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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Circuit Court

Judge Robert J. Bonds

Circuit Court Appellate No.: 2026-CP-10-01436
Appellate Case No.: 2026-001286

Dr. Brian McClureAppellant,

v.

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

RESPONDENTS' RETURN TO MOTION FOR JUDICIAL NOTICE

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September 23, 2026

This matter is before the Court on Appellant Brian McClure’s Motion for Judicial Notice, filed on September 21, 2026. Appellant asks the Court, pursuant to Rule 201, SCRE, to take judicial notice of a report issued by the South Carolina Office of the State Inspector General in August 2026, titled “Investigation of the Charleston County School District Board of Trustees for Potential Misconduct, Disclosure of Confidential Information and Adverse Fiscal Impacts” (the “Report”). Because the Report contains no adjudicative facts as related to this appeal, Appellant’s Motion should be denied.

This appeal arises out of the denial of Appellant’s request for a temporary restraining order and preliminary injunction. Appellant filed this action on March 18, 2026, seeking a declaratory judgment that Respondent Charleston County School District (“CCSD”) violated the S.C. Freedom of Information Act, S.C. Code Ann. § 30-4-10, et seq. (“FOIA”), when, at its February 25, 2026, meeting, the CCSD Board of Trustees (“BOT”) declined for the second time to appoint Appellant to the board of the newly-created CCSD Education Foundation (“Foundation”) and instead appointed Michelle Faust. Appellant’s Complaint also seeks injunctive relief. As stated in his Motion for Judicial Notice, Appellant’s “principal statutory argument is that the [BOT] took final action on an unlisted nominee without complying with S.C. Code Ann. § 30-4-80(A).” (App. Motion, p. 2) In short, Appellant claims that the agenda for the BOT meeting in question, which indicated that the BOT would take up the issue of Foundation board nominations, was insufficient because it did not specifically list Ms. Faust’s name as a potential nominee.

Appellant contends that the report “is relevant because it confirms that the State Inspector General, in an official investigation issued after the circuit-court proceedings, independently identified FOIA compliance and Board-governance concerns involving the same public body.” (App. Motion, p. 3) However, the Report does not address the sufficiency of the agenda in question

in this matter, nor does it even touch on the matter of compliance with FOIA's agenda requirement. In fact, the only reference in the Report to anything related to the matter before this Court is possibly the following excerpt:

Picayune, intra-Board squabbling accomplishes nothing but greatly distracts from the District's highest priority – student achievement and preparing the future leaders of our communities. This was no more evident than the dispute over an individual's failed nomination for the District's foundation board that caused the District's expenditure of financial resources in legal representation in court based on a majority Board decision.

(Report, p. 25)

Judicial notice takes the place of proof. Moss v. Aetna Life Ins. Co., 267 S.C. 370, 228 S.E.2d 108 (1976); see also Masters v. Rodgers Dev. Grp., 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984) (noting the reluctance of appellate courts to notice adjudicative facts and holding “that original judicial notice of adjudicative facts at the appellate level should be limited to matters which are indisputable”). The pertinent portion of Rule 201, SCRE, which governs judicial notice, states:

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Rule 201(a)–(b), SCRE. Black's Law Dictionary defines “adjudicative fact” as “[a] controlling or operative fact, rather than a background fact; a fact that is particularly related to the parties to a proceeding and that helps the tribunal determine how the law applies to those parties.” Fact Definition, Black's Law Dictionary (12th ed. 2024). The comments to Rule 201, SCRE, define “adjudicative facts” as “facts about the particular event which gave rise to the lawsuit and ... [help]

explain who did what, when, where, how and with what motive and intent.” Comments, Rule 201, SCRE (quoting McCormick on Evid., § 328 (4th ed. 1992)).

There is not a single “fact” in the Report that is controlling or operative in this appeal, that is related to the parties or events giving rise to this proceeding, or that would help the Court determine how the law applies in this matter. As noted above, the Report does not address, at all, the issue of Respondents’ compliance with FOIA’s agenda requirements, either historically or in this particular matter. The extent of the Report’s discussion concerning FOIA is as follows:

E. Freedom of Information Act Violations – Improper Quorums

The SCOIG identified multiple instances in which one or more Board members used the “Reply All” function to communicate with the full Board regarding District business. These communications occurred despite previous warnings that such exchanges could implicate FOIA by involving a quorum of board members outside a properly noticed public meeting. Under S.C. Code § 30-4-20(d), a “meeting” includes the convening of a quorum by means of electronic equipment to discuss or act upon matters within the Board’s jurisdiction. Additionally, S.C. Code § 30-4-20(c) states that communication relating to official public business may constitute public records subject to disclosure under FOIA.

The Board had previously been placed on notice regarding its obligations under FOIA. In [August 2022](#), South Carolina Attorney General Alan Wilson issued a formal warning to the District’s Board over FOIA compliance. The District acknowledged violating FOIA and took corrective action. More recently, the Board was again challenged in litigation alleging FOIA violations involving private deliberations and actions taken without proper public notice. Collectively, these events demonstrate that the Board had prior notice of its obligations under FOIA and the importance of avoiding communication that could reasonably be perceived as deliberations outside a properly noticed public meeting.

(Report, p. 6) Nothing in this excerpt relates to the matter at bar or constitutes “adjudicative facts”. Moreover, references to any past violations by, or “warnings” to, Respondents are not adjudicative as to whether, in the present situation, Respondents violated FOIA.

The matter before this Court is whether the lower court correctly determined “that Plaintiff has failed to meet its burden of demonstrating (1) that irreparable harm would occur without the injunction; (2) a likelihood of success on the merits of the underlying litigation; and (3) that no adequate remedy at law exists.” (4/6/26 Order) There are no facts, let alone adjudicative facts, contained within the Report of which this Court can properly take judicial notice. Appellant’s Motion should be denied.

By: /s/ Alice F. Paylor

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PROOF OF SERVICE

I do hereby certify that on September 23, 2026, I served all counsel in this action with a
copy of *Respondents' Return to Motion for Judicial Notice* via e-filing to the following email
addresses:

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