

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, Carlotte Bailey, and Pamela McKinney,
Respondents.

APPELLANT'S REPLY 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

Charleston, South Carolina
September 16, 2026

RECEIVED
Sep 16 2026
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. STATEMENT OF THE CASE RELEVANT TO THE REPLY	1
II. STATEMENT OF FACTS RELEVANT TO THE REPLY	1
III. STANDARD OF REVIEW	3
IV. SUMMARY OF ARGUMENT	3
V. ARGUMENT	4
A. The Agenda and the Board’s Own Procedure Establish That Faust’s Nomination Was a New Action Item.	4
B. Respondents’ Reliance on <i>Brock</i> and <i>Lambries</i> Ignores the Governing Statutory Amendment.	6
C. The Lack of Advance Notice Was Material and Was Not Cured by Appellant’s Earlier Rejection.	7
D. Respondents Improperly Demand a Final Merits Determination Before FOIA’s Statutory Injury Rule Applies.	8
E. The Alleged Outside Discussions Further Undermine Respondents’ Claim That Faust’s Nomination Was Spontaneous.	10
F. Respondents Do Not Answer the Rule 52(a) Issue.	11
VI. CONCLUSION.....	12

TABLE OF AUTHORITIES

Cases

<i>Brock v. Town of Mount Pleasant</i> , 415 S.C. 625, 629 (2016)	5-7
<i>Burton v. York County Sheriff's Department</i> , 358 S.C. 339, 354 (Ct. App. 2004).....	9
<i>Cricket Cove Ventures, LLC v. Gilland</i> , 390 S.C. 312, 328 (2010).....	9
<i>Lambries v. Saluda County Council</i> , 409 S.C. 1, 11, 16 (2014).....	3, 5-7
<i>Perry v. Bullock</i> , 409 S.C. 137, 141 (2014).....	8
<i>Pope v. Wilson</i> , 427 S.C. 377, 385 (2019).....	5

Statutes and Rules

S.C. Code Ann. § 30-4-20(d)	10
S.C. Code Ann. § 30-4-80(A)	2-3, 5, 7
S.C. Code Ann. § 30-4-100(A)	4, 10
S.C. Code Ann. § 30-4-100(B)	12
Rule 52(a), SCRCP	1, 4, 11

I. STATEMENT OF THE CASE RELEVANT TO THE REPLY

Appellant sought interim relief preventing Respondents from treating the February 25, 2026, vote approving Michelle Faust as valid while the underlying FOIA action remained pending.

The circuit court denied relief after stating, without supporting findings, that Appellant had not demonstrated irreparable harm, likelihood of success on the merits, or the absence of an adequate remedy at law. Appellant's initial brief challenges that ruling and, alternatively, seeks remand for the findings required by Rule 52(a), SCRCP.

Respondents' Initial Brief ("RIB") addresses likelihood of success, irreparable harm, and adequacy of legal remedies. It does not answer Appellant's separate Rule 52(a) issue.

II. STATEMENT OF FACTS RELEVANT TO THE REPLY

The February 25, 2026, Board Agenda Item 12(B) identified "CCSD Education Foundation Board of Director Appointments," stated that the Board would nominate and approve initial Foundation directors representing each district, and listed particular nominees. (February 25, 2026 Agenda; April 1 Tr. 67:1-24). For District 8, the agenda identified 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 Board conducted the February 25, 2026, meeting on that nominee-specific basis. The Chair and parliamentarian confirmed that nominees would be called by name. (Feb. 25 Bd. Tr. 2:1-19). Board trustees referred to resumes provided for the District 7 and District 9 nominees. (Feb. 25 Bd. Tr. 3:15-17; 5:7-10). The Board voted separately on each identified nominee. (Feb. 25 Bd. Tr. 2:15-5:25; April 1 Tr. 67:14-68:3). Appellant's District 8 nomination failed by a 4-5 vote. (Feb. 25 Bd. Tr. 2:15-5:25; April 1 Tr. 67:14-68:3).

Immediately afterward, Trustee Whatley nominated Michelle Faust and stated that she had Faust's resume with her. (Feb. 25 Bd. Tr. 6:1-8). Faust's name and resume had not been included

with the publicly posted agenda. (February 25, 2026 Agenda; April 1 Tr. 68:10-17; 72:14-18; 73:8-19). The Board provided no additional twenty-four-hour notice, took no two-thirds vote to add Faust's nomination, and made no emergency or exigent-circumstance finding before approving her appointment. (February 25, 2026 Agenda; Feb. 25 Bd. Tr. 6:1-8; 28:14-29:1; April 30 Tr. 14:18-15:3).

The circumstances also refute Respondents' suggestion that Faust's nomination was an unforeseeable development from the floor. After the vote, Trustee Leber stated that she had spoken to "the majority of the people—well, the five total of us—about Michelle Faust's experience." (Feb. 25 Bd. Tr. 34:18-25). Yet Faust was approved without the advance nominee-specific notice and materials provided for the listed candidates. (February 25, 2026 Agenda; Feb. 25 Bd. Tr. 6:1-8; April 1 Tr. 72:14-18; 73:8-19).

Taken together, the record presents more than a departure from internal custom. CCSD used a process requiring nominee-specific information before Board action; the February 25 agenda named the candidates to be considered; the Board called and voted on those nominees individually; and trustees testified they did not know Faust would be considered. (CCSD Foundation Nominee Process; February 25, 2026 Agenda; Feb. 25 Bd. Tr. 2:1-6:8; April 1 Tr. 25:8-15; 40:9-17; 47:1-22; 48:7-15). When Appellant's noticed nomination failed, the Board immediately approved Faust even though her name and materials had not been posted and without using any of § 30-4-80(A)'s procedures for adding an action item. (February 25, 2026 Agenda; Feb. 25 Bd. Tr. 6:1-8; 28:14-29:1; April 30 Tr. 14:18-15:3). Those facts support Appellant's contention that the Board took final action on a new, unlisted District 8 nominee without the public notice required by FOIA.

III. STANDARD OF REVIEW

The denial of preliminary injunctive relief is generally reviewed for abuse of discretion. (RIB 5). Statutory interpretation presents a question of law reviewed *de novo*. *Lambries v. Saluda County Council*, 409 S.C. 1, 7-8 (2014). Respondents recognize both standards. (RIB 5).

The circuit court's compliance with the requirement to state the grounds for refusing an interlocutory injunction likewise presents a legal question. Appellant preserved that issue by requesting findings in his motion for reconsideration and at the April 30 hearing. (Motion to Reconsider at 1-2; April 30 Tr. 9:15-10:21).

IV. SUMMARY OF REPLY ARGUMENT

Respondents' defense depends on recasting a nominee-specific appointment process as a generic discussion of Foundation appointments. (RIB 6-10). The actual agenda and meeting refute that characterization. The agendas in the record identified particular nominees by district and included nominee-specific materials. (January 26, 2026 Agenda; February 25, 2026 Agenda; March 4, 2026 Agenda; April 1 Tr. 67:1-24; April 30 Tr. 19:22-21:4). The Board called those nominees by name and voted on them individually. When the listed District 8 nomination failed, the Board immediately considered and approved a different person whose identity and materials had not been disclosed to the public.

Respondents' own quotation of the governing statute confirms that an action item may not be added after an agenda is posted without additional notice or the prescribed vote and findings. RIB 9; S.C. Code Ann. § 30-4-80(A). Respondents cannot avoid that command by defining the posted "item" at the highest possible level of generality. Such a reading would permit a public body to notice one appointment and approve another without meaningful advance notice.

Respondents also incorrectly treat final proof of a FOIA violation as a prerequisite to preliminary relief. (RIB 14-16). At this stage, the court considers likelihood of success. Once that

showing is made, FOIA itself treats the violation as irreparable injury for which no adequate remedy at law exists. S.C. Code Ann. § 30-4-100(A). Requiring a final adjudication or “actual success” before applying that rule would eliminate meaningful interim relief.

Finally, Respondents do not address Appellant’s Rule 52(a) argument. The circuit court entered two unexplained Form 4 orders despite Appellant’s express request for findings. (April 6 Form 4 Order at 1; May 1 Form 4 Order at 1; Motion to Reconsider at 1-2; April 30 Tr. 9:15-10:21). At minimum, remand is required for an order identifying the factual and legal grounds for denying relief.

V. ARGUMENT

A. The Agenda and the Board’s Own Procedure Establish That Faust’s Nomination Was a New Action Item.

Respondents argue that the words “Foundation Board of Director Appointments” authorized the Board to approve any person nominated during the meeting, even if that nominee was not identified and noticed prior to the meeting like the other nominees. (RIB 6-10). That argument disregards how CCSD drafted the agenda, conducted the vote, or informed the public of who may represent them on a public board.

The agenda did not merely announce a general Foundation topic. It identified specific district seats, listed specific nominees, and included specific materials for each nominee. (February 25, 2026 Agenda; McClure Resume; McClure Cover Letter; April 1 Tr. 67:1-24). At the meeting, the Board confirmed that nominees would be called by name, referred to their resumes, and voted nominee by nominee. (Feb. 25 Bd. Tr. 2:1-19; 3:15-17; 5:7-25; April 1 Tr. 67:14-68:3). The relevant action therefore was not an abstract “appointment.” It was consideration and approval of a particular person for a particular district seat.

Respondents contend that Faust could not have appeared on the agenda because she did not become a “nominee” until Trustee Whatley formally nominated her during the meeting. (RIB 13). But Trustee Leber’s statement that she had already spoken with five trustees about Faust’s experience defeats the premise that Faust emerged unexpectedly or became a “nominee” for the first time at the February 25, 2026, meeting. (Feb. 25 Bd. Tr. 34:18-25). It also confirms that providing advance notice was practicable.

Moreover, Respondents’ interpretation that a “nominee” does not become a “nominee” until formally nominated by the Board would deprive the agenda-addition provision they quote of meaningful effect. Their brief acknowledges that, once an agenda is posted, an action item may be added only through additional notice or the prescribed vote and findings. (RIB 9). S.C. Code Ann. § 30-4-80(A). Under their theory, however, a public body could post one named candidate—or no candidate at all—approve a different candidate, and avoid the addition procedure by describing both actions as part of the same general subject.

Here, the text of the statute is unambiguous and controls. Courts must apply clear statutory language as written and may not rewrite it based on speculation about legislative intent. *Lambries v. Saluda County Council*, 409 S.C. 1, 16 (2014). The text is the best evidence of legislative intent, and a court may not impose a meaning different from the statute’s plain terms. *Id.* at 11.

The public notice function of FOIA reinforces the same conclusion. South Carolina FOIA exists to protect the public from secret governmental activity and is construed liberally to advance open government. *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 629 (2016). Its provisions are intended to permit citizens to learn and report fully the activities of public officials with minimal delay. *Pope v. Wilson*, 427 S.C. 377, 385 (2019).

Advance identification mattered here. CCSD's process required nominee-specific information for qualification and conflict review. (CCSD Foundation Nominee Process; April 1 Tr. 104:20-106:5). The February agenda disclosed nominee-specific information for Appellant and the other listed nominees, but not for Faust. (February 25, 2026 Agenda; McClure Resume; McClure Cover Letter; April 1 Tr. 67:1-24; 72:14-18; 73:8-19). The public therefore had notice that Appellant would be considered for District 8, but was not given any notice that Faust would be considered and finally approved for that seat.

That notice was particularly important because the Foundation exists to assist and support CCSD and its public schools. Its Phase 1 board was structured to include a resident from each of Charleston County's nine election districts. (Foundation Bylaws at 1-2, § 5.02; April 1 Tr. 61:4-13; 62:1-15). The identity and qualifications of the person selected for a district seat bear directly on the initial governance of an entity created to support public education. Advance notice gives parents, taxpayers, educators, and district residents a meaningful opportunity to know who may occupy the seat allocated to their district, review the nominee-specific information CCSD itself required, and follow the Board's final action with informed attention. Notice naming one District 8 candidate cannot perform that function if the Board may immediately approve a different, undisclosed candidate without notice of that candidate, or if such a maneuver was even possible.

B. Respondents' Reliance on *Brock* and *Lambries* Ignores the Governing Statutory Amendment.

Respondents invoke *Brock* and *Lambries* to argue that the agenda did not need to identify Faust. (RIB 6-10). Neither decision resolves this case. *Lambries* addressed the former version of the statute, under which no agenda was required for a regularly scheduled meeting. *Lambries v. Saluda County Council*, 409 S.C. 1, 16 (2014). The decision declined to judicially create a restriction on amending an agenda *when the statute then required no agenda at all*. That

reasoning does not authorize disregard of the agenda-addition procedure later enacted by the General Assembly.

Brock likewise recognized that, when the meetings at issue in that case occurred, ***agendas were not required for regularly scheduled meetings*** and *Lambries*, therefore, declined to prohibit amendment of a posted agenda. *Brock v. Town of Mount Pleasant*, 415 S.C. 625, 629 (2016). *Brock* expressly noted that the statute was amended in 2015. *Id.* The February 25, 2026, meeting is governed by the amended statute, not the pre-amendment framework applied in *Lambries*.

Nor does Appellant ask the Court to impose a nominee-disclosure requirement absent from the statute. CCSD itself made the appointment item nominee-specific by identifying the candidates and attaching their materials. Once CCSD noticed and conducted the matter that way, final action on an undisclosed substitute required use of the FOIA's statutory method for adding an action item.

The March 4, 2026, meeting confirms compliance was both practical and consistent with CCSD's process. For another Foundation vacancy, CCSD posted a nominee's name and supporting materials before voting. (March 4, 2026 Agenda; April 30 Tr. 19:22-21:4). Nothing in the February 25, 2026, meeting established an emergency requiring immediate action on Faust.

The distinction is dispositive. *Lambries* and *Brock* explain the law governing meetings held under the former statutory framework when meeting agendas were not required. They do not nullify the agenda-addition procedures that now control. Once CCSD chose to notice Item 12(B) through identified nominees and supporting materials, the question became whether final action on a different, undisclosed nominee could occur without the additional notice, vote, and emergency or exigency finding required by § 30-4-80(A). The record shows none of those safeguards were used. (February 25, 2026 Agenda; Feb. 25 Bd. Tr. 6:1-8; 28:14-29:1; April 30 Tr. 14:18-15:3).

Respondents' reliance on the pre-amendment framework therefore does not answer the statutory violation alleged here.

C. The Lack of Advance Notice Was Material and Was Not Cured by Appellant's Earlier Rejection.

Respondents argue that Appellant suffered no prejudice because his nomination failed before Faust was nominated. (RIB 13). That argument mistakes Appellant's personal appointment interest for the public right FOIA protects.

Appellant does not claim a right to a Foundation seat. He challenges the Board's final action on an unlisted nominee. The public, not merely Appellant, lost the opportunity to learn before the vote that Faust would be considered, review the information disclosed for other nominees, and observe the decision with informed attention.

South Carolina courts have repeatedly described FOIA's essential purpose as protecting the public from secret governmental activity. *Perry v. Bullock*, 409 S.C. 137, 141 (2014). Accordingly, an agenda violation is not harmless merely because the same majority might have reached the same result after proper notice. The relevant loss is the advance public knowledge the statute was designed to provide.

Respondents also rely on substantial compliance, but their own authority recognizes that substantial compliance may excuse only a technical violation having no demonstrated effect on the complaining party. (RIB 13). This was not a clerical defect. The identity of the person approved for a district seat on an entity established to support the public school system was omitted until the meeting, while the identities and materials of the other candidates were disclosed beforehand.

The prejudice argument therefore asks the wrong question. The asserted defect did not affect only Appellant's candidacy; it deprived the public of the same advance nominee-specific information that CCSD supplied for the candidates it had actually listed. (February 25, 2026

Agenda; April 1 Tr. 72:14-18; 73:8-19). Because the Board took final action on Faust before the public had comparable notice, the omission went to the substance of the notice itself, not to a technical irregularity. Appellant's earlier rejection did not cure that loss of public notice.

D. Respondents Improperly Demand a Final Merits Determination Before FOIA's Statutory Injury Rule Applies.

Respondents acknowledge that FOIA treats a violation as irreparable injury for which no adequate remedy at law exists, but contend the provision applies only after a violation has been conclusively established. (RIB 14-16). That interpretation collapses preliminary review into final adjudication.

At the preliminary stage, the question is whether Appellant demonstrated a likelihood of success, not whether he had already obtained final judgment. Appellant made that showing through testimony presented during the April 1, 2026, hearing, the posted agenda, the meeting transcript, the undisputed absence of Faust's name and materials, and the Board's failure to use any agenda-addition procedure. (February 25, 2026 Agenda; Feb. 25 Bd. Tr. 6:1-8; 28:14-29:1; April 1 Tr. 68:10-17; 72:14-18; 73:8-19; April 30 Tr. 14:18-15:3).

FOIA authorizes a citizen to seek declaratory and injunctive relief, permits the court to order appropriate equitable relief, and directs that a violation be treated as irreparable injury for which no adequate remedy at law exists. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 328 (2010). South Carolina appellate authority has likewise recognized the statutory presumption supporting equitable relief when FOIA has been violated. *Burton v. York County Sheriff's Department*, 358 S.C. 339, 354 (Ct. App. 2004).

Respondents' construction would postpone the statute's irreparable-injury rule until interim relief was no longer useful. A plaintiff would have to obtain a final determination of the underlying violation before receiving relief intended to prevent the disputed government action

from operating during the litigation. Nothing in the statutory language quoted by Respondents supports that circular result.

That is especially so in this procedural posture. The April 1, 2026, hearing addressed preliminary relief shortly after the action was filed; it was not a final trial on the FOIA claim. The merits had not yet been developed through full merits discovery, including written discovery and depositions, or resolved after a final adjudication. Requiring Appellant to conclusively establish the violation before § 30-4-100(A) has any effect would force an applicant for a preliminary injunction to prove the full case before obtaining the interim protection the statute makes available. The inquiry at this stage remains whether the existing record establishes the required likelihood of success, not whether discovery is complete and final judgment has already been entered.

The requested relief was also limited. Appellant did not ask the circuit court to appoint him or dictate whom the Board should select. He sought to preserve the status quo by preventing reliance on the disputed Faust vote while the FOIA claim was adjudicated. At the time, the Foundation was new, had held only one meeting, had no established 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).

E. The Alleged Outside Discussions Further Undermine Respondents' Claim That Faust's Nomination Was Spontaneous.

Respondents argue that Appellant presented no evidence of deliberations involving a quorum outside a public meeting. (RIB 10-11). The Court need not decide that separate issue to resolve this appeal.

The relevant evidence remains Trustee Leber's statement that she spoke with "the majority of the people—well, the five total of us—about Michelle Faust's experience." (Feb. 25 Bd. Tr. 34:18-25). FOIA defines a meeting as the convening of a quorum, including by electronic means,

to discuss or act on a matter within the public body's authority. S.C. Code Ann. § 30-4-20(d). Whether those communications independently establish an unlawful meeting may require further factual development. However, for present purposes, the statement at least defeats Respondents' assertion that Faust's nomination was unknown and could not have been noticed before the meeting.

F. Respondents Do Not Answer the Rule 52(a) Issue.

Appellant's third issue challenges the circuit court's failure to make findings of fact and conclusions of law supporting its refusal of interlocutory injunctive relief. Rule 52(a), SCRC. Appellant preserved that issue by expressly requesting findings in his reconsideration motion and at the April 30, 2026, hearing. (Motion to Reconsider at 1-2; April 30 Tr. 9:15-10:21).

The need for findings is apparent. The circuit court questioned whether the statutory irreparable-injury rule required a final FOIA determination and whether "likelihood of success" meant a heightened probability of prevailing. (April 30 Tr. 11:7-13:15). Respondents separately argued for a "substantial likelihood of success," standard while Appellant maintained that South Carolina requires likelihood of success, not a heightened "substantial likelihood" standard. (April 30 Tr. 21:12-17; 24:19-25; 25:1-12). Yet neither Form 4 order explained the legal standard applied, the facts credited, or the reason the statutory arguments failed. (April 6 Form 4 Order at 1; May 1 Form 4 Order at 1).

Respondents' brief lists only three issues corresponding to the general injunction elements. (RIB 1). Its argument contains no response to Appellant's Rule 52(a) ground. If this Court does not reverse and direct appropriate interim relief, it should remand for an order stating the factual and legal grounds for the decision.

VI. CONCLUSION

Appellant respectfully requests that this Court reverse the April 6, 2026, order denying preliminary injunctive relief and the May 1, 2026, order denying reconsideration, and remand with instructions to enter appropriate interim relief preserving the status quo before the February 25, 2026, vote approving Michelle Faust.

Alternatively, Appellant requests remand for findings of fact and conclusions of law addressing the governing FOIA provisions and the grounds for refusing interlocutory injunctive relief. Appellant further requests preservation of his right to seek reasonable attorney's fees and costs under S.C. Code Ann. § 30-4-100(B), with any appropriate award determined on remand.

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

Counsel for Appellant Dr. Brian McClure

Charleston, South Carolina
September 16, 2026