

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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IN THE SUPREME COURT'S ORIGINAL JURISDICTION

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Appellate Case No. 2024-

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Diane Louise Shaffer and Daniel A. Higgins ..... Petitioners,

v.

McCormick County Council and McCormick County Office of  
Voter Registration and Elections, ..... Respondents,

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PETITION FOR WRIT OF MANDAMUS

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## **PETITION FOR WRIT OF MANDAMUS**

This petition asks the Court to enforce the ordinance-by-initiative requirement of the South Carolina Code with respect to county ordinances. The facts which give rise to this petition are not in dispute, and the Petitioners respectfully request that the Court (1) accept this matter in its original jurisdiction pursuant to Rule 245(b), SCACR; and (2) issue the requested writ so that the citizenry will have an opportunity to vote on the proposed ordinances at the upcoming general election.

### **STATEMENT OF THE ISSUE**

South Carolina Code § 4-9-1230 vests the citizenry with the power to pass an ordinance through a ballot referendum if a sufficient number of electors propose the ordinance to county council but county council declines to pass it. Here, the McCormick County Council declined to pass two ordinances that the Petitioners proposed, but the McCormick County Office of Voter Registration and Elections has refused to place the proposed ordinances on the ballot for the upcoming general election despite South Carolina law requiring that the referendum “shall be submitted to the electors.” *Id.* Are the Petitioners entitled to a writ of mandamus to timely enforce their statutory right to have the proposed ordinances presented to the voters?

## **BACKGROUND**

### **I. The Parties**

The Petitioners are citizens and electors of McCormick County, South Carolina, who led an initiative petition to have McCormick County Council pass three ordinances:

- (1) An ordinance creating an open public comment period at the beginning of County Council meetings (Proposed Ordinance 23-09);
- (2) An ordinance that allows any County Council member to place items on the Council's meeting agenda and that requires agendas for regular Council meetings to be posted at least seven days before each meeting (Proposed Ordinance 23-10); and
- (3) An ordinance amending Ordinance 21-07 and approving a districting map that was proposed by the South Carolina Revenue and Fiscal Affairs Office for establishing the boundaries for each County Council seat (Proposed Ordinance 23-11).

The Respondents are the relevant governing bodies that are involved in the ballot-initiative process: the McCormick County Council, which has authority to adopt ordinances proposed by the citizenry; and the McCormick County Office of Voter Registration and Elections, which is responsible for the administration of elections in McCormick County.

### **II. Relevant Facts**

At the time Home Rule was established, McCormick County was assigned the council-supervisor form of government. S.C. Code Ann. § 4-9-10(b). However, following a February 4, 1992, referendum held for its electors, McCormick County has been governed by the council-administrator form of county government, with County Council comprised of five single-member districts. (App. 1, McCormick County Ord. § 2-1.)

The South Carolina Code requires single-member districts to be reapportioned after the State adopts the then-completed federal census. S.C. Code Ann. § 4-9-90. The General Assembly passed legislation adopting the results of the 2020 Census on December 9, 2021, which Governor McMaster signed the next day. 2021 S.C. Acts No. 117.

Using the census results, the South Carolina Revenue and Fiscal Affairs Office prepared three different potential maps to redistrict the McCormick County Council's five seats that would have been in compliance with South Carolina law regarding apportionment. (App. 2–7, McCormick County Council Proposed Redistricting Maps 1, 2, & 3.) On February 15, 2022, County Council adopted Map 2 as its redistricting plan. (App. 8–10, McCormick County Ordinance 21-07.)

The Petitioners strongly disagree with County Council's decision to use Map 2 and believe that Map 3 would more appropriately apportion the electors among the various single-member districts and reduce the voter deviation between districts to approximately five percent, as recommended by the South Carolina Revenue and Fiscal Affairs Office. Accordingly, the Petitioners set about collecting signatures from at least fifteen percent of the registered voters in McCormick County to support an initiative to amend the ordinance adopting Map 2 and replace it with Map 3 to define the single-member districts for McCormick County Council, as permitted by South Carolina Code § 4-9-1210.

After gathering the requisite signatures, the Petitioners submitted three petitions to the McCormick County Office of Voters Registration and Elections in August 2023. After confirming that the statutory signature requirement had been met, the proposed ordinances were presented to County Council. One of the petitions proposed to adopt Map 3 to define the boundaries for County Council's single-member districts, as described above, and became identified as Proposed Ordinance 23-11. (App. 15–25.) The other two petitions involved meetings of County Council: one proposed an ordinance requiring an open public comment period at the beginning of County Council's regular monthly meetings, which became identified as Proposed Ordinance 23-09 (App. 11–12); and the other proposed an ordinance allowing any Council member to place items on the

meeting agendas and to require agendas to be publicly available at least seven days before meetings, which became identified as Proposed Ordinance 23-10 (App. 13–14).

McCormick County Council gave first reading to each of these ordinances during its November 21, 2023 meeting. (App. 26–27, County Council Meeting Agenda (Nov. 21, 2023).) Proposed Ordinance 23-09 passed second reading during the December 19, 2023 meeting, but proposed Ordinances 23-10 and 23-11 failed second reading and were voted down during that same meeting. (App. 30, County Council Meeting Agenda (Jan. 16, 2024).)

South Carolina Code § 4-9-1230 provides that if a county council “shall fail to pass an ordinance proposed by initiative petition,” or if it “shall fail to repeal an ordinance for which a petition for repeal has been presented, the adoption or repeal of the ordinance shall be submitted to the electors not less than thirty days nor more than one year from the date the council takes its final vote thereon.” County Council declined to present the ordinances to the citizenry for a vote during its January 16, 2024 meeting. Accordingly, on March 20, 2024, the Petitioners submitted a letter to the McCormick County Office of Voter Registration and Elections demanding that the county election commission place Proposed Ordinances 23-10 and 23-11 on the ballot during the next general election on November 5, 2024. (App. 32–33.)

However, on March 26, 2024, the County election agency notified the Petitioners that it would not place Proposed Ordinances 23-10 or 23-11 on a ballot for the electorate’s consideration. Because South Carolina Code § 4-9-1230 requires that these proposed ordinances be presented to the citizenry for an up-or-down vote, the Petitioners respectfully file this petition and seek a writ of mandamus requiring the McCormick County Council and the McCormick County Office of Voter Registration and Elections to place these proposed ordinances on the ballot during the next general election.

## JURISDICTIONAL STATEMENT

This Court has authority to issue the requested writ of mandamus pursuant to Article V, Section 5 of the South Carolina Constitution; South Carolina Code § 14-3-310; and Rule 245(b), SCACR.

The Petitioners seek such a writ in this Court’s original jurisdiction because the South Carolina Election Code requires that ballot initiatives will not be presented to the electorate for a vote “unless the question is submitted to the appropriate election commission to be placed on the ballot no later than 12:00 noon on August fifteenth or, if August fifteenth falls on a Saturday or Sunday, not later than 12:00 noon on the following business day.” S.C. Code Ann. § 7-13-355. If the Petitioners were required to seek recourse through the circuit court first, final resolution of this matter would almost certainly extend beyond the statutory deadline for presenting a referendum to the voters.

Because the facts of this matter are not subject to legitimate dispute and this case presents only legal issues for the Court’s consideration, the Petitioners respectfully submit that this matter must be addressed in the Court’s original jurisdiction in order to resolve these issues of public importance to the citizens of McCormick County within the timelines established by the South Carolina Election Code.

## ARGUMENT

### **I. South Carolina law requires that these proposed ordinances be placed on the ballot for McCormick County electors to consider.**

The Petitioners are aware of the gravity of their request: “Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy.” *City of Rock Hill v. Thompson*, 349 S.C. 197, 199, 563 S.E.2d 101, 102 (2002). Despite this high hurdle, the Petitioners embrace the burden, as this case readily meets

the elements for issuance of a writ of mandamus: “(1) a duty to perform the act; (2) the ministerial nature of the act; (3) the petitioner’s specific legal right for which discharge of the duty is necessary; and (4) a lack of any other legal remedy.” *Sanford v. S.C. State Ethics Comm’n*, 385 S.C. 483, 494, 685 S.E.2d 600, 606 (2009).

Here, there is no dispute that the Petitioners gathered the necessary signatures to propose ordinances to the McCormick County Council. *See* S.C. Code Ann. § 4-9-1210 (“Any initiated ordinance may be submitted to the council by a petition signed by qualified electors of the county equal in number to at least fifteen percent of the qualified electors of the county.”). There is also no dispute that the McCormick County Council declined to pass two of those proposed ordinances. (App. 30.) Accordingly, South Carolina law requires that those ordinances must now be presented to the citizenry for its consideration at the next election:

If the council shall fail to pass an ordinance proposed by initiative petition or shall pass it in a form substantially different from that set forth in the petition therefor or if the council shall fail to repeal an ordinance for which a petition for repeal has been presented, **the adoption or repeal of the ordinance concerned shall be submitted to the electors** not less than thirty days nor more than one year from the date the council takes its final vote thereon. The council may, in its discretion, and if no regular election is to be held within such period, provide for a special election. **All county councils shall be bound by the results of any such referendum.**

*Id.* § 4-9-1230 (emphasis added).

The statute’s use of the word “shall” makes clear that the Petitioners have a right to have their proposed ordinances presented to the voters, and that the McCormick County Council and McCormick County Office of Voter Registration and Elections have a ministerial duty to place these initiatives on the ballot at the next regular election. This is not a discretionary act for county government; it is mandatory. *See, e.g., Johnston v. S.C. Dep’t of Labor*, 365 S.C. 293, 296–97, 617 S.E.2d 363, 364 (2005) (“The term ‘shall’ in a statute means that the action is mandatory.”); *S.C.*

*Dept' of Highways & Pub. Transp. v. Dickinson*, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986) (“Ordinarily, the use of the word ‘shall’ in a statute means that the action referred to is mandatory.”).<sup>1</sup>

Nor is there any other potential legal remedy available to the Petitioners. The General Assembly has specifically designated the remedy when a sufficient number of voters proposes a new ordinance but county council rejects that proposal: the power shifts back to the electorate to vote on the proposed ordinance, and council “shall be bound by the results of any such referendum.” S.C. Code Ann. § 4-9-1230. That is the only available remedy, but because the McCormick County Council and the McCormick County Office of Voter Registration and Elections have refused to place Proposed Ordinances 23-10 and 23-11 on the ballot at the upcoming general election, mandamus is essential to enforce the Petitioners’ right to have their proposed ordinances considered by the electorate. The Court should issue a writ of mandamus accordingly.

## **II. There is nothing in the law that prevents the citizenry from passing these proposed ordinances.**

The Petitioners concede that the ordinance-by-referendum process provided by the Home Rule Act is not boundless, but the two proposed ordinances at issue here—one to govern agendas for County Council meetings, and one to adopt a different redistricting map—do not fall within the General Assembly’s limitations on when the citizenry can propose and pass ordinances.

South Carolina Code § 4-9-1210 specifically excludes “an ordinance appropriating money or authorizing the levy of taxes” from this process. The Court has held that this limitation prohibits

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<sup>1</sup> The only discretionary point of Section 4-9-1230 involves when to hold a special election on the ballot referendum “if no regular election is to be held within” a year after county council rejects the proposed ordinance. But that is not the case here; a regular election is scheduled for November 2024, so there is nothing left to the McCormick County Council’s discretion here.

ballot initiatives that would impair “County Council’s general authority over the County’s treasury.” *Focus on Beaufort County v. Beaufort County*, 318 S.C. 227, 231, 456 S.E.2d 910, 912 (1995). And in the municipal context, the Court has prohibited ballot initiatives that would override zoning procedures specifically governed by “the elaborate, detailed zoning procedures contained in Title 6” of the South Carolina Code. *I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000).

But the ballot measures proposed here do not contain any of these prohibited elements. They have nothing to do with appropriating money, levying taxes, or the treasury. Nor do they irreconcilably conflict with an “elaborate, detailed” statutory process that the General Assembly has established. Instead, these proposed ordinances go to the very heart of self-government.

Proposed Ordinance 23-10 would allow any council member to place items on the County Council’s meeting agenda, and it would require the Council to post its meeting agendas at least seven days before any meeting. There is presently no McCormick County ordinance or state statute governing how items get placed on a public body’s meeting agenda, and the South Carolina Freedom of Information Act only requires notice of meetings to be posted “at least twenty-four hours prior to such meetings.” S.C. Code Ann. § 30-4-80(A). As such, Proposed Ordinance 23-10 would work hand-in-glove with existing law, as it would give some guidance as to how a meeting agenda is to be created, and it would give the public a full week, rather than a single day, to review an agenda in advance of a Council meeting. This proposed ordinance is fully consistent with the FOIA’s goal of ensuring “that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy.” *Id.* § 30-4-15.

Similarly, Proposed Ordinance 23-11 would replace the Council-selected redistricting map with one that the voters deem more appropriately aligned with voting constituencies. The proposed map was prepared by the South Carolina Revenue and Fiscal Affairs Office and meets the only redistricting criterion set by state law: “The population variance between defined election districts shall not exceed ten percent.” *Id.* § 4-9-90.<sup>2</sup> Just as Proposed Ordinance 23-10 aligns with state law regarding open-government issues, Proposed Ordinance 23-11 is consistent with the Home Rule Act’s insistence on self-government and allowing the electorate to determine how it will be governed. The General Assembly has empowered voters with authority to change via referendum the number of council members on a county council, whether council members will be elected at-large or from single-member districts, and even the entire form of county government. S.C. Code Ann. § 4-9-10(c). There is nothing irreconcilable between letting the voters select whether council members will be elected at-large or from single-member districts, on the one hand, and letting the voters select the boundaries of those single-member districts, on the other.

Because Proposed Ordinances 23-10 and 23-11 are consistent with South Carolina law, there is no impediment to the Court granting this petition and issuing a writ of mandamus directing the McCormick County Council and McCormick County Office of Voter Registration and Elections to place these proposed ordinances on the ballot for the voters’ consideration at the November 2024 general election.

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<sup>2</sup> In fact, the redistricting map selected by Proposed Ordinance 23-11 has less of a population variance among the districts—5.68%—than does the map selected by Council—8.35%. (*Compare* App. 6–7 (Map 3—Deviation 5.68%) *with* App. 4–5 (Map 2—Deviation 8.35%).)

## CONCLUSION

This case is a paradigm for when mandamus is necessary. *See Sanford*, 385 S.C. at 494, 685 S.E.2d at 606 (“Mandamus is based on the theory that an officer charged with a purely ministerial duty can be compelled to perform that duty in case of refusal.”). The General Assembly has vested the citizenry with the power to govern itself through the ordinance-by-referendum process, but the McCormick County Council and McCormick County Office of Voter Registration and Elections have refused to follow South Carolina Code § 4-9-1230’s mandate that they must present the proposed ordinances to the electorate for an up-or-down vote. Accordingly, the Petitioners respectfully request that the Court issue a writ of mandamus requiring McCormick County to place these proposed ordinances on the ballot for the November 2024 general election.

Respectfully submitted,

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PROOF OF SERVICE

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I do hereby certify that all parties to this matter have been served with a copy of the pleading(s) specified below by delivering them at the addresses below via United States mail, first-class postage prepaid, and/or by email as indicated below:

Pleading(s): Petition for Writ of Mandamus and Accompanying Appendix

Parties Served:

The Honorable Columbus Stephens  
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