THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jocelyn C. Newman, Circuit Court Judge

Appellate Case No. 2024-002127

Christine Jernigan,……...…….……..…..……Appellant,

v.

Kershaw County South Carolina,…….……..…..……..……...Respondent.

PETITION FOR REHEARING

Appellant Christine Jernigan, pursuant to Rule 221(a), SCACR, petitions for rehearing of the Court's recent decision in *Jernigan v. Kershaw County South Carolina* ("KCSC"), Op. No. 2026-UP-418 (S.C. Ct. App. filed Aug. 19, 2026) (the "Opinion").

The grounds for Appellant's petition for rehearing are addressed in the supporting memorandum filed herewith and incorporated herein. Appellant's petition for rehearing is based on the Court's Opinion; the supporting memorandum filed herewith; the briefs and Record on Appeal; Rule 221(a), SCACR; Rule 224, SCACR; and other rules of court.

Appellant also respectfully suggests that rehearing *en banc*, pursuant to Rule 219(b), SCACR, may be appropriate because the relevant provisions of FOIA, Section 30-4-100(A), at issue in this appeal have not previously been interpreted and applied in any published decision. Notably, Appellant requests that the Court extend its holding interpretating/applying Section 30-4-100(A)'s 2017 amendments in *Osmundson v. School District 5*, 443 S.C. 610, 905 S.E.2d 418

(Ct. App. 2024), to the present case by finding that the circuit court is required to make a final ruling at the 10-day initial hearing, if possible, and to otherwise establish a scheduling order to conclude the FOIA action within six months of initial filing. Memo. at 5-7. Moreover, Appellant submits that the Opinion's newly created requester-standing requirement under FOIA, Section 30-4-100(A)'s "citizen of the State" provision conflicts with our Supreme Court's decision in *Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012), and the statutory text of FOIA. Memo. at 7-10.

Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan, Esq.
S.C. Bar No. 74954
302 Pine Cliff Dr.
Seneca, SC 29672
864-710-5029
justin.a.jernigan@gmail.com

ATTORNEY FOR APPELLANT

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MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING

Appellant Christine Jernigan has petitioned this Court for rehearing of the Court's recent decision in *Jernigan v. Kershaw County South Carolina* ("KCSC"), Op. No. 2026-UP-418 (S.C. Ct. App. filed Aug. 19, 2026) (the "Opinion"). Appellant respectfully submits that the following points were overlooked or misapprehended by this Court.

I. The Opinion elevates dismissal without prejudice for failure to prosecute of the circuit court's October 17, 2024, Order into an alternative ground for dismissal of this case with prejudice

The Opinion states that "we affirm the circuit court's dismissal of [Appellant's] action for failure to prosecute," and indicates that Appellant "[a]lternatively" argues "the circuit court erred in granting [KCSC's] motion for judgment on the pleadings." Op. at 2. The Opinion concludes by stating "we hold the circuit court properly granted [KCSC] judgment on the pleadings, and we also affirm the circuit court's dismissal on this ground." Op. at 3. In so ruling, the Court has

elevated a dismissal without prejudice for failure to prosecute of the October 17, 2024, Order (i.e., a dismissal with leave to refile) into an alternative ground for dismissing this case with prejudice, as a matter of law, for lack-of-requester-standing under FOIA.

The circuit court's October 17, 2024, Order found that undersigned counsel "had not communicated with the Court or with Defendant's counsel and had not requested a continuance" prior to the scheduled August 27, 2024, non-jury trial term. (R. p. 243). Indeed, undersigned counsel did not properly docket/calendar the term of court, and contacted the circuit court three days later upon realizing this mistake. (R. pp. 259-60, 263-66). The circuit court's October 17, 2024, Order held that dismissal without prejudice would normally result from failure to prosecute, but that "the ruling on the motion for judgment on the pleadings … dictates that this case must be dismissed with prejudice," as a matter of law, for lack-of-requester-standing under FOIA. (R. p. 243).

Appellant respectfully asks this Court to reconsider the findings of its Opinion elevating a dismissal without prejudice for failure to prosecute of the circuit court's October 17, 2024, Order to an alternative ground for dismissing this case with prejudice.

II. The Court overlooks or misapprehends Appellant's Motion for Equitable Relief

The Opinion accurately states that Appellant "appeals the circuit court's denial of her motion for scheduling and equitable relief;" i.e., Issue A of Appellant's Brief (App. Br. at 15-22). *See* Op. at 1-2. Thereafter, however, the Opinion fails to mention, address, or otherwise rule on the denial of Appellant's Motion for Equitable Relief. *See* Rule 220(b), SCACR. Appellant respectfully asks this Court to reconsider its Opinion by addressing Issue A of Appellant's Brief on the merits.

Appellant also respectfully submits that the Court overlooked or misapprehended the substance and effect of Appellant's Motion for Equitable Relief, the mandatory procedural and substantive legal requirements of FOIA, Section 30-4-100(A), and the full procedural history in affirming what would have been a dismissal without prejudice for failure to prosecute of the circuit court's October 17, 2024, Order.

The Opinion overlooks and misapprehends the actual procedural history of this case and the substance of Appellant's Motion for Equitable Relief by stating that Appellant filed "various motions, including a motion for scheduling," prior to failing to appear for a bench trial "which occurred a year after the filing of the pleadings." Op. at 2. Appellant actually filed one Motion at the outset of this case on July 28, 2023 – the "Motion for Equitable Relief" – pursuant to the mandatory procedural and substantive legal requirements of FOIA, Section 30-4-100(A), set forth below (emphasis added).

> Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court *shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter *must* be considered to be an irreparable injury for which no adequate remedy at law exists.

Appellant's Motion for Equitable Relief and Count I of the Complaint requests, pursuant to FOIA, Section 30-4-100(A): (*i*) the required ten-day initial hearing; (*ii*) declaratory relief finding that the written determination and disclosure provided by KCSC to Appellant on August 18, 2022, violates the requirements of FOIA, Section 30-4-30(c), and injunctive/equitable relief ordering disclosure of the records of the FOIA Request; and (*iii*) a scheduling order to conclude all proceedings in this case within six months of filing. (R. pp. 102-13).

At the initial hearing on August 8, 2023, Judge Newman, CAJ, issued rulings from the bench denying Appellant's July 28, 2023, Motion for Equitable Relief on grounds that Appellant, although a resident of this State, lacks standing to proceed with this case because she was not listed as "requester" on the FOIA Request; i.e., lack-of-FOIA-requester standing. (App. Br. 10-11; R. p. 219, lines 3-10).

Pursuant to the plain and unambiguous language of FOIA, Section 30-4-100(A), the hearing court is required to (*i*) make a final ruling on the request for declaratory/injunctive relief at the initial hearing, or, if unable to do so, (*ii*) establish a scheduling order to conclude the case within six months of initial filing. Appellant's Motion for Equitable Relief was fully supported via arguments/evidence, and was squarely before the circuit court for resolution on the merits of the request for declaratory/injunctive relief pursuant to the requirements of FOIA, Section 30-4-100(A). The circuit court's August 8, 2023, Form 4 Order is otherwise an appealable order pursuant S.C. Code Ann. § 14-3-330(4), because the Order is "[a]n interlocutory order or decree in a court of common pleas … refusing an injunction."

Appellant timely-filed an August 15, 2023, Motion and September 11, 2023, Memorandum seeking clarification and reconsideration of the August 8, 2023, Form 4 Order pursuant to Rules 52(a), (b) & 59(e), SCRCP (collectively, the "Motion to Clarify/Reconsider"). (App. Br. 13; R. pp. 147-61, 169-98). Appellant followed up with the circuit court via a Letter dated September 15, 2023, and a subsequent email dated October 24, 2023, regarding the pending August 15, 2023, Motion to Clarify/Reconsider. (App. Br. 13; R. pp. 233-35, 266-67). On October 27, 2023, Judge Newman's law clerk responded by stating that Appellant "will receive a ruling on your Motion [to Clarify/Reconsider] in the near future." (R. pp. 266-67). Instead of issuing a ruling "in the near future" affirming, or reconsidering, its August 8, 2023,

Order finding that Appellant lacked statutory standing to proceed with this case, the circuit court scheduled this case for the non-jury term of court on August 27, 2024.

Undersigned counsel, of course, made a mistake by failing to properly calendar and attend the scheduled non-jury term on August 27, 2024. Even so, the circuit court had already determined approximately one-year earlier that Appellant could not proceed with this case due to lack-of-FOIA-requester standing. The circuit court's October 17, 2024, Order states in part: "The grounds for this request [i.e., KCSC's Motion for Judgment on the Pleadings] have already been presented to and ruled upon by the Court in connection with a prior motion [i.e., the Motion for Equitable Relief]. Plaintiff has filed a [August 15, 2023,] motion to reconsider that prior ruling that is still pending. In accordance with the ruling below, that motion to reconsider is denied." (App. Br. 14; R. p. 244).

Upon the foregoing, Appellant asks this Court to reconsider its Opinion by addressing Issue A of Appellant's Brief on the merits. Appellant also asks this Court to reconsider its Opinion affirming what would have been a dismissal without prejudice for failure to prosecute of the October 17, 2024, Order in view of the actual procedural history of this case, the substance of Appellant's Motion for Equitable Relief, and the legal requirements of FOIA, Section 30-4-100(A).

III. The Opinion overlooks or misapprehends Issue B of Appellant's Brief; i.e., the mandatory procedural requirements, deadlines, and substantive legal standards of FOIA, Section 30-4-100(A)

Issue B of Appellant's Brief requests that this Court extend its holding in *Osmundson v. School District 5*, 443 S.C. 610, 905 S.E.2d 418 (2014), to the present case by finding that the circuit court is required to make a final ruling at the 10-day initial hearing, if possible, and to otherwise establish a scheduling order to conclude the FOIA action within six months of initial

filing. App. Br. 22-26. The Court's Opinion, however, does not mention, consider, or rule on Issue B of Appellant's Brief. *See* SCRAP 220(b). Appellant respectfully asks this Court to reconsider its Opinion by addressing Issue B of Appellant's Brief.

During the 2017 round of updates, the General Assembly amended FOIA, Section 30-4-100(A) (effective May 19, 2017, emphasis added) to include the below procedural mandates and deadlines that the CAJ's of the circuit courts are required to follow upon the filing of a FOIA case.

> Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court *must* schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court *shall* establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause.

The 2017 FOIA amendments impose "time constraints within which *determinative hearings* on the requests for relief must be made." 2017 Act No. 67 (H. 3352), Section 4, Effect of Amendment (emphasis added). The circuit court is required to resolve FOIA cases similar to a motion for temporary injunction in compliance with the mandatory legal requirements of FOIA, Section 30-4-100(A), and Rule 52(b), SCRCP.

The primary declaratory and associated injunctive/equitable relief requested in Count I of the Complaint, and in the Motion for Equitable Relief – (*i*) a finding that the written determination and disclosure provided by KCSC to Appellant on August 18, 2022, violates the statutory written determination requirements of FOIA, Section 30-4-30(c); and (*ii*) an order requiring disclosure of the relevant public records requested – should have been settled at an initial hearing held within ten (10) days of service. A scheduling order to conclude all proceedings in this case within six months of initial filing should have been entered following

the initial hearing; i.e., to conclude all proceedings in this case by January 24, 2024. Appellant respectfully submits that the expedited resolution requirements and substantive legal standards of Section 30-4-100(A) are "mode of trial" rights imposed using "must" and "shall" language, that automatically apply to the benefit of all FOIA plaintiffs without requiring resort to formal motion practice.

Respectfully, if this Court will not recognize and uphold the legal requirements imposed by the 2017 FOIA amendments, these legal protections enacted by the legislature for the benefit of FOIA plaintiffs are rendered meaningless. Appellant asks this Court to reconsider its Opinion by addressing Issue B of Appellant's Brief on the merits. Appellant requests that this Court extend its holding in *Osmundson* to the present case by finding that the circuit court is required to make a final ruling at the 10-day initial hearing, if possible, and to otherwise establish a scheduling order to conclude the FOIA action within six months of initial filing.

IV. The Opinion overlooked or misapprehended controlling precedent by finding that Appellant, a life-long resident of South Carolina, lacked statutory standing to proceed with this case pursuant to FOIA, Section 30-4-100(A)

As quoted above at page 5, the circuit court's grounds for denying Appellant's July 28, 2023, Motion for Equitable Relief, and for granting KCSC's August 27, 2024, Motion for Judgement on the Pleadings, were the same – i.e., lack-of-requester-standing under FOIA. (App. Br. 14; R. p. 244). Although the Court's Opinion does not address or consider Appellant's Motion for Equitable Relief (i.e., Issue A on Appeal), the Opinion affirms the circuit court's October 17, 2024, Order granting judgement on the pleadings as follows:

> [Appellant's] complaint contains numerous fatal issues. First, [Appellant] never filed a FOIA request with [KCSC] or any other entity; [undersigned counsel] made the FOIA request at issue, and [undersigned counsel] did not assert that he was making the request in a representative capacity. [Undersigned counsel] was listed as the 'requestor' and utilized first-person language throughout the request. Thus, [Appellant] has nothing to enforce under the FOIA. Moreover,

> [undersigned counsel] is not a party to this action, and even if he was, he would not be able to pursue relief under FOIA because he [was] not a South Carolina citizen.

Op. at 3.[1]

The Court's Opinion creates a new "requester-standing" requirement under FOIA, Section 30-4-100(A)'s "citizen of the State" provision that has never been recognized or applied in any published opinion. To satisfy the Opinion's newly-announced requester-standing requirement, an attorney must specifically indicate that his/her FOIA Request is, in fact, being made in a representative capacity on behalf of a client who is a South Carolina citizen/resident for the client to have standing to enforce a violation of FOIA before the circuit court. Otherwise, the attorney must enforce a violation of FOIA before the circuit court in his/her own name (i.e., *pro se*), but that cannot occur in the present case because undersigned counsel was an out-of-state member of the South Carolina Bar at the time the FOIA Request was submitted. Appellant submits that these newly-created requester-standing requirements of the Court's Opinion are contrary to controlling precedent and the plain statutory text of FOIA, 30-4-100(A).

The South Carolina Supreme Court has previously addressed the minimal statutory standing requirements for FOIA-plaintiffs as follows:

> The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act's requirements. S.C. Code Ann. § 30-4-100(a).
> …
>
> The legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA

[1] Although undersigned counsel was a citizen of Weddington, North Carolina, when this action was filed in 2023, undersigned counsel subsequently relocated to Seneca, South Carolina, in 2024.

> has been violated. *Nothing more is required*. Therefore, the trial court erred in finding Appellant lacked standing to assert his FOIA claims.

Freemantle v. Preston, 398 S.C. 186, 194-95, 728 S.E.2d 40, 44-45 (2012) (emphasis added).

Over 40 years ago – when FOIA was originally enacted – the legislature found that its "provisions must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay." S.C. Code Ann. § 30-4-15. Pursuant to FOIA, all "persons" have the statutory "right to inspect, copy, or receive" a "public record of a public body" upon submission of a "written request for records" to the public body. S.C. Code Ann. §§ 30-4-20(b), 20(c), 30(a)(1) & 30(c). FOIA's definition of "person" broadly encompasses any "individual, corporation, partnership, firm, organization or association" without limitation. *Id*., § 30-4-20(b).

As the South Carolina Supreme Court held in *Freemantle*, a FOIA-plaintiff need only plead: (*i*) citizenship/residency of the State, and (*ii*) that FOIA has been violated to establish statutory standing pursuant to S.C. Code Ann. § 30-40-100(A). 398 S.C. at 95, 728 S.E.2d at 45. The *Fremantle* Court explicitly stated that "[n]othing more is required." *Id*. Appellant, as a lifelong citizen/resident of South Carolina, certainly meets the statutory standing requirements in the present FOIA case. (R. p. 2 at ¶1 ("Plaintiff Mrs. Jernigan is a citizen of the United States residing in Seneca, South Carolina, County of Oconee"); R. p. 263 at ¶5 ("Plaintiff has been a life-long citizen and resident of South Carolina, presently residing in Seneca, County of Oconee.")).

Upon the foregoing, Appellant submits that the newly-created requester-standing requirements of the Court's Opinion are contrary to controlling precedent in *Freemantle* and the plain statutory text of FOIA, 30-40-100(A). Appellant respectfully requests reconsideration of the Court's finding that Appellant lacked statutory standing pursuant to FOIA, Section 30-40-

100(A), the denial of Appellant's Motion for Equitable Relief on these grounds, and the judgment of dismissal on the pleadings on these grounds.

CONCLUSION

Based on the foregoing discussion, Appellant respectfully requests that the Court grant her petition for rehearing of the Court's recent decision in *Jernigan v. Kershaw County South Carolina* ("KCSC"), Op. No. 2026-UP-418 (S.C. Ct. App. filed Aug. 19, 2026) (the "Opinion").

Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan, Esq.
S.C. Bar No. 74954
302 Pine Cliff Dr.
Seneca, SC 29672
864-710-5029
justin.a.jernigan@gmail.com

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Rehearing and Memorandum in Support of Petition for Rehearing is being served by email to counsel for Respondent as follows: David Morrison, Esq., at david@gslawsc.com, and Andrew Lindemann, Esq., at andrew@ldlawsc.com.

Respectfully submitted,

By: s/Justin A. Jernigan

Justin A. Jernigan
S.C. Bar No. 74954
302 Pine Cliff Dr.
Seneca, SC 29672
864-710-5029
justin.a.jernigan@gmail.com

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