

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 26-6380

MARK ROOTE,

Plaintiff - Appellant,

v.

KERSHAW COUNTY; KERSHAW COUNTY SHERIFF'S OFFICE; SHERIFF
LEE BOAN, individually and in his official capacity as Kershaw County Sheriff;
DANNY TEMPLAR,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. Sherri A. Lydon, District Judge. (3:25-cv-01392-SAL)

Submitted: July 16, 2026

Decided: July 21, 2026

Before WILKINSON, RICHARDSON, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Mark Roote, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mark Roote appeals the district court's order accepting the recommendation of the magistrate judge and granting Defendants' motion for summary judgment on Roote's civil complaint.* We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Roote v. Kershaw Cnty.*, No. 3:25-cv-01392-SAL (D.S.C. Mar. 5, 2026). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* Roote has moved for leave to file a supplemental informal brief. We grant that motion. He has also moved for disability accommodations in the event that this appeal is scheduled for oral argument. We deny that motion as moot.

FILED: July 21, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-6380
(3:25-cv-01392-SAL)

MARK ROOTE

Plaintiff - Appellant

v.

KERSHAW COUNTY; KERSHAW COUNTY SHERIFF'S OFFICE; SHERIFF
LEE BOAN, individually and in his official capacity as Kershaw County Sheriff;
DANNY TEMPLAR

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district
court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

FILED: July 21, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 26-6380, Mark Roote v. Kershaw County
3:25-cv-01392-SAL

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's website, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM
(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$600 (effective 12/1/2023). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
- Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (The court typically orders 4 copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
- Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):			Amount Requested: _____			Amount Allowed: _____	
Document	No. of Pages		No. of Copies		Page Cost (≤\$.15)	Total Cost	
	Requested	Allowed (court use only)	Requested	Allowed (court use only)		Requested	Allowed (court use only)
TOTAL BILL OF COSTS:						\$0.00	\$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ **Date:** _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ **Date:** _____

FILED: August 18, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-6380
(3:25-cv-01392-SAL)

MARK ROOTE

Plaintiff - Appellant

v.

KERSHAW COUNTY; KERSHAW COUNTY SHERIFF'S OFFICE; SHERIFF
LEE BOAN, individually and in his official capacity as Kershaw County Sheriff;
DANNY TEMPLAR

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Richardson, and Judge Quattlebaum.

For the Court

/s/ Nwamaka Anowi, Clerk

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Mark Roote,

Plaintiff,

v.

Kershaw County, Kershaw County Sheriff's
Office, Sheriff Lee Boan, and Danny Templar,

Defendant.

Case No.: 3:25-cv-1392-SAL

ORDER

Mark Roote ("Roote") filed this action against Kershaw County, the Kershaw County Sheriff's Office, Sheriff Lee Boan, and Danny Templar (collectively "Defendants") alleging violations of his First and Fourth Amendment rights under 42 U.S.C. § 1983, *Monell* claims against Kershaw County, and related state-law claims. Before the court is Defendants' motion for summary judgment, ECF No. 14. United States Magistrate Judge Shiva V. Hodges, pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(4) (D.S.C.), issued a Report and Recommendation ("Report"), recommending Defendants' motion for summary judgment be granted and the remaining claims be remanded to the Kershaw County Court of Common Pleas. [ECF No. 20.] Roote filed timely objections. [ECF No. 21.]

I. Background¹

Kershaw County Council held a meeting on October 11, 2022, attended by Roote, Sheriff Boan, and County Administrator Danny Templar. [ECF No. 20 at 2.] The council announced that public comment would be limited to thirty minutes, divided equally among the nine individuals

¹ The magistrate judge issued a comprehensive Report detailing the relevant facts and legal standards. The court incorporates those facts and standards by reference and adds only a brief recitation.

who signed up to speak. *Id.* at 3. Each speaker was allotted approximately three minutes and twenty seconds to address the council, and a bell would signal when a speaker's time had expired *Id.* At first, the meeting went smoothly, with each participant's speaking time being reported as follows:

Table 1: Speaker Duration

<u>Speaker Number:</u>	<u>Duration of Speaking Time in Minutes:</u>
Speaker One	1:46
Speaker Two	4:32
Speaker Three	3:00
Speaker Four	3:45
Speaker Five	4:13
Speaker Six	4:04
Speaker Seven	3:19

[ECF No. 20 at 5.]

Roote spoke eighth and delivered a speech for roughly four minutes until a staff member rang the bell to signal his time had expired. *Id.* Roote continued for a few more moments until a council member asked Roote to leave the podium and his microphone be turned off. *Id.* at 6. Despite these instructions, Roote declined to yield the floor and, with his microphone disabled, proceeded with his prepared comments. *Id.* Roughly five minutes into his speech, Sheriff Boan and a deputy approached Roote. Templar told Boan, "I want him out . . . [,]" explaining to Roote that "we're trying to run a meeting here." *Id.* Boan placed his hand on Roote's arm to guide him away, but Roote sat on the floor in passive resistance. *Id.* at 6–7. Boan and the deputy attempted to slide Roote out of the chambers, at which point Roote stated he was "trying to be a good citizen and show how dirty these fuckers are." *Id.* at 8. Boan then placed Roote under arrest.

Figure 1: Snapshot of Roote's Removal



[ECF No. 14-2 at 6:40.]

After some back and forth, Roote was slid into the lobby, handcuffed, and taken to the Kershaw County Detention Center. *See* ECF No. 20 at 8–9; ECF No. 14-15. He was later charged with disorderly conduct and resisting arrest—two charges that remain pending. [ECF No. 14-12.]

II. Legal Standard

A. Review of a Magistrate Judge's Report

The magistrate judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). In response to a recommendation, any party may serve and file written objections. *See Elijah v. Dunbar*, 66 F.4th 454, 459 (4th Cir. 2023) (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3)). The district court then makes a de novo

determination of those portions of the Report to which an objection is made. *Id.* To trigger de novo review, an objecting party must object with sufficient specificity to reasonably alert the district court of the true ground for the objection. *Id.* (quoting *United States v. Midgette*, 478 F.3d 616, 622 (4th Cir. 2007)). If a litigant objects only generally, the court need not explain adopting the Report and must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Accident Ins.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee’s note).

An objection is specific so long as it alerts the district court that the litigant believes the magistrate judge erred in recommending dismissal of that claim. *Elijah*, 66 F.4th at 460. Objections need not be novel to be sufficiently specific. *Id.* In the absence of *specific* objections this court is not required to give any explanation for adopting the recommendation. *Field v. McMaster*, 663 F. Supp. 2d 449, 451–52 (D.S.C. 2009).

B. Summary Judgment

Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A factual dispute is genuine only where the nonmovant’s version is supported by sufficient evidence to permit a reasonable jury to find in [the nonmovant’s] favor.” *United States v. 8,929 Acres of Land*, 36 F.4th 240, 252 (4th Cir. 2022). Conversely, “[w]hen a party fails to establish the existence of an element essential to that party’s case, there is no genuine issue of material fact.” *Perkins v. Int’l Paper Co.*, 936 F.3d 196, 205 (4th Cir. 2019). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

Lastly, the court must view facts in the light most favorable to the nonmoving party and draw all reasonable inferences in the nonmovant's favor. *Dean v. Jones*, 984 F.3d 295, 301 (4th Cir. 2021). If the record, viewed this way, gives rise to genuine factual disputes about the claims at issue, then those questions must be resolved by a jury and are inappropriate for summary judgment. *See id.* at 301–02.

II. Discussion

Roote asserts nine claims:

- Count I: False imprisonment against Defendant Sheriff's Office
- Count II: False imprisonment against Kershaw County
- Count III: Negligence and gross negligence against Defendant Sheriff's Office
- Count IV: Common law claim for battery against Defendant Sheriff's Office²
- Count V: §1983 Fourth Amendment violation against Boan
- Count VI: First Amendment retaliation under 42 U.S.C. § 1983 against Boan and Templar
- Count VII: First Amendment claim under 42 U.S.C. § 1983 against Boan and Templar
- Count VIII: 42 U.S.C. § 1983 First Amendment claim against Kershaw County
- Count IX: 42 U.S.C. § 1983 First Amendment claim against Kershaw County

[ECF No. 1-1 ¶¶ 29–82.]

A. Count V: Fourth Amendment (Boan)

Roote alleges Boan used excessive force during the arrest. [ECF No. 1-1 ¶ 51.] He argues that from the perspective of a reasonable officer, Boan had no reason to use force against him, and

² In his complaint, and also labeled as his “fourth cause of action,” Roote alleged a claim of medical negligence against the Kershaw County Sheriff's Office arising from his treatment while housed in jail. [ECF No. 1-1 ¶¶ 44–46.] Because Roote later withdrew this claim, ECF No. 18 at 13, and to maintain consistency with Roote's numbering in his complaint, the court omits this claim from the above list.

thus, his rights were violated. *Id.* ¶ 50. Defendants argue Boan's intervention was necessary and objectively reasonable. [ECF No. 14 at 16.] Viewing the evidence in the light most favorable to Roote, the magistrate judge found the force minimal and objectively reasonable given Roote's passive resistance. [ECF No. 20 at 11–14.] The court agrees that summary judgment is proper.

In analyzing an excessive force claim, the court considers whether the force was objectively reasonable in light of the facts and circumstances of each case. *See Lombardo v. City of St. Louis*, 594 U.S. 464, 466 n.2 (2021). The court looks to the totality of the circumstances at the moment the force was employed. *Somers v. Devine*, 132 F.4th 689, 698 (4th Cir. 2025) (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)). The court examines a reasonable officer's perception of (1) the severity of the crime or conduct at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether the suspect is resisting arrest or attempting to evade arrest by flight. *Id.* The court also considers the extent of the plaintiff's injury and any effort made by the officer to temper or to limit the amount of force. *Id.* Against this backdrop, courts have found no constitutional violation where the use of force is minimal and made necessary by the plaintiff's resistance. *See id.* at 699; *J.W. ex rel. Wikle v. Corporal Carrier*, 645 F. App'x 263, 264 (4th Cir. 2016).

The court finds that Boan's use of force was not excessive. Although the severity of the alleged crime was low³ and Roote was nonviolent, he refused multiple directives, disrupted the

³ The court is mindful that these charges remain pending and makes no determination regarding the validity of these offenses. The court is also mindful of the Supreme Court's holding in *Heck v. Humphrey*, 512 U.S. 477 (1994), that a state prisoner may not bring a 42 U.S.C. § 1983 suit for damages where a judgment for the prisoner would necessarily imply the invalidity of his conviction or sentence. *Id.* at 486–87; *Wallace v. Kato*, 549 U.S. 384, 393–94 (2007) (noting that *Heck* does not apply in the pre-conviction setting and instead a stay of the 42 U.S.C. § 1983 action is appropriate in such instances). While the parties have not addressed this issue in their briefing, the court makes no determination as to whether probable cause existed for Roote's arrest. The

meeting, and physically resisted removal. [ECF No. 14-2 at 4:30–4:45.] Even assuming a shoulder injury during his removal from the council’s chambers,⁴ the court finds Boan applied the minimal degree of force reasonably necessary to overcome Roote’s resistance. Accordingly, summary judgment is appropriate for this claim. *See Pegg v. Herrnberger*, 845 F.3d 112, 120 (4th Cir. 2017) (finding the arrest of a resisting suspect that causes only *de minimis* injuries is not excessive force).

B. Count VI: First Amendment Retaliation (Boan and Templar)

Roote next asserts retaliation claims against Boan and Templar for violation of his First Amendment rights. [ECF No. 1-1 ¶¶ 55–64.] He argues that his arrest was motivated by his critical remarks. [ECF No. 21 at 4–5.] Defendants argue Roote’s disregard for council rules and disruptions, not the content of his speech, caused his removal. *See* ECF No. 14 at 9–12. The magistrate judge found that Roote’s claim failed because he did not demonstrate a causal relationship between his critical comments and subsequent arrest. [ECF No. 20 at 14.] The court agrees.

For a successful First Amendment retaliation claim, a plaintiff must demonstrate (1) he engaged in protected First Amendment activity, (2) the defendant took some action that adversely affected his First Amendment rights, and (3) there was a causal relationship between his protected activity and the defendant’s conduct. *Jones v. Solomon*, 90 F.4th 198, 213 (4th Cir. 2024).

court holds only that, in light of his conduct and passive resistance, the force used did not violate his constitutional rights.

⁴ The magistrate judge found that Roote’s claim should fail, in part, because he failed to present evidence of an injury stemming from Boan’s use of force against him. *See* ECF No. 20 at 13 (“Plaintiff has failed to submit any evidence of a shoulder injury requiring medical attention[.]”) In his objections, Roote points to medical documents indicating he sustained a shoulder injury during the arrest and notes he testified about that injury during his deposition. [ECF Nos. 21-1, 21-2.] Accordingly, the court agrees that Roote’s claim should not fail for lack of evidence of injury and modifies the report to that extent.

The causation requirement is rigorous—it is not enough that the protected expression played a role or motivated the retaliation; a plaintiff must show that his speech was the “but for” cause of the adverse action. *Huang v. Bd. of Governors of Univ. of N. Carolina*, 902 F.2d 1134, 1140 (4th Cir. 1990); *Raub v. Campbell*, 785 F.3d 876, 885 (4th Cir. 2015) (affirming dismissal of First Amendment retaliation claim and finding that plaintiff’s evidence “falls far short” of the “rigorous” causal requirement where the plaintiff “ignores the numerous other facts on which” the alleged retaliatory action was based).

Roote cannot meet this rigorous standard. Here, his arrest occurred only after he exceeded time limits, ignored repeated directives, disrupted the meeting, and resisted removal. [ECF No. 20 at 15–16.] While Roote argues the magistrate judge improperly weighed evidence for this issue, ECF No. 21 at 4–5, the court agrees that Roote’s comments were not the but-for cause. Summary judgment is appropriate. *Davison v. Rose*, 19 F.4th 626, 637 (4th Cir. 2021) (finding summary judgment appropriate where a plaintiff had not “sufficiently provided evidence to prove that the no-trespass ban was issued because of his protected speech, as opposed to his threats and antagonistic behavior”); *Wood v. Arnold*, 321 F. Supp. 3d 565, 581 (D. Md. 2018).

C. Count VII: First Amendment Viewpoint Discrimination (Boan and Templar)⁵

Roote argues that council selectively enforced speaking time limits. [ECF No. 18 at 6–8.] Defendants argue that his removal was justified because Roote repeatedly disrupted the meeting. [ECF No. 14 at 9–12.] The magistrate judge concluded that Roote failed to show the time limits

⁵ Roote’s complaint lists this cause of action against Defendant Templar only. [ECF No. 1-1 ¶¶ 65–70.] That said, Roote’s briefing on Count VII addresses both Boan and Templar. [ECF No. 18 at 6–8.] Accordingly, as the magistrate judge did, this court addresses this claim as asserted against both Boan and Templar. [ECF No. 20 at 10 n.7.]

were selectively applied and recommended summary judgment for Boan and Templar. [ECF No. 20 at 17–19]. The court agrees that summary judgment is proper.

The First Amendment prohibits laws “abridging the freedom of speech.” U.S. Const. amend. I. “It limits, among other things, the government’s power to regulate speech on public property.” *White Coat Waste Project v. Greater Richmond Transit Co.*, 35 F.4th 179, 196 (4th Cir. 2022). A county council meeting is traditionally considered a limited public forum which allows for some reasonable restrictions but still prohibits viewpoint discrimination. *Steinburg v. Chesterfield County Plan. Comm’n*, 527 F.3d 377, 385 (4th Cir. 2008). Courts should assess a speech restriction on whether it is applied evenly, regardless of viewpoint. *Davison v. Rose*, 19 F.4th 626, 635–36 (4th Cir. 2021).

Viewing the evidence in the light most favorable to Roote, he has not shown the time restrictions were selectively enforced. The record confirms that some speakers exceeded their allotted time, but Roote spoke significantly longer than anyone before him. *Compare* Table 1 (noting the longest prior speech was four minutes and thirty-two seconds) *with* ECF No. 20 at 5–7 (citing ECF No. 14-2) (indicating Roote spoke for four minutes uninterrupted and roughly six minutes and thirty seconds before being removed). The record also shows that Roote was the only speaker who refused to yield the floor after being instructed to do so. Because he presents no evidence that time restrictions were applied in a discriminatory manner, his claims fail as a matter of law. *See Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 281 (3d Cir. 2004) (affirming summary judgment finding “the presiding officer of a public meeting to allow a speaker to try to hijack the proceedings, or to filibuster them, would impinge on the First Amendment rights of other would be participants,” and stating the court had “no difficulty sustaining the decision to remove [plaintiff] on that basis”); *Davison v. Plowman*, 247 F. Supp. 3d 767 (E.D. Va. 2017), *aff’d*, 715

F. App'x 298 (4th Cir. 2018) (“[F]ailure to effectively moderate a public discussion may be as deleterious to dialogue in such a forum as censorship.”).

D. Counts VIII and IX: *Monell* Liability (Kershaw County)

Roote alleges Kershaw County maintained an unconstitutional policy regarding speech time limits.⁶ [ECF No. 21 at 6.] Defendants argue Roote has failed to demonstrate a sufficiently widespread practice or policy for removing speakers based on their viewpoint to succeed under a *Monell* theory of liability. [ECF No. 19 at 1–4.] The magistrate judge agreed that summary judgment was proper, finding that Roote “offered no allegation or evidence in support of an express policy, nor identified a final decision maker and any related decisions leading to a violation of his constitutional rights.” [ECF No. 20 at 20.] The court agrees that summary judgment is appropriate.

Under *Monell*, a plaintiff can state a 42 U.S.C. § 1983 claim against a municipality by demonstrating a constitutional violation by an official act that resulted from a government policy or custom. *Owens v. Baltimore City State's Att'ys Off.*, 767 F.3d 379, 402 (4th Cir. 2014). A policy or custom can be expressed in several ways:

⁶ Roote claims that Defendants’ arguments for *Monell* liability were raised only in their reply brief, rather than in their motion for summary judgment, and thus were improperly considered by the magistrate judge and should not be considered by this court. See ECF No. 21 at 5–6. While the court agrees that, generally, “new arguments cannot be raised in a reply brief,” *De Simone v. VSL Pharms., Inc.*, 36 F.4th 518, 531 (4th Cir. 2022), this rule has exceptions. *Id.* (“[A] district court may consider an argument raised for the first time on reply under appropriate circumstances.”) Two such circumstances are: whether the untimely argument may be “intimately related” to the original grounds for the motion and whether the non-movant had the opportunity to contest an untimely argument in a sur-reply. *Id.* Here, both circumstances apply. First, the issue of liability for Kershaw County was raised in Defendants’ motion for summary judgment. [ECF No. 14 at 7–9.] Second, Roote addressed the reply arguments in his objections to the Report—giving him an opportunity to develop his arguments for the court’s de novo review. See ECF No. 21 at 5–7; *Progressive N. Ins. Co. v. Geoffroy*, No. 9:23-CV-00737-DCN, 2023 WL 6462851, at *7 (D.S.C. Oct. 4, 2023) (finding arguments raised in reply brief were properly considered by the court where non-movant filed motion to strike and noting “this filing serves the same purpose as a sur-reply objecting to an argument first raised in a reply brief”). Accordingly, the court concludes these arguments are properly before it.

(1) through an express policy, such as a written ordinance or regulation; (2) through the decisions of a person with final policymaking authority; (3) through an omission, such as a failure to properly train officers, that manifest[s] deliberate indifference to the rights of citizens; or (4) through a practice that is so persistent and widespread as to constitute a custom or usage with the force of law.

Howard v. City of Durham, 68 F.4th 934, 952 (4th Cir. 2023) (citing *Starbuck v. Williamsburg James City Cnty. Sch. Bd.*, 28 F.4th 529, 533 (4th Cir. 2022)).

Here, Roote identifies no express policy, final decision from a policymaker⁷ or widespread practice of unconstitutional enforcement. His evidence is limited to his own isolated incident, which is insufficient as a matter of law. *See* ECF No. 21 at 6; *Owens*, 767 F.3d at 402 (“Prevailing under such a theory is no easy task. A plaintiff must point to a persistent and widespread practice of municipal officials, the duration and frequency of which indicate that policymakers (1) had actual or constructive knowledge of the conduct, and (2) failed to correct it due to their deliberate indifference.” (citation omitted)); *Spell v. McDaniel*, 824 F.2d 1380, 1387 (4th Cir. 1987) (noting

⁷ Roote argues that a single decision by a policymaker can give rise to *Monell* liability and that he has produced sufficient evidence that time limits were arbitrarily enforced against him such that his claim should survive summary judgment. *See* ECF No. 21 at 6 (citing *Austin v. Paramount Parks, Inc.*, 195 F.3d 715 (4th Cir. 1999)). The court recognizes that, under appropriate circumstances, a municipality may incur § 1983 liability for a single decision by a policymaking official. Such liability, however, is “constrained by the caveat that ‘[t]hese principles are limited . . . municipal liability attaches only when the decision maker is the municipality’s governing body, a municipal agency, or an official possessing final authority to create official policy.’” *Charette v. Wexford Health Sources, Inc.*, No. CV CCB-19-0033, 2021 WL 1102361, at *6 (D. Md. Mar. 23, 2021) (quoting *Semple v. City of Moundsville*, 195 F.3d 708, (4th Cir. 1999)). Although Roote alleges that Templar possessed final policymaking authority for the county, ECF No. 1-1 ¶ 80, this assertion, without evidence, is not enough to sustain his *Monell* claim against Kershaw County. *See Orozco v. Yakima Sheriff’s Off.*, No. 1:22-CV-03058-SAB, 2024 WL 1337174 (E.D. Wash. Mar. 28, 2024) (“Plaintiff’s vague assertion of final policymaking authority by a deputy prosecutor is insufficient for the *Monell* claim against the County to survive.”).

that “widespread” or “flagrant” unconstitutional practices constitute a custom or policy). Accordingly, summary judgment is proper for Counts VIII and IX.⁸

E. State-Law Claims

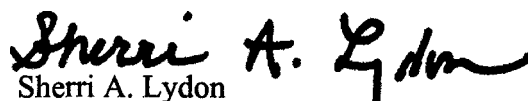
When all federal claims are dismissed in the early stages of litigation, courts typically decline supplemental jurisdiction. *Henderson v. Harmon*, 102 F.4th 242, 251 (4th Cir. 2024). This case does not present exceptional circumstances that would warrant deviation from the general rule. The remaining state-law claims are remanded.

III. Conclusion

After a thorough review of the Report, the applicable law, and the record of this case, the court finds no clear error in the Report. Additionally, the court reviewed de novo the parts of the Report to which Roote objected. The court hereby **ADOPTS** the Report as modified, ECF No. 20. As a result, Defendants’ motion for summary judgment, ECF No. 14, is **GRANTED**. Roote’s constitutional claims fail as a matter of law and are therefore dismissed **WITH PREJUDICE**. This matter is **REMANDED** to the Kershaw County Court of Common Pleas.

IT IS SO ORDERED.

March 5, 2026
Columbia, South Carolina


Sherri A. Lydon
United States District Judge

⁸ Because the court finds that Roote’s claims against Defendants fail to raise a genuine dispute of material fact as to whether a constitutional violation occurred, it does not address the magistrate judge’s recommendation, or Roote’s corresponding objections, regarding qualified immunity.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Mark Roote,

Plaintiff,

vs.

**Kershaw County, Kershaw County
Sheriff's Office, Sheriff Lee Boan,
and Danny Templar,**

Defendants.

C/A No.: 3:25-1392-SAL-SVH

REPORT AND RECOMMENDATION

On October 11, 2022, Mark Roote (“Plaintiff”) attended a Kershaw County counsel meeting where he alleges that, while speaking to the counsel members, he was “cut off, removed from the room, and ultimately arrested” in violation of his rights. [*See* ECF No. 18 at 1]. Plaintiff sues Kershaw County (the “County”), Kershaw County Sheriff’s Office (“KCSO”), Sheriff Lee Boan (“Boan”), and Danny Templar (“Templar”), the County Administrator (collectively “Defendants”). Defendants seek dismissal of Plaintiff’s claims.

Plaintiff originally filed this action in the Kershaw County Court of Common Pleas, and Defendants removed this action to this court on March 6, 2025. [ECF No. 1]. Plaintiff asserts violations of his First and Fourth Amendment rights, claims brought pursuant to 42 U.S.C. § 1983, *Monell*

claims against the County, and related state law claims.¹ This matter is before the court on Defendants' motion for summary judgment. [ECF No. 14]. The motion is fully briefed [ECF Nos. 18, 19] and ripe for disposition.

All pretrial proceedings in this case were referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(f) (D.S.C.). For the following reasons, the undersigned recommends the district judge grant Defendants' motion for summary judgment.

I. Factual Background

The relevant Kershaw County council meeting took place on October 11, 2022, attended by Plaintiff, Boan, and Templar.² The County has passed and filed Ordinance No. 387.2023, which is the Amended and Restated Ordinance by Kershaw County Council Determining Rules and Order of Business. [ECF No. 14-8]. Relevant here, the ordinance provides:

¹ Plaintiff withdraws his previously-asserted claim against the County for medical negligence while he was housed in jail. [See ECF No. 18 at 13].

² As noted by Defendants, "the council meeting was recorded and is a matter of public record on YouTube, in addition to security cameras that recorded the meeting from multiple angles without sound, in addition to a private recording taken by an individual sitting in the gallery of the council chambers. [ECF No. 14 at 2-3 (citing ECF Nos. 14-1, 14-2, 14-3, 14-4, 14-5, 14-6, 14-7)]. The court notes, however, that the YouTube link provided by Defendants is inaccessible. [See ECF No. 14-1]. The court has relied on the additional recordings provided by Defendants and notes above where Plaintiff does not dispute the factual assertions made by Defendants concerning what occurred in the relevant meeting.

Section 2.5(a) of the Ordinance provides the Order of Business for the agenda of council meeting, and the agenda provides for public comments as the sixth matter on each agenda. *Id.* at 2.

Section 2.5(d) provides rules of conduct for public comment and rules for conduct of public hearings may be established by County council and altered or amended by a single vote. *Id.* at 3.

Appendix I provides guidelines for public hearings including the following: Any person wishing to speak at a public hearing must sign up to speak prior to the hearing; when the public hearing is opened, persons are notified how many people have signed up to speak; and while each person is limited to a maximum of 10 minutes to speak, that time limit can be altered or amended by a single vote of County council. *Id.* at 9.

Appendix III provides guidelines for public comments including the following: The public comment period is limited to a maximum of five minutes per individual. *Id.* at 11.

In implementing the public comment period, the council decided the maximum amount of time for all comments would be thirty minutes per public hearing. [ECF No. 14-9 at 10:4–11:18]. The total amount of time is divided by the total number of individuals who signed up in advance to speak at the public hearing. *Id.* If three people sign up to speak, each would be given ten minutes to speak. *Id.* If ten people sign up to speak each would be given three minutes to speak. *Id.*

As to going over time, Boan testified that “other people do go beyond their time. That's not out of the ordinary for somebody to go beyond their time.” [ECF No. 18-1 at 8:12–14, *see also id.* at 5:13–15 (noting when Plaintiff “exceeded it, which sometimes people speaking do exceed the time, so that didn’t really

concern me that much”). Boan also testified that Plaintiff was “a regular” at the meetings:

He come often, and he often, you know, expressed his—his negative views of county council, which, you know, he has every right to do that and never had a problem with him. And I can’t remember any—anything that we really had out of the ordinary. He was just one that, you know, always, you know, came in and exercised his rights to talk about how he—he didn’t like council and a lot of things that they were doing. And—and he was just never—you know, it was almost like he knew exactly where he could go with it and how much he could say to them.

And I—I don’t remember anything really out of the way in the past with him, other than, you know, he’s been there before. But you know, I never saw him as, like, a threat or anything to council or—you know, he was just somebody unsatisfied with, you know, some of the things they did, and he was expressing himself as—as everybody else does.

Id. at 7:16–8:11 (errors in original).

At the relevant meeting, Defendants represent—and Plaintiff does not dispute—that the chair of the meeting announced that the agenda item was public comments and yielded to the County Attorney, Ken DuBose (“DuBose”), who announced that there were nine people who signed up to speak and, per the rules, each person would have approximately three minutes and twenty seconds to speak. [ECF No. 14 at 4–5 (citing ECF No. 14-1 at 0:39:30)]. DuBose also announced he had a bell and would ring the bell at the three minute and twenty second mark so the person would know their time to speak had ended.

See id.

The parties do not dispute that the first seven speakers spoke for the following amounts of time:

Speaker 1 started at 0:42:21 and stopped at 0:44:07 for a total time of 0:01:46;

Speaker 2 started at 0:44:15, DuBose rang the bell at 0:03:54, and Speaker 2 stopped at 0:48:48 for a total time of 0:04:32;

Speaker 3 started at 0:49:21 and stopped at 0:52:21 for a total time of 0:03:00;

Speaker 4 started at 0:52:40 and stopped at 0:56:26 for a total time of 0:03:45;

Speaker 5 started at 0:56:44, Dubose rang the bell at the 1:00:51 mark, and Speaker 5 stopped at 1:00:51 for a total time of 0:04:13;

Speaker 6 started at 1:01:15 and stopped at 1:05:19 for a total time of 0:04:04;

Speaker 7 started at 1:05:32 and stopped at 1:08:51 for a total time of 0:3:19.

[*See* ECF No 14 at 5, *see also* ECF No. 18 at 2].

The parties also agree that Plaintiff was the eighth speaker and spoke uninterrupted for four minutes until DuBose rang the bell. [ECF No. 14-2 at 4:00]. Plaintiff continued to read for a few moments when council member Cook interrupted, with irritation, stating, among other comments, that other people who had to stop at the bell should be provided more time if Plaintiff was not going to stop at the bell. *Id.* In response, the chair stated that he thought Plaintiff had a few more seconds and was waiting for DuBose, when Plaintiff

stated, “I’m not stopping until I’m done.” *Id.* A back and forth ensued and, eventually, the chair asked Plaintiff to remove himself from the podium and asked that the podium microphone be turned off, as Plaintiff continued to read his prepared speech. *Id.*

As Plaintiff continued reading, Boan is seen approaching him from the left of the screen with his hands in his pockets. *Id.* at 4:53. As Boan approaches Plaintiff, Plaintiff turns his head to the left to look at Boan and states, “I am not walking away.” *Id.* Boan stands next to the podium, with his hands in his pockets, and continues to let Plaintiff read his prepared speech. *Id.* A second deputy sheriff approaches Plaintiff from the right side and stands watching Plaintiff continue to read his speech. *Id.*

Roughly a minute and a half later, as Plaintiff continues to read, noise from the gallery is high, counsel members are seen talking to each other, and citizens are getting up and moving around the room. [ECF No. 14-2 at 0:6:25, *see also* ECF Nos. 14-3]. At or about this point, Templar stands up from the table and says to Boan, “I want him out” [ECF No. 14-2 at 0:6:25]. Plaintiff then tells Templar that he has not broken any laws, to which Templar stated, “I didn’t say that you did, but we’re trying to run a meeting here.” *Id.* Boan then puts his hand on Plaintiff’s left arm and attempts to guide him away from

the podium, at which time Plaintiff “sat down” in “passive resistance.” [ECF No. 14-2 at 0:06:29, ECF No. 14-11 at 63:8–19 (Plaintiff’s deposition)].³

After Plaintiff sat on the floor, Boan and another deputy attempted to slide Plaintiff across the carpeted floor by the arms out of the council chambers while Plaintiff passively refused to cooperate:



[ECF No. 14-2 at 0:06:40].

³ Boan and Templar testified that, at this time, they did not intend to arrest Plaintiff. [See ECF No. 18-1 at 12:15–19 (Boan testifying that “my intention to start with was just to escort him out—when I first put my hand on him and— and got his paperwork, was to escort him out and just tell him, ‘Hey, you got to leave.’”); ECF No. 18-2 at 14:20–22 (Templar testifying his hope “was just to get him outside, maybe chat with him a little bit, calm him down.”)].

As they were almost to the exit of the room, Plaintiff stated loudly that he was “trying to be a good citizen and show how dirty these fuckers are,” at which time Boan stated “now you are under arrest.” *Id.* at 6:43. The deputy sheriff, almost contemporaneously with Boan’s statement, lost his balance and fell. *Id.*⁴

Boan then commanded Plaintiff several times to put his hand behind his back, which Plaintiff refused, stating he was a disabled veteran. *Id.*⁵ Plaintiff is then slid on the floor out of the chambers into the lobby, handcuffed, walked

⁴ Based on the evidence before the court, it is not clear why the deputy sheriff lost his balance and fell beyond it being the result of efforts to maneuver Plaintiff.

⁵ Plaintiff argues in briefing that the record indicates a dispute as to “what instructions were given, whether Roote could physically comply, and what caused the deputy to fall.” [ECF No. 18 at 5]. As stated, there is no indication why the deputy fell. As to the two other categories, Plaintiff testified as follows:

No, that is not correct. He never told me to place my hands behind my back. He never released my arms enough for me to feel comfortable—releasing my restraint to let my arms be moved behind my back. I have a—again, I had a pin in my shoulder. My arms, my wrists do not touch behind my back. As he was pulling me out, you can hear me saying, “I’m a disabled veteran. My arms don’t bend that way.” That’s what I was saying.

[ECF No. 18-3 at 69:21–70:4]. Although Plaintiff argues otherwise [*see* ECF No. 18 at 11], the video evidence [*see* ECF No. 14-2] contradicts his testimony that he was not told to put his hand behind his back and does not support his testimony that he said his arms “don’t bend that way.” *See Smith v. Ozmint*, 578 F.3d 246, 254 (4th Cir. 2009) (holding that despite the parties’ contradicting versions of the fact, the court was entitled to rely on the video recordings to find that no reasonable juror could have found that the officers’ use of force was excessive) (citing *Scott v. Harris*, 550 U.S. 372, 380 (2007)).

out of the building and taken to the Kershaw County detention center. [ECF No. 14-2, ECF No. 14-5, ECF No. 14-6, ECF No. 14-7, ECF No. 14-15].⁶

Plaintiff was charged with resisting arrest and disorderly conduct. [ECF No. 14-12]. Those charges remain pending.

II. Discussion

A. Standard on Motion for Summary Judgment

The court shall grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a). The movant bears the initial burden of demonstrating that summary judgment is appropriate; if the movant carries its burden, then the burden shifts to the non-movant to set forth specific facts showing that there is a genuine issue for trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). If a movant asserts that a fact cannot be disputed, it must support that assertion either by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials;” or “showing . . . that an adverse

⁶ Plaintiff argues no one asked him how much longer he needed to complete his comments. [See ECF No. 18 at 5]. Defendants have submitted Plaintiff’s prepared comments, indicating that Plaintiff had roughly a third of his speech yet to read. [See ECF No. 14 at 7, *see also* ECF No. 14-10].

party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1).

In considering a motion for summary judgment, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.* at 248.

B. Analysis

The court first addresses Plaintiff’s federal claims brought pursuant to 42 U.S.C. § 1983: (1) Fourth Amendment excessive force claim against Boan, (2) First Amendment retaliation claim against Boan and Templar, (3) First Amendment violation claim against Templar and Boan,⁷ and (4) First Amendment violation claim against the County.⁸

⁷ In his complaint, Plaintiff asserts a First Amendment violation claim solely against Templar. [*See* ECF No. 1-1 at 7–8]. In briefing, Plaintiff indicates this claim is asserted against both Templar and Boan. [*See* ECF No. 18 at 6]. In an abundance of caution, the court addresses this claim as asserted against both Templar and Boan.

⁸ In support of his claim that the County violated his First Amendment rights to free speech, Plaintiff argues the County was enforcing a policy or custom of restricting speech based on its content or, in the alternative, the County, acting through Templar, violated the First Amendment where Templar has the final policymaking authority for the County and is responsible for setting policy for

1. Fourth Amendment Claim

The court analyzes claims of excessive force by law enforcement in the course of an arrest under the Fourth Amendment's "objective reasonableness" standard. *Graham v. Connor*, 490 U.S. 386, 388 (1989). Determining whether the force used to carry out a particular arrest is "unreasonable" under the Fourth Amendment requires "balanc[ing] the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Tennessee v. Garner*, 471 U.S. 1, 8 (1985). The outcome of this balancing test necessarily depends on the facts and circumstances of the particular case. *Id.* at 8–9 (holding question is "whether the totality of the circumstances justifie[s] a particular sort of search or seizure"). The court considers factors including the severity of the crime, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Graham*, 490 U.S. at 396. Further, the analysis "must embody allowances for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain and rapidly evolving—about the amount of force that is necessary in a particular situation." *Unus v. Kane*, 565 F.3d 103, 117 (4th Cir. 2009)

the County. [ECF No. 1-1 at 9–10].

(citation omitted); *see also Jones v. Buchanan*, 325 F.3d 520, 530–31 (4th Cir. 2003) (holding the extent of injuries to the plaintiff “is another consideration in determining whether force was excessive”).⁹

Additionally, under the qualified immunity defense, “government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity ensures that “[o]fficials are not liable for bad guesses in gray areas; they are liable for transgressing bright lines.” *Maciariello v. Sumner*, 973 F.2d 295, 298 (4th Cir. 1992). Whether an officer is entitled to qualified immunity is a question of law for the court and, when there are no relevant disputed material facts, a court should rule on the qualified immunity issue at the summary judgment stage. *Willingham v. Crooke*, 412 F.3d 553, 558 (4th Cir. 2005) (“Ordinarily, the question of qualified immunity should be decided at the summary judgment stage.”).

To resolve a qualified immunity defense, the court must (1) determine whether the facts alleged, taken in the light most favorable to the plaintiff,

⁹ As directed by the Fourth Circuit, “[i]n this Circuit, we’ve also considered a fourth factor: “the extent of the plaintiff’s injuries.” *Caraway v. City of Pineville*, 111 F.4th 369, 382 (4th Cir. 2024) (citing *Nazario v. Gutierrez*, 103 F.4th 213, 234 (4th Cir. 2024)).

show that the defendant's conduct violated a constitutional right, and (2) determine whether the right was clearly established at the time of the alleged misconduct. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Courts may address the two prongs of the qualified immunity analysis in whichever order is appropriate in light of the circumstances of the particular case at hand. *Id.*

Here, the record indicates that the force used was minimal in response to Plaintiff's passive resistance. Although the severity of the crime was low and Plaintiff posed no immediate threat to the safety of the officers or others, the record indicates Plaintiff was passively resisting the officers' efforts to maneuver him outside and, thereafter, to arrest him.

Plaintiff argues that "[t]he force used—dragging Roote across the floor, causing a shoulder injury requiring medical attention," supports his position that "[a] reasonable jury could find the force excessive under the circumstances." [ECF No. 18 at 10]. However, Plaintiff has failed to submit any evidence of a shoulder injury requiring medical attention, and, under the record before the court, no reasonable jury could conclude, under these circumstances, that Defendants violated Plaintiff's constitutional rights by using minimal force to maneuver a passively-resisting plaintiff out of the meeting and to arrest him. *See, e.g., Somers v. Devine*, 132 F.4th 689, 699 (4th Cir. 2025) ("In the present case, the use of force was minimal and was made necessary by Somers' resistance.").

Accordingly, the undersigned recommends the district judge grant Defendants' motion as to Plaintiff's Fourth Amendment excessive force claim.

2. First Amendment Retaliation Claim

"To state a colorable First Amendment retaliation claim, a plaintiff must allege that (1) he engaged in protected First Amendment activity, (2) the defendant took some action that adversely affected his First Amendment rights, and (3) there was a causal relationship between his protected activity and the defendant's conduct." *Jones v. Solomon*, 90 F.4th 198, 213 (4th Cir. 2024) (citing *Martin v. Duffy*, 977 F.3d 294, 299 (4th Cir. 2020)).

It does not appear that the first two elements are in dispute. However, the parties dispute whether there was a causal relationship between Plaintiff's critical comments and his arrest. Plaintiff argues as follows:

[C]onsidering facts and inferences in the light most favorable to the Plaintiff, the causal connection is established by: (a) neither Defendant intended to arrest Roote—only remove him (b) the arrest occurred immediately after Roote's criticism of the council, and (c) Sheriff Boan testified the arrest would have happened "even without" the profanity, indicating the content of the speech—not the manner—drove the decision.

[ECF No. 18 at 9 (footnotes removed), *see also* ECF No. 18-1 at 13:1–17 (Boan testifying that he concluded Plaintiff had engaged in disorderly conduct as follows: "No, it was—just his whole—just the way he stopped the council meeting, that he would not—he just pretty much just took over the council meeting, and other citizens were there to watch the council meeting and see

government work being done and decisions being made, votes and everything that people come to council meetings for. He clearly just ended that, just disrupted everything and—his total action and forcing us to have to drag him out and not leaving when asked, not leaving when we tried to escort him, and you know, just kind of a combination of everything is when, you know, we made the decision. If he—you know, if he didn't yell out the f-word, you know, he would—he would have still been arrested.”)].

As stated by the Fourth Circuit, “[t]he causation requirement is rigorous; it is not enough that the protected expression played a role or was a motivating factor in the retaliation; claimant must show that ‘but for’ the protected expression the [state actor] would not have taken the alleged retaliatory action.” *Huang v. Bd. of Governors of Univ. of N. Carolina*, 902 F.2d 1134, 1140 (4th Cir. 1990); *Raub v. Campbell*, 785 F.3d 876, 885 (4th Cir. 2015) (affirming dismissal of First Amendment retaliation claim and finding that plaintiff’s evidence “falls far short” of the “rigorous” causal requirement where the plaintiff “ignores the numerous other facts on which” the alleged retaliatory action was based).

Here, even taking the evidence in light most favorable to him, Plaintiff has failed to meet this rigorous requirement. Although Plaintiff was immediately arrested following his statement that he wanted “show how dirty these fuckers are,” the timeline also coincides with him being arrested after

failing to conclude his remarks, disrupting the meeting, and passively resisting being escorted out of the room. Plaintiff does not acknowledge his actions taken in addition to his protected speech as a cause for his arrest.

As argued by Defendants:

Both Sheriff Boan and County Administrator Templar testified that neither had any intention of having Roote arrested, but that Roote's defiance in refusing to yield the podium and then dropping to the ground and refusing to move caused the public hearing to break down further. [Exhibit 13 - Sheriff Boan Depo p. 11, line 7-p. 12, line 25; Ex. 9, p. 13, line 2-p. 15, line 2].

Roote was not limited in any way in the content of his prepared speech. Roote was not interrupted when Mr. DuBose rang the bell when Roote's speech reached four minutes. Roote was interrupted indirectly after speaking for four minutes and fifteen seconds when a council member raised an issue about the length of time Roote was being given to the council chair. Even when the microphone was turned off, Roote continued to speak at the podium for six minutes and thirty-eight seconds before County Administrator Templar asked Sheriff Boan to remove Roote from the podium. Roote's removal, subsequent arrest, and criminal charges had nothing to do with the content of his speech, but related directly to Roote's complete disregard for the legitimate and legal rules for the public hearing and his decision to put his personal rights over those of the other citizens who had equal rights to participate and watch the public hearing, by creating a public disturbance causing the council meeting to stop completely until the issue was resolved.

[ECF No. 14 at 12–13 (citing *Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 281 (3d Cir. 2004) (affirming summary judgment finding “the presiding officer of a public meeting to allow a speaker to try to hijack the proceedings, or to filibuster them, would impinge on the First Amendment rights of other would be participants,” stating the court had “no difficulty sustaining the decision to

remove [plaintiff] on that basis”)].¹⁰

Accordingly, the undersigned recommends the district judge grant Defendants’ motion for summary judgment as to Plaintiff’s First Amendment retaliation claim.

3. First Amendment Claim Against Templar and Boan

The First Amendment prohibits laws “abridging the freedom of speech.” U.S. Const. amend. I. “It limits, among other things, the government’s power to regulate speech on public property.” *White Coat Waste Project v. Greater Richmond Transit Co.*, 35 F.4th 179, 196 (4th Cir. 2022). At the heart of Plaintiff’s argument is that, unlike others who spoke favorably about the council, because he spoke not favorably about the council, he was arrested. [See, e.g., ECF No. 1-1 at 3 (“County Council does not enforce its guidelines equally or on a content-neutral basis. Citizens with favorable comments to the County Council are not limited in the time they are allowed to speak, while citizens criticizing the County Council are limited.”)]].

Here, Defendants argue that the challenged action, enforcement of the

¹⁰ Plaintiff argues that Defendants’ reliance on *Eichenlaub* is inappropriate where, unlike the plaintiff in that case, Plaintiff only “had spoken for a few minutes longer than the next longest speaker who went over the limit.” [ECF No. 18 at 9–10]. The court is not persuaded where the evidence indicates that Plaintiff, like the *Eichenlaub* plaintiff, spoke significantly longer than any other participant, and, unlike all other participants, adamantly refused to yield.

time limit, was a content-neutral restriction lawfully applied. Plaintiff disagrees, arguing as follows:

A reasonable jury could find that the time limit on speakers at the meeting was selectively enforced because multiple speakers exceeded it without consequence, while Roote was removed and arrested. Additionally, the differential treatment appears to be based on viewpoint because Roote was a known critic of council who “often expressed his negative views” while speakers who supported council positions were permitted to exceed time limits. Finally, the arrest was triggered not by the time violation but by Roote’s protected political speech criticizing council members as “fuckers” which is a vulgar but constitutionally protected criticism of public officials.

[ECF No. 18 at 6].

Plaintiff has failed to offer evidence to support his position. There is no evidence that the time limit on speakers at the meeting was selectively enforced when no other speaker exceeded the time limit like Plaintiff did nor refused to yield after exceeding the time limit like Plaintiff did. Also, where there is no evidence of differential treatment, where multiple speakers including Plaintiff were allowed to exceed time limits, there is no evidence of differential treatment based on viewpoint. As to Plaintiff’s complaints about the timing of his arrest, the court has addressed that issue above.

Plaintiff appears to argue that it is his constitutional right to speak in a given forum for as long as he wished. [ECF No. 18 at 7]. However, he has offered no case law or argument supporting this position. Instead, he offers significant case law supporting the position that the government may not

discriminate based on a speaker's viewpoint. *See id.* However, there is no evidence that that is what occurred here.¹¹

A county council meeting is traditionally considered a limited public forum which allows for some reasonable restrictions but still prohibits viewpoint discrimination. *Steinburg v. Chesterfield County Planning Comm'n*, 527 F.3d 377, 385 (4th Cir. 2008). Courts should assess a speech restriction on whether it is applied evenly, regardless of viewpoint. *Davison v. Rose*, 19 F.4th 626, 635–36 (4th Cir. 2021).

Here, where there is no evidence that any speech restriction was applied unevenly, the undersigned recommends the district judge grant Defendants' motion for summary judgment as to Plaintiff's First Amendment claims against Templar and Boan.

4. First Amendment Claim Against the County

Plaintiff states he has asserted multiple *Monell* claims against the County. Under *Monell*, a plaintiff can state a 42 U.S.C. § 1983 claim against a municipality by demonstrating a constitutional violation by an official act that resulted from a government policy or custom. As explained by the Fourth

¹¹ Plaintiff concedes that "that time limits, in the abstract, may be constitutionally permissible," but argues that "[t]he issue here is not the existence of a time limit but its selective enforcement." [ECF No. 18 at 6 n.20]. As stated above, Plaintiff has failed to show the time limits were selectively enforced.

Circuit, the policy or custom may be expressed in one of several forms:

(1) through an express policy, such as a written ordinance or regulation; (2) through the decisions of a person with final policymaking authority; (3) through an omission, such as a failure to properly train officers, that manifest[s] deliberate indifference to the rights of citizens; or (4) through a practice that is so persistent and widespread as to constitute a custom or usage with the force of law.

Howard v. City of Durham, 68 F.4th 934, 952 (4th Cir. 2023) (citing *Starbuck v. Williamsburg James City Cnty. Sch. Bd.*, 28 F.4th 529, 533 (4th Cir. 2022)).

Here, Plaintiff has offered no allegation or evidence in support of an express policy, nor identified a final decision maker and any related decisions leading to a violation of his constitutional rights. Nor has Plaintiff offered evidence indicating a policy or custom through an omission. Finally, Plaintiff has not shown a persistent and widespread practice, the duration and frequency of which indicate that policymakers had actual or constructive knowledge of the conduct and failed to correct it due to their deliberate indifference. *See, e.g., Owens v. Baltimore City State's Att'ys Off.*, 767 F.3d 379, 402 (4th Cir. 2014) ("Prevailing under such a theory is no easy task. A plaintiff must point to a persistent and widespread practice[] of municipal officials, the duration and frequency of which indicate that policymakers (1) had actual or constructive knowledge of the conduct, and (2) failed to correct it due to their deliberate indifference.") (citation omitted)); *Spell v. McDaniel*, 824 F.2d 1380, 1386–91 (4th Cir. 1987). Sporadic or isolated violations of rights will

not give rise to *Monell* liability; only “widespread or flagrant” violations will. *Spell*, 824 F.2d at 1387.¹²

Accordingly, the undersigned recommends the district judge grant Defendants’ motion, dismissing these claims.¹³

5. State-Law Claims

Plaintiff has also asserted claims for false imprisonment against KCSO and the County, negligence and gross negligence against KCSO for failure to “take the slightest care in arresting Plaintiff and ensuring he was not hurt during that arrest,” and battery against KCSO. [See ECF No. 1-1].

¹² Plaintiff appears to indicate that he need not offer evidence in support of these claims but only address Defendants’ argument that Plaintiff improperly named the County in its two *Monell* causes of action. [See ECF No. 18 at 5–6 & n.18]. In response, and in addition to addressing these claims on the merits, Defendants argue that where the complaint fails to allege any facts sufficient to set forth a *Monell* claim against the County, Defendants are entitled to judgment as a matter of law. [ECF No. 19 at 2]. Here, Plaintiff has offered no allegation or evidence in support of his claims that an unconstitutional violation occurred based on the County’s policy or custom.

¹³ As stated, Plaintiff was charged with resisting arrest and disorderly conduct, charges that remain pending. In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court held that a state prisoner cannot bring a 42 U.S.C. § 1983 suit for damages where a judgment in favor of the prisoner would necessarily imply the invalidity of his conviction or sentence. *Id.* at 486–87. In *Wallace v. Kato*, 549 U.S. 384 (2007), the Supreme Court clarified that *Heck* does not apply in the pre-conviction setting and instead a stay of the 42 U.S.C. § 1983 action is appropriate in such instances. *Id.* at 393–94. Here, however, the parties have not addressed this issue, and it appears that, relevant to his 42 U.S.C. § 1983 claims, Plaintiff is not seeking for the federal court to make determination identical to those to be made by the state court, including, for example, whether probable cause existed for his arrest.

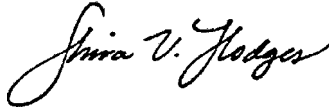
Pursuant to 28 U.S.C. § 1367(c)(3), the district court may decline to exercise supplemental jurisdiction “if the district court has dismissed all claims over which it has original jurisdiction.” *See also United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966) (“Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.”); *United States ex rel. Scott v. Metropolitan Health Corp.*, 375 F.Supp.2d 626, 647 (W.D. Mich. 2005) (“[T]he strong federal custom . . . has been to dismiss those claims in order to permit state courts to decide their own law, as is their prerogative.”); *see also AJP Group, Inc. v. Holmes*, C/A No. 4:13-611-RBH, 2013 WL 3148416, at *2 (D.S.C. June 18, 2013) (“Given that Plaintiff’s Complaint states no federal cause of action, the Court finds that the case should be remanded.”)

Accordingly, the undersigned recommends the district judge decline to exercise supplemental jurisdiction over Plaintiff’s state-law claims, remanding those claims to state court.

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends the district judge grant Defendants’ motion for summary judgment [ECF No. 14], dismissing Plaintiff’s federal claims and remanding Plaintiff’s state-law claims to the Kershaw County Court of Common Pleas.

IT IS SO RECOMMENDED.



January 5, 2026
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 26-6380
(3:25-cv-01392-SAL)

MARK ROOTE,
Plaintiff-Appellant,

v.

KERSHAW COUNTY; KERSHAW COUNTY SHERIFF'S OFFICE;
SHERIFF LEE BOAN, individually and in his official capacity;
and DANNY TEMPLAR, individually and in his official capacity,
Defendants-Appellees.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF SECTION

Plaintiff-Appellant Mark Roote respectfully moves this Court, pursuant to Federal Rule of Appellate Procedure 27 and this Court's inherent authority to manage its docket, for leave to file the attached Supplemental Brief Section as an addition to his Informal Opening Brief (ECF No. 15, filed April 20, 2026). In support thereof, Appellant states as follows:

I. BACKGROUND

1. Appellant is a pro se litigant proceeding without legal training or institutional resources. He filed his Notice of Appeal on March 26, 2026, and his Informal Opening Brief on April 20, 2026 — seven days ahead of the April 27, 2026 deadline established by this Court's Informal Briefing Order (ECF No. 9).
2. Appellant's prior civil rights counsel, Joshua Snow Kendrick of Kendrick & Leonard, P.C., did not inform Appellant of his withdrawal from the matter until March 16, 2026 — eleven days after the district court entered summary judgment on March 5, 2026. Appellant was traveling

with his minor son during this period and was out of cellular range. He did not receive or learn of the communication until March 21, 2026 — five days before the Notice of Appeal was filed. Appellant then had thirty days from the judgment, and five days of remaining time, to prepare and file a pro se Notice of Appeal in a case he had not personally managed at the trial court level.

3. Appellant prepared his Opening Brief using the case materials available to him — materials that had been in the custody of prior counsel. The Informal Opening Brief (ECF No. 15) presents five issues for this Court's review, each grounded in the district court record as Appellant understood it from those available materials.
4. After the Opening Brief was filed, Appellant obtained the complete criminal defense file compiled by his criminal defense attorney in connection with the criminal charges arising from the same October 11, 2022 incident. That file contained *Ordinance No. 343.2020* — the Kershaw County Council Rules and Order of Business ordinance that was actually in effect on the date of Appellant's arrest. This document was not present in prior civil counsel's file. It was not produced as an exhibit by Defendants. The ordinance submitted by Defendants as the governing authority — Ordinance No. 387.2023 (ECF No. 14-8) — shows on its face a Third Reading effective date of January 24, 2023, three months and thirteen days after the October 11, 2022 arrest.
5. *Ordinance No. 343.2020*, which became effective January 28, 2020 and governed the October 11, 2022 council meeting, contains no time limit of any kind for public comment speakers. The district court's entire analytical framework — including its limited public forum analysis, its content-neutral time restriction finding, and its Monell express policy conclusion — rested on a legal document that did not exist when Appellant was arrested.
6. Appellant did not raise this argument in his Opening Brief because he did not have access to the governing ordinance when the brief was prepared. The error embedded in Defendants' own exhibit — a 2023 enactment date on a 2022 incident — was not discoverable from the materials available to Appellant at the time of filing.

II. GROUNDS FOR RELIEF

A. Good Cause Exists Based on Appellant's Pro Se Status and the Circumstances of Brief Preparation.

This Court has recognized that pro se filings are to be liberally construed and that pro se litigants are entitled to reasonable latitude in procedural matters. The circumstances here are not those of a represented party who made a strategic choice or failed to exercise reasonable diligence. Appellant was informed of his prior counsel's withdrawal eleven days after summary judgment was entered,

while he was unreachable by cell. He prepared a 22-page Opening Brief, filed it seven days early, and raised five substantive legal issues — all within approximately four weeks of learning he was proceeding without counsel in a case he had not personally managed at the trial court level.

The ordinance error Appellant seeks to add was introduced into the record by opposing counsel. A pro se appellant working from his prior counsel's incomplete file cannot reasonably be expected to cross-reference the facial effective date of an exhibit he had no independent reason to scrutinize against the date of the underlying incident.

B. The Argument Is Based on Evidence Unavailable to Appellant at the Time of Filing.

Ordinance No. 343.2020 was obtained from criminal defense counsel's case file after the Opening Brief was filed. It was not in prior civil counsel's file. It was not produced by Defendants in discovery as an exhibit. Defendants' MSJ exhibit ECF No. 14-8 — *Ordinance No. 387.2023* — was the only ordinance presented to the court as governing authority, and Appellant had no comparative document against which to identify the facial defect in that exhibit.

This is not a situation where Appellant had the argument available and chose not to raise it. The argument became available only after the brief was filed, when Appellant obtained complete criminal defense file materials and was able to identify, for the first time, the discrepancy between the ordinance the district court relied upon and the ordinance that actually governed the meeting.

C. No Prejudice to Defendants-Appellees.

Defendants-Appellees did not file an informal response brief. The deadline for doing so — fourteen days after service of Appellant's Opening Brief on April 20, 2026 — has passed. The case is now fully submitted on Appellant's Opening Brief alone. Permitting a supplemental section at this stage causes no prejudice to Defendants: they had a full and fair opportunity to respond to Appellant's brief and declined to do so. If this Court deems it appropriate, Defendants may be permitted to file a brief supplemental response addressing only the added argument.

The interest of justice strongly favors addressing the ordinance issue on its merits. The district court's summary judgment order rested on a legal framework constructed around an ordinance that postdates the arrest by three months and thirteen days. That error pervades the district court's analysis of every claim Appellant appealed. Deciding this appeal without addressing it would require this Court to affirm a judgment built on a legal document that did not govern the conduct at issue.

III. RELIEF REQUESTED

For the foregoing reasons, Appellant respectfully requests that this Court grant leave to file the attached Supplemental Brief Section as Issue VI of his Informal Opening Brief. Appellant further requests that this Court accept the attached Supplemental Brief Section and consider it together with ECF No. 15 in deciding this appeal.

In the alternative, Appellant respectfully requests that this Court treat this motion and attached section as a supplemental filing under Federal Rule of Appellate Procedure 28(j), to the extent the Court deems formal supplementation of the brief to be procedurally unavailable.

Respectfully submitted,

/S Mark Roote

Mark Roote, Pro Se

1079 Corbett Road

Camden, South Carolina 29020

(803) 677-6328

mroote5569@gmail.com

Date: May 26, 2026

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2026, I electronically filed the foregoing *Motion for Leave to File Supplemental Brief Section* with the Clerk of the United States Court of Appeals for the Fourth Circuit using the CM/ECF system, which will send notification of such filing to counsel for Defendants-Appellees, addressed to:

Damon C. Wlodarczyk, Esq.

Howser Newman and Besley LLC

1508 Washington Street

Columbia, SC 29201

/S Mark Roote

Mark Roote, Pro Se

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 26-6380
(3:25-cv-01392-SAL)

MARK ROOTE,
Plaintiff-Appellant,

v.

KERSHAW COUNTY; KERSHAW COUNTY SHERIFF'S OFFICE;
SHERIFF LEE BOAN, individually and in his official capacity;
and DANNY TEMPLAR, individually and in his official capacity,
Defendants-Appellees.

SUPPLEMENTAL BRIEF SECTION

Filed with Motion for Leave to File Supplemental Brief Section

To be read as Issue VI of Appellant's Informal Opening Brief, ECF No. 15

VI. THE DISTRICT COURT'S ENTIRE ANALYTICAL FRAMEWORK RESTED ON AN ORDINANCE THAT DID NOT EXIST ON THE DATE OF APPELLANT'S ARREST, REQUIRING REVERSAL ON ALL COUNTS.

A. Standard of Review

This Court reviews a district court's grant of summary judgment de novo. Constitutional questions, including the applicable level of First Amendment scrutiny, are questions of law subject to de novo review. The legal framework the district court applied — including its characterization of the council meeting as a limited public forum and its finding that a content-neutral time restriction was

in place — rests on a legal document. Whether that document governed the October 11, 2022 meeting is a question of law this Court reviews without deference.

B. The Governing Legal Document

The district court's analysis adopted the factual and legal framework presented in Defendants' Motion for Summary Judgment. Central to that framework was *Ordinance No. 387.2023* (ECF No. 14-8), submitted by Defendants as the governing authority for the October 11, 2022 Kershaw County Council meeting. The district court relied on this ordinance to find: (1) that a limited public forum existed; (2) that a content-neutral time restriction was in place; (3) that Defendants had authority to enforce the restriction and remove Appellant; and (4) that an express written policy supported Monell analysis.

Ordinance No. 387.2023 shows the following dates on its face:

- First Reading: January 10, 2023
- Second Reading: January 12, 2023
- Third Reading (effective): January 24, 2023

The date of Appellant's arrest: **October 11, 2022.**

Ordinance No. 387.2023 was enacted three months and thirteen days after Appellant's arrest. It did not exist when Appellant spoke. It did not govern the October 11, 2022 council meeting. It cannot provide the legal basis for the time restriction Defendants enforced, the removal authority Defendants exercised, or the express policy the district court found.

C. The Ordinance Actually in Effect

Ordinance No. 343.2020 — the Amended and Restated Ordinance Determining Rules and Order of Business for Kershaw County Council — became effective January 28, 2020 and was the governing ordinance on October 11, 2022. Appellant obtained this document from criminal defense counsel's case file after his Opening Brief was filed. It was not produced by Defendants in this civil proceeding.

Ordinance No. 343.2020 establishes the following structure for council meetings:

Public Comment (Agenda Item 3, Section 2.5): No time limit of any kind is established for individual speakers during public comment. The ordinance lists Public Comments as the third item in the order of business and contains no duration restriction.

Appendix I — Public Hearing Guidelines (Agenda Item 5): A maximum of ten minutes per speaker is established. This provision applies exclusively to Public Hearings — a structurally distinct agenda category from Public Comments.

Appendix II — Public Presentation Guidelines (Agenda Item 7): A maximum of twenty minutes per presentation is established. This provision applies exclusively to formal presentations by non-governmental organizations. Appendix II, Rule 5 expressly states that individuals wishing to express concerns to County Council are directed to use the "public comment" section of the agenda — the section with no time limit.

Appellant was speaking during the public comment section of the October 11, 2022 agenda. *Ordinance No. 343.2020* imposed no written time limit on that section.

D. Legal Consequences

1. No Content-Neutral Restriction Existed.

The district court's limited public forum analysis required the existence of a content-neutral, viewpoint-neutral, pre-established time restriction. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983). An unwritten, ad hoc, orally announced time limit imposed the day of the meeting is not a content-neutral established policy — it is an improvised restriction applied without written authority. Because *Ordinance No. 343.2020* contains no public comment time limit, the three-minute-twenty-second restriction enforced against Appellant had no ordinance basis. The district court's characterization of the meeting as a limited public forum with an established content-neutral rule was legally incorrect under the governing document.

Where no written, pre-established time restriction exists, strict scrutiny applies to the government's interference with protected speech in a public forum. The district court applied deferential limited-forum review. That was error.

2. The Selective Enforcement Argument Is Materially Strengthened.

As set forth in Issue I and Issue II of Appellant's Opening Brief, the record establishes that thirty-six of forty-nine documented speakers exceeded the applicable time limit without arrest or removal, including four speakers on the same evening before Appellant's arrest and one speaker immediately after. Under *Gonzalez v. Trevino*, 602 U.S. 653 (2024), this objective evidence satisfies the exception to the but-for causation requirement.

The ordinance finding materially strengthens this argument. If there was no written time limit in the governing ordinance, the restriction was improvised and applied at the discretion of meeting officials. Discretionary, unwritten enforcement is precisely the vehicle through which viewpoint-

based selective enforcement operates. The absence of a written rule means there was no neutral standard against which to measure consistency — which is direct evidence that enforcement was driven by something other than a neutral policy.

3. The Monell Express Policy Finding Cannot Stand.

The district court's Monell analysis (Counts VIII and IX) relied, in part, on the existence of an express written policy governing public comment. That finding rested on *Ordinance No. 387.2023*. Because that ordinance postdates the arrest, the court's Monell express policy conclusion has no legal foundation in the governing document. The correct analysis under *Ordinance No. 343.2020* is that no written time limit existed — meaning the enforcement action against Appellant rested on an improvised, unwritten rule applied by untrained officers exercising unconstrained discretion. That is not an express policy. It is the absence of a constitutionally adequate one, which is itself the predicate for deliberate indifference liability under *City of Canton v. Harris*, 489 U.S. 378 (1989).

4. The Error Is Structural and Pervades All Five Counts.

Because the district court's entire framework was constructed around a non-governing ordinance, the error is not confined to any single count. Every conclusion the district court reached about the legal character of the meeting, the authority of the officials, the legitimacy of the time restriction, and the existence of a written policy is affected. This Court cannot affirm summary judgment on any of the five appealed counts without first determining what legal framework actually governed the October 11, 2022 meeting — and that determination requires applying the ordinance that was actually in effect.

E. Why This Argument Was Not Raised in the Opening Brief

Ordinance No. 343.2020 was not available to Appellant when his Opening Brief was prepared. Appellant's prior civil counsel did not have the document in the case file, and Defendants did not produce it in discovery — choosing instead to submit *Ordinance No. 387.2023* (ECF No. 14-8), which bears a 2023 effective date on its face. Appellant prepared his Opening Brief from the materials available to him, under the time constraints described in the accompanying Motion for Leave. The correct ordinance was obtained from criminal defense counsel's case file after the brief was filed.

The omission of this argument was not strategic. Appellant — a pro se litigant filing his first appellate brief within weeks of learning he had no counsel — could not have identified the facial defect in Defendants' own exhibit without access to the document it should have been compared

against. That document was in criminal defense counsel's file. It was not in civil counsel's file. The question of why the attorney litigating a civil rights case arising from the same incident did not possess the ordinance governing that incident is a matter Appellant intends to address separately.

F. Relief Requested

For the foregoing reasons, and in conjunction with the arguments set forth in Issues I through V of Appellant's Opening Brief (ECF No. 15), Appellant respectfully requests that this Court reverse the district court's grant of summary judgment on Counts V, VI, VII, VIII, and IX, and remand for further proceedings applying the legal framework established by *Ordinance No. 343.2020* — the ordinance actually in effect on October 11, 2022.

Respectfully submitted,

/S Mark Roote

Mark Roote, Pro Se

1079 Corbett Road

Camden, South Carolina 29020

(803) 677-6328

mroote5569@gmail.com

Date: May 26, 2026

/S Mark Roote

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2026, I electronically filed the foregoing *Supplemental Brief Section* with the Clerk of the United States Court of Appeals for the Fourth Circuit using the CM/ECF system, which will send notification of such filing to counsel for Defendants-Appellees, addressed to:

Damon C. Wlodarczyk, Esq.

Howser Newman and Besley LLC

1508 Washington Street

Columbia, SC 29201

/S Mark Roote

Mark Roote, Pro Se

ORDINANCE NO. 343.2020**AMENDED AND RESTATED ORDINANCE BY KERSHAW COUNTY COUNCIL
DETERMINING RULES AND ORDER OF BUSINESS****ARTICLE I. PURPOSE AND AUTHORITY****Section 1.1 Purpose**

The purpose for this ordinance is for Kershaw County Council to adopt and determine its own rules and order of business pursuant to Section 4-9-110 of the South Carolina Code of Laws.

ARTICLE II. AGENDA**Section 2.1 Council Meeting**

County Council meetings shall be scheduled and special meetings called as provided in Section 4-9-110 of the Home Rule Act South Carolina Code of Laws.

County Council meetings shall be held and conducted in accordance with the South Carolina Freedom of Information Act and the Home Rule Act and in accordance with the general law of the State of South Carolina affecting meetings of public bodies.

Section 2.2 Preparation of Agenda

The county administrator and clerk to county council shall prepare a proposed agenda which shall be compiled with supporting documentation by 1:00 p.m. on Wednesday preceding the next regular scheduled session of county council at which county council will vote on or take action on any matter coming before county council. The agenda shall be published by 1:00 p.m. on Friday.

For special meetings, the agenda with supporting documentation shall be published at least twenty-four (24) hours prior to the meeting.

Section 2.3 Members of County Council placing matters on the agenda

County council members may place proposed matters on the agenda by providing the agenda item to the county administrator and clerk of county council by 1:00 p.m. on Wednesday preceding the next regular scheduled council meeting at which county council will vote on or take action on any matter coming before county council together with supporting documentation.

For special meetings the proposed matter with supporting documentation shall be provided at least twenty-four (24) hours prior to the meeting.

FILED
JANET C. MOORE
CLERK OF COURT
KERSHAW COUNTY, S.C.
2020 MAR 13 PM 12:59

Section 2.4 Matters to be placed on the agenda

Matters to be placed on the agenda shall include matters to be considered by county council for enactment, approval, or execution, for consideration, or for information pursuant to county council's authority and to serve the public need, or for action pursuant to county council's statutory authority or jurisdiction.

Section 2.5 Order of business

a. The form of the agenda

The form of the agenda shall be as follows:

1. Call to Order
2. Invocation/Pledge of Allegiance
3. Public Comments
4. Adoption of Agenda
5. Public Hearings
6. Proclamations
7. Public Presentations
8. Approval of Minutes
9. Ordinances
10. Resolutions
11. New Business
12. Council Briefings
13. Administrator's Briefings
14. Legal Briefings
15. Future Agenda Items
16. Executive Session
17. Adjournment

b. Adoption of agenda

The agenda shall be adopted by council. Deletions at adoption can be made by majority vote. Additions to the agenda at adoption require a vote of two-thirds and items can be added at adoption only in case of emergency or deadline considerations. The order of business on the agenda may be varied if required by the chairman.

c. Rules as to Public Hearings and Public Presentations may be varied by vote of county council

ARTICLE III. SELECTION OF COUNTY COUNCIL OFFICERS

Section 3.1 Officers to be selected by County Council.

Pursuant to Section 4-9-110, county council shall designate the following officers:

Section 3.2 Chairperson

Chairperson: The chairperson is elected at large as a separate office and presides at all meetings of county council, preserves order and decorum at all meetings, and states every question, where applicable, coming before county council. The Chairperson of Kershaw County Council shall pursuant to the rules when a vote is called and taken on any motion or matter before council require a show of hands of those member(s) voting for the matter and a show of hands of those member(s) voting opposed to the matter and shall state for the record each council member(s) voting for the matter and each council member(s) voting against the matter which shall be stated in the minutes of county council. When a member abstains and does not vote the member shall state the reason why the council member abstained.

The chairperson shall preside at all regular and special meetings of the county council, and may vary the order of business on the agenda as required, the Chairman shall, and when required, execute, on behalf of county council, all ordinances, resolutions, directives, bonds, and other official instruments or documents as required by county council.

The chairperson acts as parliamentarian and rules on parliamentary and procedural issues while presiding at meetings and rules on points of order and delineates points of order. When a challenge is made as to the ruling by the chair as to a point of order and after an explanation is made as to the challenge of a ruling by the chair, and after the chair rules on the point of order made, then any appeal from the ruling by the chair is debatable subsequent to which council votes on the appeal with the chair breaking a tie.

Motions to reconsider a matter already decided must be made at the next meeting of council as an agenda item and the motion must be made by a member on the prevailing side of the prior matter.

The chairperson shall disseminate to members of county council pertinent correspondence that requests action by county council.

Section 3.3 Vice-chairperson

Vice-chairperson: At the initial meeting in January following each general election, the county council shall select one (1) of its members to serve as Vice-chairperson for a two-year term; in the event that the chairperson shall be temporarily absent or unable to serve, the vice-chairperson shall serve as chairperson in his stead. When the chairperson shall be temporarily absent or unable to serve, the vice-chairperson shall, when required, execute, on behalf of county council, all ordinances, resolutions, directives, bonds, and other official instruments or documents as required by county council.

ARTICLE IV. COMMITTEES

Section 4.1 Standing Committees

There shall be no standing committees of Kershaw County Council.

Section 4.2 Ad Hoc Committees

Ad Hoc Committees of Kershaw County Council may be created by the Chairman of the Kershaw County Council.

Ad Hoc Committees of Kershaw County Council created by the Chairman of the Kershaw County Council shall be for a specified task or limited purpose and for a limited duration or until the specified task or limited purposed is completed.

All appointments to Ad Hoc Committees created by and established by the Chairman of the Kershaw County Council shall be made by the Chairman of the Kershaw County Council.

ARTICLE V. APPOINTMENTS BY KERSHAW COUNTY COUNCIL TO BOARDS, COMMISSIONS, AND COMMITTEES

Section 5.1 Appointments by County Council to Boards, Commissions, and Committees

Appointments by county council to boards, commissions, or committees provided by state law, provided by Kershaw County Code or provided by action of County Council, shall be made by county council for the term specified.

Section 5.2 Notification of appointments

The county administrator and the Clerk of Kershaw County Council shall notify the county council in the agenda of pending appointments or vacancies caused by resignation or expiration of terms.

Notification of appointments to be made shall be placed in the agenda under Future Agenda Items at least one regularly scheduled meeting prior to placement of the appointment on the agenda under Appointments.

Section 5.3 Identification of candidates

Persons desiring to be appointed shall submit their application as designated by the county administrator which shall be contained in the agenda package together with any other persons proposed by any member of Kershaw County Council or any recommendation from the boards, commissions, or committee for which appointments are to be made. Members of Kershaw County Council need not submit an application to be eligible for appointment where otherwise eligible.

Section 5.4 Eligibility for appointment

No person shall be eligible for appointment to a board, commission, or committee unless his/her name is proposed by application, by request of a county council member, or proposed by the board commission or committee and the person's application is placed in the agenda package for consideration of county council prior to appointment.

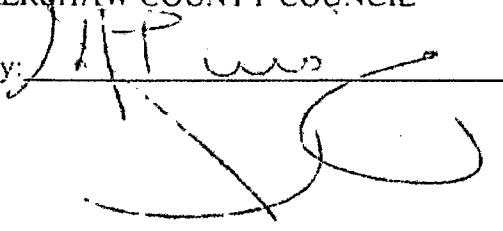
Section 5.5 Prior Appointments

Appointments made by Kershaw County Council for committees and officers provided for in this ordinance during 2009 and prior to the effective date hereunder are ratified and confirmed.

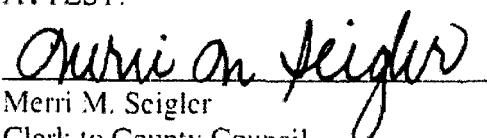
Section 5.6 Effective Date

This ordinance is effective upon third reading.

KERSHAW COUNTY COUNCIL

By: 

ATTEST:


Merri M. Scigler
Clerk to County Council

First Reading: November 12, 2019
Second Reading: January 14, 2020
Third Reading: January 28, 2020

APPENDIX I

PUBLIC HEARING GUIDELINES

Rules as to Public Hearings

1. Prior to the public hearing persons wishing to speak should sign up to speak.
2. Immediately prior to the public hearing, it shall be announced that persons wishing to speak must identify that they wish to speak.
3. When the public hearing is opened, that persons be notified as to how many people have signed up, and identified, and in what order.
4. Persons will speak in the order in which they signed up, and identified, and in the order they have identified themselves as wishing to speak.
5. Each person can speak a maximum of ten minutes.
6. Comments at public hearings should be germane to the matter subject to the public hearing which should be liberally construed.

APPENDIX II

PUBLIC PRESENTATION GUIDELINES

Rules as to Public Presentations

These rules may be varied by county council by a single vote at the time of the presentation.

1. A "public presentation" as an agenda item is limited to non-governmental organizations that wish to make requests or present information to County Council involving matters which are within the purview or statutory scope of County Council's authority.
2. A public presentation is limited to no more than three per meeting. The maximum time allotted for a public presentation is 20 minutes. No action is taken by County Council as a result of a public presentation.
3. Governmental entities, agencies of Kershaw County, or boards of Kershaw County can likewise present a public presentation as an agenda item. Governmental entities, agencies of Kershaw County, or boards of Kershaw County or entities that have a contractual relationship with Kershaw County can likewise request to be put on the agenda under New Business.
4. A request to be put on the agenda as a public presentation, or new business (if applicable) shall be accompanied by a written request which shall state the nature of the public presentation and the substantive content of the proposed presentation.
5. Individuals or representatives of organizations that wish to express concerns to County Council or to comment as to public matters are more appropriate to present their concerns or comments during the "public comment" section on the Council agenda.

ORDINANCE NO. 387.2023

AMENDED AND RESTATED ORDINANCE BY KERSHAW COUNTY COUNCIL DETERMINING RULES AND ORDER OF BUSINESS

ARTICLE I. PURPOSE AND AUTHORITY

Section 1.1 Purpose

The purpose for this ordinance is for Kershaw County Council ("County Council" or "Council") to adopt and determine its own rules and order of business pursuant to Section 4-9-110 of the South Carolina Code of Laws.

This ordinance amends and restates the ordinance of Kershaw County Council Determining Rules and Order of Business.

ARTICLE II. AGENDA

Section 2.1 Council Meeting

County Council meetings shall be scheduled and special meetings held as provided in Section 4-9-110 of the South Carolina Code of Laws.

County Council meetings shall be held in accordance with the South Carolina Freedom of Information Act and the South Carolina Public Records Act and in accordance with the general law of the State of South Carolina relating to meetings of public bodies.

Section 2.2 Preparation of Agenda

The County Administrator and Clerk to County Council shall prepare a proposed agenda which shall be published by 4:00 p.m. on Friday preceding the next scheduled County Council meeting. Matters to be placed on the agenda shall be submitted to the Clerk to Council no later than 1:00 p.m. on Thursday preceding the next scheduled County Council meeting.

For special meetings, the agenda shall be published at least twenty-four (24) hours prior to the meeting.

Section 2.3 Members of County Council placing matters on the agenda

County Council members can place proposed matters on the agenda (subject to Section 5.1(b)) by providing the agenda item to the County Administrator and Clerk to County Council by 1:00 p.m. on Thursday preceding the next regular scheduled Council meeting at which County Council will vote on or take action on any matter coming before County Council together with supporting documentation. Matters placed on the agenda by a County Council member shall bear the name of that County Council member.

The proposed agenda shall be reviewed by the Chairperson prior to publishing of the agenda, and approved by the Chairperson as being compliant with these rules.

For special meetings the proposed Agenda with supporting documentation shall be provided at least twenty-four (24) hours prior to the meeting.

Section 2.4 Matters to be placed on the agenda

Matters to be placed on the agenda shall include matters to be considered by County Council for enactment, approval, or execution, for consideration, or for information pursuant to County Council's authority or to serve the public need, or for action pursuant to County Council's statutory authority or jurisdiction.

Section 2.5 Order of business

a. The form of the agenda

The form of the agenda shall be as follows:

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Adoption of Agenda
5. Proclamations
6. Public Comments
7. Public Hearings
8. Public Presentations
9. Approval of Minutes
10. Discussion
11. Ordinances
12. Resolutions
13. New Business
14. Council Briefings
15. Administrator's Briefings
16. Legal Briefings
17. Future Agenda Items
18. Executive Session
19. Adjournment

b. Adoption of agenda

The agenda shall be adopted by Council. Deletions at adoption can be made by majority vote. Additions to the agenda at adoption require a vote of two-thirds and items can be added at adoption only in case of emergency or deadline considerations that are exigent circumstances. The order of business on the agenda may be varied if required by the Chairperson.

c. Motions to reconsider a matter already decided must be made at the next meeting of Council as an agenda item, in the manner provided for by Section 2.2 and Section 2.3, and the motion must be made by a member on the prevailing side of the prior matter.

d. Rules of conduct for Public Comment and rules of conduct for Public Hearings may be established by County Council and altered or amended by County Council by a single vote.

e. Ordinances can be read in title only at first reading as agenda items.

f. Proclamations by County Council honoring a person or persons or an event or a matter of public interest as an agenda item are limited to no more than two per meeting.

g. Proclamations may be issued (not as an agenda item and not during the council meeting) by individual council members under the council member's name. Other council members may also join in the proclamation if desired. Issuance of proclamations under this provision (not as an agenda item) may be issued in the Council Chamber.

ARTICLE III. KERSHAW COUNTY ANNUAL BUDGET ORDINANCE AND APPROPRIATION AND EXPENDITURE OF FUNDS

Section 3.1 Budget Ordinance and Millage Ordinance

a. The proposed schedule for adoption of the Kershaw County Annual Budget (and any Supplemental Appropriation Budget Ordinance) shall be set by Council no later than the first scheduled meeting in April. The schedule can be amended or altered by subsequent vote of Council.

b. Proposed amendments to the Kershaw County Budget Ordinance (the "Annual Budget") subsequent to first reading in title only shall be made as follows:

- 1) On second reading, proposed amendments shall be made either verbally or by written motion. Verbal motions shall state with particularity the proposed budget amendment and provide the source of funding for such expenditure. Written motions shall be submitted as an agenda item pursuant to Section 2.2 or Section 2.3. Amendments must state source of funding.
- 2) On third reading, proposed amendments may only be made in writing and shall be submitted as an agenda item pursuant to Section 2.2 or Section 2.3.
- 3) Motions to transfer funds appropriated in the Annual Budget for purposes other than specified in such Annual Budget shall be by motion as submitted as an agenda item pursuant to Section 2.2 or Section 2.3.

c. The Millage Ordinance for Kershaw County millage shall be enacted no later than the council meeting at which the Kershaw County Annual Budget is enacted.

ARTICLE IV. SELECTION OF COUNTY COUNCIL OFFICERS

Section 4.1 Officers to be selected by County Council.

Pursuant to Section 4-9-110 of the South Carolina Code of Laws, County Council shall designate the following officers:

Section 4.2 Chairperson

Chairperson: The Chairperson is elected at large as a separate office and presides at all meetings of County Council, preserves order and decorum at all meetings, and states every question, where applicable, coming before County Council. The Chairperson of Kershaw County Council shall pursuant to the rules when a vote is called and taken on any motion or matter before Council require a show of hands of those member(s) voting for the matter and a show of hands of those member(s) voting opposed to the matter and shall state for the record each council member(s) voting for the matter and each council member(s) voting against the matter which shall be stated in the minutes of county council. When a member abstains and does not vote the member shall state the reason why the council member abstained.

The Chairperson shall preside at all regular and special meetings of the County Council, and may vary the order of business on the agenda.

The Chairperson shall, and when required, execute, on behalf of County Council, all ordinances, resolutions, directives, bonds, and other official instruments or documents as required by County Council.

As to honorary proclamations and resolutions as to an event(s), organization(s) or person(s) or statement(s) of expression the sponsoring council member may indicate support by executing and other and other council members may executed including the council members' support.

The Chairperson acts as parliamentarian and rules on parliamentary and procedural issues while presiding at meetings and rules on points of order and delineates points of order. When a challenge is made as to the ruling by the chair and after an explanation if required is made as to the challenge of a ruling by the chair, and after the chair rules on the point of order made, then any appeal from the ruling by the chair is debatable subsequent to which council votes on the appeal with the chair breaking a tie.

The Chairperson shall disseminate to members of County Council pertinent correspondence that requests action by County Council.

Section 4.3 Vice-chairperson

Vice-chairperson: At a meeting in January following each general election, the County Council shall select one (1) of its members to serve as Vice-chairperson for a two-year term. In the event the Chairperson shall be temporarily absent or unable to serve, the Vice-chairperson shall serve as Chairperson in the Chairperson's stead. When the Chairperson shall be temporarily absent or unable to serve, the Vice-chairperson shall, when required, execute, on behalf of County Council, all ordinances, resolutions, directives, bonds, and other official instruments or documents as required by County Council.

ARTICLE V. COMMITTEES

Section 5.1 Committees of County Council

a. Committees of Kershaw County Council (other than Ad Hoc Committees – Section 5.2) shall be created by County Council as provided in this ordinance.

b. Finance Committee:

1. The Finance Committee shall consist of three Council members appointed by County Council for two-year terms in January subsequent to the general election.

2. The Chairperson of the Finance Committee shall be appointed by the Chairperson of County Council.

3. The Chairperson of County Council shall serve as an ex-officio member of the Finance Committee and may participate in discussions but shall not vote on matters of the committee and shall not be a part of the quorum of the committee.

4. The Finance Committee is subject to the South Carolina Freedom of Information Act. The Finance Committee may adopt rules and order of business.

5. The Clerk to Council shall act as the Clerk to the Finance Committee.

6. The County Administrator will assist the Finance Committee as required.

7. Recommendations from the Finance Committee to County Council for official action shall be by written recommendation as a County Council agenda item.

8. The appropriation(s) and expenditure(s) of funds shall first be submitted to the Finance Committee for consideration and a recommendation to County Council.

9. The Finance Committee will first consider the Annual Budget and recommend to Council a proposed budget prior to second reading of the budget. The recommendation of the Finance Committee must be provided to County Council as an agenda item under New Business (at least one council meeting prior to the scheduled second reading of the Kershaw County Budget Ordinance). After the proposed Annual Budget has been recommended by the Finance Committee and placed on the agenda for Second Reading (or in the event of no timely recommendations) the budget is then subject to proposed amendments (including the amount and purpose of the expenditure and source of funding) by motions of Council members as provided for in Section 3.1.b or by administrative proposals.

10. Council members may submit matters to the Finance Committee for consideration and recommendations to Council. If a matter is submitted to the Finance Committee for consideration by a Council member, the Finance Committee shall make its recommendation to Council within fourteen (14) days of submission of the matter by the Council member. If no recommendation is made to Council as to the matter submitted fourteen (14) days, the matter can be placed on the agenda by the council member.

11. Council members may submit proposed matters to the Finance Committee for inclusion in the recommended Annual Budget to Council but it is in the discretion of the Finance Committee whether to include such proposal in the recommended Annual Budget. Council members may propose amendments to the proposed Annual Budget as agenda items as provided in Section 5.1.(b)(9)

12. Members of the Finance Committee may attend committee meetings by electronic equipment so long as a quorum is physically present at the meeting.

Section 5.2 Ad Hoc Committees

Ad Hoc Committees that use county staff or facilities and deal with matters for submission or recommendation to Council may be created only by the Chairperson of the Kershaw County Council.

Ad Hoc Committees of Kershaw County Council created by the Chairperson of the Kershaw County Council shall be for a specified task and limited purpose and for a limited duration specified at the creation of the committee.

All appointments to Ad Hoc Committees created by and established by the Chairperson of the Kershaw County Council shall be made by the Chairperson of the Kershaw County Council.

Ad Hoc Committees may make recommendations to Council.

ARTICLE VI. APPOINTMENTS BY KERSHAW COUNTY COUNCIL TO BOARDS, COMMISSIONS, AND COMMITTEES AND NAMING COUNTY PROPERTY AND HONORARIUMS

Section 6.1 Appointments by County Council to Boards, Commissions, and Committees

Appointments by County Council to boards, commissions, or committees provided by state law, provided by Kershaw County Code or provided by action of County Council, shall be made by County Council for the term specified.

Section 6.2 Notification of appointments

The County Administrator and the Clerk to Kershaw County Council shall notify the County Council in the agenda of pending appointments or vacancies caused by resignation or expiration of terms.

Notification of appointments to be made shall be placed in the agenda under Future Agenda Items at least one regularly scheduled meeting prior to placement of the appointment on the agenda under Appointments.

Section 6.3 Identification of candidates

Persons desiring to be appointed shall submit their application as designated by the County Administrator which shall be contained in the agenda package together with any other persons proposed by any member of Kershaw County Council or any recommendation from the boards, commissions, or

committee for which appointments are to be made. Members of Kershaw County Council need not submit an application to be eligible for appointment where otherwise eligible.

Section 6.4 Eligibility for appointment

No person shall be eligible for appointment to a board, commission, or committee unless his/her name is proposed by application, by request of a County council member, or proposed by the board commission or committee and the person's application is placed in the agenda package for consideration of County Council prior to appointment.

Section 6.5 Prior Appointments

Appointments made by Kershaw County Council for committees and officers provided for in this ordinance during 2009 and prior to the effective date hereunder are ratified and confirmed.

Section 6.6 Naming of county property and displays of honorariums

Only County Council, by express action and approval of County Council, can name County property or buildings and only County Council, by express action and approval, can permit the display of honorariums on or in County property or buildings including names, plaques, or portraits.

Section 6.7 Attendance at Council Meetings by Members by Electronic Equipment, Public Comments by Electronic Equipment, and Comments at Public Hearings by Electronic Equipment

1. Attendance by members at Council meetings by electronic equipment. County Council members may attend County Council meetings remotely by electronic equipment so long as and for long as a positive majority of Council members are physically present at the meeting.
2. Subject to the rules established by Council, public comments are allowed by electronic equipment.
3. Subject to the rules established by Council, comments for public hearings are allowed by electronic equipment.
4. Rules as to Council public comments by electronic equipment and rules as to Council comments for public hearings by electronic equipment are attached as Appendix III. These rules may be changed or altered by County Council by a single vote.
5. County Council meetings will continue to be live streamed where available and will continue to be accessible to the public live streamed in real time via the County's Facebook page and/or YouTube.

Section 6.8 Repeal of inconsistent county ordinance or policies

All previous ordinances, policies, or resolutions of Kershaw County to the extent the ordinance or policy is inconsistent with the matters contained herein are repealed.

Section 6.9 Effective Date

This ordinance is effective upon third reading.

KERSHAW COUNTY COUNCIL

By: Kaitlyn Guinn
Kaitlyn Guinn

Its: Chairperson

ATTEST:

[Signature]
Clerk to County Council

First Reading: 1-10-23

Second Reading: 1-12-23

Third Reading: 1-24-23

APPENDIX I

PUBLIC HEARING GUIDELINES

Rules as to Public Hearings

1. Prior to the public hearing persons wishing to speak should sign up to speak.
2. Immediately prior to the public hearing, it shall be announced that persons wishing to speak must identify that they wish to speak.
3. When the public hearing is opened, that persons be notified as to how many people have signed up, and identified, and in what order.
4. Persons will speak in the order in which they signed up, and identified, and in the order they have identified themselves as wishing to speak.
5. Each person can speak a maximum of ten minutes.
6. Comments at public hearings should be germane to the matter subject to the public hearing which should be liberally construed.

These rules may be altered or amended by County Council by a single vote – including, but not limited to, when the agenda item is reached.

APPENDIX II

PUBLIC PRESENTATION GUIDELINES

Rules as to Public Presentations

These rules may be varied by county council by a single vote at the time of the presentation.

1. A “public presentation” as an agenda item is limited to non-governmental organizations that wish to make requests or present information to County Council involving matters which are within the purview or statutory scope of County Council’s authority.
2. A public presentation is limited to no more than three per meeting. The maximum time allotted for a public presentation is 20 minutes. No action is taken by County Council as a result of a public presentation.
3. Governmental entities, agencies of Kershaw County, or boards of Kershaw County can likewise present a public presentation as an agenda item. Governmental entities, agencies of Kershaw County, or boards of Kershaw County or entities that have a contractual relationship with Kershaw County can likewise request to be put on the agenda under New Business.
4. A request to be put on the agenda as a public presentation, or new business (if applicable) shall be accompanied by a written request which shall state the nature of the public presentation and the substantive content of the proposed presentation.
5. Individuals or representatives of organizations that wish to express concerns to County Council or to comment as to public matters are more appropriate to present their concerns or comments during the “public comment” section on the Council agenda.

These rules may be altered or amended by County Council by a single vote – including, but not limited to, when the agenda item is reached.

APPENDIX III

PUBLIC COMMENT GUIDELINES

1. Public Comment:

- is an opportunity for members of the public to share information with Council
- is not a time for debate with or questions and answers from Council
- is a time for Council to receive input
- is not a time for Council response

In short, during Public Comment Council will listen to public comment, but not comment on public comment.

2. Offensive and inappropriate comments will not be tolerated.
3. If a group would like to speak to Council, we request that a spokesperson be selected and that this person indicate the group he/she is representing on the sign-up sheet and in his/her comments.
4. Public comment is a time to discuss issues.
5. Public comment period is limited to 5 minutes maximum allowed per individual speaker.
6. Public Comments to Council as an agenda item shall continue uninterrupted to be live streamed by audio and video (where available) until the Public Comments agenda item is finished and concluded.

ORDINANCE NO. 343.2020

**AMENDED AND RESTATED ORDINANCE BY KERSHAW COUNTY COUNCIL
DETERMINING RULES AND ORDER OF BUSINESS**

ARTICLE I. PURPOSE AND AUTHORITY

Section 1.1 Purpose

The purpose for this ordinance is for Kershaw County Council to adopt and determine its own rules and order of business pursuant to Section 4-9-110 of the South Carolina Code of Laws.

ARTICLE II. AGENDA

Section 2.1 Council Meeting

County Council meetings shall be scheduled and special meetings called as provided in Section 4-9-110 of the Home Rule Act South Carolina Code of Laws.

County Council meetings shall be held and conducted in accordance with the South Carolina Freedom of Information Act and the Home Rule Act and in accordance with the general law of the State of South Carolina affecting meetings of public bodies.

Section 2.2 Preparation of Agenda

The county administrator and clerk to county council shall prepare a proposed agenda which shall be compiled with supporting documentation by 1:00 p.m. on Wednesday preceding the next regular scheduled session of county council at which county council will vote on or take action on any matter coming before county council. The agenda shall be published by 1:00 p.m. on Friday.

For special meetings, the agenda with supporting documentation shall be published at least twenty-four (24) hours prior to the meeting.

Section 2.3 Members of County Council placing matters on the agenda

County council members may place proposed matters on the agenda by providing the agenda item to the county administrator and clerk of county council by 1:00 p.m. on Wednesday preceding the next regular scheduled council meeting at which county council will vote on or take action on any matter coming before county council together with supporting documentation.

For special meetings the proposed matter with supporting documentation shall be provided at least twenty-four (24) hours prior to the meeting.

2020 MAR 13 PM 12:59
JANET C. MOITY
CLERK OF COURT
KERSHAW COUNTY, S.C.

Section 2.4 Matters to be placed on the agenda

Matters to be placed on the agenda shall include matters to be considered by county council for enactment, approval, or execution, for consideration, or for information pursuant to county council's authority and to serve the public need, or for action pursuant to county council's statutory authority or jurisdiction.

Section 2.5 Order of business

a. The form of the agenda

The form of the agenda shall be as follows:

1. Call to Order
2. Invocation/Pledge of Allegiance
3. Public Comments
4. Adoption of Agenda
5. Public Hearings
6. Proclamations
7. Public Presentations
8. Approval of Minutes
9. Ordinances
10. Resolutions
11. New Business
12. Council Briefings
13. Administrator's Briefings
14. Legal Briefings
15. Future Agenda Items
16. Executive Session
17. Adjournment

b. Adoption of agenda

The agenda shall be adopted by council. Deletions at adoption can be made by majority vote. Additions to the agenda at adoption require a vote of two-thirds and items can be added at adoption only in case of emergency or deadline considerations. The order of business on the agenda may be varied if required by the chairman.

c. Rules as to Public Hearings and Public Presentations may be varied by vote of county council

ARTICLE III. SELECTION OF COUNTY COUNCIL OFFICERS

Section 3.1 Officers to be selected by County Council.

Pursuant to Section 4-9-110, county council shall designate the following officers:

Section 3.2 Chairperson

Chairperson: The chairperson is elected at large as a separate office and presides at all meetings of county council, preserves order and decorum at all meetings, and states every question, where applicable, coming before county council. The Chairperson of Kershaw County Council shall pursuant to the rules when a vote is called and taken on any motion or matter before council require a show of hands of those member(s) voting for the matter and a show of hands of those member(s) voting opposed to the matter and shall state for the record each council member(s) voting for the matter and each council member(s) voting against the matter which shall be stated in the minutes of county council. When a member abstains and does not vote the member shall state the reason why the council member abstained.

The chairperson shall preside at all regular and special meetings of the county council, and may vary the order of business on the agenda as required, the Chairman shall, and when required, execute, on behalf of county council, all ordinances, resolutions, directives, bonds, and other official instruments or documents as required by county council.

The chairperson acts as parliamentarian and rules on parliamentary and procedural issues while presiding at meetings and rules on points of order and delineates points of order. When a challenge is made as to the ruling by the chair as to a point of order and after an explanation is made as to the challenge of a ruling by the chair, and after the chair rules on the point of order made, then any appeal from the ruling by the chair is debatable subsequent to which council votes on the appeal with the chair breaking a tie.

Motions to reconsider a matter already decided must be made at the next meeting of council as an agenda item and the motion must be made by a member on the prevailing side of the prior matter.

The chairperson shall disseminate to members of county council pertinent correspondence that requests action by county council.

Section 3.3 Vice-chairperson

Vice-chairperson: At the initial meeting in January following each general election, the county council shall select one (1) of its members to serve as Vice-chairperson for a two-year term; in the event that the chairperson shall be temporarily absent or unable to serve, the vice-chairperson shall serve as chairperson in his stead. -When the chairperson shall be temporarily absent or unable to serve, the vice-chairperson shall, when required, execute, on behalf of county council, all ordinances, resolutions, directives, bonds, and other official instruments or documents as required by county council.

ARTICLE IV. COMMITTEES

Section 4.1 Standing Committees

There shall be no standing committees of Kershaw County Council.

Section 4.2 Ad Hoc Committees

Ad Hoc Committees of Kershaw County Council may be created by the Chairman of the Kershaw County Council.

Ad Hoc Committees of Kershaw County Council created by the Chairman of the Kershaw County Council shall be for a specified task or limited purpose and for a limited duration or until the specified task or limited purposed is completed.

All appointments to Ad Hoc Committees created by and established by the Chairman of the Kershaw County Council shall be made by the Chairman of the Kershaw County Council.

ARTICLE V. APPOINTMENTS BY KERSHAW COUNTY COUNCIL TO BOARDS, COMMISSIONS, AND COMMITTEES

Section 5.1 Appointments by County Council to Boards, Commissions, and Committees

Appointments by county council to boards, commissions, or committees provided by state law, provided by Kershaw County Code or provided by action of County Council, shall be made by county council for the term specified.

Section 5.2 Notification of appointments

The county administrator and the Clerk of Kershaw County Council shall notify the county council in the agenda of pending appointments or vacancies caused by resignation or expiration of terms.

Notification of appointments to be made shall be placed in the agenda under Future Agenda Items at least one regularly scheduled meeting prior to placement of the appointment on the agenda under Appointments.

Section 5.3 Identification of candidates

Persons desiring to be appointed shall submit their application as designated by the county administrator which shall be contained in the agenda package together with any other persons proposed by any member of Kershaw County Council or any recommendation from the boards, commissions, or committee for which appointments are to be made. Members of Kershaw County Council need not submit an application to be eligible for appointment where otherwise eligible.

Section 5.4 Eligibility for appointment

No person shall be eligible for appointment to a board, commission, or committee unless his/her name is proposed by application, by request of a county council member, or proposed by the board commission or committee and the person's application is placed in the agenda package for consideration of county council prior to appointment.

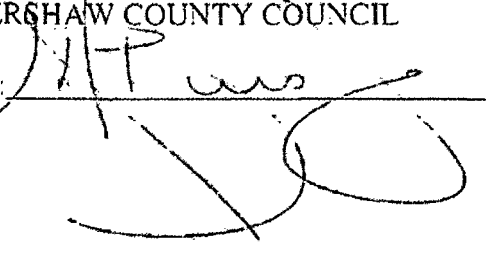
Section 5.5 Prior Appointments

Appointments made by Kershaw County Council for committees and officers provided for in this ordinance during 2009 and prior to the effective date hereunder are ratified and confirmed.

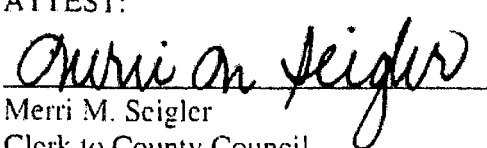
Section 5.6 Effective Date

This ordinance is effective upon third reading.

KERSHAW COUNTY COUNCIL

By: 

ATTEST:


Merri M. Seigler
Clerk to County Council

First Reading:	November 12, 2019
Second Reading:	January 14, 2020
Third Reading:	January 28, 2020

APPENDIX I

PUBLIC HEARING GUIDELINES

Rules as to Public Hearings

1. Prior to the public hearing persons wishing to speak should sign up to speak.
2. Immediately prior to the public hearing, it shall be announced that persons wishing to speak must identify that they wish to speak.
3. When the public hearing is opened, that persons be notified as to how many people have signed up, and identified, and in what order.
4. Persons will speak in the order in which they signed up, and identified, and in the order they have identified themselves as wishing to speak.
5. Each person can speak a maximum of ten minutes.
6. Comments at public hearings should be germane to the matter subject to the public hearing which should be liberally construed.

APPENDIX II

PUBLIC PRESENTATION GUIDELINES

Rules as to Public Presentations

These rules may be varied by county council by a single vote at the time of the presentation.

1. A "public presentation" as an agenda item is limited to non-governmental organizations that wish to make requests or present information to County Council involving matters which are within the purview or statutory scope of County Council's authority.
2. A public presentation is limited to no more than three per meeting. The maximum time allotted for a public presentation is 20 minutes. No action is taken by County Council as a result of a public presentation.
3. Governmental entities, agencies of Kershaw County, or boards of Kershaw County can likewise present a public presentation as an agenda item. Governmental entities, agencies of Kershaw County, or boards of Kershaw County or entities that have a contractual relationship with Kershaw County can likewise request to be put on the agenda under New Business.
4. A request to be put on the agenda as a public presentation, or new business (if applicable) shall be accompanied by a written request which shall state the nature of the public presentation and the substantive content of the proposed presentation.
5. Individuals or representatives of organizations that wish to express concerns to County Council or to comment as to public matters are more appropriate to present their concerns or comments during the "public comment" section on the Council agenda.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARK ROOTE,

Plaintiff,

v.

**KERSHAW COUNTY; KERSHAW
COUNTY SHERIFF'S OFFICE;
SHERIFF LEE BOAN,
individually and in his official
capacity as Kershaw County
Sheriff; and DANNY TEMPLAR,**

Defendants.

C/A 3:25-cv-01392-SAL-SVH

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

INTRODUCTION

Plaintiff Mark Roote respectfully submits this Memorandum in Opposition to Defendants' Motion for Summary Judgment. Viewed in the light most favorable to the non-moving party, the record reveals genuine disputes of material fact on every claim except for one that Plaintiff abandons, precluding summary judgment.

Mark Roote was speaking at a Kershaw County Council meeting. He was cut off, removed from the room, and ultimately arrested. He has filed a lawsuit alleging First and Fourth Amendment violations, *Monell* claims against the County, and related state law claims. The crux of his argument is simple: the County does not consistently enforce its timing rules for speakers at Council meetings. The rules were enforced against Roote because his speech was critical of the County. The Defendants have moved for summary judgment.

The record shows: (1) multiple speakers exceeded the stated time limit without consequence; (2) neither Sheriff Boan nor Templar intended to arrest Roote—only to remove him despite the fact he was being targeted solely for the content of his speech; (3) the decision to arrest was triggered by Roote's protected political speech criticizing the

council; and (4) the force used to drag a passively resistant, unarmed citizen across the floor raises serious questions under the Fourth Amendment.

LEGAL STANDARD

If there is a genuine dispute about a material fact, summary judgment is inappropriate. *Young v. UPS*, 135 S.Ct. 1338, 1355 (2015); Fed. R. Civ. P. 56(a). At this point in the case, it is not a question of whether the Plaintiff will win in a courtroom; it is only a matter of whether the Plaintiff can get to the courtroom.

The Court must consider all facts in the light most favorable to the Plaintiff. But that does not end the district court's responsibility when considering a motion for summary judgment. In addition to considering the facts in the light most favorable to the Plaintiff, the Court must also draw all reasonable inferences in his favor. *Harris v. Pittman*, 927 F.3d 266, 272 (4th Cir. 2019). The Court cannot weigh evidence or make credibility determinations; it must construe all evidence in the Plaintiff's favor, even if it does not believe the Plaintiff can prevail in this matter. *Id.*

STATEMENT OF DISPUTED FACTS

1. Selective Enforcement of Time Limits

Defendants' own timeline, set forth in their Memorandum in Support, demonstrates that multiple speakers exceeded the stated 3:20 time limit on the night in question.¹ Specifically:

- Speaker 2 spoke for 4:32 (exceeded limit by 1:12)
- Speaker 4 spoke for 3:45 (exceeded limit by :25)
- Speaker 5 spoke for 4:13 (exceeded limit by :53)
- Speaker 6 spoke for 4:04 (exceeded limit by :44)

None of these speakers were removed. None were arrested. Sheriff Boan himself acknowledged this pattern, testifying that "other people do go beyond their time. That's not out of the ordinary for somebody to go beyond their time."² He further admitted that

¹ DE 14 at 5

² Boan Dep., p. 8, ll. 12-14

when Roote "exceeded it, which sometimes people speaking do exceed the time, so that didn't really concern me much."³ Sheriff Boan's testimony reflects that speakers at the council meetings were not treated in a uniform manner and there was no explicit rule uniformly enforced related to the time allotted for those speakers.⁴

This selective enforcement—where some speakers who exceed time limits are tolerated while Roote was removed and arrested—raises genuine issues of material fact as to whether the time limit was applied in a viewpoint-neutral manner.

2. No Intent to Arrest—Only Removal

Both Sheriff Boan and Administrator Templar testified unequivocally that they had no intention of arresting Roote. Their only goal was to remove him from the podium so the meeting could continue.

Sheriff Boan testified⁵:

"Q: Prior to—so just to break it down, you approach him hoping that he will hurry up, and then when you sort of take him to escort him out, prior to that point, you're not going—you're not planning to arrest him for any crime, right?

A: No, no."

Sheriff Boan further confirmed: "my intention to start with was just to escort him out—when I first put my hand on him and—and got his paperwork, was to escort him out and just tell him, 'Hey, you got to leave.'"⁶

Administrator Templar's testimony was even more explicit: "speaking for myself, I never had any intent of having him arrested or anything like that."⁷ Templar stated his

³ Boan Dep., p. 5, ll. 13-15

⁴ The lack of concern for Plaintiff's actions Sheriff Boan had as a general matter is consistent with the policy related to speakers. The Defendants attached an exhibit laying out the rules for county council meetings. DE 14-8. On page 9, the first appendix sets out rules for the public hearings. Those rules set a maximum speaking time of 10 minutes. On page 11, public comments are addressed and 5 minutes is the maximum for any one speaker. Because it is unclear whether these two sections apply to different types of speakers, the attached policy of the Defendants does not appear to clarify the rules for public commenters.

⁵ Boan Dep., p. 7, ll. 11-16

⁶ Boan Dep., p. 12, ll. 15-18

⁷ Templar Dep., p. 14, ll. 12-14

hope "was just to get him outside, maybe chat with him a little bit, calm him down."⁸ When asked about Sheriff Boan's intentions, Templar agreed that "at that point, all he wanted to do was remove him. He was not going to arrest him."⁹

This undisputed testimony raises a critical question: If neither official intended to arrest Mr. Roote, what changed? The answer is found in the timing of the arrest which took place immediately after Roote's protected political speech. There is a genuine issue of fact as to whether Roote was handled differently because of his critical speech.

3. The Arrest Was Triggered by Protected Speech

Defendants concede that Sheriff Boan did not announce Roote was under arrest until after Roote stated he was "trying to be a good citizen and show how dirty these fuckers are," referring to the council members.¹⁰ This speech, however crude, is classic political criticism of government officials and at the core of First Amendment protection.

Sheriff Boan acknowledged that Roote was a "regular" at council meetings who "often, you know, expressed his—his negative views of county council, which, you know, he has every right to do that and never had a problem with him."¹¹ Boan further testified: "I never saw him as, like, a threat or anything to council or—you know, he was just somebody unsatisfied with, you know, some of the things they did, and he was expressing himself [sic] as—as everybody else does."¹²

Critically, Sheriff Boan testified that the arrest "would have still happened" even without the profanity.¹³

4. Disputed Facts Regarding Force and Resistance

The parties dispute key facts regarding the force used and Roote's alleged resistance. Roote testified that Sheriff Boan "never told me to place my hands behind my back. He never released my arms enough for me to feel comfortable—releasing my

⁸ Templar Dep., p. 14, ll. 20-22

⁹ Templar Dep., p. 15, ll. 13-16

¹⁰ See Defendant Ex. 2, 0:06:48; DE 14 at 7

¹¹ Boan Dep., p. 7, ll. 16-20

¹² Boan Dep., p. 8, ll. 6-11

¹³ Boan Dep., p. 12, l. 19 – p. 13, l. 17

restraint to let my arms be moved behind my back."¹⁴ He went on to explain he was disabled and could not bend his arms a certain way.¹⁵

Administrator Templar could not explain what happened with Deputy Nelson, testifying only that "I know a deputy was knocked over somehow, some way—or not knocked over but fell, or ended up on the ground. Just say that. I can't say, you know, the cause and effect why."¹⁶ Deputy Nelson's fall does not offer any support to the Defendants' theory.

These disputed facts regarding what instructions were given, whether Roote could physically comply, and what caused the deputy to fall are precisely the type of credibility determinations reserved for a jury.

5. No One Asked How Much Longer Roote Needed

When asked whether anyone inquired how much longer Roote planned to speak, Administrator Templar testified: "No, but the—no. Short answer, no."¹⁷ A reasonable jury could find that removing and arresting a speaker without even asking how much more time he needed—when other speakers routinely exceeded their limits—evidences discriminatory intent.

ARGUMENT

1. Plaintiff has properly pled *Monell* claims against Kershaw County.

Defendants first argue that Plaintiff has improperly named Kershaw County in two § 1983 causes of action (Eighth and Ninth Causes of Action). The argument is based on the line of cases that prevent naming a State in a § 1983 claim. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70 (1989). That is not what Plaintiff has done.

Instead, Plaintiff seeks to hold the County liable for violating his constitutional rights under two *Monell* theories. *Monell v. Department of Social Services*, 436 U.S. 658 (1978). In the Fourth Circuit, such a claim is related to the underlying constitutional

¹⁴ Roote Dep., p. 69, ll. 21-25

¹⁵ Roote Dep., p. 70, ll. 1-4

¹⁶ Templar Dep., p. 15, ll. 22-25 - p. 16, ll. 1-2

¹⁷ Templar Dep., p. 15, ll. 3-5

violations pled against individuals and is not barred. The claim has two requirements: (1) a constitutional violation, and (2) a custom or policy of the governmental body that caused the violation. *Kopf v. Skyrn*, 993 F.2d 374 (4th Cir. 1993). Notably, it was a county that was at issue in *Kopf*. The county was liable based on the underlying conduct of the law enforcement officers, but the claim against the county was a separate claim under § 1983. *Id.*¹⁸

While counties are not normally named in a § 1983 complaint, there is an exception to that rule for *Monell* liability. Plaintiff has properly pled *Monell* claims against the County and summary judgment on this ground should be denied.

2. Genuine Disputes of Material Fact Preclude Summary Judgment on Plaintiff's First Amendment Claims Against Defendants Templar and Boan.

Defendants argue that the time limit was a content-neutral restriction lawfully applied. But the record demonstrates otherwise. A reasonable jury could find that the time limit on speakers at the meeting was selectively enforced because multiple speakers exceeded it without consequence, while Roote was removed and arrested. Additionally, the differential treatment appears to be based on viewpoint because Roote was a known critic of council who "often expressed his negative views"¹⁹ while speakers who supported council positions were permitted to exceed time limits. Finally, the arrest was triggered not by the time violation but by Roote's protected political speech criticizing council members as "fuckers" which is a vulgar but constitutionally protected criticism of public officials.²⁰

¹⁸ There is no additional argument in this section related to *Monell* liability, so Plaintiff has limited his response to the specific argument made by the Defendants. Additionally, they are not duplicate claims, but rather, two different *Monell* theories.

¹⁹ Boan Dep., p. 7, ll. 16-20

²⁰ Defendants cite *Shero v. City of Grove*, 510 F.3d 1196 (10th Cir. 2007), *Wright v. Anthony*, 733 F.2d 575 (8th Cir. 1984), and *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995), for the proposition that time limits are reasonable restrictions in a limited public forum. Plaintiff does not dispute that time limits, in the abstract, may be constitutionally permissible. The issue here is not the existence of a time limit but its *selective enforcement*. None of the cases Defendants cite involved a speaker singled out

The Fourth Circuit has recognized the well-settled principle that citizens have the right to freely criticize the government and government officials and cannot be subject to retaliation for expressing such views. *Trulock v. Freeh*, 275 F.3d 391, 404 (4th Cir. 2001) (collecting cases). Free speech best serves its purpose when it incites unrest, dissatisfaction, and even anger. *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). This is almost exactly in line with the description of the reaction to Roote's speech. Roote's actions were protected. What Sheriff Boan and Templar did not describe was a "clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." *Id.* In fact, they both described inconvenience, annoyance, and unrest. While those things are what they sound like, inconvenient, annoying, and causing unrest, they are fully protected by the First Amendment and should not have led to the actions taken in this case.

The Defendants have not raised fighting words, true threats, or unconstitutional obscenity as a defense to this action and those theories are not addressed though they would certainly give additional support to denying summary judgment and sending this matter to trial.

Even in a limited public forum, the government may not discriminate based on a speaker's viewpoint. *Child Evangelism Fellowship v. Anderson Sch. Dist. Five*, 470 F.3d 1062, 1067 (4th Cir. 2006). The Fourth Circuit went on to note the entrenched authority for this position:

"It is axiomatic," the Supreme Court has held, "that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995). This does not mean that the government must allow all speech on all of its property at all times, because the state has the "power to preserve the property under its control for the use to which it is lawfully dedicated." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46, 103 S. Ct. 948, 74 L. Ed. 2d 794 (1983)

for enforcement while others who exceeded time limits faced no consequences. Where, as here, the rule is enforced against one speaker but not others, the question becomes whether the differential treatment was based on viewpoint—a question for the jury.

(internal quotations omitted). But it does mean that when the government opens its property to private speech, it may not discriminate based upon the viewpoint of the speaker, and it must also "respect the lawful boundaries it has itself set." *Rosenberger*, 515 U.S. at 829."

Id. at 1067.

Because the time limits in speeches at council meetings are not uniformly enforced, Roote has raised a dispute that prevents the grant of summary judgment on his First Amendment claims. A county council meeting is traditionally considered a limited public forum which allows for some reasonable restrictions but still prohibits viewpoint discrimination. *Steinburg v. Chesterfield County Planning Comm'n*, 527 F.3d 377, 385 (4th Cir. 2008). Courts should assess a speech restriction on whether it is applied evenly, regardless of viewpoint. *Davison v. Rose*, 19 F.4th 626, 635-36 (4th Cir. 2021).

The evidence here—particularly the selective enforcement and the timing of the arrest immediately after protected speech—creates genuine issues of material fact on this claim. There were multiple speakers who faced no action for going over the time limits for public comment and the witnesses testified that was not a rare occurrence and rarely resulted in any action. Yet Roote was subjected to harsh consequences for going over the time limit. In the light most favorable to him, as is required at this stage, there is a factual dispute over whether Boan and Templar were violating his free speech rights, and the Court should deny summary judgment.

3. Genuine Disputes of Material Fact Preclude Summary Judgment on Plaintiff's First Amendment Retaliation Claims.

To establish First Amendment retaliation, Plaintiff must show: (1) he engaged in protected speech; (2) Defendants took adverse action against him; and (3) a causal connection exists between the speech and the adverse action. *Martin v. Duffy*, 858 F.3d 239, 249 (4th Cir. 2017).

The record supports each element. First, criticizing local government officials—even using profanity—is protected speech.²¹ *Trulock*, 275 F.3d at 404. Sheriff Boan acknowledged Roote "has every right" to express "negative views of county council."²²

Second, arrest is the quintessential adverse action. Even the threat of an arrest would likely deter the ordinary person from exercising his free speech rights. *Nazario v. Gutierrez*, 103 F.4th 213, 237 (4th Cir. 2024); see also *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005) (collecting cases). There is no question an actual arrest constitutes the ultimate adverse action the government can take against a citizen.

Third, considering facts and inferences in the light most favorable to the Plaintiff, the causal connection is established by: (a) neither Defendant intended to arrest Roote—only remove him²³ (b) the arrest occurred immediately after Roote's criticism of the council²⁴, and (c) Sheriff Boan testified the arrest would have happened "even without" the profanity, indicating the content of the speech—not the manner—drove the decision.²⁵

The Defendants cite a Third Circuit case in support of its motion. *Eichenlaub v. Twp. of Indiana*, 385 F.3d 274 (3rd Cir. 2004). The description of the behavior in that case is very different. *Id.* at 281. Though the opinion does not clarify the exact behavior that led to removal in *Eichenlaub*, it was extreme enough to be described as "hijack[ing]" or "filibuster[ing]." In this case, Roote had spoken for just a few minutes longer than the

²¹ Defendants rely on South Carolina's disorderly conduct statute, S.C. Code § 16-17-530, which prohibits "profane" language at public gatherings. (See DE 14 at 18). But this reliance is misplaced for two reasons. First, Sheriff Boan testified the arrest would have occurred "even without" the profanity, undermining any claim that the profanity was the basis for probable cause. Second, the profanity at issue—calling council members "fuckers"—was political criticism of government officials, not fighting words or obscenity. South Carolina courts have recognized that profanity alone, without more, does not constitute disorderly conduct. See *City of Landrum v. Sarratt*, 352 S.C. 139, 143-45 (Ct. App. 2002) (reversing disorderly conduct conviction based on profanity). The First Amendment does not permit the government to arrest citizens for vulgar but constitutionally protected criticism of public officials.

²² Boan Dep., p. 7, ll. 17-19

²³ Boan Dep., p. 7, ll. 11-16; Templar Dep., p. 14, ll. 12-14

²⁴ See Defendant's Ex. 2, 0:06:48

²⁵ Boan Dep., p. 13, ll. 1-17

next longest speaker who went over the limit. Combined with evidence the time limits are not clearly or consistently enforced and viewed in the light most favorable to the Plaintiff, this out of circuit case does not support the grant of summary judgment in this case.

4. Genuine Disputes of Material Fact Preclude Summary Judgment on Plaintiff's Excessive Force Claim.

Under the Fourth Amendment, courts evaluate excessive force claims by examining: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat; and (3) whether the suspect is actively resisting. *Graham v. Connor*, 490 U.S. 386 (1989).

Here, genuine disputes exist as to each factor. First, the severity of any potential crime does not support any use of force. Roote was engaged in passive resistance at most. Both Templar and Boan described him as passively dropping to the ground—not actively threatening anyone.²⁶ Second, there is no evidence Roote was a threat to anyone. Sheriff Boan admitted he "never saw him as, like, a threat or anything to council."²⁷ Mr. Roote was a 45-year-old, 5'4", 208-pound disabled veteran holding papers—not a weapon.

Finally, the parties dispute whether Roote was given clear instructions and whether he was physically able to comply.²⁸ It is not clear if he was actively resisting at any time, and the Defendants have produced no undisputed evidence of active resisting. A jury must resolve these credibility issues.

The force used—dragging Roote across the floor, causing a shoulder injury requiring medical attention—must be evaluated against these factors. A reasonable jury could find the force excessive under the circumstances and summary judgment is not appropriate.

²⁶ Templar Dep., p. 14, ll. 14-15; Boan Dep., p. 12, ll. 21-22

²⁷ Boan Dep., p. 8, ll. 6-8

²⁸ Roote Dep., p. 69, l. 21 – p.70, l. 3

5. Defendants Are Not Entitled to Qualified Immunity at the Summary Judgment Stage.

Qualified immunity protects officials unless their conduct violated clearly established law. At summary judgment, the Court must view the facts in the light most favorable to the plaintiff.

Here, genuine disputes of material fact preclude qualified immunity. If a jury credits Plaintiff's version of events—that he was selectively targeted for his viewpoint, arrested in retaliation for protected speech, and subjected to excessive force while passively resisting—then Defendants violated clearly established law. The right to criticize government officials, to be free from viewpoint discrimination, and to be free from excessive force during passive resistance were all clearly established at the time of the incident. *Blankenship v. Manchin*, 471 F.3d 523, 533 (4th Cir. 2006)(addressing the well-established right to criticize the government as well as to be free from retaliation for such criticism); *R.A.V. v. St. Paul*, 505 U.S. 377, 385, 386 (1992)(addressing viewpoint discrimination); *Yates v. Terry*, 817 F.3d 877, 887 (4th Cir. 2016)(clearly established that a police officer should not use force against a misdemeanor defendant not actively resisting).

Defendants suggest the video evidence conclusively establishes the reasonableness of their conduct. But the existence of video does not resolve disputed facts as a matter of law—it merely provides evidence for the jury to consider. *See Scott v. Harris*, 550 U.S. 372, 378, 381 (2007) (noting that video evidence may resolve disputes only where it "quite clearly" contradicts one party's version). Here, the videos do not "quite clearly" establish that Roote was given clear instructions, that he could physically comply, or that the force used was reasonable. On the contrary, the videos are subject to interpretation, and reasonable jurors could view them and reach different conclusions. This is precisely the type of factual dispute that must be resolved at trial.

The Defendants argue they had the right to remove and arrest Roote for creating a public disturbance and are entitled to summary judgment. All constitutional violations

that were pled in this case involved clearly established constitutional rights. As argued above, those rights were violated. The Defendants rely on a version of facts that is favorable to them to support summary judgment. If the facts are viewed in the light most favorable to the Plaintiff, as required at this stage, a very different picture emerges. The Court should deny summary judgment.

6. Genuine Disputes of Material Fact Preclude Summary Judgment on Plaintiff's State Law Claims.

For the same reasons set forth above, genuine disputes of material fact exist as to Plaintiff's claims for false imprisonment, battery, and negligence. The lawfulness of the arrest and the reasonableness of the force used are contested issues that a jury must resolve.

a. False imprisonment

The Defendants primarily argue the existence of probable cause defeats this claim. However, they rely on Roote's admissions that the probable cause affidavit was accurate to support for this argument. While the affidavit may have been factually accurate, it did not describe a crime. Defendants place great weight on Roote's acknowledgment that the statements in Sheriff Boan's probable cause affidavit were factually accurate. But factual accuracy is not the same as legal sufficiency. A probable cause affidavit may accurately describe events that do not, as a matter of law, constitute a crime. Here, the affidavit describes Roote speaking beyond his allotted time and using profanity. This is conduct that, viewed in the light most favorable to Plaintiff, amounts to protected political speech and passive resistance to an unlawful removal. The question is not whether Sheriff Boan accurately described what happened, but whether what happened constituted criminal conduct. That is a question for the jury.

Defendants also claim probable cause existed for resisting arrest under S.C. Code § 16-9-320. But this charge is derivative of the underlying arrest—if the arrest was unlawful, resistance to it cannot form the basis for criminal liability. *Horton v. City of Columbia*, 408 S.C. 27, 35 (Ct. App. 2014). Because genuine disputes of material fact exist

as to whether Roote's arrest was lawful, the resisting arrest charge cannot independently support probable cause at the summary judgment stage.

The argument in support of summary judgment relies on the theory it was perfectly legal to enforce the time restriction on Roote, despite the fact it had been enforced on no other speaker who went over the allotted time. Roote was illegally restrained from finishing his speech because it was critical of the very government who restricted his speech. For the same reasons this behavior violated Roote's constitutional rights, as described above, it was unlawful and the state law claim should stand.

b. Battery

The Defendant correctly points out that a claim of battery under South Carolina law requires unlawful, unauthorized use of force. This claim should be considered under the same analysis as the Fourth Amendment cause of action for excessive force, and summary judgment should be denied based on the previous arguments.

7. Medical negligence claim

Plaintiff concedes he has not made a case against the County for medical negligence at the jail. Based on the short period of time he was there, and the records produced by the Defendants, Plaintiff withdraws this claim. However, this is not in any way a concession that he was not injured during his arrest or subject to excessive force. It is simply an acknowledgement the jail could not have engaged in much medical treatment during the time he was there.

CONCLUSION

For the foregoing reasons, Plaintiff Mark Roote respectfully requests that this Court deny Defendants' Motion for Summary Judgment in its entirety.

Respectfully Submitted,

s/ Joshua Snow Kendrick
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Attorneys for Plaintiff

In the United States District Court
District of South Carolina
Columbia Division

Case No.: 3:25-CV-01392-SAL-SVH

Mark Roote,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	Deposition
	)	
Kershaw County; Kershaw	)	of
County Sheriff's Office;	)	
Sheriff Lee Boan,	)	Sheriff Lee Boan
individually and in his	)	
official capacity as	)	
Kershaw County Sheriff;	)	
and Danny Templar,	)	
	)	
Defendant(s) .	)	

Date: November 11, 2025

Time: 11:01 a.m.

Location: Via Remote Videoconference for All Parties

Reported by
Cynthia H. Patterson

Appendix J

REMOTE APPEARANCES

For the Plaintiff(s): Joshua S. Kendrick, Esq.
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Greenville, South Carolina

For the Defendant(s): Damon C. Wlodarczyk, Esq.
Howser, Newman & Besley, LLC
Columbia, South Carolina

Also Present: Mark Roote

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EXHIBITS

No exhibits were marked during the course of this deposition.

1 you're familiar with the allegations we have
2 brought in the complaint on behalf of Mr. Roote?

3 A Yes.

4 Q So let's start at the beginning, and just tell me,
5 why did you arrest Mr. Roote?

6 A Well, we were having a council meeting, and he was
7 one of the public speakers. They have -- like, at
8 the beginning of the meeting, they allow the public
9 to come up and speak, and they limit them on the
10 amount of time they have, and I forget what it was.
11 Seems like he had three minutes, twenty seconds or
12 something that day, something like that. And --
13 and he exceeded it, which sometimes people speaking
14 do exceed the time, so that didn't really concern
15 me much. But as time went -- going on and on and
16 on and it started, you know, really interfering
17 with the council meeting, at that time, I went up
18 to Mr. Roote, kind of stood beside him in hopes
19 that he would go ahead and wrap it up, and at that
20 time, it kind of -- I think we were maybe getting
21 up on five/six minutes. He was well past it, and
22 he was going to read every word, and he wasn't
23 going to stop what he was reading. I can't -- I
24 can't really remember what he was reading on this
25 thing, but he had something he wrote out, and I

1 out into the hallway and was able to get him under
2 -- in custody at that point.

3 Q Okay. When he was using profanity, do you remember
4 specifically what he was saying?

5 A Yeah. Well, I remember the f-word. He did yell
6 the f-word out real loud, and that was kind of
7 right at the point there where he's done --
8 disruptive, refusing to leave and just -- just
9 completely out of control, and -- and that was when
10 he was placed under arrest.

11 Q Okay. Prior to -- so just to break it down, you
12 approach him hoping that he will hurry up, and then
13 when you sort of take him to escort him out, prior
14 to that point, you're not going -- you're not
15 planning to arrest him for any crime, right?

16 A No, no. He was a regular in there. He come often,
17 and he often, you know, expressed his -- his
18 negative views of county council, which, you know,
19 he has every right to do that and never had a
20 problem with him. And I can't remember any --
21 anything that we really had out of the ordinary.
22 He was just one that, you know, always, you know,
23 came in and exercised his rights to talk about how
24 he -- he didn't like council and a lot of things
25 that they were doing. And -- and he was just never

1 -- you know, it was almost like he knew exactly
2 where he could go with it and how much he could say
3 to them.

4 And I -- I don't remember anything really out
5 of the way in the past with him, other than, you
6 know, he's been there before. But you know, I
7 never saw him as, like, a threat or anything to
8 council or -- you know, he was just somebody
9 unsatisfied with, you know, some of the things they
10 did, and he was expressing himself as -- as
11 everybody else does.

12 And like I said earlier, other people do go
13 beyond their time. That's not out of the ordinary
14 for somebody to go beyond their time. But at some
15 point, it's like, you know, they'll ring a bell or
16 let them know their time's gone, and -- and they'll
17 start wrapping it up. Mr. Roote kind of -- you
18 know, if I remember correctly, when he -- soon as
19 he arrived, he pretty much laid out his rules.
20 He didn't care about council's, he laid his rules,
21 and I don't really get into what council's rules
22 are because I'm not a rule enforcer. I'm -- I'm a
23 law enforcement officer.

24 And they -- they gave their rules before they
25 start the little public comments, and then when the

1 there. He's disrupted -- the council meeting had
2 come to a stop. They started cutting microphones,
3 and I think they even went to a recess or
4 something. So he completely stopped the council
5 meeting that other members of the public were there
6 to watch and observe in an orderly manner, and he
7 went well beyond that. And so I mean, I -- I made
8 a decision at that point there -- you know, we
9 couldn't go forward with him standing there, and
10 that he needed to be escorted out.

11 Q Okay. And it's -- if I understand you, it is the
12 behavior between you starting to escort him out and
13 getting him out that led to the arrest for the
14 crime of public disorderly conduct?

15 A Yeah. Yeah, because like I said, my intention to
16 start with was just to escort him out -- when I
17 first put my hand on him and -- and got his
18 paperwork, was to escort him out and just tell him,
19 Hey, you got to leave." You know, "You've
20 disrupted the council meeting enough," and -- but
21 that's when he dropped to the ground and you know,
22 forced us to drag him out and started yelling
23 profanity. And at that point there, he's got -- he
24 got what I -- I definitely considered disorderly
25 conduct.

1 Q Okay. And that was based on him yelling the
2 profanity on the way out the door?

3 A No, it was -- just his whole -- just the way he
4 stopped the council meeting, that he would not --
5 he just pretty much just took over the council
6 meeting, and other citizens were there to watch the
7 council meeting and see government work being done
8 and decisions being made, votes and everything that
9 people come to council meetings for. He clearly
10 just ended that, just disrupted everything and --
11 his total action and forcing us to have to drag him
12 out and not leaving when asked, not leaving when we
13 tried to escort him, and you know, just kind of a
14 combination of everything is when, you know, we
15 made the decision. If he -- you know, if he didn't
16 yell out the f-word, you know, he would -- he would
17 have still been arrested.

18 Q So -- and I -- it's been a minute since I've been
19 to a county council meeting, and it wasn't in
20 Kershaw, so I'm -- in the -- how long do the
21 meetings usually last, start to finish, just
22 roughly?

23 A I would say they usually try to keep them under an
24 hour, but it just depends on what's on the agenda
25 for that night. Sometimes it's a little more

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
CASE NO. 3:25-cv-01392-SAL-SVH

MARK ROOTE,	)	
	)	
PLAINTIFF,	)	
	)	DEPOSITION
	)	
VS.	)	OF
	)	
KERSHAW COUNTY; KERSHAW	)	DANNY TEMPLAR
COUNTY SHERIFF'S OFFICE;	)	
SHERIFF LEE BOAN,	)	
INDIVIDUALLY AND IN HIS	)	
OFFICIAL CAPACITY AS	)	
KERSHAW COUNTY SHERIFF; AND	)	
DANNY TEMPLAR,	)	
	)	
DEFENDANTS.	)	

THE DEPOSITION OF DANNY TEMPLAR, TAKEN BEFORE JILL
BISHOP EDWARDS, CVR-CM, CERTIFIED VERBATIM REPORTER AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA,
COMMENCING AT THE HOUR OF 3:32 P.M., THURSDAY, THE 13TH DAY
OF NOVEMBER, 2025, VIA VIDEO CONFERENCE.

Page 2

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1 asked the sheriff, I said, Sheriff, can you escort him
2 out? And the sheriff came over and just kind of stood,
3 because I want to say that Mark was maybe still
4 talking, so Lee just kind of stood in proximity and
5 just kind of, again, was charitable to his -- you know,
6 we didn't want to -- we didn't want to do anything
7 other than just resume the meeting. That was the
8 spirit of my action. I get it. Look, people come in
9 there and they cut me a new one, and everybody else.
10 But it's just, at the end of the day, we just -- I
11 wanted the meeting to resume, and it had went well off
12 the rails. It was -- you know, speaking for myself, I
13 never had any intent of having him arrested or anything
14 like that. I know he kind of fell down in a passive
15 kind of manner. So, we -- then it -- again, it started
16 to spiral like a little more, but, you know,
17 unfortunately, but that was just kind of what we had to
18 deal with. And then it escalated a little more to that
19 with some actions by him that led to his arrest. But
20 it was unfortunate. That's certainly not what I
21 wanted. I was hoping to just get him outside, maybe
22 chat with him a little bit, calm him down. You know,
23 at the end of the day, I mean, he's -- he seems like an
24 angry guy. He's certainly not a bad guy. You know, I
25 -- I have no hard feelings against him, but, you know,

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1 what the -- the overall spirit, my motive was to resume
2 the meeting and just let's -- let's just move on.

3 Q Did you know how much longer he planned to speak, or
4 did anyone ask him how much longer he had?

5 A No, but the -- no. Short answer, no.

6 Q When you -- you said that there were some things he did
7 as he was being removed that led to his arrest. Do you
8 remember, from the time that Sheriff Boan -- and I'm
9 just going to -- I'm not using a technical -- Sheriff
10 Boan grabbed him or was holding him, you know, to
11 escort him out.

12 A Uh-huh.

13 Q I don't -- I want to be honest with you. Sheriff Boan
14 told me that, at that point, all he wanted to do was
15 remove him. He was not going to arrest him.

16 A Right. Right.

17 Q So, between that time where he starts that process and
18 then gets him, you know, ultimately out the door and
19 into custody, what did you see that led you to believe
20 he should be arrested, or did you think he should be
21 arrested?

22 A I know he flopped -- and, again, that's not -- you
23 know, it's just whatever. And I know a deputy was
24 knocked over somehow, some way -- or not knocked over
25 but fell, or ended up on the ground. Just say that. I

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARK ROOTE,

Plaintiff,

v.

KERSHAW COUNTY; KERSHAW
COUNTY SHERIFF'S OFFICE;
SHERIFF LEE BOAN, individually
and in his official capacity as
Kershaw County Sheriff; and
DANNY TEMPLAR,

Defendants.

C/A 3:25-cv-01392-SAL-SVH

**PLAINTIFF'S OBJECTIONS TO
MAGISTRATE'S REPORT AND
RECOMMENDATION**

The First Amendment to the United States Constitution allows the Kershaw County Council to set reasonable time limits on public comment, even though such a limit restricts protected speech. But the restriction must be content-neutral and evenly applied.

In this case, who knows how long a speaker has before they will be cut off? Every speaker before Plaintiff Mark Roote was allowed to go over the time limit by varying amounts. When Roote went over his time, he was forced out of the council meeting and arrested. Though the Defendants now claim his speech was restricted for going over a time limit, it is not clear how he could have known that. Defendants believe a speech restriction that involves a subjective decision that speakers can go over the time limit, just not *too far* over the limit, does not offend the Constitution. They are wrong.

The Plaintiff is not required to conclusively prove his facts at the summary judgment stage; he merely needs to show a dispute exists so that the case should be decided by a factfinder. *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). The Court does not weigh evidence or make credibility determinations. *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 569 (4th Cir. 2015). It makes no difference if the Court does not believe Plaintiff will win at trial. *Id.* at 568-69. There is only one question relevant at this stage of

the case: “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-252.

Plaintiff has presented a case that should go to a jury. This Court should decline to adopt the Magistrate’s Report and Recommendation (“Report”), deny summary judgment, and schedule this matter for trial.

OBJECTION 1: Fourth Amendment Excessive Force

a. No force was authorized in this case.

The Report recommends this Court grant summary judgment because “minimal” force was used. Under the *Graham v. Connor* analysis and the factors courts use to analyze use of force, no force was authorized because Plaintiff had not broken the law. *Graham v. Connor*, 490 U.S. 386 (1989).

First, the severity of the crime warranted no use of force because Roote had broken no law. Law enforcement decided to remove him from council chambers because he had violated an unclear and arbitrary time limit for speaking. Plaintiff was exercising his rights under the First Amendment and there was no need for any law enforcement action under these circumstances.

Second, there was no threat to any officer or other person present at the meeting. Roote was not violent and did not give officers any reason to believe he was a threat.

Third, the Report finds the use of force was appropriate because it was minimal and Roote was “passively resisting.” Plaintiff was acting within his rights to passively resist police action which was unlawful. He had broken no law and only violated a nebulous time limit that the record reflects was arbitrarily enforced. In South Carolina, a person has the right to resist unlawful arrest through such force as is reasonably necessary depending on the circumstances. *State v. McGowan*, 347 S.C. 618, 622 (2001). Roote’s actions were well within the law:

An unlawful arrest, or an attempt to make an unlawful arrest, stands upon the same footing as any other nonfelonious assault, or as a common assault and battery. The person who

is so unlawfully arrested, or against whom such an unlawful attempt is directed, is not bound to yield, and may resist force with force, but he is not authorized to go beyond the line of force proportioned to the character of the assault, or he in turn becomes a wrongdoer. . . .

Id. at 623 (quoting *State v. Francis*, 152 S.C. 17, 38-39 (1929)).

The final factor is discussed separately below.

b. The Defendants never raised lack of injury as grounds for summary judgment.

The Report also recommends summary judgment because Plaintiff did not present evidence of his injuries. As an initial matter, Defendants never raised this argument in support of summary judgment. Additionally, Plaintiff does have this evidence.

Counsel disclosed medical records in discovery reflecting Plaintiff had a significant shoulder injury from the arrest.¹ Plaintiff also testified about his injuries at his deposition.² The Fourth Circuit does not require an injury in a Fourth Amendment excessive force claim. While a minimal injury may be a factor to consider, it does not defeat the claim. *Hill v. Crum*, 727 F.3d 312, 327-328 (4th Cir. 2013) (Thacker, J. dissenting) (collecting cases explaining that a minor injury would not defeat an excessive force claim). Regardless, Plaintiff has presented sufficient information related to his injuries.

A plaintiff can testify about his own injuries and a causal connection can be inferred when either a visible injury or the sudden onset of an injury occurs. *Dillard v. Smith*, 558 F. Supp. 3d 308, 312 (W. D. Va. Sept. 7, 2021) (collecting cases). Though this comes from a district court opinion, the reasoning is both sound and consistent with Rule 602 of the Federal Rules of Evidence. Plaintiff has personal knowledge of his injuries and

¹ A portion of the records is redacted and attached as an exhibit to these objections (EX 1). Counsel is happy to provide the entire medical file directly to chambers, but it is over 1000 pages.

² The relevant deposition testimony is attached (EX 2). See p.2, ll. 9-24; p.3, ll.8-21; p.4, ll. 15-25; p.5, l.2-p.6, l.5; p.8, ll.10-16; p.10, ll.11-23; p.12, ll.19-21.

Date	Video Link	Video time	Order	Portion of meeting	allotted time	Speaker	Comments	Time Spoken	Over?	Time Over
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=s_hare	0:20:00	1	Public Comment	05:00	Ted Davis	- Can't hear him at the beginning - American Legion commander?	01:18	No	
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=s_hare		2	Public Comment	05:00	Preston Crissman	skipped		No	
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=s_hare	0:22:00	3	Public Comment	05:00	Mary Brandenberger	- mic not placed correctly	00:25	No	
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=s_hare	0:23:03	4	Public Comment	05:00	Jeff Mattox	- talked about Mary	57:00	Yes	52:00
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=s_hare	0:24:13	5	Public Comment	05:00	Matthew Hutchison	- Talked about "why the 10 AM meeting" - sewer debt, 2.7 million dollars - "gift" for Julian of a book titled "War is a Racket" - wasn't stopped when talking about Julian's war profiteering	02:54	No	
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=s_hare	0:28:13	6	Public Hearing	10:00	Matthew Hutchison	- Fee in Lieu issue - excited about the new council coming in	01:26	No	
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=s_hare	2:37:35	7	council briefings		Jimmy Jones	- truth about past county councils - council has consistently lacked transparency - spent money on properties that citizens cannot use - sewer system consistently mismanaged - a lot of issues with past councils, including the one that just ended - complained about excess spending of councils - "bragged" about his "fighting" those wastes			
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=s_hare	2:43:10	8	council briefings		Sammie Tucker	- disagreed with everything Jimmy just said - thanked Mary for all the years she's given Kershaw County - blew smoke up Tom Gardner's ass - blew smoke up Julian's ass - council of governments presentation by director of Santee-Lynches COG to "honor" Julian * more smoke			

12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=share	2:49:57	9	council briefings	Tom Gardner	- going away talk - smoke all around			
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=share	2:50:52	10	council briefings	Russell Brazell	- lot of nothing			
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=share	2:54:14	11	council briefings	Julian Burns	- economic development BS - gave a neck thing to Tom (cavalry thing), blew smoke up his ass - more shit about cutting the budget debt in half (not sure how that works since the budget is up 40+ million this year - no millage increase? - lowest taxes? - I can't keep taking notes on this one, he's full of shit sounds like he was warning new council not to fuck with the illegal budget they passed			
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=share	3:01:20	12	council briefings	Danny Templar	- COG stuff - special election for District 3 since Ben Connell is now in the state house - agreed with Julian about the audit of the budget			
12/15/2022	https://www.youtube.com/live/UBDpA3_7DkU?feature=share	3:04:00	13	council briefings	Tommy (lawyer in place of DuBose)	- blew smoke up the leaving peoples ass			
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:22:30	1	Opening	Julian Burns	- 0:24:45 Julian starts trying to justify their "rules" - long ramble, brought up Syndey Butler (I think that's the name)... I have no idea who that is (but thanks to Julian I know they're dead) - made sure to remind the audience that children need to learn by example - did a prayer anyway			
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share		2	Public Comment	03:00 DuBose	11 speakers into 30 minutes is a "little bit less than 30 minutes"		No	

11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:07:30	3	Public Comment	03:00	Carson Brazell	- A child, Brazell, spoke about needing recreation areas. Maybe the councilmember, Brazell, helped her write that? - council gave her a round of applause. Aren't they not supposed to interact with speakers?	01:01	No	
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:08:50	4	Public Comment	03:00	Mary Brandenberger	- spoke about city electric - spoke about taxes	02:23	No	
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:11:25	5	Public Comment	03:00	Melody Dowhan	- taxes & fiscal responsibility (repeatedly) - public comment (make more noise) - applaud Katie Guinn - 3:11 DuBose muttered/mumbled something about time - she cut herself off and walked away (quickly)	03:17	Yes	00:17
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:15:00	6	Public Comment	03:00	William Howland	- Animal/Dog Shelter - praised their actions arresting me - I didn't drop the F bomb - He might have been supporting me?	03:05	Yes	00:05
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:42:20	7	Public Comment	03:00	Jack Kerrington	- talked about pushing the recreational facilities stuff - sucking councils **ck - bell rung at 3:11	03:22	Yes	00:22
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:45:55	8	Public Comment	03:00	Dale Vanderbilt	- "recreation" - complaining about existing baseball fields being inadequate - wants to spend the money on those rather than the \$10,000,000 complex being pushed for	02:46	No	
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:49:00	9	Public Comment	03:00	Jeff Mattox	- complained about the sheriff's pay increase - pretty good, IMO	02:26	No	
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:51:40	10	Public Comment	03:00	Matthew Hutchison	- brought up some good points about the arrest - talked about republic - bell at 3:11 - he walked away	03:18	Yes	00:18
11/9/2022	https://www.youtube.com/live/aMrlrsUWL1E?feature=share	0:55:15	11	Public Comment	03:00	Tom Webb III	- waste of money for sports - veterans day parade coming - no private property by 2030 due to WEF - bell at 3:12 - kept talking faster - stopped himself	03:52	Yes	00:52

11/9/2022	https://www.youtube.com/live/aMrIrsUWL1E?feature=share	0:59:20	12	Public Comment	03:00	Amanda Stephens	- Rules for thee but not for me - budget - the waste for park - talked about proper procedure for line items	02:25	No	
11/9/2022	https://www.youtube.com/live/aMrIrsUWL1E?feature=share	1:02:05	13	Public Comment	03:00	Gina McClean	- Animal/Dog Shelter - Disappointment with council and attorney - zero response from anyone at all	02:07	No	
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	0:41:15	1	Public Comment		Jimmy Jones	- tries to get council to allow the full 5 minutes per speaker			
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	0:41:40	2	Public Comment		Julian Burns	- says he has been fighting time and time again to give citizens more time to speak at public comment			
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	0:42:20	3	Public Comment	03:20	Dennis Outlaw		01:44	No	
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	0:44:15	4	Public Comment	03:20	William Howland	- talking about the animal rescue issue - bell @ 3:50 - spoke till 4:30 - was addressed by coucil for another 15 seconds	04:46	Yes	01:26
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	0:49:15	5	Public Comment	03:20	Tim Taylor	- talks about going against the will of the people - calls out Ben before Julian stops him - talks about executive session - talks about their lack of transparency	02:59	No	
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	0:52:40	6	Public Comment	03:20	Mary Brandenberger	- talks about unfair council - talks about her treatment in the Army - disappointment in county council - no bell	03:45	Yes	00:25
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	0:56:45	7	Public Comment	03:20	Melody Dowhan	- budget issues - lies of council members - identified the 4 pass voters - cut herself short (didn't keep to her script) - brings up her response from council that was requested in august 2022 - gave numbers about the budget increases - no bell	04:14	Yes	00:54
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	1:01:15	8	Public Comment	03:20	Gina McClean	- talking about animal rescue issue - no bell	04:04	Yes	00:44
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	1:05:30	9	Public Comment	03:20	Amanda Stephens	- talking about the budget BS	03:21	Yes	00:01

10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	1:09:00	10	Public Comment	03:20	Mark Roote	- being antagonistic of course - going over rules of public forum per law - F-Bomb : none - first bell 3:57 - 4:12 Jimmy makes a "point of order" about not using the bell - they go back an forth til 4:39 - mic off at 4:40 - 5:22 council mics turned off - 6:25 Danny told Lee to remove me - 6:31 I sat down and was dragged out by Boan and a deputy	06:31	Yes	03:11
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	1:16:10	11	Exexecutive Session				01:38		01:38
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	1:18:20	12	Public Comment	03:20	Jeff Mattox	- things getting worse and worse - 3:40 Russell told Julian time was up and Julian asked DuBose to clarify	04:11	Yes	00:51
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	1:22:30	13	Public Comment			a lot of argument about public comment			
10/11/2022	https://www.youtube.com/live/hVJG_EBiQ1w?feature=share	2:20:00	14	---			<u>Who was snoring around 2:26:00? Looks like DuBose was sleeping, but I can't tell. Doesn't look like anyone else was asleep, but you can hear snoring in a mic.</u>			
9/13/2022	https://www.youtube.com/live/yECMmKmNqFE?feature=share	0:55:20	1	Public Hearing	10:00	Jeff Mattox	- spoke against millage rates - millage should be tied with budget	06:15	No	
9/13/2022	https://www.youtube.com/live/yECMmKmNqFE?feature=share	1:01:50	2	Public Hearing	10:00	Matthew Hutchison	- Spoke against millages - interrupted @ 1:44 for speaking about the sheriff - interrupted @ 4:12 for speaking about Burns	05:09	No	

9/13/2022	https://www.youtube.com/live/yECMmKmNqFE?feature=share	1:07:35	3	Public Hearing	10:00	Melody Dowhan	- Spoke against millages - spoke about the lies about the budget published by the council - spoke about the bad vote on the budget - interrupted @ 8:24 by Burns to tell her she was running out of time - stopped herself @ 9:18 - Julian said to make sure they have her contact info... why? what does the council need to address her specifically about since she was asking about the tax/millage increases? Any answers to her questions should be public knowledge	09:18	No	
9/13/2022	https://www.youtube.com/live/yECMmKmNqFE?feature=share	1:19:20	4	Public Comment	05:00	William Howland	- Spoke about the animal rescue - was interrupted by Julian because group stood up behind him	04:03	No	
9/13/2022	https://www.youtube.com/live/yECMmKmNqFE?feature=share	1:23:40	5	Public Comment	05:00	Amanda Stephens	- Spoke against millages - Burns looking at his phone	03:43	No	
9/13/2022	https://www.youtube.com/live/yECMmKmNqFE?feature=share	1:27:45	6	Public Comment	05:00	Tom Webb III	- spoke about 9/11 - none of council paying attention - spoke about comprehensive plan - stopped himself	06:43	Yes	01:43
9/13/2022	https://www.youtube.com/live/yECMmKmNqFE?feature=share	1:34:40	7	Public Comment	05:00	Jeff Mattox	- spoke about 9/11 - how many individuals does it take to make robbery legal? - spoke about government waste - interrupted by Brazell @ 2:07 for saying damn, "addressed" until 2:40 - loss of freedom/collective idiocracy	05:02	Yes	00:02
9/13/2022	https://www.youtube.com/live/yECMmKmNqFE?feature=share	1:40:00	8	Public Comment	05:00	Matthew Hutchison	- spoke about 9/11 - asked for a councilmember to make a motion to freeze council decisions until new council comes in - said he'd be available to talk to any council members after the meeting	02:16	No	
8/9/2022	https://www.youtube.com/live/GBJY0mKgp5M?feature=share	1:21:40	1	Public Comment	05:00	Matthew Hutchison	- spoke about behavior of audience at last meeting - agreed with the once a month schedule - spoke about Vic Carpenter - spoke about council of governments - spoke against comprehensive plan	02:56	No	

8/9/2022	https://www.youtube.com/live/GBJY0mKgp5M?feature=share	1:24:45	2	Public Comment	05:00	Mr. Alexander	- complained about littering - kept getting interrupted - not enough access to government employees for citizens	01:00	No	
8/9/2022	https://www.youtube.com/live/GBJY0mKgp5M?feature=share	1:26:05	3	Public Comment	05:00	Jeff Mattox	- government unintended consequences - asked to wrap @ 6:13 - stopped himself	06:38	Yes	01:38
8/9/2022	https://www.youtube.com/live/GBJY0mKgp5M?feature=share	1:33:00	4	Public Comment	05:00	Susan Jones	- thanked them for their service - talked about growing up with politics in her house - asked to close it out by Burns @ 7:32 - read scripture - stopped herself	08:53	Yes	03:53
7/12/2022	https://www.youtube.com/live/43OqqWYsLOk?feature=share	0:57:30	1	Public Comment	02:00	William S Robinson	- Knights Hill Preservation Board - Burns asked him to wrap it up @ 2:48 - stopped himself	03:01	Yes	01:01
7/12/2022	https://www.youtube.com/live/43OqqWYsLOk?feature=share	1:00:45	2	Public Comment	02:00	Chris Dixon	- spoke against budget/taxes - spoke against Snodgrass voting on taxes	00:47	No	
7/12/2022	https://www.youtube.com/live/43OqqWYsLOk?feature=share	1:01:45	3	Public Comment	02:00	Tommy Mangum	- spoke against budget/taxes - most of council ignoring - asked to wrap @ 2:21 - stopped himself	03:01	Yes	01:01
7/12/2022	https://www.youtube.com/live/43OqqWYsLOk?feature=share	1:05:10	4	Public Comment	02:00	Ricky Carey	- spoke about his shame of council	01:25	No	
7/12/2022	https://www.youtube.com/live/43OqqWYsLOk?feature=share	1:06:45	5	Public Comment	02:00	Katie Guinn	- taxation without representation - stopped herself	02:52	Yes	00:52
7/12/2022	https://www.youtube.com/live/43OqqWYsLOk?feature=share	1:09:55	6	Public Comment	02:00	Vicky Moniz	- council voting record - stopped herself	02:26	Yes	00:26
7/12/2022	https://www.youtube.com/live/43OqqWYsLOk?feature=share	1:12:45	7	Public Comment	02:00	Dorothy Davis	- Handouts for council - Farmers Market issue with Jimmy & Katie - got interrupted a few times - stopped herself	05:03	Yes	03:03

7/12/2022	https://www.youtube.com/live/43OggWysLOk?feature=share	1:18:15	8	Public Comment	02:00	Phil Truesdale	- Handouts for council - Farmers Market issue with Jimmy & Katie - Burns interrupted him at 3:00 to say we can't call out individuals & gave him another minute - Russell said to give him ten minutes to hear it all - Tucker calls out "that's time" @ 5:34. Jimmy said "negative, I wanna hear him" - Jimmy kept interrupting the rest of the time trying to defend himself, so of course Julian kept interrupting - stopped himself	06:13	Yes	04:13
7/12/2022	https://www.youtube.com/live/43OggWysLOk?feature=share	1:24:45	9	Public Comment	02:00	Steven Clyburn	- surrendered his time supporting the Farmers Market	00:19	No	
7/12/2022	https://www.youtube.com/live/43OggWysLOk?feature=share	1:25:25	10	Public Comment	02:00	Ben Tobin	- Plans for water shortage?	01:36	No	
7/12/2022	https://www.youtube.com/live/43OggWysLOk?feature=share	1:27:30	11	Public Comment	02:00	Christina Truesdale	- Farmers Market issue with Jimmy & Katie	00:43	No	
7/12/2022	https://www.youtube.com/live/43OggWysLOk?feature=share	1:28:30	12	Public Comment	02:00	Jeff Mattox	- spoke against taxes/budget - "vision Kershaw 2030" - said "damn" a couple times - trust has been broken/shattered - asked to wrap at 3:18	03:23	Yes	01:23
7/12/2022	https://www.youtube.com/live/43OggWysLOk?feature=share	1:32:10	13	Public Comment	02:00	Hector Ortiz	- new subdivision near him causing water damage to his house/property - looking for help - asked for info @ 2:20 - walked away	02:29	Yes	00:29
7/12/2022	https://www.youtube.com/live/43OggWysLOk?feature=share	1:34:55	14	Public Comment	02:00	Andrea Walker	- Farmers Market issue with Jimmy & Katie	00:51	No	
7/12/2022	https://www.youtube.com/live/43OggWysLOk?feature=share	1:36:00	15	Public Comment	02:00	Tyler Eubanks	- taxation without representation	01:12	No	
7/12/2022	https://www.youtube.com/live/43OggWysLOk?feature=share	1:37:30	16	Public Comment	02:00	Barb Willens	- Farmers Market issue with Jimmy & Katie	00:47	No	

6/28/2022	https://www.youtube.com/live/htf9NoYx5Wo?feature=share	0:42:10	1	Public Comment	05:00	Harrison Goodwin James Smith Todd McDonald	- school district - asking for millage increase - superintendent - fee in lieu of	03:53	No	
6/28/2022	https://www.youtube.com/live/htf9NoYx5Wo?feature=share	0:46:25	2	Public Comment	05:00	Tom Webb III	- keep repeating lies, etc - EMP warning - technology	04:51	No	
6/28/2022	https://www.youtube.com/live/htf9NoYx5Wo?feature=share	0:52:00	3	Public Comment		Matt Hutchison (written form, read by Mary)	- they seriously edited it			
6/14/2022	https://www.youtube.com/live/TyBvhUwMk0g?feature=share			Public Comment			no public comment?			
5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	0:50:00	1	Public Hearing	05:00	Mark Roote	- against sewer fees - interrupted - spoke against citizens having to pay for Prestage Farms sewer requirements	01:25	No	
5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	0:54:50	2	Public Comment	05:00	Mark Roote	- spoke about how I was ignored and told to leave last time - spoke about citizens rights at council meetings - spoke about councils ignoring citizens - identified the guidelines -v- rules - separation of church and state - spoke against the gerrymandering of Kershaw County - spoke about new KCSD superintendent - spoke about the laws violated by Shane - asked to wrap at 7 minutes * Shane made a comment "you can't do anything about it" as I walked away from the mic which is why I got "yelled at" by Julian after I walked away	07:20	Yes	02:20
5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	1:02:40	3	Public Comment	05:00	Darrel Ogburn	- chairman of health district - talked about failure to keep council informed - new facility - blowing smoke about facilities	06:27	Yes	01:27
5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	1:09:15	4	Public Comment	05:00	Shane Robbins	- blowing smoke - "making great progress" on the high school (BS) - allowed behind the counter to pass out "challenge coins" ** I thought council wasn't allowed to interact during public comment	02:55	No	

5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	1:12:40	5	Public Comment	05:00	Tom Webb III	- spoke about Memorial Day - gave out helmet liners	03:07	No	
5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	2:12:35	6	Motion		Jimmy Jones	- wanted to extend Public Comments. Didn't even get a second to his motion			
5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	2:13:20	7	council briefings		Russell Brazell	- congratulated graduates			
5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	2:13:50	8	council briefings		Ben Connell	- congratulates graduates - sewer tax removal - beauracracy of government			
5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	2:15:20	9	council briefings		Jimmy Jones	- disappointed in colleagues for not even giving a second			
5/24/2022	https://www.youtube.com/live/0m-2-AN93tc?feature=share	2:19:40	10	council briefings		Julian Burns	- BS about public comments			
5/10/2022	https://www.youtube.com/live/iugRqfHTFeM?feature=share	0:23:28	1	Public Hearing	10:00	Miles Bancroft	- only saw it "today" in the paper - bought the property at 1050 Broad Street	06:49	No	
5/10/2022	https://www.youtube.com/live/iugRqfHTFeM?feature=share	0:41:50	2	Public Comment	05:00	Mark Roote	- limited public forum definition - guidelines/rules definitions - identified Kershaw County Council Values * identifying valuves they violate regularly - interrupted at 3:40 - mic turned off at 4:55 escorted away at 5:38	05:39	Yes	00:39
5/10/2022	https://www.youtube.com/live/iugRqfHTFeM?feature=share	0:48:00	3	Public Comment	05:00	Grace Misor	- dirt road complaints - black heritage building "down there" - interrupted by Sammy 5:20	05:35	Yes	00:35
5/10/2022	https://www.youtube.com/live/iugRqfHTFeM?feature=share	0:55:50	4	Public Presentation		Lee Boan	- "Assault on a deputy" - complained about a club - wah wah wah - back and forth with council	18:10		18:10
5/10/2022	https://www.youtube.com/live/iugRqfHTFeM?feature=share	2:06:10	5	council briefings		Jimmy Jones	- talked about extending public comments			
5/10/2022	https://www.youtube.com/live/iugRqfHTFeM?feature=share	2:09:40	6	council briefings		Sammie Tucker	- public comments BS - absolutely will not support extending public comments - will amend to eliminate public comments - BS BS BS			

5/10/2022	https://www.youtube.com/live/iugRqfHTFeM?feature=share	2:13:50	7	council briefings		Ben Connell	- 1st Amendment Law Review			
5/10/2022	https://www.youtube.com/live/iugRqfHTFeM?feature=share	2:17:25	8	council briefings		Julian Burns	- BS about the "rules" written in 1997 and blah blah - wanted to talk to BuDose and Connell after meeting			
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	0:46:00	1	Public Comment	05:00	C.A. Ruley	- comments about paving dirt roads - not interrupted or asked to finish	06:04	Yes	01:04
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	0:52:15	2	Public Comment	05:00	Sharon Brown	- comments about litter, dirt roads, etc	01:27	No	
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	0:54:10	3	Public Comment	05:00	Mark Roote	- first interruption about 2:55 in - gavel struck at about 3:5 in - deputies told to escort me out at about 3:20 - I left because I was unsure of my rights in this situation, I did threaten a lawsuit on my way out, but after talking with a lawyer about that it wasn't worth it then - I also flipped the council the bird on my way out because they pissed me off	03:30	No	
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	0:57:50	4	Public Comment	05:00	Mary Jane Martin	- talked about community growth	02:00	No	
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	1:00:00	5	after public comment		Jimmy Jones	- asking lawyer about violation of rights			
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	2:18:35	6	council briefings		Jimmy Jones	- included comments about restricting free speech - talked about councils need to "toughen up"			
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	2:25:44	7	council briefings		Sammie Tucker	- spoke counter to Jimmy - spoke about me a bit - said I was wrong to call out Julian by name - said they are not required to provide public comment (they're not) - complaining about my gestures - calls out public venues for my actions			
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	2:29:00	8	council briefings		Tommie Gardner	- "seconds" Sammie - says he would vote to do away with public comment rather than tolerate criticism			
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	2:29:05	9	council briefings		Russell Brazell	- agreed with Jimmy that free speech is the "bedrock of America"			

4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	2:30:05	10	council briefings		Julian Burns	- talked about his service and anger and issues - read the "rules" for public comment (they are not rules, they are guidelines, look at the legal definition) - talked about "taking heat" and "thin skin and thick skin" and he could "teach a class on it" and how he "encourages open dialogue" between council and citizens - back to policy and his duty to move it forward when the person is told again and again and won't respond			
4/26/2022	https://www.youtube.com/live/zqsCV00yDiQ?feature=share	2:34:30	12	council briefings		DuBose	- Home document (or whatever) says "county administrator shall be the head of county government" - Says they have administrative control over all departments of government which the county council has authority over			
4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	1:37:35	1	Public Comment	03:00	Jenie Collins	- kids sports complaints (for homeschool kids)	04:30	Yes	01:30
4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	1:42:35	2	Public Comment	03:00	Jamie Coulter	- dock on the river	00:43	No	
4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	1:43:45	3	Public Comment	03:00	Mark Roote	- Julian's "less government" - interrupted by Julian - threatened recess @0:0:50 of my speaking - starving children of Kershaw County - baseball field behind KCSD admin office - replacing Shane - asked Frankie about Goldsmiths greatest hits - Julian kept going about "personal attacks" and declared out of recess	02:27	No	
4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	1:46:42	4	Public Comment	03:00	Katie Guinn	- budget and budget meeting comments - comprehensive plan/why bother with commissioners	02:25	No	
4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	1:49:25	5	Public Comment	03:00	Guendalyn Shannon	- electric increase concerns	03:18	Yes	00:18
4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	1:53:08	6	Public Comment	03:00	Lee Boan	- autism awareness month - telecommunication officers week	01:21	No	

4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	1:54:44	7	Public Comment	03:00	Jene Hardess	- complimenting recycling center employees	01:43	No	
4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	2:36:25	8	council briefings		David Snodgrass	- only in town 2-3 days a week because he has started working outside the county (relevant to the illegally passed budget)			
4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	2:38:35	9	council briefings		Sammie Tucker	- talked about having me removed and "escorted down to Bramblewood" - do what Tom Webb III does, go stand on a corner if your upset - told Julian that he would overrule and have me removed - I don't deserve to be in public because of my comments - mentioned my giving them all the finger on my way out - Julian said "let's move ahead please" - how good government is - "there's not a child in Kershaw County that goes hungry unless they choose to, almost" - said I was playing victim. said I don't help anyone (these are lies about me specifically)			
4/12/2022	https://www.youtube.com/live/l83fmQlXC30?feature=share	2:47:00	10	council briefings		Julian Burns	- explains what "recess" is - said he tried to seek me out at a restaurant (this is a straight up lie that I asked him about at the next meeting) - not ok to criticise the boards or commissions (since when is it not ok to criticise public officials?) - wanted to see administrator, vice chair, and lawyer to talk about what happened at the meeting - Jimmy Jones talked about showing citizens more respect			
3/22/2022	https://www.youtube.com/live/eY6vICts4iA?feature=share	0:59:00	1	Public Comment	05:00	Tommy Swan	- Cleanup efforts related to the Carolina Cup - Friends of Goodale State Park group	04:14	No	
3/8/2022	https://www.youtube.com/live/lZu-nDPXCxl?feature=share	1:12:35	1	Public Comment	03:30	Dale Vanderbuilt	- kids sports stuff	04:40	Yes	01:10
3/8/2022	https://www.youtube.com/live/lZu-nDPXCxl?feature=share	1:17:35	2	Public Comment	03:30	Tom Webb III	- clean up committee - untrustworthy news and governments	05:21	Yes	01:51

2/22/2022	https://www.youtube.com/watch?v=85-ve/85-eoKraxko?feature=share	0:34:00	1	Public Comment	03:30	Bryan Holmes	- Fishing on Lake Wateree	03:00	No	
2/22/2022	https://www.youtube.com/watch?v=85-ve/85-eoKraxko?feature=share	0:37:25	2	Public Comment	03:30	Matthew Hutchison	- Ad Hoc Task Force for Vision 2030 - against more "hidden" taxes	15:00	Yes	11:30
2/22/2022	https://www.youtube.com/watch?v=85-ve/85-eoKraxko?feature=share	0:40:55	3	Public Comment	03:30	Mark Roote	- talked about "how do we actually contact" council members - councils failure to follow their own values - comparison between Wyoming County, PA and Kershaw County, SC - said "shit", got interrupted by Julian, Jimmy - talked about prior stuff regarding Shane Robbins - got interrupted because I was over time	05:53	Yes	02:23
2/22/2022	https://www.youtube.com/watch?v=85-ve/85-eoKraxko?feature=share	0:47:00	4	Public Comment	03:30	Tom Webb III	- Washington's birthday - started over because he wasn't talking into the mic	01:50	No	
2/22/2022	https://www.youtube.com/watch?v=85-ve/85-eoKraxko?feature=share	0:49:05	5	Public Comment	03:30	Debbie Smith	- Soccer club stuff/recreation department	02:58	No	
2/22/2022	https://www.youtube.com/watch?v=85-ve/85-eoKraxko?feature=share	0:52:15	6	Public Comment	03:30	Katie Guinn	- soccer stuff - Ad Hoc task force	02:54	No	
2/22/2022	https://www.youtube.com/watch?v=85-ve/85-eoKraxko?feature=share	0:55:35	7	Public Comment	03:30	Rose Patterson	- soccer stuff	04:31	Yes	01:01
2/22/2022	https://www.youtube.com/watch?v=85-ve/85-eoKraxko?feature=share	1:00:00	8	Public Comment		Julian Burns	- Summarized seven emails that were submitted that support the guy who's been doing soccer for 20 years			
2/8/2022	https://www.youtube.com/watch?v=GHlgmyTNfi?feature=share	0:44:40	1	Public Comment	05:00	couldn't understand	- issues with Planning & Zoning	02:47	No	
2/8/2022	https://www.youtube.com/watch?v=GHlgmyTNfi?feature=share	0:48:15	2	Public Comment	05:00	Jamie Harriet	- supporting her sister (above)	01:00	No	
2/8/2022	https://www.youtube.com/watch?v=GHlgmyTNfi?feature=share	0:49:10	3	Public Comment	05:00	Lee Smith	- zoning & planning board issues - unfair treatment	00:45	No	
2/8/2022	https://www.youtube.com/watch?v=GHlgmyTNfi?feature=share	0:50:12	4	Public Comment	05:00	Tom Webb III	- Scalia death stuff	01:33	No	

1/25/2022	https://www.youtube.com/live/flq6ov8VEHA?feature=share		1	Public Comment			no public comment?			
1/11/2022	https://www.youtube.com/live/2W73ooJZ8ac?feature=share		1	Public Comment			no public comment, no one signed up			
12/14/2021	https://www.youtube.com/live/SWY0q9v2whI?feature=share	0:40:00	1	Public Comment	05:00	Tom Webb III	- Pearl Harbor - US Civil War	04:16	No	
12/14/2021	https://www.youtube.com/live/SWY0q9v2whI?feature=share	0:44:29	2	Public Comment	05:00	Bob Giangorji	- KC Trails, progress and purpose - related to Vision 2030	04:11	No	
12/14/2021	https://www.youtube.com/live/SWY0q9v2whI?feature=share	0:48:50	3	Public Comment	05:00	Tommy Swan	- Vision 2030, related to Goodale State Park	05:26	Yes	00:26
12/14/2021	https://www.youtube.com/live/SWY0q9v2whI?feature=share	0:54:25	4	Public Comment	05:00	Judge Hardess	- Yielded his time to Tommy to finish up - old Pickett Thomas acreage	02:26	No	
12/14/2021	https://www.youtube.com/live/SWY0q9v2whI?feature=share	0:57:08	5	Public Comment	05:00	William Tetherton	- boat landing * after 5 minutes Juilian asked him to wrap, Jimmy asked to give him more time	05:58	Yes	00:58
12/14/2021	https://www.youtube.com/live/SWY0q9v2whI?feature=share	1:03:25	6	Public Comment	05:00	Richard Hunter	- boat ramp	02:09	No	
11/9/2021	https://www.youtube.com/live/OMwNSkXobBM?feature=share	1:22:55	1	Public Comment	05:00	Tom Webb III	- aircraft care at the airport - Veterans Day - his time on the corner with a sign - disappointed that no one else is signed up to speak - elected officials don't do what we think they will after their elected - COG/politicians in a poem he wrote for Halloween	04:48	No	
11/9/2021	https://www.youtube.com/live/OMwNSkXobBM?feature=share	1:38:50	2	Public Hearing	10:00	Floyd Bracie	- redistricting plan dissent	00:37	No	
11/9/2021	https://www.youtube.com/live/OMwNSkXobBM?feature=share	1:31:37	3	Public Hearing	10:00	Amanda Hooten	- redistricting plan dissent	01:00	No	
10/12/2021	https://www.youtube.com/live/SotOLqDB2sk?feature=share	0:20:48	1	Public Comment	03:00	Dustin Catoe	- lynch river electric fiber project - interrupted several times by Julian	02:39	No	

10/12/2021	https://www.youtube.com/live/5ot0LqDB2sk?feature=share	0:23:30	2	Public Comment	03:00	Tim Webb	- curious about the decision making process - concerns about being ignored, oppressed, targeted by council - citizens threatened with removal from meetings for speaking against councils decisions - lack of transparency by council - using the Chronical as a mouthpiece of council	02:56	No	
10/12/2021	https://www.youtube.com/live/5ot0LqDB2sk?feature=share	0:26:36	3	Public Comment	03:00	Kay Vincent	- "rivernet" from Lynches River - Buffalo area citizens need internet access, feel they are being ignored by council in favor of Camden and Lugoff - compared actions of council to democrats in Washington - asked to wrap at 4:12	04:22	Yes	01:22
10/12/2021	https://www.youtube.com/live/5ot0LqDB2sk?feature=share	0:31:14	4	Public Comment	03:00	Ben Tobin	- dump site on Springdale Road - too much trash due to new subdivisions added	00:45	No	
10/12/2021	https://www.youtube.com/live/5ot0LqDB2sk?feature=share	0:32:15	5	Public Comment	03:00	Phil Truesdale	- actions after he spoke at the last meeting - talking about a "certain individual" on the council ignoring their booth at the farmers market for years - that individual went to confront him at the market - was basically "attacked" by that individual - ended by clarifying that he was talking about the Chairman	03:25	Yes	00:25
10/12/2021	https://www.youtube.com/live/5ot0LqDB2sk?feature=share	0:35:55	6	Public Comment	03:00	Alan Cobb	- supported previous speakers - talked about areas being ignored by council - altercation at the park by a dog while the dog was on leash and the handler laughed - would like to see the Chronical report better about the meetings	02:05	No	
10/12/2021	https://www.youtube.com/live/5ot0LqDB2sk?feature=share	0:38:18	7	Public Comment	03:00	Ruth White	- supported previous speakers - complaint about council not listening to tax payers - complaint about wasting taxpayer money by supporting specific businesses - road fee, found unconstitutional by State, why not been refunded? - why is everyone in county charged sewer fee when they won't ever have access to it - council lost trust	02:51	No	

10/12/2021	https://www.youtube.com/like/Sot0LqDB2sk?feature=share	0:41:17	8	Public Comment	03:00	Tom Webb III	- Australia stuff - Covid Stuff - world economic agenda stuff	03:22	Yes	00:22
10/12/2021	https://www.youtube.com/like/Sot0LqDB2sk?feature=share	0:44:52	9	Public Comment	03:00	Robbie Lackey	- Hermitage Pond Rd rezoning issue	01:13	No	
10/12/2021	https://www.youtube.com/like/Sot0LqDB2sk?feature=share	0:46:32	10	Public Comment	03:00	Devin Lee	- basketball in the city - need for new sports facility	00:55	No	
9/14/2021	https://www.youtube.com/like/fd12Tciu-ho?feature=share	1:13:37	1	Public Comment	03:00	Al Bozard	- hotel in town dissent	00:49	No	
9/14/2021	https://www.youtube.com/like/fd12Tciu-ho?feature=share	1:14:38	2	Public Comment	03:00	Gayle Branham	- fees citizens are being charged in Kershaw County	03:20	Yes	00:20
9/14/2021	https://www.youtube.com/like/fd12Tciu-ho?feature=share	1:18:16	3	Public Comment	03:00	Katie Guinn	- objection to preserving user fees	00:34	No	
9/14/2021	https://www.youtube.com/like/fd12Tciu-ho?feature=share	1:19:10	4	Public Comment	03:00	Tim Webb	- objection to Project Seagull - called out the council for not listening	02:54	No	
9/14/2021	https://www.youtube.com/like/fd12Tciu-ho?feature=share	1:22:38	5	Public Comment	03:00	Don Canada	- against rezoning Hermitage Pond Road	03:59	Yes	00:59
9/14/2021	https://www.youtube.com/like/fd12Tciu-ho?feature=share	1:26:55	6	Public Comment	03:00	Ruth White	- against Project Seagull - we don't like our tax money used this way - asked to wrap at 5:05	05:38	Yes	02:38
9/14/2021	https://www.youtube.com/like/fd12Tciu-ho?feature=share	1:33:00	7	Public Comment	03:00	Sabria Phillips	- her 19yo son Jayden Phillips died - riding on a boat with an allegedly intoxicated 30 yo man - no one did anything to help - no investigation conducted - no charges filed - deputy's body cam watched her son dying, "leader" of that organization didn't watch the video - qualified immunity issue	07:02	Yes	04:02
9/14/2021	https://www.youtube.com/like/fd12Tciu-ho?feature=share	1:40:40	8	Public Comment	03:00	Tom Webb III	- signed up to speak against Project Seagull, switched to Liberty	01:24	No	
9/14/2021	https://www.youtube.com/like/fd12Tciu-ho?feature=share	1:42:24	9	Public Comment	03:00	Dr. Jim Hicuch	- against rezoning Hermitage Pond Road	03:36	Yes	00:36

9/14/2021	https://www.youtube.com/live/fd12Tciu-ho?feature=share	1:46:20	10	Public Comment	03:00	Brian Babil	- equality issues, equal under the law - Project Seagull is being treated very unequally by getting benefits that other businesses in KC don't get - got reprimanded by Julian for looking/speaking at the audience	03:01	Yes	00:01
9/14/2021	https://www.youtube.com/live/fd12Tciu-ho?feature=share	1:51:16	11	Public Hearing	10:00	Katie Guinn	- council has hoodwinked us all - interrupted by Julian for "attacking" council - against Project Seagull and the backroom deals/payoffs to council?	09:50	No	
9/14/2021	https://www.youtube.com/live/fd12Tciu-ho?feature=share	2:01:25	12	Public Hearing	10:00	Irving Branham	- against tax break for new hotel downtown while taxes for citizens go up	03:00	No	
9/14/2021	https://www.youtube.com/live/fd12Tciu-ho?feature=share	2:04:36	13	Public Hearing	10:00	Tom Webb III	- government is not looking out for the people - would like council to table Project Seagull and let citizens "mull it over" a bit longer	00:54	No	
9/14/2021	https://www.youtube.com/live/fd12Tciu-ho?feature=share	2:05:51	14	Public Hearing	10:00	Brian Babil	- interrupted while asking for total dollar amount of the tax break for the hotel - 'no back and forth' conversations repeated - the "deal" is not available for public review	07:25	No	
9/14/2021	https://www.youtube.com/live/fd12Tciu-ho?feature=share	2:13:34	15	Public Hearing	10:00	Phil Truesdale	- shady and unfair manner that Project Seagull went through - government should stay out of private business - people are sick and tired of the way government is treating them	02:22	No	

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 26-6380

MARK ROOTE,
Plaintiff-Appellant,

v.

**KERSHAW COUNTY; KERSHAW COUNTY SHERIFF'S OFFICE;
SHERIFF LEE BOAN, in his individual and official capacity;
and DANNY TEMPLAR, in his individual and official capacity,**

Defendants-Appellees.

On Appeal from the United States District Court
for the District of South Carolina

Case No. 3:25-cv-1392-SAL

The Honorable Sherri A. Lydon, District Judge

OPENING BRIEF OF PLAINTIFF-APPELLANT

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JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Appellant's claims arising under 42 U.S.C. § 1983 and the First and Fourth Amendments to the United States Constitution. The district court entered summary judgment on March 5, 2026 (ECF Nos. 25 and 26). Appellant timely filed a Notice of Appeal on March 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the district court erred in granting summary judgment on Count VI (First Amendment Retaliation) without applying the controlling standard established in *Gonzalez v. Trevino*, 602 U.S. 653 (2024), which holds that objective evidence of similarly situated individuals who were not arrested satisfies the *Nieves* exception and does not require virtually identical comparators.
2. Whether the district court committed reversible error on Count VII (Viewpoint Discrimination) by relying on an incomplete comparator analysis that omitted the strongest comparator — a speaker who addressed the same council at the same meeting on the same night as Appellant's arrest, exceeded the same time limit, and was not removed or arrested — while conflating Appellant's total time including a council-initiated procedural interruption and physical removal with his protected speech time for comparison purposes.
3. Whether the district court erred in granting summary judgment on Count V (Excessive Force) where genuine disputes of material fact exist regarding the proportionality of force applied against a non-threatening, passively resistant individual, the adequacy of the documented shoulder injury as a serious medical need, and the denial of medical care following overnight detention.
4. Whether the district court erred in granting summary judgment on Count VIII (First Amendment Monell claim against Kershaw County) where the record establishes a pattern of viewpoint-based enforcement at county council meetings sufficient to support municipal liability under *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978), and where the decision to arrest was made or ratified by a final policymaker.
5. Whether the district court erred in granting summary judgment on Count IX (First Amendment Monell claim against Kershaw County) where the record supports an inference that the county's failure to adequately train and supervise law enforcement officers regarding First Amendment limits at public government meetings was the moving force behind the constitutional violation Appellant suffered.

STATEMENT OF THE CASE

On October 11, 2022, Appellant Mark Roote — a disabled Army veteran with years of civic participation in Kershaw County, South Carolina — was arrested at a Kershaw County Council public comment session while exercising his First Amendment right to address his government. He was charged with Public Disorderly Conduct and Resisting Arrest.

On March 27, 2026, after forty-one months of prosecution, a jury of Appellant's peers returned a verdict of NOT GUILTY. The Resisting Arrest charge was dismissed before trial. No criminal conviction of any kind arose from the October 11, 2022 incident.

Appellant filed a civil rights complaint in the District of South Carolina (Case No. 3:25-cv-1392-SAL) raising claims under 42 U.S.C. § 1983. On March 5, 2026, the Honorable Sherri A. Lydon granted summary judgment for Defendants-Appellees on all federal claims. The district court remanded state law claims (false imprisonment, battery, negligence) to the South Carolina Court of Common Pleas. Appellant timely appealed the federal claims. Appellant proceeds pro se.

The district court's order is vulnerable on multiple grounds. Most critically, it failed to apply — and did not cite — *Gonzalez v. Trevino*, 602 U.S. 653 (2024), a unanimous Supreme Court decision issued less than two years before the order was entered, which directly controls the retaliatory arrest analysis and forecloses the district court's reasoning on Count VI. The district court's Count VII analysis relied on a factually incomplete comparator table that omitted the most powerful evidence in Appellant's favor and conflated Appellant's protected speech time with a council-initiated procedural interruption and a subsequent physical removal. On Count V, the court acknowledged Appellant's shoulder injury documentation while failing to apply the proper summary judgment standard. On Counts VIII and IX, the court failed to analyze the municipal liability implications of a civilian administrator's direct order to effectuate the removal, the documented pattern of selective enforcement across dozens of council meetings, and the absence of constitutional training on First Amendment limits.

STATEMENT OF FACTS

A. Background

Appellant Mark Roote has attended and spoken at Kershaw County Council public comment sessions since March 2020. His appearances are documented across fifteen council meetings. Over the period documented in the record, thirty-six of forty-nine speakers exceeded the applicable time limit at council meetings. None were removed by force or arrested. Appellant was the only speaker in the documented record ever subjected to forcible removal and criminal prosecution.

B. The October 11, 2022 Incident

On the evening of October 11, 2022, Appellant was present at the Kershaw County Council meeting at 515 Walnut Street, Camden, South Carolina. During the public comment period, each citizen was allotted three minutes and twenty seconds to speak. Appellant was the eighth of nine speakers.

Appellant began speaking. At 3:57 into his remarks, a bell sounded. At 4:12, a council member raised a point of order — not about Appellant's conduct, but about whether the bell itself should have been used. The council debated this procedural question among themselves until 4:39, during which time Appellant was not speaking. This council-initiated interruption consumed approximately 27 seconds of clock time attributable to internal council procedure. The podium microphone was cut off at 4:40. At 5:22, council microphones were cut off. Appellant continued to speak.

County Administrator Danny Templar — a civilian official with no law enforcement authority — stood and directed Sheriff Lee Boan to remove Appellant from the podium. The order came at 6:25 into the total clock time. It was one of removal only: Templar stated, "I want him out of here, Lee." There was no instruction to arrest, no claim that Appellant had committed a crime, and no direction beyond physical removal from the podium.

Sheriff Boan and Deputy Barry Nelson approached Appellant. Appellant did not flee, did not threaten anyone, and did not engage in any physical aggression. He entered a state of passive resistance — he sat cross-legged on the floor of the council chamber, holding his phone in his hands. At 6:31, Boan began physically dragging Appellant toward the exit.

During this process, Appellant realized his phone had stopped recording. He restarted the recording. At that point, Sheriff Boan grabbed the phone out of Appellant's hands and threw it on the floor. It was not until after Sheriff Boan seized and threw Appellant's phone that — for the first time — Boan announced: "You're under arrest."

At no point prior to seizing Appellant's phone did Sheriff Boan announce that Appellant was under arrest. Appellant verbally informed Boan that his arms did not bend in the manner being used to restrain him, a warning consistent with his pre-existing shoulder condition. Appellant was dragged through the hallway, was handcuffed using two sets of handcuffs

connected together due to his inability to flex his arms far enough behind his back, and was transported to the Kershaw County Detention Center.

Appellant spent the night in county custody. He received no medical attention despite notifying officials of his shoulder pain during intake. On October 12, 2022 — after his release — Appellant presented to the Dorn VA Medical Center Emergency Department, where he was diagnosed with a left shoulder sprain. Medical records document the diagnosis, x-ray findings, and a prescription for hydrocodone for severe pain. The shoulder injury has become a chronic condition. Appellant has been evaluated for possible surgical intervention.

The October 11, 2022 county council meeting — including the full public comment session and the arrest — was live-streamed and posted to Kershaw County's official YouTube channel the same evening. Video footage showing Appellant's phone actively recording while in Sheriff Boan's possession was subsequently posted to YouTube by Jeff Mattox in the days following the arrest. Appellant is continuing to review all video materials produced in discovery to determine whether any county-produced recordings also captured this footage.

C. The Bond Hearing

At Appellant's bond hearing, Sheriff Boan addressed the presiding judge regarding the conditions of release. Boan stated — on the record — that he was not concerned with the dollar amount of the bond. His stated objective was to ensure that Appellant could not return to Kershaw County Council meetings before his charges were adjudicated. The court accepted Boan's position and imposed as a condition of bond that Appellant was prohibited from in-person attendance at any county council meetings while charges were pending.

Appellant was barred from attending his own government's public meetings for forty-one months as a direct result of this bond condition — a condition sought by the same officer who effectuated his arrest.

D. The Full Picture of the October 11, 2022 Meeting

The record before the district court contained complete documentation of every speaker at the October 11, 2022 council meeting. Each citizen was allotted three minutes and twenty seconds. The following reflects the data provided to the court:

Speaker	Allotted	Actual	Over?	Notes
Dennis Outlaw (1st)	3:20	1:44	No	
William Howland (2nd)	3:20	4:46	Yes (+1:26)	No enforcement action
Tim Taylor (3rd)	3:20	2:59	No	
Mary Brandenberger (4th)	3:20	3:45	Yes (+0:25)	No bell; no enforcement action
Melody Dowhan (5th)	3:20	4:14	Yes (+0:54)	No bell; no enforcement action
Gina McClean (6th)	3:20	4:04	Yes (+0:44)	No bell; no enforcement action
Amanda Stephens (7th)	3:20	3:21	Yes (+0:01)	No enforcement action

Mark Roote (8th)	3:20	See below	Yes	Arrested; forcibly removed
Jeff Mattox (9th — post-arrest)	3:20	4:11	Yes (+0:51)	No enforcement action

Of the seven speakers who preceded Appellant that evening, four exceeded the three minute and twenty second limit by margins ranging from twenty-five seconds to one minute and twenty-six seconds. None were interrupted, warned, removed, or subjected to any enforcement action. Two of those four exceeded the limit by margins greater than Appellant's speech time before the removal order was issued.

Appellant's time on the record requires further breakdown. The total clock time attributed to Appellant — 6:31 — encompasses three distinct periods: (1) Appellant's protected speech, including the period before and after the bell at 3:57; (2) a 27-second council-initiated procedural interruption from 4:12 to 4:39, during which council member Jimmy Jones raised a point of order about whether the bell should have been used and the council debated the matter among themselves while Appellant was not speaking; and (3) the period from 6:25 to 6:31 during which Appellant had stopped speaking and was subject to a removal order from a civilian administrator followed by physical force. The relevant constitutional inquiry — the duration of Appellant's protected speech — does not encompass time consumed by council procedure or by a police encounter initiated by a civilian administrator's order.

Jeff Mattox, the ninth and final speaker, addressed the council after Appellant had been removed and arrested. Mattox spoke for four minutes and eleven seconds — fifty-one seconds over the same limit. The council member who presided over Appellant's removal was present. Sheriff Boan was present or in the building. No bell sounded. No warning was issued. No removal occurred. No arrest was made. The county posted Mattox's full remarks to its official YouTube channel that same evening.

The district court's Table 1 listed only the seven speakers who preceded Appellant and omitted Mattox entirely. The court's conclusion that Appellant "spoke significantly longer than anyone before him" and was "the only speaker who refused to yield" cannot survive the complete evidentiary record. The court was required to view this evidence in the light most favorable to Appellant and failed to do so.

E. Prior Proceedings

Appellant filed a civil rights complaint raising nine counts under 42 U.S.C. § 1983. The district court granted Defendants' motion for summary judgment on the federal claims on March 5, 2026, without citing or applying *Gonzalez v. Trevino*, 602 U.S. 653 (2024). The court remanded state law claims. Appellant filed his Notice of Appeal on March 26, 2026 — the day before his criminal trial. On March 27, 2026, a jury returned a Not Guilty verdict on the Public Disorderly Conduct charge. The Resisting Arrest charge had been dismissed prior to trial.

SUMMARY OF ARGUMENT

The district court's order should be reversed on five independently sufficient grounds.

First, the court granted summary judgment on Appellant's First Amendment retaliation claim (Count VI) without applying — or mentioning — *Gonzalez v. Trevino*, 602 U.S. 653 (2024). That unanimous Supreme Court decision, issued less than two years before the district court's order, directly controls this case. Under *Gonzalez*, a plaintiff need only present objective evidence that officers typically exercise their discretion not to arrest in similar situations — the comparison need not be to virtually identical conduct. The record contains exactly this: thirty-six of forty-nine documented speakers exceeded the same time limit without arrest; on the night of the arrest itself, four speakers exceeded the limit without consequence prior to Appellant's speech; and a subsequent speaker exceeded the same limit in the presence of the same officials without any enforcement action immediately after the Appellant's speech. The district court ignored this evidence entirely.

Second, the court's viewpoint discrimination analysis (Count VII) rested on a factually incomplete comparator table that compounded two independent errors. By listing only the seven speakers who preceded Appellant, the court omitted Jeff Mattox, who spoke after Appellant's arrest that same evening and exceeded the same limit without consequence. Additionally, the court's comparative analysis attributed to Appellant a clock time of 6:31 that included a 27-second council-initiated procedural interruption during which Appellant was not speaking, and a separate period of physical removal initiated by a civilian administrator's order. The district court was required to view the evidence in the light most favorable to the non-moving party and failed to do so on both counts.

Third, the excessive force analysis (Count V) failed to apply the proper summary judgment standard. The district court modified the Magistrate's recommendation in Appellant's favor by acknowledging the shoulder injury documentation — then failed to follow through on that correction. Genuine disputes of material fact exist regarding whether the force applied was proportionate to a non-threatening, passively resistant individual, and whether the overnight denial of medical care constitutes deliberate indifference to a documented serious medical need.

Fourth, the district court erred in dismissing Count VIII — Appellant's *Monell* claim against Kershaw County based on unconstitutional policy or custom. The record establishes that thirty-six of forty-nine documented speakers exceeded the applicable time limit without arrest or removal — a pattern demonstrating that selective enforcement against Appellant was the policy or custom in practice. Moreover, the arrest was effectuated at the direction of County Administrator Danny Templar — a civilian with final administrative authority over county operations — whose removal directive was escalated to an arrest by Sheriff Boan acting on his own independent — and constitutionally untrained — judgment. The district court's failure to analyze this evidence under *Monell* is reversible error.

Fifth, the district court erred in dismissing Count IX — Appellant's *Monell* claim based on failure to train and supervise. Where the need for constitutional training is so obvious that failure to provide it reflects deliberate indifference to citizens' rights, municipal liability attaches. *City of Canton v. Harris*, 489 U.S. 378 (1989). Sheriff Boan's conduct reflects the absence of training on the First Amendment limits of law enforcement authority at public government

meetings. The pattern of selective non-enforcement against other speakers further demonstrates that the absence of constitutional guardrails was systemic, not individual.

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON COUNT VI (FIRST AMENDMENT RETALIATION) WITHOUT APPLYING THE CONTROLLING STANDARD OF GONZALEZ v. TREVINO.

A. Standard of Review

This Court reviews a district court's grant of summary judgment de novo. Summary judgment is appropriate only where there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The court must view all facts and draw all reasonable inferences in the light most favorable to the non-moving party.

B. The Governing Legal Framework

A plaintiff claiming First Amendment retaliatory arrest must demonstrate that protected speech was a but-for cause of the arrest. *Nieves v. Bartlett*, 587 U.S. 391 (2019). However, *Nieves* created an objective exception: where a plaintiff presents evidence of officers "typically" not making arrests for the conduct at issue, the but-for causation requirement is satisfied by that comparative evidence even in the presence of probable cause. *Id.*

In *Gonzalez v. Trevino*, 602 U.S. 653 (2024), the Supreme Court unanimously clarified and expanded the *Nieves* exception. The Court held that a plaintiff need not identify a comparator whose conduct is "virtually identical" to the plaintiff's — only that officers typically exercise discretion not to arrest in situations like the plaintiff's. The Court emphasized that the exception is designed to capture cases where the arrest, while technically lawful, was motivated by the plaintiff's protected speech. *Id.* at 658-59.

The district court's order does not cite *Gonzalez v. Trevino*. It does not acknowledge the standard the Supreme Court articulated less than two years before the order was entered. This is reversible error.

C. The Record Satisfies the Gonzalez Standard

The record contains substantial objective evidence that officers typically did not arrest individuals for exceeding the time limit at Kershaw County Council meetings:

1. Thirty-six of forty-nine documented speakers exceeded the applicable time limit at Kershaw County Council meetings during the period documented in the record. None were arrested.
2. On the specific evening of Appellant's arrest — October 11, 2022 — four of the seven speakers who preceded Appellant exceeded the same three minute and twenty second limit, by margins ranging from twenty-five seconds to one minute and twenty-six seconds. None were removed or arrested. Jeff Mattox, the speaker

immediately following Appellant's removal, exceeded the same limit by fifty-one seconds. The same officials who had just arrested Appellant for exceeding the limit took no action against Mattox.

3. Sheriff Boan stated at Appellant's bond hearing that his objective was to prevent Appellant from returning to council meetings — not to address a public safety concern, not to enforce a content-neutral rule, but to suppress Appellant's continued presence at public government proceedings.

4. Sheriff Boan confirmed at deposition that he had never arrested anyone else at a Kershaw County Council meeting. (Entry 14-13, p.12.) This admission goes directly to the Gonzalez standard: officers “typically” did not arrest individuals for the conduct at issue. Boan’s own testimony establishes that Appellant was the sole instance of arrest at a council meeting across his entire tenure as Sheriff — making this not a close comparative question but a categorical one.

Under Gonzalez, this evidence satisfies the objective exception. The district court was required to apply this standard and failed to do so. The judgment on Count VI must be reversed.

D. The Not Guilty Verdict Provides Additional Objective Evidence

On March 27, 2026 — after the district court's summary judgment order — a jury of Appellant's peers found him Not Guilty of all charges arising from the October 11, 2022 incident. The criminal verdict constitutes additional objective evidence bearing on the but-for causation analysis: a unanimous jury concluded that the conduct underlying the arrest did not constitute a criminal offense. Where the criminal conduct that purportedly justified the arrest is itself rejected by the finder of fact, the inference that the arrest was motivated by protected speech is materially strengthened.

II. THE DISTRICT COURT COMMITTED REVERSIBLE ERROR ON COUNT VII (VIEWPOINT DISCRIMINATION) BY RELYING ON AN INCOMPLETE COMPARATOR ANALYSIS THAT OMITTED THE STRONGEST EVIDENCE.

A. Standard of Review

De novo. The court reviews factual findings underlying the summary judgment for genuine disputes of material fact, viewing the evidence in the light most favorable to the non-moving party.

B. The District Court's Analysis Rested on an Incomplete Record

The district court's Table 1 compared Appellant's speaking time against seven speakers who preceded him on October 11, 2022. Based on this analysis, the court concluded that Appellant "spoke significantly longer than anyone before" him and that he was "the only speaker who refused to yield."

Both conclusions are undermined by evidence the court excluded from its analysis.

The court's table omitted Jeff Mattox — the ninth and final speaker at the same meeting. Mattox spoke for four minutes and eleven seconds after Appellant's arrest, exceeding the same limit. He was not removed, not warned, and not arrested. His remarks — and the council's non-response — were captured on the county's own YouTube recording of the meeting, the same recording from which the court drew the seven-speaker table.

The omission of Mattox from the comparative analysis is not a peripheral evidentiary issue. Mattox is the single most powerful comparator in this record for three independent reasons:

1. Same meeting. The comparison is not across different dates, different officials, or different councils. It is the same meeting, same night, same officials, same time limit, same room.
2. Post-arrest timing. Mattox spoke after Appellant had already been arrested for the same conduct. The officials who had just arrested Appellant for exceeding the limit did not take any action against Mattox for exceeding the same limit. This is direct evidence of differential enforcement.
3. Source is county's own record. The county uploaded the full meeting recording to its official YouTube channel. The court could not reasonably exclude Mattox by claiming the evidence was unavailable or unverified — the county itself preserved and published it.

The district court's conclusion that Appellant presented "no evidence that time restrictions were applied in a discriminatory manner" cannot survive inclusion of this evidence. A reasonable factfinder presented with Mattox's post-arrest speech at the same meeting — by officials who had just arrested Appellant for the same conduct — could readily conclude that the time limit was not enforced neutrally.

C. The Court's Time Attribution Was Factually Incorrect

The district court's comparative table attributed to Appellant a total clock time of 6:31. This figure encompasses three legally and factually distinct periods that the court treated as a single undifferentiated block:

1. Appellant's protected speech, from the beginning of his remarks through the bell at 3:57 and continuing thereafter.
2. A 27-second council-initiated procedural interruption from 4:12 to 4:39, during which a council member raised a point of order about whether the bell should have been used and the council debated the matter among themselves. During this period, Appellant was not speaking. This time is attributable to internal council procedure, not to Appellant's exercise of First Amendment rights.
3. The period from 6:25 to 6:31, during which Appellant had ceased speaking and was subject to a removal order from civilian administrator Danny Templar, followed by physical force by Sheriff Boan.

The relevant constitutional comparator for a First Amendment viewpoint discrimination claim is the duration of protected speech — not the duration of a council procedural debate or a subsequent police encounter. The court's inclusion of these periods in Appellant's "speaking time" artificially inflated his apparent violation and distorted the comparative analysis against the non-moving party.

For both reasons — the omission of Mattox and the improper time attribution — the Count VII ruling cannot stand. The judgment must be reversed and remanded for analysis under the correct evidentiary record.

III. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON COUNT V (EXCESSIVE FORCE) WHERE GENUINE DISPUTES OF MATERIAL FACT EXIST REGARDING PROPORTIONALITY AND HARM.

A. Standard of Review

De novo. Excessive force claims under the Fourth Amendment are analyzed under the objective reasonableness standard of *Graham v. Connor*, 490 U.S. 386 (1989). Courts consider the severity of the crime at issue, whether the suspect posed an immediate threat to officers or others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight. *Id.* at 396.

B. Genuine Disputes of Material Fact Preclude Summary Judgment

The district court acknowledged, on Appellant's objections to the Magistrate's recommendation, that the record contains medical documentation of Appellant's shoulder injury. The Magistrate had incorrectly stated that Appellant presented no evidence of injury. The district court corrected that finding. Having corrected it, the court was required to apply the summary judgment standard to the corrected factual record — but failed to do so in a manner that recognized the genuine disputes created by that evidence.

The following facts are documented in the record and create genuine disputes of material fact on the excessive force claim:

1. Appellant was engaged in passive resistance — sitting cross-legged on the floor — not fleeing, not threatening officers, and not engaging in any physical aggression.
2. Appellant verbally warned Sheriff Boan, before handcuffing, that his arms did not bend in the manner being employed. This warning was ignored.
3. The following day, Appellant presented to the Dorn VA Medical Center Emergency Department and was diagnosed with left shoulder sprain. The medical record documents x-ray findings and a prescription for hydrocodone for severe pain. This shoulder condition has become chronic.
4. Appellant received no medical attention during overnight detention despite informing officials of his shoulder pain during intake.
5. The arrest was effectuated on the order of a civilian administrator with no law enforcement authority, not in response to a threat or exigency.

Under *Graham v. Connor*, the relevant inquiry is whether the force was objectively reasonable given these circumstances. A jury could reasonably find that forcing an individual with a documented shoulder condition to put his arms behind his back after receiving a verbal warning — in the context of enforcing a county council time limit at a civilian administrator's direction — was not objectively reasonable. That is a genuine dispute of material fact, not a question appropriate for summary judgment.

C. The Denial of Medical Care Presents a Separate Cognizable Claim

Where a pretrial detainee presents to officials with a documented serious medical need and officials are deliberately indifferent to that need, a constitutional violation occurs. *Estelle v. Gamble*, 429 U.S. 97 (1976). Appellant documented his shoulder pain during intake at the Kershaw County Detention Center. He received no medical attention. The following day, the injury required emergency medical evaluation and prescription pain medication. These facts, taken in the light most favorable to Appellant, create a genuine dispute as to whether the denial of overnight medical care constituted deliberate indifference to a serious medical need.

IV. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON COUNT VIII (MONELL — UNCONSTITUTIONAL POLICY OR CUSTOM) WHERE THE RECORD DEMONSTRATES A PATTERN OF VIEWPOINT-BASED ENFORCEMENT ATTRIBUTABLE TO KERSHAW COUNTY.

A. Standard of Review

De novo. Summary judgment on a Monell claim is reviewed under the same standard as any other summary judgment ruling: whether there is a genuine dispute of material fact and whether the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

B. Legal Framework

A municipality is liable under 42 U.S.C. § 1983 where a constitutional violation results from: (1) an official policy; (2) a widespread custom or practice; or (3) a decision by an individual with final policymaking authority. *Monell v. Dep't of Social Services*, 436 U.S. 658, 694 (1978); *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986). The plaintiff must show that the municipal policy or custom was the "moving force" behind the constitutional violation. *Board of Cty. Comm'rs v. Brown*, 520 U.S. 397, 404 (1997).

C. The Record Supports Monell Liability on Multiple Independent Grounds

1. Custom and Practice: Selective Enforcement

The record documents thirty-six of forty-nine speakers at Kershaw County Council meetings exceeding the applicable time limit by more than 30 seconds without arrest, removal, or any enforcement action — including four speakers on the same night prior to Appellant's arrest. This pattern — spanning multiple meetings and multiple council sessions — is not merely background context for the individual claims. It is direct evidence of a county-wide custom: time limits at council meetings were selectively enforced, and that selective enforcement was directed at Appellant specifically while others engaged in the identical conduct without consequence.

A widespread custom does not require a formally enacted policy. It requires evidence of a practice "so persistent and widespread as to practically have the force of law." *Monell*, 436 U.S. at 691. The documented pattern here satisfies this standard at the summary judgment stage. A reasonable jury could find that the custom was viewpoint-based enforcement of a facially neutral rule.

2. Final Policymaker: Templar's Direct Order

The directive to remove Appellant was issued by County Administrator Danny Templar — a civilian official exercising final administrative authority over county government operations. Templar stated: "I want him out of here, Lee." That directive was a removal order only. Templar confirmed at deposition that he "never had any intent of having him arrested."

(Entry 14-9, p.14.) The decision to arrest belonged entirely to Sheriff Boan, who confirmed at deposition: “it was my decision 100 percent that he needed to leave.” (Entry 14-13, p.12.) Where an individual with final policymaking authority initiates a constitutional encounter and the officer exercising independent arrest authority does so without adequate constitutional training, both the policymaker’s directive and the officer’s independent judgment expose the municipality to liability.

Where an individual with final policymaking authority makes a decision that results in a constitutional violation, the municipality is directly liable. *Pembaur*, 475 U.S. at 480-81. Templar's directive was not a deviation from county policy — it was county policy, executed in real time by a final policymaker on behalf of Kershaw County.

3. Ratification

Even if Templar's directive alone were insufficient, Kershaw County ratified the constitutional violation through subsequent conduct: posting the full video of the meeting and arrest to its official YouTube channel the same evening; pursuing criminal prosecution for forty-one months; and failing — even after a Not Guilty verdict — to rescind the trespass notice issued in connection with the same incident until after service of the official complaint, 2026-CP-28-00408. Ratification of an unconstitutional act by county officials supports Monell liability. *Board of Cty. Comm'rs v. Brown*, 520 U.S. at 406-07.

The judgment on Count VIII must be reversed.

V. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON COUNT IX (MONELL — FAILURE TO TRAIN AND SUPERVISE) WHERE SHERIFF BOAN'S CONDUCT REFLECTS THE ABSENCE OF ADEQUATE CONSTITUTIONAL TRAINING ON FIRST AMENDMENT LIMITS.

A. Standard of Review

De novo.

B. Legal Framework

A municipality may be liable under § 1983 for failure to train where: (1) the training provided was inadequate; (2) the municipality was deliberately indifferent to the rights of persons with whom its employees come into contact; and (3) the inadequate training caused the constitutional violation. *City of Canton v. Harris*, 489 U.S. 378, 388-91 (1989). Deliberate indifference may be inferred where the need for training is obvious — where constitutional violations are a "highly predictable consequence" of the failure to train. *Board of Cty. Comm'rs v. Brown*, 520 U.S. at 409.

C. The Record Supports Failure to Train Liability

1. The Need for First Amendment Training Was Obvious

Law enforcement officers who interact with citizens at public government meetings exercise authority in a setting where First Amendment rights are at their apex. Public comment sessions at county council meetings are classic public forums. The constitutional limits on removing or arresting a speaker at such a session — particularly absent any threat, disruption, or safety concern — are not arcane or unsettled. The need to train officers on those limits was obvious.

2. Sheriff Boan's Conduct Reflects Absence of Constitutional Training

Sheriff Boan's conduct on October 11, 2022 demonstrates a failure of First Amendment training at every stage of the encounter:

(a) County Administrator Danny Templar initiated the encounter by standing and directing Sheriff Boan to escort Appellant out — a removal order only, with no instruction to arrest. Boan then exercised independent constitutional judgment as to whether arrest was warranted. That judgment was constitutionally deficient. At his deposition, Boan confirmed: "it was my decision 100 percent that he needed to leave." (Entry 14-13, p.12.) The decision to escalate from removal to arrest belonged entirely to Boan — and it was made without adequate First Amendment training on the limits of law enforcement authority in a public forum. Templar's deposition confirms he "never had any intent of having him arrested." (Entry 14-

9, p.14.) The gap between Templar's intent and Boan's action is direct evidence of the absence of constitutional training: Boan made an independent arrest decision at a public government meeting without the constitutional framework to make it correctly.

(b) Boan applied physical force to a passively resistant individual without issuing any prior lawful command, without asserting probable cause, and without announcing an arrest until after seizing Appellant's recording device.

(c) Boan stated at Appellant's bond hearing that his objective was to prevent Appellant from returning to county council meetings — not to address a public safety threat or enforce a law. This stated objective reflects a fundamental misunderstanding of the First Amendment limits on law enforcement authority in a public forum.

3. The Pattern of Non-Enforcement Reflects Systemic Absence of Standards

The documented pattern of non-enforcement against thirty-six other speakers at county council meetings — including four on the same night — followed by forcible arrest of Appellant, reflects not individual deviation from constitutional norms but the absence of any consistent constitutional standard applied to time-limit enforcement. Where no consistent standard exists, the inference is that no adequate training existed to establish one. The "moving force" requirement of City of Canton is satisfied where the absence of training created conditions under which constitutional violations were a predictable consequence of officer discretion exercised without constitutional guardrails.

The judgment on Count IX must be reversed.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the district court's grant of summary judgment on Counts V, VI, VII, VIII, and IX, and remand this matter for further proceedings consistent with the controlling legal standards — including, most critically, the standard established by the Supreme Court in *Gonzalez v. Trevino*, 602 U.S. 653 (2024), which the district court failed to apply.

The record in this case is straightforward: a disabled Army veteran was arrested at a public government meeting for exercising a constitutional right, at the direction of a civilian administrator with no law enforcement authority. On the night of the arrest, four of the seven speakers who preceded him exceeded the same time limit without consequence. The speaker immediately after his arrest exceeded the same limit in the presence of the same officials without consequence. The district court's comparative analysis attributed to Appellant a clock time that included a council-initiated procedural interruption during which he was not speaking and a period of physical removal that followed a civilian administrator's order. The arresting officer stated on the record that his goal was to prevent Appellant from returning to council meetings. The district court applied summary judgment without citing the controlling Supreme Court standard from *Gonzalez v. Trevino*, omitted the strongest comparator from its factual analysis, and failed to recognize the municipal liability implications of a civilian administrator's direct order.

A unanimous jury found Appellant Not Guilty of all charges arising from the same incident. These facts, taken together and viewed in the light most favorable to the non-moving party, preclude summary judgment on all five counts.

Appellant respectfully requests reversal and remand on Counts V, VI, VII, VIII, and IX.

Respectfully submitted,

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Date: April 20, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7) because it contains fewer than 13,000 words, excluding the parts of the brief exempted by Rule 32(f).

I further certify that this brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in Times New Roman, 12-point font.

Mark Roote

Mark Roote, Pro Se

Date: April 20, 2026

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2026, I electronically filed the foregoing Opening Brief of Plaintiff-Appellant with the Clerk of the United States Court of Appeals for the Fourth Circuit using the CM/ECF system, which will send notification of such filing to counsel for Defendants, addressed to:

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Mark Roote, Pro Se

In the United States District Court
District of South Carolina
Columbia Division

Case No.: 3:25-CV-01392-SAL-SVH

Mark Roote,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	Deposition
	)	
Kershaw County; Kershaw	)	of
County Sheriff's Office;	)	
Sheriff Lee Boan,	)	Sheriff Lee Boan
individually and in his	)	
official capacity as	)	
Kershaw County Sheriff;	)	
and Danny Templar,	)	
	)	
Defendant(s).	)	

Date: November 11, 2025

Time: 11:01 a.m.

Location: Via Remote Videoconference for All Parties

Reported by
Cynthia H. Patterson

Appendix O

1 And -- and they usually go over the -- the -- the
2 rules of the public comments prior to letting the
3 first speaker start.

4 Q Okay. Have you ever had to arrest anybody else at
5 a council meeting?

6 A No. No, I don't . . .

7 Q When you went to stand next to him, did someone
8 tell you to do that, or did you kind of think that
9 was the -- what needed to happen right then?

10 A Yeah, I just felt like that's what needed to
11 happen. I was trying to -- you know, again, our
12 role as peacemakers, we want to keep the peace.
13 You know, I want to let Mr. Roote say what he wants
14 to say, and -- and council, you know, gives that
15 microphone up for him to say what he's going to
16 say, and . . .

17 Q Okay. Same -- same question about when -- when it
18 moves from you standing next to him to you trying
19 to remove him. Was that something you decided to
20 do, or did someone tell you this -- "We need to get
21 him out of here"?

22 A I remember our county administrator, Danny,
23 standing up and coming over toward us. But I mean,
24 at that point, it was -- it was my decision 100
25 percent that he needed to leave at that point

1 there. He's disrupted -- the council meeting had
2 come to a stop. They started cutting microphones,
3 and I think they even went to a recess or
4 something. So he completely stopped the council
5 meeting that other members of the public were there
6 to watch and observe in an orderly manner, and he
7 went well beyond that. And so I mean, I -- I made
8 a decision at that point there -- you know, we
9 couldn't go forward with him standing there, and
10 that he needed to be escorted out.

11 Q Okay. And it's -- if I understand you, it is the
12 behavior between you starting to escort him out and
13 getting him out that led to the arrest for the
14 crime of public disorderly conduct?

15 A Yeah. Yeah, because like I said, my intention to
16 start with was just to escort him out -- when I
17 first put my hand on him and -- and got his
18 paperwork, was to escort him out and just tell him,
19 Hey, you got to leave." You know, "You've
20 disrupted the council meeting enough," and -- but
21 that's when he dropped to the ground and you know,
22 forced us to drag him out and started yelling
23 profanity. And at that point there, he's got -- he
24 got what I -- I definitely considered disorderly
25 conduct.