LOADING: SECTIONS 155.895 - 155.923
Minimum Parking Requirements: Max parking is 150% of the minimum number of spaces.

- Churches and Religious Institutions - 1 space per 4 seats
- Schools, K-12, Either Public or Private, and Administrative School Buildings - Elementary & Junior High Schools: 2 spaces per classroom, High Schools: 1 space per classroom, laboratory, or instruction area, plus 1 space per 4 students based on design capacity, Administrative School Buildings and Office Areas Within Schools: 1 space per 300 sf GFA

- It appears that the proposed project will require a shared parking plan between the church and school. Please provide documentation of the plan and show the required parking on the site plan. 155.912 SHARED PARKING PLANS.
- Please show loading zones, dumpster locations, and large vehicle (garbage truck and delivery trucks) turning diagrams for the site. A minimum of one loading berth is required for this project. Dumpsters shall be screened as per NON-RESIDENTIAL AND MIXED-USE BUILDING DESIGN: SECTIONS 155.780 - 155.791.
- If the school will have a drop-off / pick-up vehicle stacking plan please show that on the site plan.
- The site appears to have sufficient parking for the existing church and the proposed school but note that any new parking spaces must be in compliance with current county code.

3.) ACCESS MANAGEMENT AND DRIVEWAYS: SECTIONS 154.105 – 154.111

- The existing curb cut separations for the proposed driveways will need to be approved by the SCDOT and York County.
- Please discuss the access plan with York County's Transportation Planner, Chris Stephens. A TIA will be required for this project. The approved requirements of the TIA must be shown on the submitted site plan.
- The sight distance triangles must be shown on the plans and kept clear of obstruction.
- The approved requirements of the TIA must be shown on the submitted site plan.
- Review the York County Land Development Manual.

4.) SIGNAGE: SECTIONS 155.930– 155.939

- Will the ground sign be updated with the addition of the school?

Advisory Comments:

- These plan comments are based on York County's code update. Refer to the York County Code Chapter 154 & Chapter 155 and York County Land Development Manual. https://www.yorkcountygov.com/960/York-County-Land-Use-Codes

---

Environmental - Will Johnson - will.johnson@yorkcountygov.com - 803-909-7226 **Approved**

Review Comments:

All work being proposed is interior. If land disturbance occurs, additional land disturbance permitting will be required.

Addressing/E-911 - Gina Aaron - gina.aaron@yorkcountygov.com - 803-909-7482 **Conditional**

Review Comments:

12984 SUITE 101 HIGHWAY 55 W, YORK, SC 29745

Ind. Pretreatment - Michael Wade - michael.wade@yorkcountygov.com - 803-628-3211 **No Review Required**

Review Comments:

Planning & Development Services
18 W. Liberty Street
York, SC 29745
(803) 909-7200
www.yorkcountygov.com

Letter of Notification for Plan Review

Midway Baptist

Review of:
Upfit

Status:
Not Approved

To:
Robert Smith
Talley & Smith Architecture, Inc.
Bob@TalleySmithArch.com
704-487-7082

Project:
20221626
Midway Baptist
12984 HIGHWAY 55 W YORK
Change of Occupancy, all work proposed is for compliance with Change of Occupancy Requirements. Create 1-hr rated corridor. Improve wall finishes. New electrical.

We have completed our review of the plan identified above. The comments listed on the attached report must be addressed and revised plans submitted with a response letter.

If your plans were uploaded through the online York County Development portal any applicable document markups by reviewers will be available through your login under My Projects at www.yorkcountygov.com/permitting.

If the attached comments require changes to the plans, please upload your dwg or pdf plan under the associated project at www.yorkcountygov.com/permitting. Please contact us with any questions at 803-909-7200.

Once revised plans are received, they will be submitted to staff for review.

Please be aware that plans will not be routed for review without a response letter. Any re-review fees (if applicable) will need to be paid prior to the plan being re-opened for review.

Sincerely,

N. Clevenger

Niki Clevenger
Permit Center Administrator
Planning & Development Services
803-909-7200

Review Comments — Upfit

The following comments are grouped as "Review Comments" or "Advisory Comments". "Review Comments" are items related to your plan review that require action on your part. "Advisory Comments" are informational notes that may be important in the future and are for your information.

Building & Codes - Nicole Troutman - nicole.troutman@yorkcountygov.com - 803-909-7205 — Approved

Review Comments:

This office has reviewed the plans submitted for the project. This review does not relieve the owner, designers and contractors, nor their representatives from their responsibility to comply with applicable provisions of the York County Code of Laws. Our review is not a check of every item in these plans and does not prevent this department from requiring corrections of errors in plans or construction. Any changes/alterations to structure not noted on these plans, may void this permit. Approved - subject to compliance with all local codes and standards. Plans checked by NT and JPC and reviewed with 2018 IBC,IPC,IMC, IFGC and the 2017 NEC. DATE : MAY 20, 2022

NOTE: If civil plans are required, they shall be approved before building permits can be issued.

Fire Safety - Donnie Helms - donnie.helms@yorkcountygov.com - — Approved

Review Comments:

1. The 2018 SC Fire Code, section 907.1.2 requires shop drawings for fire alarm systems to be submitted for review and approval prior to system installation. Please submit fire alarm plans to this office for review and approval.

Zoning - Jeff Kirchner - jeff.kirchner@yorkcountygov.com - 803-909-7232 — Not Approved

Review Comments:

LOCATION: 12984 HIGHWAY 55 W YORK
TM: 1810000030
ZONING DISTRICT: RUD
ZONING USES: Existing Church – Proposed School (Grades?)
- 2nd Review

REVISED COMMENTS:
1.) NEW USE: The proposed project is a change of zoning use, adding a school to the existing church property and building. Any zoning code requirements which will apply to the new school will have to be shown to be in compliance. A site plan will need to be submitted with the building plans showing the existing conditions of the site and note the site issues that apply to adding the school use. Proposed changes to the site may require a full civil site plan review. Will there be additional changes to the site for this project?
- Please show the additional side walk with the parking plans.

2.) OFF-STREET PARKING & LOADING: SECTIONS 155.895 - 155.923
Minimum Parking Requirements: Max parking is 150% of the minimum number of spaces.
• Churches and Religious Institutions - 1 space per 4 seats
• Schools, K-12, Either Public or Private, and Administrative School Buildings - Elementary & Junior High Schools: 2 spaces per classroom, High Schools: 1 space per classroom, laboratory, or instruction area, plus 1 space per 4 students based on design capacity, Administrative School Buildings and Office Areas Within Schools: 1 space per 300 sf GFA

• It appears that the proposed project will require a shared parking plan between the church and school. Please provide documentation of the plan and show the required parking on the site plan. 155.912 SHARED PARKING PLANS.
• Please show loading zones, dumpster locations, and large vehicle (garbage truck and delivery trucks) turning diagrams for the site. A minimum of one loading berth is required for this project. Dumpsters shall be screened as per NON-RESIDENTIAL AND MIXED-USE BUILDING DESIGN: SECTIONS 155.780 - 155.791.
• If the school will have a drop-off / pick-up vehicle stacking plan please show that on the site plan.
• The site appears to have sufficient parking for the existing church and the proposed school but note that any new parking spaces must be in compliance with current county code.

3.) ACCESS MANAGEMENT AND DRIVEWAYS: SECTIONS 154.105 – 154.111
• The existing curb cut separations for the proposed driveways will need to be approved by the SCDOT and York County.
• Please discuss the access plan with York County's Transportation Planner, Chris Stephens. A TIA will be required for this project. The approved requirements of the TIA must be shown on the submitted site plan.
• The sight distance triangles must be shown on the plans and kept clear of obstruction.
• The approved requirements of the TIA must be shown on the submitted site plan.
• Review the York County Land Development Manual.
- As per the Response Letter, the TIA and parking plan will be submitted later.

4.) SIGNAGE: SECTIONS 155.930– 155.939
• Will the ground sign be updated with the addition of the school?
- Zoning review does not see a sign sheet with the documents. What size will the proposed existing sign topper be?

Environmental - Will Johnson - will.johnson@yorkcountygov.com - 803-909-7226 **Approved**

Review Comments:

All work being proposed is interior. If land disturbance occurs, additional land disturbance permitting will be required.

Addressing/E-911 - Gina Aaron - gina.aaron@yorkcountygov.com - 803-909-7482 **Conditional**

Review Comments:

12984 SUITE 101 HIGHWAY 55 W, YORK, SC 29745

Ind. Pretreatment - Michael Wade - michael.wade@yorkcountygov.com - 803-628-3211 **No Review Required**

Review Comments:

Planning & Development Services
18 W. Liberty Street
York, SC 29745
(803) 909-7200
www.yorkcountygov.com

Letter of Notification for Plan Review

Midway Baptist

Review of:
Upfit

Status:
Not Approved

To:
Robert Smith
Talley & Smith Architecture, Inc.
Bob@TalleySmithArch.com
704-487-7082

Project: 20221626
Midway Baptist
12984 HIGHWAY 55 W YORK
Change of Occupancy, all work proposed is for compliance with Change of Occupancy Requirements. Create 1-hr rated corridor. Improve wall finishes. New electrical.

We have completed our review of the plan identified above. The comments listed on the attached report must be addressed and revised plans submitted with a response letter.

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If the attached comments require changes to the plans, please upload your dwg or pdf plan under the associated project at www.yorkcountygov.com/permitting. Please contact us with any questions at 803-909-7200.

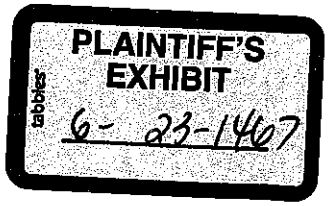
Once revised plans are received, they will be submitted to staff for review.

Please be aware that plans will not be routed for review without a response letter. Any re-review fees (if applicable) will need to be paid prior to the plan being re-opened for review.

Sincerely,

Bea McCarter

Bea McCarter
Development Coordinator
Planning & Development Services
803-909-7200



Review Comments — Upfit

The following comments are grouped as "Review Comments" or "Advisory Comments". "Review Comments" are items related to your plan review that require action on your part. "Advisory Comments" are informational notes that may be important in the future and are for your information.

Building & Codes - Nicole Troutman - nicole.troutman@yorkcountygov.com - 803-909-7205 — Not Approved

Review Comments:

York County Building and Codes maintains the original interpretation of the new Midway Christian School to be a change of use from Group A-3 to Group E. Even when academic education is taught from a religious point of view, the 2018 SC IBC Section 305, defines Group E occupancy as the use of a building or structure, or portion thereof, by 6 or more persons at any one time for educational purposes through the 12th grade, and is therefore Group E. Our understanding of Section 305.1.1 Accessory to places of religious worship, supported by using the definition of accessory spaces, is when those spaces are being used for occupancies that are ancillary to the main occupancy of the building or portion thereof, to include Sunday School, Bible study, etc. and not for academic education. Per discussions with the church staff, the goal for Midway Christian School is to increase its enrollment as the need demands, supporting our decision for the Group E occupancy.

The zoning requirements will be determined outside of the Building and Codes determination of occupancy group. Zoning will be providing additional information for their updated regulations for schools in York County.

Fire Safety - Donnie Helms - donnie.helms@yorkcountygov.com - — Conditional

Review Comments:

1. The 2018 SC Fire Code, section 907.1.2 requires shop drawings for fire alarm systems to be submitted for review and approval prior to system installation. Please submit fire alarm plans to this office for review and approval. Also include carbon monoxide detection in the classrooms if the building has gas appliances.

Zoning - Jeff Kirchner - jeff.kirchner@yorkcountygov.com - 803-909-7232 — Not Approved

Review Comments:

LOCATION: 12984 HIGHWAY 55 W YORK
TM: 1810000030
ZONING DISTRICT: RUD
ZONING USES: Existing Church – Proposed School
- 3rd Review

1.) Please refer to the previous Zoning review comments.
2.) Attached is the letter dated June 2, 2022 from Jonathan Buono, Planning & Development Services Director and Rachel Grothe, Rachel Grothe

---

Environmental - Will Johnson - will.johnson@yorkcountygov.com - 803-909-7226 — Approved

Review Comments:

All work being proposed is interior. If land disturbance occurs, additional land disturbance permitting will be required.

Addressing/E-911 - Gina Aaron - gina.aaron@yorkcountygov.com - 803-909-7482 — **Conditional**

Review Comments:

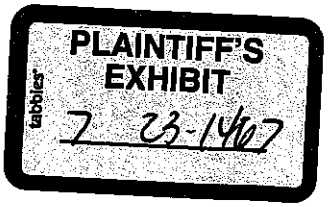
12984 SUITE 101 HIGHWAY 55 W, YORK, SC 29745

Ind. Pretreatment - Michael Wade - michael.wade@yorkcountygov.com - 803-628-3211 — **No Review Required**

Review Comments:

From: Mark Dellinger <markdellinger55@yahoo.com>
Sent: Friday, July 8, 2022 10:22 AM
To: Catoe, Jamie <jamie.catoe@yorkcountygov.com>
Cc: Troutman, Nicole <Nicole.Troutman@yorkcountygov.com>; Culver, Jennifer <jennifer.culver@yorkcountygov.com>; Buono, Jonathan <Jonathan.Buono@yorkcountygov.com>; Reinhardt, Josh <Josh.Reinhardt@yorkcountygov.com>
Subject: Re: Midway Baptist project# 20221626

-



WARNING: The email below is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

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-

Good morning Jamie,

-

As always, thank you for your response and the time and effort you have put in working thru our project. I really appreciate it.

I agree with your position of safety and if there is anything within our project that is not safe, we want to work to correct that immediately. Are there specifics safety issues we have not previously discussed?

As to the code understanding our conversations have centered on what is religious education and more specifically what we are doing is not religious education. My understanding of your position on the code is 305.1.1 implies that religious education takes place at the same time as other religious services. I do not see an implication of time within the code for 305.1.1. We check off every box within 305.1.1. We are a place of religious worship, we offer religious education, our rooms and auditoriums are used for religious education, and we also have less than 100 per room or space. I would also like to add, the Bible cannot be taught from a particular point of view within any public school in South Carolina. They must go off campus for those studies. The federal and state government has made a very clear distinction on religion and religious studies.

A couple of questions I have based on your response:

1) If 305.1.1 relates only to Sunday school, Bible studies, etc what is their classification when they have 101 in Sunday school per the code?

2) What about a religion that offers no Sunday school space (the Catholic church & many new churches) can they engage in religious education?

3) What about a religion that does not adhere to the Bible or have Bible studies (Buddhism, Hinduism, Islam) can they engage in religious education?

4) Is religious education limited to certain times and certain days?

5) Please clarify what exactly constitutes religious education from the perspective of the building code.

-

Thank you in advance for your response.

Mark Dellinger

-

-

On Thursday, July 7, 2022 at 02:01:56 PM EDT, Catoe, Jamie <jamie.catoe@yorkcountygov.com> wrote:

-

-

PLAINTIFF'S EXHIBIT
tabbies
8 23-1407

Read to your supervisor.

My Goals

To learn about light

I. What Is Light?
II. What Causes Light Rays?
III. What Are the Kinds of Light?
IV. What Is Light Like?
V. How Does Light Behave?
VI. What Does Light Do?
VII. How Is Light Measured?
VIII. How Fast Does Light Travel?

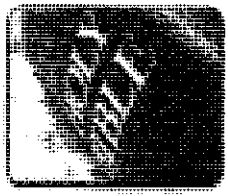
To learn to use all I have for God's glory—
to be generous

Read these words and tell what they mean.

bullets	eternal	loss	shot	torch
camp	gun	set	sign	trillion

Generous

"Give and it shall be given
unto you."
Giving shows we are believing.
Luke six, thirty-eight is a
promise to elate,
But giving comes before
receiving.



Learn this Scripture Verse

. . . remember the words of the Lord Jesus, how he said, It is more blessed to give than to receive.

Acts 20:35

Symbol and Sound Chart

ă	glad	ĭ	sit	o͞o	tool	oi	coin	zh	Asio
ā	save	ī	kind	ŭ	cup	ou	out	ə	a in above
â	fair	ŏ	box	ū	use	sh	she	ə	e in the
ä	barn	ō	go	ch	much	th	this, thin	ə	i in easily
ĕ	best	ô	soft, order	kw	queen	ûr	burn	ə	o in lemon
ē	bee	o͝o	look	ng	song	z	has	ə	u in Jesus

Supervisor initial _____

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Generous

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Read and learn each new vocabulary word, its part of speech, pronunciation, and definition.

Word	Pronunciation	Definition
1. applied v.	ə·plīd′	put on
2. artificial adj.	är′tə·fĭsh′əl	not natural; made by people
3. available adj.	ə·vā′lə·bəl	ready for use
4. basketball n.	băs′kĭt·bôl′	the round ball used in the game of basketball
5. behave v.	bĭ·hāv′	to move or respond in a particular way
6. blind adj.	blīnd	without sight; unable to see
7. dim adj.	dĭm	not bright
8. emit v.	ĭ·mĭt′	to send out
9. filament n.	fĭl′ə·mənt	a thread-like wire that gives off light

Using the vocabulary words above, fill in each blank with the correct word.

(1) You do not have to water _artificial_ flowers.

(2) I could hardly see because the light from the flashlight was _____.

(3) My flashlight, when turned on, will _____ a bright light.

(4) The doctor _____ healing medicine to my cut.

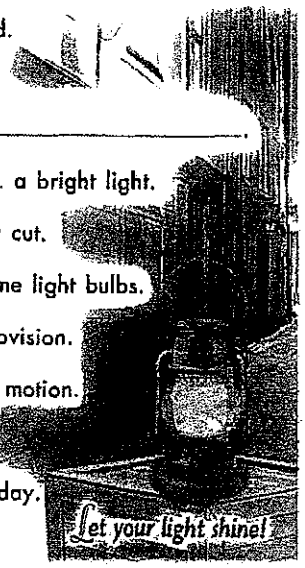
(5) A _____ is a thread-like wire used in some light bulbs.

(6) Light is _____ to us because of God's provision.

(7) Atoms _____ according to God's laws of motion.

(8) The _____ boy had never seen colors.

(9) Racer received a new _____ for his birthday.



Read and fill in the blanks.

(10) . . . _____ the words of the _____ Jesus, how he said, _It_ _is_ _more_ _blessed_ _to_ _give_ _than_ _to_ _receive_. Acts 20:35

I. What Is Light?

In John 8:12 the Lord Jesus declared of Himself, ". . . I am the light of the world: he that followeth me shall not walk in darkness, but shall have the light of life." Jesus was speaking of light in a spiritual sense, and we will discuss this more later in the PACE. Light is also important in a physical sense. Do you remember what light is? Light is a form of energy. Scientists have studied light for hundreds of years but still do not completely understand it. They have learned many things about light, but they still do not know exactly of what light consists.

Light is God's way of transferring energy through space. In space light travels in a straight line unless blocked by materials in its path. Light radiates from its source, which means light travels in straight lines in all directions at once. These straight lines of radiation are called rays. Always remember that rays are straight lines with a beginning point and direction. Light radiates from the

sun in all directions, not just to Earth and the moon.

Light is almost always closely connected with heat. All long-lasting light sources produce heat along with light. The brightness and color of light are determined by the amount of energy and the process that is used to produce it. In most cases if little energy is used by a light source, the light will be very dim and little heat will be produced. As more and more energy is used by a light source, the light given off will be brighter and brighter, and more heat will be produced.

Fill in the blanks with the correct answers.

(1) Light is a form of _____.

(2) Light is God's way of transferring _____ through _____.

(3) In space _____ travels in a straight line.

(4) Light _____ from its source and travels in _____ lines in all directions at once.

(5) Straight lines of radiation are called _____.

(6) _____ are straight lines with a beginning point and direction.

(7) _____ radiates from the sun in all directions.

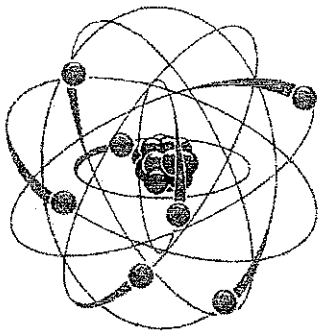
(8) Light is almost always closely connected with _____.

(9) The _____ and _____ of light are determined by the amount of energy and the process used to produce it.

Every SUNRISE is God's GREETING—the SUNSET His SIGNATURE.

II. What Causes Light Rays?

If light is a form of energy, what produces the energy? Energy is the ability to do work, such as producing heat and motion. The energy required to emit light rays is contained in atoms. An atom is made of tiny particles that are always in motion. Because the particles in atoms are in motion, they have energy. These particles, which move at great speeds, are called electrons. Electrons always revolve around the center of an atom.

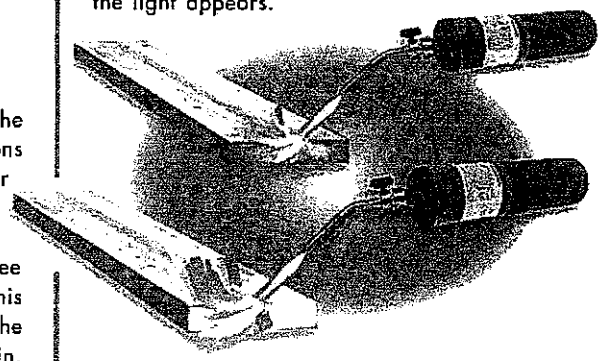


When energy is applied to an atom, the electrons absorb the energy. As electrons absorb energy, they move faster and farther away from the center of the atom. When the electrons have absorbed as much energy as they can, they emit a burst of energy we see as light and feel as heat. As electrons emit this burst of energy, they are pulled closer to the center of the atom to begin the process again.

The incandescent light bulb was the first light bulb invented, and light was produced because the atoms of the filament inside the light bulb became energized by electricity. In an incandescent light bulb, the atoms of the thread-like filament absorb energy from the electricity flowing into it. The atoms of the filament then emit bursts of energy in the form of heat and light. An incandescent light bulb has a filament of many millions of atoms. Each atom of the filament emits energy bursts continuously so that the light produced is from many, many atoms. We would not be able to see light from just two or three, or even a hundred, atoms. Visible light requires energy bursts from millions of atoms at the same time.

Have you noticed that some lights are brighter than others? Sometimes the light in your home may become brighter or dimmer for a second or two. The difference in brightness in these lights is caused by the different amounts of energy applied to them.

Why does the iron bar in the picture glow red when some heat is applied to it, then glow white when more heat is applied? If more energy is applied to the iron bar, then the atoms in the iron bar will absorb more energy. The more energy the atoms absorb, the more heat and light energy they will emit. The more light energy emitted, the brighter the light appears.



Light rays, or streams of light, are made of photons. Photon means "light particle." Scientists have never seen a photon of light. Photons are too small to be seen and move too fast to be observed. Scientists do not know for certain what makes up a photon, but they do know how photons behave.

Before we discuss how photons behave, we need to discover the sources of photons. Since photons make up light, what are the sources of light? We can divide all light into two categories: created light and artificial light.

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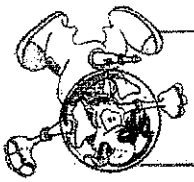
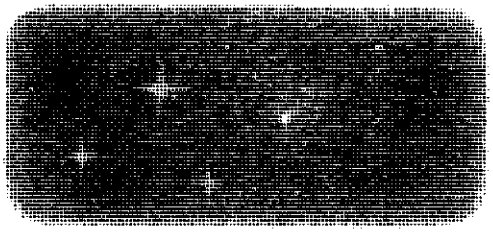


DID YOU KNOW?

Traveling to Earth's next nearest star would be like traveling around Earth at the equator 931,689,490 times.

God made another source of natural light for us that we can see at night when the sky is clear. It is not the moon. The moon has no light of its own. The moon only reflects light from the sun. The natural light source seen at night is the stars. Genesis 1:16 records, ". . . he [God] made the stars also." He not only created the stars, but according to Psalm 147:4, God also counted and named the stars. "He telleth the number of the stars; he calleth them all by their names."



What are stars? Our sun is a star. The sun is the closest star to Earth. Most of the stars are very, very far from us. For example, light from the sun takes about eight minutes to reach Earth, while light from the next nearest star takes more than four years to reach Earth!

Again, if we think of the sun as a basketball and Earth as an apple seed, the distance between Earth and the sun would be about 110 feet, or 34 meters. If this were true, our next nearest star would be 5,000 miles, or 8,000 kilometers, away!

Now let's consider the distance in actual miles and kilometers. Our next nearest star, from Earth, other than the sun, is more than 23,200,000,000,000 (twenty-three trillion, two hundred billion) miles, or 37,340,000,000,000 (thirty-seven trillion, three hundred forty billion) kilometers, away!

Fill in the blanks with the correct answers.

(1) The _____ has no light of its own.

(2) The moon only _____ light from the sun.

(3) What is the natural light source we can see at night?

_____

(4) Who made the stars? _____

(5) Our sun is a _____.

(6) The _____ is the closest _____ to Earth.

(7) Light from the sun takes about _____ to reach Earth.

(8) Light from the next nearest star takes more than _____ to reach Earth.

(9) In actual distance our next nearest star is more than _____ miles, or _____ kilometers, away.

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There are many different sizes of stars. Some stars are giants that make our sun seem microscopic in comporison. Other stars are the same size as our sun, and there are many sizes of stars in between.

Why are some stars very bright, while some seem like only flickering points of light in the night sky? Three questions can be used as guidelines to determine the brightness of a star:

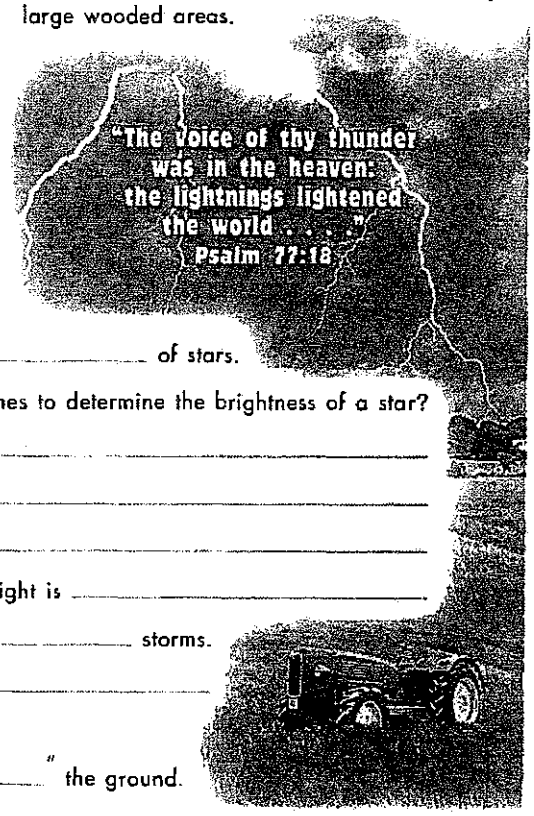
(1) How far away is the stor? The closer a star is to Eorth, the brighter it will appear in the night sky. If o star is very far away, it will appear dim.

(2) How large is the star? A very large star will be brighter thon a very small star. However, some very large stars may appear dim if they are also very far oway. Small stars that are not as for away can oppear to be rather bright in the sky.

(3) How hot is the star? Very hot stars will oppear whiter and brighter in the sky, while stors that are not as hat will appear redder and dimmer in the sky.

A beautiful but dangerous source of natural light is <u>lightning</u>. God created lightning, and as Psalm 97:4 states, "His lightnings enlightened the world: the earth saw, and trembled." Lightning occurs during electrical storms. Sometimes lightning lights up the whole night sky as bright as if it were daytime.

Lightning sometimes jumps from cloud to cloud. It may "strike" the ground, hitting trees, electricol equipment, houses, animals, and sometimes people. Before people learned how to protect their homes, many homes were lost due to fires started by lightning. Sometimes lightning starts fires that destroy large wooded areas.



Fill in the blanks with the correct answers.

(1) There are many different _____ of stars.

(2) What are the three questions used os guidelines to determine the brightness of a star?

(a) _____

(b) _____

(c) _____

(3) A beautiful but dangerous source of natural light is _____.

(4) Lightning occurs during _____ storms.

(5) Lightning sometimes jumps from _____

to _____.

(6) Lightning moy "_____" the ground.

Score pages 13, 14, and 15. ☐	Correct mistakes. ☐	Rescore. ☐

R.p. 490

Fill in the blanks with the correct answers.

(1) Materials that allow no light to pass through them are _____.

(2) Wood, _____, and most metals are opaque.

(3) _____ objects are always opaque.

(4) Why do opaque objects become warm when placed in light? _____

_____

(5) Dark-colored clothing _____ the heat of light rays.

(6) Why do we wear white or light-colored clothing when it is hot? _____

_____

(7) _____ surface is opaque and absorbs heat from the sun's rays.

(8) Sometimes an object's _____ determines whether the object is transparent, translucent, or opaque.

(9) Rocks are normally opaque, but the mineral mica can be cut into thin, _____ sheets.

(10) At great _____ no natural light is visible in water except for light coming from a few fish.

(11) We see the sky as _____ during the day because of the _____ of sunlight by tiny particles in the atmosphere.

(12) If sunlight were not _____ in the atmosphere, the part of Earth absorbing direct rays of sunlight would be too _____ for life, and the areas in darkness would be too _____ for life.

Read and fill in the blanks.

(13) . . . _____ the words of the _____ Jesus, how he said, _____ _____ _____

VII. How Is Light Measured?

What is one way we can *measure* the brightness of a light source? Scientists decided to use the light of one *certain type* of candle. The light given off by this candle was called "one-candle power." A light source twice as bright as this candle has two-candle power.

Candle power tells us how bright a light is at its source, but we also need to know how bright a beam of light is when it reaches an object. Scientists have divided the distance from the light source to an object into feet. One square foot of area one foot from the source is a foot-candle of light. Your office and Learning Center should be lit to a level of 70 to 100 foot-candles. In the *metric system*, a similar system of measuring light is used.

VIII. How Fast Does Light Travel?

We know light takes only a few minutes to travel from the sun to Earth, a distance of 93,000,000 miles, or 150,000,000 kilometers. From this observation it is clear light travels at a very high rate of speed. We also know light travels freely through space where nothing slows its speed. By conducting a series of experiments, scientists have discovered the speed of light.

Amazingly, light travels at a speed of 186,282 miles, or 299,792 kilometers, each second. Since light never slows its speed in space, the speed of light has been recognized as a universal constant in nature. In space the speed of light never changes!

How fast is 186,282 miles, or 299,792 kilometers, each second? Light travels to Earth from the sun in about eight minutes. Light can travel from Earth to the moon and back to Earth in about two and one-half seconds. If light could travel in a curve, it would travel around Earth about seven and one-half times in one second! If you could throw a ball at the speed of light, it would travel around the world twice before you could blink your eye! We can see from these examples that God created light to travel at an amazing rate of speed.

God gives us light because it is necessary for our existence. Just as we cannot have physical life without light, we cannot have eternal life without the Eternal Light, Jesus Christ. The Bible tells us Jesus Christ is our Light. In John 12:46 Jesus said, "I am come a light into the world, that whosoever believeth on me should not abide in darkness." Are you a child of darkness or a child of light? If you have not believed in the Lord Jesus as your Saviour, the Bible says you are in darkness, but when you ask the Lord Jesus to forgive your sins and be your Saviour, you become a child of light. "For ye were sometimes darkness, but now are ye light in the Lord: walk as children of light." (Ephesians 5:8)

The hearts of many people in our world are in darkness. It is the Believer's task to take these people the Light. The Bible tells us that Believers are to be lights in the world. "Ye are the light of the world. A city that is set on an hill cannot be hid. Neither do men light a candle, and put it under a bushel, but on a candlestick; and it giveth light unto all that are in the house. Let your light so shine before men, that they may see your good works, and glorify your Father which is in heaven." (Matthew 5:14-16) Are you letting your light shine for Jesus?

In Heaven we will have no need of natural or artificial light. When talking about the New Jerusalem, Revelation 22:5 states, "And there shall be no night there; and they need no candle, neither light of the sun; for the Lord God giveth them light: and they shall reign for ever and ever."

 Supervisor initial _____ Be prepared to answer student's questions concerning salvation.

Fill in the blanks with the correct answers.

(1) Candle power tells us how bright a light is at its _____.

(2) Scientists have divided the distance from the light source to an object into _____.

(3) One square foot of area one foot from the light source is a _____ of light.

(4) Your office should be lit to a level of _____ foot-candles.

(5) Light travels at a very high rate of _____.

(6) In space light travels at a speed of _____ miles, or _____ kilometers, each second.

(7) Since light never slows its speed in space, the speed of light has been recognized as a _____.

(8) In space the speed of light never _____.

(9) Light travels to Earth from the sun in about _____.

(10) Light can travel from Earth to the _____ and back to Earth in about two and one-half _____.

(11) If light could travel in a curve, it would travel around Earth about seven and one-half times in _____ second.

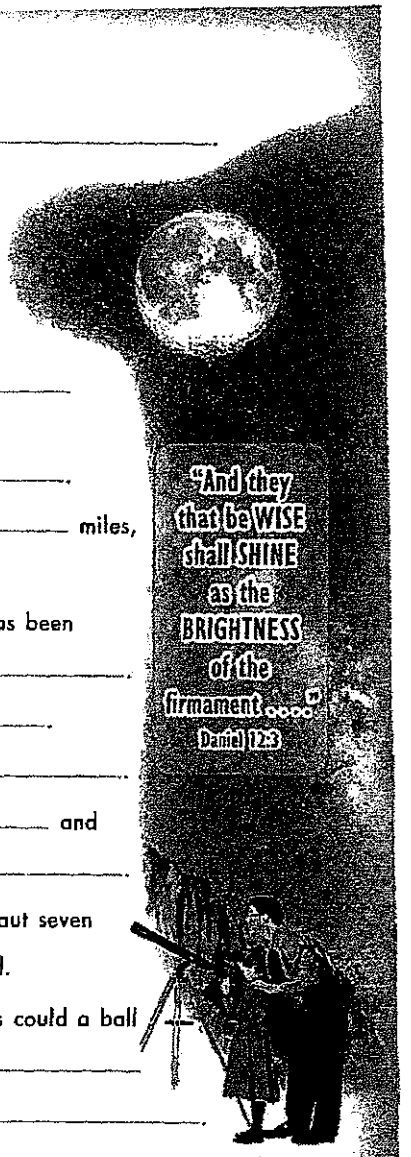
(12) If you could throw a ball at the speed of light, how many times could a ball go around Earth before you blink your eye? _____

(13) God gives us light because it is necessary for our _____.

(14) We cannot have eternal life without the Eternal _____, Jesus Christ.

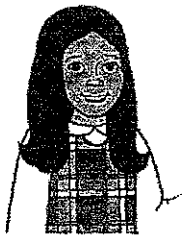
(15) According to Ephesians 5:8, Believers are to walk as children of _____.

(16) The Bible tells us that Believers are to be lights in the _____.



Score pages 35, 36, and 38. ☐	Correct mistakes. ☐	Rescore. ☐

R.p. 493



Nita Faithful

Let's get ready to take the Self Test.
1. Study the Checkups.
2. Ask your supervisor to initial here. _____
3. Answer as many questions as you can without looking back into your PACE.

My score _____

Self Test

Fill in each blank, or draw a line under the correct answer. (3 points each)

(1) God created (man, light, plants) on the first day of Creation.

(2) Mr. Thomas Edison's light bulb opened the path for America's (coal, industrial, instant) age.

(3) Light is a form of _____.

(4) The energy required to emit light rays is contained in (atoms, filaments, optics).

(5) Visible light requires energy (spectrums, beams, bursts) from millions of atoms.

(6) Light rays, or streams of light, are made of (protons, photos, photons).

(7) All light is divided into created, or natural, light and (moon, sun, artificial) light.

(8) The main source of created, or natural, light on Earth is the (light bulb, sun, moon).

(9) The source of natural light we see at night is the _____.

(10) The display of natural light near the Arctic Circle is the aurora (borealis, boards, australis).

(11) Bioluminescence means "_____ life."

(12) (Vapor, Laser, LED) light travels from its source in a narrow beam in only one direction.

(13) Light consists of tiny (particles, droplets, articles) streaming through space.

(14) Scientists are able to tell how hot the stars are by their (size, color, age).

(15) Light acts like (springs, raindrops, waves) of the ocean.

(16) The light spectrum is a band of (energy, stars, colors).

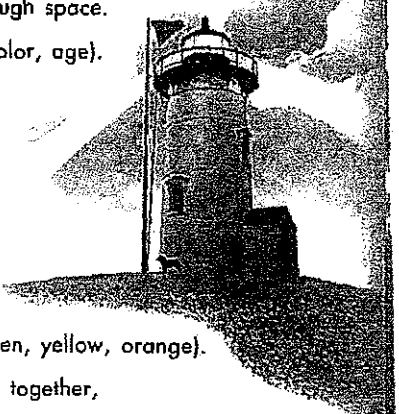
(17) _____ light is a combination of all the colors in the light spectrum.

(18) A _____ is a clear, solid piece of glass that can split white light into its band of colors.

(19) The primary colors of the light spectrum are red, blue, and (green, yellow, orange).

(20) When all three primary colors of the light spectrum are blended together, (red, black, white) light results.

Are YOU letting your LIGHT shine for JESUS?



Please continue on the next page.

(21) From a spectrum analysis, we can find the _____ and the chemical makeup of a star.

(22) In space light travels at a speed of 186,282 miles, or 299,792 kilometers, each _____.

(23) Ephesians 5:8 tells Believers to walk as children of _____.

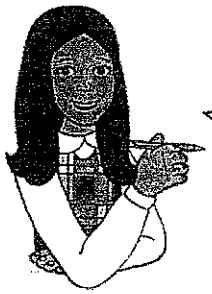
Place the letter of the correct answer on the blank.

_____ (24) the study of how light behaves	(A) diffracted
_____ (25) light that bounces off a rough surface and goes in all directions	(B) diffused
_____ (26) the bending of light as it passes through a substance	(C) dispersed
_____ (27) objects that allow most of the light to pass through them	(D) opaque
_____ (28) objects that allow some light to pass through but are not clear enough to see through	(E) optics
_____ (29) materials that allow no light to pass through them	(F) polarized
_____ (30) light that allows us to see well in shaded areas	(G) refraction
_____ (31) light that has been split into separate wavelengths, or colors	(H) translucent
_____ (32) light waves that are limited to one direction	(I) transparent

Read and fill in the blanks. Say the verse to your supervisor. (4 points)

(33) . . . _____ the words of the _____ Jesus, how he said, _____ _____ _____ _____ _____ _____ _____ _____ _____ _____. Acts 20:35

Score pages 42 and 43. ☐	Correct mistakes. ☐	Rescore. ☐



Let's get ready for the PACE Test.
1. Find and learn the answers you missed on the Self Test.
2. Study the Checkups and Self Test.
3. When you understand the vocabulary and the concepts on the Checkups and Self Test, you are ready to take the PACE Test.
4. Turn in your PACE to your supervisor.

Supervisor initial _____ Have student say verse by memory. Be sure he has mastered vocabulary, Checkups, and Self Test content.

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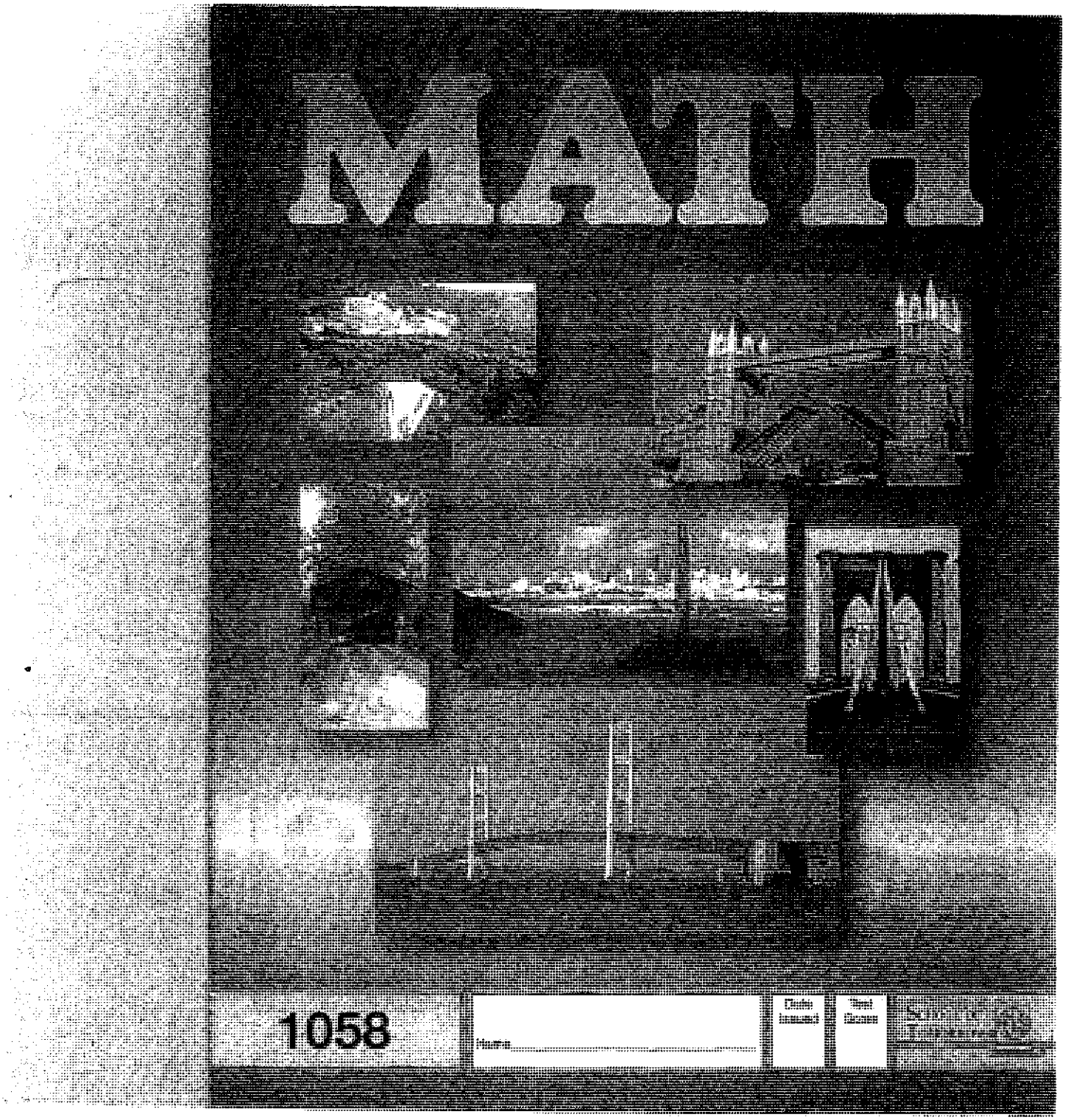

PLAINTIFF'S EXHIBIT
tabbies
9 23-1467

Read to your supervisor.

My Goals

To review addition and subtraction up to 6 digits
To solve addition and subtraction problems while being timed
To review finding averages
To review multiplication, including 3 digits times 3 digits and 2 digits times 4 digits
To solve multiplication problems while being timed
To learn more about dividing by 2-digit divisors
To learn to multiply decimals
To complete activities using bar graphs
To learn about parallelograms
To review geometric shapes, lines of symmetry, and congruent figures
To begin learning about volume
To find the Least Common Denominator (LCD)
To add and subtract fractions using the LCD
To review multiplication of fractions
To solve word problems

Self-Controlled

To learn to stay away from bad thoughts and doings

Learn this Scripture Verse

Abstain from
all appearance
of evil.
I Thessalonians 5:22

Self-Controlled

2021 Revision
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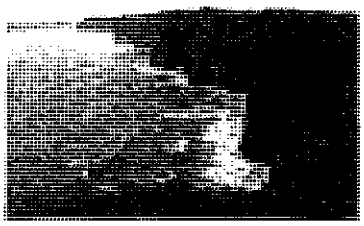
Supervisor initial _____

If needed, student should use Math Builder® and/or flashcards for daily drill.

Look at the chart and complete these activities about place value.

Island	Location	Square kilometers
Ellesmere	Arctic Ocean	212,688
Victoria	Arctic Ocean	212,199
Ireland	Northeast Atlantic	114,525
Iceland	North Atlantic	102,999



(1) The expanded number 100,000 + 10,000 + 4,000 + 500 + 20 + 5 is the area of which island?

_____

(2) Two hundred twelve thousand, six hundred eighty-eight is the area of which island?

_____

(3) In number words, write the area of Iceland. _____

_____

(4) Write the area of Victoria in expanded form.

_____

(5) Write the area of Iceland in place value farm. _____ hundred thousands + _____ ten thousands + _____ thousands + _____ hundreds + _____ tens + _____ anes

(6) The area of which island has a 4 in thousands' place? _____

(7) The area of Ellesmere has what digit in the place of least value? _____

(8) In the area of Iceland, what is the value of the digit 1? _____

(9) In the area of Ireland, the digit 5 with the greater value is in _____ place.

(10) The areas of how many islands have a 9 in tens' place and ones' place? _____

(11) The areas of how many islands have a 1 in ten thousands' place? _____

Read and fill in the blanks.

(12) _____ _____ all appearance of evil.

1 Thessalonians 5:22

Cover photographs: Mackinac Bridge (St. Ignace, Michigan–Chamber of Commerce); Golden Gate Bridge (San Francisco Convention and Visitors Bureau) Photo by Kenrick James; Brooklyn Bridge (New York Convention and Visitors Bureau)

R.p. 498

Add.

(1) 576 + 334 + 778

(2) 3,342 + 4,278 + 7,749

(3) 46,472 + 52,783 + 18,247

(4) 303,472 + 478,954

(5) 743,248 + 249,836

Subtract.

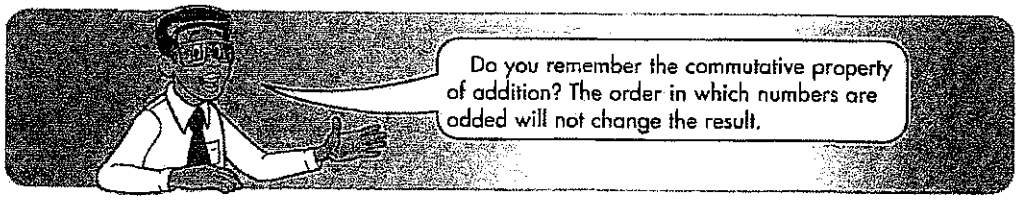
(6) 32,047 − 13,745

(7) 470,405 − 274,386

(8) 5,341 − 3,785

(9) 800 − 496

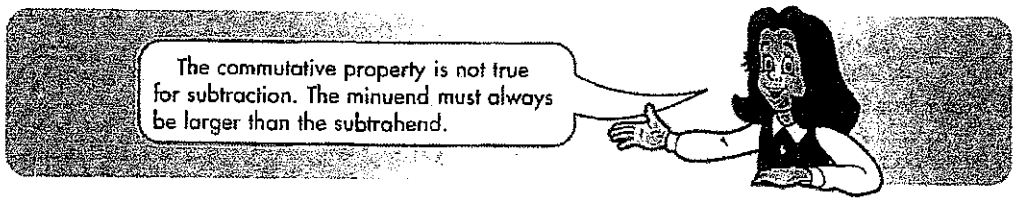
(10) 78 − 29



Write these numbers in order from greatest to least and add. Then write the numbers from least to greatest and add.

(11) 72 + 493 + 150 = ?

(12) 4,981 + 3 + 65 = ?



Write each pair of numbers in columns; then subtract. Be sure to write the larger number first.

(13) (708; 189)

(14) (95; 440)

(15) (5,004; 864)

Score pages 2 and 3.		Correct mistakes.		Rescore.	

Remember, we can show division in 3 ways.

$3\overline{)36}$ $\quad 36 \div 3 = 12 \quad \frac{36}{3} = 12$

Rewrite these problems using the division bracket; then solve.

(1) $480 \div 20 = ?$ $\quad 20\overline{)480}$

(2) $\frac{988}{52} = ?$ $\quad 52\overline{)988}$

(3) $858 \div 33 = ?$

(4) $\frac{128}{8} = ?$

(5) $\frac{946}{43} = ?$

(6) $1{,}922 \div 62 = ?$

(7) $\frac{2{,}160}{60} = ?$

(8) $78 \div 3 = ?$

(9) $1{,}462 \div 34 = ?$

(10) $\frac{117}{9} = ?$

(11) $1{,}000 \div 40 = ?$

(12) $\frac{492}{82} = ?$

Read and fill in the blanks.

(13) _____ _____ all appearance of evil.

I Thessalonians 5:22

Score pages 9 and 10.		Correct mistakes.		Rescore.	

R.p. 500

Read to your supervisor.

Sometimes it takes detective work to track the correct number to use in the quotient.

Round 35 up to the nearest 10.
196 ÷ 40 = ?
19 ÷ 4 = 4

```
      4
35 ) 1,960
     140
      56
```

This difference must always be less than the divisor. The number 56 is larger than 35. This means 4 is not correct, and we must track down a larger number for the quotient.

```
      5
35 ) 1,960
     175
      21
```

Since 4 did not work, let's try 5.

This difference is less than the divisor (21 < 35), so we can continue.

Again, round 35 up to the nearest 10.
210 ÷ 40 = ?
21 ÷ 4 = 5

```
      55
35 ) 1,960
     175
      210
      175
       35
```

Again, this difference is not less than the divisor, so 5 is not correct.

```
      56
35 ) 1,960
     175
      210
      210
        0
```

Since 5 did not work, let's try 6.

This difference is less than the divisor (0 < 35).

We have no more numbers to bring down, and we have no remainder.

 Supervisor initial _____

R.p. 501

A good detective will have fun solving these problems. If the first number you try in the quotient doesn't work, track down the next larger number.

Study this example.

```
      36                    37 R1
36 ) 1,333            36 ) 1,333
     108                   108
      253                   253
      216                   252
       37                     1
```

133 ÷ 40 = ?
13 ÷ 4 = 3
3 is correct.

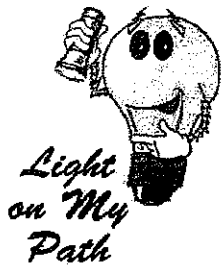
253 ÷ 40 = ?
25 ÷ 4 = 6
6 is not correct because 37 > 36.
Let's try 7.

Divide. If the number you tracked down for the quotient is not correct, just erase and try the next larger number. Remember to round the divisor up or down to the nearest 10 according to our rules for rounding.

(1) 27) 2,189 = 81 R2 (216; 29; 27; 2)

(2) 76) 3,199

(3) 32) 1,378



(4) 25) 1,550

(5) 62) 3,358

(6) 55) 1,815

(7) 66) 3,499

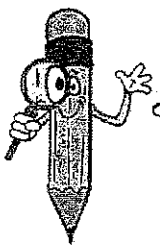
(8) 48) 1,152

(9) 82) 3,526

The apostle Paul found the people of Berea to be good *detectives*. Acts 17:11 tells us, "they . . . searched the scriptures daily . . . ."

Score this page.		Correct mistakes.		Rescore.	

Supervisor initial _____ Please check student's basic understanding of 2-digit divisors. The 2-digit divisor concept will be expanded even more in future PACEs.



How is your detective work going so far?
Are you able to track down the correct numbers?

Divide.

[1] $36\overline{)2,680}$ [2] $56\overline{)1,792}$ [3] $53\overline{)1,908}$ [4] $85\overline{)3,250}$

[5] $24\overline{)578}$ [6] $67\overline{)3,237}$ [7] $75\overline{)3,900}$ [8] $43\overline{)1,777}$

Divide. Check where indicated.

[9] $97\overline{)2,328}$ Check.

[10] $33\overline{)2,805}$ Check.

[11] $86\overline{)2,838}$

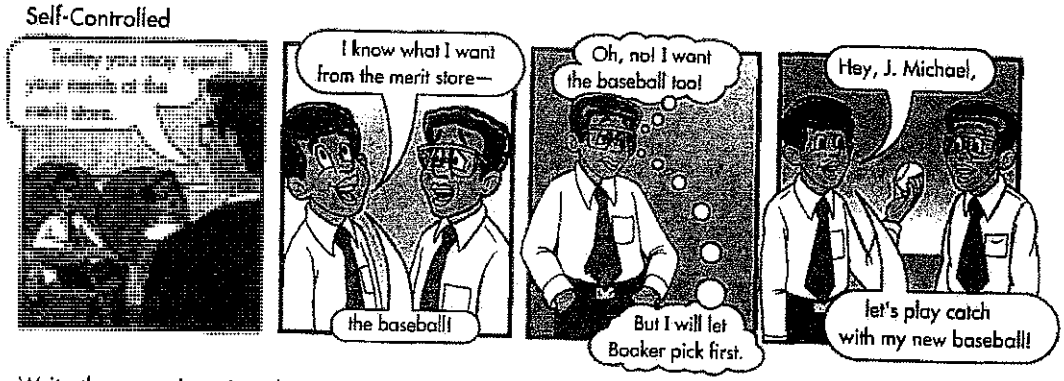
Read and fill in the blanks.

[12] _____ _____ all appearance
of evil.

I Thessalonians 5:22

Score this page.		Correct mistakes.		Rescore.	

Self-Controlled



Write these numbers in columns; then multiply. Follow the 3 steps given on page 19.

(1) 5.1 × 3.18 = (2) 4.2 × 6.43 = (3) 2.5 × 4.5 = (4) 0.7 × 36 =

```
   4
  3.18
 × 5.1
  318
15900
16.218
```

Multiply.

(5) 842 × 0.003 (6) 2.62 × 5.6 (7) 8 × 0.8 (8) 37 × 0.07 (9) 2.45 × 33

(10) 35.7 × 0.04 (11) 80.2 × 3.8 (12) 1.5 × 1.5 (13) 1.29 × 44 (14) 58 × 0.02

Read and fill in the blanks.

(15)

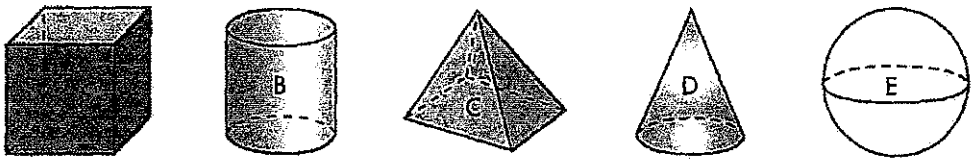
____ ____ ____ ____ ____

__of__ __evil__.

I Thessalonians 5:22

Score this page.		Correct mistakes.		Rescore.	

R.p. 504



Write the letter(s) of the solid figure(s) being described.

(1) pyramid _____

(2) cone _____

(3) cube _____

(4) sphere _____

(5) cylinder _____

(6) a drinking glass has this shape _____

(7) a toy block has this shape _____

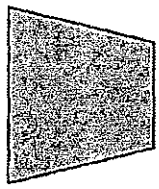
(8) 2 faces _____

(9) 1 face _____

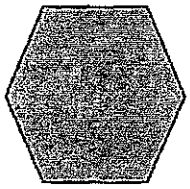
(10) 6 faces _____

Draw all the lines of symmetry through these figures.

(11)



(12)

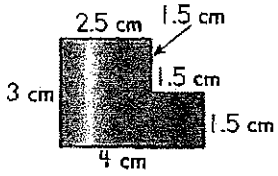


(13)

(14)

Find the perimeter

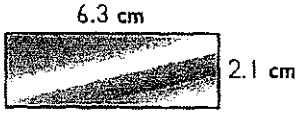
(15)



_____

Find the area.

(16)



_____

Read and fill in the blanks.

(17)

_____ _____ _____ _____

of evil. I Thessalonians 5:22

Score pages 22 and 23		Correct mistakes.		Rescore.	

R.p. 505

Solve these problems. Remember to write number sentences except for activity (2).

(1)

a. The missionaries who spoke in chapel had ministered in Brazil for $9\frac{2}{3}$ years and in Peru for $7\frac{1}{2}$ years. How long had the missionaries ministered in South America?

b. Another missionary speaker and his family had ministered in Africa for $21\frac{3}{4}$ years. For $10\frac{1}{2}$ years, he was in the Congo, and the rest of the time he ministered in Chad. How long was he in Chad?

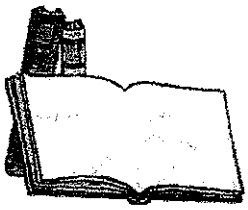
c. Altogether how long had the two families ministered as missionaries?

(2)

The chapter titles in a resource book were written in Roman numerals. Ace read selected chapters from the book. Write the Roman numerals for chapters 9 _____, 16 _____, 24 _____, 35 _____, 47 _____, and 50 _____.

(3)

a. A resource book had a total of 78 pages. What was the average number of pages for each of the 6 chapters?



b. Ace read 12 pages each night for 6 nights. How many pages did he still need to read? Circle your final answer.

Score this page.		Correct mistakes.		Rescore.	

R.p. 506

On the first blank, write the number that is 10 more than the Roman numeral. On the second blank, write the Roman numeral for the number you have written.

(1)	V	_____ _____	(5)	CLII	_____ _____
(2)	XXIV	_____ _____	(6)	CLXV	_____ _____
(3)	XL	_____ _____	(7)	CCIII	_____ _____
(4)	XCIX	_____ _____	(8)	CCCL	_____ _____

Solve these problems. Write number sentences except for activity (10).

(9)

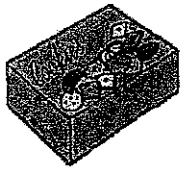
a. The monthly memory verse passage had 7 verses. Mr. Friendson figured it would take 2.75 minutes for the students to write each verse. How long would it take to write the entire passage?

b. Christi wrote the memory verse passage in 14.75 minutes. How much time did she have to check over her work?

(10) Of the 2^4 students who wrote the memory verse passage, 6 finished early. Write this as a ratio. Reduce your answer. _____ Write this as a percent. _____

(11)

a. Christi and her mother baked 168 cookies for the bake sale. They packed the cookies in boxes that held one dozen each. Sandy and her mother baked 162 cookies and packed them in boxes that held one and a half dozen each. How many boxes did they fill? Circle your final answer.



b. Booker's mother bought one of the boxes containing a dozen cookies. So far Booker's family has eaten $\frac{2}{3}$ of them. How many cookies have they eaten?

Score pages 35 and 36.		Correct mistakes.		Rescore.	

Supervisor initial _____ If needed, student should use Math Builder® and/or flashcards for daily drill.

R.p. 507

DEFENDANT'S EXHIBIT

R.p. 509

R.p. 510

R.p. 511

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Midway Christian Academy

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Intro

MCA is on a mission to prepare the next generation to excel spiritually and academically by providing them a Christ centered education.

Page · Religious School

Clover, SC · Blacksburg, SC · Kings Mountain, NC · Hickory Grove, SC · Smyrna, SC

(803) 222-2909

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DEFENDANT'S EXHIBIT

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Midway Christian Academy
September 20 at 1:41 PM ·

Please pray for a beautiful woman and MCA mom Sarah Amburn Ingram !!

And be blessed to be a blessing by one of these sweet shirts

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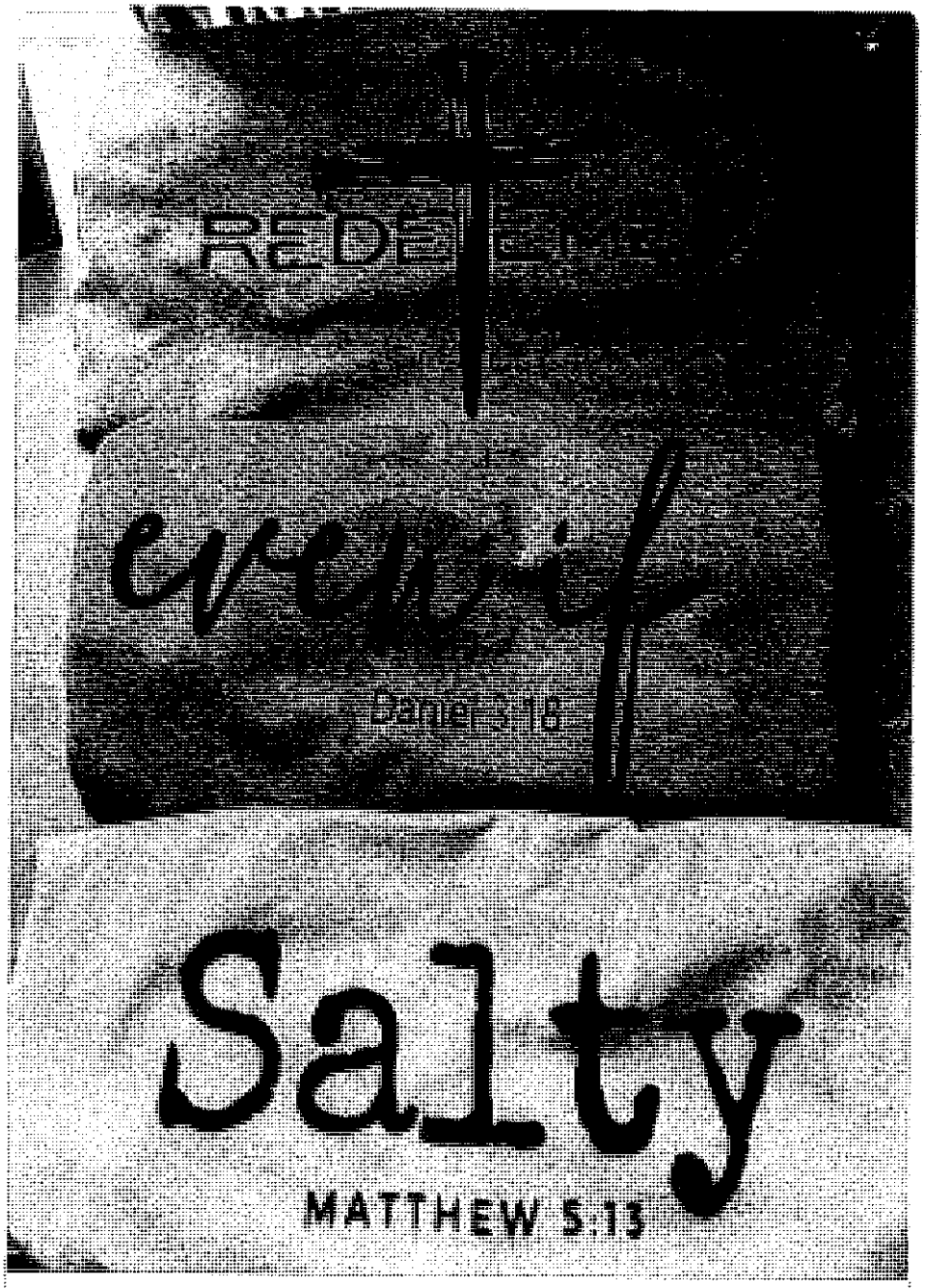

Darla Jordan is with Naptime Creationss and Sarah Amburn Ingram.

September 20 at 11:18 AM ·

My best friend Sarah has been diagnosed with stage 5 kidney disease due to a VERY rare antibody that is attacking her lungs &

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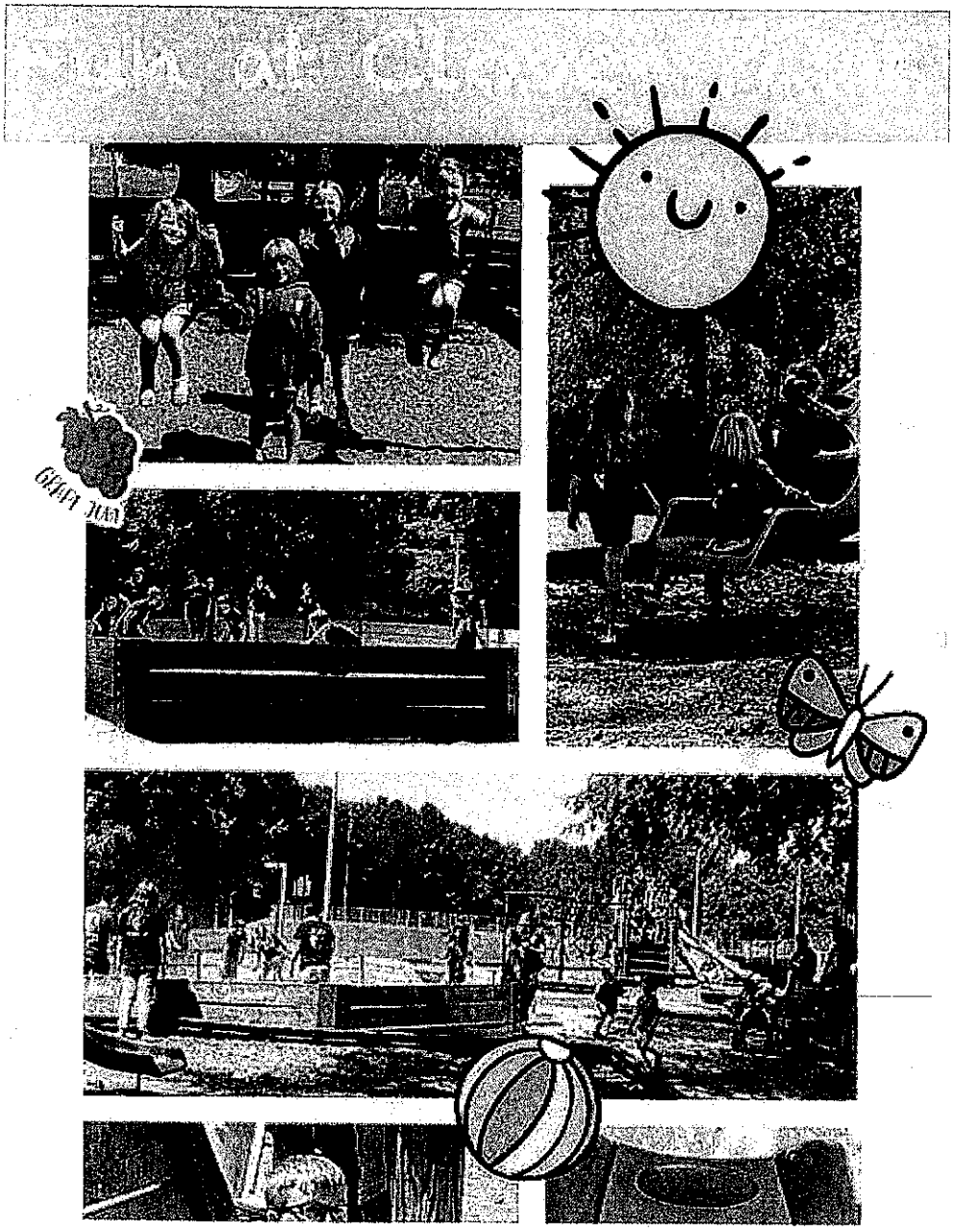
2d

Midway Christian Academy
September 11 at 8:07 AM ·

Picnics & Gaga Ball are what make for a great ending to our field trip day here at Midway Christian Academy! Clover Community Park thank you for such a great place to play!



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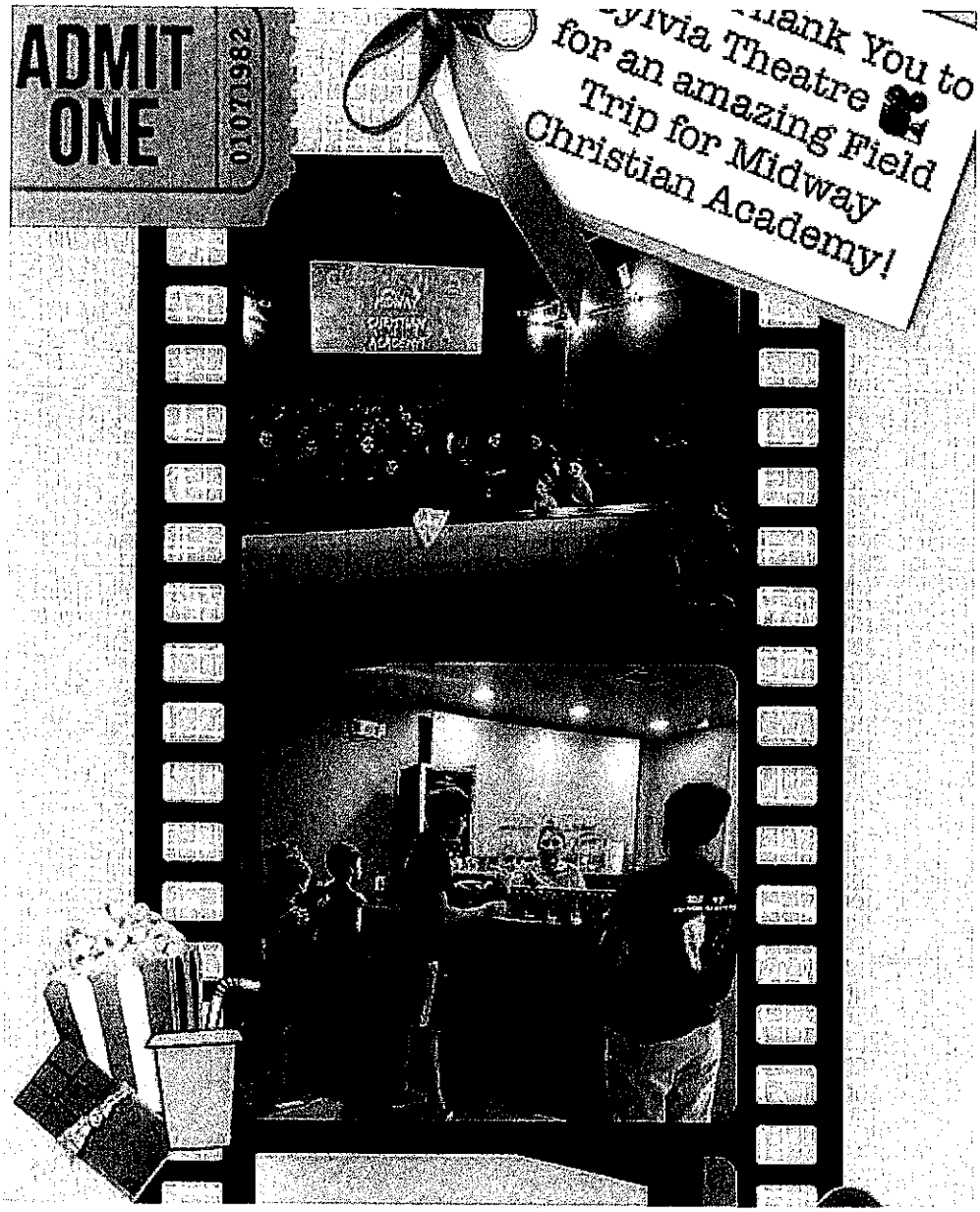
Midway Christian Academy is at **Sylvia Theater**.
September 11 at 7:53 AM ·

Midway Christian Academy had the very best time at The Sylvia Theater - York, SC while watching Family Camp Movie! Mrs.Talisha was absolutely Amazing with taking such awesome care of us and making our first field trip for the school year, exciting!
Check them out and support this local gem ✨ downtown York!



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Midway Christian Academy
September 10 at 3:13 PM ·

MCA QUARTER 1 CALENDAR....

Wow the first nine weeks are almost half over!!! Time flies when working hard and getting it done!

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Midway Christian Academy
September 10 at 12:13 PM ·

MCA QUARTER 1 CALENDAR....

Wow the first nine weeks are almost half over!!! Time flies when working hard and getting it done!

2

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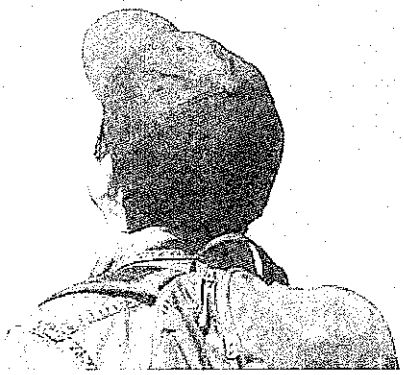
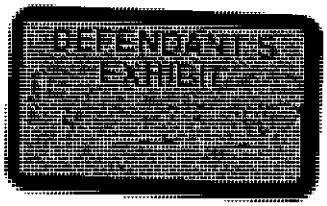
DEFENDANT'S EXHIBIT



Admissions Steps



Welcome on Board

We are passionate about educational ministry, and we want to come alongside our families to support and prepare your children for their very best life with Jesus Christ. We want to offer families a clear vision of what MCA's educational experience will be like for their family. We are here to help our families believe for the blessings and for the spiritual growth that will abound beyond measure when we sow into our children's faith!

Contact our MCA Director and complete our Interest Application.

Parents and guardians are asked to contact us to get more info at midwaydirector@outlook.com. Please share any further questions, comments or concerns. If your family is genuinely interested in our academy, submit a Student Interest Application to initiate the process and

get on our wait list.

2. Prayerfully consider this family commitment.

After carefully reviewing our mission and beliefs, we encourage you to discuss every aspect of this exciting opportunity and pray for discernment regarding the level of involvement that best meets your needs. Also take some time as a family to look at our Statement of Faith. If you decide to proceed with the admissions process, a registration form must be completed for each student.

3. Apply for a local MCA Scholarship.

As we receive donations through our Partnerships page, we will let our families know. Please complete the application to be on our scholarship recipient list if there is a financial need. Through this program, we hope to be able to serve more and more families in our community!

*** Above this point all steps are informational and optional. Steps beyond this point require a commitment of time, information, and money. ***

4. Complete the Enrollment Form.

The parents complete the application sharing responses about their background, their understandings of Christian faith and education, and their hopes, desires, and expectations for their children's education.

5. Complete our Registration Form.

Submitting the MCA Registration form requires paying a non-refundable application and placement testing fee of $100.

6. Schedule the prerequisite core subject placement test for each student.

The purpose of the testing is to affirm that the student is adequately prepared and equipped for the courses and grade level he or she will be entering at MCA. Sometimes, knowledge or concept gaps are identified that can be tended to in the months before the start of classes to ensure we are preparing the student for academic success. This testing will be schedule with the director and held onsite; typically for two mornings 8:30-10:30am.

7. Pay Curriculum Fee and Register for Courses.

Complete Course Registration for each student after the curriculum fee is paid of $300. High school students can also register for dual credit electives which are offered as additional costs to the tuition with affiliated colleges.

8. Pay Tuition.

You will receive confirmation of acceptance and tuition requirements. Tuition is due before classes begin or on an agreed payment schedule. You may pay in full at the time of registration, pay in two installments for each semester, or pay monthly. Payments are due by the first of each month starting in August. See Registration Form for agreement and policies with more detailed information.

9. Apply for After School Care.

If your family needs After School Care, please fill out the student application. This care will be available on full school days up until 6:00pm for an additional fee.

10. Come see us! Schedule a tour to visit our MCA campus!

Contact our Director to schedule a tour either during school hours, after school, or during the summer months! Our door is always open to see what we do! Before school begins in August, parents will also be invited to an MCA Open House. At this time, your family and child will meet and greet the teacher and fellow classmates!

Get in Touch

Midway Christian Academy

midwaydirector@outlook.com

803-222-2909

12984 Hwy 55 W, York SC 29745

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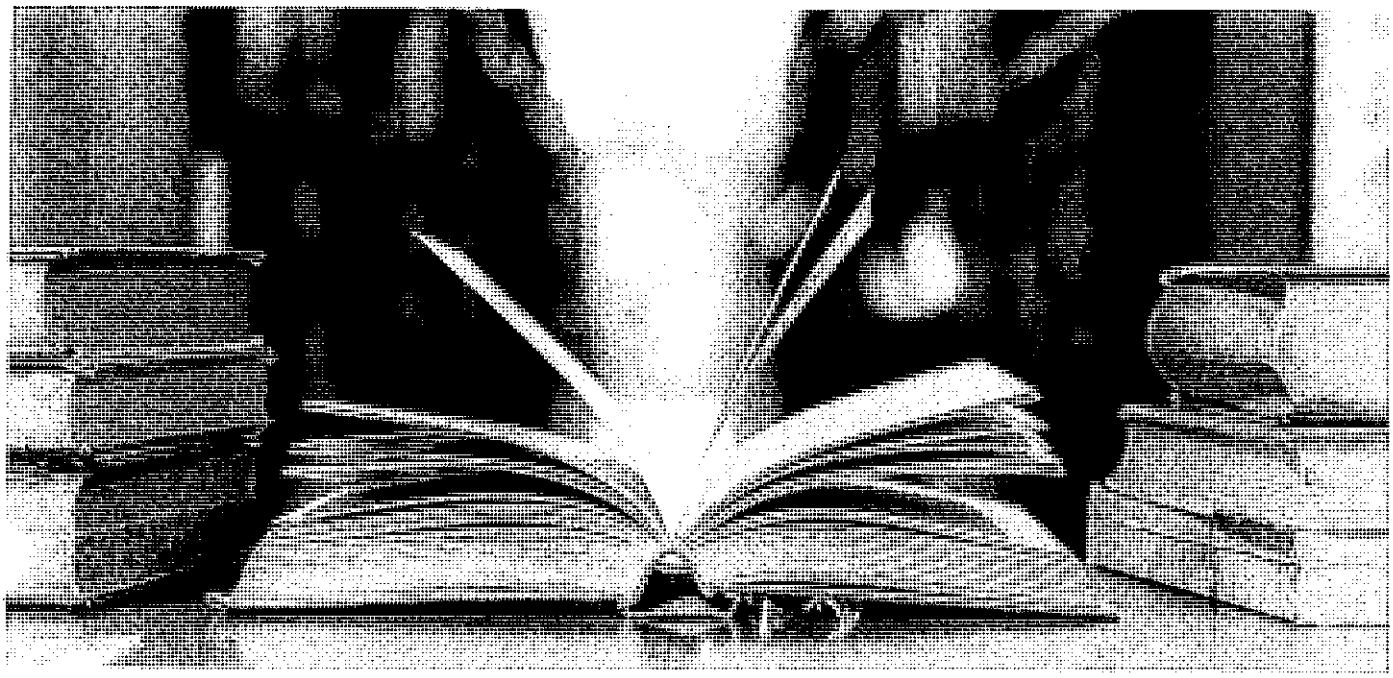

MCA Tuition & Fees

Invest in Your Child

Private education requires tuition. MCA receives no government funding, and we are fortunate to be ministry of Midway Baptist Church where financial support is at heart. At MCA, we made a real effort to budget and keep costs as minimal and as simple as possible for our families.

TUITION CONTRACT:

REGISTRATION FEE

$100.00 (Non-Refundable. Includes Accreditation & Standard Pre-Assessment Costs.)

CURRICULUM

$300.00 (Non-Refundable plus $40 each additional elective per Book Fees List.)

DEFENDANT'S EXHIBIT

TUITION

$4,600.00 (See Refund Policy.)

TOTAL DUE

$ 5,000.00

Registration Fee of $100 should be paid upon registration. Curriculum Costs of $300 must be paid in full as soon as possible. Tuition can be paid in full by July 1 and a 5% discount will be given on tuition only for a max discount of $250.00.

Midway Baptist Church members and MCA employees also receive a 5% discount for a max discount of $250.00/child. All families will receive a 5% discount for every child after the first child. Tuition of $4600 can also be divided into 10 or 12 installments. The first payment is due on or before August 1st with the final payment due on or before May 1st or July 1st. Ten month payments total $460.00. Twelve month payments total $383.33.
Any tuition not received by the 1st of each month will be charged a $10 late fee per day, unless other arrangements have been made with the administrator. Please include any late fees automatically with your tuition payment.

You may pay tuition by using one of these methods: Cash, Check, Money Order, or Online.

Fees required for any additional state testing: Iowa State Testing, PSAT, SAT, ACT, etc. will be paid at the time of testing. Fees required for student trips will be paid by due dates provided.

Refund Policy. When tuition is paid in full, a prorated refund will be given excluding the current month. When tuition is paid monthly, no tuition will be refunded if the student is withdrawn. We will not refund any registration, testing fees, or curriculum costs. Curriculum remains as MCA property. If a student's account falls past due more than 30 days, he or she will be placed on academic probation and removed from the program until all financial matters have been cleared.

Open Registration Form

Midway Christian Academy

midwaydirector@outlook.com

803-222-2909

12984 Hwy 55 W, York SC 29745

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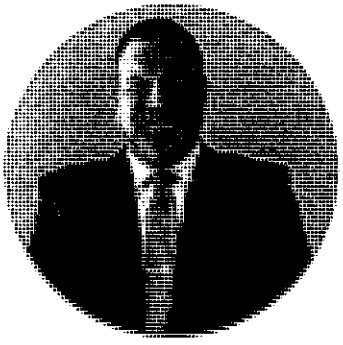
Midway Christian Academy

A Ministry of

Midway Baptist Church

Home About Academics Admissions After School Our Team Partnerships Contact



Mark Dellinger

MBC/MCA Pastor

Amy Comer Moss

MCA Director

Marissa Cross

Teacher K5-1

DEFENDANT'S EXHIBIT

Nikki Allen

Teacher 5-6

More MCA Staff

MCA Secretary:

Paula Traylor

MCA School Board Members:

Chrisopher Allen

Luke Dellinger

Bobby Smith

Stanley Trayler

Now therefore hearken unto me, O ye children: for blessed are they that keep my ways.

Hear instruction, and be wise, and refuse it not.

Blessed is the man that heareth me, watching daily at my gates, waiting at the posts of my doors.

For whoso findeth me findeth life, and shall obtain favour of the Lord.

Proverbs 8:32-36

Midway Christian Academy

midwaydirector@outlook.com

803-222-2909

12984 Hwy 55 W, York SC 29745

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PLANNING & DEVELOPMENT SERVICES
18 W. LIBERTY STREET, PO Box 96, YORK, SC 29745-0096
PHONE (803) 909-7200 / FAX (803) 909-7227

COMMERCIAL BUILDING PLAN REVIEW APPLICATION

- **This application is for building plan review only.**
- **Once plans are approved, a permit application is required to start the permit process.**
- **Permit applications require 1 to 2 days for processing.**

Project name: Change of Occupancy, Midway Baptist Date submitted: 04/25/2022

Project address: 12984 State Hwy 55, York, SC 29745

Project #: _____ Tax Map #: ID 1810000030

PLAN TYPE:

- ☐ Existing building with interior additions (upfit)
- ☐ New building with completed interior
- ☐ Electrical/mechanical/plumbing plan submittal only
- ☐ New building with no interior additions (shell)
- ☐ Exterior addition to existing building
- ■ Other: Change of Occupancy - all work proposed is for compliance with

Description of proposed work: Change of Occupancy requirements.
Create 1-hour rated corridor. Improve wall finishes. New electrical.

PROJECT COORDINATOR INFORMATION:

Company: Midway Baptist Contact: Amy Moss

Address: 12984 State Hwy 55, York, SC 29745

Phone: 803-222-2909 Email: MidwayDirector@outlook.com

PROPERTY OWNER INFORMATION:

Name & address: Midway Baptist Church

Phone: 803-222-2909 Email: MidwayDirector@outlook.com

DEFENDANT'S EXHIBIT 328 7-25-1917

Continued next page

3/12/2020 (EM)

TENANT INFORMATION:

Business name: Midway Christian School Contact: _____

Phone: _____ Email: _____

Use(s):

- ☐ Retail store
- ☐ Storage/warehouse
- ☐ Factory/industrial
- ☐ Apartment
- ☐ Business office
- ☐ Hazardous
- ☐ Townhome
- ■ Educational
- ☐ Assembly/restaurant/church
- ☐ Institutional/dependent care
- ☐ Other (please explain): Changing A-3 educational space to E educational space for starting a Christian School.

ARCHITECT INFORMATION:

Company: Talley & Smith Architecture Contact: Bob Smith, AIA

Address: 409 E. Marion St., Shelby, NC 28150 (PO Box 518, 28151)

Phone: 704-487-7082 Email: Bob@TalleySmithArch.com

License #: SC 5839

ENGINEER INFORMATION:

Company: MSWG Engineers Contact: Craig Champion, PE

Address: 4223 South Blvd., Charlotte, NC 28209

Phone: 704-527-2112 Email: CChampion@MSWG.com

License #: SC 20133

OTHER:

Company: _____ Contact: _____

Address: _____

Phone: _____ Email: _____

License #: _____

Any information provided on this document may be subject to the South Carolina Freedom of Information Act and may be disclosed to third parties in accordance with applicable law.

3/12/2020 (EM)

422 S.C. 264
Supreme Court of South Carolina.

Jacklyn DONEVANT, Respondent,
v.
TOWN OF SURFSIDE BEACH, Petitioner.

Appellate Case No. 2015-002533
|
Opinion No. 27771
|
Heard October 18, 2017
|
Filed February 28, 2018
|
Rehearing Denied April 17, 2018

Synopsis

Background: Former town **building official** brought wrongful termination action against town, asserting she was fired in retaliation for issuing a stop-work order. A jury returned a verdict in favor of former official, and town moved for a directed verdict which the Circuit Court, Horry County, Deadra L. Jefferson, J., denied. Town appealed. The Court of Appeals, Lockemy, J., 414 S.C. 396, 778 S.E.2d 320, affirmed. Town petitioned for writ of certiorari.

[Holding:] The Supreme Court, Few, J., held that former official's claim fell within public policy exception to at-will employment.

Affirmed.

Procedural Posture(s): On Appeal; Petition for Writ of Certiorari; Motion for Judgment as a Matter of Law (JMOL)/ Directed Verdict.

West Headnotes (1)

[1] Public Employment ⇦ Indefinite term; employment at-will

Public Employment ⇦ Grounds for and Propriety of Adverse Action

Towns ⇦ Appointment or election, qualification, tenure, and removal of officers or employees

Former town **building official's** wrongful termination claim fell within public policy exception to at-will employment; former official was not fired for taking a discriminatory action by issuing a stop work order on a town-owned restaurant, but rather, for carrying out her mandatory legal duty to **enforce** compliance with the **building code** when she discovered work being done without a proper permit, which she correctly determined to be in violation of the **building code**. S.C. Code Ann. § 6-9-30(A).

1 Case that cites this headnote

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Horry County, Deadra L. Jefferson, Trial Court Judge

Attorneys and Law Firms

Charles Franklin Thompson Jr., of Malone, Thompson, Summers & Ott, LLC, of Columbia, for Petitioner.

Henrietta U. Golding and James K. Gilliam, both of McNair Law Firm, of Myrtle Beach, for Respondent.

Opinion

JUSTICE FEW:

***265** The court of appeals affirmed a jury verdict for Jacklyn Donevant in her wrongful termination action against the Town of Surfside Beach, finding her cause of action fit within the public policy exception to the at-will ****745** employment doctrine. *Donevant v. Town of Surfside Beach*, 414 S.C. 396, 778 S.E.2d 320 (Ct. App. 2015). The Town contends the court of appeals' decision "greatly expanded the public policy exception." We find the Town has misinterpreted the court of appeals' opinion. We affirm.

The court of appeals set forth the facts of the case in detail. 414 S.C. at 399-404, 778 S.E.2d at 322-25. We summarize below those facts necessary to explain our interpretation of the court of appeals' opinion.

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DEFENDANT'S EXHIBIT
S-23-1407

The South Carolina **Building Codes** Council [1] is responsible for adopting the **building code** that applies throughout the state. *See* S.C. Code Ann. §§ 6-9-40(A), 6-9-50(A) (Supp. 2017); 1 S.C. Code Ann. Regs. 8-236 (2011). The Council has adopted the International **Building Code**. *See* 1 S.C. Code Ann. Regs. 8-800 (Supp. 2017). Each municipality is responsible for **enforcing** this **building code** in its jurisdiction. *See* S.C. Code Ann. § 6-9-10(A) (Supp. 2017) (requiring all municipalities **enforce** the **building code** adopted by the South Carolina **Building Code** Council). Before she was fired, Donevant served as the Town's "**building official**," a position each municipality is required to fill. S.C. Code Ann. § 6-9-30(A) (Supp. 2017). The **building official's** responsibilities are defined in the State regulations. *See* 1 S.C. Code Ann. Regs. 8-105 (2011) (defining "**building official**" as "the officer designated by a local jurisdiction, who is charged with the administration and ***266 enforcement** of **Building Codes**"). Chapter 1 of the **building code** provides, "The **building official** shall ... **enforce** compliance with the provisions of this code" and "shall issue all necessary notices or orders to ensure compliance." Int'l Bldg. Code §§ 104.2, 104.3 (2006). [2]

The **building code** requires anyone "who intends to construct, enlarge, alter, [or] repair ... a building ... shall first ... obtain the required permit." Int'l Bldg. Code § 105.1. The **building code** further provides, "It shall be unlawful for any person ... to erect, construct, alter, ... [or] repair ... any building ... in conflict with or in violation of any of the provisions of this code." Int'l Bldg. Code § 113.1. Donevant discovered unpermitted construction work she determined to be in violation of the **building code**, and she issued a stop work order. [3] She was fired a few days later.

Our Legislature established the general public policy of **enforcing** the **building code** in subsection 6-9-5(A) of the South Carolina Code (Supp. 2017), which provides, "The public policy of South Carolina is to maintain reasonable standards of construction in buildings and other structures in the State consistent with the public health, safety, and welfare of its citizens." The Legislature set forth the specific requirements of that policy by requiring every municipality to **enforce** the **building code**. § 6-9-10(A). As the Town's **building official**, Donevant was charged by State and local law to carry out this policy. *See supra*, discussion of S.C. Code Ann. § 6-9-30(A), 1 S.C. Code Ann. Regs. 8-105, and Int'l Bldg. Code §§ 104.2, 104.3. When she discovered construction work being done without a permit, which she correctly determined to be in violation of the **building code**, it became her mandatory responsibility to "ensure compliance."

As we read this record and the court of appeals' opinion, Donevant was fired because she carried out her mandatory ***267** responsibility under the law to **enforce** the provisions of the **building code**. The jury charge and the closing arguments are not in the record, which prevents us from determining the precise factual question the trial court put before the jury. However, during oral argument at the court of appeals, "the Town conceded that the reason Donevant was fired is not an issue on appeal." *Donevant*, 414 S.C. at 408, 778 S.E.2d at 327. Therefore, based on the record as it appears to us, the question on appeal is whether it is a violation of a clear mandate of public policy to fire a **building official** for ****746 enforcing** the **building code**. *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985). As the court of appeals held, the answer is "yes." This case fits squarely within the long-established limits of the public policy exception to the at-will employment doctrine because firing Donevant for **enforcing** the **building code** violates a clear mandate of public policy. *See Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636-37 (2011) ("Under the 'public policy exception' to the at-will employment doctrine ... an at-will employee has a cause of action in tort for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy." (citing *Ludwick*, 287 S.C. 219, 337 S.E.2d 213)).

The Town makes several arguments to support its contention the court of appeals' decision expands the public policy exception, each of which we find the court of appeals effectively refuted. We address in particular only one of those arguments—the argument Donevant's claim does not fit within the public policy exception because her decision to issue a stop work order was discretionary under *Antley v. Shepherd*, 340 S.C 541, 532 S.E.2d 294 (Ct. App. 2000), *aff'd as modified*, 349 S.C. 600, 564 S.E.2d 116 (2002). In *Antley*, the court of appeals held the public policy exception does not apply when an employee is fired for taking action she is "permitted, but not required" by law, to take. 340 S.C. at 549, 532 S.E.2d at 298. The Town argues the court of appeals' decision is in conflict with *Antley* because she was fired for taking the discretionary action of issuing a stop work order.

We do not read the court of appeals' opinion to be in conflict with *Antley*. Distinguishing *Antley* from this case, the court of appeals explained that "unlike *Antley*, where the statutes

*268 'permitted but did not require' the tax assessor to take action, the statutory and building code provisions at issue here *required* Donevant's actions of enforcing compliance with the building code." 414 S.C. at 413, 778 S.E.2d at 329 (quoting *Antley*, 340 S.C. at 549, 532 S.E.2d at 298) (emphasis in original). Thus, according to the court of appeals, *Antley* does not control this case because Donevant was not fired for taking the discretionary action of issuing the stop work order. Rather, she was fired for carrying out the building official's mandatory legal duty to "enforce compliance" with the building code. We agree with the court of appeals. While some statements in the court of appeals' opinion may suggest Donevant was fired for taking the discretionary action of issuing the stop work order,[4] the basis of the court's decision—with which we agree—is that the public policy exception applies to her claim because she was fired for enforcing the building code. Under the circumstances of this case, firing Donevant for carrying out her mandatory responsibility to enforce the building code violates public policy.

The court of appeals' decision is **AFFIRMED.**

BEATTY, C.J., KITTREDGE, JAMES, JJ., and Acting Justice Donald Bruce Hocker, concur.

All Citations

422 S.C. 264, 811 S.E.2d 744, 2018 IER Cases 66,954

Footnotes

1 The Council is an agency within the South Carolina Department of Labor, Licensing, and Regulation. S.C. Code Ann. § 1-30-65 (2005).

2 Although municipalities are not required to adopt Chapter 1, *see* § 6-9-50(A), the Town chose to do so. *See* Surfside Beach, S.C., Ordinance No. 08-0641 (July 8, 2008) (adopting Chapters 1 through 35 of the 2006 Int'l Bldg. Code).

3 A stop work order is an official document signed by the building official that requires all construction at the site to cease. Int'l Bldg. Code §§ 114.1-114.3.

4 The court of appeals stated "to carry out her legal duty to 'enforce compliance' with the building code, Donevant issued a stop-work order as she was required to do by law," 414 S.C. at 413, 778 S.E.2d at 329, and, "By suspending Donevant and ultimately terminating her for issuing the stop-work order at the Pier Restaurant, Duckett effectively discharged Donevant for refusing to violate the law," 414 S.C. at 413, 778 S.E.2d at 330. We do not read these statements to say Donevant was fired because she chose to issue a stop work order as the means of enforcing the building code, but to merely explain the particular action she took in fulfilling her mandatory duty. As the court of appeals also stated, "Donevant was enforcing the building code and therefore enforcing a clear mandate of public policy when she issued the stop-work order," 414 S.C. at 415, 778 S.E.2d at 331, and, "the law required Donevant to take action to enforce compliance with the building code when she saw unpermitted construction," 414 S.C. at 411, 778 S.E.2d at 328.

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62 S.W.3d 217
Court of Appeals of Texas,
Eastland.

CHRISTIAN ACADEMY OF ABILENE, Appellant,
v.
CITY OF ABILENE, Appellee.

No. 11–99–00342–CV.
|
Aug. 16, 2001.

Synopsis

City sued private religious school, seeking injunction for alleged violations of building code. The 350th District Court, Taylor County, Jess Holloway, J., granted injunction. School appealed. The Court of Appeals, W.G. Arnot, III, C.J., held that: (1) Texas Religious Freedom Act did not apply to action; (2) trial court was not required to enter findings regarding compelling government interest or least restrictive means; and (3) evidence supported finding that substantial danger of injury or adverse health impact existed at school.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (5)

[1] **Civil Rights** ⇐ Retrospective application

Texas Religious Freedom Act did not apply to city's suit for injunction against private religious school for alleged building code violations, where Act was enacted after cause of action accrued. V.T.C.A., Civil Practice & Remedies Code § 110.001 et seq.

[2] **Constitutional Law** ⇐ School facilities

Injunction ⇐ Findings and conclusions

Trial court was not required under First Amendment to enter findings regarding compelling government interest or least restrictive means in city's suit against private religious school seeking injunction based on building code violations; compelling governmental interest did not have to be shown to justify a generally applicable, religion-neutral law that had the effect of burdening a particular religious practice. U.S.C.A. Const.Amend. 1.

1 Case that cites this headnote

[3] **Appeal and Error** ⇐ Review for factual or legal sufficiency; "no evidence" review

Appeal and Error ⇐ Legal sufficiency or "no evidence" in general

In order to address a no-evidence argument, an appellate court must consider only the evidence and inferences that tend to support the finding, disregarding any evidence or inferences to the contrary; if there is any evidence of probative force to support the finding, the no-evidence point must be overruled.

[4] **Appeal and Error** ⇐ Manifest weight; manifestly contrary

In order to determine if evidence is factually sufficient, the Court of Appeals must review all of the evidence and determine whether the challenged finding is so against the great weight and preponderance of the evidence as to be manifestly unjust.

[5] **Health** ⇐ Buildings, structures, and building components

Evidence supported finding that substantial danger of injury or adverse health impact existed at private religious school, or that school building failed to comply with applicable building code; evidence showed that building did not have fire-resistant protection on walls or structural members, and did not have approved manual fire alarm system and either one-hour construction or sprinkler system.

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DEFENDANT'S EXHIBIT 9 to Def

Attorneys and Law Firms

***218** Randall L. Rouse, Lynch, Chappell & Alsup, Midland, Sharon Hicks, City Attorney's Office, Abilene, for appellant.

Megan R. Santee, City Attorney's Office, T. Daniel Santee II, Asst. City Atty., Abilene, for appellee.

Panel consists of ARNOT, C.J., and WRIGHT, J., and McCALL, J.

Opinion

W.G. ARNOT, III, Chief Justice.

This is an appeal from an order granting a permanent injunction against the Christian Academy of Abilene. [1] The Academy was enjoined from operating a school at 301 Palm Street in Abilene, Texas. The City of Abilene asserted and the trial court found that the building used by the Academy for school purposes violated city ordinances by failing to meet certain life-safety measures and that the building created a substantial danger of injury or adverse health impact. The Academy appeals. We affirm.

The Academy presents five issues for review. In the first issue, the Academy complains about the failure of the trial court to notify the Academy of the findings of fact and conclusions of law as required by TEX.R.CIV.P. 297. On April 5, 2001, this appeal was abated in order to allow the Academy to file a request for additional findings and conclusions and to allow the trial court to respond to the Academy's request. The Academy's request and the trial court's response have been filed in this court in a supplemental clerk's record. Consequently, the first issue on appeal has previously been resolved and is now overruled.

[1] In the second issue, the Academy contends that the trial court erred by failing to apply the standards enumerated in the Texas Religious Freedom Act. ***219** TEX. CIV. PRAC. & REM. CODE ANN. § 110.001 et seq. (Vernon Supp.2001). Although the Academy asserted the Texas Religious Freedom Act as a defense, the Act does not apply in this case because the cause of action accrued prior to the effective date of the Act. See Section 110.002 historical note. The Act became effective on August 30, 1999, and this suit was filed in 1998. Therefore, the second issue is overruled.

[2] In the third issue, the Academy contends that the trial court erred by failing to apply the standards enumerated in *Employment Division, Department of Human Resources of Oregon v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990). In that case, the Supreme Court dealt with the Free Exercise Clause of the First Amendment and concluded that a compelling governmental interest need not be shown to justify a generally applicable, religion-neutral law that has the effect of burdening a particular religious practice. See also *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993). Thus, the trial court properly applied the standards enumerated in *Employment Division* and did not err in refusing to enter findings regarding a compelling governmental interest and least restrictive means. Moreover, the Texas Supreme Court has held: "[A]s a matter of law, the State has a compelling interest of the highest order in protecting" the health and safety of children. *State v. Corpus Christi People's Baptist Church, Inc.,* 683 S.W.2d 692, 696 (Tex.1984), *cert. dism'd,* 474 U.S. 801, 106 S.Ct. 32, 88 L.Ed.2d 26 (1985)(upholding State licensing requirement imposed on church-operated childcare facility); see also *First Assembly of God, Alexandria, Virginia v. City of Alexandria, Virginia,* 739 F.2d 942 (4th Cir.), *cert. den'd,* 469 U.S. 1019, 105 S.Ct. 434, 83 L.Ed.2d 360 (1984); *Hough v. North Star Baptist Church,* 109 Mich.App. 780, 312 N.W.2d 158 (1981)(imposing fire safety standards on church building that was also used as a private school did not impermissibly burden the free exercise of religion). The third issue is overruled.

[3] **[4]** In the fourth and fifth issues, the Academy argues that there is no evidence or insufficient evidence to support the trial court's findings that a substantial danger of injury or adverse health impact existed and that the building failed to comply with the applicable building code. In order to address the no-evidence argument, we must consider only the evidence and inferences that tend to support the finding, disregarding any evidence or inferences to the contrary. If there is any evidence of probative force to support the finding, the no evidence point must be overruled. *Juliette Fowler Homes, Inc. v. Welch Associates, Inc.,* 793 S.W.2d 660 (Tex.1990); *In re King's Estate,* 150 Tex. 662, 244 S.W.2d 660 (1951); see also *Merrell Dow Pharmaceuticals, Inc. v. Havner,* 953 S.W.2d 706, 711 (Tex.1997), *cert. den'd,* 523 U.S. 1119, 118 S.Ct. 1799, 140 L.Ed.2d 939 (1998). In order to determine if the evidence is factually sufficient, we must review all of the evidence and determine whether the challenged finding is so against the great weight and

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preponderance of the evidence as to be manifestly unjust. *Pool v. Ford Motor Company*, 715 S.W.2d 629 (Tex.1986); *In re King's Estate, supra*.

[5] The trial court found that the City had adopted by ordinance the 1994 and 1997 versions of the Uniform Building Code and that the occupancy classification for the building's use as a school is Group E, Division 1, Educational. See ABILENE, TEX., BUILDING CODE Ordinances # 6–1995 & 51–1998 (1995 & 1998). In order to comply with the requirements of that classification, the Academy must *220 meet certain life-safety measures to ensure the health, safety, and welfare of its students.[2] The trial court found that the Academy was not in compliance.

The trial court's findings are supported by the testimony of Cassie Hughes, the City's building official; by Terry Williams, a registered professional engineer; and by Ed Williams, the City's fire marshal. Hughes testified that the Academy's noncompliance and failure to have a certificate of occupancy came to light in August of 1997 when the Academy applied for a permit to add a stairwell to the basement so that it could be used as a lunchroom. She testified that the building being used by the Academy was a two-story addition to the Abilene Community Church and was built in 1956–57. The Academy began using the building as a school in 1985. The Academy did not obtain a certificate of occupancy from the City when it changed the use of the building and began using it for educational purposes.

Hughes inspected the building to determine if it complied with the Abilene Building Code. Hughes stated that, for purposes of the Code, a private school is treated the same as a public school. The Code does not allow educational occupancy above or below the first floor unless it has "a rated construction," which is a "fire-resistive protection." The building used by the Academy was "non-rated," which means that it had no fire-resistant protection on the walls or structural members. Hughes testified that, in order to be in compliance, the building needs to have an approved manual fire alarm system and either "one-hour construction" or a sprinkler system. According to Hughes, the building has never complied for use as a school and does not meet the minimal life-safety requirements. Hughes also stated that the Academy's building poses a substantial danger to its students from fire and smoke because of the type of construction, the non-rated corridors, and the age of the building.

Terry Williams testified that there are compliance problems with the Academy's smoke detection system, the narrow corridors, the hollow doors, and the chipboard and wood construction. Ed Williams testified that the Academy's building was not safe and that it did not meet the Code requirements involving type of construction, fire alarm system, and rated corridors. Furthermore, although the Academy's expert witness testified that the building was safe and posed no substantial danger, he admitted that the classroom doors did not comply with the Code. The Academy's expert also testified that, in his opinion, the steps taken by the Academy to make its building safer made it equivalent to one-hour fire-resistive construction. Rob Prulhiere, the headmaster of the Academy, testified that he had attempted to make the changes required by the City but that the Academy was not able to make all of the required changes because of the financial burden involved. Prulhiere stated that the building was safe and that, in fire drills, all students and personnel were able to exit the building in 55 seconds.

We hold that the trial court's findings are supported by sufficient evidence to *221 withstand both a no-evidence challenge and an insufficient-evidence challenge. There is more than a scintilla of probative evidence that supports the findings, and the findings are not so against the great weight and preponderance of the evidence as to be manifestly unjust. The fourth and fifth issues are overruled.

The judgment of the trial court is affirmed.

All Citations

62 S.W.3d 217

Footnotes

1 TEX. LOCAL GOV'T CODE ANN. § 54.012 et seq. (Vernon 1999) establishes the availability of civil actions and injunctions as a remedy for violations of municipal ordinances regarding health and safety.

2 The Academy asserts that, because its building complies with the Code's requirements and is, therefore, safe for purposes of church and Sunday school, the building is also safe for use as a school. However, a building being used for church and Sunday school is classified differently than one being used as a school. In determining that a school must comply with stricter safety requirements, the drafters of the Building Code may have considered the extended amount of time a child spends at school, the use of various appliances to cook lunch, and the increased use of electrical equipment.

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Ordinance No. 5522
Date Adopted: December 5, 2022

AN ORDINANCE

TO AMEND THE YORK COUNTY CODE OF ORDINANCES, CHAPTER 92, FIRE PREVENTION CODE, TO UPDATE SECTIONS 92.28 (RESPONSIBILITY FOR ENFORCEMENT), 92.29 (FIRE PREVENTION BUREAU), AND 92.30 (STANDARD FIRE PREVENTION CODE, PORTIONS ADOPTED), TO DESIGNATE THE DIRECTOR OF FIRE SAFETY AS THE FIRE OFFICIAL AND TO ADOPT THE MOST RECENT FIRE CODE BY REFERENCE; TO AMEND THE YORK COUNTY CODE OF ORDINANCES, CHAPTER 150, BUILDING REGULATIONS, TO UPDATE SECTIONS 150.04 (BUILDING CODE), 150.05 (ELECTRIC CODE), 150.07 (GAS CODE), 150.08 (PLUMBING CODE), 150.09 (MECHANICAL CODE), AND 150.11 (INTERNATIONAL EXISTING BUILDING CODE), TO ADOPT THE MOST RECENT CODES BY REFERENCE, AS MODIFIED AND ADOPTED BY THE SOUTH CAROLINA BUILDING CODES COUNCIL FOR MANDATORY ENFORCEMENT BY ALL JURISDICTIONS WITHIN THE STATE OF SOUTH CAROLINA; TO PROVIDE FOR A PUBLIC HEARING; AND TO PROVIDE FOR OTHER MATTERS RELATING THERETO.

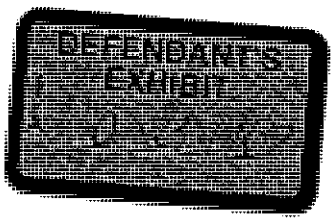
BE IT ORDAINED AND ENACTED BY THE COUNTY COUNCIL OF YORK COUNTY, SOUTH CAROLINA:

SECTION 1. Legislative findings.

As an incident to the adoption of this ordinance, the York County Council, as the governing body of York County, South Carolina, has made the following legislative findings:

1.1. The international codes regulating building construction, as modified and adopted by the South Carolina Building Codes Council pursuant § 6-9-50(A) of the South Carolina Code of Laws and as enforced by York County pursuant to § 6-9-10 of the South Carolina Code of Laws have been revised. In order to apply the appendices and administrative provisions within the most recently adopted international codes, York County must adopt the codes as modified by the South Carolina Building Codes Council.

1.2. Council finds that this ordinance will serve the public safety, health, and general welfare of York County and its citizens by allowing the County to apply and enforce the specified appendices and administrative procedures and guidelines as found in the respective and applicable International Fire Code, International Building Code, International Residential Code, National Electrical Code, International Fuel Gas Code, International Plumbing Code, International Mechanical Code, and International Existing Building Code.



SECTION 2. Code of York County Amended.

Chapter 92, FIRE PREVENTION CODE, and Chapter 150, BUILDING REGULATIONS, are hereby amended in the particulars established in Exhibit A, attached and incorporated herewith by reference.

SECTION 3. Public Hearing Required.

Pursuant to York County Code of Ordinances § 30.14 and South Carolina Code of Laws § 4-9-130, the York County Council shall conduct a public hearing, which shall be held after publishing a notice of the date, time and place of such hearing at least fifteen (15) days in advance of such hearing and before final legislative action is taken for the adoption of this ordinance.

SECTION 4. Severability.

The provisions of this ordinance are hereby declared to be severable, and if any provision or section of this ordinance is declared to be unconstitutional or unenforceable by the final order of a court of competent jurisdiction, such declaration shall not affect the constitutionality, legality, or enforceability of any other section or provision of this ordinance, which shall be deemed severable, valid, enforceable, and effective.

SECTION 5. Repeal of inconsistent sections and ordinances.

All sections of the York County Code of Ordinances and all York County ordinances in conflict with this ordinance are hereby amended to the extent of such conflict.

SECTION 6. Effective date.

This ordinance shall take effect on January 1, 2023.

ADOPTED THIS 5th DAY OF Dec., 2022.

YORK COUNTY COUNCIL

BY: _____
Christi P. Cox, Chairwoman

First Reading: November 7, 2022
Second Reading: November 21, 2022
Public Hearing: November 21, 2022
Third Reading: December 5, 2022

Attest: _____
David E. Hudspeth
County Manager

EXHIBIT A

York County Code of Ordinances, Chapter 92, Fire Prevention Code, Section 92.28 RESPONSIBILITY FOR ENFORCEMENT is hereby amended to read as follows:

The Director of Fire Safety shall be responsible for administering and enforcing the provisions of this subchapter through the Department of Fire Safety. The Director shall function as the fire official who shall enforce the provisions of this code and all state laws under the official's jurisdiction pertaining to the prevention, suppression or extinguishing of fires. The fire official and the official's duly authorized representatives and agents shall have the powers of a police officer in performing their duties under this code.

York County Code of Ordinances, Chapter 92, Fire Prevention Code, Section 92.29 FIRE PREVENTION BUREAU is hereby retitled as "FIRE PREVENTION DIVISION" and amended to read as follows:

The Fire Prevention Division of the Department of Fire Safety shall operate under the direction of the Director of Fire Safety as the fire official. The function of the Fire Prevention Division shall be to inspect all buildings and premises as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions which could cause fire, endanger life from fire, or any violations of the provisions of this subchapter and any other law or ordinance affecting fire safety.

York County Code of Ordinances, Chapter 92, Fire Prevention Code, Section 92.30 STANDARD FIRE PREVENTION CODE, PORTIONS ADOPTED, Paragraph (A) is hereby amended to read as follows:

(A) *Fire Code adopted.* Except as herein amended, the 2021 Edition of the International Fire Code as modified by the South Carolina Codes Council is hereby adopted by reference and made an integral part of this chapter.

York County Code of Ordinances, Chapter 150, Building Regulations, Section 150.04 BUILDING CODE hereby amended to read as follows:

(A) Except as herein amended, the installation, workmanship, construction, maintenance or repair of new non-residential construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2021 Edition of the International Building Code with modifications and Appendix H (Signs), as modified by the South Carolina Codes Council is hereby adopted by reference and made an integral part of this chapter.

(B) Except as herein amended, the installation, workmanship, construction, maintenance or repair of new residential construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2021 Edition of the International Residential Code with modifications and Appendices AH (Patio Covers), AJ (Existing Buildings and Structures), and AQ (Tiny Houses), as modified by the South Carolina Codes Council, is hereby adopted by reference and made an integral part of this chapter.

York County Code of Ordinances, Chapter 150, Building Regulations, Section 150.05 ELECTRICAL CODE hereby amended to read as follows:

Except as herein amended, the installation, workmanship, construction, maintenance or repair of all electrical work shall conform to the National Electrical Code, 2020 Edition, with modifications, no appendices, as modified by the South Carolina Codes Council, which is hereby adopted by reference and made an integral part of this chapter.

York County Code of Ordinances, Chapter 150, Building Regulations, Section 150.07 GAS CODE hereby amended to read as follows:

Except as herein amended, the installation, workmanship, construction, maintenance or repair of all new fuel construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2021 Edition of the International Fuel Gas Code with modifications, as modified by the South Carolina Codes Council, which chapter is hereby adopted by reference and made an integral part of this chapter.

York County Code of Ordinances, Chapter 150, Building Regulations, Section 150.08 PLUMBING CODE hereby amended to read as follows:

Except as herein amended, the installation, workmanship, construction, maintenance or repair of all plumbing work shall be administered as provided in Chapter 1 of the 2021 Edition of the International Plumbing Code, as modified by the South Carolina Codes Council, is hereby adopted by reference and made an integral part of this chapter.

York County Code of Ordinances, Chapter 150, Building Regulations, Section 150.09 MECHANICAL CODE hereby amended to read as follows:

Except as herein amended, the installation, workmanship, construction, maintenance and repair of all heating, air conditioning, refrigeration and ventilation equipment shall be administered as provided in Chapter 1 of the 2021 Edition of the International Mechanical Code, as modified by the South Carolina Codes Council, is hereby adopted by reference and made an integral part of this chapter.

York County Code of Ordinances, Chapter 150, Building Regulations, Section 150.11 INTERNATIONAL EXISTING BUILDING CODE hereby amended to read as follows:

Except as herein amended, the installation, workmanship, construction, maintenance or repair of existing residential and non-residential construction, additions, alterations or repairs shall be administered as provided in Chapter 1 of the 2021 Edition of the International Existing Building Code, which is hereby adopted by reference and made an integral part of this chapter.

CERTIFICATION OF COUNTY ORDINANCE

December 11, 2024

As York County Clerk to Council charged with maintaining the legislative enactments by the York County Council, I do hereby certify that the foregoing is a true and exact copy of the original Ordinance 5522 given third reading by York County Council during its meeting of December 5, 2022.

Karen Brogdon
Clerk, York County Council

Post Office Box 66
6 South Congress Street
York, South Carolina 29745
Tel. 803.628.3954

SECTION 6-9-55. Council to promulgate certain regulations.

(A) The council shall promulgate as regulations, in accordance with the procedure and requirements contained in Article 1, Chapter 23, Title 1, any provision of or amendment to any building code that would affect construction requirements for one-family or two-family dwellings. No building code provision that would otherwise become effective after the effective date of this section concerning construction requirements for one-family or two-family dwellings shall be enforced until the effective date of the regulations required to be promulgated by this section.

(B) Notwithstanding subsection (A), a regulation mandating the installation of an automatic residential fire sprinkler system in one-family or two-family dwellings shall not become effective at any time before July 1, 2015.

(C) Notwithstanding subsection (A), Section 501.3 of the 2012 International Residential Code must not be enforced.

HISTORY: 2010 Act No. 232, Section 2, eff June 7, 2010; 2013 Act No. 65, Section 1, eff June 14, 2013; 2015 Act No. 17 (H.3662), Section 1, eff May 7, 2015.

Effect of Amendment

The 2013 amendment, in subsection (B), substituted "July 1, 2015" for "January 1, 2014", and added subsection (C) relating to the International Residential Code.

2015 Act No. 17, Section 1, substituted "enforced" for "enforced at any time before July 1, 2015".

Title 6 - Local Government - Provisions Applicable to Special Purpose Districts and Other Political Subdivisions

CHAPTER 9

Building Codes

SECTION 6-9-5. Public policy for building codes.

(A) The public policy of South Carolina is to maintain reasonable standards of construction in buildings and other structures in the State consistent with the public health, safety, and welfare of its citizens. To secure these purposes, a person performing building codes enforcement must be certified by the South Carolina Building Codes Council, and this act is necessary to provide for certification.

(B) To clarify the intent of the General Assembly and address questions which might arise or have arisen with respect to provisions of the nationally known codes which have been or are in place, only those portions or provisions of the nationally known building and safety codes which relate to building standards and safety are binding upon a state or local governmental entity or agency which adopts the building and safety codes authorized or required by this chapter.

(C) To further clarify the intent of the General Assembly, Chapter 9, Title 23 continues to apply to a person who may act under authority of the State Fire Marshal and that the allocation of inspection duties among local officials is not dictated by Title 6 but remains a matter for the local authority.

HISTORY: 1997 Act No. 123, Section 7; 2003 Act No. 83, Section 1, eff July 2, 2003.

Code Commissioner's Note

This section was classified as Section 6-9-5 at the direction of the Code Commissioner.

Effect of Amendment

The 2003 amendment designated the first and second undesignated paragraphs as subsections (A) and (B), substituted "this chapter" for "Chapter 9 of Title 6 of the South Carolina Code of Laws" and made a nonsubstantive change in subsection (B), and added subsection (C) relating to persons acting under the authority of the Fire Marshal and the allocation of inspection duties.

SECTION 6-9-30. Appointment of building official or contractual arrangement for such services; affidavit for exemption.

(A) Each county shall appoint a building official or contract with other political subdivisions as authorized in Section 6-9-20 so that the unincorporated area of the county is under the jurisdiction of a building official. Each municipality shall appoint a building official or contract for a building official within the municipal limits. Based on the needs established by each municipality or county, the building official or appointing authority may appoint and employ other personnel and assistants necessary to perform the required inspections and duties and may prescribe fees for construction permits and inspections.

(B) If a municipality or county determines that it is unable to arrange for services for any annual period at costs totally within the schedule of fees recommended in the appendices to the building codes referred to in Section 6-9-50, the municipality or county shall submit an affidavit to the council to be exempt from the requirements of this chapter. The affidavit shall provide the financial reasoning as to why the municipality or county cannot provide the services. If such affidavit is submitted, the municipality or county is exempt from the requirements of this chapter, which exemption is effective until such time as it becomes financially feasible for a municipality or county to provide the services, or five years, whichever is less. A municipality or county may renew its affidavit at the end of five years and at each five-year interval thereafter if it makes another determination that it cannot arrange for services at costs totally within the schedule of fees recommended in the building codes referred to in Section 6-9-50.

HISTORY: 1962 Code Section 14-400.583; 1972 (57) 2607; 1984 Act No. 481, Section 2; 1997 Act No. 123, Section 1; 2003 Act No. 83, Section 1, eff July 2, 2003.

Effect of Amendment

The 2003 amendment designated the first undesignated paragraph as subsection (A), deleted the fourth sentence and items (1), (2), and (3) relating to building inspection programs and correlating date and population figures, and added subsection (B) relating to affidavits for exemption.

South Carolina Code of State Regulations Annotated
Regulations
Chapter 8. Building Codes Council (Refs & Annos)
Article 1. Registration, Fees and Disciplinary Procedure (Refs & Annos)

S.C. Code of Regulations R. 8-105

8-105. Definitions.

Effective: May 24, 2024
Currentness

When used in these regulations, the following words and terms shall have the meanings so designated.

1. "Act" means Chapter 8 of Title 6 of The Code of Laws of South Carolina, 1976, as amended.

2. "Approved" means approved by the Council.

3. "Building Official" means the officer designated by a local jurisdiction, who is charged with the administration and enforcement of Building Codes and their related programs.

4. "Certificate of Registration" means the document issued by the Council, authorizing the person named thereon, to practice in the stated classification.

5. "Certified" means qualified by examination administered by a recognized code organization in one or more building, system or component inspection disciplines.

6. "Building Code Enforcement" means administering a building inspection department, enforcement and/or rendering interpretations of building, residential, plumbing, electrical, mechanical, fuel gas and energy conservation codes, performing building plans review, or performing inspections on one or more building systems as or under the supervision of a building official. The term shall also apply to the process of reviewing plans, specifications, and other technical data, as well as inspection of buildings and structures.

7. "Codes" means the editions of the building codes referenced in Section 6-9-50, Code of Laws of South Carolina, 1976, as amended that have been adopted by the Council.

8. "Commercial Inspector" means a person who performs onsite inspections in one or more construction disciplines, as determined by position description for the local jurisdiction for which employed, for all types of construction in all occupancy groups.

9. "Council" means The South Carolina Building Codes Council.

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DEFENDANT'S EXHIBIT

10. "Department" means the Department of Labor, Licensing and Regulation for the State of South Carolina.

11. "Limited Registration" means a renewable registration issued to a non-certified building code enforcement officer, employed by a local jurisdiction on the effective date of the act.

12. "Provisional Registration" means a nonrenewable registration issued to a building code enforcement officer, who is training for certification required for employment or advancement.

13. "Recognized code organization" means any national code organization approved by the Council, which administers a testing and certification program specifically for building code enforcement officers or special inspectors.

14. "Registered/Registrant" means a person approved by Council to practice as a building code enforcement officer or special inspector.

15. "Residential Inspector" means a person who performs onsite building, plumbing, electrical and mechanical inspections on one and two family dwellings, multifamily dwellings three stories or less in height and not exceeding sixteen (16) dwelling units per building or other buildings or structures of light frame construction and not exceeding five thousand (5,000) square feet in total area that can be constructed within the prescriptive requirements of the South Carolina Residential Code.

16. "Plans Examiner" means a person who performs plan reviews for building, plumbing, electrical or mechanical applications in accordance with the adopted building codes and as determined by the job description for the local jurisdiction for which employed or contracted.

17. "Building Codes Enforcement Officer" means a person registered by the Council as a building official, commercial inspector, residential inspector, plans examiner, or property maintenance inspector.

Credits

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998. Amended by State Register Volume 34, Issue No. 6, eff June 25, 2010; SCSR 48-5 Doc. No. 5248, eff May 24, 2024.

Current through State Register Volume 48, Issue 11, eff November 22, 2024.

S.C. CODE REGS. 8-105, SC ADC 8-105

End of Document

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CODE AND COMMENTARY
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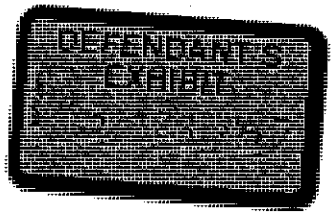
2021



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R.p. 548

PREFACE

The principal purpose of the Commentary is to provide a basic volume of knowledge and facts relating to building construction as it pertains to the regulations set forth in the 2021 *International Building Code*. The person who is serious about effectively designing, constructing and regulating buildings and structures will find the Commentary to be a reliable data source and reference to almost all components of the built environment.

As a follow-up to the *International Building Code*, we offer a companion document, the *IBC® Code and Commentary—Volume 1*. Volume 1 covers Chapters 1 through 15 of the 2021 *International Building Code*. The basic appeal of the Commentary is thus: it provides in a small package and at a reasonable cost thorough coverage of many issues likely to be dealt with when using the *International Building Code*—and then supplements that coverage with historical and technical background. Reference lists, information sources and bibliographies are also included.

Throughout all of this, effort has been made to keep the vast quantity of material accessible and its method of presentation useful. With a comprehensive yet concise summary of each section, the Commentary provides a convenient reference for regulations applicable to the construction of buildings and structures. In the chapters that follow, discussions focus on the full meaning and implications of the code text. Guidelines suggest the most effective method of application, and the consequences of not adhering to the code text. Illustrations are provided to aid understanding; they do not necessarily illustrate the only methods of achieving code compliance.

The format of the Commentary includes the full text of each section, table and figure in the code, followed immediately by the commentary applicable to that text. At the time of printing, the Commentary reflects the most up-to-date text of the 2021 *International Building Code*. As stated in the preface to the International Building Code, the content of sections in the code that begin with a letter designation (i.e., Section [F]307.1) are maintained by another code development committee. Each section's narrative includes a statement of its objective and intent, and usually includes a discussion about why the requirement commands the conditions set forth. Code text and commentary text are easily distinguished from each other. All code text is shown as it appears in the *International Building Code*, and all commentary is indented below the code text and begins with the symbol ❖.

Readers should note that the Commentary is to be used in conjunction with the *International Building Code* and not as a substitute for the code. The Commentary is advisory only; the code official alone possesses the authority and responsibility for interpreting the code.

Comments and recommendations are encouraged, for through your input, we can improve future editions. Please direct your comments to the Codes and Standards Development Department at the Chicago District Office.

The International Code Council would like to extend its thanks to the following individuals for their contributions to the technical content of this commentary:

Brian Black
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James Milke
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Dave Frable
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Dick Bukowski

For the complete errata history of this code, please visit: https://www.iccsafe.org/errata-central/

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fire fighters. Often a meeting room that is open to the public is also included. This type of facility is a mix of Group A, B, R and S occupancies.

Ambulatory care facilities are those that provide medical or similar care on less than a 24-hour basis to patients who are rendered incapable of self-preservation (see Section 202). Frequently called "day surgery centers" or "ambulatory surgical centers," ambulatory care facilities are where procedures are performed that render care recipients (patients) temporarily incapable of self-preservation due to the use of nerve blocks, sedation or anesthesia. Because of the condition of the care recipients, the need for medical staff to stabilize the patients before evacuation and the use of medical gases such as oxygen and nitrous oxide, these types of facilities pose greater fire and life safety hazards than other business occupancies. Accordingly, additional fire protection and means of egress requirements specific to ambulatory care facilities are provided in Section 422.

Facilities that provide medical services for inpatient care where the care recipients (patients) stay for more than 24 hours would be classified as Group I-2. Buildings used as sleep clinics would be classified as Group B since these spaces are not typical dwelling or sleeping units where people live, the occupants are assumed to be capable of self-preservation and the occupants are not living in a supervised environment. Although the patients in a sleep clinic may be sleeping, they can be easily awakened and alerted to an emergency as compared to the patients at an ambulatory care facility.

Based on size, the code distinguishes between food processing operations that are not directly associated with a restaurant. Those 2,500 square feet (232 m^2) or smaller fall under the Group B classification. A small catering business would fall under this classification. Other food-related businesses that do not provide a space for their product to be eaten on-site, such as a take-out pizza store or a neighborhood bakery, would also be classified as a Group B occupancy. A commercial kitchen or food processing facility larger than 2,500 square feet (232 m^2) would be classified as a Group F-1 occupancy.

Training and skill development is classified as a Group B occupancy due to the similarity in use of spaces between education above the 12th grade and professional consultation. Often unions provide training facilities for their members so they can keep up with new materials and updates of regulations. Other facilities can provide one-on-one tutoring such as remedial reading or math skills for students. Those receiving training or skill development can include those whose ages are typically associated with grade 12 or earlier. The determination of the appropriate classification requires the building official to consider whether the training is given as part of a traditional educational program. Examples provided by the code allow a range of size in the numbers receiving the training from one-on-one tutoring to a large class of children learning martial arts or ballet. The presence of children does not automatically mean classification as a Group E occupancy. Where the occupant load of a training classroom or space is 50 or more, a Group A classification may be appropriate for the space, especially if the space is to be used for different activities at different times. If the training room is used for a martial arts competition with spectators on an evening or weekend, then a Group A designation should also be considered.

304.2 Airport traffic control towers. Airport traffic control towers shall comply with Section 412.2.

❖ This is one of a series of pointers to Chapter 4 due to a concern that these items may be missed. See the commentary to Section 412.2.

304.3 Ambulatory care facilities. Ambulatory care facilities shall comply with Section 422.

❖ This is one of a series of pointers to Chapter 4 due to a concern that these items may be missed. Complete criteria for ambulatory care facilities are found in Section 422. See the commentary to the definition of "Ambulatory care facility" and Section 422.

304.4 Higher education laboratories. Higher education laboratories shall comply with Section 428.

❖ This is one of a series of pointers to Chapter 4 due to a concern that these items may be missed. For information on higher education laboratories, see the commentary to the definition of "Higher education laboratories," Section 428 of the IBC and Chapter 38 of the *International Fire Code*.

SECTION 305
EDUCATIONAL GROUP E

305.1 Educational Group E. Educational Group E occupancy includes, among others, the use of a building or structure, or a portion thereof, by six or more persons at any one time for educational purposes through the 12th grade.

❖ The risks to life safety in this occupancy vary with the composition of the facilities and also with the ages of the occupants. In general, children require more safeguards than do older, more mature persons.

This section identifies the criteria for classification of a building in Group E. The two fundamental characteristics of a Group E facility are as follows:

1. The facility is occupied by more than five persons (excluding the instructor).
2. The purpose of the facility is for educating persons at the 12th-grade level and below, but not including more than five occupants $2^1/_2$ years of age or less.

It is common for a school to also have cafeterias (Group A-2), gymnasiums (Group A-3), auditoriums (Group A-1), libraries (Group A-3) and offices (Group B). Storage rooms might be classified as either a Group S-1 or Group E occupancy (see Section 311.1.1). When this occurs, the building is considered as a mixed occupancy condition and is subject to the provisions of Section 508. In accordance with Section 303.1.3, assembly spaces, such as the gymnasium, auditorium, library and cafeteria, do not have to be considered separate occupancies if used for school purposes (see commentary, Section 303.1.3). For such assembly functions to be considered part of the

for nonseparated mixed occupancies and not comply with any of the provisions of either Section 508.2 or 508.4. A different example could be to use the provisions of Section 508.3 on the first story of a building having three or four different occupancies, but then separate the upper stories of the building from the first story and design the upper stories under Section 508.4 for separated occupancies. A final example would be a building that was predominately one use but had small accessory areas on various stories. For this building, the best option might be Section 508.2 regarding accessory occupancies.

These options depend on the limitations of their use, as stated in the respective sections of the code. Basically, the availability of the options depends on the size of the areas desired for each different occupancy, and the relationship of one occupancy to the other.

Exception 1 provides a fourth set of options for mixed occupancies by referring to Section 510, which describes various special circumstances, including where parking garages are located above or below other uses.

Exception 2 reminds the user that including Group H-1, H-2 or H-3 in the same building with other occupancies where quantities exceed certain amounts is prohibited by Section 415.6.2 because of the nature of the hazard for high quantities of flammable, combustible and explosive materials. These H occupancies are, or may be, required to be in a detached building, meaning such buildings not only can't contain other occupancies but must be physically separated from other structures.

Note that Section 509 regulates incidental uses that, where they occur as part of an occupancy, require additional protection or separation from the balance of the building. Incidental uses are part of the occupancy. The presence of an incidental use in a building does not establish a mixed occupancy condition, and as such is not required to comply with Section 508.

508.2 Accessory occupancies. Accessory occupancies are those occupancies that are ancillary to the main occupancy of the building or portion thereof. Accessory occupancies shall comply with the provisions of Sections 508.2.1 through 508.2.4.

❖ Buildings often have rooms or spaces with an occupancy classification that is different from, but accessory to, the principal occupancy classification of the building. Where such accessory areas are limited in size, they will not ordinarily represent a significantly different life safety hazard. This principle does not apply where otherwise indicated in Section 508.2.4 for areas classified as Group H, I-1 or R.

The accessory occupancy must be ancillary to the principal purpose for which the structure is occupied. This means that the purpose and function of the area is subordinate and secondary to the structure's primary function. As such, the activities that occur in accessory use areas are necessary for the principal occupancy to properly function and would not otherwise reasonably exist apart from the principal occupancy.

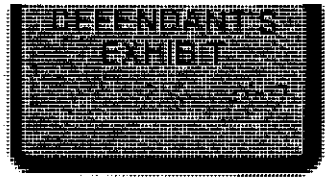
508.2.1 Occupancy classification. Accessory occupancies shall be individually classified in accordance with Section 302.1. The requirements of this code shall apply to each portion of the building based on the occupancy classification of that space.

❖ Under Section 508.2.1, each accessory use is to be classified in accordance with Section 302 in the appropriate occupancy classification. Code requirements for means of egress, sprinkler protection, interior finishes and so on are to be determined for this occupancy as if it were a main occupancy of the building. For example, an accessory lunchroom located in a business office regulated as an accessory occupancy would need to be protected with an automatic sprinkler system if the lunchroom's occupant load exceeds 100. In addition, any means of egress doors serving the lunchroom, from the lunchroom to the exterior exit doors, would need to be provided with panic hardware. The lunchroom would need to comply with all other code requirements applicable to a Group A-2 use.

Please note that Sections 508.2.2 and 508.2.3 state that height and area of the building are based on the main occupancy. Therefore, for determining the construction type for the total building, the building's floor area and height should be compared to the limits of Tables 504.3, 504.4 and 506.2 to determine the appropriate construction type. See Section 508.2.3 regarding the area of the accessory occupancy itself and see Section 508.2.2 regarding the height of the accessory occupancy itself.

Where applying Chapter 9, many of the requirements for automatic sprinkler systems are based on the size of the fire area in which the occupancy is located. For instance, a Group A-2 occupancy requires a sprinkler system where the fire area is greater than 5,000 square feet (465 m^2) or where the fire area has an occupant load of 100 or more. By definition, a "Fire area" includes everything between fire barriers, fire walls or exterior walls. Thus, if there is no rated separation of the accessory occupancy from the main occupancy, the fire area could, and most likely will, contain both the accessory occupancy area and the main occupancy.

Continuing with this example, suppose that a single-story business office of 23,000 square feet (2137 m^2) contains a lunchroom that is 2,000 square feet (186 m^2) and an occupant load of 134. The main occupancy is a Group B, and the accessory occupancy is a Group A-2. Because the Group A-2 occupancy has a floor area of less than 10 percent of the overall floor area of the single story, it could be regulated as an accessory occupancy, and there is no fire separation requirement between the Group A-2 and Group B occupancies. A Group A-2 occupancy is required to be provided with an automatic sprinkler system when it is either in excess of 5,000 square feet (465 m^2) or 100 occupants. Since this fire area is 23,000 square feet (2137 m^2), contains a Group A-2 occupancy with an occupant load of over 100 and is located within a fire area of greater than 5,000 square feet (465 m^2), this fire area would need to be provided with an automatic sprinkler system throughout both the Group B and A-2 occupancies based on either of the two thresholds of the A-2 occupancy.



§ 92.25 SHORT TITLE.

This subchapter shall be known as the Fire Prevention Code, and may be so cited as the "Fire Prevention Code," and will be referred to in this subchapter as "this code."

('77 Code, § 9-20) (Ord. 36, passed 3-5-79)

§ 92.26 INTENT.

(A) This code is intended to prescribe regulations consistent with nationally recognized practice for the reasonable protection of life and property from the hazards of fire and explosion due to the storage, use or handling of hazardous materials, substances and devices, and from conditions hazardous to life or property in the use or occupancy of buildings or premises.

(B) Compliance with standards of the National Fire Protection Association or the American Insurance Association or other nationally approved safety standards shall be deemed to be prima facie evidence of compliance with this intent.

('77 Code, § 9-21) (Ord. 36, passed 3-5-79)

§ 92.27 SCOPE.

The provisions of this code shall apply equally to new and existing conditions except that existing conditions not in strict compliance with the requirements of this code may be permitted to continue if it can be proven that they do not constitute a distinct hazard to life or property.

('77 Code, § 9-22) (Ord. 36, passed 3-5-79)

§ 92.28 RESPONSIBILITY FOR ENFORCEMENT.

The Director of Fire Safety shall be responsible for administering and enforcing the provisions of this subchapter through the Department of Fire Safety. The Director shall function as the fire official who shall enforce the provisions of this code and all state laws under the official's jurisdiction pertaining to the prevention, suppression or extinguishing of fires. The fire official and the official's duly authorized representatives and agents shall have the powers of a police officer in performing their duties under this code.

('77 Code, § 9-23) (Ord. 36, passed 3-5-79; Am. Ord. passed 3-19-84; Am. Ord. 5522, passed 12-5-22)

§ 92.29 FIRE PREVENTION BUREAU.

The Fire Prevention Division of the Department of Fire Safety shall operate under the direction of the Director of Fire Safety as the fire official. The function of the Fire Prevention Division shall be to inspect all buildings and premises as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions which could cause fire, endanger life from fire, or any violations of the provisions of this subchapter and any other law or ordinance affecting fire safety.

('77 Code, § 9-24) (Ord. 36, passed 3-5-79; Am. Ord. 284, passed 3-19-84; Am. Ord. 5522, passed 12-5-22)

§ 92.30 STANDARD FIRE PREVENTION CODE, PORTIONS ADOPTED.

(A) *Fire Code adopted.* Except as herein amended, the 2021 Edition of the International Fire Code as modified by the South Carolina Codes Council is hereby adopted by reference and made an

integral part of this chapter.

(B) *Board of appeals.*

(1) *Created.* A seven-member board of appeals is hereby established in York County for the purpose of hearing applications for modification of the requirements of the International Fire Code and appeals from decisions of the fire code official when it is alleged that there is error in any order, requirement, decision or determination made by the fire code official in the enforcement of the International Fire Code.

(2) *Membership.*

(a) The membership of the board of appeals shall consist of seven voting members, one of whom shall be a resident of each of the seven County Council districts. Initial appointments shall be as follows:

1. Three members shall be appointed for terms of three years;
2. Two members shall be appointed for terms of two years; and
3. Two members shall be appointed for terms of one year.

(b) Members will serve without pay, but may be reimbursed for any expenses incurred while representing the board. Vacancies shall be filled for unexpired terms in the manner of the initial appointments. Members may be nominated by the fire code official or the county manager, and shall be appointed by a majority vote of the county governing body. In nominating and appointing members of the board, an effort shall be made to include members who are engineers, architects, technologists, technicians, firemen, safety professionals, general contractors, business representatives and representatives of the public at large.

(3) *Terms of office.* After the expiration of the terms of office of initial members of the board, members shall be appointed for terms of four years. No member shall be reappointed to serve more than two consecutive full terms on the board of appeals. Members appointed to fill a vacancy and an unexpired term shall be eligible for reappointment to two full terms.

(4) *Removal from office.* Members may be removed from office prior to the expiration of their respective terms for cause. Failure to attend to 50% of properly called meetings of the board of appeals within a calendar year without excuse, excessive tardiness, participation in matters in which the member has a conflict of interest, engaging in any course of conduct as a board member for private gain, unauthorized or improper use or disclosure of county records and malfeasance, misfeasance, nonfeasance or misconduct in office shall constitute grounds for removal from the board.

(5) *Quorum.* Four members of the board shall constitute a quorum. The concurring vote of a majority of the board of appeals at a properly called meeting of the board with a quorum present is required to vary the application of any provision of the International Fire Code or modify an order of the fire official.

(6) *Minutes; secretary.* The board will keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and shall keep detailed records of its proceedings which shall set forth the reasons for its decisions which shall be filed in the office of the board and will be a public record.

(7) *Legal counsel.* The York County attorney shall provide legal counsel to the board and provide members in their official capacities with general legal advice concerning matters before them for consideration. Members shall be represented by the York County attorney or by other designated legal counsel at the expense of the county in all matters arising from service within the scope of their duties.

(8) *Meetings.* The board shall meet as frequently as may be necessary to address matters coming before the board. The chairman and/or the secretary to the board shall provide members

timely written notice of meetings. All applications for modifications and appeals shall be heard, in any event, within 30 days after such applications or appeals have been received.

(9) *Conflict of interest.* Members with a material or financial interest in a matter before the court shall declare such interest and refrain from participating in discussions, deliberations and votes on such matters.

(10) *Decisions.* Every decision of the board shall be filed promptly in writing in the office of the fire code official and shall be open to public inspection. A certified copy of each decision of the board shall be sent by mail to the applicant or appellant and other parties in interest, and a copy shall be kept publicly posted in the office of the fire code official for two weeks after it is filed.

(11) *Procedure before board.* The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code and applicable state law.

('77 Code, § 9-34) (Ord. 36, passed 3-5-79; Am. Ord. 2285, passed 11-18-85; Am. Ord. 1492, passed 3-16-92; Am. Ord. 2701, passed 7-16-01; Am. Ord. 3208, passed 6-16-08; Am. Ord. 3713, passed 9-3-13; Am. Ord. 5216, passed 9-9-16; Am. Ord. 5522, passed 12-5-22)

Statutory reference:

Authority to adopt codes by reference, S.C. Code § 4.9-130(3)

§ 92.31 STATUTE ADOPTED.

S.C. Code §§ 23-35-10 through 23-35-170, and Rules 19-60 through 19-67 promulgated by the state fire marshal are adopted by reference and made an integral part of this code. Amendments and revisions to the statute and rules shall become effective, and this section shall be amended to include amendments and revisions, which shall be deemed to be adopted automatically, unless the County Council shall, by affirmative action, reject the amendments or revisions within 60 days after notice to the fire official of the adoption or promulgation of the amendments or revisions.

('77 Code, § 9-35) (Ord. 36, passed 3-5-79)

§ 92.32 RIGHT OF ENTRY.

(A) The fire official or the official's authorized representative may, at all reasonable times, have free access and right-of-entry to any building, whether completed or under construction, or to any property, for the purpose of making an inspection or investigation to enforce any of the provisions of this code.

(B) No person, owner or occupant of any building or premises shall fail, after proper credentials are displayed, to permit entry into any building or onto any property by the fire official or the official's authorized agent for the purpose of inspections pursuant to this code. Any person violating this section shall be guilty of a misdemeanor.

('77 Code, § 9-25) (Ord. 36, passed 3-5-79)

§ 92.33 INSPECTION.

(A) The fire official shall cause to be inspected all buildings and premises, including other hazards or material items, for the purpose of ascertaining and causing to be corrected any conditions which would reasonably tend to cause fire or contribute to its spread, or any violation of the purpose or provisions of this code and of any other law or standard affecting fire safety.

(B) All buildings or structures which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster damage or abandonment, as specified

in this code or any other effective ordinance, are, for the purpose of this section, unsafe buildings. All unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal.

('77 Code, § 9-26) (Ord. 36, passed 3-5-79)

§ 92.34 NOTICE TO ELIMINATE DANGEROUS CONDITIONS.

(A) Whenever the fire official or the official's duly authorized agent shall find in any building or upon any premises dangerous or hazardous conditions or materials, as follows, there shall be issued notice or orders to remove or remedy the conditions as may be necessary for the protection of life and property from fire and smoke:

(1) Dangerous or unlawful amounts of combustible or explosive or otherwise hazardous materials;

(2) Hazardous conditions arising from defective or improperly installed equipment for handling or using combustible or explosive or otherwise hazardous materials;

(3) Dangerous accumulations of rubbish, waste paper, boxes, shavings or other highly combustible materials;

(4) Accumulations of dust or waste material from air conditioning or ventilating systems or of grease in kitchen or other exhaust ducts or inadequate clearances to unprotected combustible material from hoods, grease extractors and ducts;

(5) Obstructions to or on fire escapes, designated access openings in exterior walls for fire department use, stairs, passageways, doors or windows, liable to interfere with the operations of the fire authority having jurisdiction or egress of occupants in case of fire;

(6) Any building or other structure which, for want of repairs, lack of adequate exit facilities, automatic or other fire alarm apparatus or fire extinguishing equipment, or by reason of age or dilapidated condition, or from any other cause, creates a hazardous condition.

(B) Whenever the fire official or the official's duly authorized representative deems any chimney, smokestack, stove, oven, incinerator, furnace or other heating device, electric fixture or any appurtenance thereto or anything regulated under a nationally approved standard in or upon any building, structure or premises not specifically mentioned in this code, to be defective or unsafe so as to create an immediate hazard, the official shall serve upon the owner or the person having control of the property, a written notice to repair or alter as necessary and shall notify any other authority enforcing codes regulating the equipment. The fire official or representative may affix a condemnation tag prohibiting the use thereof until the repairs or alterations are made. When affixed, the tag may be removed only by the order of the fire official or duly authorized representative and may be removed only when the hazard to which the order pertains has been eliminated in an approved manner. Until removed, that item or device which has caused the hazard shall not be used or be permitted to be used.

(C) When an apparent structural hazard is caused by the faulty installation, operation or malfunction of any of the hereinabove mentioned items or devices, the fire official shall immediately notify the building official who shall investigate the hazard and shall cause the hazard to be abated as required under the building code.

('77 Code, § 9-27) (Ord. 36, passed 3-5-79)

§ 92.35 SERVICE OF ORDERS.

(A) The service of orders for the correction of violations of this code shall be made upon the owner, occupant or other person responsible for the conditions, either by delivering a copy of same to the

person or by delivering the same to and leaving it with any person in charge of the premises, or in case no person is found upon the premises, by affixing a copy thereof in a conspicuous place on the door to the entrance of the premises. Whenever it may be necessary to serve an order upon the owner of premises, the order may be served either by delivering to and leaving with the person a copy of the order, or, if the owner is absent from the jurisdiction of the officer making the order, by sending the copy by certified or registered mail to the owner's last known post office address.

(B) If buildings or other premises are owned by one person and occupied by another under lease or otherwise, the orders issued in connection with the enforcing of this code shall apply to the occupant thereof, except where the rules or orders require the making of additions to or changes in the premises such as would immediately become real estate and be the property of the owner of the premises; in such cases, the rules or orders shall affect the owner and not the occupant unless it is otherwise agreed between the owner and the occupant.

('77 Code, § 9-28) (Ord. 36, passed 3-5-79)

§ 92.36 COMPLIANCE.

(A) Any person operating or maintaining any occupancy, premises or vehicle subject to this code who shall permit any fire hazard to exist on premises under the person's control or who shall fail to take immediate action to abate a fire hazard when ordered or notified to do so by the fire official or the official's duly authorized representative shall be guilty of a misdemeanor.

(B) Any order or notice issued or served as provided in this code shall be complied with by the owner, operator, occupant or other person responsible for the condition or violation to which the order or notice pertains. Every order or notice shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In cases of extreme danger to persons or property immediate compliance shall be required. If the building or other premises is owned by one person and occupied by another, under lease or otherwise, and the order or notice requires additions or changes in the building or premises such as would immediately become real estate and be the property of the owner of the building or premises, the order or notice shall be complied with by the owner unless the owner and occupant have otherwise agreed between themselves, in which event the occupant shall comply.

(C) No person shall remove a notice affixed under § 92.34(B) without authority to do so.

(D) No person shall use a building, premises or object in violation of a notice affixed under § 92.34(B).

('77 Code, § 9-29) (Ord. 36, passed 3-5-79) Penalty, see § 92.99

§ 92.37 INVESTIGATION OF FIRES.

(A) The fire official or the official's duly authorized agent shall investigate promptly the cause, origin and circumstances of each fire occurring in the official's jurisdiction involving loss of life or injury to person or destruction or damage to property, and if it appears that the fire is of suspicious origin, the fire official shall take immediate charge of all physical evidence relating to the cause of the fire and shall pursue the investigation to its conclusion. A report in writing shall be made of all facts and findings relative to each investigation.

(B) The sheriff's office shall assist the fire department in its investigations whenever requested to do so.

('77 Code, § 9-30) (Ord. 36, passed 3-5-79)

§ 92.38 RECORDS.

(A) The fire department shall keep a record of all fires occurring within its jurisdiction and of all facts concerning the same, including statistics as to the extent of the fires and the damage caused thereby, together with other information as may be required.

(B) The records shall be retained for not less than five years.

('77 Code, § 9-31) (Ord. 36, passed 3-5-79)

§ 92.39 ALTERNATE MATERIALS AND METHODS.

(A) The provisions of this code are not intended to prevent the use of any material or method, provided any alternate has been approved and its use authorized by the fire official. The fire official shall approve any alternate, provided the official finds that the proposed design, use or operation is satisfactory and complies with the intent of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire-resistance, durability and safety.

(B) The fire official shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding any use. Any approval under this section shall also be subject to the approval of the building official whenever the alternate material or method involves matters regulated by the building code.

('77 Code, § 9-32) (Ord. 36, passed 3-5-79)

§ 92.40 LIABILITY.

Any public employee, officer or other persons responsible for the enforcement of this code, acting for the applicable governing body in the discharge of official duties shall not thereby render the person's self liable personally, and the person is hereby relieved from all personal liability for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of official duties.

('77 Code, § 9-33) (Ord. 36, passed 3-5-79)

§ 92.99 PENALTY.

The violation of any provision of this code shall constitute a misdemeanor. Each day the violation shall continue shall be deemed a separate offense. In the event of any violation or proposed violation of this code, the fire official or official's duly authorized agent or representative or any neighboring property owner may apply to a court of competent jurisdiction for injunctive relief or other appropriate proceedings to prevent, abate, enjoin or correct the threatened or actual violation. The remedies provided under this section shall be cumulative to any other remedies provided by law.

('77 Code, § 9-36) (Ord. 36, passed 3-5-79)

Statutory reference:

Authority to adopt technical regulations, S.C. Code § 4-9-130

CERTIFICATION OF COUNTY CODE

December 11, 2024

As York County Clerk to Council charged with maintaining the legislative enactments by the York County Council and coordinating the codification of ordinances adopted by York County Council, I do hereby certify that the foregoing is a true and exact copy of the Fire Code as adopted by York County Council through its Ordinances, as referenced therein, and as currently codified by York County.

Karen Brogdon
Clerk, York County Council

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