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**Jan 12 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

The Honorable Jocelyn Newman  
Circuit Court Judge

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Appellate Case No. 2021-001012  
Case No. 2020-CP-40-01996

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State of South Carolina, ex rel Alan Wilson, Attorney General.....Respondent

v.

City of Columbia.....Appellant

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MOTION TO AMEND EXHIBIT B TO NOTICE OF APPEAL AND CLARIFY  
THE RECORD RELATED TO APPELLANT'S INITIAL BRIEF

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Pursuant to Rule 240, SCACR, Appellant City of Columbia ("City") hereby files this Motion to Amend Exhibit B to Appellant's Notice of Appeal and to clarify the record relating to its second Initial Brief. This motion is made on the following grounds:

On September 16, 2021, a Notice of Appeal was filed by Appellant that included two exhibits. Exhibit B erroneously failed to include the 59(e) Form 4 Order of the trial court issued on August 18, 2021. This was simply a scrivener's error with no harm done to the substance of the case, as the Order was clearly referenced in the Notice of Appeal as filed. Appellant has attached hereto the new Amended Exhibit B Appellant seeks to have reflected in the record.

Additionally, on November 30, 2021, an incomplete Initial Brief was inadvertently filed by

Appellant. Subsequently, and still timely, Appellant filed a complete Initial Brief on December 1, 2021. For the sake of a clear and accurate record, Appellant requests that the incomplete Initial Brief be removed from the record in this case to ensure that all parties' future responses are only based upon and reference the correct, complete brief filed by Appellant on December 1, 2021.

For the reasons stated above, Appellant respectfully requests this Court issue an Order granting Appellant's Motion to Amend Exhibit B to Appellant's Notice of Appeal and to clarify the record relating to the Appellant's Initial Brief as filed on December 1, 2021.

s/R. Allyce Bailey  
R. Allyce Bailey, S.C. Bar No. 101916  
CITY OF COLUMBIA  
Post Office Box 667  
Columbia, South Carolina 29201  
Telephone: 803-737-4242  
Email: [Roneeka.Bailey@columbiasc.gov](mailto:Roneeka.Bailey@columbiasc.gov)

January 12, 2022

Attorney for Appellant

Other Counsel of Record:

Alan Wilson, Attorney General – [agwilson@scag.gov](mailto:agwilson@scag.gov)  
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Office of the Attorney General  
Post Office Box 11549, Columbia, South Carolina 29211

# EXHIBIT B

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FIFTH JUDICIAL CIRCUIT  
COUNTY OF RICHLAND )  
 )  
State of South Carolina, ex rel Alan Wilson, ) C/A No.: 2020-CP-40-01996  
Attorney General, )  
 )  
Plaintiff, )  
 )  
vs. ) **DEFENDANT’S NOTICE OF MOTION**  
 ) **AND MOTION PURSUANT TO RULE**  
City of Columbia, ) **59(e), SCRCP**  
 )  
Defendant. )  
 )  
 )  
 )  
 )

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**TO: J. EMORY SMITH, JR., ESQUIRE, ATTORNEY FOR PLAINTIFFS ABOVE-NAMED:**

**PLEASE TAKE NOTICE** that the City of Columbia ("the City" or "Defendant"), by and through its undersigned attorney, hereby moves the Court for an order which reconsiders, alters, and/or amends its decision issued in the above-referenced matter. This motion is brought pursuant to Rule 59(e), SCRCP, as well as the relevant statutory and case law.

The State brought this suit by a Complaint filed April 16, 2020, challenging three firearms ordinances of the City of Columbia as violating State law. The City filed an Answer on May 18, 2020 denying that the State was entitled to relief. Subsequently, the State filed a Motion for Judgment on the Pleadings, which this Court granted on May 4, 2021.

Based upon the facts in the record, the City respectfully moves that the Court reconsider its ruling on the following grounds:

1. Plaintiff claims in paragraph 1 of its motion and this court found that through S.C. Code Ann. §§23-31-510 and 23-31-520 "State law expressly occupies the entire field of South Carolina firearm regulation and preempts any local government on the same subject..." That is not what those statutes say. The State Legislature could have stated that the entire field of firearm regulation was preempted, but it purposely chose not to do so. Instead it chose to list in the statute,

the seven areas that were preempted. The City's answer clearly shows that there is a material issue that exists and that the matter should be allowed to go forward to be argued on its merits. The City's ordinances do not conflict with any of these seven areas and actually complements state law.

2. Plaintiff claims in paragraph 2 of its motion that the City of Columbia's ordinances violate the above referenced statutes as well as the Second Amendment of the United States Constitution. The ordinances in question violate neither. Plaintiff attempts to quote its office's opinions to justify its claim, but as we know, opinions of the State Attorney General's Office do not carry the weight of law, though it may carry persuasive weight. That being said, the Attorney General's Office has opined many times in agreement with the South Carolina Supreme Court and the South Carolina Constitution that:

When determining the validity of a local ordinance, we begin with the principle that '[a]n ordinance is a legislative enactment and is presumed to be constitutional.'... The burden of proving the invalidity of a local ordinance rests with the party attacking the ordinance.

*Op. S.C. Att'y Gen.*, 2017 WL 4707545 (October 11, 2017); *Southern Bell Tel. & Tel. Co. v. City of Spartanburg*, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985); S.C. Const., Art. VIII, §17.

As the Supreme Court has stated "Where no conflict exists, both laws stand." *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 553, 397 S.E.2d at 664 (quoting *McAbee v. Southern Rwy. Co.*, 166 S.C. 166, 169 170 164 S.E. 444-445 (1932)).

Also, specifically regarding Ordinance 2019-056, Extreme Risk Protection Orders, the plaintiff indicates that the ordinance gives the City the authority to confiscate firearms, but it does no such thing. As S.C. Code §23-31-520 states, local law enforcement has the authority to confiscate weapons if incident to an arrest. The City's ordinance does not expand this authority.

What it does is give any court of competent jurisdiction, after weighing the facts, the ability to order that someone, who the court has deemed an extreme risk to him or herself or to others, temporarily relinquish firearms to either a licensed gun shop or, if the individual chooses to do so, to a law enforcement agency, until the court rescinds the order, deems the individual to no longer be a threat, or the limited time for relinquishment expires. Nowhere is the ability for the City to confiscate firearms expanded.

As to Plaintiff's claim that the ordinances in question are unconstitutional as a violation of the Second Amendment of the United States Constitution; this claim is false. The ordinances are fully in line with the Second Amendment. The Plaintiff's argument that the Second Amendment was violated would also mean that both the Federal Statutes and State Law that regulate firearms would also be in violation of the Second Amendment because any regulation of firearms by any governmental entity would be a violation. Of course, this is not the case.

3. Specifically regarding Ordinance: 2019-063, the court failed to address the fact that 18 U.S.C., Section 922(q)(3), the Gun-Free School Zones Act of 1990, with amendments, allows local governments to establish gun-free school zones as provided in the subsection or the fact that the ordinance does not conflict with existing state laws. The City should have the opportunity to argue the merits of its ordinance before the court.

4. As to Ordinance: 2019-046, regarding Ghost Guns, state law gives the City the ability to declare a location that is used to violate state or federal law, a violation of land use regulation, and to deem that location a nuisance. This ordinance does not go against any preemption and the City should be allowed the opportunity to argue its position before this court.

4. The City reasserts that it should be able to present its arguments on their merits before the court as stated in its Answer to the Plaintiff's Complaint, including all Exhibits and attachments.

WHEREFORE, the grounds upon which Plaintiff's motion rests are not supported, and the City of Columbia respectfully urges the Court to reconsider its Order Granting Plaintiff's Motion for Judgment on the Pleadings.

s/Patrick L. Wright  
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Attorney for the Defendant  
City of Columbia

Columbia, South Carolina  
May 11, 2021

State Of South Carolina Ex Rel Alan Wilson Attorney General  
PLAINTIFF(S)

City Of Columbia  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN** (*CHECK REASON*):  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Defendant's Motion Pursuant to Rule 59(e), SCRPC (filed on May 11, 2021) is DENIED.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/18/2021 .

Robert D. Cook for State Of South Carolina Ex Rel Alan Wilson Attorney General

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

**Case Caption:** State Of South Carolina Ex Rel Alan Wilson Attorney General vs  
City Of Columbia  
**Case Number:** 2020CP4001996  
**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

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Jan 12 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE RICHLAND COUNTY  
COURT OF COMMON PLEAS

The Honorable Jocelyn Newman  
Circuit Court Judge

Civil Action No.: 2020-CP-40-01996  
Appellate Case No.: 2021-001012

State of South Carolina, ex rel Alan Wilson, Attorney General.....Respondent

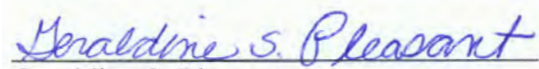
v.

City of Columbia.....Appellant

**PROOF OF SERVICE**

The undersigned hereby certifies that she served a copy of the Appellant’s *Motion to Amend Exhibit B to Notice of Appeal and Clarify the Record Related to Appellant’s Initial Brief* upon counsel for Respondent via email indicated below on this 12<sup>th</sup> day of January, 2022:

Alan Wilson, Attorney General – [agwilson@scag.gov](mailto:agwilson@scag.gov)  
David S. Jones, Assistant Attorney General – [djones@scag.gov](mailto:djones@scag.gov)  
Robert D. Cook, Solicitor General [rcook@scag.gov](mailto:rcook@scag.gov)  
J. Emory Smith, Jr., Deputy Solicitor General – [esmith@scag.gov](mailto:esmith@scag.gov)  
Office of the Attorney General  
Post Office Box 11549, Columbia, South Carolina 29211



Geraldine S. Pleasant  
Lead Paralegal for the City of Columbia

January 12, 2022  
Columbia, South Carolina

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SC Court of Appeals



Office of the City Attorney  
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

January 12, 2022

Via Email: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: State of South Carolina Ex Rel Alan Wilson Attorney General v.  
City of Columbia  
Circuit Court File No.: 2020-CP-40-01996  
Appellate Case No.: 2021-001012

Dear Ms. Kitchings:

Enclosed for filing, please find Appellant's *Motion to Amend Exhibit B to the City's Notice of Appeal and to Clarify the Record Related to the Appellant's Initial Brief*, along with the amended *Exhibit B* as well as the *Proof of Service* in the above referenced case. The filing fee check will be forwarded by regular mail under separate cover.

By copy of this letter, I am serving same on counsel for the parties.

Sincerely,

R. Allyce Bailey  
Assistant City Attorney

RAB/gsp  
Enclosure(s) as Stated

cc: Alan Wilson, Attorney General – [agwilson@scag.gov](mailto:agwilson@scag.gov)  
David S. Jones, Assistant Attorney General – [djones@scag.gov](mailto:djones@scag.gov)  
Robert D. Cook, Solicitor General [rcook@scag.gov](mailto:rcook@scag.gov)  
J. Emory Smith, Jr., Deputy Solicitor General – [esmith@scag.gov](mailto:esmith@scag.gov)  
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