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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2026-001286
Civil Action No. 2026-CP-10-01436

Dr. Brian McClure,
Appellant,
v.
Charleston County School District, Charleston County School District Education Foundation,
Leah Whatley, Michelle Leber, Keith Grybowski, Carlotta Bailey, and Pamela McKinney,
Respondents.

APPELLANT'S INITIAL BRIEF

Emmanuel J. Ferguson, Sr.
FERGUSON LAW AND MEDIATION, LLC
SC Bar No. 81431
171 Church Street, Suite 160
Charleston, South Carolina 29401
Telephone: (843) 491-4890
emmanuel@fergusonlaborlaw.com

Attorney for Appellant

August 5, 2026
Charleston, South Carolina

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STATEMENT OF ISSUES ON APPEAL

- I. Did the circuit court err or abuse its discretion by denying preliminary injunctive relief?
- II. Did the circuit court err by finding no likelihood of success on the merits?
- III. Did the circuit court err by denying reconsideration without making the findings of fact and conclusions of law required by Rule 52(a), SCRCP?

STATEMENT OF THE CASE

This appeal arises from the circuit court's denial of Appellant's request for preliminary injunctive relief in a South Carolina Freedom of Information Act action. Appellant seeks review of the denial of interim relief concerning the legal effect of the February 25, 2026, vote approving Michelle Faust to serve on a newly created board designed to assist the Charleston County School District's ("CCSD") Board of Trustees. Appellant further seeks review of the circuit court's denial of Appellant's motion to reconsider or, in the alternative, to make findings addressing the governing FOIA statutes.

On March 19, 2026, Appellant filed Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. The motion invoked S.C. Code Ann. § 30-4-100, Rule 65, SCRCF, and the court's inherent equitable authority. It alleged that CCSD approved Michelle Faust to serve on the CCSD Education Foundation (the "Foundation") Board after Appellant's properly noticed nomination failed. Faust's nomination was not on the posted agenda, no additional twenty-four hours' public notice was given, no two-thirds vote was taken to add the item, and no emergency or exigent-circumstance finding was made. Appellant's motion requested interim relief prohibiting Respondents from treating the Faust vote as valid, prohibiting the Foundation from recognizing Faust as a voting director or relying on her vote, preserving Foundation nomination records, and preventing future Foundation votes pending final resolution. (Motion for TRO and Preliminary Injunction at 1-2).

Appellant filed an Amended Complaint on March 27, 2026. The Amended Complaint alleges violations of the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq., arising from actions taken by the CCSD Board of Trustees at its February 25, 2026, public meeting. (Amended Complaint).

The circuit court held a hearing on April 1, 2026. At that hearing, the court heard testimony from three trustees, CCSD Chief Financial Officer Daniel Prentice, and Superintendent Anita Huggins. The court also received various documents, including the January 26, 2026, Agenda, the February 25, 2026 Agenda, the March 4, 2026 Agenda, CCSD Policy BEDA/BEDB, the Foundation Bylaws and Nominee Process, and various email exhibits. (April 1 Tr. 3:1-4:25; April 1 Tr. 55:1-57:25; April 1 Tr. 108:1-11).

On April 6, 2026, the circuit court entered a Form 4 order denying temporary and preliminary injunctive relief. The order did not make findings of fact, did not explain the legal basis for those conclusions, and did not address S.C. Code Ann. §§ 30-4-80(A) or 30-4-100(A). (April 6 Form 4 Order at 1). Appellant timely moved to reconsider, alter, or amend under Rules 52 and 59, SCRCF. Appellant asked the circuit court to address the statutory irreparable harm language in § 30-4-100(A), the agenda addition requirements in § 30-4-80(A), and, at minimum, to enter findings of fact and conclusions of law explaining the denial of interlocutory injunctive relief. (Motion to Reconsider at 1-2; April 30 Tr. 9:15-10:21).

The circuit court heard the reconsideration motion on April 30, 2026. On May 1, 2026, the circuit court entered another Form 4 order denying reconsideration. The May 1 order stated that the court reviewed the memoranda, heard argument, and “declines to reconsider its April 6, 2026, order.” The order again did not address Rule 52(a), § 30-4-80(A), or § 30-4-100(A). (May 1 Form 4 Order at 1). Appellant timely served a Notice of Appeal on May 22, 2026. This Court has jurisdiction under S.C. Code Ann. § 14-3-330(4), which permits immediate appeal from an interlocutory order refusing an injunction.

STATEMENT OF FACTS

A. The Foundation, bylaws, and nomination process.

The Charleston County School District Education Foundation (the “Foundation”) is a newly planned nonprofit entity established to assist and support the Charleston County School District (“CCSD”), including its administration, staff, teachers, and students. Notably, CCSD operates independently of the Foundation and can continue managing the business of the school district without the Foundation. The Foundation bylaws provide that the Foundation is organized and operated to assist and support the District and to promote educational and charitable endeavors for public schools in the District. (Bylaws at 1-2).

During Phase 1 of the Foundation’s creation, the initial voting members of the Foundation’s Board of Directors “shall be appointed by majority vote of the Board of Trustees of the District.” (Bylaws § 5.02). The bylaws further provide that, during Phase 1, the initial voting directors appointed by the Board of Trustees shall include a resident of each of Charleston County’s nine election districts who is not an employee or member of the Board of Trustees. (Bylaws § 5.02; April 1 Tr. 61:4-13; 62:1-15).

The CCSD Foundation Nominee Process required potential nominees to be qualified under the CCSD Education Foundation Founding Board of Directors Job Description, complete a Board of Directors Inquiry Form, sign a Conflict of Interest Statement, and complete a Conflict of Interest Disclosure Form. (CCSD Foundation Nominee Process; April 1 Tr. 104:20-106:5). It also stated that potential nominees would be shared with Foundation staff at the beginning of the review process. (CCSD Foundation Nominee Process; April 1 Tr. 104:20-106:5). A trustee, staff member, or citizen cannot evaluate whether a potential director satisfies the job description, has relevant

nonprofit oversight experience, has conflicts requiring disclosure, or should be reviewed by Foundation staff unless the nominee is identified before final action is taken.

CCSD also has policies governing Board meeting agendas and supporting materials. (BEDA/BEDB Policy; April 1 Tr. 108:13-109:4). CCSD Policy BEDA/BEDB likewise treated agenda content and supporting materials as important to public notice and Board action. Policy BEDA/BEDB provides that agenda items for CCSD Board of Trustees meetings must be identified and described on a board action item form, that the form must be submitted before the deadline, and that any such item must be accompanied by appropriate backup material. (BEDA/BEDB Policy). It also provides that regular-meeting notice, the agenda, and supporting materials must be distributed to Board members by the Wednesday before the following Monday meeting so members can thoughtfully consider each item, and that agenda items for which supporting materials are not timely received “shall be deferred to the next regularly scheduled meeting.” (BEDA/BEDB Policy; April 1 Tr. 108:13-109:4).

B. January 7, 2026: CCSD communicated a nominee-specific process.

On January 7, 2026, Superintendent Huggins sent trustees an email titled “Critically Important/Action Required: Education Foundation Board of Directors - Trustee Nominations.” (January 7, 2026, Email). The email stated that, at the January 22 Board meeting, “each Trustee will be asked to make a nomination for one member to serve on the Board of Directors” of the Foundation. (January 7, 2026, Email; April 1 Tr. 39:15-40:17).

Further, the January 7, 2026, email stated that nominees had to reside within the trustee’s district, not be a CCSD employee or Board member, and otherwise meet the qualifications in Section 5.02 of the Foundation’s bylaws. (January 7, 2026, Email). It directed trustees to submit nominations by January 19, 2026 so staff would have adequate time to conduct conflict of interest

review and verify that nominees met the required qualifications. (January 7, 2026, Email). The January 7, 2026, email also directed trustees to submit the nominee's name and relevant background information so staff could update the agenda item for posting. (January 7, 2026, Email).

CCSD's Superintendent clearly asked for names and background information in advance so the nominee-specific materials could be reviewed and placed with the agenda before the Board voted. (January 7, 2026, Email). The Superintendent also instructed each Board member to nominate one person to the Foundation Board. (January 7, 2026, Email). CCSD did not tell trustees to appear at a meeting and nominate anyone from the floor. The Superintendent instructed trustees to submit names and relevant background information by a deadline so staff could conduct review, verify qualifications, and update the agenda item before the Board acted. (January 7, 2026, Email).

C. January 26, 2026: the Board used a district-by-district, nominee-by-name process.

At the January 26, 2026, Board meeting, the Board reached Item 11A, "CCSD Education Foundation Board of Director appointments." (Jan. 26 Bd. Tr. 2:1-3). The parliamentarian instructed the presiding officer to "call each board member by the district they represent and ask for their nominee." (Jan. 26 Bd. Tr. 2:1-8).

The Board then proceeded district by district. The presiding officer called for District 1, District 2, District 3, District 4, District 5, District 6, and District 8 nominees. (Jan. 26 Bd. Tr. 2:9-5:18). Each trustee announced a named nominee. (Jan. 26 Bd. Tr. 2:9-5:18). The District 3 nominee resume was included in the record as a nominee-specific resume supporting the January 26 process. (District 3 Nominee Resume; April 1 Tr. 3:1-4:25; 57:1-25).

Trustee Dunmeyer-Roberson nominated Appellant, Dr. McClure, for the District 8 Foundation seat. Appellant's nomination failed by a 4-5 vote. (Jan. 26 Bd. Tr. 5:5-25; 6:1-7). The

presiding officer then stated that the unfilled nominees would be taken up at the February Board meeting. (Jan. 26 Bd. Tr. 6:1-8). During the same meeting, the presiding officer stated that “all of the nominees” had submitted resumes for everyone’s review. (Jan. 26 Bd. Tr. 8:9-13).

This January 26, 2026, process confirms the baseline procedure CCSD used: district-by-district nominations, nominees called by name, and nominee-specific materials submitted for review before Board action. After Appellant’s nomination failed, the Board did not immediately fill District 8 with an unlisted substitute. Instead, the presiding officer stated the remaining unfilled seats would be taken up at the February Board meeting. (Jan. 26 Bd. Tr. 6:1-8).

D. February 25, 2026: the agenda listed specific nominees and materials, but did not list Michelle Faust.

The February 25, 2026, agenda again identified the Foundation appointment item. (February 25, 2026, Agenda; April 1 Tr. 67:1-24). Agenda Item 12(B) was titled “CCSD Education Foundation Board of Director Appointments.” (February 25, 2026 Agenda; April 1 Tr. 67:1-24). It stated that the Board “shall nominate and approve the nine (9) initial Foundation board members representing each district,” and that the appointments would comply with the Foundation’s Board of Directors Job Description and Conflict of Interest Policy. (February 25, 2026 Agenda; April 1 Tr. 67:1-24).

The February 25, 2026, agenda listed first-time nominees for Districts 7 and 9. (February 25, 2026, Agenda; April 1 Tr. 67:1-24). The agenda also listed Appellant as the “second-time” nominee for District 8. (February 25, 2026 Agenda; April 1 Tr. 67:1-24). The agenda included Appellant’s resume and cover letter. (February 25, 2026, Agenda; McClure Resume; McClure Cover Letter; April 1 Tr. 67:1-24). Appellant’s cover letter identified him as a District 8 resident and described his board experience, governance and compliance background, and prior service as a board member for Lee Montessori Public Charter School. (McClure Cover Letter).

At the February 25, 2026, meeting, the Board treated the item as a nominee-specific appointment process. At the start of Item 12(B), Trustee Whatley asked whether trustees were “calling our nominees by name,” and the Chair and parliamentarian confirmed nominees were being called by name. (Feb. 25 Bd. Tr. 2:1-19). Trustee Jewett asked whether the District 7 nominee’s resume had been received, and the Chair answered that it was “in the board packet.” (Feb. 25 Bd. Tr. 3:15-17). Dr. Tempel likewise stated that the Board had the District 9 nominee’s resume before nominating that individual. (Feb. 25 Bd. Tr. 5:7-10).

The Board then proceeded with the nominees listed on the agenda. Trustee Whatley nominated Julie Armstrong for District 7. Dr. Tempel nominated Taryn Williams for District 9. Trustee Dunmeyer-Roberson nominated Appellant for District 8. The District 7 and District 9 nominees were approved. (Feb. 25 Bd. Tr. 2:15-5:25; April 1 Tr. 67:14-68:3). Appellant’s nomination failed by a 4-5 vote. (Feb. 25 Bd. Tr. 2:15-5:25; February 25, 2026 Agenda; April 1 Tr. 67:14-68:3).

Immediately after Dr. McClure’s nomination failed, Trustee Whatley stated, “I would like to nominate Michelle Faust for District 8,” and added, “And I have her resume here.” (Feb. 25 Bd. Tr. 6:1-8). Faust was not listed on the February 25 agenda. Her resume was not included with the posted agenda. Her nomination was not noticed to the public in the same manner as the listed nominees. (February 25, 2026, Agenda; April 1 Tr. 68:10-17; 72:14-18; 73:8-19). The publicly posted agenda gave notice that Appellant was the District 8 nominee to be considered. It did not give notice that Faust would be considered, that Faust’s qualifications would be evaluated, or that Faust could be approved for the District 8 seat that night. (February 25, 2026 Agenda; Feb. 25 Bd. Tr. 6:1-8).

Some CCSD Board of Trustees members immediately objected to Faust's nomination, citing their concern the nomination of Ms. Faust was inconsistent with the prior nominations. Trustee Dunmeyer-Roberson stated that the Board had been following an established process and "now, in the middle of the -- you want to change." (Feb. 25 Bd. Tr. 17:16-22). Trustee Jewett stated that trustees had been told that "each board member was to have a nomination within their district," that this instruction was "in an email," and that it had been part of "every single dialogue." (Feb. 25 Bd. Tr. 18:7-17). Dr. Tempel stated that Faust's resume was not "on the list" and that trustees received it only at the meeting. (Feb. 25 Bd. Tr. 19:24-20:2). Trustee Dunmeyer-Roberson stated that the Board had been given a clear process, followed it, and then the process changed after the vote did not go as some trustees wanted. (Feb. 25 Bd. Tr. 20:3-9).

The Board then voted to approve Faust to serve as the Foundation's District 8 representative. After the vote, Trustee Jewett stated that Faust's resume "was never put on the agenda," and the Chair responded, "It was passed out [during the meeting]." (Feb. 25 Bd. Tr. 34:4-15). Trustee Leber then stated that she had talked to "the majority of the people -- well, the five total of us -- about Michelle Faust's experience." (Feb. 25 Bd. Tr. 34:18-25). The fact that a CCSD Board of Trustees member had prior conversations about Ms. Faust's nomination shows her nomination was not unforeseeable and could have been publicly noticed before final action was taken.¹

¹ This also enhances the likelihood of success on the merits. Ms. Leber's discussion with 5 board members may be a FOIA violation as it is evidence of an unnoticed, secret meeting with a quorum of the board. See *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 630, 785 S.E.2d 198, 201 (2016) (citing S.C. Code Ann. § 30-4-20(d)) ("FOIA defines a 'meeting' as 'the convening of a quorum of the constituent membership of a public body . . . to discuss or act upon a matter over which the public body has supervision, control, jurisdiction[,] or advisory power.'").

Moreover, there was no additional twenty-four hours' notice to the public that identified Faust as a nominee. The Board did not add Faust's nomination to the agenda by a two-thirds vote, nor did the Board make an emergency or exigent-circumstance finding before taking final action on Faust's appointment. (February 25, 2026 Agenda; Feb. 25 Bd. Tr. 6:1-8; 28:14-29:1; April 30 Tr. 14:18-15:3). The Board therefore did more than change the order of discussion or continue the same agenda item. It took final action on a different person whose name and materials were first disclosed during the meeting.

E. March 4, 2026: the later Foundation appointment confirms the nominee-specific nature of the process and ability to provide notice.

On March 4, 2026, the Board held a special called meeting for another Foundation appointment. (March 4, 2026 Agenda; April 1 Tr. 4; April 30 Tr. 19:22-21:4). The March 4 agenda again identified the Foundation appointment item by nominee. (March 4, 2026 Agenda; April 30 Tr. 19:22-21:4). It listed "District 7 Nominee: Joan Robinson-Berry" and included "Bio.pdf" and Foundation documents. (March 4, 2026 Agenda; April 30 Tr. 19:22-21:4). At the April 30 hearing, Appellant showed the circuit court that, after a different nominee withdrew, the replacement nominee's name and biography were placed on the March 4 agenda. (April 30 Tr. 19:22-21:4).

The March 4, 2026, agenda and hearing record confirm that CCSD knew how to notice Foundation nominees by name when it chose to do so. The exception was Faust. The January 26, February 25, and March 4 agendas all used nominee-specific notice for the listed nominees. Faust was the only nominee approved without her name and materials being publicly posted before the vote.

When a different Foundation seat required action, CCSD placed the nominee's name and materials on the agenda of a later meeting. (March 4, 2026 Agenda; April 30 Tr. 19:22-21:4). Respondents also acknowledged below that, after the District 7 nominee withdrew, the Board held

a special-called meeting at which three individuals were nominated and the person receiving a majority vote became the District 7 Foundation board member. (Respondents' Memorandum in Opposition to Motion for Temporary Restraining Order and Preliminary Injunction at 3). Nothing in the February 25, 2026, meeting shows an emergency requiring the Board to seat Faust before the public received comparable notice.

F. The April 1 and April 30 hearings before the circuit court confirmed the disputed facts and preservation of the statutory issues.

After Appellant filed his Motion for Preliminary Injunction, the circuit court held an in-person hearing on April 1, 2026 (the "April 1, Hearing"). At the April 1 Hearing, three trustees testified that they understood nominee names, resumes, or biographical information were supposed to be provided before Board action and that they did not know Faust would be nominated or considered at the February 25, 2026, meeting. (April 1 Tr. 25:8-15; 37:5-10; 40:9-17; 41:1-9; 47:1-22; 48:7-15).

Further, CCSD's Chief Financial Officer, Daniel Prentice, testified that he and CCSD's staff include supplementary information with agenda items when available, that CCSD included the information it had as attachments to Foundation appointment agenda items, that staff provide as much information as possible when drafting agendas, and that information received is placed on the agenda. (April 1 Tr. 63:9-20; 65:6-11; 72:1-13). He testified that Faust's resume was handed out during the meeting and was not placed on the agenda. (April 1 Tr. 72:14-18; 73:8-19). He also acknowledged that "the public's informed by anything on the agenda" and later testified that placing available nominee information on the agenda was CCSD's "procedure." (April 1 Tr. 75:19-76:16; 82:1-13; 82:21-83:13).

Superintendent Huggins testified that CCSD originally requested nominee names and resumes so staff could conduct due diligence and provide trustees with information before the vote.

(April 1 Tr. 97:10-98:18). Superintendent Huggins also testified that, after a nominee's name appeared on a later agenda, the nominee withdrew from consideration after being contacted by members of the public. CCSD thereafter stopped listing nominee names on a later special called agenda on advice of counsel. (April 1 Tr. 115:1-19).²

The evidence also confirmed that the requested relief would not disrupt settled public operations. The Foundation was brand new, had conducted only one meeting, had not established a budget, and was still addressing IRS-related organizational filings. (April 1 Tr. 79:2-10; April 30 Tr. 15:23-16:8; 25:13-19).

STANDARD OF REVIEW

The grant or denial of injunctive relief is generally reviewed for abuse of discretion. *Richland County v. S.C. Department of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018). “An abuse of discretion occurs where the trial court is controlled by an error of law or where the trial court’s order is based on factual conclusions without evidentiary support.” *Lambries v. Saluda County Council*, 409 S.C. 1, 10, 760 S.E.2d 785, 790 (2014). Although injunctions are equitable and generally subject to the trial court’s discretion, when the decision turns on statutory interpretation, the appellate court reviews the legal issue *de novo*. *Id.* at 10-11, 760 S.E.2d at 790.

An applicant for preliminary injunctive relief must ordinarily show immediate, irreparable harm, likelihood of success on the merits, and no adequate remedy at law. *Compton v. S.C. Department of Corrections*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). However, the court

² Notably, the April 30, 2026, hearing on Appellant’s Motion to Reconsider clarified that Faust’s appointment had not been cured by a later, properly noticed vote. The circuit court asked whether the person at issue had declined to serve and whether a new person had later been appointed after proper notice. Appellant clarified that the court was thinking of a different nominee for a different seat and that Faust still sat on the Foundation Board for the disputed District 8 seat. (April 30 Tr. 17:19-19:14).

examines the merits only to determine whether the plaintiff made a sufficient *prima facie* showing of entitlement to relief. *Id.* Once a FOIA violation is shown, the legislature has already answered the irreparable harm and adequate remedy inquiries: “a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.” S.C. Code Ann. § 30-4-100(A).

ARGUMENT

I. THE CIRCUIT COURT ERRED OR ABUSED ITS DISCRETION BY DENYING PRELIMINARY INJUNCTIVE RELIEF.

The circuit court denied preliminary injunctive relief after finding that Appellant failed to demonstrate irreparable harm, likelihood of success on the merits, and no adequate remedy at law. (April 6 Form 4 Order at 1). That ruling cannot be reconciled with FOIA’s statutory language. Section 30-4-100(A) provides that “a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.” S.C. Code Ann. § 30-4-100(A). At the injunction stage, Appellant was not required to prove the entire FOIA case as though the matter had already proceeded through discovery and trial. The proper merits inquiry was whether Appellant made a *prima facie* showing of likelihood of success. *Compton*, 392 S.C. at 366, 709 S.E.2d at 642; *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009). Once that showing was made, § 30-4-100(A) supplied the irreparable-harm and no-adequate-remedy elements as a matter of law.

Appellant preserved this issue at reconsideration. Appellant argued that § 30-4-100(A) provides that a FOIA violation “must be considered an irreparable injury for which no adequate remedy at law exists.” (April 30 Tr. 6:8-18). The circuit court asked whether applying the statute required a final determination that a FOIA violation occurred before Appellant received the statute’s effect on irreparable harm and adequate remedy. (April 30 Tr. 11:7-12:13). Appellant

explained that the court did not need to finally decide the FOIA claim at the preliminary-injunction stage; it needed to decide whether Appellant made the required preliminary showing of likelihood of success. (April 30 Tr. 12:14-13:6).

Respondents' contrary position collapses the preliminary-injunction standard into a final merits standard. If a FOIA plaintiff must conclusively prove the violation before receiving interim relief, then § 30-4-100(A) would have little practical effect. The plaintiff would be forced to conclusively prove the same FOIA violation that the underlying action seeks to adjudicate before discovery, trial, and final judgment. That is not how preliminary injunctive relief functions. South Carolina courts recognize that injunctive relief is part of FOIA's remedial framework. *Burton v. York County Sheriff's Department*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004); *Business License Opposition Committee v. Sumter County*, 311 S.C. 24, 426 S.E.2d 745 (1992).

Further, the relief requested was narrow. Appellant did not ask the circuit court to appoint him to the Foundation or to select a different nominee. Appellant asked the court to prevent Respondents from treating the February 25, 2026, vote approving Faust as valid while the FOIA claim was adjudicated. (Motion for TRO and Preliminary Injunction at 1-2). Before the disputed vote, the District 8 Foundation seat had not been filled by Faust. Preserving that status quo would have prevented the disputed vote from having legal effect without directing the Board to appoint any particular person.

The record further showed that interim relief would not disrupt settled public operations. The Foundation was new, had conducted only one meeting, had not established a budget, and was still addressing IRS-related organizational filings. (April 1 Tr. 79:2-10; April 30 Tr. 15:23-16:8; 25:13-19). CCSD could continue operating regardless of whether the Foundation relied on the disputed District 8 voting seat. Public confidence in the Foundation would be better served by

lawful and transparent formation than by allowing an allegedly unlawful vote to remain operative while the FOIA claim was pending.

II. THE CIRCUIT COURT ERRED BY FINDING NO LIKELIHOOD OF SUCCESS ON THE MERITS.

The merits issue is narrow. This case is not about whether Appellant had a right to be appointed to the Foundation. He did not. The issue is whether, after posting a nominee-specific agenda and attaching nominee-specific materials, the Board could immediately take final action on a different, unlisted District 8 nominee without additional public notice, without a two-thirds vote to add the item, and without an emergency or exigency finding. FOIA does not permit that procedure.

S.C. Code Ann. § 30-4-80(A) provides that once an agenda is posted, “no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be made in the same manner as the original posting.” After the meeting begins, an action item may be added only by a two-thirds vote of the members present and voting. *Id.* If final action can be taken, or if there has not been and will not be an opportunity for public comment with prior public notice, the item may be added only by two-thirds vote and upon a finding that an emergency or exigent circumstance exists if the item is not added. *Id.* None of that occurred here.

A. The February 25, 2026, agenda item was nominee-specific.

Respondents cannot fairly characterize the February 25, 2026, agenda item as a generic Foundation topic. The agenda identified “CCSD Education Foundation Board of Director Appointments,” stated that the Board would nominate and approve the initial Foundation board members representing each district, and then listed specific nominees and nominee materials. (February 25, 2026 Agenda; April 1 Tr. 67:1-24). For District 8, it listed Appellant as the second-

time nominee and included his resume and cover letter. (February 25, 2026, Agenda; McClure Resume; McClure Cover Letter; April 1 Tr. 67:1-24).

The meeting itself confirms that the Board treated the item as nominee-specific. The Chair and parliamentarian confirmed nominees would be called by name. (Feb. 25 Bd. Tr. 2:1-19). The District 7 nominee's resume was in the board packet. The District 9 resume was also available. (Feb. 25 Bd. Tr. 3:15-17; 5:7-10). Appellant's name and biographical information were included in the agenda. (February 25, 2026 Agenda; McClure Resume; McClure Cover Letter; April 1 Tr. 67:1-24). Faust's information was not. The Board then voted nominee by nominee. (Feb. 25 Bd. Tr. 2:1-19; 3:15-17; 5:7-25). This was not a general discussion of the Foundation. It was final action on identified people for identified district seats.

The identity of the nominee mattered because the Foundation process itself required nominee-specific review. The CCSD Foundation Nominee Process required potential nominees to satisfy the Founding Board of Directors Job Description, complete an inquiry form, sign a Conflict of Interest Statement, and complete a Conflict of Interest Disclosure Form. (CCSD Foundation Nominee Process; April 1 Tr. 104:20-106:5). A citizen cannot evaluate qualifications, conflicts, residency, or suitability if the nominee's identity is withheld until the moment of the vote.

B. Faust's nomination was a new action item.

After Appellant's nomination failed, Trustee Whatley announced for the first time that she wanted to nominate Faust for District 8 and began to hand out Faust's resume to Board members during the meeting.³ (Feb. 25 Bd. Tr. 6:1-8). Faust was not listed on the February 25, 2026, meeting agenda, her resume was not posted with the agenda, and the public had no advance notice

³ Notably, some board members appeared remotely and were not able to collect the resume that was handed out at the meeting.

that she would be considered for the District 8 seat. (February 25, 2026, Agenda; April 1 Tr. 68:10-17; 72:14-18; 73:8-19).

CCSD's own process confirms why Faust's nomination was new and material. The January 7 email directed trustees to submit names and relevant background information by a deadline so staff could conduct conflict review, verify qualifications, and update the agenda item before the Board acted. (January 7, 2026, Email). CCSD Policy BEDA/BEDB likewise required agenda items to be identified and accompanied by appropriate backup material, and it required agenda items lacking timely supporting materials to be deferred. (BEDA/BEDB Policy; April 1 Tr. 108:13-109:4). Faust's nomination bypassed that process.

Nor was Faust's nomination unforeseeable. During the February 25, 2026, meeting, Trustee Leber stated that she had talked to "the majority of the people -- well, the five total of us - - about Michelle Faust's experience." (Feb. 25 Bd. Tr. 34:18-25). Appellant does not ask this Court to decide a separate FOIA claim based on those conversations. At minimum, that statement showed Faust's nomination was not unforeseeable and was not an unexpected emergency. Therefore, under FOIA, her nomination should have been publicly noticed in the same manner as the other Foundation nominees. See *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 630, 785 S.E.2d 198, 201 (2016); S.C. Code Ann. §§ 30-4-20(d), -80(A).

C. The Board did not satisfy any statutory method for adding Faust's nomination.

Once the Board moved from the posted District 8 nominee to a different unlisted nominee, the statute required compliance with the agenda-addition procedure. See S.C. Code Ann. § 30-4-80(A). The Board could have provided additional twenty-four-hour notice in the same manner as the original posting. It did not. After the meeting began, the Board could add an action item only by a two-thirds vote and, because final action was taken without prior public notice, upon an

emergency or exigency finding. See S.C. Code Ann. § 30-4-80(A). It did not do that either. (Feb. 25 Bd. Tr. 6:1-8; 28:14-29:1; April 30 Tr. 14:18-15:3).

The Board did not merely receive Faust's name for later consideration. It approved her for the District 8 Foundation seat within minutes of her being nominated from the floor, without notice or opportunity for public comment. That final action occurred before the public received the same notice it received for the other nominees. If the Board wished to take final action on Faust that night, it had to formally add that action item under § 30-4-80(A). If the Board did not wish to invoke that procedure, it could have deferred the nomination and noticed Faust in the same manner used for the other Foundation nominees.

D. The *Brock* and *Lambries* cases do not excuse the FOIA violation.

Respondents rely on *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 785 S.E.2d 198 (2016), to defend their failure to notice Faust's nomination. However, *Brock* does not authorize what occurred here. In *Brock*, the defendant government entity listed an item on its agenda that it would discuss in executive session. It then took action on that executive session item during the public meeting. Accordingly, the Supreme Court held that, "[FOIA] does not require that an agenda for an executive session be posted or that the news media be notified of the agenda of an executive session." *Brock*, 415 S.C. at 630, 785 S.E.2d at 201 (quoting *Herald Publ'g Co. v. Barnwell*, 291 S.C. 4, 11, 351 S.E.2d 878, 883 (Ct. App. 1986)).

Here, there was no action on an executive session item. The nomination of Foundation Board members was a publicly noticed agenda item and did not fit into any executive session

purpose enumerated by FOIA.⁴ *Brock* held that FOIA requires notice that action may be taken on an agenda item. It did not hold that a public body may post a nominee-specific agenda, reject the listed nominee, and then take final action on an unlisted substitute without following § 30-4-80(A). Here, the Board had already made the Foundation appointment item nominee-specific, and the public had a right to rely on the notice process CCSD used for the other Foundation appointments.

Lambries v. Saluda County Council, 409 S.C. 1, 760 S.E.2d 785 (2014), also does not control. *Lambries* interpreted the pre-2015 version of S.C. Code Ann. § 30-4-80, which referred to an “agenda, if any” for regularly scheduled meetings and contained no express statutory procedure governing how a posted agenda could be amended during a meeting. *Id.* at 12-13, 760 S.E.2d at 791-92. After *Lambries*, the General Assembly enacted 2015 Act No. 70, § 1, amending § 30-4-80 to require agendas for regularly scheduled and special meetings and to specify how agendas may be amended. The present case is governed by the amended statute.

E. The violation was material, uncured, and created a harm to the public, including Appellant.

Respondents’ substantial compliance and lack of prejudice arguments fail because the violation changed the substance of the action taken. The prejudice is not measured by whether Appellant personally lost a vote. FOIA protects the public’s right to know what public officials are about to do. The public received notice that the Board would consider Appellant for District 8. The public did not receive notice that the Board would consider and approve Faust for that same seat. That loss of advance public knowledge is the statutory harm.

⁴ “During an open meeting, public bodies may vote to close the meeting and go into an executive session for certain enumerated purposes.” *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 630, 785 S.E.2d 198, 201 (2016) (citing S.C. Code Ann. § 30-4-70(a)-(b) (2007) (allowing executive sessions for the discussion of sensitive topics, including employment matters, negotiations dealing with the purchase of property, and the receipt of legal advice)).

The General Assembly has declared that public business must be performed openly so citizens are advised of public officials' performance and decisions reached in public activity and public policy formulation. S.C. Code Ann. § 30-4-15. The essential purpose of FOIA is to protect the public from secret government activity and to allow citizens to learn and report fully the activities of public officials. *Brock*, 415 S.C. at 629, 785 S.E.2d at 200.

The March 4, 2026, agenda confirms the materiality of the violation. When CCSD later considered another Foundation seat, the agenda again listed the nominee by name and included supporting materials. (March 4, 2026, Agenda; April 30 Tr. 19:22-21:4). Specifically, the March 4 agenda listed "District 7 Nominee: Joan Robinson-Berry" and included "Bio.pdf" and Foundation documents. (March 4, 2026, Agenda). That later process shows that nominee identity was not incidental. It was part of the action being taken and noticed to the public prior to the meeting.

Nor can Respondents avoid the violation by arguing that Faust was not technically a nominee until she was nominated during the meeting. That argument proves Appellant's point. If the Board wanted flexibility to move to an entirely different District 8 candidate and take final action that same night, it had to comply with § 30-4-80(A) once the meeting began. It did not.

Likewise, Respondents cannot transform the lack of notice into substantial compliance by pointing to the broad words "Foundation appointments." The agenda addition provision of the statute would have little force if a public body could list one identifiable appointment, take final action on another person, and then claim substantial compliance because the general subject area was similar.

Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 630 (1996), is instructive because it addressed FOIA issues arising from a public appointment process and confirms that appointment actions are

not insulated from FOIA merely because the public body completes the appointment. The harm here was not simply that Appellant was rejected. The harm was that the Board filled the District 8 seat through a final vote on an unlisted nominee without the notice required by FOIA.

III. THE CIRCUIT COURT ERRED BY DENYING RECONSIDERATION WITHOUT MAKING THE FINDINGS REQUIRED BY RULE 52(a), SCRCP.

Alternatively, this Court should remand because the circuit court failed to make the findings required when refusing interlocutory injunctive relief. Rule 52(a), SCRCP, provides that “in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action.” Rule 52(a), SCRCP. The April 6 and May 1 Form 4 orders did not do so. (April 6 Form 4 Order at 1; May 1 Form 4 Order at 1).

The April 6 order recited the three preliminary injunction elements and stated that Appellant failed to satisfy them. It did not identify which facts the court credited, whether the court accepted Respondents’ broad-agenda theory, whether the court rejected § 30-4-100(A), whether the court believed a final FOIA determination was required, or whether the court applied a heightened likelihood-of-success standard. (April 6 Form 4 Order at 1).

The absence of any support for the court’s order is particularly important because the court was not deciding a routine motion. Rule 52(a) expressly states that, with respect to interlocutory injunctions, the court is required to state the findings and conclusions that constitute the grounds for its action. Rule 52(a), SCRCP. A Form 4 order that simply recites the elements does not inform the parties or this Court why statutory FOIA relief was refused. At the April 30 hearing, Appellant specifically asked the court, if it was not inclined to grant relief, to amend its ruling to provide “the specific factual and legal conclusions for which element Plaintiff has failed to demonstrate.” (April 30 Tr. 9:15-10:21). Appellant cited Rule 52(a) and explained that findings were needed to identify

whether the court rejected § 30-4-100(A), rejected likelihood of success, or denied relief for some other reason. (April 30 Tr. 9:15-10:21).

The need for findings was concrete. The court questioned whether § 30-4-100(A) required a final determination of a FOIA violation before its irreparable harm and adequate remedy language applied. (April 30 Tr. 11:7-12:13). The court also questioned the meaning of “likelihood of success on the merits,” stating that the phrase sounded like “a pretty darn good likelihood” of winning. (April 30 Tr. 13:1-15). Respondents argued that Appellant had to show a “substantial likelihood of success,” while Appellant responded that South Carolina requires likelihood of success, not a heightened substantial-likelihood requirement. (April 30 Tr. 21:12-17; 24:19-25; 25:1-12).

In *In re Care and Treatment of Corley*, 365 S.C. 252, 616 S.E.2d 441 (Ct. App. 2005), the Court of Appeals explained that findings are not a “mere formality” or “empty ritual.” *Id.* at 258, 616 S.E.2d at 444. They are required so the reviewing court can determine whether the judgment and legal conclusions reflect a correct application of the law. Although *Corley* did not involve an injunction, its Rule 52(a) reasoning applies with even greater force here because Rule 52(a) specifically requires findings when a court refuses interlocutory injunctive relief. If the court denied injunctive relief because it believed Appellant failed to independently prove irreparable harm and lack of an adequate remedy, then the court failed to apply § 30-4-100(A). If the court denied relief because a generic Foundation appointment heading permitted final action on any unlisted nominee, then it failed to apply § 30-4-80(A). If the court denied relief because the violation was technical or harmless, it failed to explain why the lack of public notice of the nominee approved was immaterial despite FOIA’s open government mandate. In any scenario, the circuit

court abused its discretion and committed legal error in denying Appellant's request for a preliminary injunction.

CONCLUSION

For these reasons, Appellant respectfully requests this Court reverse the circuit court's April 6, 2026, order denying preliminary injunctive relief and its May 1, 2026, order denying reconsideration. Appellant further requests this Court remand the matter with instructions to enter appropriate interim relief preserving the status quo before the February 25, 2026, vote on Michelle Faust.

Alternatively, Appellant requests the Court remand to the circuit court for an order containing the findings of fact and conclusions of law required by Rule 52(a), SCRPC.

Appellant also requests that this Court preserve Appellant's right to seek reasonable attorney's fees and costs under S.C. Code Ann. § 30-4-100(B) and remand for the circuit court to determine any appropriate fee and cost award.

Respectfully submitted,
s/ Emmanuel J. Ferguson
Emmanuel J. Ferguson
S.C. Bar No. 81431
FERGUSON LAW AND MEDIATION, LLC
171 Church Street, Suite 160
Charleston, South Carolina 29401
Telephone: 843.491.4890
emmanuel@fergusonlaborlaw.com

Attorney for Appellant Dr. Brian McClure

Charleston, South Carolina
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