

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

* * * *

Appeal No. 30008

* * * *

TAMMY BOHN, JUSTIN BOHN, and BRENDA VASKNETZ,
Petitioners and Appellants,

vs.

FAY BUENO, in her capacity as Finance Officer for the City of Sturgis; MARK
CARSTENSEN, in his capacity as Mayor for the City of Sturgis; and MIKE BACHAND,
ANGELA WILKERSON, DAVID MARTINSON, BEKA ZERBST, JASON
ANDERSON, AARON JORDAN, DEAN SIGMAN, and KEVIN FORRESTER, in their
capacities as Aldermen for the City of Sturgis,
Respondents and Appellees.

* * * *

APPEAL FROM THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
MEADE COUNTY, SOUTH DAKOTA

* * * *

THE HONORABLE KEVIN J. KRULL
Circuit Court Judge

* * * *

APPELLANTS' BRIEF

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PRELIMINARY STATEMENT

Appellants Tammy Bohn, Justin Bohn, and Brenda Vasknetz are collectively referred to as “Citizens”. Appellee Faye Bueno is referred to as “Bueno”. The remaining Appellees are collectively referred to as “Sturgis Council”. Bueno and Sturgis Council will be together referred to as “Sturgis”. The Circuit Court in Meade County, South Dakota, Judge Kevin J. Krull presiding, is referred to as “Trial Court”.

References to the Clerk of Court’s certified record are prefaced with “CR”. References to specific pages in the Appendix to this brief are prefaced with “A”. References to the transcript for the January 18, 2022 scheduling hearing will be prefaced with “ST” for ‘scheduling transcript’. References to the February 14, 2022 motions hearing will be prefaced with “HT” for ‘hearing transcript’. The video of the Sturgis Council’s December 27, 2021 special meeting is a physical exhibit and will be referred to as “Exhibit 11”.

JURISDICTIONAL STATEMENT

This is an appeal of the Memorandum Decision and Order entered by the Honorable Judge Kevin J. Krull of the Fourth Judicial Circuit Court, Meade County, South Dakota, entered on April 14, 2022. CR 431-432; A 1-4. Notice of Entry of Memorandum Decision and Order was served on April 28, 2022. CR 425-426. The Notice of Appeal was filed on May 25, 2022. CR 431-432.

LEGAL ISSUES

1. Whether the South Dakota Supreme Court should modify the Memorandum Decision and Order to issue a writ of mandamus.

2. Whether the Trial Court erred by denying the Citizens' Motion Regarding Scope of Sturgis' Argument.

3. Whether the Trial Court erred by granting summary judgment.

STATEMENT OF THE CASE AND FACTS

Case History

This mandamus proceeding was initiated on January 3, 2022. CR 130. On January 18, 2022 the Trial Court held a telephonic scheduling hearing and subsequently entered a Scheduling Order on January 21, 2022. CR 138. At the January 18, 2022 scheduling hearing the Trial Court scheduled a motions hearing for February 14, 2022, with a hearing on Citizens' mandamus action to immediately follow. ST 7:13-16; A 61. The Trial Court also granted Citizens' request to serve all respondents by and through the Sturgis City Attorney. ST 8:15-22; A 62. The Court filed a Scheduling Order on January 21, 2022. CR 138-139; A 5-6.

During the February 14, 2022 motions hearing the Court denied Citizens' motion to strike certain pages found in the record (HT 14:3-14; A 65), denied Citizens' Motion Regarding Scope of Respondents' Argument (HT 20:20-22; A 68), and granted summary judgment (HT 43:8-9; A 77). After making the bench rulings, the Trial Court denied Citizens' request for reconsideration on the summary judgment issue. HT 46:23-24; A 80. The Trial Court also refused to proceed with the hearing on the mandamus issues. HT 47:20-48:3; A 81-82.

The Court entered and filed its written Memorandum Decision and Order on April 14, 2022. CR 421-424; A 1-4. The Notice of Entry of Memorandum Decision and Order was filed and served by Sturgis on April 28, 2022. CR 425-426.

Citizens filed and served their Notice of Appeal on May 25, 2022. CR 431-432.

Statement of Facts

In 2007 a petition was filed in Sturgis to change the “form” of government in Sturgis to a “city manager form of government”. CR 227-228. Sturgis City Council passed Resolution 2007-09 on February 20, 2007 titled “Resolution Setting the Election Date for Vote on *Change in Form of Government*”. CR 228, 255-256 (emphasis added); A 11-12. Resolution 2007-09 resolved “that the question of the change in *form* of city government be submitted for a vote.” CR 228, 256 (emphasis added); A 11-12. After the 2007 election, the votes were canvassed in Resolution 2007-15, which tallied the votes as being either “For the Change in *Form of Government*” or “Against the Change in *Form of Government*”, ultimately finding “For the Change in *Form of Government*” received a majority of the votes cast and it is hereby declared “that the City of Sturgis will change to the manager form of government.” CR 229, 260-261 (emphasis added); A 16-17. Sturgis has carried itself out as being a city manager “form” of government since 2007. CR 2, 145, 191-192, 234-237, 263, 274, 293, 297, 300 (second paragraph); A 19-24, 58-59.

Citizens are each a resident, taxpayer, and voter of the City of Sturgis, South Dakota. CR 1, 145. Citizens were among the sponsors and circulators of the petitions titled “Petition for Election to Change Municipal Government in the Municipality of Sturgis” (herein referred to as “Petition”). CR 1-2, 145. The Petition states:

WE THE UNDERSIGNED qualified voters of the municipality of STURGIS, the state of South Dakota, petition, pursuant to SDCL § 9-11-6 and other applicable law, petition that the municipal government of STURGIS be changed as follows and that the proposal be submitted to the voters for their approval or rejection pursuant to SDCL § 9-11-5:

The form of government for the municipality of Sturgis should be changed *from* the current form of municipal government (aldermanic *with* a city

manager form of government) *to* an aldermanic form of government *without* a city manager.

CR 2, 145.¹ The same Petition form that was used in 2007 to bring about the election to change to the “City manager form of government” was used by Citizens in this case. CR 228-230; *see* ARSD 5:02:08:23.²

On December 16, 2021 the Citizens and other circulators caused the Petition to be filed with Bueno, the Finance Officer for the City of Sturgis. CR 3, 145. The Petition contained approximately 900 signatures. *See* Petition. CR 2, 11-110, 145. Only 700 signatures were necessary to meet the fifteen percent threshold. Exhibit 11, at 25:15-25:27. After the Petition had begun to circulate, Sturgis executed an Addendum to City Manager Employment Agreement (“Addendum”) on November 16, 2021, nunc pro tunc December 21, 2020. CR 419-420; A 48-49. The Addendum anticipates and acknowledges the possibility of “[i]f the city residents vote to return to an aldermanic form of government without a city manager” CR 419; A 48. *See also* HT 35:18-38:14; A 71-74.

After the Petition was filed, Sturgis investigated “whether there were irregularities in the effort to get signatures on the Petition.” CR 211. Sturgis released the “City Attorney’s Report on Petition to Change Municipal Government in the Municipality of Sturgis” (hereinafter referred to as “CA Report”) on or about December 23, 2021. CR 122-126; A 25-29. After openly discussing the CA Report in open meetings, Sturgis later claimed during this mandamus proceeding that the investigation and its specific results

¹ Note, the Petition does not seek a vote on being a city manager *form* of government, but instead “*to* an aldermanic *form* of government *without* a city manager.” CR 2, 145 (original and added emphasis).

² There is no form in the ARSD for a petition specific to an office of city manager.

were “work product”. CR 211. On or about December 28, 2021, Sturgis published on its website a public release stating “Based upon a discussion during a Special City Council Meeting held on December 28, the City Finance Officer will neither validate nor invalidate petitions to Change Municipal Government”; the public release did not cite any legal authority for Bueno, the City Finance Officer, to “neither validate nor invalidate” the Petition. CR 3 (at ¶16), 121; A 30.

At the Sturgis Council meeting held on January 3, 2022, the Sturgis Council adopted Resolution 2022-08, which states, in part, that “the City has adopted the *City Manager form of government . . .*” CR 172, 191-192 (emphasis added); A 58-59. At the same Sturgis Council meeting on January 3, 2022, the Sturgis Council adopted Resolution 2022-11 acknowledging that “the petition sought to hold an election to change the City government from an Aldermanic with a City Manager to an Aldermanic government without a City Manager.” CR 193-194, 225; A 31-32.

This mandamus action was initiated immediately following the Sturgis Council meeting on January 3, 2022. CR 130-131.

In mid-January, 2022 (nearly a month after the Petitions were hand-delivered to the Finance Office and over a week after this action was initiated) Bueno provided Citizens with written notice that she was declining to certify the Petition (“Certification Denial”).³ CR 169, 174, 205, 207, 225, 245. The Certification Denial stated:

Prior to 1939, a contract employing a city manager was a proper subject of referendum. However, in 1939 state legislature granted due process rights

³ Citizens briefed and referred to Exhibit 14, which Citizens contend bears a date of January 13, 2022. CR 225. It appears that Exhibit 14 inadvertently did not get filed with the Court. It is unclear why the version of the Denial Letter Defendants filed (dated January 12, 2022) with the Court is dated differently from the Denial Letter actually sent to Citizens (dated January 13, 2022).

to city managers and vested the exclusive power to employ and discharge city managers with the municipal governing body. Employment decisions are administrative decisions within the meaning of South Dakota law and are not subject to the referendum.

Because the question posed is not subject to referendum, I decline to certify the Petition for Election to Change Municipal Government in the Municipality of Sturgis.

Id. (emphasis added). The Certification Denial did not raise any issue relating to there being an insufficient number of valid signatures on the Petition. *Id.*

STANDARD OF REVIEW

Summary judgment is reviewed de novo. *Hass v. Wentzlauff*, 2012 S.D. 50, ¶ 11, 816 N.W.2d 96 (internal citation omitted).

This Court may modify the Judgment appealed from. SDCL § 15-26A-12. “A judgment may be disturbed or modified if ‘refusal to take such action appears to the court inconsistent with substantial justice’ because ‘substantial rights of the parties’ will otherwise be jeopardized.” *Matter of Estate of Tallman*, 1997 S.D. 49, ¶ 14, 562 N.W.2d 893 (citing SDCL § 15-6-61).

ARGUMENT

The crux of this case is whether, upon receipt of a petition, an unelected municipal finance officer has the discretion to forego their ministerial duties of certifying whether there are enough valid signatures, and instead act in a quasi-judicial manner to insert their subjective opinion to independently adjudicate a petition to be invalid without providing any due process.

This Court should give this matter finality by modifying the Memorandum Decision and Order to be a writ of mandamus directing Bueno to certify there are valid signatures on the Petition from at least fifteen percent of the voters, direct Bueno to

present the Petition to the Sturgis Council, and direct the Sturgis Council to schedule the election. Alternatively, this Court should reverse the Trial Court on all matters presented herein.

In South Dakota, “Under God the people rule.” S.D. Const. art. XXI, § 1:

All men are born equally free and independent, and have certain inherent rights, among which are those of enjoying and defending life and liberty, of acquiring and protecting property and the pursuit of happiness. To secure these rights governments are instituted among men, *deriving their just powers from the consent of the governed.*

S.D. Const. art. VI, § 1 (emphasis added). “The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue and by frequent recurrence to fundamental principles.” S.D. Const. art. VI, § 27.

One fundamental principal to heavily safeguard is Section 26 of the South Dakota

Constitution Bill of Rights:

All political power is inherent in the people, and all free government is founded on their authority, and is instituted for their equal protection and benefit, and *they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper.* And the state of South Dakota is an inseparable part of the American Union and the Constitution of the United States is the supreme law of the land.

S.D. Const. art. VI, § 26 (emphasis added). “*The right of petition*, and of the people peaceably to assemble to consult for the common good and make known their opinions, *shall never be abridged.*” S.D. Const. art. VI, § 4 (emphasis added).

Upon the receipt of the Petition, Bueno had no discretion to do anything other than to perform her ministerial duties of certifying whether or not there were enough valid signatures. ARSD 5:02:08:00 and 5:02:08:00.01; A 46-47. Instead, Bueno delayed the process, had Sturgis conduct an investigation without any authority to do so (and

without bearing any results), and then she independently adjudicated whether the Petition was “a proper subject of referendum” while depriving Citizens (and any other signors of the Petition) of any semblance of due process. *See* CR 207.

“When a petition to initiate is filed with the finance officer, the finance officer shall present the petition to the governing body at its first ensuing regular or special meeting. The governing body shall submit the petition to a vote of the voters in the manner prescribed for a referendum.” SDCL § 9-20-4.⁴ “As used in the South Dakota Codified Laws to direct any action, the term, shall, manifests a mandatory directive and does not confer any discretion in carrying out the action so directed.” SDCL § 2-14-2.1.

Due to the inclusion of the word “shall” in SDCL § 9-20-4, Bueno had an obligatory ministerial duty to present the Petition to the Council at the December 20, 2021 meeting. Bueno failed to present the Petition to the Council at its December 20, 2021, December 27, 2021, and January 3, 2022 meetings, directly ignoring her nondiscretionary duty pursuant to SDCL § 9-20-4.⁵

There is no authority enabling Bueno to withhold certifying the signatures on the Petition and request an investigation be done.

Despite Bueno having scrutinized the Petition by December 23, 2021 at the latest (as indicated by scrutiny of signatures in the CA Report), Bueno waited for an unreasonable amount of time – until January 13, 2022 and only after Citizens initiated

⁴ Additionally, the CA Report initially declared “The City Finance Officer should not schedule an election” CA Report 122 (at ¶ 1); A 25. The finance officer should never schedule an election – that is the statutory duty of the Sturgis Council.

⁵ Bueno never presented the Petition to the Sturgis Council.

this action – to notify the Citizens that she was declining to certify the Petition (not for any reason related to the number of valid signatures). CR 122-126, 174, 205, 207; A 25-29.⁶ Of course, this was all done after Sturgis tried to contract around the effect of a successful vote on the Petition (*see* Addendum).

The law has been clear since at least 1907 – petitions must be liberally construed. CR 246-247, 354-357; SL 1907, Ch. 166; Rev. Code 1919, § 5073; S.D. Code of 1939 § 55.046; SDCL § 2-1-11; SDCL § 9-20-10; A 33-38. Petitions “shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality.” SDCL § 2-1-11; *see* also SDCL § 9-20-10; CR 357; A 38.

[T]he right of the people to be heard on legislative issues of the day should be maintained and by the legislative directive found in SDCL 2-1-11 that the real intention of the petitioners should not be defeated by mere technicalities.

Nist v. Herseth, 270 N.W.2d 565, 567 (S.D. 1978).⁷ Again, the “right to petition . . . shall never be abridged.” S.D. Const. art. VI, § 4.

⁶ The reason Bueno’s decision for certification was so unreasonable is because the election would have to take place within such a short time period. Bueno had an affirmative duty to “immediately” notify Citizens by certified mail if their Petition was rejected or declared invalid, to wit:

The person in charge of the election shall immediately notify by certified mail any candidate whose nominating petition or any primary sponsor whose referendum or initiative petition is rejected and declared invalid in accordance with §§ 12-1-13 and 12-1-14.

SDCL § 12-1-15.

⁷ Citizens are unaware of any other petition matters that requires fifteen percent or more of the electorate to sign to get on the ballot. Even an initiative to amend the Constitution only requires signatures by ten percent of the electorate. S.D. Const. art. XXIII, § 1. This is a legislative issue of the day in Sturgis, and the people should be afforded the opportunity have an election.

The Petition cited SDCL § 9-11-5 (as was done in 2007) as well as “SDCL §9-11-6 and other applicable law”; Citizens asked the Trial Court to issue a writ of mandamus directing an election under either SDCL §§ 9-10-1 or 9-11-6. CR 7.

If a petition signed by fifteen percent of the registered voters of any first or second class municipality as determined by the total number of registered voters at the last preceding general election is presented requesting that an election be called to vote upon the proposition of employing a city manager, the governing body shall call an election for that purpose. Upon receipt of a valid petition, the question shall be presented at the next annual municipal election or the next general election, whichever is earlier. However, the governing body may expedite the date of the election by ordering, within ten days of receiving the petition, a special election to be held on a Tuesday not less than thirty days from the date of the order of the governing body.

The election shall be held upon the same notice and conducted in the same manner as other municipal elections. The vote upon the question of employing a city manager shall be by ballot which conforms to a ballot for statewide question except that the statement required to be printed on the ballot shall be prepared by the municipal attorney.

SDCL § 9-10-1; CR 129; A 39.

If a petition signed by fifteen percent of the registered voters of any municipality, as determined by the total number of registered voters at the last preceding general election, is presented to the governing body, requesting that an election be called for the purpose of voting upon a question of change of form of government or upon a question of the number of wards, commissioners, or trustees, the governing body shall call an election to be held within fifty days from the date of the filing of the petition with the municipal finance officer. At that election, the question of the change of form of government or the number of wards, commissioners, or trustees, or both, must be submitted to the voters. No petition is valid if filed more than six months after the circulation start date declared on the petition forms. If the petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply with the provisions of § 9-13-14, the question may be submitted at that annual municipal election.

The election must be held upon the same notice and conducted in the same manner as other city elections.

SDCL § 9-11-6; CR 129; A 39.

The voters of any municipality may change its form of government or change the number of its commissioners, wards, or trustees by a majority vote of all electors voting at an election called and held as provided. Any municipality under special charter may adopt any form of government as provided in this title.

SDCL § 9-11-5; A 40. SDCL § 9-11-5 was last amended in 2000 as follows:

Section 3. That § 9-11-5 be amended to read as follows:

9-11-5. The voters of any ~~first or second class~~ municipality may change its form of government ~~from the aldermanic to the commission or from the commission to the aldermanic, or may change the number of its commission, or change its form of government from the city manager plan to the aldermanic or commission plan, or from any form of the aldermanic or aldermanic manager plan to any form of the commission or commission manger plan and vice versa~~ or change the number of its commissioners, wards, or trustees by a majority vote of all electors voting at an election called and held as ~~hereinafter~~ provided. ~~Municipalities~~ Any municipality under special charter may ~~in like manner~~ adopt any ~~of the forms~~ form of government as ~~hereinabove~~ provided in this title.

SL 2000, ch 34, § 3; CR 243; A 41-42.⁸ If SDCL § 9-11-5 can be used to create an office of city manager, certainly it can be used to terminate the office as well. South Dakota law has expressly used the phrase “city manager form of government” since at least 1959. 1959 SL, ch 268 (in part), SL 1995, ch 45 (in part), and SDCL § 9-14-19; CR 243-244; A 43-44. This Court recognized the “city-manager form of government” as recently as 2014. *Kolda v. City of Yankton*, 2014 S.D. 60, ¶ 2, 852 N.W.2d 425.⁹

⁸ Note the previous use of “city manager plan.”

⁹ The opinion acknowledges and states as a fact that Yankton is “a city-manager form of government.”

An aldermanic government with a city manager is substantively different in numerous ways from an aldermanic government without a city manager. CR 404; A 45. *See also Kolda*, at ¶¶ 12-16.¹⁰

The ‘city manager plan’ and/or ‘city manager form’ of government has been recognized by South Dakota law for a long time. Both SDCL §§ 9-10-1 and 9-11-6 require a petition be signed by at least fifteen percent of the voters, and nothing makes the use of one statute more exclusive over the other. Citizens have the constitutional right to alter or reform their government, and their right to petition “shall never be abridged.” S.D. Const. art. VI, §§ 26 and 4. If the Petition used in 2007 was used to create an office of city manager, then the Citizens are able to bring forward the Petition and have an election on the issue of terminating the office of city manager under either SDCL §§ 9-10-1 and/or 9-11-6.

1. This Court Should Issue a Writ of Mandamus.

The South Dakota Supreme Court should modify the Trial Court’s Memorandum Decision and Order to issue a writ of mandamus. This Court can modify the judgment or order appealed from. SDCL § 15-26A-12. “A judgment may be disturbed or modified if ‘refusal to take such action appears to the court inconsistent with substantial justice’ because ‘substantial rights of the parties’ will otherwise be jeopardized.” *Matter of Estate of Tallman*, 1997 S.D. 49, ¶ 14, 562 N.W.2d 893.

When Bueno was presented with the Petition, her “duties were purely ministerial, limited to matters apparent on the face of the petition”. *Larson v. Hazeltine*, 100, ¶17,

¹⁰ For example, the mayor under a city manager government is really an alderman at large, is not the chief executive officer, and has no veto power. CR 404; A 45.

552 N.W.2d 830, 835 (S.D. 1996) (internal citation omitted). Bueno’s ministerial duties were simple: certify whether there were enough valid signatures. CR 2 (at ¶16), 196 (at ¶3).¹¹ It is not disputed that there were enough signatures on the Petition for certification.

¹¹ Administrative Rules of South Dakota (“ARSD”) 5:02:08 is applicable to petitions for municipal elections. *Anderson v. City of Tea*, 2006 S.D. 112, ¶ 10, 725 N.W.2d 595.

ARSD 5:02:08:00 states, in relevant part:

Guidelines for acceptance of petitions. When a petition is presented for filing, the person or governing board authorized to accept the petition shall determine if it meets the following requirements:

- (1) The petition is in the form required by this chapter;
- (2) The petition contains the minimum number of valid signatures, counted according to § 5:02:08:00.01. One or more invalid signatures on a petition do not disallow other valid signatures;
- (3) Each sheet of the petition contains an identical heading and is verified by the circulator. The circulator may add the addresses of the petitioners and the dates of signing before completing the verification. The circulator may also add the printed name of the signer and the county of voter registration. Residence addresses may be abbreviated. The verification was completed and signed before an officer authorized to administer oaths in this state;
- ...
- (7) The governing board or person authorized to accept the petition shall, if requested, allow a petition circulator the opportunity to add missing information on the signature lines or circulator’s verification on the petition provided the filing deadline has not passed; and
- (8) Following the presentation of the petition for filing, names may not be removed from the petition.

Except for petitions to nominate candidates for school boards, municipal offices, or statewide campaigns, the person who is authorized to accept petitions for filing need not check for voter registration of the signers. Petitions containing signatures in excess of the minimum number may be filed, but any excess signatures will be disregarded, unless there is a

CR 7 (at ¶ 27); HT 18:9-11; A 67. There is no authority enabling Bueno, an unelected municipal finance officer, to forego her ministerial duties of certifying the signatures on the Petition and to independently adjudicate that the Petition was not valid for reasons other than not containing enough valid signatures. Instead of certifying whether there were valid signatures from at least fifteen percent of the voters of Sturgis, Bueno and Mayor Carstensen asked the City Attorney to conduct an investigation without any authority to do so and interfered with the Petition process.¹² The CA Report was publically released, and Bueno inappropriately made the Petition public prior to completing the signature validation process.¹³

The intent of the Petition was acknowledged and admitted to by Sturgis in the Addendum executed about a month prior to the Petition being filed with Bueno:

“The City is informed and thereby believes that the technical termination of the Employee because of a change in form of City government election”

challenge to that petition. Excess signatures will not be considered by the filing office unless the signatures are needed to validate the petition.

CR127; A 46.

¹² The Mayor in an aldermanic scheme of government with a city manager is merely a councilman at large (*see* SDCL § 9-10-7(1)) – the Mayor has no role in certifying signatures on Petitions. It is not known why the Mayor was involved in certifying the signatures on the Petition.

¹³ SDCL Title 12 applies to municipal elections. SDCL § 12-1-2. The law prohibits a Petition being made public until completion of the validation process. SDCL § 12-1-39. Bueno improperly made the Petition public prior to completing the signature validation process. CR 4. Even though Citizens, through counsel, notified Sturgis at the December 27, 2021 Special Meeting that the Petitions were made public contrary to SDCL § 12-1-39, Sturgis did not remove the Petitions from the website. CR 4; Exhibit 11 at 17:00-17:30. Certainly this early release of the Petition and calling individual signors to question them about their signatures will have a chilling effect on Citizens signing petitions.

“If the City residents vote to return to an aldermanic form of government without a City Manager”

“Therefore, the parties understand that, if there is a change of form of government, the job performed by the Employee under his Employment Agreement could become that of the City Administrator”

CR 419-420; A 48-49. As Sturgis legislatively declared, “The Petition sought to hold an election to change the City government from an Aldermanic with City Manager to an Aldermanic government without a City Manager.” CR 194; A 32. The same day as the January 18, 2022 scheduling hearing in this mandamus action, the Sturgis Council declared by resolution that “therefore, it is hereby resolved by the Sturgis Common Council to strongly affirm its support and its use of the Office of Sturgis Manager within its municipal organizational staff” CR 367-369; A 51.

The Addendum (CR 419-420; A 48-49), public release of the Petition in violation of SDCL § 12-1-39 (CR 4), the public release of the CA Report (CR 122-126; A 25-29), and Sturgis’ January 18, 2022 Resolution 2022-13 (“a Resolution and Support of The Office of City Manager” CR 367-369; A 50-52) all illustrate Sturgis’ undemocratic desire to retain its city manager at the expense of suppressing the voice of the people. Sturgis’ aggressive resistance to having a free and fair election on the issue presented by the Petition undoubtedly has a chilling effect on the citizenry bringing forth petitions to have their voices heard.

It was only after Citizens were forced to initiate this Mandamus proceeding that Sturgis finally admitted there were valid signatures from at least fifteen percent of the Sturgis voters on the Petition. CR 215; HT 18:9-11, 32:10-14; A 67, 70. It was at this point that Bueno should have certified the signatures on the Petition and presented it to the Sturgis Council to schedule an election. Instead, Sturgis continued to resist.

Despite admitting the Petition had enough valid signatures, Bueno continued to forego her ministerial duties and adjudicated the petition invalid for reasons other than not containing enough valid signatures. CR 215; HT 18:9-11, 32:10-14; A 67, 70. This is not Bueno's duty and is not in her discretion. This is not the mark of a citizenry bearing the freedom to petition and reform the government, a government with "all political power [being] inherent in the people", nor a free government founded on the authority of the people. *See* S.D. Const. art. VI, § 26.

Citizens' right to petition their government under South Dakota's Constitution "shall never be abridged." S.D. Const. art. VI, § 4. Citizens' constitutional rights were not only jeopardized, but were trampled on in the public arena – including the veiled threat of criminal prosecution. (*see* CA Report at CR 122-126; A 25-29; *see also* Sturgis' Response to Motion Regarding Scope of Respondents' Argument, p. 4-6 at CR 211-213; A 53-55). Refusal to order an unelected bureaucrat to perform their ministerial duties is inconsistent with substantial justice. It is not disputed that there were enough valid signatures on the Petition and Bueno refused to certify them; the South Dakota Supreme Court should modify the Trial Court's Memorandum Decision and Order in this matter to issue a writ of mandamus ordering Bueno to certify the Petition, present the Petition to the Sturgis Council, and for the Sturgis Council to schedule an election.¹⁴ The matter can be speedily and finally resolved if this Court directs that the people are allowed to call an election on the issue.

¹⁴ If this Court issues the writ of mandamus, all of the other issues would become moot.

2. The Trial Court Erred by Denying Citizens’ Motion Regarding Scope of Respondents’ Argument.

The Trial Court erred by denying Citizens’ Motion Regarding Scope of Respondents’ Argument (“Scope Motion”). The Scope Motion asked the Court to limit Sturgis’ argument to the reason(s) set forth in the Certification Denial (i.e. that the question posed is not subject to referendum). CR 177. Sturgis expressly stated “city does not oppose [the motion].” CR 214. At the February 14, 2022 hearing the Trial Court ruled “. . . you know I see where there’s no objection to the motion, but I’m not going to grant the motion.” T 20:20-22.¹⁵

This action was initially brought because Bueno refused to certify whether there were enough valid signatures on the Petition, and therefore the Sturgis Council could not even consider the Petition to schedule an election. CR 1-8. It was only after the mandamus action was initiated that Bueno issued her Certification Denial Letter, albeit justifying her rationale to deny certification as “[b]ecause the question posed is not subject to referendum.” CR 204-207.¹⁶

¹⁵ Sturgis explicitly stated “Although the Petitioners’ current motion is inappropriate for the reasons identified above, the City does not oppose it.” CR 214. Sturgis went on to assert that “. . .the City will stipulate the Petition contains enough signatures to allow certification, but only if the question posed in the Petition is subject to referendum.” CR 215. Sturgis at the hearing then asserted “I have no objection to limiting the scope of this proceeding to whether the underlying question is appropriate. If it’s inappropriate, I am willing to stipulate that there are sufficient signatures on the petition for certification.” HT 18:7-11; A 67. It is unclear why Sturgis will stipulate that there are enough valid signatures – but only if certain conditions are met; there either are or are not enough valid signatures for certification. Because there are enough valid signatures, Bueno had a nondiscretionary and ministerial duty to present the Petition to the Sturgis Council to schedule an election. SDCL § 9-20-4.

¹⁶ Sturgis spent much of their briefing addressing the apparent employment rights of Mr. Daniel Ainslie, the current Sturgis City Manager. CR 156-166. Sturgis asserted that having an election on the Petition “would expose city government to liability for taking away this man’s job” HT 31:24-32:2; A 69, 70. Sturgis argued this despite the fact

The Scope Motion should have been granted for two independent reasons: A) Sturgis should be estopped from advancing the ‘form of government’ argument, and B) Sturgis failed to affirmatively plead the ‘form of government’ issue.

A. Sturgis should be estopped from advancing the ‘form of government’ argument.

Sturgis should be estopped from advancing their “form of government” arguments in this matter due to its long history of affirmative actions acknowledging Sturgis is under a ‘City Manager form of government’, which is wholly inconsistent with Sturgis’ arguments in this Mandamus action.

Sturgis legislatively determined the intent of the Petition on January 3, 2022 by Resolution 2022-11, which stated “WHEREAS, the petition sought to hold an election to change the city government from an aldermanic with a City Manager to an Aldermanic government without a City Manager” CR 232; A 32. Sturgis even went so far as to, after the Petition started to be circulated, execute the Addendum in an attempt to contract itself around a successful vote on the Petition. CR 419-420; A 48-49. In resistance of this mandamus action, Sturgis now argues against the Sturgis Council’s own legislative determination and against Sturgis’ rationale for executing the Addendum.

The doctrine of equitable estoppel or estoppel in pais is bottomed on principles of morality and fair dealing and is intended to subserve the ends of justice. When considering the application of equitable estoppel, each

that Sturgis had executed the Addendum – which was not provided to Citizens until immediately before the February 14, 2022 hearing. HT 35:18-38:14; A 71-74. This was all done despite the fact that Sturgis had already taken action to protect Sturgis and the employee in the acknowledged event that the voters could decide to terminate the office of city manager (i.e. the Addendum). CR 419-420; A 48-49. Sturgis even went so far as to argue that the only way to change the form of government is to run for City Council, remove the city manager from office, and then Citizens are “free to seek a change in the form of government.” CR 165-166. Sturgis’ argument ignores the law that “the term of a municipal officer is liable to change or termination by the transition which the corporation undergoes in the process in reorganization.” *Mitchell v. Herreman*, 41 N.W.2d 829 (S.D. 1950) (citing 62 CJS, Municipal Corporations, § 501, p.940).

case is dependent on application of the doctrine to the specific facts. When applying the doctrine to municipal corporations in matters pertaining to their governmental functions the basis of its application is municipal officers have taken some affirmative action influencing another which renders it inequitable for the municipality to assert a different set of facts.

Even v. City of Parker, 1999 S.D. 72, 597 N.W.2d 670 (internal citations omitted).

The same process used by Citizens in this matter was used in 2007 when Sturgis accepted a petition, set an election, and canvassed the votes on “the question of the change in form of city government” to become a “City Manager Form of Government”. CR 227-230, 255-256, 260-261; A 7-18. Since 2007, Sturgis has held itself out to be under the “City Manager form of government” many times and in many ways including resolutions (CR 234-236, 263, 274, 293; A 19-22) and City publications (CR 236-237, 297, 300; A 23-24).

To allow Sturgis to assert a different set of facts than what it has affirmatively held to be fact for the last fifteen years undermines morality and fair dealing. If Sturgis was indeed granted the special power of having an office of city manager in 2007, the same process can be used by Citizens in this case to withdraw the special power.¹⁷ The Scope Motion should have been granted for this reason alone.

B. Sturgis failed to affirmatively plead the ‘form of government’ issue.

Sturgis cannot raise new issues for summary judgment because the issues were not affirmatively plead. Sturgis’ sole affirmative defense was “Respondents aver that the

¹⁷ “All political power is inherent in the people, and all free government is founded on their authority, and is instituted for their equal protection and benefit, and they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper. And the state of South Dakota is an inseparable part of the American Union and the Constitution of the United States is the supreme law of the land”. S.D. Const. art. VI § 26.

question posed in the Petition is not referable as a matter of law. *See* SDCL § 9-20-19.” CR 146 (at ¶ 5), A 56 (original emphasis).

Sturgis’ argument is limited to the matters affirmatively plead. “A party has ‘a duty to plead’ affirmative defenses; failure to do so results in a bar to the defense.” *High Plains Genetics Research, Inc. v. J K Mill-Iron Ranch*, 535 N.W.2d 839 (S.D. 1995) (internal citation omitted).

Issues in a mandamus proceeding must be affirmatively plead by the Respondent; the Court in *Hinrichs* articulated that:

If the amount of the bonds was in fact in excess of the constitutional limitation, the burden would be upon the defendant to show that fact, as it would be a matter of defense to be affirmatively made on the part of the defendant.

State ex rel. Hinrichs v. Olson, 30 S.D. 460, 139 N.W. 109, 11-112 (S.D. 1912). Because Sturgis’ form of government arguments were not affirmatively plead, this Court should reverse the Trial Court’s decision on the Scope Motion for this reason alone.

The Trial Court erred by denying Citizens’ Motion Regarding Scope of Respondents’ Argument. Mandamus should have been entered against Bueno ordering her to fulfill her ministerial duties and certify the undisputed fact that there were enough valid signatures on the Petition. Because this error by the Court prejudices Citizens by abridging their constitutional right to petition the government, the South Dakota Supreme Court should reverse the Trial Court on this issue.

3. The Trial Court Erred by Granting Summary Judgment.

The Trial Court erred by entering summary judgment.

Summary judgment is authorized if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the

moving party is entitled to judgment as a matter of law All reasonable inferences drawn from the facts must be viewed in favor of the non-moving party. The burden is on the moving party to clearly show an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law,

Schwaiger v. Avera Queen of Peace Health Servs., 2006 S.D. 44, ¶ 7, 714 N.W.2d 874, 877-78.

In reviewing a trial court’s grant or denial of summary judgment under SDCL 15–6–56(c), [the Supreme Court] must view evidence in the light most favorable to the non-moving party and decide both whether the moving party has demonstrated the absence of any genuine issue of material fact and whether the trial court correctly decided all legal questions. [It makes] these determinations de novo, with no deference to the [trial] court’s ruling.

Jorgensen Farms, Inc. v. Country Pride Coop., Inc., 2012 S.D. 78, ¶ 7, 824 N.W.2d 410 (internal citations omitted).

There are five independent reasons summary judgment was inappropriate in this case: A) summary judgment was used as a substitute for trial, B) summary judgment is not an available remedy in a mandamus proceeding, C) Sturgis’ filings were procedurally defective, D) the Trial Court failed to liberally construe the Petition, and E) Sturgis’ Motion was moot.

A. Summary judgment was used as a substitute for trial.

“Summary judgment is not a substitute for trial; a belief that the non-moving party will not prevail at trial is not an appropriate basis for granting the motion on issues not shown to be a sham, frivolous or unsubstantiated” *St. Onge Livestock Co., Ltd. v. Curtis*, 2002 S.D. 102, ¶ 25, 650 N.W.2d 537, 543 (internal citation omitted).

Instead of denying the motion or even granting Sturgis’ actual motion, the Trial Court went beyond the scope of the noticed motion and hearing and instead declared:

Since the Petition for Election to Change a Municipal Government in the Municipality of Sturgis improperly seeks to achieve an outcome that is not possible, it is invalid. There is no genuine issue as to any material fact, and Respondents are entitled to a judgment as a matter of law. Consistent with the above, Respondents' Motion for Summary Judgment is GRANTED, and this matter is therefore dismissed.

CR 424.¹⁸ The Trial Court seemingly made a factual determination regarding the intent of the Petition, viewing evidence in favor of Sturgis when it was required to do so in favor of Citizens and by not viewing reasonable inferences in favor of Citizens as the non-moving party. *See Jorgensen*, at 97.

Nowhere in the Order does the Trial Court make a ruling or articulate anything about the substance of Sturgis' motion for summary judgment (whether the Petition is an administrative act not subject to referendum). The Trial Court went far beyond the noticed Motion for summary judgment and simply declared that "Since the Petition for Election to Change Municipal Government in the Municipality of Sturgis improperly seeks to achieve an outcome that is not possible, it is invalid." CR 424. This was not the issue raised in the motion made by Sturgis nor noticed for the hearing. CR 148-149. The Trial Court should have had the hearing on the mandamus issues prior to making its ruling.

The Trial Court relied on SDCL § 9-2-3:

¹⁸ Importantly, if the Trial Court did not err and an election to change to a city manager form of government is a non-thing/legal impossibility, then the 2007 election to change to a city manager form of government had no effect because it would have been a vote for something that is a non-thing and has no legitimate legal status. In all candor to this Court, Citizens brought a quo warranto and declaratory action against the City of Sturgis and Mr. Ainslie in Meade County court file 46CIV22-7 on the issue of whether the 2007 election created an office of city manager; at the time of writing this brief, the matter in 46CIV22-7 was still pending.

Each municipality shall be governed by a board of trustees, a mayor and common council, or by a board of commissioners. A city manager may serve with any of the forms of government.

SDCL § 9-2-3.¹⁹

The Trial Court determined that the change that the Petition asks for “does not change the city’s *form of government*.” CR 423 (original emphasis). This is a ruling that should have only been made after a hearing on the mandamus action and was inappropriate for summary judgment – especially since the Citizens had further evidence for the Court to consider for the mandamus action that they were not given the opportunity to present to the Trial Court. T 17: 5-17; A 66.

Not only has “City Manager” been acknowledged as a form of government by Sturgis itself for the past fifteen years (most recently on January 3, 2022), it has been

¹⁹ Sturgis argued and the Trial Court determined that, pursuant to SDCL § 9-2-3, “[t]here are two forms of municipal government in South Dakota; aldermanic and board of commissioners.” T 42:12-13; A 76. This is incorrect and should be clarified by the Supreme Court. “Each municipality shall be governed by a board of trustees, a mayor and common council, or by a board of commissioners. A city manager may serve with any of the forms of government.” SDCL § 9-2-3. SL 2000, ch 34, § 1 amended SDCL § 9-2-3 as follows:

Section 1. That § 9-2-3 be amended to read as follows:

9-2-3. ~~Third class municipalities~~ Each municipality shall be governed by a board of trustees –

~~First and second class municipalities shall be governed either by, a mayor and common council, or by a board of commissioners, in each case with or without a~~
A city manager may serve with any of the forms of government.

SL 2000, ch 34, § 1; A 41.

The plain reading of the statute expresses at least three ‘forms’ of municipalities: 1) board of trustees, 2) mayor and common council, or 3) board of commissioners. The term “aldermanic” does not appear in the statute.

acknowledged by the state code since at least 1959 and by this Court as recently as 2014. CR 242-244; A 43-44; *Kolda*, at ¶ 2.²⁰

The Trial Court erred because it went beyond the noticed Motion for Summary Judgment and used summary judgment as a substitute for trial on the actual mandamus issue. This Court should reverse the Trial Court’s grant of summary judgment based on this rationale alone.

B. Summary judgment is not an available remedy in a mandamus proceeding.

Additionally, summary judgment is not an available remedy for Sturgis in this mandamus action. Summary judgment is only available for “[a] party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought” SDCL § 15-6-56(b); *see also* SDCL § 15-6-56(a). This mandamus action is a special proceeding that does not assert any claim against Sturgis, nor is it asking for a declaratory judgment; this mandamus action requests the Court issue a writ of mandamus to compel Bueno and the Sturgis Council to perform their duties. CR 1-8; *See* SDCL § 21-29-3. Although there is caselaw involving the use of summary judgment in a mandamus action, whether or not summary judgment is an available remedy in a mandamus action appears to be an issue of first impression for South Dakota.

²⁰ The Trial Court disregarded SDCL § 9-14-19, which expressly acknowledges the ‘city manager form of government’: “[e]xcept that for those municipalities administered under the *city manager form of government*, the supervision is by the city manager.” SDCL § 9-14-19; CR 244 (emphasis added); A 43-44.

“The writ of mandamus *must* be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.” SDCL § 21-29-2 (emphasis added) ; A 57.²¹

The Court’s immediate resolution of this matter is incredibly important. CR 2 (at ¶6), CR 146 (at ¶3).²² SDCL § 21-29-8 is dispositive on the issue of whether or not summary judgment is an available remedy in a mandamus action:

. . . . If the answer raises only questions of law, or puts in issue only immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear, or fix a day for hearing the case.

SDCL § 21-29-8 (in part) (emphasis added). SDCL § 21-29-8 requires that “the court must proceed to hear” a mandamus action like the one at issue here. Because this statute is specific to mandamus proceedings and applies when an “answer raises only questions of law”, summary judgment is foreclosed as an available remedy.²³

²¹ Sturgis briefed: “This analysis does not leave Petitioners without recourse. To change the form of government Petitioners could run for City Council. If a majority of the City Council subscribes to Petitioners’ beliefs, the Council may afford the City Manager his due process rights and remove him from office. Once the Manager is removed from office, Petitioner [*sic*] are free to seek a change in form of government”. CR 165-166. Not only does Sturgis admit that there can be a change in form of government as desired by Citizens, Sturgis argues that first Citizens must run for office, be seated in office, and then terminate the individual employee before changing the form of government to remove the office of city manager. Such a course of action certainly is not a “plain, speedy, and adequate remedy” as contemplated in SDCL § 21-29-2.

²² If an election is to be had, the election should have taken place no later than Sturgis’ annual election on April 12, 2022 (pursuant to SDCL § 9-10-1) or by February 3, 2022 (pursuant to SDCL § 9-11-6).

²³ This is because a mandamus action is used to effectuate quick results. To allow a mandamus action to be bogged down with motions practice (for example a 28 day notice period for summary judgment pursuant to SDCL § 15-6-56(c)) would defeat the very purpose of a mandamus action. “The rules of statutory construction dictate that statutes of specific application take precedence over statutes of general application.” *In re Estate of Hamilton*, 2012 S.D. 34, ¶ 12, 814 N.W.2d 141 (internal citations omitted).

The Trial Court erred by granting summary judgment in this matter, and for this reason alone the Supreme Court should reverse the Trial Court.

C. Sturgis' filings were procedurally defective.

Citizens argued to the Trial Court that Sturgis' "Statement of Material Facts About Which There Is No Genuine Dispute" (hereinafter referred to as "Sturgis' SUMF") was procedurally defective. CR 221-222; T 39:12-16; A 58-59. The law requires:

A party moving for summary judgment shall attach to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact in this required statement must be presented in a separate numbered statement and *with appropriate citation to the record in the case.*

SDCL § 15-6-56(c)(1) (emphasis added). Sturgis' SUMF is procedurally defective because there is not a single citation to the record despite the clear requirement that each statement include an "appropriate citation to the record . . ." *Id.* Citizens expressly objected on these grounds. CR 221-223. Sturgis' request for summary judgment should have been denied for this reason alone as a matter of law, and the Trial Court committed reversible error by not denying summary judgment on this ground. CR 221-222; T 39:12-16; A 75.

D. The Trial Court failed to liberally construe the Petition.

Citizens used the same process and petition procedure used in 2007 when Sturgis held an election on the issue of changing to a "City Manager form of government", which Sturgis has held itself out to be since 2007. CR 234-237, 255-256, 263, 274, 293, 297, 300; A 7-22.

The Trial Court incorrectly analyzed the Petition under the requirement to liberally construe it. "The petitions herein provided for shall be liberally construed, so

that *the real intention of the petitioners may not be defeated by a mere technicality.*” SDCL § 2-1-11 (emphasis added).²⁴

The Trial Court did not consider the real intention of the petitioners. HT 43:6-45:19; A 77-79. The Trial Court confused the issues of removing the city manager as an individual employee with terminating the *office* of the city manager. HT 45:11-46:9; A 79-80. The Petition should not be abridged and its intent is clear: terminate the *office* of the city manager.²⁵

The Petition submitted by Citizens seeks to have an election on the simple issue of whether Sturgis should have an office of city manager.

Despite using the same process that was used in 2007, executing the Addendum, passing Resolutions 2022-08 (acknowledging “city manager form of government”) and 2022-11 (legislatively construing the Petition’s intent), and despite acknowledging that the Petition contains enough signatures for certification, Bueno and the Sturgis Council refused to certify the Petition and schedule an election.²⁶

The Trial Court erred by entering summary judgment without liberally construing the Petition in favor of Citizens, and should be reversed.

²⁴ At one point, the Trial Court seemed to understand liberal construction as only applicable to signature validation (the Court stated “I think that’s where liberal construction comes from”), as opposed to “the real intention of the petitioners”. HT 44:12-22; A 78.

²⁵ Recall that, even if the voters terminated the office of the city manager, the current person employed as city manager still is employed pursuant to the Addendum.

²⁶ It is noteworthy that, despite Sturgis’ legislative determination of the Petition’s intent as well as the express language on the Petition itself, Sturgis’ Response to Affidavit and Application for Writ of Mandamus denied that the intent of the Petition was to change Sturgis’ government to “an aldermanic form of government without a city manager.” CR 2 (at ¶5), CR 146 (at ¶4). This denial also created a disputed material fact.

E. Sturgis' Motion was moot.

The sole affirmative defense in City's Response to Affidavit and Application for Writ of Mandamus asserted that "[t]he question posed in the Petition is not referable as a matter of law. *See* SDCL § 9-20-19." CR 146. City's Motion for Summary Judgment stated: "There are no genuine questions of material fact and the question posed in the Petition for Election to Change Municipal Government in the Municipality of Sturgis is not, as a matter of law, subject to referendum." CR 148. Sturgis' motion is solely based on the premise that going from an aldermanic government with a city manager to an aldermanic government without a city manager is an administrative decision not subject to referendum pursuant to SDCL § 9-20-19. CR 151, 174, 205, 207.

However, Citizens pointed out and Sturgis later admitted that the Petition at issue in this case was not a referendum:

A petition for change of form of government under SDCL Chapter 9-11 does not fit within the definition of either an initiative or a referendum. A vote for change of government does not propose a new ordinance, law, or repeal an existing ordinance or law as required to be an initiative. While the City has specific ordinances addressing the type of government, these ordinances are not the basis of the Petition. CR 218-220; 378.²⁷ Sturgis never amended its motion. With Sturgis' admission that the Petition was not a referendum, City's Motion for Summary Judgment became moot and should have been denied on this basis alone as a matter of law.²⁸ The South Dakota Supreme Court should correct the Trial Court's errors.

²⁷ "It is well-established that a party . . . may make admissions in a brief which are binding upon the party and estops the party from denying the admission . . ." *Estate of Tallman, Matter of*, 1997 S.D. 49, 562 N.W.2d 893, 897 (internal citations omitted). "[T]he initiative is the people's 'right to propose measures' while the referendum is the people's right 'to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect.'" *Brendtro v. Nelson*, 2006 S.D. 71, 720 N.W.2d 670 (internal citation omitted).

²⁸ Even if this Court finds summary judgment was appropriately entered, the Trial Court granting the motion had no effect on the underlying Mandamus action since the Petition was not a referendum.

CONCLUSION

Bueno improperly ignored her ministerial duties of certifying whether there are enough valid signatures and improperly acted in a quasi-judicial manner to insert her subjective opinion to independently adjudicate the Petition to be invalid without providing Citizens any due process.

The blessings of a free government in Sturgis can only be maintained by ensuring the fundamental rights of self-governance and the right to petition are not abridged. All that Citizens ask for in this mandamus action is to let the people vote on whether Sturgis should have an *office* of city manager.

This Court should let the people of Sturgis have an election by modifying the Memorandum Decision and Order to be a writ of mandamus directing Bueno to certify there are valid signatures on the petition from at least fifteen percent of the voters, direct Bueno to present the Petition to the Sturgis Council, and direct the Sturgis Council to schedule an election pursuant to either SDCL 9-10-1 or 9-11-6. A writ of mandamus resolves all other issues presented in this matter. Alternatively, this Court should reverse the Trial Court on all matters presented herein.

Dated this 29th day of July, 2022.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Tammy Bohn, Justin Bohn, and Brenda
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CERTIFICATE OF COMPLIANCE

COME NOW, the Appellants, TAMMY BOHN, JUSTIN BOHN, and BRENDA VASKNETZ, by and through their attorney of record, Kellen B. Willert, of Bennett Main Gubbrud & Willert, P.C., 618 State Street, Belle Fourche, South Dakota, and pursuant to SDCL 15-26A-66(4), hereby certifies that he has complied with the type volume limitation of SDCL 15-26A-66(4) in that Appellants' Brief is double-spaced and proportionally spaced in Times New Roman, 12-point, with a total word count of 9,195 and a total character count of 46,049. The Appellants' Brief and all copies are in compliance with this rule.

Dated this 29th day of July, 2022.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Tammy Bohn, Justin Bohn, and Brenda
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CERTIFICATE OF SERVICE AND FILING

I, KELLEN B. WILLERT, attorney for BRENDA BOHN, JUSTIN BOHN, and BRENDA VASKNETZ, do hereby certify that on the 29th day of July, 2022. I caused a full, true, and complete copy of APPELLANTS' BRIEF to be served *electronically* by email and by U.S. Mail depositing said copies in envelopes securely sealed with first class postage, fully prepaid in Belle Fourche, S.D., as set forth below:

Mark Marshall
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I further certify that on the same day I caused the APPELLANTS' BRIEF to be filed *electronically* and the original and two (2) full, true and complete copies of the APPELLANTS' BRIEF to be filed by U.S. Mail with:

Shirley Jameson-Fergel
Clerk of the Supreme Court
State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5070
Email SCClerkBriefs@ajs.state.sd.us

by depositing said copies in envelopes securely sealed with first class postage thereon fully prepaid in the U.S. Mail in Belle Fourche, S.D., and addressed as shown above.

Dated this 29th day of July, 2022.

BENNETT MAIN GUBBRUD & WILLERT, P.C.

Kellen B. Willert

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STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

TAMMY BOHN, JUSTIN BOHN and
BRENDA VASKNETZ,
Petitioners,

46CIV22-5

v.

**MEMORANDUM DECISION
AND ORDER**

FAY BUENO, in her capacity as
Finance Officer for the City of Sturgis;
MARK CARSTENSEN, in his capacity
as Mayor for the City of Sturgis; and
MIKE BACHAND, ANGELA
WILKERSON, DAVID MARTINSON,
BEKA ZERBST, JASON ANDERSON,
AARON JORDAN, DEAN SIGMAN,
and KEVIN FORRESTER, in their
capacities as Aldermen for the City of
Sturgis,
Respondents.

On January 4, 2022, Petitioners filed an Affidavit and Application for Writ of Mandamus. Petitioners also filed a proposed Order For and Notice of Hearing, with attachments, as well as a proposed Alternative Writ of Mandamus. The Court held a telephonic scheduling hearing on January 18, 2022. Kellen Willert appeared for the Petitioners and Mark Marshall appeared for the Respondent. The Court denied each of the aforementioned proposed documents on January 20, 2022. On January 21, 2022, the Court entered a Scheduling Order, which included a briefing schedule, and also set a motions hearing on February 14, 2022, at 1:15, as well as a hearing on the mandamus action for the same date and time. On January 31, 2022, Respondents filed, among other things, a Motion for Summary Judgment. Subsequent to that

FILED

APR 14 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

Motion, the parties filed various Motions, Briefs, Affidavits, Responses, Objections, and Replies.

The Court held a hearing in this matter on February 14, 2022. Mr. Willert appeared for the Petitioners, and Mr. Marshall and Eric Miller appeared on behalf of the Respondents. The Court first addressed the Respondents' Motion for Summary Judgment, and heard arguments on the Motion from both parties. This Court, having heard arguments of Counsel, and having considered the written submissions from the parties, with good cause showing, issues its Memorandum Decision.

BACKGROUND

Petitioners' Affidavit and Application for Writ of Mandamus alleges that the Petitioners were among the circulators of a petition entitled Petition for Election to Change Municipal Government in the Municipality of Sturgis (hereinafter "Petition"). The Petition states:

WE, THE UNDERSIGNED qualified voters of the municipality of STURGIS, the state of South Dakota, petition, pursuant to SDCL § 9-11-6 and other applicable law, petition that the municipal government of STURGIS be changed as follows and that the proposal be submitted to the voters for their approval or rejection pursuant to SDCL § 9-11-5:

The form of government for the municipality of Sturgis should be changed from the current form of municipal government (aldermanic with a city manager form of government) to an aldermanic form of government without a city manager.

(Bolding and underlining in original.)

The Petition states, in paragraph 5, that the purpose and intent of the Petition is to change Sturgis' government from an aldermanic government with a city manager to "an aldermanic form of government without a city manager." (Quotation marks in original.) On January 11, 2022, the Finance Officer for the City of Sturgis advised the Petitioners that she declined to certify the Petition because the question posed in the Petition is legally not subject to referendum. The Respondents' Brief in Support of Motion for Summary Judgment makes the same argument, among others.

ANALYSIS AND OPINION

Concerning a motion for summary judgment, SDCL 15-6-56(c) states, "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The evidence is viewed "most favorably to the nonmoving party and [courts] should resolve reasonable doubts against the moving party." *Lammers v. State by & through Dep't of Game, Fish & Parks*, 2019 S.D. 44, ¶ 9, 932, N.W.2d 129, 132-33 (citing *State Auto Ins. Cos. v. B.N.C.*, 2005 S.D. 89, ¶ 6, 702 N.W.2d 379, 382). The nonmoving party must present specific facts in the record that raise a genuine issue of material facts for trial. *Brandt v. Cnty. Of Pennington*, 2013 S.D. 22, ¶ 7, 827 N.W.2d 871, 874. "A disputed fact is not 'material' unless it would affect the outcome of the suit under the governing substantive law in that a reasonable jury could return a verdict for the nonmoving party." *W. Nat. Mut. Ins. Co. v. Gateway Bldg. Sys., Inc.*, 2016 S.D. 85, ¶ 11, 887 N.W.2d 887, 890 (quotations in original).

The Petition for Election to Change Municipal Government in the Municipality of Sturgis in this matter seeks to change the form of government in the City of Sturgis from aldermanic with a city manager form of government to an aldermanic form of government without a city manager. SDCL § 9-2-3 states, "Each municipality shall be governed by a board of trustees, a mayor and common council, or by a board of commissioners. A city manager may serve with any of the forms of government." This statute provides for the different forms of government for municipalities in South Dakota. Each form of government may have a city manager, or it may not have a city manager. As stated above, the Petition in this matter seeks to change the form of government of the City of Sturgis from aldermanic with a city manager to aldermanic without a city manager. Such a change, however, does not change the city's form of government. It merely seeks to do away with the position of city manager, which is not a change in the city's form of government. Since the Petition

improperly seeks to achieve an outcome that is not possible, whether by initiative, referendum, or other means, it is invalid.

CONCLUSION

Since the Petition for Election to Change Municipal Government in the Municipality of Sturgis improperly seeks to achieve an outcome that is not possible, it is invalid. There is no genuine issue as to any material fact, and Respondents are entitled to a judgment as a matter of law. Consistent with the above, Respondents' Motion for Summary Judgment is **GRANTED**, and this matter is therefore dismissed.

Dated this 14th day of April, 2022.

BY THE COURT:



Kevin J. Krull
Circuit Court Judge

Attest:
Adam, Laura
Clerk/Deputy



FILED

APR 14 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

By _____

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF MEADE)

IN THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

TAMMY BOHN, JUSTIN BOHN,
and BRENDA VASKNETZ,

Petitioners,

vs.

FAY BUENO, in her capacity as
Finance Officer for the City of
Sturgis; MARK CARSTENSEN, in
his capacity as Mayor for the City of
Sturgis; and MIKE BACHAND,
ANGELA WILKERSON, DAVID
MARTINSON, BEKA ZERBST,
JASON ANDERSON, AARON
JORDAN, DEAN SIGMAN, and
KEVIN FORRESTER, in their
capacities as Aldermen for the City
of Sturgis,

Respondents.

46CIV22-000005

SCHEDULING ORDER

TO THE ABOVE NAMED- RESPONDENTS AND PETITIONERS:

A telephonic hearing was held in the above-captioned action on January 18, 2022 regarding scheduling in this matter. Petitioners appeared telephonically through attorney Kellen B. Willert. Respondents appeared telephonically through attorney Mark Marshall and staff attorney Eric Miller. The Court having considered the submissions and arguments of counsel, and good cause appearing therefore, the Court hereby makes and enters the following:

Motions due:.....01/31/2022
Reply to Motions due:.....02/07/2022

Respondents' Answer to Affidavit and
 Application for Writ of Mandamus due:01/31/2022
 Reply to Answer due:02/07/2022
 Response to Reply to Answer due:02/10/2022

IT HEREBY IS ORDERED, that a motions hearing shall commence on Monday, February 14, 2022 at 1:15 P.M. at the Meade County Courthouse in Sturgis, South Dakota; and

IT IS FURTHER ORDERED, that a hearing on the mandamus action shall commence on Monday, February 14, 2022, immediately following the motions hearing; and

IT IS FINALLY ORDERED, that Mark Marshall, Attorney for the City of Sturgis, shall accept service of all documents relating to this matter on behalf of all Respondents.

1/20/2022 5:33:27 PM

BY THE COURT:



Honorable Kevin J. Krull
 Circuit Court Judge

Attest:
 Rude, Jennifer
 Clerk/Deputy



PROCEEDINGS OF THE STURGIS CITY COUNCIL – FEBRUARY 20, 2007

The Common Council of the City of Sturgis met in regular session at 7:30pm at the Sturgis Community Center on Tuesday, February 20, 2007. Present: Mayor Terry Jensen, Alderpersons Tom Ferguson, Penny Green, Roger Call, Sherry Scudder, Mark Chaplin, Steve Anders & Bev Patterson. Absent: Pokey Jacobson.

Mayor Jensen made the following announcements: a) the council is having a work session on Monday, February 26, 2007 at the Fire Hall and beginning at 6:00pm; b) the 2007 Leadership Sturgis class was in attendance and Jensen welcomed them; c) a plaque was presented to Bruce McFarland, immediate past President of the Library Board, in appreciation for his many years of service as an officer of the board (he remains on the Board); d) a moment of silence was observed for our men and women serving in the military.

Motion by Chaplin, second by Anders & carried to approve the agenda with the following amendments: a) 3 – Add February 5, 2007 minutes to be approved; b) remove 27 – First Reading of Ordinance 2007-09 – Ordinance Adding Title 13.04.04; c) add 30b – Ashley Johnson – CC Aquatics, \$7.25/hr, effective 1/1/07 (correction).

Motion by Chaplin, second by Scudder & carried to approve the minutes of the February 5 & 13, 2007 council meetings.

Motion by Anders, second by Patterson & carried unanimously to approve the following claims:

GENERAL FUND – Wellmark Blue Cross, Blue Shield, \$948.00, group insurance.

GENERAL FUND – 54 Printing, \$120.00, sup; A&B Business, \$188.15, maint; A&B Welding, \$7.20, maint; A&J Surplus, \$517.20, sup; Amcon Distributing, \$351.62, merch for resale; Associated Supply Company, \$365.44, merch for resale; Best Business Products, \$23.92, maint; BH Chemical, \$274.98, sup; BH Elevator, \$102.04, maint; BH Industries, \$3,019.00, maint; BH Mobile Extinguisher, \$191.75, maint; BHP&L, \$17,293.96, util; Butler Machinery, \$662.88, sup; Campbell Supply, \$403.77, sup; Caselle, Inc., \$8,500.00, sup; Century Business Products, \$17.36, maint; Chamber of Commerce, \$70.00, travel; Chief Supply Corp, \$33.98, sup; Coca Cola, \$1,636.50, merch for resale; Dakota Backup, \$254.89, maint; Dare America Merchandise, \$198.22, other; Ecolab, \$434.00, maint; Elan-city, \$2,157.58, sup; Elan-Fire, \$628.44, travel; Energy Labs, \$52.50, maint; Farmers Union Oil, \$11,459.47, sup; FSH Communications, \$55.00, util; Robert Greenberg, \$80.00, cc prog exp; Hauff Mid-America Sports, \$54.75, cc prog exp; Heiman Fire Equipment, \$205.35, sup; Linda Hemmah, \$61.48, refunds; Hills Materials, \$506.19, sup; Hillyard, \$261.70, sup; JD Evans, \$755.12, maint; Dennis Johnson, \$80.00, cc prof exp; Johnston Hardware, \$142.35, sup; Robert Kaufman, \$43.00, travel; Ketel Thorstenson, \$1,500.00, prof fees; Locks by Bernie, \$20.00, sup; Lynn's Dakotamart, \$77.18, sup; Adam Martin, \$57.00, travel; David McCarthy, \$30.00, other; Meade Co Auditor, \$978.39, util; Meade Co Times, \$466.70, publishing; MDU, \$6,908.37, util; NAPA, \$1,088.62, sup; Neve's Uniforms, \$22.95, sup; NFPA, \$270.00, sup; Occupational Health Network, \$630.00, other; Office Depot, \$119.53, sup; Officemax, \$112.97, maint; Ombs Express Police Supply, \$364.78, sup; O'Reilly Auto Parts, \$148.68, sup; Tami Otis, \$35.00, travel; Owens Interstate Sales, \$580.60, sup; Pamida, \$106.36, sup; Pitney Bowes-Fire, \$46.13, sup; Powerplan, \$32.32, maint; Prairiewave, \$232.00, util; Public Safety Equipment, \$34.95, maint; Purchase Power, \$714.44, sup; Douglas Quarve, \$30.00, other; Rapid Delivery, \$54.60, maint; Rockingtree Floral, \$50.00, sup; Rushmore Communications, \$295.94, maint; Rushmore Office Supplies, \$384.73, sup; Fred Schmidt, \$30.00, other; Servall Towel, \$383.94, sup; Walt Simons, \$30.00, other; Specialty Technical Publishing, \$90.00, publishing; Stoptech, \$794.20, sup; Street Dept Petty Cash, \$18.97, sup; TDG Communications, \$80.00, sup; Temperature Technology, \$44.03, maint; Twilight First Aid, \$105.85, sup; Tanner Urbaniak, \$20.00, cc prog exp; Joey Weiland, \$30.00, sup; Steve Westbrook, \$30.00, other; Western States Fire Protection, \$350.00, maint; Zylstra, \$2,601.32, maint.

PARK – A&B Welding, \$49.86, sup; Ace Hardware, \$83.95, sup; BHP&L, \$42.71, util; Campbell Supply, \$177.52, sup; Elan-City, \$180.00, travel; Farmers Union Oil, \$7.63, maint; Hersrud, \$1.72, maint; HSBC Business Solutions, \$72.43, maint; J&L Services, \$28.50, maint; Jenner Equipment, \$140.76, maint; Johnston Hardware, \$108.56, sup; Knecht Home Center, \$189.90, sup; MDU, \$162.77, util; NAPA, \$131.20, sup; Owens Interstate Sales, \$31.63, maint; Pamida, \$3.49, sup; Prairiewave, \$130.09, util; Rapid Delivery, \$7.80, maint; Rushmore Office Supplies, \$24.48, sup; Town-n-Country Plumbing, \$5.98, maint.

BRICK PROJECT FUND – A&J Surplus, \$655.80, sup; Glover Investments, \$1,400.00, publishing, Knecht Home Center, \$196.63, sup.

AMBULANCE SERVICE – Alliance Medical, \$573.18, sup; Dakota Backup, \$12.49, prof fees; DB Billing, \$1,723.90, prof fees; Farmers Union Oil, \$294.14, sup; Farmers Union-Center, \$68.91, sup; Jacobsen Ford, \$100.00, maint; Office Depot, \$119.53, sup; Owens Interstate Sales, \$162.00, sup; Pitney Bowes-Fire, \$46.12, sup; Western Communications, \$381.37, maint.

CAPITAL IMPROVEMENT – Meade Co Auditor, \$2,837.93, principal.

BIKE PATH – Freeman Electric, \$250.00, cap imp.

SALES TAX REFUNDING BOND, 2002 – First Nat'l Bank in Sioux Falls, \$421,540.00, interest.

SERIES REVENUE BOND – Rural Development, \$8,739.00, principal.

RURAL DEVELOPMENT-CITY HALL 2 – Rural Development, \$8,958.00, interest.

LIQUOR – BHP&L, \$780.05, util; Coca Cola, \$453.20, pop for resale; Eagle Sales, \$6,569.10, other; Ecolab, \$25.50, maint; Elan-City, \$701.11, travel; Fisher Beverage, \$4,809.97, off sale beer; Frito-Lay, \$28.33, snacks for resale; Heartland Paper, \$199.17, sup; Johnson Western Wholesale, \$42,357.27, off sale liquor; Lynn's Dakotamart, \$16.58, sup; MDU, \$101.63, util; Nash Finch, \$45.00, other; Pepsi Cola, \$285.50, pop for resale; Prairie Berry, \$568.00, off sale liquor; Republic Beverage Co, \$5,631.44, off sale liquor; S. Ellwein, \$105.12, merch for resale; Servall Towel, \$91.92, maint; Valiant Vineyard, \$70.00, off sale liquor; Western Business Solutions, \$395.00, prof fees.

WATER SYSTEM OPERATIONS – BHP&L, \$92.51, util; Prairiewave, \$78.39, util.

WASTEWATER FACILITIES – BHP&L-RC, \$701.02, cap imp; BHP&L-Sturgis, \$1,790.07, util; Brosz Engineering, \$700.00, cap imp; Campbell Supply, \$82.22, maint; Citi Tech Systems, \$2,094.35, sup; City of Belle Fourche, \$27.44, other; Hersrud, \$344.40, maint; Johnston Hardware, \$169.95, maint; Tanya Neuschwander, \$125.00, group ins; Owens Interstate Sales, \$310.40, maint; Powerplan, \$102.66, maint; Rapid Delivery, \$7.80, maint; Rushmore Office Supplies, \$12.19, sup; Sanitation Products, \$1,053.04, maint; Stern Oil Co, \$108.70, sup.

SANITARY SERVICE – Adams Machining, \$297.67, maint; Butler Machinery, \$56.00, maint; City of Belle Fourche, \$13,825.92, other; Dakota Backup, \$199.82, sup; Farmers Union Oil, \$440.95, sup; Ferber Engineering, \$375.00, prof fees; FSH Communications, \$55.00, util; Meade Co Times, \$158.00, publishing; NAPA, \$307.66, sup; Tanya Neuschwander, \$125.00, group ins; Owens Interstate, \$20.17, maint; Pressure Services, \$97.67, maint; Rapid Delivery, \$9.00, maint; Rushmore Office Supplies, \$312.30, sup; Stern Oil, \$3,282.40, sup; West River International, \$109.00, maint.

RALLY – Coca Cola, \$25.50, rent; Elan-City, \$908.76, travel; Farmers Union Oil, \$77.10, sup; Fedex, \$49.48, travel; Outsource Solutions, \$6,716.57, prof fees; Paisano Publication, \$10,117.00, publishing; Rally Dept Petty Cash, \$1.68, sup.

1998-36pb – First Western Bank, \$35,544.69, principal.

TIF #8 ALLISON II – First Western Bank, \$8,857.99, other.

This was the time set for the continued public hearing for a zoning variance for Elizabeth Fischer, 2112 Sherman St., to construct a detached garage with less than the required side-yard setback. The Planning Commission has approved this request. Motion by Green, second by Anders & carried to approve said variance.

This was the time set for the continued public hearing for a use on review for Samantha Carroll, 710 Park St. #6, to operate a home daycare business at this location. The Planning Commission approved this request. Motion by Green, second by Scudder & carried to approve said use on review.

Motion by Chaplin & second by Anders to set a public hearing date of March 19, 2007 for a zoning variance for Susan Caldwell dba Pizza Ranch, 2707 Lazelle, to install a sign with a larger square footage than allowed by ordinance. Deputy City Attorney Candi Thomson advised that there is no ordinance to authorize this so the motion and second were withdrawn & the City will refund Caldwell the fee.

Motion by Chaplin, second by Anders & carried to set a public hearing date of March 19, 2007 for a zoning variance for Derrick Linn, 2917 1st Ave., to construct a detached garage with less than the required side-yard setback.

This was the time set upon publication for a public hearing on the proposed resolution of necessity for the Woodland Dr paving project.

Roger Schieman voiced his opposition to this project, stating that he felt Mt. Rodney Campground should be paying a larger share of the project because they requested it and the road is basically only used for access to the campground.

Terry Hermann, representing Joseph & Maxine Parks, advised that they also opposed the paving project. The Parks would be assessed more than \$25,000 and it would not be a benefit to them.

Green questioned what the Public Works committee's recommendation was.

Chaplin advised their recommendation was to pave this.

City Engineer Bob Kaufman advised that the road would be the minimal width of 25 feet, with no parking on either side, to keep the costs down.

Patterson requested that the City speak with the Halvorson's (owners of Mt. Rodney's Campground) to see if they would be willing to pay more towards the project.

Scudder concurred in that she would like to hear directly from the landowners involved.

Motion by Scudder, second by Green & carried to continue this hearing until such time as the above noted requests have been addressed.

Motion by Scudder, second by Patterson & carried to approve the raffle request of Meade County Relay for Life. They will be raffling 3 small statues (figurines) at the Relay event on August 17, 2007.

Motion by Anders, second by Patterson & carried unanimously to authorize the Mayor to sign the Sturgis airport closeout report for AIP #3-46-0054-07-2004.

Anders introduced the following written resolution and moved its adoption:

RESOLUTION 2007-04
RESOLUTION CONSENTING TO TRANSFER OF CONTROL

WHEREAS, The City of Sturgis, SD, having received and reviewed a request to transfer control of the Cable Television Franchise ("Franchise"), previously awarded to PrairieWave Telecommunications, Inc., ("PrairieWave"), from its existing ultimate parent, PrairieWave Holdings, Inc. to its new ultimate parent, Knology, Inc. pursuant to an Agreement and Plan of Merger, dated January 8, 2007 ("Request"); and

WHEREAS, The City having reviewed the Request and the attachments, and having had a Hearing, discussion and vote on the transfer;

NOW THEREFORE BE IT RESOLVED that the City finds that the transfer is acceptable and thus GRANTS ITS CONSENT to the transfer; transferring the Franchise from PrairieWave Holdings, Inc. to Knology, Inc., transferring all rights, duties, and obligations of the Franchise, and continuing said Franchise in full force and effect for its term.

Dated this 20th day of February 2007.

Published: March 3, 2007

Effective: March 24, 2007

Ferguson duly seconded the motion for the adoption of the foregoing resolution. All those present voted in favor of and the resolution was declared passed and adopted.

Chaplin introduced the following written resolution and moved its adoption:

RESOLUTION 2007-05
PROSECUTION OF ORDINANCE VIOLATIONS DURING THE 2007 STURGIS
MOTORCYCLE RALLY

WHEREAS the City of Sturgis, Meade County, South Dakota, is authorized by SDCL 9-14-23 to contract for or employ attorneys under such terms and conditions as the governing body shall deem necessary and proper; and

WHEREAS it appears necessary and in the best interests of the City to authorize the Meade County State's Attorney's Office to prosecute all actions or proceeding arising out of the violation of any ordinance of the City of Sturgis during the 2007 Sturgis Motorcycle Rally; and

WHEREAS the Meade County State's Attorney's Office has agreed to prosecute all actions or proceedings arising out of the violation of any ordinance of the City of Sturgis during the 2007 Sturgis Motorcycle Rally excluding therefrom any trials to the Court for unresolved actions; and

WHEREAS in the case an action is scheduled for trial, the City Attorneys shall take over prosecution of the matter and try the same to the Court; and

NOW THEREFORE BE IT RESOLVED that the following individuals shall be deputized authorizing them to prosecute all actions or proceedings arising out of the violation of any ordinance of the City of Sturgis: Jesse Sondreal, Ken Chleborad, and Wendy Kloepfner.

BE IT FURTHER RESOLVED that the individuals listed above shall be given a free membership to the Sturgis Community Center for a period of one (1) year;

BE IT FURTHER RESOLVED that the City Attorneys shall take over prosecution of any case that is scheduled to be tried to the Court.

Dated this 20th day of February, 2007.

*Published: March 3, 2007
Effective: March 24, 2007*

Patterson duly seconded the motion for the adoption of the foregoing resolution. All those present voted in favor of and the resolution was declared passed & adopted.

Patterson introduced the following written resolution and moved its adoption:

**RESOLUTION 2007-06
RESOLUTION AUTHORIZING CLOSURE OF CITY PARKS**

WHEREAS, the Sturgis Motorcycle Rally will be held in the City of Sturgis, South Dakota, in August 2007; and

WHEREAS, it appears necessary and in the best interests of public safety to provide limited access to the City Park;

NOW THEREFORE, BE IT RESOLVED that Woodle Field and the surrounding parking lot, and the Hills & Plains Soccer Field and surrounding area, will be closed from 8 a.m. on July 28, 2007 through 8 a.m. on August 17, 2007, both dates inclusive, and that all City Parks shall be open for day use only between the hours of 6 a.m. and 10 p.m. on July 28, 2007 through August 17, 2007, except that at the direction of the city park supervisor, the aforementioned park areas may be opened for Rally purposes at any other time, depending on schedules between Wednesday August 1, 2007, and Friday August 17, 2007 from 8 a.m. to 5 p.m.

Dated this 20th day of February, 2007.

*Published: March 3, 2007
Effective: March 24, 2007*

Anders duly seconded the motion for the adoption of the foregoing resolution. All those present voted in favor of and the resolution was declared passed & adopted.

Chaplin introduced the following written resolution and moved its adoption:

**RESOLUTION 2007-07
RESOLUTION AUTHORIZING TEMPORARY STOP SIGNS AND ONE-WAY TRAFFIC
DURING STURGIS MOTORCYCLE RALLY**

WHEREAS, the City of Sturgis, Meade County, South Dakota, has jurisdiction to regulate and maintain their street system; and

WHEREAS, it appears necessary and in the best interest of public safety to establish temporary stop signs and one-way streets at the locations set forth herein.

NOW THEREFORE, BE IT RESOLVED, that stop signs shall be placed at the following intersections from July 28, 2007, to August 17, 2007.

*Blanche Street and Lazelle Street
Nellie Street and Lazelle Street
Middle Street and Lazelle Street
1st Street and Lazelle Street
6th Street and Lazelle Street
20th Street and Highway 14A
Junction Avenue and Sherman Street*

BE IT FURTHER RESOLVED that Whitewood Service Road from Highway 14A to 20th Street shall be one-way traffic to the west from July 28, 2007 to August 17, 2007.

Dated this 20th day of February, 2007.

*Published: March 3, 2007
Effective: March 24, 2007*

Anders duly seconded the motion for the adoption of the foregoing resolution. All those present voted in favor of and the resolution was declared passed & adopted.

Chaplin introduced the following written resolution and moved its adoption:

**RESOLUTION 2007 - 08
RESOLUTION AUTHORIZING CLOSURE OF STREETS
FOR ANNUAL STURGIS MOTORCYCLE RALLY**

WHEREAS the Sturgis Motorcycle Rally will be held in the City of Sturgis, August 6, 2007 through August 12, 2007; and

WHEREAS due to the great number of motorcyclists in Sturgis, South Dakota, during this time, it would be in the best interest for the City of Sturgis and its citizens that a portion of Main Street in the City of Sturgis be designated for motorcycle traffic only during this time and that parking restrictions be placed in effect adjacent to the Main Street area; and

WHEREAS it is necessary for portions of First Street and Third Streets be closed to normal automobile vehicle traffic for Rally displays and activities; and

WHEREAS a considerable number of organized motorcycle tours are held during the Rally and from the standpoint of public safety, the City Council has determined that a location should be set aside to safely facilitate allowing these tours to begin at a place convenient to the participants and consistent with public safety, and it is necessary for a portion of Fifth Street be closed to normal automobile traffic.

NOW, THEREFORE, BE IT RESOLVED: That Main Street in the City of Sturgis, from its intersection with Middle Street to its intersection with Fourth Street, shall be closed to all traffic with the exception of motorcycle traffic, including two-wheel and three-wheel motorcycles, during a time period from 2 a.m. on Saturday August 4, 2007 to 2 a.m. on Sunday August 12, 2007, and for such additional time if deemed necessary by the Chief of Police of the City of Sturgis and the City Council's Public Safety Committee. The City Council of the City of Sturgis does hereby determine that it is necessary to close Main Street during the above time, in order to provide orderly traffic control and to ensure the safety of the citizens of the City of Sturgis and their guests. Only motorcycles, including two-wheel and three-wheel motorcycles shall be allowed on Main Street during the above time period with the exception of maintenance vehicles, law enforcement vehicles, and fire protection vehicles. Bicycles, skateboards, scooters, roller blades, and other similar conveyances shall not be allowed to use that portion of Main Street described during the above time period, as the presence of bicycles, skateboards, scooters, roller blades, and other similar conveyances present a safety hazard to pedestrians, motorcyclists, bicyclists and those riding skateboards, scooters, roller blades and other similar conveyances. A 14-foot fire lane for emergency vehicles shall be maintained throughout the closed area.

BE IT FURTHER RESOLVED that a portion of First Street, from the alley between Main Street and Sherman Street to Lazelle Street shall be closed to motor vehicle traffic at 2 a.m. on Friday August 3, 2007 to 2 a.m. on Sunday August 12, 2007, for parking, rally displays, and other rally activities to be determined by the Council. A 14-foot fire lane for emergency vehicles shall be maintained throughout the closed area.

BE IT FURTHER RESOLVED a portion of Third Street from the alley between Main and Sherman Streets to the alley between Main and Lazelle Streets shall be closed to all traffic with the exception of motorcycle traffic from 2 a.m. on Friday August 3, 2007 to 2 a.m. Sunday August 12, 2007 for parking, rally displays, and other rally activities to be determined by the Council. Bicycles, skateboards, scooters, roller blades and other similar conveyances shall not be allowed to use that portion of Third Street described during the above time period, as the presence of bicycles, skateboards, scooters, roller blades and other similar conveyances present a safety hazard to pedestrians, motorcyclists, bicyclists and those riding skateboards, scooters, roller blades and other similar conveyances. A 14-foot fire lane for emergency vehicles shall be maintained throughout the closed area.

BE IT FURTHER RESOLVED that that portion of Fifth Street from Sturgis Community Center to Lazelle Street be closed to normal traffic for rally display purposes for the time period from 2 a.m. on Friday, August 3, 2007 to 2 a.m. on Sunday August 12, 2007, and for such additional time if deemed necessary. That a 14-foot fire lane for emergency vehicles shall be maintained throughout the closed area.

BE IT FURTHER RESOLVED that four-wheel vehicular traffic shall be allowed through said alley between Main and Sherman Street from Middle Street through Fourth Street; and that the alley between Main Street and Lazelle Street, shall be open to four-wheel vehicular traffic from said Middle Street through Fourth Street.

BE IT FURTHER RESOLVED that while four-wheel vehicular traffic is allowed in the above said alleys, no parking is allowed in this area except for strict adherence to loading and unloading vehicles as set forth in Ordinance 2001-24 Chapter 16.05.07 (12) of the Sturgis City Ordinances.

Dated this 20th day of February, 2007.

Published: March 3, 2007

Effective: March 24, 2007

Anders duly seconded the motion for the adoption of the foregoing resolution. All those present voted in favor of and the resolution was declared passed & adopted.

Green introduced the following written resolution and moved its adoption:

RESOLUTION 2007-09

RESOLUTION SETTING THE ELECTION DATE FOR VOTE ON CHANGE IN FORM OF GOVERNMENT:

WHEREAS it appears to the Common Council of the City of Sturgis that more than 589 signatures have been received from qualified voters of the municipality of Sturgis, South Dakota

to bring the following proposal to a voters for their approval or rejection pursuant to SDCL § 9-11-5:

CITY MANAGER FORM of GOVERNMENT: The City Manager is the chief administrative officer for the City and is appointed by the City Council. The City Manager implements policy decisions of the City Council and enforces City ordinances. The City Manager appoints and directly supervises most directors of the City's operating departments and supervises the administration of the City's personnel system and further supervises the official conduct of City employees including their employment, compensation, discipline and discharge. The City Council, however, has the power to appoint and remove the auditor, attorney, library board of trustees, and the treasurer, with the auditor and treasurer having the power to appoint all deputies and employees in its offices. The City Manager also oversees the administration of City contracts, and prepares and introduces ordinances and resolutions to the City Council. The City Manager further prepares a proposed annual budget to be submitted to the City Council, and presents recommendations and programs to the City Council.

WHEREAS it appears to the Council that 584 signatures were required to bring this matter to a vote of the people;

NOW THEREFORE BE IT RESOLVED that the question of the change in form of city government be submitted for a vote of the people to be held at the regular municipal election dated April 10, 2007.

Dated this 20th day of February 2007.

Published: March 3, 2007

Effective: March 24, 2007

Patterson duly seconded the motion for the adoption of the foregoing resolution. All those present voted in favor of and the resolution was declared passed & adopted.

Motion by Anders, second Chaplin & carried unanimously to approve the 2006 write-offs for sanitation (\$891.07) and wastewater (\$1,832.15).

Motion by Call, second by Chaplin & carried unanimously to authorize the purchase of a John Deere backhoe in the amount of \$69,995 from RDO. This is from the bid submitted to the City of Mission.

Motion by Chaplin, second by Anders & carried unanimously to authorize to advertise for bids on a street sweeper.

Motion by Ferguson, second by Chaplin & carried unanimously to authorize to advertise for bids on an ambulance.

Motion by Chaplin, second by Anders & carried unanimously to authorize to advertise for bids on the 2007 Street Improvement Project.

Motion by Patterson, second by Chaplin & carried to approve first reading of Ordinance 2007-02 – Ordinance Amending Title 12.02.01 Specific Acts, Conditions and/or Things Deemed to be Nuisances.

Motion by Patterson, second by Chaplin & carried to approve first reading of Ordinance 2007-03 – Ordinance Amending Title 12.08.02 Sale of Fireworks.

Motion by Green, second by Anders & carried to approve first reading of Ordinance 2007-04 – Ordinance Amending Title 12.08.03 Use of Fireworks.

Motion by Patterson, second by Chaplin & carried to approve first reading of Ordinance 2007-05 – Ordinance Adding Title 12.08.04 Restriction by Resolution.

Motion by Green, second by Chaplin & carried to approve first reading of Ordinance 2007-06 – Ordinance Amending Title 12.11.07 Fees for Sexually Oriented Performers.

Motion by Green, second by Call & carried to approve first reading of Ordinance 2007-07 – Ordinance Amending Title 13.02.08 Trespass and Unauthorized Use of Property.

Motion by Green, second by Chaplin & carried to approve first reading of Ordinance 2007-08 – Ordinance Amending Title 13.04.03 Carrying: Persons Under 18 (Firearms).

Motion by Green, second by Anders & carried to approve first reading of Ordinance 2007-10 – Ordinance Amending Title 15.04.01 Unlawful to Obstruct Streets and Sidewalks.

Motion by Chaplin, second by Anders & carried unanimously to authorize to advertise for a full-time rubble site operator.

Motion by Chaplin, second by Anders & carried unanimously to approve the following salary matters: Wages – a) Tanya Neuschwander – Transfer to Parks Dept, \$11.29/hr (3/4 time), effective 3/12/07; b) Ashley Johnson – CC Aquatics, \$7.25/hr, effective 1/1/07 (correction).

OTHER MATTERS THAT MAY COME BEFORE COUNCIL

Green advised that she had requested a copy of the petitions for the management form of government that over 1000 people had signed. She wanted it clarified that the vote would be for the City Manager form of government and not for the option of manager or administrator.

Green further advised that the program the other night was presented based on the request of the Citizens to Advance Sturgis. This group requested that the City invite Roland Van der werff. Green has concerns with the way the news has been reporting the petitions as a “manager/administrator” proposal.

Again, the vote is on a city manager form of government. Should that fail, the council then has the right to look into an administrator position. Green is concerned that the council is taking a hit based on the mis-information that is circulating and she just wants to make sure the public knows what they are voting for.

Jack Hoel advised that he felt everybody already understands that.

Scudder advised that the rally committee had discussed the issue of contracts being signed. The committee felt that, due to the limited time frame, the rally director be allowed to sign any contracts that would enable the department to continue their daily business with guidelines set forth from legal counsel.

Patterson advised she would like to visit with legal regarding the contracts and binding the city by them.

Chaplin advised that they had a nice attendance at the Freedom Memorial Fundraiser on Saturday, February 17, 2007. The final tally is not in yet but they raised enough to be able to get the granite ordered. The committee would like the Freedom Memorial dedication set for Flag Day in June. Of course, more donations would be welcomed.

Wayne Reynolds requested clarification from Green on her previous comments on the change in form of government, which she gave.

Finance Officer Pauline Sumption also clarified that there were not over 1,000 signatures that were certified. She advised that she certified 589 (584 were needed) and there were maybe half a dozen additional petitions in which she could certify names. However, many had to be disregarded for various reasons.

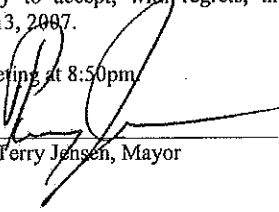
Motion by Anders, second by Chaplin & carried to adjourn to executive session for the purpose of discussing personnel matters.

Motion by Green, second by Anders & carried to return to regular session.

Motion by Chaplin, second by Green & carried unanimously to accept, with regrets, the resignation of Finance Officer Pauline Sumption, effective April 13, 2007.

Motion by Chaplin, second by Green & carried to adjourn the meeting at 8:50pm.

ATTEST: 
Pauline Sumption, Finance Officer

APPROVED: 
Terry Jensen, Mayor

PROCEEDINGS OF THE STURGIS CITY COUNCIL – APRIL 16, 2007

The Common Council of the City of Sturgis met in regular session at 7:30 p.m. on Monday April 16, 2007 at the Sturgis Community Center. Present: Mayor Terry Jensen, Aldermen Roger Call, Penny Green, Tom Ferguson, Sherry Scudder, Mark Chaplin, Pokey Jacobson, Steve Anders and Bev Patterson. Absent: None.

Mayor Jensen made the following announcements: the Library/Municipal Offices complex will be holding its grand opening on May 4th from 2pm-6pm with the sculpture unveiling at 2:45; b) a moment of silence was observed for our men & women serving in the military and also for the death of students at Virginia Tech.

Water Board President Dale Morman presented the Water Department employees Eldon Christians, Dale Olson, Brad Deutsch and Neil Murray with the 2006 Drinking Water Certificate of Achievement Award received from South Dakota Department of Environment and Natural Resources.

Motion by Jacobson, second by Anders and carried to approve the agenda as presented.

Motion by Anders, second by Ferguson and carried to approve the minutes of the April 2 and April 5, 2007 meetings.

Motion by Call, second by Jacobson and carried with Patterson voting no to approve the following claims:

GENERAL FUND – Sam's Club, \$262.87, merch for resale; Sam's Club, \$121.01, sup.

BRICK PROJECT FUND – Sam's Club, \$176.01, sup.

MAYOR'S RIDE – Sam's Club, \$176.01, sup.

RALLY – Sam's Club, \$196.34, sup.

GENERAL FUND – A&B Business, \$117.94, maint; A&B Welding, \$166.16, sup; A&J Surplus, \$44.80, sup; Amcon Distributing, \$117.22, merch for resale; American Red Cross, \$206.00, cc prog exp; Banyon Data Systems, \$865.00, maint; Bentz Equipment, \$278.35, maint; Colleen Bertolotto, \$169.00, other; Best Business Products, \$25.30, maint; BH Chemical, \$1,105.32, sup; BHP&L, \$16,348.69, util; Border States Electric, \$999.93, maint; Butte Electric, \$233.66, util; Campbell Supply, \$271.67, sup; Chemsearch, \$176.95, sup; City of Belle Fourche, \$8.00, prof fees; Coca Cola, \$1,194.00, sup; Curt Corey, \$30.00, cc prog exp; Custom Cage, \$1,340.00, sup; Ecolab, \$305.00, maint; Elan-City, \$2,297.35, sup; Energy Labs, \$17.50, maint; Environmental Products, \$44.16, sup; Farmers Union Oil, \$11,045.18, sup; Freeman Electric, \$579.06, maint; FSH Communications, \$120.00, util; Diana K. Hayes, \$141.00, sup; Heiman Fire Equipment, \$149.65, sup; Hillyard, \$330.80, sup; HSBC Business Solutions, \$99.99, maint; Judith Hughes, \$174.00, other; Nora Hussey, \$161.00, other; Jacobsen Ford, \$99.44, maint; Dennis Johnson, \$80.00, cc prog exp; Johnston Hardware, \$173.06, sup; Kimball Midwest, \$176.58, sup; Melissa Lensegrav, \$11.96, other; Lynn's Dakotamart, \$147.86, other; Edna Matz, \$146.00, other; Donna Mayer, \$173.00, other; Meade Co Auditor, \$9,430.11, other; Meade Co Times, \$1,898.58, publishing; MDU, \$6,794.56, util; Stacie Morell, \$250.00, refunds; NAPA, \$665.15, maint; Shirley Nohava, \$141.00, other; Carolyn Oedekoven, \$173.00, other; Office Depot, \$39.99, sup; Officemax, \$211.94, sup; OMBS Express Police Supply, \$128.74, sup; O'Reilly Auto Parts, \$5.33, maint; Joel Ortiz, \$30.00, other; Owens Interstate Sales, \$529.10, sup; Pamida, \$209.30, sup; Park Avenue Car Wash, \$100.00, sup; Pet Giant, \$25.18, sup; Pete Pi, Sr., \$30.00, other; Pizza Hut, \$32.08, other; Powerplan, \$1,025.67, maint; Prairiewave, \$234.79, util; Larry Prince, \$80.00, cc prog exp; Public Safety Equipment, \$597.90, sup; Purchase Power, \$299.75, sup; Rapid Delivery, \$33.60, maint; Louise Rogers, \$166.00, other; Rushmore Communications, \$118.13, maint; Rushmore Office Supplies, \$366.54, sup; SD Dept of Revenue, \$12.00, sup; Servall Towel, \$356.83, sup; Dorothy Short, \$161.00, other; Ruth Smit, \$178.00, other; Kary Stock, \$169.00, other; Sturgis Volunteer Fire Dept, \$3,500.00, state grants; Superior Lamp, \$360.98, sup; Temperature Technology, \$552.51, sup; Tom's T's, \$806.00, cc prog exp; Town-n-Country Plumbing, \$571.35, sup; Joey Weiland, \$60.00, sup; Weimer's Diner, \$35.90, other; Woods, Fuller, Shultz & Smith, \$728.04, prof fees.

PARK – A&B Welding, \$166.37, sup; Barrows Electric Services, \$849.82, maint; Bentz Equipment, \$620.12, maint; BHP&L, \$37.30, util; Birdsall Sand & Gravel, \$45.75, sup; BSN Sports, \$260.97, maint; Campbell Supply, \$241.23, sup; Dakota Mill, \$20.00, sup; Elan-City, \$168.32, sup; Farmers Union Oil, \$11.00, maint; Godfrey Brake Service, \$55.71, maint; Heartland Paper, \$115.54, sup; Hills Materials, \$136.80, maint; J&L Services, \$223.00, maint; Jacobsen Ford, \$1.60, maint; Johnston Hardware, \$7.05, sup; Lynn's Dakotamart, \$7.23, sup; MDU, \$62.40, util; NAPA, \$114.22, sup; Occupational Health Network, \$38.00, prof fees; Owens Interstate Sales, \$192.75, sup; Pamida, \$29.99, sup; Powerhouse, \$76.55, maint; Prairiewave, \$128.88, util; Rapid Delivery, \$8.40, maint; SD Federal Property Agency, \$10.00, sup; Sturgis Community Center, \$12.75, sup; Subway, \$42.00, sup; The Sharpening Shop, \$24.00, maint.

April 16, 2007

BRICK PROJECT FUND – Glover Investments, \$1,400.00, publishing.

AMBULANCE SERVICE – Alliance Medical, \$554.62, sup; BH Chemical, \$115.19, sup; BH Garage Doors, \$40.00, maint; DB Billing, \$604.26, prof fees; Ecolab, \$45.00, maint; Farmers Union Oil, \$524.61, sup; Interstate All Batteries Center, \$999.20, sup; Meade Co Times, \$11.56, prof fees; Mountain Plains Health Consort, \$15.00, prof fees; Office Depot, \$95.91, sup; Pamida, \$49.99, sup; Regional Home Medical Equip, \$178.00, sup; West River Electric Assoc, \$21.79, util.

CAPITAL IMPROVEMENT – Brosz Engineering, \$9,060.00, cap imp; Meade Co Auditor, \$2,837.93, interest; Meade Co Times, \$54.57, other; SD Dept of Transportation, \$636.00, cap imp.

CITIZEN CORPS POLICE GRANT – Elan-City, \$1,073.22, sup.

SALES TAX REFUNDING BOND, 2002 – First Nat'l Bank in SF, \$180,927.50, principal.

2005 SERIES REVENUE BOND – Rural Development, \$9,773.00, principal.

COMMUNITY PROJECTS – Daktronics, Inc., \$20,788.00, cap imp.

LIQUOR – BHP&L, \$747.95, util; Campbell Supply, \$26.82, sup; Coca Cola, \$372.50, pop for resale; Eagle Sales, \$7,758.20, other; Ecolab, \$31.00, maint; Elan-City, \$68.98, prof fees; Fisher Beverage, \$6,440.66, off sale beer; Johnson Western Wholesale, \$21,178.57, off sale liquor; Lynn's Dakotamart, \$13.87, sup; MDU, \$34.96, util; Nash Finch, \$45.00, other; Pepsi Cola, \$232.90, pop for resale; Republic Beverage Co, \$11,695.56, off sale liquor; S. Ellwein, \$116.66, merch for resale; Servall, \$91.92, maint; Western Business Solutions, \$974.00, maint.

WATER SYSTEM OPERATIONS – BHP&L, \$66.68, util; Butte Electric, \$183.60, util; Prairiewave, \$79.06, util.

WASTEWATER FACILITIES – BHP&L, \$1,481.94, util; BH Truck & Trailer, \$33.92, maint; Birdsall Sand, \$231.00, maint; Campbell Supply, \$46.49, maint; Chemsearch, \$150.27, sup; City of Belle Fourche, \$34.30, other; Dakota Rental, \$1,150.00, maint; Godfrey Brake Service, \$396.01, maint; Johnston hardware, \$27.98, maint; Meade Co Times, \$23.75, publishing; NAPA, \$11.59, sup; Rushmore Office Supplies, \$25.00, sup.

SANITARY SERVICE – A&B Welding, \$49.24, maint; BH Truck & Trailer, \$103.20, maint; Campbell Supply, \$265.08, sup; City of Belle Fourche, \$14,109.36, other; Dakota Battery, \$23.75, maint; Farmers Union Oil, \$416.40, sup; Meade Co Times, \$149.50, publishing; NAPA, \$308.02, sup; Owens Interstate Sales, \$272.30, maint; Rushmore Office Supplies, \$107.94, sup.

RALLY – A&B Business, \$57.19, maint; Boner's Woodworking, \$6,600.00, sup; Coca Cola, \$36.00, sup; Elan-City, \$4,802.61, sup; Executive Business Communications, \$68.00, maint; Fedex, \$502.91, travel; Loud American Roadhouse, \$47.70, sup; Mobile Electronics Service, \$1,400.00, sup; Officemax Contract, \$63.18, sup; Outsource Solutions, \$6,475.00, prof fees; Pitney Bowes-Rally, \$342.00, rent; Purchase Power, \$3,018.99, sup.

TIF #2-BESTGEN – First Western Bank, \$3,454.19, other.

TIF #7-LEGNER – Wells Fargo-Sturgis, \$2,095.63, other.

TIF #8-ALLISON II – First Western Bank, \$7,505.74, other.

This was the time set upon application for the public hearing for a zoning variance for Billy Fields, dba Rosco'z, 976 Lazelle, to construct an 8' privacy fence between Rosco'z and BP Amoco (7ft. is allowed by ordinance) and also to construct a deck with less than the required side-yard setback. The Planning Commission had no recommendation on these requests. Billy Fields would like these requests withdrawn.

Motion by Chaplin, second by Patterson and carried to a authorize Park Department to allow Iverson Construction the use of used chain link fence in exchange for Iverson Construction to use their boom truck and operator to disassemble scoreboard at Strong Field.

Motion by Patterson, second by Scudder and carried to approve the Chamber of Commerce's request for temporary street closure from Main Street south to the alley by Northern Hills Federal Credit Union from 8:00 a.m. until the activities are over at approximately 5:00 p.m. on June 8, 2007; temporary street closure for the Cavalry Days parade to be held on Saturday, June 9, 2007 at 10:00 a.m.; the parade route will begin at the Veteran's Club and proceed west on Main Street, turn south on Third Street, turn east on Sherman Street and proceed back to the Veteran's Club; and to allow the Chamber of Commerce to place banners across some city streets.

This was the time set to award the bid for the 2007 Street Overlay Project. The following bids were received:

❖ J & J Asphalt	\$273,257.20
❖ Simon Contractors of SD	\$289,664.00
❖ Hills Materials	\$288,089.75
❖ Sacrison Paving, Inc.	\$278,501.75

Motion by Jacobson, second by Anders and carried unanimously to award the bid to J & J Asphalt in the amount of \$273,257.20.

Patterson introduced the following written resolution and moved its adoption:

RESOLUTION 2007 - 14

A RESOLUTION AMENDING THE MUNICIPAL COMPENSATION FOR ELECTION BOARD

WHEREAS it is necessary to set the municipal compensation for the election board for the City of Sturgis; and

WHEREAS on January 2, 2007 the compensation for the election board had been set at \$110.00 per day with the superintendent receiving \$125.00; and

WHEREAS it has been determined that the size of the election was larger than anticipated and that there were multiple issues to be voted on and counted;

NOW THEREFORE BE IT RESOLVED that the compensation for the members of the election board be amended so that they be paid \$8.00 per hour with the superintendent receiving \$8.25/hr.

BE IT FURTHER RESOLVED that those members of the election board that attended the election school shall be paid \$10.00/hr while the school was in session.

Dated this 16th day of April 2007.

Published: April 21, 2007

Effective: May 11, 2007

Green duly seconded the motion for the adoption of the foregoing resolution. All those present voted in favor of and the resolution was declared passed and adopted.

Green introduced the following written resolution and moved its adoption:

RESOLUTION 2007-15

A RESOLUTION CANVASSING THE ELECTION

BE IT RESOLVED by the Common Council of the City of Sturgis, South Dakota, as follows:

This is the time and place for canvassing the vote of the Annual City Election held on April 10, 2007. All poll books were thoroughly examined and the votes cast were as follows:

<i>For Second Ward Alderman -- Two Year Term</i>	<i>Bey Patterson</i>	<i>216</i>
	<i>David Hersrud</i>	<i><u>266</u></i>
		<i>482</i>
<i>For Third Ward Alderman -- Two Year Term</i>	<i>Pokey Jacobson</i>	<i>115</i>
	<i>Jamie McVay</i>	<i>300</i>
	<i>Carmen Flint</i>	<i><u>203</u></i>
		<i>618</i>
<i>For Fourth Ward Alderman -- Two Year Term</i>	<i>Penny Green</i>	<i>185</i>
	<i>Bernadette Usera</i>	<i><u>396</u></i>
		<i>581</i>
<i>For Mayor -- Two Year Term</i>	<i>Maurice LaRue</i>	<i>833</i>
	<i>Joseph Bryant</i>	<i>424</i>
	<i>Richard Deaver</i>	<i><u>762</u></i>
		<i>2,019</i>
<i>"For the Change in Form of Government"</i>		<i>1,224</i>
<i>"Against the Change in Form of Government"</i>		<i><u>768</u></i>
		<i>1,992</i>

The results of the election of April 10, 2007 are hereby declared to be as follows:

Tom Ferguson was unopposed for First Ward Alderman, two-year term, and is hereby declared elected to that office.

David Hersrud received a majority of the votes cast for Second Ward Alderman, two-year term, and is hereby declared elected to that office.

Jamie McVay received a majority of the votes cast for Third Ward Alderman, two-year term, and is hereby declared elected to that office.

April 16, 2007

Bernadette Usera received a majority of the votes cast for Fourth Ward Alderman, two-year term, and is hereby declared elected to that office.

Maurice LaRue received a majority of the votes cast for Mayor, two-year term, and is hereby declared elected to that office.

"For the Change in Form of Government" received a majority of the votes cast and it is hereby declared that the City of Sturgis will change to the manager form of government.

BE IT FURTHER RESOLVED that the Finance Officer shall issue certificates of election to all elected candidates.

Dated this 16th day of April 2007.

Published: April 21, 2007

Effective: May 11, 2007

Anders duly seconded the motion for the adoption of the foregoing resolution. All those present voted in favor of and the resolution was declared passed and adopted.

Motion by Patterson, second by Chaplin and carried unanimously to approve the second reading of Ordinance 2007-12 – Ordinance Amending Title 16.05.03 Parking or Stopping on Streets or Highways. The ordinance reads as follows:

ORDINANCE 2007-12

**REVISED ORDINANCE AMENDING TITLE 16, CHAPTER 16.05, SECTION 16.05.03
PARKING OR STOPPING ON STREETS OR HIGHWAYS**

BE IT ORDAINED by the Common Council of the City of Sturgis, Meade County, South Dakota, that Title 16 Chapter 16.05 Section 16.05.03 PARKING OR STOPPING ON STREETS OR HIGHWAYS shall be amended to add Subsection E to read as follows:

- E. No person shall park or leave standing any vehicle upon Moose Drive from its intersection with Dolan Creek Road to Highway 14A.*

Dated this 16 day of April, 2007.

First reading: April 2, 2007

Second reading: April 16, 2007

Adopted: April 16, 2007

Published: April 21, 2007

Effective: May 11, 2007

Motion by Chaplin, second Scudder and carried unanimously to authorize Deputy Finance Officer Shyne to transfer any remaining funds from the Half Mile Fund to the Rally Fund.

Motion by Green, second by Scudder and carried unanimously to appoint Ann Bertolotto and Jeanie Shyne as Interim Finance Officers.

Motion by Jacobson, second by Chaplin and carried to authorize advertisement for Finance Officer.

Motion by Anders, second by Chaplin and carried unanimously to authorize the hiring of A to Z Shredding for record destruction at the average of \$.20 per pound.

Motion by Anders, second by Chaplin and carried unanimously to approve a raffle request from Guide Dogs of America, which will be sold during the 2007 Motorcycle Rally from Custom Corners, 1700 block of Lazelle Street.

Motion by Chaplin, second by Scudder and carried to authorize Mayor Jensen to sign the West Nile grant application.

Motion by Jacobson, second by Chaplin and carried unanimously to authorize Mayor Jensen to sign agreement with Black Hills Central Reservations.

Bryan Carter, The Knuckle Saloon, appeared before the city council to inform them of their plans concerning existing structures on Second Street that house Turkey Graphix and Turkey Graphix Factory Outlet. The current plan calls for tearing down these two structures and replacing them with a temporary structure or tent. Carter does plan on starting construction of a new structure in the fall of 2007 that will again hold these two businesses along with the possibility of a sports bar and gift shop.

Motion by Chaplin, second by Jacobson and carried unanimously to approve the travel of Jeanie Shyne and Joyce Ehlers to the SDGHRA/SDGFOA School in Pierre June 12-15, 2007.

Motion by Jacobson, second by Anders and carried unanimously to approve the following new hires: a) Eric Tibbetts – Water Superintendent, \$50,000/yr, effective 5-16-07; b) Gary Edwards – Seasonal Parks, \$7.00/hr, effective 4/17/07.

OTHER MATTERS THAT MAY COME BEFORE COUNCIL

Dana Walker appeared before the council to discuss decks that he constructed on a house in the 1900 block of Junction Avenue.

Motion by Green, second by Jacobson and carried unanimously to direct Mr. Walker to discuss this situation with the Planning Commission.

Alderman Call questioned where the city was going to advertise for a new Finance Officer.

Council directed Deputy Finance Officers to work with the Legal and Finance Committee on this job advertisement.

Green advised that she had attended the Meade County Planning meeting on Monday and wanted to reassure residents that both the city and the county had concerns on proposed cell towers. Currently the city and the county have a 90 day moratorium against any new cell towers in order to give the entities time to further study their options.

Motion by Jacobson, second by Chaplin and carried to adjourn to executive session for the purpose of discussing personnel and legal matters.

Motion by Chaplin, second by Ferguson and carried to return to regular session.

Motion by Chaplin, second by Green and carried unanimously to hire Guy Edwards, Jr. to do an appraisal on property located to the east side of Le Salon at the corner of 8th & Lazelle.

Motion by Green, second by Chaplin and carried to adjourn the meeting at 9:05 p.m.

ATTEST: Jeanie Shyne APPROVED: Terry Jensen
 Jeanie Shyne, Deputy Finance Officer Terry Jensen, Mayor

RESOLUTION 2021 - 08
A RESOLUTION AUTHORIZING THE SIGNING OF CONTRACTS FOR SUPPLIES,
SERVICES AND EMPLOYEE CONTRACTS

WHEREAS, the City makes use of numerous vendors throughout the year to provide supplies and services not subject to the State bid law requirements to help the City effectuate the day to day operation needs of the organization;

WHEREAS, the said vendors may require the signing of contracts before the goods or services are provided;

WHEREAS, all departments of the City are required to follow the Council adopted Purchasing Policy and must strictly abide by the appropriated authority within each year's budget;

WHEREAS, the City may enter differing contracts with employees to further the City's interests;

WHEREAS, the City has adopted the City Manager form of government whereas City staff are hired to complete administrative tasks in an efficient expedited manner;

NOW THEREFORE, City Manager Daniel Ainslie or Mayor Mark Carstensen are hereby authorized to execute said contracts for goods or services that comply with the parameters of the City Council adopted Purchasing Policy and employee contracts throughout calendar year 2021.

Dated this 4th day of January 2021.

CITY OF STURGIS

Mayor Mark Carstensen

ATTEST:

Fay Bueno
City Finance Officer

Published: 01-12-2021

Effective: 02-02-2021

RESOLUTION 2020 - 07
A RESOLUTION AUTHORIZING SIGNATURES TO SIGN
SPONSORSHIP AGREEMENTS

WHEREAS, the City of Sturgis desires to enter into contract with business and non-profit entities for the purpose of sponsorship of the City of Sturgis Motorcycle Rally;

WHEREAS, the City's staff bring forward potential agreements under the instruction and guidance of the City's Rally and Events Committee;

WHEREAS, the Rally and Events Committee, City Manager and staff will review said contract templates and potential agreements to ensure compliance with overall sponsorship strategy and to ensure City's ability to meet all logistical considerations outlined in the contract;

WHEREAS, promptly responding to sponsorship proposals presented by Rally and Events Staff by signing them when acceptable will enable Rally and Events Staff to work more effectively for the City;

NOW THEREFORE, Mayor Mark Carstensen or City Manager Daniel Ainslie are hereby authorized to execute said sponsorship contracts for partners in which annual revenue is \$30,000 or less for the above intended purposes during calendar year 2020.

Dated this 6th day of January 2020.

Published: 01-14-2020

Effective: 02-04-2020

RESOLUTION 2020 - 08
A RESOLUTION AUTHORIZING THE SIGNING OF CONTRACTS FOR SUPPLIES,
SERVICES AND EMPLOYEE CONTRACTS

WHEREAS, the City makes use of numerous vendors throughout the year to provide supplies and services not subject to the State bid law requirements to help the City effectuate the day to day operation needs of the organization;

WHEREAS, the said vendors may require the signing of contracts before the goods or services are provided;

WHEREAS, all departments of the City are required to follow the Council adopted Purchasing Policy and must strictly abide by the appropriated authority within each year's budget;

WHEREAS, the City may enter differing contracts with employees to further the City's interests;

WHEREAS, the City has adopted the City Manager form of government whereas City staff are hired to complete administrative tasks in an efficient expedited manner;

NOW THEREFORE, City Manager Daniel Ainslie or Mayor Mark Carstensen are hereby authorized to execute said contracts for goods or services that comply with the parameters of the City Council adopted Purchasing Policy and employee contracts throughout calendar year 2020.

Dated this 6th day of January 2020.

Published: 01-14-2020

Effective: 02-04-2020

Motion by Waterland, second by Martinson and carried with all members present unanimously voting yes to approve Resolution 2020-06 – Authorizing City Manager to sign property lease agreements (Rally).

RESOLUTION 2020 - 06
A RESOLUTION AUTHORIZING CITY MANAGER TO SIGN
PROPERTY LEASE AGREEMENTS (RALLY)

WHEREAS, individuals, businesses, non-profit organizations, and other entities desire to lease space (both indoor and/or outdoor) at the Sturgis Community Center, Sturgis Auditorium, Sturgis Liquor Store, Sturgis Fairgrounds and other vacant City owned lots for the City of Sturgis Motorcycle Rally;

WHEREAS, the City has entered into numerous leases for this land throughout the last several years;

WHEREAS, City policy requires leasing entities to sign a property lease agreement with the City outlining the lease requirements and term for both parties;

WHEREAS, the Rally and Events Committee, City Manager and staff review said leases to ensure compliance with the City's property management strategy and to ensure City's ability to meet all logistical considerations outlined in the lease before recommending it be approved;

WHEREAS, promptly responding to lease proposals presented by Rally and Events staff by signing them when acceptable will enable Rally and Events staff to work more effectively for the City to meet City goals;

NOW THEREFORE, City Manager Daniel Ainslie is hereby authorized to execute said lease agreements for the above intended purposes throughout calendar year 2020.

Dated this 6th day of January 2020.

Published: 01-14-2020

Effective: 02-04-2020

Motion by Bachand, second by T. Keszler and carried with all members present unanimously voting yes to approve Resolution 2020-09 – Authorizing Writing Off Insufficient Funds and Accounts Receivable.

RESOLUTION 2020 - 09
A RESOLUTION AUTHORIZING WRITING OFF INSUFFICIENT FUNDS
AND ACCOUNTS RECEIVABLE

WHEREAS, the City receives numerous payments for the Community Center, Ambulance Service and the Liquor Store and the Rubble Site throughout the year within the established internal controls document;

WHEREAS, the City's sponsorship agency will bring forward contracts under the instruction and guidance of the City's Sponsorship Committee;

WHEREAS, the Sponsorship Committee, City Manager and staff will review said contracts to ensure compliance with overall sponsorship strategy and to ensure City's ability to meet all logistical considerations outlined in the contract;

NOW THEREFORE, Mayor Mark Carstensen or, City Manager Daniel Ainslie are hereby authorized to execute said sponsorship contracts for partners in which annual revenue is \$30,000 or less for the above intended purposes throughout calendar year 2018.

Dated this 2nd day of January, 2018.

Published: 01-10-2018

Effective: 01-31-2018

- m. Consideration of Resolution 2018-08 – Authorizing City Manager or Mayor to sign contacts for administrative supplies and services.

RESOLUTION 2018 - 08
A RESOLUTION AUTHORIZING THE SIGNING OF CONTRACTS FOR
ADMINISTRATIVE SUPPLIES AND SERVICES

WHEREAS, the City makes use of numerous vendors throughout the year to provide administrative supplies and services not subject to the State bid law requirements to help the City effectuate the day to day operation needs of the organization;

WHEREAS, the said vendors may require the signing of contracts before the goods or services are provided;

WHEREAS, all departments of the City are required to follow the Council adopted Purchasing Policy and must strictly abide by the appropriated authority within each years' budget;

WHEREAS, the City has adopted the City Manager form of government whereas City staff are hired to complete administrative tasks in an efficient expedited manner;

NOW THEREFORE, City Manager Daniel Ainslie or Mayor Mark Carstensen are hereby authorized to execute said administrative contracts for goods or services that comply with the parameters of the City Council adopted Purchasing Policy throughout calendar year 2018.

Dated this 2nd day of January, 2018.

Published: 01-10-2018

Effective: 01-31-2018

- n. Consideration of 2018 Mayor/Council Charitable Contributions as recommended by Sturgis Rally Charities. City Manager Ainslie announced the agencies and the amount they received for a total of \$25,000.

Departments / City Manager

City Manager

The City of Sturgis is governed under the Aldermanic/Manager form of government. The Mayor is elected at large for a three-year term. The City Council is made up of the Mayor and two aldermen who are elected from each of the four wards for staggered, three-year terms.

The City Manager is the Chief Administrative Officer of the City and serves at the pleasure of the City Council. The City Manager's job is to carry out the goals of the City Council as directed by the Council. The City Manager works in cooperation with the heads of the various City departments to ensure the public is receiving the services that it needs and wants. The City Manager is available to all City employees to offer guidance and to provide assistance in solving problems.

The City Attorney, Public Information Officer, and Human Resources Coordinator are also located within the City Manager's Department.

EXHIBIT 20

P000364

PURPOSE & RESPONSIBILITIES

Council members act as a body when exercising their legislative duties, taking official action only by the passage or adoption of ordinances, resolutions, or motions. Ordinances, resolutions, or motions can only be acted upon by a quorum of the city Council members (again as a body) and only in a public meeting. All power and authority to set policy rests with an elected governing body, not individual members of the Council. The Sturgis City Council includes a mayor and eight members of the Council.

The elected Council members represent their wards within the city, bringing forward individual or group concerns to the entire elected body or the City Manager, as appropriate. Sturgis has four wards and two representatives for each ward. The Mayor serves at large and is elected by all voters, regardless of ward of residence. Under the City Manager form of government, the Mayor has a few additional duties, but generally has the same duties and responsibilities as other Council members.



The Council is responsible for developing the long-range vision for the community. It also established the policies that affect the overall operation of the city. The Council focuses on the city's goals, major projects, as well as long-term planning such as community growth, land use development, capital improvements, financing, and strategic planning.

Council also adopts an annual budget appropriating all funds and, as such, must approve all claims on the City's finances. Likewise, the Council must approve bids, contracts, and any other agreement that financially binds the City. Staff begins drafting the proposed budget in May and presents it to the Council in July for final approval by the second meeting in September. Additionally, Council also considers grant requests from local non-profit organizations in June as part of the budgetary process.

QUALIFICATIONS (SDCL 9-10-4 and 9-8-1.1)

- Candidates must be residents of the United States and live within the City limits.
- Except for the Mayor, Councilors must live and be registered to vote in the ward s/he represents.

TERMS

Following the passage of ordinance 2010-02, Council members now serve for three-year terms. Formerly, terms were of two-year duration.

In the event that a Council member decides he or she is unable to fulfill the duties of their position, the Council member may formally resign from their elected position. In that case, the Council must choose to fill that vacancy through one of two methods: special appointment or special election. The requirements for filling a vacancy on Council are set forth in SDCL 9-13-14.1. In either case, the person filling the vacancy serves the remainder of the unexpired term.



Mark F. Marshall
City Attorney
1040 Harley-Davidson Way
Sturgis, SD 57785
(605) 347-4422
www.sturgis-sd.gov

December 23, 2021

**CITY ATTORNEY’S REPORT ON
PETITION TO CHANGE MUNICIPAL GOVERNMENT
IN THE MUNICIPALITY OF STURGIS**

On December 16, 2021, a Petition for Election to Change Municipal Government in the Municipality of Sturgis was delivery to the City Finance Officer. The Mayor and City Finance Officer asked me to render a legal opinion as expressly allowed by SDCL §9-14-22 on the propriety of the question presented in the Petition presented to her office.

EXECUTIVE SUMMARY

1. The City Finance Officer should not schedule an election on the question presented in the Petition because the question posed is improper.
2. The City Council should authorize an action for declaratory judgment in circuit court to determine whether the power to employ a city manager is a form of government.
3. There is reason to believe criminal conduct occurred in connection with the circulation of the Petition and City Council should refer the matter to appropriate authorities for further investigation.

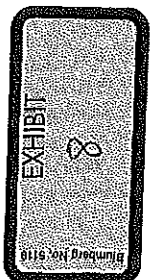
THE PROPRIETY OF THE QUESTION PRESENTED

“Generally, ‘municipal corporations possess only those powers given to them by the Legislature.’” *City of Rapid City v. Schaub*, 2020 S.D. 50, ¶ 13, n. 8, 948 N.W.2d 870, 874 n. 8 citing *Ericksen v. City of Sioux Falls*, 70 S.D. 40, 53, 14 N.W.2d 89, 95 (1944) (“A municipal corporation is a creature of the Constitution and statutes of the state. It possesses only such powers, great or small, as these laws give to it.”)

South Dakota law recognizes two forms of municipal government. SDCL ch. 9-8 authorizes the aldermanic form of government and SDCL ch. 9-9 authorizes the commissioner form of government. SDCL ch. 9-12 identifies the general powers of municipalities and does not include the power to employ a city manager. A municipality under either form of government may employ a



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city manager, if authorized by a vote approving a proposition to do so. SDCL § 9-10-1. "The vote upon the question of employing a city manager shall be by ballot which conforms to a ballot for statewide question except that the statement required to be printed on the ballot shall be prepared by the municipal attorney." *Id.* Thus, while municipalities have the power to employ a city manager if authorized by the voters, nothing in state law recognizes the concept of a city manager as a separate form of municipal government.

Once authorized by the voters, the governing body, and not the voters, has the sole power to remove a city manager. SDCL § 9-10-11 provides in relevant part "[t]he manager shall be appointed for an indefinite term but may be removed by majority vote of the members of the governing body."

Once employed a city manager has a property interest in his or her employment and has a right of due process before the city manager can be removed from office. SDCL § 9-10-11 further provides:

At least thirty days before such removal may become effective, the manager shall be furnished with a formal statement in the form of a resolution passed by a majority vote of such governing body stating the intention of such governing body to remove him, and the reasons therefor. He may reply in writing to such resolution. If so requested by the manager, the governing body shall fix a time for a public hearing upon the question of his removal, and the final resolution removing him shall not be adopted until such public hearing has been had.

Upon passage of a resolution stating the governing body's intention to remove the manager, such governing body may suspend him from duty, but his pay shall continue until his removal shall become effective as herein provided. The action of the governing body in removing the manager shall be final.

After a city manager has been removed from office, the governing body is authorized to designate a qualified administrative officer to perform the duties of his or her office. SDCL § 9-10-12. In a first- or second-class municipality the designated administrative officer is authorized to "perform the duties of the manager". *Id.*

South Dakota law authorizes to petition for a "change in form of municipal government". As noted above, the employment of a city manager is not a "form of government" but is instead a special power granted to a municipality.

The procedure for changing the form of government is different than the procedure to authorize the employment of a city manager. For example, on a petition for employment of a city manager, "the statement required to be



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printed on the ballot shall be prepared by the municipal attorney." SDCL § 9-10-1. There is no such requirement petition for change of form of government. See SDCL § 9-11-7 ("The vote upon such questions shall be by ballot in the form and be case in the manner provided by chapter 9-13.")

A city manager is entitled to due process before he or she may be removed from office. SDCL § 9-10-11. There is no similar right of due process for a city manager when there is a change of form of government. Instead, "[a]ny ordinance, resolution, contract, obligation, right or liability of the municipality shall continue in force and effect the same as though no change of government has occurred." SDCL § 9-11-10. Thus, it is fair to suggest that a change in form of government does not contemplate the removal of a city manager.

Finally, when a city manager is removed from office by the governing body pursuant to SDCL § 9-10-11 there is no provision for any election. That is not the case where the form of government is changed. SDCL § 9-11-9 provides:

If an election changes the form of government or number of commissioners, wards or trustee is approved, at the next annual municipal election or a special election call by the governing board and held pursuant to § 9-13-14, officers shall be chosen under the changed form of government.

The question posed in the Petition conflates the power to employ a city manager with a change in form of city government. That much is apparent in the way the Petitioner framed the question posed:

The form of government for the municipality of Sturgis should be changed from the current form of municipal government (aldermanic with a city manager form of government) to an aldermanic form of government without a city manager.

The Petition does not call for any change in the form of city government. Indeed, two individuals called me to express concerns about the way the Petition was presented to them and asked to have their signature stricken from the Petition. These individuals told me that the Petition was presented to them as an effort to remove the current City Manager from his job. The Petition calls for the removal of the city manager, a power that the South Dakota legislature as reserved to the City Council. As such, it is improper to set an election on the question posed in the Petition.



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REQUEST TO FILE AN ACTION FOR DECLARATORY JUDGMENT

The question whether hiring a city manager is a special power granted to municipal government or a distinct form of government may be an appropriate subject of an action for declaratory judgment. A declaratory judgment defines the rights of the parties regarding the legal question presented. Declaratory judgments differ from other judgments because they do not order a party to take any action or award any damages for violations of the law. Instead, declaratory judgments state whether the parties may seek or are entitled to relief.

One may apply to circuit court for a declaratory judgment pursuant to SDCL §15-6-57. Or in cases such as this, one may apply to the South Dakota Board of Elections for declaratory relief pursuant to A.R.S.D. 5:02:02. You may expect an initial answer more quickly from the South Dakota Board of Elections, however a decision from the South Dakota Board of Elections may be appealed to circuit court and from circuit court to the South Dakota Supreme Court. Filing an action for declaratory judgment in circuit would probably lead to a final decision more quickly than by initiating the action before the Board of Elections.

The benefit of seeking a declaratory judgment is a final binding decision determining on whether removal of a city manager is a change in the form of government. In an action for declaratory relief, the petition circulators would be the adverse party.

I recommend that the City Council direct me to apply for declaratory relief in the forum that the Council deems more appropriate.

PETITION IRREGULARITIES

On examination by the City Finance Officer, the Petition contained several irregularities. For example, there were ten instances of where the same person signed the petition more than once. This conduct provides no basis from criminal investigation but is nonetheless irregular.

The Petition contained one forged signature. Forgery is a Class 5 felony. SDCL § 22-39-36. One convicted of a Class 5 felony faces a maximum possible punishment of up to five years in the state penitentiary, a fine of up to \$10,000 or a combination of prison and fine.

The City Finance Officer received reports that the Petition had been left unattended in a local business creating the opportunity for someone to sign the Petition without the circulator observing the act of signing. As a result of those reports, the City Finance Officer asked the person submitting the Petitions to



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segregate those which had been signed in the business. Four persons who signed under such circumstances were selected at random and contacted to determine if the Circulator in fact witnessed the signature. Two persons reported that someone other than the circulator observed them sign the Petition while two persons reported that the Circulator observed them sign the Petition.

The City Finance Officer and her staff observed that in many instances the column identifying the date and county of the signature appeared to be in different handwriting than the rest of the entry. These observations suggest many of the signatures may have been gathered outside of the statutory time limit but dated within the time allowed by statute contrary to state law. Additionally, two signature dates were obviously altered to show dates within the 6-month limitation, while it is apparent that the signatures were obtained outside of the time limit. The observations also suggest conduct that may constitute the crime of offering a false or forged instrument for filing, registering, or recording, a violation of SDCL § 22-11-28.1, a Class 6 felony. A Class 6 felony is punishable by up to two years in the state penitentiary, a fine of up to \$4000, or a combination of prison and fine.

Eighty-nine persons who signed the Petition were not registered to vote in Meade County and an additional nine person who signed the Petition do not reside within the city limits of Sturgis. The Petition circulator "attest[ed] to the legality of the signatures and that each signing [the] petition is a resident of and a qualified voter of the municipality of Sturgis." False attestation is also a violation of SDCL § 22-11-28.1.

Allegations of forgery and false attestation in election petitions are serious matters. Most recently, Annette Bosworth was convicted of six counts of offering false or forged instruments in connection with her submission of nominating petitions for election to the United States Senate, and her conviction for that conduct was affirmed on appeal. *State v. Bosworth*, 2017 S.D. 43, 899 N.W.2d 691 (2017). Bosworth, a medical doctor, received a suspended imposition of sentence, placed on probation, and ordered to serve 500 hours of community service as a condition of her probation. Bosworth lost her license to practice medicine, but the license was ultimately restored to her.

Because of the serious nature of the irregularities in the Petition and the way the Petition was signed and attested, I suggest the City Council authorize me to refer the matter to law enforcement for such further investigation or other action as law enforcement deems appropriate.



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written off in the aforementioned instances. The write offs may not end further collection efforts. This authority is granted through the calendar year 2022.

Dated this 3rd day of January 2022.

Published: January 8, 2022

Effective: January 28, 2022

RESOLUTION 2022-10 - ELECTION WORKERS PAY 2022

RESOLUTION 2022- 10
A RESOLUTION SETTING THE COMPENSATION FOR ELECTION BOARD

WHEREAS, the compensation for the election board must be set,

NOW THEREFORE BE IT RESOLVED that the members of the election board, made up of three persons per ward, will be paid \$14.00 an hour and the superintendent will receive \$17.00 an hour. The Counting Board will be a three-person board and will receive \$50.00 a person for the time spent counting ballots.

BE IT FURTHER RESOLVED that those members of the election board that attend the election school shall be paid \$14.00 per hr. while the school is in session.

Dated this 3rd day of January 2022.

Published: January 8, 2022

Effective: January 28, 2022

CONSIDERATION TO APPROVE 2022 PROFESSIONAL SERVICES AGREEMENT WITH STURGIS ECONOMIC DEVELOPMENT CORP. (SEDC)

CONSIDERATION TO APPROVE RESOLUTION #2022-11 AUTHORIZING THE MAYOR TO SIGN AND SUBMIT A PETITION TO THE STATE ELECTION BOARD

Moved by Zerbst, seconded by Martinson, to approve Resolution 2022-1 - Submit a petition to the SD Election Board

Members present carried unanimously.

RESOLUTION 2022 - 11
A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AND SUBMIT A PETITION TO THE SOUTH DAKOTA ELECTION BOARD

WHEREAS, petitioners presented a petition titled "Petition for election to change Municipal Government in the Municipality of Sturgis." on December 16, 2021;

WHEREAS, the petition sought to hold an election to change the City government from an Aldermanic with a City Manager to an Aldermanic government without a City Manager;

WHEREAS, the Mayor and the City Finance Officer requested the City Attorney to review the petition to provide a legal opinion on the propriety of the question as authorized in SDCL 9-14-22.

WHEREAS, the City Attorney prepared an opinion that the question posed was improper on December 23, 2021.

WHEREAS, during a Special City Council meeting on December 27, 2021, the City Council heard from the City Attorney and the Attorney representing the petitioners. During the meeting, the Council discussed petitioning the South Dakota Board of Elections to provide a declaratory judgement as to the propriety of the question.

NOW THEREFORE, Mayor Mark Carstensen is hereby authorized to sign and submit a petition to the South Dakota Election Board requesting a declaratory judgement as to the propriety of the question submitted on the question.

Dated this 3rd day of January 2022.

Published: January 8, 2022

Effective: Immediately

APPROVAL OF THE CLAIMS

01-03-2022 CLAIMS

WAGES – Ambulance \$35,008.08; Attorney \$5819.23; Auditorium \$203.59; Buildings \$1229.72; Cemetery \$2352.63; City Manager \$4460.27; Community Center \$11,785.78; Downtown BID \$725.31; Finance Office \$3465.19; Fire Department \$267.16; Fleet \$6732.73; Human Resource \$4900.26; Library \$10,128.09; Liquor \$7418.87; Mayor and Council \$4046.71; Parks \$10,970.29; Planning & Permitting \$5552.36; Police \$47,843.50; Rally \$7222.13; Recreation \$6503.92; Sanitary Service \$16,306.61; Streets \$11,983.00; Wastewater \$9264.60; Water \$18,129.64; Federal Withholding \$18,218.17; FICA \$16,376.99.

GENERAL – A & B Business, \$177.24, repair; American Academy of Appellate Lawyers, \$495.00, dues; Dustin Barnes, \$30.00, transport; BH Community Economic Dev, \$2000.00, dues; BH Council of Local Gov't, \$3445.00, other; BH Energy, \$2736.78, utilities; Roger Burnham, \$4250.00, prof fee; Central States Sanitation, \$40.00, repair; City of Sturgis Water Dept, \$2974.14, utilities; Parker Derouchey, \$40.00, other; Fjelstad Professional Services, \$7000.00, reimbursement; G & H Distributing, \$50.81, supp; Daniel Grubl, \$1500.00, SVFD contract; Human Design, \$17,500.00, prof fee; Leavitt Heartland Insur, \$19,923.00, insur; Scott Lensegrav, \$5000.00, SVFD contract; Meade County Auditor, \$14,162.08, util; Montana Dakota Utilities, \$19.62, util; Mountain Air Insurance, \$4050.00, insur; Travis Parker, \$30.00, other; Prairie Hills Transit, \$7000.00, other; Puffy's, \$63,000.00, reimbursement; Royal Flush Casino, \$7000.00, reimbursement; SD Airport Managers

VI - THE PETITION MUST BE LIBERALLY CONSTRUED

Under God the people rule. South Dakota Constitution, Art. XXI, § 1.

[T]he right of the people to be heard on legislative issues of the day should be maintained and by the legislative directive found in SDCL 2-1-11 that the real intention of the petitioners should not be defeated by mere technicalities.

Nist v. Herseth, 270 N.W.2d 565, 567 (S.D. 1978). The Petition must be liberally construed so that the intent of the Petitioners is not defeated by a mere technicality, which has been the law since at least 1907 (the historical changes to what is now SDCL § 2-1-11).

CHAPTER 166

(H. B. 137)

RELATING TO THE INITIATIVE AND REFERENDUM

AN ACT to Amend Article Three (3) of Chapter (2) of the Political Code Providing for the Initiative and Referendum.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That article three (3) of chapter two (2) of the Political Code be and the same is hereby amended by adding thereto the following, which shall be known as section twenty-eight (28):

§ 28. The petitions herein provided for shall be liberally construed so that the real intention of the petitioners may not be defeated by mere technicality. It shall not be necessary that one paper shall contain all the signatures, but a single petition may be made up of one or more papers, each having the requisite heading.

SL 1907, Ch. 166;

§ 5073. Petition Liberally Construed. The petitions herein provided for shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality. It shall not be necessary that one paper shall contain all the signatures.

Rev. Code 1919, § 5073;

~~shall be~~ ~~liberally construed; technicalities disregarded.~~ The petitions herein provided for shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality.

SD Code of 1939, § 55.046; The current statute states:

2-1-11. Petitions liberally construed.

The petitions herein provided for shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality.

Source: SDC 1939, § 55.0406.

Exhibit 31. For only 115 years the law has substantively remained the same in regards to requiring a petition to be liberally construed.

SDCL § 9-20-10 also requires the Petition to be liberally construed.

9-20-10. Liberal construction of referendum petition.

Such petition may be made up and signed and shall be liberally construed as provided by the statute governing an initiated law.

Source: SDC 1939, § 45.1012; SL 1957, ch 245, § 1.

Exhibit 32.⁶

When the Petition is liberally construed, it is as plain as Wonder Bread that the intent of the Petitioners is to have an election to change the City's scheme of government from one as an Aldermanic with a City Manager to Aldermanic without a City Manager. It also bears repeating that Petitioners used the same exact process Sturgis used in 2007 to switch to the current Aldermanic with City Manager government.

Respondents' request for summary judgment should be denied.

VII - RESPONDENTS' DUTIES

2-14-2.1. Definition of term "shall".

As used in the South Dakota Codified Laws to direct any action, the term, shall, manifests a mandatory directive and does not confer any discretion in carrying out the action so directed.

Source: SL 1997, ch 21, § 1.

⁶ The history of what is now SDCL § 9-20-10 is different from that of SDCL § 2-1-11.

Session Law 1907, Ch. 166

action, including a reasonable fee for any attorney necessarily employed in such action by the inspector.

§ 16. Statement] At the end of each month the inspector shall file with the state auditor a verified statement of the amounts collected and the sources thereof.

§ 17. Repeal] All acts and parts of acts inconsistent herewith are hereby repealed.

Approved February 25, 1907.

INITIATIVE AND REFERENDUM

CHAPTER 166

(H. B. 137)

RELATING TO THE INITIATIVE AND REFERENDUM

AN ACT to Amend Article Three (3) of Chapter (2) of the Political Code Providing for the Initiative and Referendum.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Amendment] That article three (3) of chapter two (2) of the Political Code be and the same is hereby amended by adding thereto the following, which shall be known as section twenty-eight (28):

§ 28. The petitions herein provided for shall be liberally construed so that the real intention of the petitioners may not be defeated by mere technicality. It shall not be necessary that one paper shall contain all the signatures, but a single petition may be made up of one or more papers, each having the requisite heading.

Separate papers in proper form and duly signed may, before filing, be bound together and shall be regarded as one petition and shall be sufficient if the aggregate number of signatures upon all is not less than the number required by this act. Blank lines upon additional sheets securely fastened to a top sheet, having the prescribed heading, may be used in obtaining signatures, and shall be regarded together with the top sheet having the proper heading as one paper.

The place of residence, business and post office address of a petitioner may be indicated by ditto marks if they are the same as those last written above his signature.

EXHIBIT 31

P000367

§ 2. Repeal] All acts and parts of acts in conflict with this act are hereby repealed.

Approved February 26, 1907.

INSURANCE

CHAPTER 167

(S. B. 191)

Fire Marshal to attend State Fair Ch. 280/15

RELATING TO THE COMMISSIONER OF INSURANCE

AN ACT Adding to the Duties of the Commissioner of Insurance and Defining the Same, and Providing for the Necessary Funds to Maintain all Expense Incurred in the Discharge of Said Duties.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. Duties Added] That there be added to the duties of the commissioner of insurance the duties created by this bill. That the commissioner of insurance is hereby empowered to deputize the chief clerk of his office or some other suitable person, or persons to act when required with the full powers herein conferred upon the commissioner of insurance.

§ 2. Duty of Commissioner and Other Officers] The commissioner of insurance and the chief of the fire department of every city or village in which a fire department is established, and the mayor of every incorporated village or town in which no fire department exists, and the township clerk of every organized township without the limits of any organized village or city, shall investigate the cause, origin and circumstances of every fire occurring in such city, village, town or township by which property has been destroyed or damaged by fire, and shall especially make investigation as to whether such fires are the result of carelessness or design. Such investigation shall be begun within five days not including Sunday or the day of the occurrence of such fire, and the commissioner of insurance shall have the right to supervise and direct such investigation whenever he deems it expedient or necessary. The officer making investigation of fires occurring in cities, villages, towns, or townships shall forthwith notify said commissioner of insurance and shall within one week of the occurrence of the fire, furnish to the said commissioner of insurance a written statement of all the facts relating to the cause and origin of the fire, and such other information

vote of the electors of the state at the next general election. Such petition shall be signed by not less than five per cent of the qualified electors of the state; and each elector shall add to his signature his place of residence, business, postoffice address, and date of signing, which petition shall be filed in the office of the secretary of state within ninety days after the adjournment of the legislature which passed such law, and if a majority of all the votes cast both for and against the law be for the law, it shall become a law of the state, in force and effect on and after the day upon which the canvass of the vote thereon has been completed by the state canvassing board.

Source: § 3, Ch. 93, 1899; § 23, Rev. Pol. C. to law going into effect. State ex rel. Richards v. Whisman, 36 S. D. 260, 154 N. W. 707, 1 L. R. A. 1917B, 1, 241 U. S. 643, 36 Sup. Ct. Rep. 449, 60 L.ed. 1218.

§ 5070. **Required Number of Petitioners Determined.** The total number of votes cast for governor, at the last preceding general election, shall, for the purposes of this article, be the basis for determining the number of petitioners required.

Source: § 5, Ch. 93, 1899; § 25, Rev. Pol. C.

§ 5071. **Requirements of Petition.** Every petition proposing a measure must contain the substance of the law desired and must be signed in person by the petitioners, and every petition to submit a law to a vote of the electors must be signed in person by the petitioners and must describe the law desired to be submitted, by setting forth its title, together with the date of its passage and approval.

Source: § 6, Ch. 93, 1899; § 26, Rev. Pol. C.

§ 5072. **Qualifications of Petitioner, Penalties.** Every person who is a qualified elector may sign a petition to propose a measure or submit a law, and any person signing any name other than his own, or any person signing who is not a qualified elector of this state, shall, upon conviction thereof, be fined in any sum not to exceed five hundred dollars or may be imprisoned in the state penitentiary for a term not to exceed five years; and the court may, in its discretion, impose both such fine and imprisonment.

Source: § 7, Ch. 93, 1899; § 27, Rev. Pol. C.

§ 5073. **Petition Liberally Construed.** The petitions herein provided for shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality. It shall not be necessary that one paper shall contain all the signatures, but a single petition may be made up of one or more papers, each having the requisite heading. Separate papers, in proper form and duly signed, may, before filing, be bound together and shall be regarded as one petition and shall be sufficient if the aggregate number of signatures upon all is not less than the number required by this chapter. Blank lines upon additional sheets securely fastened to a top sheet, having the prescribed heading, may be used in obtaining signatures, and shall be regarded, together with the top sheet having the proper heading, as one paper. The place of residence, business and postoffice address of a petitioner may be indicated by ditto marks, if they are the same as those last written above his signature.

Source: Ch. 166, 1907.

§ 5074. **Verification of Petition.** Every person who shall circulate and secure signatures to a petition to initiate or submit to the electors

may be made up of one or more papers, each having the requisite heading. Separate papers, in proper form and duly signed, may, before filing, be bound together and shall be regarded as one petition and shall be sufficient if the aggregate number of signatures upon all is not less than the number required by this chapter. Blank lines upon additional sheets securely fastened to a top sheet, having the prescribed heading, may be used in obtaining signatures, and shall be regarded, together with the top sheet having the proper heading, as one paper. The place of residence, business, and post office address of a petitioner may be indicated by (to marks, if they are the same as those last written above his signature.

Every petition proposing a measure must contain the substance of the law desired and must be signed in person by the petitioners, and every petition to submit a law to a vote of the electors must be signed in person by the petitioners and must describe the law desired to be submitted, by setting forth its title, together with the date of its passage and approval.

Source: § 5071 and part of § 5073 Rev. Code 1919, revised for separate statement of independent subject matter.

55.0404 Qualifications of petitioners: determination of number required. Every person who is a qualified elector may sign a petition to propose a measure or submit a law.

The total number of votes cast for Governor at the last preceding general election, shall, for the purposes of this chapter, be the basis for determining the number of petitioners required.

Source: § 5070 and part of § 5072 Rev. Code 1919, revised for separate statement of independent subject matter.

Cross-reference: § 55.9901, penal provision violation of foregoing section.

55.0405 Verification of petition by circulators: form. Every person who shall circulate and secure signatures to a petition to initiate or submit to the electors any law under the provisions of section 1, Article III, of the Constitution, shall, before filing said petition with the officer in whose office the same is by law required to be filed, make and attach to the petition an affidavit in the following form, which he shall subscribe and swear to before some officer qualified to administer oaths and having an official seal:

State of South Dakota, }
County of } ss.

I,, being first duly and solemnly sworn, on my oath state, that I am a qualified voter of the state of South Dakota. That I am acquainted with all the persons whose names are affixed to the above and foregoing paper and know that each one of said persons signed said paper personally and added thereto his place of residence, his business, his post office address and date of signing. That each and all of said persons are residents and qualified electors of the county of, state of South Dakota. That each of said persons signed said petition with full knowledge of its contents. That I have received no compensation whatever or promise of compensation for my services in circulating said petition.

Subscribed and sworn to before me this day of, 19....

Source: § 5074 Rev. Code 1919.

55.0406 Petitions liberally construed: technicalities disregarded. The petitions herein provided for shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality.

Source: Part of § 5073 Rev. Code 1919, revised for separate statement of distinct subject matter.

2-1-11. Petitions liberally construed.

The petitions herein provided for shall be liberally construed, so that the real intention of the petitioners may not be defeated by a mere technicality.

Source: SDC 1939, § 55.0406.

2-1-11.1. Initiated measure to embrace only one subject.

No initiated measure may embrace more than one subject, which shall be expressed in the title.

Source: SL 2018, ch 23, § 1.

9-10-1 Petition for employment of city manager-Election

9-10-1. Petition for employment of city manager-Election

If a petition signed by fifteen percent of the registered voters of any first or second class municipality as determined by the total number of registered voters at the last preceding general election is presented requesting that an election be called to vote upon the proposition of employing a city manager, the governing body shall call an election for that purpose. Upon receipt of a valid petition, the question shall be presented at the next annual municipal election or the next general election, whichever is earlier. However, the governing body may expedite the date of the election by ordering, within ten days of receiving the petition, a special election to be held on a Tuesday not less than thirty days from the date of the order of the governing body.

The election shall be held upon the same notice and conducted in the same manner as other municipal elections. The vote upon the question of employing a city manager shall be by ballot which conforms to a ballot for statewide question except that the statement required to be printed on the ballot shall be prepared by the municipal attorney.

SL 1918, ch 57, § 1; RC 1919, § 6231; SL 1935, ch 158, §§ 2, 11; SDC 1939, § 45.0901; SL 1988, ch 63, § 5; SL 1992, ch 60, § 2; SL 2006, ch 29, §5; SL 2011, ch 42, §1, eff. March 14, 2011.

9-11-6 Petition by voters for change in form of municipal government-Election

9-11-6. Petition by voters for change in form of municipal government-Election

If a petition signed by fifteen percent of the registered voters of any municipality, as determined by the total number of registered voters at the last preceding general election, is presented to the governing body requesting that an election be called for the purpose of voting upon a question of change of form of government or upon a question of the number of wards, commissioners or trustees, the governing body shall call an election to be held within fifty days from the date of the filing of the petition with the municipal finance officer. At that election the question of the change of form of government or the number of wards, commissioners or trustees, or both, shall be submitted to the voters. No signature on the petition is valid if signed more than six months prior to the filing of the petitions. If the petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply with the provisions of §9-13-14, the question may be submitted at that annual municipal election.

The election shall be held upon the same notice and conducted in the same manner as other city elections.

SDC 1939, § 45.0502; SL 1978, ch 60, § 1; SL 1979, ch 48, § 3; SL 1983, ch 52, § 3; SL 1983, ch 53, § 4; SL 1984, ch 54; SL 1988, ch 63, § 6; SL 1992, ch 60, § 2; SL 2000, ch 34, §4.



9-11-5 City voters authorized to change form of government

9-11-5. City voters authorized to change form of government

The voters of any municipality may change its form of government or change the number of its commissioners, wards, or trustees by a majority vote of all electors voting at an election called and held as provided. Any municipality under special charter may adopt any form of government as provided in this title.

SDC 1939, § 45.0501; SL 1957, ch 243; SL 1992, ch 60, § 2; SL 2000, ch 34, §3.

CHAPTER 34

(SB 103)

Municipal government, process to change form revised.

ENTITLED, An Act revise the process and requirements for changing the form of municipal government.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 9-2-3 be amended to read as follows:

9-2-3. ~~Third class municipalities~~ Each municipality shall be governed by a board of trustees -

~~—First and second class municipalities shall be governed either by~~, a mayor and common council, or by a board of commissioners, ~~in each case with or without a~~. A city manager may serve with any of the forms of government.

Section 2. That § 9-11-1 be repealed.

Section 3. That § 9-11-5 be amended to read as follows:

9-11-5. The voters of any ~~first or second class municipality~~ may change its form of government ~~from the aldermanic to the commission or from the commission to the aldermanic, or may change the number of its commission, or change its form of government from the city manager plan to the aldermanic or commission plan, or from any form of the aldermanic or aldermanic manager plan to any form of the commission or commission manager plan and vice versa~~ or change the number of its commissioners, wards, or trustees by a majority vote of all electors voting at an election called and held as hereinafter provided. Municipalities ~~Any municipality~~ under special charter may in like manner adopt any of the forms ~~form~~ of government as ~~hereinabove provided in this title~~.

Section 4. That § 9-11-6 be amended to read as follows:

9-11-6. If a petition signed by fifteen percent of the registered voters of any ~~first or second class~~ municipality, as determined by the total number of registered voters at the last preceding general election, is presented to the governing body requesting that an election be called for the purpose of voting upon a question of change of form of government or upon a question of the number of wards, commissioners or trustees, the governing body shall call an election to be held within fifty days from the date of the filing of the petition with the ~~auditor~~ municipal finance officer. At that election the question of the change of form of government or the number of wards, commissioners or trustees, or both, shall be submitted to the voters ~~thereof~~. No signature on the petition is valid if signed more than six months prior to the filing of the petitions. If the petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply with the provisions of § 9-13-14, the question shall ~~may~~ be submitted at that annual municipal election.

The election shall be held upon the same notice and conducted in the same manner as other city elections.

Section 5. That § 9-11-9 be amended to read as follows:

9-11-9. If ~~at such an election a change of~~ changes the form of government or number of commissioners ,

wards, or trustees is decided upon approved, at the next annual municipal election or at a special election called by the governing board and held pursuant to § 9-13-14, officers shall be chosen under the changed form of government.

Section 6. That § 9-11-10 be amended to read as follows:

9-11-10. Any ordinance, resolution, contract, obligation, right, or liability of the ~~first or second class~~ municipality shall continue in force and effect the same as though no change of government ~~had~~ has occurred.

Section 7. That § 9-11-2 be repealed.

Section 8. That § 9-11-3 be repealed.

Section 9. That chapter 9-11 be amended by adding thereto a NEW SECTION to read as follows:

If the population of a municipality, as shown by the last preceding federal census, increases or decreases causing the municipality to pass into a different class of municipality pursuant to § 9-2-1, the municipality may, through its governing body, apply to the circuit court having jurisdiction for a judgment authorizing the classification change. Upon the presentation of the application, the court shall establish a time and place for hearing the application. Notice of the hearing shall be given by publishing the order once a week for two successive weeks, the last publication to be not less than

ten days prior to the day of the hearing, Not less than ten days prior to the date of the hearing, the notice of hearing shall also be posted in three public places in the municipality.

Section 10. That § 9-11-4 be amended to read as follows:

9-11-4. Upon such hearing, if the facts warrant the granting of the application, the court shall make and enter its judgment changing the status of ~~such first or second class~~ the municipality to that of a municipality of the ~~third~~ appropriate class, pursuant to § 9-2-1. The court shall establish ~~fixing~~ determining the time when ~~such~~ the change shall be effective and ~~determining~~ determine the manner in which the change shall be made.

A certified copy of ~~such~~ the judgment shall be filed in the office of the register of deeds of the county wherein such municipality is situated, and also in the Office of the Secretary of State.

Signed March 11, 2000.

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Section 6191 was codified in 1939 as SDC 45.0501. That statute provides:

Power of electors to change. The electors of any city may change its form of government from the aldermanic to the commission or from the commission to the aldermanic, or may change the number of its commissioners [REDACTED] to the aldermanic or commission plan by a majority vote of all electors voting at an election called and held as herein provided.

Respondents' SJ Brief, p. 7. Respondents' brief then informs the Court that:

A revised version of SDC 45.0501 was recodified in 1967 in relevant part as SDCL § 9-11-5. SDCL § 9-11-5 in turn was amended in during the 2000 legislative session deleting any reference to the "city manager plan." 2000

Respondent's SJ Brief, p. 7. Respondents leave out the fact that the 2000 amendment also deleted references to aldermanic and commissioner forms of government, to wit:

Section 3. That § 9-11-5 be amended to read as follows:

9-11-5. The voters of any first or second class municipality may change its form of government from the aldermanic to the commission or from the commission to the aldermanic, or may change the number of its commission, or change its form of government from the city manager plan to the aldermanic or commission plan, or from any form of the aldermanic or aldermanic-manager plan to any form of the commission or commission-manager plan and vice-versa or change the number of its commissioners, wards, or trustees by a majority vote of all electors voting at an election called and held as hereinafter provided. Municipalities Any municipality under special charter may in like manner adopt any of the forms of government as hereinabove provided in this title.

SL 2000, ch 34, § 3. Exhibit 29.

2) South Dakota Code has expressly used the phrase "city manager form of government" since at least 1959:

body.

He shall supervise the accounting system for all departments and offices of the municipality in accordance with the recommendations of the State Department of Audits and Accounts, except that for those municipalities administered under the city manager form of government, the supervision will be by the city manager.

1959 SL, ch 268 (in part);

9-14-19. The ~~auditor or clerk~~ appointed financial official shall supervise the accounting system for all departments and offices of the municipality in accordance with the recommendations of the Department of Legislative Audit, except that for those municipalities administered under the city manager form of government, the supervision will be by the city manager.

SL 1995, ch 45 (in part); and

9-14-19. The ~~appointed financial official~~ municipal finance officer shall supervise the accounting system for all departments and offices of the municipality in accordance with the recommendations of the Department of Legislative Audit except that for those municipalities administered under the city manager form of government, the supervision will be by the city manager.

SL 2014, ch 51, § 5. Exhibit 30.

Not only has "City Manager" been acknowledged as a form of government by Respondents themselves for the past 15 years (most recently on January 3, 2022), but has been acknowledged by the state code since at least 1959. Respondents' arguments regarding "form of government" are red herrings in an attempt by Respondents to circumvent state law requiring them to liberally construe the Petition.

Initially, the Council construed the Petition by adopting Resolution 2022-11 on January 3, 2022:

WHEREAS, petitioners presented a petition titled "Petition for election to change Municipal Government in the Municipality of Sturgis" on December 16, 2021;

WHEREAS, the petition sought to hold an election to change the City government from an Aldermanic with a City Manager to an Aldermanic government without a City Manager;

MAYORAL DIFFERENCES: ALDERMANIC VS. ALDERMANIC WITH CITY MANAGER

Powers and Duties of Mayor	Aldermanic	Aldermanic with City Manager
"chief executive officer"	Yes 9-1-8	No. Mayor "shall have the powers and duties of an alderman at large." 9-10-7(1)
"takes care that the laws and ordinances are faithfully executed."	Yes 9-8-3	No; City manager has duty to "see that the laws and ordinances are enforced." 9-10-13
Can break a tie vote	Yes 9-8-3	No
Has the veto power	Yes 9-8-3	No. "in no case shall he have the right of veto." 9-10-7(4)
Appoint the Finance Officer	Yes 9-14-13	No. City Manager appoints. 9-10-9
Appoint other officers	Yes 9-14-13	No. City Manager "shall have power to appoint and remove all officers and employees...." 9-10-9 and 9-10-13
Remove appointed officers	Yes 9-14-13	No. City Manager has this power. 9-10-13
Recommend measures to the Council	Yes 9-8-3	No. City Manager has this power. 9-10-15(3)

FILED

FEB 14 2022

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
4TH CIRCUIT CLERK OF COURT

[Signature]

5:02:08:00. Guidelines for acceptance of petitions. When a petition is presented for filing, the person or governing board authorized to accept the petition shall determine if it meets the following requirements:

- (1) The petition is in the form required by this chapter;
- (2) The petition contains the minimum number of valid signatures, counted according to § 5:02:08:00.01. One or more invalid signatures on a petition do not disallow other valid signatures;
- (3) Each sheet of the petition contains an identical heading and is verified by the circulator. The circulator may add the addresses of the petitioners and the dates of signing before completing the verification. The circulator may also add the printed name of the signer and the county of voter registration. Residence addresses may be abbreviated. The verification was completed and signed before an officer authorized to administer oaths in this state;
- (4) The declaration of candidacy contains the original signature of the candidate. Additional sheets may have an original or photocopied signature of the candidate;
- (5) If a petition is for a ballot question to be voted on statewide, the signatures were obtained after a copy of the text of the petition was filed with the Office of the Secretary of State;
- (6) If a petition is for a ballot question to be voted on statewide, the sponsor(s) must submit the affidavit of completed petition when the petition sheets are submitted to the Office of the Secretary of State;
- (7) The governing board or person authorized to accept the petition shall, if requested, allow a petition circulator the opportunity to add missing information on the signature lines or circulator's verification on the petition provided the filing deadline has not passed; and
- (8) Following the presentation of the petition for filing, names may not be removed from the petition.

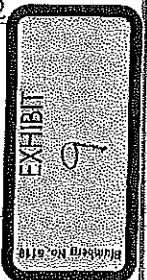
Except for petitions to nominate candidates for school boards, municipal offices, or statewide campaigns, the person who is authorized to accept petitions for filing need not check for voter registration of the signers. **Petitions containing signatures in excess of the minimum number may be filed, but any excess signatures will be disregarded**, unless there is a challenge to that petition. Excess signatures will not be considered by the filing office unless the signatures are needed to validate the petition.

Source: 2 SDR 46, effective December 30, 1975; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 16 SDR 203, effective May 28, 1990; 28 SDR 99, effective January 17, 2002; 35 SDR 48, effective September 8, 2008; 42 SDR 178, effective July 1, 2016; 45 SDR 9, effective July 30, 2018; 46 SDR 42, effective September 30, 2019; 47 SDR 37, effective October 6, 2020.

General Authority: SDCL 12-1-9(6).

Law Implemented: SDCL 2-1-1.1, 2-1-1.2, 2-1-3.1, 9-13-7, 9-13-11, 12-1-1, 12-1-1.1, 12-1-2, 12-6-7.1, 12-6-8, 12-7-1, 13-7-6, 12-1-3, 12-6-4, 18-3-1.

Cross-Reference: Sections of petition, § 5:02:08:00.02.



5:02:08:00.01. Requirements for counting signatures on petitions. Requirements for counting

Å 46

P000117

signatures on a petition sheet are as follows:

(1) No signature on a petition sheet may be counted if one of the following conditions is present:

- (a) The form of the petition does not meet the requirements of this chapter;
- (b) The petition sheet is not a self-contained sheet of paper printed front and back;
- (c) The circulator's verification is not completed or is improperly completed, according to subdivision 5:02:08:00(3) unless the missing information is completed elsewhere on the petition sheet. A completed circulator's verification must include the printed name of the circulator, the circulator's residence address as provided in subdivision (2)(c) of this section, and the complete date;
- (d) The declaration of candidacy has not been completed on or after the first date authorized by law to circulate the petition, and signed by the candidate and the signature witnessed by an official empowered to administer oaths in this state; or
- (e) The circulator's verification was signed by more than one circulator;
- (f) A petition for a legislative candidate must include the district number and whether the candidate is running for senate or house; and

(2) An individual signature on a petition sheet may not be counted if one of the following conditions is present:

- (a) It was signed prior to the signing of the candidate's declaration of candidacy or, if for a ballot question, it was signed before a copy of the text was filed with the secretary of state;
- (b) It was signed after the circulator completed the verification;
- (c) The residence address does not include a street and house number or a rural route and box number and the town. If the signer is a resident of a second or third class municipality, a post office box number may be used. If the signer does not have a residence address or post office box number, a description of the residence location must be provided. If the signer is a resident of a building with a publicly known name, the building name may be used;
- (d) The date of signing, including month and day, is not indicated;
- (e) The signer's name is not printed and legible; or
- (f) The signer's county of voter registration is not provided.

Source: 10 SDR 27, effective September 26, 1983; 12 SDR 43, effective September 23, 1985; 14 SDR 19, effective August 9, 1987; 16 SDR 20, effective August 10, 1989; 19 SDR 12, effective August 5, 1992; 21 SDR 77, effective October 24, 1994; 26 SDR 168, effective June 25, 2000; 33 SDR 230, effective July 1, 2007; 35 SDR 48, effective September 8, 2008; 44 SDR 94, effective December 4, 2017; 46 SDR 42, effective September 30, 2019.

General Authority: SDCL 12-1-9(6).

Law Implemented: SDCL ~~9-13-11~~, 12-1-1, 12-1-1.1, 12-1-2, 12-6-7.1, 12-6-8, ~~13-7-6~~.

5:02:08:00.02. Petitions. A petition may be composed of multiple sheets. Each sheet must be a self-contained sheet of paper printed front and back and have identical headings printed at the top.

Source: 16 SDR 20, effective August 10, 1989; 44 SDR 94, effective December 4, 2017.

General Authority: SDCL 12-1-9(7).

Law Implemented: SDCL 12-1-3(8).

Cross-Reference: Guidelines for acceptance of petitions, § 5:02:08:00(3).

ADDENDUM TO CITY MANAGER EMPLOYMENT AGREEMENT

This Agreement ("Agreement") is an Addendum to the Employment Agreement between the City of Sturgis ("City") and Daniel Ainslie ("Employee"), dated September 2011 ("the Employment Agreement"). This Agreement is effective as of December 6, 2021.

The City affirms that the City of Sturgis, as a municipal corporation, requires a chief executive officer to implement the City's goals and objectives and to direct the day-to-day operations of City staff to achieve those goals and objectives. Currently, City's chief executive officer is a City Manager as provided in SDCL Ch. 9.

During the term of the Employment Agreement to date, the Employee has done an exemplary job as City's chief executive officer. Every aspect of Employee's job performance has met or exceeded the City's expectations. The City believes that it is in the City's best interest to ensure the Employee's continued employment with the City.

The City is informed and thereby believes that the technical termination of the Employee because of a change in form of City government election is not "cause" for calculating compensation to be paid to the Employee upon termination of his Employment Agreement.

If the City residents vote to return to an aldermanic form of government without a City Manager, the City believes the need for a competent chief executive officer will not change. The City still must have a chief executive office to implement the City's goals and objectives and to direct the day-to-day operations of City staff to achieve those goals and objectives. The title of the position may change under a different form of government and a different chapter of the South Dakota Code may apply; nevertheless, the core function of the chief executive officer remains the same.

Therefore, the parties understand that, if there is a change of form of government, the job performed by the Employee under his Employment Agreement could become that of the City Administrator performing those duties and responsibilities outlined by the City in the City Administrator job description, or by resolution, or by ordinance or by any combination of job description, resolution, and ordinance.

If Employee does not accept the change in job title and duties after such an election or if the City does not offer of a change of job title and description, any resulting termination must be considered involuntary by the Employee and "not for cause" for the purposes of calculating Employee's compensation due on the termination of the Employment Agreement.

If such a change in job title and duties is accepted by both parties, the total compensation packages for the Employee as the City Administrator must be no less than the base compensation of the Employee immediately prior to the change in form of city government.

The health, retirement, and insurance benefits (including any cost sharing or matches) for the City Administrator under this Agreement must be the same as for other direct reports to the City Council.

All other terms and conditions of the Employment Agreement will remain in effect without amendment or change.

Executed this 16th day of November 2021, *nunc pro tunc* December 21, 2020.

SIGNED

Daniel Ainslie
Daniel Ainslie

WITNESS

Paul Z Marshall
Name: 11/16/2021

Approved by Sturgis City Council and authorized for signature by the Mayor the 21th day of December 2020.

SIGNED:

Mark Carstensen
Mayor Mark Carstensen

ATTEST

Fay Bueno
FAY BUENO FINANCE OFFICER



FILED

FEB 14 2022

By [Signature]

EXHIBIT A

RESOLUTION 2022 - 13 A RESOLUTION IN SUPPORT OF THE OFFICE OF CITY MANAGER

Working with a City Manager, the City Council has achieved the following objectives:

1. **ENSURED THE FINANCIAL VIABILITY OF THE MUNICIPAL GOVERNMENT.** The City reserves in nearly every major operating fund now exceed the GFOA's recommended amounts. In 2010, the City had no reserves. The City's bond rating improved substantially. Further, the City's financial stability meant that in 2022 the Council is in the position to invest surplus revenue from 2021 on several projects.
2. **REDUCED RELIANCE ON PROPERTY TAX REVENUE TO PROVIDE CITY SERVICES.** The City increased sales tax collections, optimized Rally income, self-administered TIFs, and saw growth in "rooftops" which diversified revenue streams in the General Fund. The Airport and Planning & Permitting Department now almost fully support themselves through revenue they generate. The Liquor Store became profitable and returned more than \$275,000 to the General Fund in 2021. In total, by 2022, the City will have reduced its property tax rate by 34.3% since 2010 levels and property taxes only make up 28% of general fund revenue (down from 37% in 2010). Through growth, in 2021 alone, \$21 million will be added to the tax roles.
3. **PROMOTED NEW HOME CONSTRUCTION AND ENSURE LIFE CYCLE HOUSING DEVELOPMENT.** The Council recognized that the City's stagnant and flat growth rate in the 2000s was severely detrimental to Sturgis's economic and financial viability as a community. The Council prioritized residential growth, offered incentives and encouraged developers to consider building in Sturgis. Several subdivisions of single-family residences and townhomes were built (Dolan Creek, Woodland Drive, Wildflower Townhomes, and Canyon View or are under construction (Garden Grove, Hidden Valley). Workforce housing (Creekside Apartment Complex and Trailhead subdivision) were built. Aspen Grove assisted living community was constructed and a new independent senior living community broke ground in 2021. In 2021 the City saw a residential growth rate of 2.9% and 94 units were issues building permits, the highest number of residential new construction building permits ever issued.
4. **CAPITALIZED ON THE STURGIS MOTORCYCLE RALLY TO BRING ECONOMIC BENEFIT TO THE RESIDENTS OF STURGIS.** The City's in-house sponsorship program now nets more than \$1.1 million dollars annually to the City's General Fund. The City's sponsorship program now attracts nationally and internationally recognized corporations to sponsor the Rally. The Council consolidated all the heritage marks and launched its own brand to grow the Rally's sponsorship and better manage our brand. The Council also established an endowment fund to ensure the legacy of the Rally well into the future.
5. **MADE SIGNIFICANT INVESTMENTS IN THE CITY'S INFRASTRUCTURE.** The City is finishing up a new Wastewater Treatment Facility to include a new interceptor line. The City partnered with the State to completely reconstruct Lazelle Street and Main Street. The Council invested more than \$750,000 for improvements and upgrades at the Community Center. It built concession stands at the Ft Meade Softball Fields, Pony Field, and Legion Field. The Council authorized the construction of the Rally Point plaza, which is a hub for events year round. The City also invested in its Public Works facilities constructing a new, consolidated campus.
6. **INCREASED RECREATIONAL ACCESS FOR RESIDENTS AND VISITORS.** The City expanded bike, recreational and hiking trails within City limits and on City property providing better access to the natural areas that surround our community. Paved bike paths were constructed

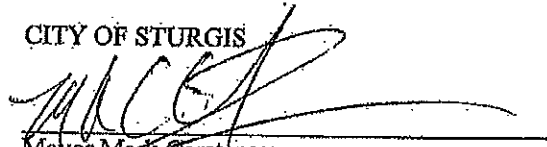
under the Interstate connecting Racoon Drive to Ball Park Road (Deadman Bike Trail). A crushed gravel recreational trail was constructed around Fort Meade VA Campus. The City received grants to construct bike paths to the Oak Acres Mobile Home Park up Boulder Canyon and also along Vanocker Canyon Road. The City coordinated an environmental study with the US Forest Service to allow access to the City dams property. The City partnered with Black Hills Trails to build a trail system on the City dams property opening that property to all residents and visitors.

7. **PROMOTED TOURISM TO STURGIS.** The City instituted the Music on Main summer concert series and the Mountain Bike Point Series. The Council authorized the acquisition of Sturgis Camaro Rally to avoid the event ending or moving to another community. The Council significantly funds the Sturgis Area Chamber of Commerce & Visitors Bureau and also allocates \$20,000 each year to event promotion in the form of grants distributed by the Chamber.
8. **BECAME A PARTNER WITH LOCAL BUSINESSES AND NONPROFITS TO ENSURE QUALITY OF LIFE.** The City Council worked closely with Monument (then Regional) to expand its Sturgis Hospital and relocate the clinic facilities, thereby ensuring the on-going provision of emergency and clinic medical services in town for our residents. The Council invests in the Sturgis Economic Development Corporation as part of its annual budget to ensure their ability to attract and retain businesses in our community. The Council allocates funding each year through the Sturgis Rally Charities Foundation to enhance the lives of our resident.
9. **BUILT RELATIONSHIPS WITHIN AND OUTSIDE THE CITY.** The Council approved agreements with both its long-established collective bargaining units and implemented creative and unique ways to ensure that the City would financially afford the wage and benefit improvements it provided employees. The City invested in the future of its employees through educational opportunities and introducing 457(b) retirement matches. The staff hierarchy was restructured in 2016 to more efficiently utilize staff and equipment. The City developed an annual legislative breakfast to network with our local, state and federal representatives. The City serves in the Municipal League and various Municipal League affiliated boards and associations. The Municipal League requested senior staff to present each year to the Legislature on key bills and issues. Prior to 2007, the City played no role in broader regional politics.
10. **OFFERED RELIABLE, QUALITY MUNICIPAL SERVICES.** The City provided safe drinking water, sanitary sewer services, daily garbage collection, law enforcement response, emergency medical / ambulance services, quality library services, recreational programming, 24/7 exercise and fitness access, an animal shelter, and building inspections. It upgraded parks and ballfield facilities and expanded recycling opportunities. The City provided and often expanded municipal services within minimal cost increases. The City also has received clean audits with no findings, confirming that we are fiscally and responsibly accounting for all the taxpayers' monies.

Therefore, it is hereby resolved by the Sturgis Common Council to strongly affirm its support and its use of the Office of City Manager within its municipal organizational staff and to establish an Office of City Manager Sub-Committee made up of one Councilor from each Ward appointed by action of the Sturgis Common Council. The Sturgis City Attorney will provide the Office of City Manager Sub-Committee a report that outlines the current general powers and authority given to the Office of City Manager through South Dakota Codified Laws and City of Sturgis Ordinances. The Sturgis Common Council will schedule a Special Meeting to discuss publicly the Office of City Manager position general powers and authority. The Office of City Manager Sub-Committee will provide for consideration to the Sturgis Common Council changes to any City of Sturgis Ordinances that contain reference to the Office of City Manager position's general powers and authority.

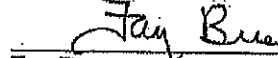
Dated this 18th day of January 2022.

CITY OF STURGIS



Mayor Mark Carstensen

ATTEST:



Fay Bueno
City Finance Officer

Published: 01-25-2022
Effective: 02-14-2022



Huber v. Hanson Cty. Plan. Comm'n, 2019 S.D. 64, ¶ 21, n.7; 936 N.W.2d 565, 571, n.7

In general, SDCL § 15-6-11(b) imposes duties on persons making representations to a court that the representations are not presented for any improper purpose, that the claims or defenses are warranted by existing law or by a nonfrivolous argument for extension or modification of existing law and have or are likely to have evidentiary support.

If a party may plead alternative or inconsistent defenses subject to the provisions of SDCL § 15-6-11, then a party must have the ability to research the law and the facts which support the defenses. Petitioners' suggestion otherwise is misplaced.

The City investigated whether there were irregularities in the effort to get signatures on the Petition. The investigation and specific details about the results of the investigation are work product. However, in general, the investigation revealed sponsors left petitions unattended in a local business thus allowing people to sign the petition outside the of the sight of the person who verified their signature. Another impropriety discovered was that circulators carried voter registration cards as well as the petition, thus allowing signatories to register to vote after signing the Petition. Yet another impropriety concerned a forged signature. Still another impropriety involved misrepresentations about the purpose of the Petition to persons who were reluctant to sign the document.

The Sponsors would undoubtedly disavow these irregularities, and so create a credibility contest. In preparation for such a swearing match, the City searched the public record for evidence with which to impeach the Sponsor and uncovered the following.

Tammy Bohn and Justin Bohn are defendants in the following cases:

KTM North America, Inc. v. Cycle Hutt, Inc., Sturgis Cycle Hutt, LLC, Dirt Promotions, LLC Justin Bohn and Tammy Bohn, Civ. 13-5033 – JLV (Temporary and permanent injunctions by default for violation of settlement agreement); *First National Bank v. Sturgis Guns, LLC, Davenport Family Real Estate, LLC, Tammy A. Bohn, Justin W. Bohn and Jeff Greslin d/b/a Black Hills Specialty Builders*, 46 CIV 20-000144 (Pending claims for money damages of more than \$244,440); *PNC Equipment Finance LLC v. Cycle Hutt Inc., Justin Bohn and Tammy Bohn*, 40 CIV 12-682 (Unsatisfied judgement of \$34,665.23 plus post judgment interest); *Black Hills & Badlands Tourism Assoc. v. Tammy Bohn*, 51 SMC20-1569; (Default judgment entered and subsequently satisfied); *Credit Collections Bureau v. Tammy Bohn and Justin Bohn*, 46 SMC 21-93. (Unsatisfied judgment of \$12,026.34).

Brenda Vasknetz is a defendant in the following cases and has outstanding default judgments against her in each action:

Credit Collections Bureau v. Brenda Vasknetz, 46 SMC 18-168 (Unsatisfied default judgment in the sum of \$790.22); *Portfolio Recovery Associates v. Brenda Vasknetz*, 46 CIV 18-170 (Unsatisfied judgment in the sum of \$7140.20); *Unifund CCR, LLC v. Brenda Vasknetz*, 46 CIV 18-254

(Unsatisfied judgment in the \$1795.48); *Portfolio Recovery Associates v. Brenda Vasknetz*, 46 CIV 18-362 (Unsatisfied default judgment in the sum of \$2832.07).

In all these cases, which are matters of public record, the sponsors made a commitment, breached the commitment, and have refused to be accountable for their actions. The sponsors conduct in these cases is admissible under SDCL §19-19-404(b) because the evidence goes to the sponsors' credibility.

The South Dakota Supreme Court has held “[g]iven that the list of ‘other purposes’ under Rule 404(b) for which evidence of other acts may be admitted is nonexclusive, the possible uses, other than character is limitless. Rule 404(b) is thus an inclusionary rule, not an exclusionary rule. Evidence is *only* inadmissible under the rule if offered to prove character.” *Mousseau v. Schwartz*, 2008 S.D. 86, ¶ 24, 756 N.W.2d 345, 354–55 *citing Kostel v. Schwartz*, 2008 SD 85, ¶ 27, 756 N.W.2d 363, 375 (citations omitted). (emphasis original). Thus, the sponsors “other acts” are relevant on the issue of the sponsors' credibility.

However, proving the irregularities in Court would require calling many Sturgis residents to testify and exposing them to the rigors of cross examination. As a matter of trial strategy, and out of respect for its citizens the City chose not to assert these irregularities in this action and instead assert that the predicate question underlying the Petition is improper as a matter of law.

3. Respondents aver the allegations in paragraphs 6, 7, 8, 9, 10, 12, 18, 19, 21, 23, 24, 25, and 30 are not statements of fact but are instead statements of law to which no response is necessary. To the extent that a response may be necessary, Respondents admit the statements are accurate statements of law, but deny the statements are relevant to this matter.

4. Respondents deny the allegations in 5, 20, 22, 26, 27, 28, and 29.

AFFIRMATIVE DEFENSE

5. Respondents aver that the question posed in the Petition is not referable as a matter of law. *See* SDCL § 9-20-19.

Wherefore, Respondents pray that the Court deny petitioners Application for Writ of Mandamus and grant respondents such other and further relief as the Court deems equitable and just.

Dated this 31st day of January 2022.

/s/ Mark F. Marshall
Mark. F Marshall
Sturgis City Attorney
Counsel for Respondents
1040 Harley Davidson Way
Sturgis, SD 57785
(605) 347-4422, Ext. 223
mmarshall@sturgisgov.com

Printed from Dakota Disc

21-29-2 Writ issued when ordinary remedy inadequate-Application and affidavit

21-29-2. Writ issued when ordinary remedy inadequate-Application and affidavit

The writ of mandamus must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon affidavit, upon the application of the party beneficially interested.

CCivP 1877, § 696; CL 1887, § 5518; RCCivP 1903, § 765; RC 1919, § 3007; SDC 1939 & Supp 1960, § 37.4502.

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

TAMMY BOHN, JUSTIN BOHN, and)
BRENDA VASKNETZ,)

46CIV22-000005

Petitioners,)

vs.)

FAY BUENO, in her capacity as)
Finance Officer for the City of)
Sturgis; MARK CARSTENSEN, in his)
capacity as Mayor for the City of)
Sturgis; and MIKE BACHAND,)
ANGELA WILKERSON, DAVID)
MARTINSON, BEKA ZERBST, JASON)
ANDERSON, AARON JORDAN,)
DEAN SIGMAN, and KEVIN)
FORESTER, in their capacities for)
the City of Sturgis,)

**STATEMENT OF
MATERIAL FACTS ABOUT
WHICH THERE IS NO
GENUINE DISPUTE**

Respondents.)

Respondents offer the following Statement of Material Facts About Which
There is No Genuine Dispute.

1. On December 16, 2021, a Petition for Election to Change Municipal
Government in the City of Sturgis was presented to the City of Sturgis Finance
Officer.

2. The Petition posed the following proposition:

The form of government for the municipality of Sturgis should be
changed from the current form of municipal government
(aldermanic with a city manager form of government) to an
aldermanic aldermanic form of government without a manager.

3. On January 11, 2022, the City Finance Officer advised Petitioners that she declined to certify the Petition because the question posed in the Petition is legally not subject to referendum.

Dated this 31st day of January 2022.

/s/ Mark F. Marshall
Mark F. Marshall
City of Sturgis City Attorney
Counsel for Respondents
1040 Harley Davidson Way
Sturgis, SD 57785
(605) 347-4422
mmarshall@sturgisgov.com

CERTIFICATE OF SERVICE

The undersigned certifies that on January 31, 2022, he caused a true and correct copy of the above to be served upon each of the person identified as follows:

<input type="checkbox"/>	First Class Mail	<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Hand Delivery	<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	Electronic Mail	<input checked="" type="checkbox"/>	Odyssey/ECF System

Kellen B. Willert
Bennett Main Gubrud & Willert P.C.
Attorney for Petitioners
618 State St.
Belle Fourche, SD 57717
(605) 892-2011
Kellen@bellelaw.com

/s/ Eric C. Miller
Eric C. Miller
Sturgis Staff Attorney

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STATE OF SOUTH DAKOTA)
)
COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

TAMMY BOHN, JUSTIN BOHN, and)
BRENDA VASKNETZ,)

Petitioners,)

vs.)

FAY BUENO, in her capacity)
as Finance Officer for the)
City of Sturgis; MARK)
CARSTENSEN, in his capacity)
as Mayor for the City of)
Sturgis; and MIKE BACHAND,)
ANGELA WILKERSON, DAVID)
MARTINSON, BEKA ZERBST,)
JASON ANDERSON, AARON)
JORDAN, DEAN SIGMAN, and)
KEVIN FORRESTER, in their)
capacities as Aldermen for)
the City of Sturgis,)

Respondents.)

Scheduling Hearing

46CIV22-5

BEFORE: **THE HONORABLE KEVIN J. KRULL**
Circuit Court Judge
Sturgis, South Dakota
January 18, 2022 at 1:15 p.m.

APPEARANCES:

For the Petitioners: Kellen Brice Willert (via telephone)
Attorney at Law
618 State Street
Belle Fourche, South Dakota 57717

For the Respondents: Mark F. Marshall and Eric Charles Miller
(via telephone)
Sturgis City Attorney's Office
1040 Harley-Davidson Way
Sturgis, South Dakota 57785

1 question itself is referable, and my desire for a motions
2 hearing is based on the thought that I don't want to tie up
3 my city finance officer and other city employees for half a
4 day if that isn't necessary, but I appreciate the Court's
5 inclination.

6 THE COURT: Well, I understand that. The only other thing
7 to do would be to have a motions deadline, have a reply
8 deadline, have a hearing on your motion, and then worry
9 about the mandamus and then we're out into March, and as I
10 said, I understand that time is of the essence. So I
11 apologize if it's a little inconvenient for some of those
12 officials, but I think that's the way we're going to go.
13 We will hear -- if you have a motion to dismiss or any
14 other motion, Mr. Marshall, we will hear it on the 14th.
15 We'll take it up first, and then we'll have the mandamus
16 hearing.

17 MR. WILLERT: But, Judge, if I could just clarify the
18 Court's intent here. My understanding is the Court wants
19 the answer from Respondents, that's due on January 31st?

20 THE COURT: Yes.

21 MR. WILLERT: And then a reply would be due on
22 February 7th?

23 THE COURT: Yes.

24 MR. WILLERT: Does the Court -- I guess I'm asking the
25 Court to spell out a schedule on the motions.

1 THE COURT: Oh, I see. Well, Mr. Marshall, could you have
2 your motion also filed on the 31st of January?

3 MR. MARSHALL: Yes, I can, Your Honor.

4 THE COURT: Okay. And, Mr. Willert, if there's any reply
5 to that motion, file that by February 7th.

6 MR. WILLERT: Okay, Your Honor. And then I apologize if I
7 missed it, but did the Court tell us what time we'll be
8 starting on the 14th?

9 THE COURT: We'll start at 1:15 and we'll have the whole
10 afternoon.

11 MR. WILLERT: Okay. Judge, would you like me to draft a
12 proposed order on this?

13 THE COURT: That's what I was going to ask you next. Yes,
14 please.

15 MR. WILLERT: And then my last question, if the Court would
16 entertain it, we requested in our application, I believe it
17 was, to be able to serve all the Respondents by and through
18 Mr. Marshall since he's the city attorney.

19 THE COURT: All right. Any objection to that, Mr.
20 Marshall?

21 MR. MARSHALL: No, Your Honor.

22 THE COURT: Okay, very good. That will be granted.

23 MR. MARSHALL: And one other scheduling issue, Your Honor?

24 THE COURT: Go ahead.

25 MR. MARSHALL: Do I get to respond to Mr. Willert's reply

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STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
COUNTY OF MEADE)

I, TAMMY STOLLE, RPR, an Official Court Reporter and Notary Public in the State of South Dakota, Fourth Judicial Circuit, do hereby certify that I reported in machine shorthand the proceedings in the above-entitled matter and that pages 1 through 9, are a true and correct copy, to the best of my ability, of my stenotype notes of said proceedings had before the HONORABLE KEVIN J. KRULL, Circuit Court Judge.

Dated at Sturgis, South Dakota, this 9th day of June, 2022.

 /s/Tammy Stolle
TAMMY STOLLE, RPR
Registered Professional Reporter
My Commission Expires: 2/2/28

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STATE OF SOUTH DAKOTA)
)
COUNTY OF MEADE)

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

TAMMY BOHN, JUSTIN BOHN, and)
BRENDA VASKNETZ,)

Petitioners,)

vs.)

FAY BUENO, in her capacity)
as Finance Officer for the)
City of Sturgis; MARK)
CARSTENSEN, in his capacity)
as Mayor for the City of)
Sturgis; and MIKE BACHAND,)
ANGELA WILKERSON, DAVID)
MARTINSON, BEKA ZERBST,)
JASON ANDERSON, AARON)
JORDAN, DEAN SIGMAN, and)
KEVIN FORRESTER, in their)
capacities as Aldermen for)
the City of Sturgis,)

Respondents.)

Motions Hearing

46CIV22-5

BEFORE: **THE HONORABLE KEVIN J. KRULL**
Circuit Court Judge
Sturgis, South Dakota
February 14, 2022 at 1:15 p.m.

APPEARANCES:

For the Petitioners: Kellen Brice Willert
Attorney at Law
618 State Street
Belle Fourche, South Dakota 57717

For the Respondents: Mark F. Marshall and Eric Charles Miller
Sturgis City Attorney's Office
1040 Harley-Davidson Way
Sturgis, South Dakota 57785

1 my offer.

2 THE COURT: Okay.

3 MR. WILLERT: Your Honor, based on the argument just made
4 and the things pointed out to the Court, I request pursuant
5 to Rule 12(f) that the Court strike those pages of
6 Respondents' response to my motion that makes these
7 inappropriate allegations without any evidentiary basis and
8 that would be on pages -- the last paragraph of page 4
9 through page 6.

10 THE COURT: The entirety of page 6?

11 MR. WILLERT: Through the end of page 6, yes, Your Honor.

12 THE COURT: All right. Well, I'm not going to grant that
13 motion. I'm not going to strike that. I will decide what
14 I'm going to consider when the time comes.

15 MR. WILLERT: Okay. Thank you, Your Honor. And so lastly,
16 at the end of their response they say they're not opposing
17 the motion, which is important, Your Honor, because then in
18 their summary judgment pleadings they still try and go
19 beyond the scope of Ms. Bueno's certification denial
20 letter. They're not opposing the motion and the Court
21 should grant it.

22 THE COURT: All right. Well, Mr. Willert, in your
23 Petitioners' motion regarding scope of the argument on page
24 5 -- oh, I'm sorry, wrong page. Page 7, you cite -- in
25 paragraph 15 you say -- this is what I perceive to be the

1 every petition, okay, but I've read all the pleadings and
2 all the notices and everything that's in the file. Like I
3 said, I didn't go and read all the petitions and
4 everybody's name, but other than that, I've read
5 everything. So are the exhibits that are attached to your
6 motion the same as the ones that you would offer in
7 support?

8 MR. WILLERT: Yes, Your Honor, and I intend to use them at
9 the primary mandamus part of the hearing as well. If you
10 want me to wait for that, I can wait for that.

11 THE COURT: Why don't we wait for that.

12 MR. WILLERT: Okay.

13 THE COURT: You know, I've seen the exhibits.

14 All right, Mr. Marshall, your response to the
15 Petitioners' motion regarding scope of Respondents'
16 argument.

17 MR. MARSHALL: Your Honor, counsel asked why and suggested
18 that the Court demand that I explain my conduct. I
19 explained my conduct. I had offered an opinion that the
20 matter was not the appropriate question. I advised the
21 city council to test that opinion by seeking an answer from
22 the South Dakota Board of Elections. After we sought that
23 input, Petitioner filed this action making the Board of
24 Elections' matter moot. In their administrative rules, the
25 Board of Elections offers the prospect of a ruling within

1 30 days of the date on which the question is asked them.
2 It was the most expedient way to get at what the South
3 Dakota Supreme Court identifies as the predicate question
4 in any action for mandamus; that is, whether the underlying
5 matter is subject to mandamus or prohibition.

6 Counsel asked why I did it. I told him why I did it.
7 Having done that, I have no objection to limiting the scope
8 of this proceeding to whether the underlying question is
9 appropriate. If it's inappropriate, I am willing to
10 stipulate that there are sufficient signatures on the
11 petition for certification.

12 And in fact, I proposed stipulated facts which Mr.
13 Willert declined.

14 THE COURT: Okay. Any response, Mr. Willert?

15 MR. WILLERT: Yes, Your Honor. Thank you.

16 In terms of stipulated facts, Your Honor, I'll
17 represent to the Court that I actually reached out to them
18 first about stipulated facts, both within the last week or
19 two and at the hearing that, I believe, is referenced in
20 the motion.

21 The timeline here is important, Judge. You were just
22 told that because of this mandamus action, the petition to
23 the Board of Elections then became moot. The timeline is
24 important. January 3rd some of the Respondents were served
25 with the, I'm just going to call it the mandamus

1 time, Your Honor, and I don't want to get too far into the
2 other motion, but I think it's clear that my motion is not
3 being opposed and it should be approved or granted.

4 THE COURT: All right. Well, your motion cites the
5 doctrine of equitable estoppel or estoppel in pais, and as
6 you just went through, it takes account of all the
7 proceedings that have happened between --- well, we go back
8 to December 16th when it was first -- when the petition was
9 hand delivered to the City of Sturgis finance office. But
10 I think Mr. Marshall is right, first of all, you can plead
11 alternate defenses, and as I said, I think the three
12 questions that you -- the three official positions that you
13 attribute to the city, while they're not worded the same
14 and while they don't all ask the exact same question, they
15 all get to the bottom line of the mandamus issue. So while
16 they're -- you know, the words are inconsistent, the
17 general scope of each of those things, when taken within
18 the context of how they were used, they're all reduced to
19 the same question. So the motion regarding the scope of
20 Respondents' argument -- you know, I see where there's no
21 objection to the motion, but I'm not going to grant the
22 motion.

23 Let's take up the summary judgment question. Mr.
24 Marshall, as I said, has filed a motion for summary
25 judgment. He filed a statement of material facts and he

1 And again, coming back to what was briefed, Resolution
2 2022-13, just a little over a month ago the council passed
3 this resolution which expressly -- oh, excuse me, 22-11 I
4 believe it was. Council expressly acknowledged that it is
5 under a city form of government, and the Court is to
6 liberally construe --

7 THE COURT: It is under a city manager form of government,
8 is that what you meant to say?

9 MR. WILLERT: That is what meant to say. Thank you, Your
10 Honor.

11 THE COURT: Okay, sorry to interrupt. Go ahead.

12 MR. WILLERT: In terms of liberally construing the
13 petition, it's clear, Your Honor, the Petitioners want to
14 go to a city aldermanic form of government without a city
15 manager. And with that, I request the Court deny summary
16 judgment, or at least take it under advisement.

17 THE COURT: All right. Mr. Marshall, any reply?

18 MR. MARSHALL: Your Honor, I think you identified the issue
19 in 9-2-3 which states there are two forms of government.
20 The purpose of this petition is to eliminate the office of
21 city manager, and to eliminate the office of city manager
22 necessarily eliminates the city manager officer. If
23 there's no office, you can't have an officer.

24 The due process requirements would be explicitly
25 violated. It would expose city government to liability for

1 taking away this man's job without due process as provided
2 by statute. Also, the legislature has plenary power over
3 municipal government, not the City of Sturgis. Sturgis has
4 no legal authority to say what is or what is not a legal
5 form of government. Confusion can be created by using a
6 term of art. Colloquially "form of government" is just
7 such a term of art. It's an easy shorthand to use that
8 term when one should actually say "eliminate the office of
9 city manager" which is the intention of this petition.

10 Your Honor, this is entirely a question of law. The
11 city's prepared to stipulate that 697 signatures were
12 necessary to certify the question. The city will also
13 stipulate that 708 -- no less than 708 signatures were
14 submitted. Nevertheless, there's no obligation to certify
15 the petitions unless they pose the appropriate predicate
16 question.

17 Mr. Willert's argument identifies in rather stark
18 relief that the Petitioners didn't have a clue what they
19 were asking for. It's not an initiative because it doesn't
20 propose any initiated measure. It's not a true referendum
21 because it doesn't request the repeal of any ordinance.
22 It's an improper question. One that must be answered, in
23 the city's view, before this matter can go further.

24 Thank you for your time, Your Honor.

25 THE COURT: All right. Thank you, Mr. Marshall. Mr.

1 MR. WILLERT: And could I respond to what Mr. Marshall
2 just --

3 THE COURT: You can.

4 MR. WILLERT: Thank you, Your Honor.

5 Your Honor, their argument about due process is
6 confusing to me because then at the end of their brief,
7 Respondents talk about if Petitioners want to change the
8 form of government, they can run for council and go through
9 the termination process of the current actual employee or
10 officer and then change the form of government. There they
11 acknowledge that it would be changing the form of
12 government. Your Honor, these due process concerns would
13 not be issues, for example, if the petition was to change
14 to the commissioner form of government. That's a
15 reorganization that the position is subject to, and it's
16 worth noting that no legal authority on point has been
17 cited by the Respondents.

18 Lastly in regards to the due process concerns, I think
19 those have been essentially -- those concerns have been
20 removed by the city, and I just received a document today
21 from the Respondents and it's essentially the current city
22 manager's contract dated September 13th, 2011, and it
23 includes an addendum which essentially insures the city
24 manager still has a job even if this election goes through
25 and it removes the city manager. So I would like to offer

1 this as Exhibit 44.

2 THE COURT: So I don't have it is what you're saying?

3 MR. WILLERT: Correct, Your Honor. I just got copies this
4 morning.

5 THE COURT: Who's the letter from and who's it to and when
6 is it dated?

7 MR. WILLERT: Your Honor, this is the contract for the
8 current city manager.

9 THE COURT: Okay.

10 MR. WILLERT: The real important thing is the addendum.

11 This addendum is dated November 16th, 2021, and it's dated
12 nunc pro tunc back to December of 2020, but it talks about
13 if this petition goes through and there's an election and
14 there's no more city manager, what happens to this
15 individual's employment status, and that's relevant to what
16 they're arguing, Your Honor.

17 THE COURT: Okay. Mr. Marshall -- so you're offering
18 Exhibit 44?

19 MR. WILLERT: Yes, Your Honor.

20 THE COURT: All right. Go ahead and mark it as 44. Mr.
21 Marshall, do you have a copy of this?

22 MR. MARSHALL: Yes, I do, Your Honor.

23 THE COURT: Okay. Your position on Exhibit 44?

24 MR. MARSHALL: Your Honor, it illustrates the meat of the
25 petition to change form of government is an effort to

1 remove the current city manager from his position as city
2 manager. The addendum allows this individual to continue
3 his employment as a city administrator. The rights of a
4 city administrator to his or her employment are profoundly
5 different than the rights of a city manager. A city
6 administrator can be fired on the whim of the mayor, while
7 a city manager requires the affirmative vote of a majority
8 of the governing council. So his continued employment is
9 not employment in the same job, and whether he would choose
10 to bring an action against the city if this matter goes to
11 a vote and they in effect fire him is an unknown question.
12 And it illustrates, once again, Your Honor, that they are
13 making this entire matter about the person and not the
14 office.

15 THE COURT: All right. So is your objection relevance, or
16 maybe you're not objecting?

17 MR. MARSHALL: Relevance, Your Honor.

18 THE COURT: Relevance, okay. Do you have a reply, Mr.
19 Willert?

20 MR. WILLERT: Your Honor, five minutes ago they told the
21 Court that if the Court allows this election to happen that
22 the city could be exposed to a lawsuit. That's not true.
23 This addendum clearly shows that, Your Honor. It's
24 absolutely relevant. They're the ones that brought it up
25 and we should be able to address it.

1 THE COURT: All right, I'll receive Exhibit 44. Give me
2 just a minute.

3 MR. MARSHALL: And once again for the record, if the
4 petition is passed, there will be no office of city
5 manager, so continued employment is not in the same form.

6 THE COURT: I understand your argument.

7 MR. MARSHALL: Thank you, Your Honor.

8 MR. WILLERT: And just for the Court's reference, that
9 addendum that was referenced to is the last two pages of
10 that exhibit.

11 THE COURT: Okay. All right, I'm not going to read the
12 entire thing, but give me a second to look through it.

13 All right, Exhibit 44 is received if I didn't already
14 say that.

15 All right, Mr. Willert, I wasn't quite done asking you
16 about your statement of material facts.

17 MR. WILLERT: Oh, I apologize, Your Honor.

18 THE COURT: No, that's okay. On C -- do you know where I'm
19 at, page 3 of your statement of material facts? In
20 paragraph C, it says whether the city improperly made a
21 petition available to the public. When you say "the
22 petition," you're talking about the petition that was filed
23 asking for the election, right?

24 MR. WILLERT: Yes, Your Honor, essentially Exhibits 1
25 through 6 attached to the mandamus application.

1 THE COURT: Okay. So let's assume that for the sake of
2 argument that you're right, how does that affect -- how is
3 that a fact in dispute for the summary judgment issue?

4 MR. WILLERT: Your Honor, it's a fact in dispute because
5 they denied that in their Answer to the mandamus
6 application and it's important to show how the city has
7 conducted itself throughout this process.

8 THE COURT: Well, I'm not making any finding of good faith
9 or bad faith, but -- well, I see what you're saying.

10 MR. WILLERT: And I --

11 THE COURT: All right, and then finally -- well, go ahead.

12 MR. WILLERT: And I just want to make sure the Court also
13 saw the fact that the statement of undisputed material
14 facts or whatever it was called by the Respondents was
15 procedurally defective for lack of citations that's
16 required by 56(c) (1).

17 THE COURT: And in paragraph D of your statement of
18 material facts, when the finance officer was presented with
19 the petition, her "duties were purely ministerial, limited
20 to matters apparent on the face of the petition." That's a
21 question of law, isn't it?

22 MR. WILLERT: Well, I think it's a mixture, Your Honor. I
23 think you have a question of what does the petition
24 request, what is that question, and then you have a
25 question of law of what that constitutes under the eyes of

1 I'm relying on here. 9-2-3 says, "Form of municipal
2 government. Each municipality shall be governed by a board
3 of trustees, a mayor, and common council." That's one form
4 of government. "Or by a board of commissioners." That is
5 the other form of government. The second sentence of that
6 statute says, "A city manager may serve with any of the
7 forms of government." So the city manager, despite what
8 may have been erroneously stated in a number of city
9 documents over the years and despite how the election was
10 characterized back in 2007 -- and again, I wasn't here,
11 that's not before me, I don't know the answer to that.
12 There are two forms of municipal government in the State of
13 South Dakota; aldermanic and board of commissioners. You
14 can have an aldermanic form of government with a city
15 manager. You can have an aldermanic form of government
16 without a city manager. You can have a board of
17 commissioners form of government with a city manager. You
18 can have a board of commissioners form of government
19 without a city manager. The petition asks for something
20 that is impossible. The petition asks for something to be
21 done that can't be done under the statutes, all right.

22 Statute 9-10-1, which is in the chapter entitled "City
23 Manager" has a provision for -- if your city doesn't have a
24 city manager, it has a provision for employing a city
25 manager, and based on my review of this, there is a way to

1 appoint a city manager which is SDCL 9-10-1, and then there
2 are statutory methods for removing a city manager. As Mr.
3 Marshall stated, the way to remove them is by an action of
4 the city council or the aldermen, not by changing -- not by
5 a vote of the people, all right.

6 So, as I said, the request in the petition asks for
7 something that can't be done, and therefore, there are no
8 issues of material fact, and therefore I am going to grant
9 the motion for summary judgment as a matter of law. Now --

10 MR. WILLERT: Excuse me, Your Honor.

11 THE COURT: Go ahead.

12 MR. WILLERT: If I may, I would respectfully ask the Court
13 to reconsider when the law since at least 1907 has been
14 that petitions shall be liberally construed to avoid mere
15 technicalities. Now the petitions themselves when the
16 Court looks, it may incorrectly state the current form of
17 government apparently despite the city's long-standing
18 history of carrying itself out to be that way, but what it
19 asks for, Your Honor, is "to an aldermanic form of
20 government without a city manager." To construe it
21 otherwise --

22 THE COURT: I'm sorry to interrupt you, but it says, "From
23 an aldermanic form with a city manager to an aldermanic
24 form without a city manager."

25 MR. WILLERT: But to construe that and refuse to

1 acknowledge what it's actually asking for at the end state
2 I think would be not liberally construing the petition and
3 denying it on a mere technicality.

4 THE COURT: Well, any response to that, Mr. Marshall?

5 MR. MARSHALL: Your Honor, for the petition to be
6 appropriate, it has to ask the correct question. If you
7 don't ask the correct question, as I mentioned at the
8 beginning of this argument, your likelihood of getting the
9 right answer is reduced, sometimes dramatically. I don't
10 see anything other than a desire to reconsider based on a
11 lapse of mere seconds from the Court announcing its ruling.

12 THE COURT: Well, you cited that, you argued that in
13 your -- somewhere in your briefing, the petitions are to be
14 liberally construed, and you're right, they are.

15 Two things, first of all, I think -- you know, I've
16 taken out petitions when I had to run for state's attorney,
17 and I had petitions where the person signed where it says
18 print and printed where it says signed. You know, I don't
19 know if that signature counted or not because I didn't call
20 the auditor and say, "Hey, did you disallow any of my
21 signatures," but I think that's where liberal construction
22 comes from. So you're right, they should be liberally
23 construed, but when you're -- it's kind of like Mr.
24 Marshall said, when you're asking for something that the
25 law doesn't allow for, I don't think liberal construction

1 saves that, if you get my meaning.

2 MR. WILLERT: And, Your Honor, I don't think -- what the
3 Court doesn't like is the apparent inaccurate statement of
4 what the city is. What the Petitioners asked for is
5 clearly within bounds of what the question is to do an
6 aldermanic form with a city manager, so what is being asked
7 is not inaccurate. The only apparent inaccuracy is a
8 statement of where the city apparently is today and that
9 should not be held against the Petitioners, the sponsors,
10 or all the signers of the petitions.

11 THE COURT: But there's a way to remove the city manager.
12 There's a statutory way to remove a city manager, and I
13 don't have the cite with me, but it's -- I think it's in
14 the City Manager Chapter 9-10 or 9-11 something or
15 whatever. There is a statutory method for removing a city
16 manager. This is not the way. Your petition specifically
17 asked for a change in form of government. It doesn't do
18 that. If enough people voted for it, it wouldn't do that,
19 so you're -- go ahead, what were you going to say?

20 MR. WILLERT: Your Honor, I was going to say, 9-10-1
21 provides for a petition on the proposition of employing a
22 city manager, and that's in Exhibit 10 of your binder, Your
23 Honor.

24 THE COURT: Yeah, I've got it.

25 MR. WILLERT: And the petition cited 9-11-6 and other

1 applicable law and one under the statute that the city used
2 before, and again, there's no other statute, I don't
3 believe, in 9-10 that really provides for the same thing
4 that 9-11-5 provides for. I mean --

5 THE COURT: All right. You know, it's unusual that the way
6 to hire -- the way to have a city manager is by getting
7 enough -- getting a petition and getting enough voters to
8 sign it and having an election, but the way to take it away
9 is different, so --

10 MR. WILLERT: So, Your Honor, in terms of hiring a city
11 manager, those are some different statutes as well.

12 THE COURT: Yeah, I shouldn't have said "hire." The way
13 of --

14 MR. MARSHALL: May I suggest --

15 THE COURT: -- adding a city manager to the governmental
16 structure is unusual, but that's what our statutes leave us
17 with.

18 I'm sorry, Mr. Marshall, were you going to say
19 something?

20 MR. MARSHALL: No, Your Honor, I was going to butt into
21 your statement and offer something that's probably
22 unnecessary.

23 THE COURT: All right. Well, your motion to reconsider is
24 denied, and the motion for summary judgment is granted.
25 Now I assume as far as where that leaves us -- go ahead.

1 MR. WILLERT: If I could just clarify, Your Honor. The
2 motion was -- the initial motion, I mean the motion itself
3 was to find that the petition cannot go forward because it
4 is an administrative action subject to 9-20-19. So is that
5 the rationale the Court is granting the motion?

6 THE COURT: I'm sorry, say that again.

7 MR. WILLERT: The motion and the briefing, Your Honor, rely
8 on the idea that the petition is not valid because it is
9 not subject to referendum pursuant to SDCL 9-20-19. That
10 was the motion and the brief and what was noticed for
11 hearing today.

12 THE COURT: All right. Well, it is not subject to
13 referendum. The reason being it is not is because it asked
14 for something that the law does not provide for.

15 All right, so where does that leave us? I mean --

16 MR. WILLERT: Well, Your Honor --

17 MR. MARSHALL: If I may, Your Honor, since it was my
18 motion, that leaves us with nothing further to hear today.

19 THE COURT: Well, that's what I was thinking also.

20 MR. WILLERT: Well, and Your Honor, I would submit to the
21 Court that we proceed with the mandamus proceeding because
22 we agree it's not a referendum.

23 THE COURT: Well, I think if the -- if the petition asks
24 for something that can't be done by law, then I don't think
25 that there's anything else for us to answer. So as a

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STATE OF SOUTH DAKOTA)
) SS. CERTIFICATE
COUNTY OF MEADE)

I, TAMMY STOLLE, RPR, an Official Court Reporter and Notary Public in the State of South Dakota, Fourth Judicial Circuit, do hereby certify that I reported in machine shorthand the proceedings in the above-entitled matter and that pages 1 through 48, are a true and correct copy, to the best of my ability, of my stenotype notes of said proceedings had before the HONORABLE KEVIN J. KRULL, Circuit Court Judge.

Dated at Sturgis, South Dakota, this 16th day of July, 2022.

 /s/Tammy Stolle
TAMMY STOLLE, RPR
Registered Professional Reporter
My Commission Expires: 2/2/28

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15-26A-12 Actions available to Supreme Court on decision

15-26A-12. Actions available to Supreme Court on decision

By its judgment, the Supreme Court may reverse, affirm, or modify the judgment or order appealed from, and may either direct a new trial or the entry by the trial court of such judgment as the Supreme Court deems is required under the record.

: SDC 1939 & Supp 1960, § 33.0710; SDCL, §15-26-26.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 30008

TAMMY BOHN, JUSTIN BOHN, and BRENDA VASKNETZ,

Petitioners and Appellants.

vs.

FAY BUENO, in her capacity as Finance Officer for the City of Sturgis;
MARK CARSTENSEN, in his capacity as Mayor for the City of Sturgis;
and MIKE BACHAND, ANGELA WILKERSON, DAVID MARTINSON, BEKA
ZERBST, JASON ANDERSON, AARON JORDAN, DEAN SIGMAN, and
KEVIN FORRESTER, in their capacities as Aldermen for the City of
Sturgis.

Respondents and Appellees.

APPEAL FROM THE CIRCUIT COURT
THE FOURTH JUDICIAL CIRCUIT
MEADE COUNTY, SOUTH DAKOTA

THE HONORABLE KEVIN J. KRULL
Circuit Court Judge

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NOTICE OF APPEAL FILED May 25, 2022

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PRELIMINARY STATEMENT

In this brief, the City will refer to Appellants Tammy Bohn, Justin Bohn, and Brenda Vasknetz as “Petitioners.” The City will refer to Appellee Fay Bueno as “Bueno,” while Bueno and the Sturgis City Council will be referred to as “City.” The City will cite to the Clerk’s Index as “CR___” with the page number, and cite the February 14, 2022, Motions Hearing transcript as “MT___” with the page and line number.

JURISDICTIONAL STATEMENT

Petitioners appeal from an order dated April 14, 2022, in which the Circuit Court, the Honorable Kevin J. Krull, presiding, granted the City’s motion for summary judgment and denied Petitioners’ application for a writ of mandamus. CR 421-24. The City served and filed a notice of entry of the order on April 28, 2022. CR 425-26. Petitioners filed a notice of appeal on May 25, 2022. CR 431-32. This Court has jurisdiction pursuant to S.D.C.L. § 15-26A-3(1).

STATEMENT OF THE ISSUE

Dissatisfied with the Petitioners’ Statement of the Issue, the City restates the issue on appeal as:

Did the Circuit Court err by granting the City’s Motion for Summary Judgment?

The Circuit Court granted the City’s Motion for Summary Judgment.

S.D. CONST. art. IV, § 1

S.D.C.L. § 9-2-3

City of Rapid City v. Schaub, 2020 S.D. 50, 948 N.W.2d 870

Harvieux v. Progressive N. Ins. Co., 2018 S.D. 52, 915 N.W.2d 697

STATEMENT OF THE CASE

Petitioners applied for a writ of mandamus in Circuit Court for the Fourth Judicial Circuit, Meade County, before the Honorable Kevin J. Krull, requesting the finance officer certify their petition for a change of municipal government and require the City to hold an election on the petition under S.D.C.L. § 9-11-5. The Circuit Court granted the City's motion for summary judgment and denied Petitioners' motion to limit the scope of the City's argument on February 14, 2022, ruling from the bench. The Court later entered a memorandum decision and order on April 14, 2022. CR 421-24. The City filed and served a notice of entry of that order on April 28, 2022. CR 425-26. Petitioners appealed to this Court on May 25, 2022. CR 431-32.

STATEMENT OF FACTS

On December 16, 2021, Petitioners filed a petition for election to change municipal government with Bueno, the finance officer for the City of Sturgis. CR 204. The Petition stated:

WE, THE UNDERSIGNED qualified voters of the municipality of STURGIS, the State of South Dakota, petition, pursuant to S.D.C.L. § 9-11-6 and other applicable law, petition that the municipal government of STURGIS be changed as follows and that the proposal be submitted to

the voters for their approval or rejection pursuant to S.D.C.L. § 9-11-5:

The form of government for the municipality of Sturgis should be changed from the current form of municipal government (aldermanic with a city manager form of government) to an aldermanic form of government without a city manager.

CR 11, 205 (emphasis supplied). When she received the petition, Bueno requested an opinion from the Sturgis city attorney as allowed by S.D.C.L. § 9-14-22,¹ asking whether the petition posed a proper question and whether certification was proper. CR 194, 207. On December 27, 2021, the city attorney presented his opinion to the city council. CR 194.

On January 12, 2022, Bueno advised Petitioners that she declined to certify the petition because the question posed was invalid. CR 205, 207. Because Bueno refused to certify the petition, she did not present the petition to the city council, and no election was held. The petition had sufficient signatures to meet the threshold requirement of S.D.C.L. § 9-11-6.

¹ S.D.C.L. § 9-14-22 provides: “When required by the governing body or any officer of the first and second class municipality, the city attorney shall furnish an opinion upon any matter relating to the affairs of the municipality or the official duties of such officer.”

ARGUMENT

I. **The Circuit Court did not err by granting the City’s motion for summary judgment.**

A. *Standard of Review.*

This Court reviews “a circuit court’s entry of summary judgment under the de novo standard of review.” *Harvieux v. Progressive N. Ins. Co.*, 2018 S.D. 52, ¶ 9, 915 N.W.2d 697, 700 (quoting *Wyman v. Bruckner*, 2018 S.D. 17, ¶ 9, 908 N.W.2d 170, 174). This Court affirms a circuit court’s “grant of a motion for summary judgment when no genuine issues of material fact exist, and the legal questions have been correctly decided.” *Id.* Moreover, this Court “will [also] affirm the circuit court on summary judgment if it is correct for any reason.” *Clay v. Weber*, 2007 S.D. 45, ¶ 6, 733 N.W.2d 278, 282 (quoting *A–G–E Corp. v. State*, 2006 SD 66, ¶ 13, 719 N.W.2d 780, 785) (citations omitted).

B. *The relationship between the South Dakota Constitution, the state legislature, and municipal government.*

It is important to appreciate the relationship between the South Dakota Constitution, the state legislature, and municipal government to understand the issue presented in this case. “[M]unicipal corporations possess only those powers given to them by the Legislature.” *City of Rapid City v. Schaub*, 2020 S.D. 50, n.8, 948 N.W.2d 870, 874 n.8 (citing *Ericksen v. City of Sioux Falls*, 70 S.D. 40, 53, 14 N.W.2d 89, 95 (1944) (“A municipal corporation is a creature of the Constitution and statutes

of the state. It possesses only such powers, great or small, as these laws give to it ...”)).

The South Dakota Constitution vests the power to create subordinate forms of government exclusively in the state legislature:

The Legislature shall have plenary² powers to organize and classify units of local government, except that any proposed change in county boundaries shall be submitted to the voters of each affected county at an election and be approved by a majority of those voting thereon in each county.

S.D. CONST. art. IX, § 1.

Based on this authority, the state legislature enacted statutes providing for the “Form of Government” in 1913. SDRC 1919, art. 2, § 6185 provides:

How governed. All municipal corporations of the third class shall be governed by a board of trustees; all municipal corporations of the first and second class shall be governed either by a mayor and common council, with or without a city manager, or by a board of commissioners, with or without a city manager.

Section 6185 was codified without substantial change as SDC 45.0401, which provided “[t]owns shall be governed by a board of trustees. Cities shall be governed either by a mayor and common council, or by a board of commissioners, in each case with or without a city manager.”

² “Plenary” “means characterized by being full and complete in every respect.” <https://definitions.uslegal.com/p/plenary/> (Last viewed August 18, 2022.)

SDC 45.0401 was recodified as S.D.C.L. § 9-2-3, which currently provides, “[e]ach municipality shall be governed by a board of trustees, a mayor and a common council, or by a board of commissioners. A city manager may serve with any of the forms of government.” Consistent with the constitutional grant of authority, the title of chapter 9-2 is “classes of municipalities.”

South Dakotans retain “the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper.” S.D. CONST. art. VI, § 26. The lawful and constituted method to alter or reform the forms of government is through the state legislature because that body has the plenary power to organize and classify units of local government. S.D. CONST. art. IX, § 1. There has been no substantive change in the form of municipal government for a least a century.

As this Court has noted, “[w]hen we interpret a statute, “[n]o wordage should be found to be surplus. No provision can be left without meaning. If possible, effect should be given to every part and every word.” *Peterson, ex rel. Peterson v. Burns*, 2001 S.D. 126, ¶¶ 31-32, 635 N.W.2d 556, 568 (quoting *Maynard v. Heeren*, 1997 SD 60, ¶ 14, 563 N.W.2d 830, 835).

When construing statutes that conflict, courts read them together and harmonize them, if possible, to give effect to all words in the statutes. *Faircloth v. Raven Industries, Inc.*, 2000 S.D. 158, ¶ 7, 620

N.W.2d 198, 201. S.D. CONST. art. VI, § 26 and S.D. CONST. art. IX, § 1 are easily harmonized. The latter vests plenary power to create forms and classes of municipal government in the legislature, while the former recognizes the power of the people to revise those forms of municipal government through legislation.

C. *The nature of mandamus.*

“Mandamus is a potent, but precise remedy. Its power lies in its expediency; its precision in its narrow application. It commands the fulfillment of an existing legal duty, but creates no duty itself, and acts upon no doubtful or unsettled right.” *Okerson v. Common Council of City of Hot Springs*, 2009 S.D. 30, ¶ 6, 767 N.W.2d 531, 533 (quoting *Sorrels v. Queen of Peace Hosp.*, 1998 S.D. 12, ¶ 6, 575 N.W.2d 240, 242). “To prevail in seeking a writ of mandamus, the petitioner must have a clear legal right to performance of the specific duty sought to be compelled and the respondent must have a definite legal obligation to perform that duty.” *Id.* (citations omitted).

In South Dakota, mandamus may be disposed of by summary judgment, and this Court has heard many appeals from cases where the circuit court decided mandamus cases in such a manner. *See generally, Parris v. City of Rapid City*, 2013 S.D. 51, 834 N.W.2d 850; *Hanig v. City of Winner*, 2005 S.D. 10, 692 N.W.2d 202; *H & W Contracting, LLC v. City of Watertown*, 2001 S.D. 107, 633 N.W.2d 167; *Sorrels*, 1998 S.D. 12, 575 N.W.2d 240.

“Because mandamus may only be granted under exceptional circumstances which require a drastic remedy, it must be shown entitlement to the writ was clear and indisputable.” *Sorrels*, 1998 S.D. 12, ¶ 7, 575 N.W.2d at 242 (citing *Crowley v. Spearfish Indep. Sch. Dist.*, No. 40–2, 445 N.W.2d 308 (S.D.1989)); *Anderson v. City of Sioux Falls*, 384 N.W.2d 666, 668 (S.D.1986) (mandamus not an absolute right, but a matter of sound discretion); *Bailey v. Lawrence County*, 2 S.D. 533, 536, 51 N.W. 331, 332 (1892).

D. Petitioners may not resort to S.D.C.L. § 9-11-5 to discharge a city manager.

S.D.C.L. § 9-11-5³ grants city voters’ the authority to change the form of municipal government. The statute provides:

The voters of any municipality may change its form of government or change the number of its commissioners, wards, or trustees by a majority vote of all electors voting at an election called and held as provided. Any municipality under special charter may adopt any form of government as provided in this title.

The Petition poses this question:

The form of government for the municipality of Sturgis should be changed from the current form of municipal government (aldermanic with a city manager form of government) to an

³ Petitioners alternatively argue that if the petition is not allowable under S.D.C.L. § 9-11-5, that it be considered under S.D.C.L. § 9-10-1. S.D.C.L. § 9-10-1 applies to “the proposition of *employing* a city manager” and not to how a city manager is removed, a topic addressed in S.D.C.L. § 9-10-11. (Emphasis added.) S.D.C.L. § 9-10-1 does not support Petitioners’ argument.

aldermanic form of government without a city manager.

CR 11, 205 (emphasis supplied).

S.D.C.L. § 9-11-5 does not define “form of government.” Instead, one must look to S.D.C.L. § 9-2-3 for guidance. That statute provides: “[e]ach municipality shall be governed by a board of trustees, a mayor and common council, or by a board of commissioners. A city manager may serve with any of the forms of government.”

The plain language of S.D.C.L. § 9-2-3 is dispositive. South Dakota recognizes three forms of municipal government, and a city manager is not one of them. Instead, a city manager is a municipal employee granted specific statutory authority who may be hired to work within the forms of government found in S.D.C.L. § 9-2-3.

S.D.C.L. § 9-10-11 also supports the plain reading of S.D.C.L. § 9-2-3 — that a city manager is an employee who may be hired to serve in any recognized form of municipal government, rather than a separate form of government. S.D.C.L. § 9-10-11 provides:

Removal of city manager from office.

The manager shall be appointed for an indefinite term but may be removed by majority vote of the members of the governing body. At least thirty days before such removal may become effective, the manager shall be furnished with a formal statement in the form of a resolution passed by a majority vote of such governing body stating the intention of such governing body to remove him, and the reasons therefor. He may reply in writing to such resolution. If so requested by the manager, the governing body shall fix a time for

a public hearing upon the question of his removal, and the final resolution removing him shall not be adopted until such public hearing has been had.

Upon passage of a resolution stating the governing body's intention to remove the manager, such governing body may suspend him from duty, but his pay shall continue until his removal shall become effective as herein provided. The action of the governing body in removing the manager shall be final.

Given the due process protections granted to a city manager by S.D.C.L. § 9-10-11, it strains credulity to argue a city manager is a "form of government." For example, a form of government is not "removed from office." It is absurd to suggest that a form of government "shall be furnished with a formal statement in the form of a resolution passed by a majority vote of such governing body stating the intention of such governing body to remove him, and the reasons therefor."

The legislature did not grant governing bodies the authority to change the form of government. Instead, that power is vested in municipal voters. S.D.C.L. § 9-11-6. Due process rights, like those contained in S.D.C.L. § 9-10-11, are granted to employees and not to "forms of government."

E. Petitioners' interpretation of South Dakota law is unreasonable.

Courts interpret statutory provisions to learn the intent of the law. *In re GCC License Corp.*, 2001 S.D. 32, ¶ 11, 623 N.W.2d 474, 479 (citing *De Smet Ins. Co. of South Dakota v. Gibson*, 1996 S.D. 102, ¶ 7, 552

N.W.2d 98, 100) (citations omitted). Where possible, legislative intent should be gleaned from the plain text of the statute. *Id.* Of course, when statutory language is clear and unambiguous, courts can simply declare the meaning as expressed. *Id.*

Situations may arise where more than one statutory interpretation seems reasonable. For example, this Court wrested with two reasonable interpretations of the Telecommunications Act of 1996 in *In re GCC License Corporation*. This Court noted:

It would be gross understatement to say that the Telecommunications Act of 1996 is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self-contradiction.

In re GCC License Corp., 2001 S.D. 32, ¶ 12, 623 N.W.2d at 480 (quoting *AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 397, 119 S. Ct. 721, 738, 142 L. Ed. 2d 835 (1999)).

The same might be said about S.D.C.L. Title 9. The City concedes much of S.D.C.L. Title 9 is ambiguous, but the City does not concede there is any ambiguity about whether a city manager is a “form of municipal government.” But, assuming only for the sake of argument the Court finds that S.D.C.L. § 9-2-3 is not dispositive, the City will address Petitioners’ argument.

1. Petitioners’ argument is barred by S.D.C.L. § 9-10-18.

Where statutes are ambiguous, Courts must

Go beyond plain language analysis to decide which interpretation more closely comports with

congressional intent. In cases where a literal approach leaves us without a definitive interpretation, “the cardinal purpose of statutory Construction — ascertaining legislative intent — ought not be limited to simply reading a statute’s bare language; we must also reflect upon the purpose of the enactment, the matter sought to be corrected, and the goal to be attained.

In re GCC License Corp., 2001 S.D. 32, ¶ 2, 623 N.W.2d at 480 (quoting *De Smet Ins. Co.*, 1996 SD 102, ¶ 7, 552 N.W.2d at 100 (citations omitted)).

By conflating S.D.C.L. ch. 9-10 and ch. 9-11, Petitioners do more to obfuscate than illuminate the law governing municipal government in South Dakota. First, Petitioners’ arguments overlook S.D.C.L. § 9-10-18, which states: “[p]rovisions of the statutes governing first or second class municipalities inconsistent with this chapter shall be inapplicable to municipalities employing a city manager.”

As previously discussed, the intent of Petitioners’ ballot question was to discharge the current city manager by using S.D.C.L. § 9-11-5 to change the “form of city government” in Sturgis. However, as noted in the preceding section, the exclusive way to remove a city manager is by a “majority vote of the members of the governing body,” as stated in S.D.C.L. § 9-10-11. Thus, S.D.C.L. § 9-10-18 disposes of Petitioners’ argument. If a majority of the city council is satisfied with the city

manager's performance, then Petitioners' remedy is to elect council members more amenable to their goal.⁴

2. Petitioners' argument misapprehends South Dakota law.

Petitioners' argument also misapprehends the nature of municipal government. South Dakota law recognizes three types of governing bodies. A third-class municipality is governed by a board of trustees. S.D.C.L. ch. 9-7. First- and second-class municipalities may be governed by a mayor and common council, S.D.C.L. ch. 9-8, or by a board of commissioners. S.D.C.L. ch. 9-9. Each governing body is empowered to discharge all the duties and functions of municipal government. The City respectfully suggests that the phrase "form of government," as a term of art, refers to the type of governing body.

⁴ Each of the Petitioners ran for city council in the April 2022 election in an apparent attempt to create a council more disposed to oust the current city manager. In the words of former President Obama, the Petitioners took "a shellacking" in the municipal election. (<https://www.npr.org/2010/11/03/131046118/obama-humbled-by-election-shellacking>, last viewed September 19, 2022.) In the race for mayor, incumbent Mark Carstensen defeated Petitioner Tammy Bohn 1017 to 470, or 68% to 32%. In the race for Ward 1, incumbent Mike Bachand defeated Petitioner Brenda Vaskentz 151 to 97, or 61% to 39%. Finally, in Ward 4 incumbent Kevin Forrester defeated Justin Bohn 340 to 133, or 71% to 29 % . (https://www.bhpioneer.com/local_news/sturgis-election-results-certified/article_f4b908d4-c0d9-11ec-abc9-a775c814f37e.html, last viewed September 19, 2022.) This Court may take judicial notice of these facts, and the City requests that it do so. *See Legrand v. Weber*, 2014 S.D. 71, 855 N.W.2d 121, 130 ("S.D.C.L. 19-10-3 (Rule 201(d)) provides '[a] court may take judicial notice, whether requested or not.' We find it instructive to consider and therefore take judicial notice of LeGrand's direct appeal brief.").

A city manager is not a governing body but is instead an employee who reports to a governing body and is responsible to the governing body for “the proper administration of all affairs” the municipality “placed in his charge.” S.D.C.L. § 9-10-13. A city manager does not have statutory authority to discharge all the duties and functions of municipal government. Instead, a city manager is a municipal employee who reports to the governing body of a first- or second-class municipality. S.D.C.L. §§ 9-10-3, -10 & -13.

South Dakota law provides a city manager is an employee of a governing body. S.D.C.L. §§ 9-10-1, -3, -4, & -6. Likewise, South Dakota law provides that a majority of a governing body, subject to the manager’s due process rights, has the authority to remove the manager. S.D.C.L. § 9-10-11. Petitioners’ version of municipal government ignores the manager’s due process rights and allows the voters the power to remove the manager, even against the will of the governing body.

Under the Petitioners’ view of municipal law, a city manager has not one, but two masters: the governing body and the voters. The interest of the governing body and the voters may, and often do, differ. The voters may have an unlimited wish list for municipal government, while the governing body is constrained by its budget.

Since biblical times we are taught “[n]o man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. Ye cannot serve God and

mammon.” *Mathew* 6:24 (King James). *See also Luke* 16:13 (King James).

A city manager can try to meet the demands of the voters and risk discharge by the governing body; or the manager can be fiscally responsible and risk discharge by the voters. Under the Petitioners’ view of municipal government, whom should the city manager serve?

South Dakota law does not subject a city manager to such a Hobson’s choice, and instead recognizes the fundamental truth that no person can serve two masters. The city council, as the elected governing body is accountable to and serves the people, while the city manager is accountable to the city council. The voters do not have the authority to discharge a city manager by changing the form of government.

3. S.D.C.L. § 9-14-19 does not define “form of government.”

Petitioners can take no solace in S.D.C.L. § 9-14-19, which provides:

The municipal finance officer shall supervise the accounting system for all departments and offices of the municipality in accordance with the recommendations of the Department of Legislative Audit except that for those municipalities administered under the city manager form of government, the supervision is by the city manager.

S.D.C.L. § 9-14-19 merely assigns the supervision of the accounting function either to the finance officer for those municipalities that do not employ a city manager, or to the city manager in those

municipalities that do. The statute offers no insight into the definition of the term “form of government.”⁵

II. Petitioners’ other issues lack merit.

A. Summary judgment procedure was appropriate.

Summary judgment is proper in mandamus proceedings where, as here, the primary question is one of law. *See Cowan Bros., L.L.C. v. American State Bank*, 2007 S.D. 131, ¶ 26, 743 N.W.2d 411, 420 (citing *Garrett v. BankWest*, 459 N.W.2d 833, 839 (S.D. 1990) (finding that whether a fiduciary relationship exists, which is a question of law, is appropriate for summary judgment)).

Other courts have held that “[s]ummary judgment is available in a mandamus action.” *Williams v. Sundstrom*, 2016 WY 122, ¶ 17, 385 P.3d 789, 793 (citing *Allendale Water & Sewer Dist. v. State ex rel. Hansuld*, 919 P.2d 146 (Wyo. 1996)). *See also* Annotation, *Summary Judgment in Mandamus or Prohibition Cases*, 3 A.L.R.3d 675 (1965) (stating “in all the cases in which the issue has been presented[,] the courts have uniformly

⁵ In *Kolda v. City of Yankton*, Justice Zinter stated “[t]he City acknowledges that unlike in *Finck* and *Patterson*, it is a city-manager form of government rather than an aldermanic form of government.” 2014 S.D. 60, ¶ 14, 852 N.W.2d 425, 429. Justice Zinter’s use of “city-manager form of government” did not define the term, any more than his subsequent use of the term “city-manager municipalities.” *Kolda*, 2014 S.D. 60, ¶ 16, 852 N.W.2d at 430. The Court used both terms in a colloquial, rather than technical manner. As such the Court’s reference to “city-manager form of government” is mere dicta. “Dicta are pronouncements in an opinion unnecessary for a decision on the merits,” *Moeller v. Weber*, 2004 S.D. 110, n.4, 689 N.W.2d 1, 15 n.4, and provide no substantive authority.

held, either specifically or by implication, that summary judgment may be entered in actions of mandamus if the facts warrant it”). *See also Taliaferro v. Coakley*, 186 Cal. App. 2d 258, 260, 9 Cal. Rptr. 529, 530 (Ct. App. 1960).

Here the facts called for the use of the procedure, and thus the use of the procedure was proper.

B. The Circuit Court did not err by denying Petitioners’ motion regarding the scope of City’s argument.

The City asserted the same issue — whether a city manager is an employee or a form of municipal government — in a variety of ways and in different forums before Petitioners commenced this case. Petitioners took umbrage with the City’s assertion of the dispositive issue and moved to limit the scope of the City’s argument before the Circuit Court.

The City argued that its positions were not inconsistent, but that even if they were, the City was entitled to raise inconsistent arguments. CR 208, 210-11. The Circuit Court denied the Petitioners’ motion, noting with regard to the City’s positions that while “the words are inconsistent, the general scope of each of those things, when taken within the context of how they were used, they’re all reduced to the same question.” MT 20:16-19.

The Petitioners’ motion did not try to limit the introduction of any evidence; instead, the motion tried to limit the City from presenting certain arguments. As such, the attempt was akin to a motion in limine.

See *State v. Seidel*, 2020 S.D. 73, ¶¶ 19-20, 953 N.W.2d 301, 309 (reviewing a motion in limine aimed at preventing or limiting an erotic asphyxiation argument). Decisions for granting or denying a motion in limine are reviewed under the abuse of discretion standard. *Id.*

“[A]n abuse of discretion refers to a discretion exercised to an end or purpose not justified by, and clearly against reason and evidence.” *State v. Lodermeier*, 481 N.W.2d 614, 621 (S.D.1992) (quoting *State v. Pfaff*, 456 N.W.2d 558, 560–61 (S.D.1990)). “Under the abuse of discretion standard, we do not determine whether we would have made a like decision, only whether a judicial mind, considering the law and the facts, could have reached a similar decision.” *Id.* (citations omitted).

Petitioners have shown no abuse of discretion. For example, Petitioners have not relied on any of the alleged inconsistencies, nor have Petitioners showed any prejudice. After all, the circuit court observed that while “the words are inconsistent, the general scope of each of those things, when taken within the context of how they were used, they’re all reduced to the same question.” MT 20:16-19. Petitioners offer no evidence that the circuit court’s observation that “they’re all reduced to the same question” is wrong.

C. Estoppel does not apply to the City’s conduct.

Petitioners also suggest that since the City has held itself out as a “city manager form of government” that it should be estopped from making a “form of government” argument. Once again, Petitioners have

not shown or even alleged any detrimental reliance on the City's prior statements. Petitioners merely argue that those statements prevent the City from asserting its "form of government" argument in this case.

Petitioners argue that the City's citation of the change in form-of-government statutes in its 2007 petition to employ a city manager provides a legal basis for their petition to remove a city manager. Appellants' Brief, 11, 19. The Circuit Court acknowledged that the validity of the 2007 petition and election were not before it. Those issues are being litigated by Petitioners in *Bohn, et al. v. City of Sturgis, Ainslie*, 46CIV22-077. If Petitioners genuinely want to raise the issue of the 2007 election here, the City is willing to allow this Court to stay this appeal until 46CIV22-077 is decided and then combine the appeals to allow the Court the latitude to address the full panoply of issues.

But for now, the 2007 election is irrelevant as to any issue before the Court. Evidence is relevant if "[i]t has any tendency to make a fact more or less probable than it would be without the evidence; and ... [t]hat fact is of consequence in determining the action." S.D.C.L. § 19-19-401. Whether the 2007 election is valid makes no fact in this case more or less probable and has no consequence in deciding the issue before this Court.

Petitioners assert estoppel based on the City holding itself as a city manager form of government in earlier resolutions and ordinances. Appellants' Brief, 18. While some City resolutions and ordinances use the

phrase “city manager form of government,” those documents use the phrase in its colloquial, rather than technical, sense. Moreover, Petitioners do not contend they relied on those resolutions.

This Court has only “applied estoppel against public entities in ‘exceptional circumstances to prevent manifest injustice.’” *Even v. City of Parker*, 1999 S.D. 72, ¶ 11, 597 N.W.2d 670, 674 (quotations omitted). This Court does not “favor estoppel against a public entity and will apply it only in extreme circumstances.” *Id.* (citations omitted). For estoppel to be proper against a public entity, “[t]he conduct must have induced the other party to alter his position or do that which he would not otherwise have done to his prejudice.” *Id.* (quotations omitted).

Petitioners do not contend they detrimentally relied on any of the past City resolutions. Based on the lack of detrimental reliance, Petitioners’ estoppel argument fails.

D. The City’s pleadings are not defective.

Petitioners argue the City did not plead the “form of government” defense and therefore is unable to raise it. Appellants’ Brief, 19. The City raised the issue by averring that Petitioners’ ballot question was not legally valid. See CR 146. That is all that is needed. The purpose of pleading an affirmative defense is to “give the opposing party notice.” *Sander v. Geib, Elston, Frost Professional Ass’n*, 506 N.W.2d 107, 126 (S.D. 1993) (citations omitted). Another purpose is to give the other party a chance to rebut the defense. *Id.* The City’s pleadings did both.

E. Petitioners did not raise their constitutional claim before the Circuit Court.

Petitioners argue that they “have the constitutional right to alter or reform their government, and their right to petition ‘shall never be abridged.’” Appellant’s Brief, 12 (quoting S.D. CONST. art. VI, §§ 26 and 4). One should accurately quote the provision on which it relies when making a constitutional argument. Petitioners misquote SD CONST. art. VI, § 26. The relevant part provides “the right in lawful and constituted methods to alter or reform their **forms of government** in such manner as they may think proper.” (Emphasis added.) “Form of government” is a term of art, and one should take care to use the term in its proper context.

Nevertheless, Petitioners did not raise this argument below, and there is no showing Petitioners gave notice of their constitutional challenge to the South Dakota Attorney General as required by S.D.C.L. § 15-6-24.

“Ordinarily, one cannot challenge the constitutionality of a statute for the first time on appeal” unless an exception to that general rule applies. *Bruggeman by Black Hills Advoc., LLC v. Ramos*, 2022 S.D. 16, ¶ 44, 972 N.W.2d 492, 508 (citing *Sharp v. Sharp*, 422 N.W.2d 443, 446 (S.D. 1988) (“a court may in its discretion decide to consider a constitutional issue raised for the first time on appeal because the question is a matter of considerable importance to the public policy of the state”)). Petitioners have not identified any such question.

S.D.C.L. § 15-6-24 requires notice of constitutional claims to be given to the South Dakota Attorney General as a condition of making a such a challenge:

When the constitutionality of an act of the Legislature affecting the public interest is drawn in question in any action to which the state or an officer, agency, or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general thereof within such time as to afford him the opportunity to intervene.

This Court “will not rule on the constitutionality of a statute unless the Attorney General has been notified because when an adjudication of unconstitutionality may seriously affect the general public, it is proper for the Attorney General to appear on behalf of the Legislature and the people.” *Regalado v. Mathieson*, 2004 S.D. 87, ¶ 18, 684 N.W.2d 67, 74 (citations and quotations omitted).

Petitioners did not raise this issue before the Circuit Court and give notice to the Attorney General. Under settled precedent, this Court should not address it for the first time on appeal.

F. This case is not moot.

Petitioners argue that the City’s case is moot because it mentioned “referendum” in its defense. Petitioners misapprehend the meaning of the term “moot.” This Court has observed:

[A]lthough the term ‘moot’ has more than one meaning, in a more technical sense it indicates that after the rendition of the decision appealed from an event has occurred which renders moot

what, except for that event, might be a justiciable issue. Thus, a case is usually said to become ‘moot’ for the purpose of an appeal whereby a change of circumstances prior to the appellate decision the case has lost any practical purpose for the parties[.]

Investigation of Highway Construction Indus. v. Bartholow, 373 N.W.2d 419, 420-21 (S.D. 1985) (quoting 5 Am. Jur. 2d § 762, p. 204).

“An action is moot if it no longer presents a justiciable controversy because the issues involved have become academic or nonexistent. A case is moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Maxwell v. State*, 261 N.W.2d 429, 432 (S.D.1978). *See also Moeller v. Solem*, 363 N.W.2d 412 (S.D.1985).

The issue in this case is live, not moot.

G. The legality of Petitioners’ ballot question is properly before the Court.

The City referred to Petitioners proffered ballot question as a “referendum.” The City’s reference might be inartful, but it is not reversible error. The question proffered in the petition is neither an initiative nor a referendum.

The referendum allows the people to vote on a legislatively enacted law before it takes effect except when the law is necessary for the immediate preservation of the public peace, health, or safety or the support of state government and its existing public institutions. S.D. CONST., art. III, § 1. “The initiative allows the people to propose new laws and to repeal current laws that after the passage of time are reviewed as

undesirable or unnecessary.” *Brendtro v. Nelson*, 2006 S.D. 71, ¶ 37, 720 N.W.2d 670, 682.

A petition for change of form of government under S.D.C.L. ch. 9-11 does not fit within the definition of either an initiative or a referendum. A vote for change of government does not propose a new ordinance or repeal an existing ordinance. Thus, it is not an initiative. Likewise, the petition was not in response to a passed ordinance or law which is about to take effect, as required to be a referendum. That the petition is not an initiative or referendum provides no basis for reversal; instead, it is another reason to affirm the Circuit Court’s decision.

H. An illegal ballot question is not subject to liberal construction.

Petitioners complain that the Circuit Court did not liberally construe their petition. Appellants’ Brief, 9, 26-27. Liberal construction prevents the intention of the voters from defeat by a mere technicality.

Thompson v. Lynde, 2018 S.D. 69, ¶ 9, 918 N.W.2d 880, 883.

Substantial compliance is necessary where requirements go beyond mere form. *Id.* (quoting *Baker v. Atkinson*, 2001 S.D. 49, ¶ 19, 625 N.W.2d 265, 271).

The defect in the petition is not a mere technicality, but instead the defect goes to core of the question posed. A petition must pose a lawful question to be valid. There is nothing to liberally construe in the petition. The question is either lawful or not. The Circuit Court cannot liberally

construe a petition which proposes an unlawful result. The Circuit Court did not err by refusing to liberally construe the petition.

I. The City's statement of material facts was proper.

Petitioners suggest the City's statement of material fact, CF 168-69, is procedurally defective because it did not provide pinpoint cites for each material fact. Appellants' Brief, 26. Assuming only for the sake of argument that Petitioners allege an error, the error, if any is harmless.

S.D.C.L. § 15-6-61 provides that:

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or other wise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every state of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

The City's alleged failure to supply pinpoint citations did not affect any substantial right. No one harbored doubt about the facts on which the City based its motion for summary judgement. Both Petitioners and the Circuit Court understood the undisputed factual basis on which the City based its motion for summary judgment. The error, if any, is harmless and should be disregarded. S.D.C.L. § 15-6-61.

CONCLUSION

“To prevail in seeking a writ of mandamus, the petitioner must have a clear legal right to performance of the specific duty sought to be compelled and the respondent must have a definite legal obligation to perform that duty.” *Okerson*, 2009 S.D. 30, ¶ 6, 767 N.W.2d at 533 (quoting *Sorrels*, 1998 S.D. 12, ¶ 6, 575 N.W.2d at 242). “Because mandamus may only be granted under exceptional circumstances which require a drastic remedy, it must be shown entitlement to the writ was clear and indisputable.” *Sorrels*, 1998 S.D. 12, ¶ 7, 575 N.W.2d at 242 (citations omitted).

This case presents no circumstance which requires a drastic remedy. Petitioners have no clear legal right to compel the City to schedule an election to decide whether the city manager should be discharged.

The City prays that that this Court affirm the Circuit Court’s decision to grant summary judgment and deny Petitioners’ motion to limit argument.

REQUEST FOR ORAL ARGUMENT

City respectfully requests oral argument.

Dated this 27th day of September, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to S.D.C.L. § 15-26A-66(b)(4), I certify this Appellees' Brief complies with the type volume limitation provided for in South Dakota Laws. This Appellees' Brief contains 6,094 words. I rely upon the word count of Microsoft Word as used to prepare this Appellees' Brief.

Dated this 27th day of September, 2022.

CITY OF STURGIS

/s/ Mark F. Marshall
Mark F. Marshall
Sturgis City Attorney

CERTIFICATE OF SERVICE

I hereby certify on September 27, 2022, I emailed the foregoing and sent a correct copy by U.S. Mail, first-class postage prepaid, to the following address and last known email address:

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I further certify that on September 27, 2022, I emailed the foregoing Appellees' Brief and sent the original and two copies by U.S. Mail, first-class postage prepaid, to:

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CITY OF STURGIS

/s/ Mark F. Marshall
Mark F. Marshall
Sturgis City Attorney

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

* * * *

Appeal No. 30008

* * * *

TAMMY BOHN, JUSTIN BOHN, and BRENDA VASKNETZ,
Petitioners and Appellants,

vs.

FAY BUENO, in her capacity as Finance Officer for the City of Sturgis; MARK
CARSTENSEN, in his capacity as Mayor for the City of Sturgis; and MIKE BACHAND,
ANGELA WILKERSON, DAVID MARTINSON, BEKA ZERBST, JASON
ANDERSON, AARON JORDAN, DEAN SIGMAN, and KEVIN FORRESTER, in their
capacities as Aldermen for the City of Sturgis,
Respondents and Appellees.

* * * *

APPEAL FROM THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
MEADE COUNTY, SOUTH DAKOTA

* * * *

THE HONORABLE KEVIN J. KRULL
Circuit Court Judge

* * * *

APPELLANTS' REPLY BRIEF

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THE NOTICE OF APPEAL WAS FILED MAY 25, 2022.

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PRELIMINARY STATEMENT

Citizens' initial brief will be referred to as "Citizens' Brief", and Citizens adopt the naming conventions used therein. Appellees' Brief will be referred to as "Sturgis Brief".

ARGUMENT

Even if the Petition in this matter were invalid for any reason other than an insufficient number of valid signatures, Bueno had no authority to simply decide it was invalid and refuse to certify the signatures. The Petition in this matter was signed by approximately 899 voters. CR 11-110. Sturgis admits the Petition contained more than the 697 signatures required to meet the 15% of the electorate threshold. HT 32:10-16;¹ Sturgis Brief, p. 3. The crux of this case is whether an unelected municipal finance officer has the discretion to forego their ministerial duty of certifying the number of valid signatures, and instead act in a quasi-judicial manner by attempting to independently adjudicate the subject-matter of a petition to be invalid without any due process. The answer is no - Bueno had no discretion to do anything other than to perform her ministerial duty of certifying the number of valid signatures on the Petition. ARSD 5:02:08:00 and 5:02:08:00.01; A 46-47.

1. This Court Should Issue a Writ of Mandamus

This Court should issue a writ of mandamus against Bueno and the Sturgis Council. Citizens' Brief, pp. 12-16. Sturgis did not brief or otherwise oppose Citizens' argument for this Court to issue a writ of mandamus as requested. Sturgis failed to

¹ Sturgis admits there "are no less than 708 signatures . . ." HT 32:13-14. Why Sturgis wouldn't admit to the other 191 signatures is unknown.

address Bueno’s ministerial duties, applicable statutes, or relevant administrative rules. Sturgis doesn’t even use the word “ministerial”.

“A writ of mandamus can be used to compel performance of ministerial duties”. *M.G. Oil Co. v. City Of Rapid City*, 2011 S.D. 3, ¶ 13, 793 N.W.2d 816. “The writ of mandamus *must* be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.” SDCL § 21-29-2 (in part) (emphasis added).

The Petition was made “pursuant to SDCL § 9-11-6 and other applicable law” CR 11. Knowing that the Petition contained more than enough valid signatures, Bueno has a ministerial duty to certify the signatures and present the Petition to the Sturgis Council to schedule the election – just as was done for the 2007 election to transition to a “city manager form of government”. *See*, Citizens’ Brief, p. 7-8. The sole reason Sturgis could declare the Petition invalid is for a lack of valid signatures. *See*, Citizens’ Brief, p. 7-8; *see also*, SDCL §§ 12-1-14 and 12-1-15. Sturgis fails to point this Court to any authority enabling Bueno to abandon her ministerial duties.

South Dakota law specifies that municipalities can be administered under the “city manager form of government”:

... [e]xcept that for those municipalities administered under the *city manager form of government*, the supervision is by the city manager.

SDCL § 9-14-19; CR 244 (emphasis added) (in part); A 43-44.²

² The City Manager is responsible “for the proper *administration* of all affairs of the first or second class municipality placed in his charge.” SDCL § 9-10-13 (emphasis added); *see also*, Sturgis Brief, p. 14. The only way a City Manager can legally administer the government is under a city manager form of government. SDCL § 9-14-19.

This Court has expressly acknowledged the city manager form of government. *See, Kolda v. City of Yankton*, 2014 S.D. 60, fn. 7, 852 N.W.2d 425.³

An “essential” duty of Sturgis’ City Manager is to educate others about the “city manager form of government.” CR 417; A 93. The Addendum expressly acknowledges: “[i]f the City residents vote to return to an aldermanic form of government without a City Manager” CR 419; A 48.⁴

The Citizens in this matter used the same process utilized in 2007 when Sturgis 1) accepted a petition for the voters’ “approval or rejection pursuant to SDCL § 9-11-5 “CITY MANAGER FORM OF GOVERNMENT.” (CR 256; A 12); 2) scheduled an election on the “question of the change in form of city government” (CR 256; A 12); and 3) canvassed the votes on “the question of the change in *form of city government*” to become a “City Manager *Form of Government*” (CR 260-261; A 16-17). There is no

³ Sturgis argues that the use of the phrase “city-manager form of government” in the *Kolda* case is dicta, and was unnecessary for a decision on the merits. *See, Sturgis Brief*, p. 16, fn. 5. The 5-0 opinion in *Kolda* uses the phrase “city-manager form of government” multiple times, and the legal analysis of the “case involves the city-manager form of government” in comparison to an “aldermanic-governed municipality.” *Kolda v. City of Yankton*, 2014 S.D. 60, fn. 7, 852 N.W.2d 425.

⁴ SDCL § 9-10-3 expressly recognizes the right of the voters to vote against employing a city manager. If Sturgis prevails on its argument in this case, the Contract and Addendum could be construed as void due to mistake of fact and law that Sturgis was administered under the City Manager form of government. *See, SDCL ch. 53-4*. The 2007 election will have had no effect because it would have been a vote for something that is not legally possible.

ARSD form for a city manager Petition. CR 227-230, 255-256, 260-261; A 7-18

(emphasis added).⁵

[T]he right of the people to be heard on legislative issues of the day should be maintained and by the legislative directive found in SDCL 2-1-11 that the real intention of the petitioners should not be defeated by mere technicalities.

Nist v. Herseth, 270 N.W.2d 565, 567 (S.D. 1978). The intent of the Petition is clear: to change “to an aldermanic form of government without a city manager.” CR 11 (original emphasis). The Petition, which states “SDCL § 9-11-6 and other applicable laws” (CR 11), seeks to bring a legislative issue of the day to the voters, which Councilmember Kevin Forester acknowledged: “These Petitions, signed by our residents, indicate there is a problem with city government [unintelligible] that we can’t ignore”. Exhibit 11 at 8:05. A Petition signed by nearly 20% of the voters regarding the structure under which the government is administered is a legislative issue of the day.

⁵ Sturgis’ Brief cites *Baker*, which looked to the form of the petition set forth in the ARSD when analyzing the issue of substantial compliance; there is an ARSD form for change in form of government, but there is no such form for a petition relating to city managers. *Baker v. Atkinson*, 2001 S.D. 49, ¶ 20, 625 N.W.2d 265; HT 29:10-30:23. ARSD is void of any form correlating directly to SDCL § 9-10-1. SDCL Chapter 9-10 lacks an election enabling statute analogous to SDCL § 9-11-5. Citizens’ position is that SDCL § 9-11-5 is the operative statute to have an election under both SDCL § 9-10-1 and 9-11-6; if this is not true it begs the question – what would a “valid” petition look like?

Sturgis acknowledged the intent of the Petition in its own resolution, and entered into the Addendum to protect Mr. Ainslie as a contingency in the event the will of the voters agreed with the intent of the Petition.⁶

Under the guise of the CA Report to suppress the Petition signed by nearly 20% of Sturgis voters, Sturgis ignored the fact that the South Dakota Municipal League (“SDML”) recognizes a City Manager form of government in South Dakota. CR 327-337. Ironically, Bueno is a sitting director for the SDML. CR 327-337; A 95-104. *See also*, CR 237-241.

Sturgis will continue to aggressively resist letting the people vote. There is no plain, speedy, and adequate remedy available to Citizens to force Bueno to certify there are enough signatures on the Petition and for the Sturgis Council to schedule an election. A writ of mandamus is the only mechanism available to Citizens in this matter.

Given Sturgis’ admission there are (and therefore always have been) enough signatures on the Petition, this Court should issue a writ of mandamus ordering Bueno to certify the Petition’s signatures and present it to the Sturgis Council, and for the Sturgis Council to schedule the election. A writ of mandamus from this Court would resolve the matter and let the people be heard on Sturgis’ legislative issue of the day, as guaranteed by our Constitution.

2. The Trial Court Erred by Denying Citizens’ Motion Regarding Scope of Respondents’ Argument.

⁶ Despite the fact that Citizens used the same process as was used in 2007, Councilmember Beka Zerst commented that “[a]s a councilmember, um, my responsibility is to move forward with what is in the best interests for our community...” Exhibit 11, at 30:50. Note, this did not mean moving forward with a free and fair election. It is obvious the Sturgis Council wants to protect its status quo, as evidenced by the January 18, 2022 Resolution 2022-13. CR 367-369; A 50.

A. Sturgis should be estopped from advancing the ‘form of government’ argument.

Sturgis acknowledges that Citizens used the same process petition form as was used in 2007, but then also argues to this Court that “the 2007 election is irrelevant”⁷ Sturgis’ Brief, p.19. The only way the 2007 election is irrelevant is if that election had no effect (that is, if a city manager form of government, as voted in in 2007, is something that cannot legally exist). But for the 2007 election and Sturgis administering itself as a “city manager form of government”, there would be no need to circulate the Petition to, essentially, abolish the office of city manager because there would be no such office.

Allowing Sturgis to assert a different set of facts other than what it has affirmatively held to be fact for the last fifteen years undermines morality and fair dealing, demanding estoppel as previously briefed; if the 2007 vote granted Sturgis the special power of having an office of city manager, the same process can be used by Citizens to withdraw the special power. *See, Even v. City of Parker*, 1999 S.D. 72, 597 N.W.2d 670, and Citizens’ Brief, pp. 18-19. “The power to create an office generally includes the power to modify or abolish it.” *McQuillan on Mun. Corp.* § 4:117 (discussing the legislative creation of an office).

⁷ Citizens review Sturgis’ argument asserting the 2007 election is irrelevant with botheration; if the 2007 election is irrelevant, then Citizens pose a rhetorical question here: why and how is it relevant or necessary for Sturgis to issue a public report insinuating prosecution of felony criminal charges against circulators of the Petition (CA Report at CR 122-126; A 25-29), brief inappropriate and inadmissible ad hominem attacks against Citizens (Response to Motion Regarding Scope of Respondents’ Argument at CR 212-214; A 53-56), and brief to this Court about Citizens getting “a shellacking” in an election that took place *after* this litigation began (Sturgis Brief, p. 13, fn. 4)?

Sturgis should have been estopped, and the Trial Court abused its discretion by denying the Scope Motion. This Court should reverse the Trial Court.

B. Sturgis failed to affirmatively plead the ‘form of government’ issue.

Sturgis attempts to justify its single theory motion under SDCL § 9-20-19 (CR 146, 148, 151) by now asserting:

The City referred to Petitioners proffered ballot question as a “referendum.” The City’s reference might be inartful, but it is not reversible error.

Sturgis Brief, p. 23. SDCL § 9-20-19 only applies to referendums. Because Sturgis fails to point this Court to authority to support their position or to counter the *Hinrichs* case cited by Citizens, Citizens rely on their argument and authorities previously briefed. *See*, Citizens’ Brief, p. 20; *State ex rel. Hinrichs v. Olson*, 30 S.D. 460, 139 N.W. 109, 11-112 (S.D. 1912).

3. The Trial Court Erred by Granting Summary Judgment.

A. Summary judgment was used as a substitute for trial.

Sturgis admits it used summary judgment as a substitute for trial to get to the “predicate question” “that is, whether the underlying matter is subject to mandamus or prohibition.” HT 18:2-5; A 67.

Nowhere in the Order does the Trial Court rule on the substance of Sturgis’ motion or even address the issue it raised.⁸ CR 148-149. Additionally, Sturgis attempts here to use its motion as a substitute for trial to challenge the Petition as if Sturgis

⁸ Sturgis argues the Trial Court: “...denied Petitioners’ application for a writ of mandamus.” Sturgis Brief, p. 1. The Court never denied the application for a writ of mandamus because the Court never even considered the mandamus action on the merits.

requested a writ of prohibition (which it didn't). CR 146, 148; A 56. Sturgis unequivocally asserts:

Given the due process protections granted to a city manager by S.D.C.L. § 9-10-11, it strains credulity to argue a city manager is a “form of government.”

Sturgis Brief, p. 10.⁹ Under Sturgis' rationale, an aldermanic, commissioner, and trustee form of government would be non-existent because they are made up of individuals who are aldermen, commissioners, and trustees.

The Trial Court committed reversible error by using summary judgment as a substitute for trial in this matter, and this Court should reverse.

B. Summary Judgment is not an available remedy in a mandamus proceeding.

Summary judgment is not available in a mandamus proceeding. CR 226. SDCL

§§ 21-29-8 and 15-6-81(a) are dispositive on this issue:

... *If the answer raises only questions of law, or puts in issue only immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear, or fix a day for hearing the case.*

SDCL § 21-29-8 (in part) (emphasis added). SDCL § 15-6-81(a) states:

This chapter does not govern pleadings, practice, and procedure in the statutory and other proceedings included in but not limited to

⁹ Sturgis argues about the due process rights of an employee (despite the mysterious Addendum which was not provided to Citizens until immediately before the February hearing (HT 35:20)), yet affords no due process to Citizens and nearly 20% of the electorate who signed the Petition. Sturgis' continued assertion that “the intent of Petitioners' ballot question was to discharge the current city manager” (*see*, Sturgis Brief, p. 12) is disingenuous and only based on Sturgis' own argument, which is unsupported by any evidence. Citizens have never argued that the individual holding the office of City Manager is the form of government. A government administered by a City Manager is undisputedly a unique scheme/form/name/type (call it what you will) of government. A 15. *See also*, SDCL §§ 9-14-19 and 9-10-4.

those listed in Appendix A to this chapter insofar as they are inconsistent or in conflict with this chapter.

SDCL § 15-6-81(a). Appendix A expressly excepts writ of mandamus proceedings under SDCL ch. 21-29. Appendix A, SDCL § 15-6-81(a). SDCL § 15-6-56(c) is inconsistent with and in conflict with SDCL § 21-29-8. Using summary judgment in a mandamus proceeding would make SDCL § 21-29-8 “useless and superfluous” *See, State v. Moss*, 2008 S.D. 64, 754 N.W.2d 626. “[S]tatutes of specific application take precedence over statutes of general application.” *Schafer v. Deuel County Bd. of Com’Rs.*, 2006 S.D. 106, ¶ 10, 725 N.W.2d 241 (internal citation omitted). Because SDCL § 21-29-8 is specific to mandamus proceedings and applies when an “answer raises only questions of law”, the general SDCL § 15-6-56(c) is foreclosed as an available remedy.

This issue appears to be one of first impression for South Dakota. Sturgis failed to point this Court to any binding authority negating the dispositive authority of SDCL §§ 21-29-8 and 15-6-81(a), discussed above. The *Williams* case Sturgis cites is distinguishable because there was no duty in that case and comparing Wyoming and South Dakota statutes on these issues are not apple-to-apple comparisons. *See, Williams v. Sundstrom*, 2016 WY 122, ¶ 24, 385 P.3d 789 (Wyo. 2016); WYO. Stat. Ch. 1-30 and Rule 56 (summary judgment).

The *Cowan Brothers* case cited by Sturgis does not even mention the word “mandamus”. Sturgis Brief, p. 16.

The beginning of the A.L.R. sentence that Sturgis excluded from its quote is important, and reads as follows: “Although the propriety of entering a summary judgment in an action of mandamus *depends largely upon the statutes authorizing such judgments*” Annotation, Summary Judgment in Mandamus or Prohibition Cases, 3 A.L.R. 675

(1965) (emphasis added). The first case discussed in the A.L.R. section cited herein is *Loveland v. City of Oakland*, which held “We are satisfied that the summary judgment procedure was never intended by the Legislature to be imported into mandate which, is itself in the nature of a summary proceeding.” *Loveland v. City of Oakland*, 69 Cal.App.P.2d 399, 407 (Cal. Ct. App. 1945) (internal citation omitted).¹⁰

C. Sturgis’ filings were procedurally defective.

Sturgis cites SDCL § 15-6-61 alleging harmless error. Even if summary judgment is an available remedy in this mandamus action, avoiding adherence to the rules to dodge adjudication of a question of law under SDCL ch. 21-29 is not be excusable as mere harmless error – it interferes with a decision on the merits.

Citizens rely on Citizens’ Brief, section 3.c, and pleadings before the Trial Court. *See*, CR 218-250.

D. The Trial Court failed to liberally construe the Petition.

It doesn’t even take a liberal construance to conclude South Dakota recognizes a city manager form of government. SDCL § 9-14-19¹¹, the *Kolda* case, the Contract, Sturgis since the 2007 election, and the SDML all acknowledge the city manager form of government. CR 327-337, 408-418; A 84-104.

¹⁰In *Loveland*, the Court analyzed the statutory scheme for mandamus actions, which appear identical to the scheme South Dakota currently has. *Id.*, at 404. California later amended its summary judgment statutes to apply “in any kind of action.” *Taliaferro v. Coakley*, 186 Cal.App.2d 258, 260, 9 Cal.Rptr. 529 (1960).

¹¹ "We are guided by the principle that a court should construe multiple statutes covering the same subject matter in such a way as to give effect to all of the statutes if possible." *Schafer*, 2006 S.D. at ¶ 10.

The Trial Court erroneously refused to apply liberal construction to anything other than signature validation. HT 44:12-22; A 78. "[The party opposing the petition] cites no authority in support of his request for the application of this harsh penalty. We will not defeat the real intent of the signers on a mere technicality." *Nist*, 270 N.W.2d at 568. The intent of the Petition is to have an election on the simple issue of whether Sturgis should have an office of city manager, which was acknowledged at the December 27, 2021 meeting by Councilman Aaron Jordan:

In terms of having an election sooner than later, I'm not sure what that serves. Again, we're, we're trying to, you know build relations and, you know, build bridges in this community – not, you know, tear things down.... *if we do go forward with this, then we'll let the people speak and*, and the answer is done. But, does it matter if it happens in February or if it happens, you know, six months from now. *If there is a strong desire from the community to change from not [sic] having a city manager and just going back to what we had before in 2008, just a mayor and a council, uh, I think that, if that's the outcome, again I think it's, it's, it's not a bad thing to take the time, you know, to get there... if that's the case.*

Exhibit 11 at 28:40. The point of any Petition is to force an election, not for the petitioners to convince the governing body to bestow permission to 'go forward' and 'let the people speak'. *Id.*

The real intention of the petitioners is a question of fact which the Trial Court was required to weigh in favor of Citizens. "[E]vidence is viewed most favorably to the non-moving party...." *Estate of Steffen, Matter of*, 467 N.W.2d 490 (S.D. 1990). The Trial Court erroneously did not weigh the intent of the Petition in favor of Citizens in this matter.

Liberalizing the Petition requires an election be held, just as was done in 2007. This Court should make the same conclusion as it did in the *Bollinger* case: "The

trial court took a 100% opposite view. We reverse the trial court on its statutory, procedural error. Said error had an effect on the final result and affected the rights of the party assigning the error.” *Tri-State Co. of Minnesota v. Bollinger*, 476 N.W.2d 697 (S.D. 1991). The Trial Court’s actions in this matter constitute reversible error. *Id.*

E. Sturgis’ Motion was moot.

As cited by Sturgis, “A case is moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Maxwell v. State*, 261 N.W.2d 429, 432 (S.D.1978). While the case itself was not moot, it is clear that Sturgis’ Motion for Summary Judgment based on SDCL § 9-20-19 was moot. *Supra*, Citizens’ Brief, Section 3.E. Sturgis’ motion had no practical legal effect on whether Bueno had a ministerial duty.

4. Miscellaneous.

Sturgis briefed several diversionary matters, briefly addressed here.

A. All political power is inherent in the people.

Sturgis asserts that:

The lawful and constituted method to alter or reform the forms of government is through the state legislature because that body has the plenary power to organize and classify units of local government. S.D. CONST. art. IX, § 1.

Sturgis Brief, p. 6. Sturgis cites no authority supporting its conclusory statements, going on to argue that Article IX, § 1 of the Constitution “vests plenary power to create forms and classes of municipal government in the legislature, while [Article VI, § 26 of the

Constitution] recognizes the power of South Dakotans to revise those forms of municipal government through legislation.” Sturgis Brief, p. 7.¹²

Sturgis’ assertions are simply not correct and ignore Article IX, § 2 of the Constitution (Home Rule) and other laws. *See*, S.D. Const. art. IX, § 2 and VI, § 26.

B. SDCL § 9-10-18.

For the first time on appeal, Sturgis argues that Citizens’ argument is barred by SDCL § 9-10-18. This Court does not review theories argued for the first time on appeal. *Wyman v. Bruckner*, 2018 S.D. 17, ¶ 16.

C. Character Attacks.

Sturgis asks this Court to take judicial notice of websites having nothing to do with this mandamus matter in an attempt to justify Sturgis’ demeaning behavior taken toward Citizens. Sturgis Brief, p. 13. The *Legrand* case has no application in this matter. Sturgis Brief, p. 16. These materials are 1) not in the record in violation of SDCL § 15-26A-60(5), 2) should be excluded under SDCL § 19-19-403, and 3) are inadmissible hearsay per to SDCL § 19-19-801. Sturgis ought to know better.

D. Constitutional Challenge.

Sturgis argues a new issue about Citizens challenging the Constitutionality of a statute. Sturgis’ argument is another red herring which has nothing to do with Bueno’s ministerial duty or the lack of power for the Sturgis Council to make any sort of

¹² Sturgis substitutes the word “form” for “organize” as found in Article IX, § 1 of the Constitution. *See*, SD Const., Art. IX, § 1. “One should accurately quote the provision on which it relies when making a constitutional argument.” Sturgis Brief, p. 21. Organizing deals with incorporation of a governmental entity. *Lippold v. Meade County Commissioners*, 2018 S.D. 7. Classifying units of local municipal government deals with the population of the municipality to classify it as a “municipality of the first class...second class...[or] third class....” SDCL § 9-2-1.

adjudication on the Petition. In this regard, the actual issues before the Court and this one argued by Sturgis “are like two ships passing through the fog at night.” *Matter of LAC Minerals*, 2017 S.D. 44, ¶8.

E. Context Matters.

Sturgis cites Mathew [sic] 6:24 and Luke 16:13 to argue the city manager cannot have two masters. These citations to the Word of God have no bearing on the requirement for Bueno to perform her ministerial duties. While Citizens always welcome fellowship in the Word of God, context matters. The Bible should be interpreted using sound historical, grammatical, and contextual evidences rather than attempting to force an interpretation to fit an agenda.

CONCLUSION

This Court should give this matter finality by modifying the Memorandum Decision and Order to be a writ of mandamus directing Bueno to certify there are valid signatures on the Petition from at least fifteen percent of the voters, direct Bueno to present the Petition to the Sturgis Council, and direct the Sturgis Council to schedule the election. Citizens request this Court award costs and attorney’s fees. Alternatively, this Court should reverse and remand the Trial Court on all matters presented herein.

Scheduling the vote has already been delayed for nearly a year. Should this Court decide to have oral argument, Citizens request said arguments be expedited and considered simultaneously with the sister-case (as previously briefed by all parties) that will soon be appealed. Citizens’ Brief, p. 22, fn. 18, Sturgis’ Brief, p. 19.

Dated this 27th day of October, 2022.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Tammy Bohn, Justin Bohn, and Brenda
Vasknetz

By: *Kellen B. Willert*

Kellen B. Willert
618 State Street
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CERTIFICATE OF COMPLIANCE

COME NOW, the Appellants, TAMMY BOHN, JUSTIN BOHN, and BRENDA VASKNETZ, by and through their attorney of record, Kellen B. Willert, of Bennett Main Gubbrud & Willert, P.C., 618 State Street, Belle Fourche, South Dakota, and pursuant to SDCL 15-26A-66(4), hereby certifies that he has complied with the type volume limitation of SDCL 15-26A-66(b)(2) in that Appellants' Brief is double-spaced and proportionally spaced in Times New Roman, 12-point, with a total word count of 4,189 and a total character count of 20,923. The Appellants' Reply Brief and all copies are in compliance with this rule.

Dated this 27th day of October, 2022.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Tammy Bohn, Justin Bohn, and Brenda
Vasknetz

By: */s/ Kellen B. Willert*

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Email: kellen@bellelaw.com

CERTIFICATE OF SERVICE AND FILING

I, KELLEN B. WILLERT, attorney for BRENDA BOHN, JUSTIN BOHN, and BRENDA VASKNETZ, do hereby certify that on the 27th day of October, 2022. I caused a full, true, and complete copy of APPELLANTS' REPLY BRIEF to be filed *electronically* through the UJS Odyssey e-filing system and served *electronically* through UJS Odyssey e-filing system upon the following name people:

Mark Marshall
Sturgis City Attorney
1040 Harley-Davidson Way
Sturgis, SD 57785
Email: mmarshall@sturgisgov.com

Eric C. Miller
Sturgis Staff Attorney
1040 Harley-Davidson Way
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Shirley Jameson-Fergel
Clerk of the Supreme Court
State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5070
Email: SCClerkBriefs@ujs.state.sd.us

Additionally, the original Appellants' Reply Brief was mailed to the Clerk of the Supreme Court for the State of South Dakota and a copy mailed to counsel for the Appellees at the addresses above.

Dated this 27th day of October, 2022.

BENNETT MAIN GUBBRUD & WILLERT, P.C.

By: /s/ Kellen B. Willert
Kellen B. Willert

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

* * * *

Appeal No. 30008

* * * *

TAMMY BOHN, JUSTIN BOHN, and BRENDA VASKNETZ,
Petitioners and Appellants,

vs.

FAY BUENO, in her capacity as Finance Officer for the City of Sturgis; MARK
CARSTENSEN, in his capacity as Mayor for the City of Sturgis; and MIKE BACHAND,
ANGELA WILKERSON, DAVID MARTINSON, BEKA ZERBST, JASON
ANDERSON, AARON JORDAN, DEAN SIGMAN, and KEVIN FORRESTER, in their
capacities as Aldermen for the City of Sturgis,
Respondents and Appellees.

* * * *

APPEAL FROM THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT
MEADE COUNTY, SOUTH DAKOTA

* * * *

THE HONORABLE KEVIN J. KRULL
Circuit Court Judge

* * * *

APPELLANTS' SUPPLEMENTAL BRIEF

KELLEN B. WILLERT,
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THE NOTICE OF APPEAL WAS FILED MAY 25, 2022.

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PRELIMINARY STATEMENT

The naming conventions used in Appellants’/Citizens’ Brief and Reply Brief will be utilized here. The Supplemental Appendix will be referred to as “SuppApp”.

SDCL § 15-26A-73 authorizes a party to file and serve a supplemental brief for a matter before this Court to “present...other intervening matters that were not available in time to have been included in” a brief in chief.¹ Citizens’ brief in chief was filed and served on July 29, 2022. Appellees’ Brief was filed and served on September 27, 2022. Appellants’ Reply Brief was filed and served on October 27, 2022. This matter was initially docketed for oral argument on January 11, 2023, yet was postponed pursuant to Sturgis’ request. *See* Order Granting Appellees’ Motion for Continuance, filed December 30, 2022.

Citizens desire to present this Court with the following intervening matters to aid in resolution of this matter: 1) Sturgis Council Resolution 2023-8 (adopted January 3, 2023), 2) Sturgis Council Resolution 2023-20 (adopted February 21, 2023), and 3) City of Sturgis March 21, 2023 press release (“Press Release”). Appellants contend that, pursuant to SDCL § 15-26A-73, these are “intervening matters” which were not available in time to be included in a brief in chief, and are therefore properly brought to this

¹ Whenever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in time to have been included in the party’s brief in chief, the party shall serve a copy thereof upon the attorney for each party to the action separately represented and upon any party who is not represented by counsel and file the supplemental brief, restricted to such new matter and otherwise in conformity with this chapter, up to the time the case is called for hearing, or by leave of court thereafter. A supplemental brief shall not exceed ten pages.

SDCL § 15-26A-73.

Court's attention by a supplemental brief. Citizens incorporate the arguments and authorities previously briefed in this matter for brevity. Citizens contend these materials are admissible pursuant to SDCL § 19-19-902(5) as official publications published on Sturgis' website.

ARGUMENT

Since January 3, 2023, Sturgis has taken multiple actions necessitating this supplemental brief in order for this Court to make an informed decision in this matter.

1. Sturgis Council Resolution 2023-8:

Despite arguing to this Court that 'form' of government is a term of art and there is no such thing as a "city manager form of government", the Sturgis Council unanimously adopted Resolution 2023-8 on January 3, 2023 – just eight days prior to when oral arguments were initially set for this matter. A copy of the relevant pages of the January 3, 2023 Sturgis Council Meeting Minutes including Resolution 2023-8 is attached at SuppApp 001-2. The unanimously adopted Resolution 2023-8 expressly admits and acknowledges that "...City has adopted the City Manager form of government..." SuppApp 002. This directly contradicts Sturgis' arguments in Bohn I.

2. Sturgis Council Resolution 2023-20:

The Sturgis Council recently adopted Resolution 2023-20, despite this pending action. A copy of the relevant pages of the February 21, 2023 Sturgis Council meeting minutes including Resolution 2023-20 are attached at SuppApp 003-6.

Despite the possibility this Court may resolve this matter in favor of Citizens, Resolution 2023-20 places a prohibition against any changes to the duties of city manager

for 18 months and attempts to make the issue of whether or not to employ a city manager a referable issue.

3. Sturgis' Press Release:

On March 21, 2023 Sturgis published a press release on its website (“Press Release”). A copy of the Press Release is attached at SuppApp 007-9. The Press Release ends with a quote from Mayor Carstensen: “We had hoped that we could have had a healthy civic discussion on the merits of whether or not the city of Sturgis should have a city manager”. SuppApp 008. Sturgis now very publicly declares it would like to have this discussion approximately 15 months after Citizens filed the Petition and, essentially, a year after an election should have been had on the issue. The Press Release further declared:

With passage of the resolution, the council provided a path forward for city manager opponents to organize a referendum and force an election on whether the city should continue operating with a city manager...

SuppApp 008 (emphasis added). This completely ignores the statutory path to call an election used by the voters in 2007 and by Citizens in this matter by filing the Petition in December 2021. CR 3, 146. Resolution 2023-20 purports to require *another* petition, this time with signatures from only 5% of the electorate, be filed with the Finance Officer to call an election . . . notwithstanding the fact that Citizens already filed the Petition on the issue in containing signatures from approximately 20% of the electorate. CR 2, 11-110, 145.

The very next paragraph of the Press Release expressly acknowledges and admits that the intent of Citizens’ Petition in this matter is to “remove the city manager position”:

Sturgis city manager opponents have pushed a campaign beginning around November 2021 to remove the city manager position including filing two unsuccessful court actions which are currently being appealed to the South Dakota Supreme Court.

SuppApp 008 (emphasis added). This directly contradicts Sturgis' arguments in Bohn I that the Petition was invalid due to "...the intent of Petitioners' ballot question was to discharge the current city manager...." Appellees' Brief, p. 12. The position or office of city manager has always been the issue in this matter-which Sturgis here admits.

SuppApp 008.

In discussing a potential petition to refer Resolution 2023-20 to a vote, the Press Release further states:

The petitioners needed just 254 valid signatures from registered voters who are also residents of the city to force an election. The number represents 5% of the 5,080 registered voters who reside in Sturgis. As of the 6 p.m., Monday, March 20 deadline, the Sturgis Finance office had not received a petition.

SuppApp 008. It is unclear why Sturgis believes it can abrogate the statutory requirements for having a petition signed by at least 15% of the voters on this question. It is baffling that Sturgis now takes the position that whether or not to employ a city manager is now a referable matter, given the fact that Bueno's Certification Denial in this matter expressly declared Citizens' Petition to be invalid because:

Prior to 1939, a contract employing a city manager was a proper subject of referendum. However, in 1939 state legislature granted due process rights to city managers and vested the exclusive power to employ and discharge city managers with the municipal governing body. Employment decisions are administrative decisions within the meaning of South Dakota law and are not subject to the referendum.

Because the question posed is not subject to referendum, I decline to certify the Petition for Election to Change Municipal Government in the Municipality of Sturgis.

CR 207; SuppApp 013 (emphasis added).

In discussing a potential referendum petition for Resolution 2023-20, Sturgis acknowledges the Finance Officer's ministerial duties are to merely verify that the signatures on a petition are valid and submit the matter to a vote, which directly contradicts how Bueno handled Citizens' Petition:

Had the petition been filed with the City Finance Office, the finance officer would have had to verify the signatures on the petition and if valid, submit the referendum at the next municipal election or general election. The Finance Officer at the direction of the Sturgis City Council also could have scheduled a special election.

SuppApp 008. Ironically, this paragraph summarizes the simple request Citizens have been making since their attorney told them about Bueno's ministerial duties at the Sturgis Council Special Meeting on December 27, 2021. Physical Exhibit 11. *See* Appellants' Brief, pp. 13-15.

CONCLUSION

"Truth is stranger than fiction, but it is because Fiction is obliged to stick to possibilities; Truth isn't." Mark Twain (Samuel L. Clemens), *Following the Equator* Vol. I 155 (Harper & Brothers 1899) (1897) (citing Pudd'nhead Wilson's New Calendar). This case is stronger than fiction.

Sturgis' actions now brought to the Court are a legislative attempt to whipsaw Citizens subsequent to being judicially whipsawed. These intervening matters should aid this Court in resolving this matter in favor of Citizens. Citizens respectfully request this Court grant the relief requested and previously briefed.

Dated this 7th day of April, 2023.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Tammy Bohn, Justin Bohn, and Brenda Vasknetz

By: _____

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CERTIFICATE OF COMPLIANCE

COME NOW, the Appellants, TAMMY BOHN, JUSTIN BOHN, and BRENDA VASKNETZ, by and through their attorney of record, Kellen B. Willert, of Bennett Main Gubbrud & Willert, P.C., 618 State Street, Belle Fourche, South Dakota, and pursuant to SDCL 15-26A-66(4), hereby certifies that he has complied with the type volume limitation of SDCL 15-26A-66(4) in that Appellants' Supplemental Brief is double-spaced and proportionally spaced in Times New Roman, 12-point, with a total word count of 1,423 and a total character count of 7,545. The Appellants' Supplemental Brief and all copies are in compliance with this rule.

Dated this 7th day of April, 2023.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Tammy Bohn, Justin Bohn, and Brenda Vasknetz

By: _____

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CERTIFICATE OF SERVICE AND FILING

I, KELLEN B. WILLERT, attorney for BRENDA BOHN, JUSTIN BOHN, and BRENDA VASKNETZ, do hereby certify that on the 7th day of April, 2023. I caused a full, true, and complete copy of APPELLANTS' SUPPLEMENTAL BRIEF to be served *electronically* by email and by U.S. Mail depositing said copies in envelopes securely sealed with first class postage, fully prepaid in Belle Fourche, S.D., as set forth below:

Mark Marshall
Sturgis City Attorney
1040 Harley-Davidson Way
Sturgis, SD 57785
Email: mmarshall@sturgisgov.com

Eric C. Miller
Sturgis Staff Attorney
1040 Harley-Davidson Way
Sturgis, SD 57785
Email: emiller@sturgisgove.com


I further certify that on the same day I caused the APPELLANTS' SUPPLEMENTAL BRIEF to be filed *electronically* and the original and two (2) full, true and complete copies of the APPELLANTS' SUPPLEMENTAL BRIEF to be filed by U.S. Mail with:

Shirley Jameson-Fergel
Clerk of the Supreme Court
State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501-5070
Email SCClerkBriefs@ujs.state.sd.us

by depositing said copies in envelopes securely sealed with first class postage thereon fully prepaid in the U.S. Mail in Belle Fourche, S.D., and addressed as shown above.

Dated this 7th day of April, 2023.

BENNETT MAIN GUBBRUD & WILLERT, P.C.
Attorneys for Tammy Bohn, Justin Bohn, and Brenda Vasknetz

By: 

Kellen B. Willert

APPENDIX

Resolution 2023-8.....SuppApp 001-002

Resolution 2023-20.....SuppApp 003-006

March 21, 2023 Press Release.....SuppApp 007-009

Bueno Affidavit and Certificate of Denial.....SuppApp 010-013

MINUTES
City Council Meeting
City of Sturgis, State

Tuesday, January 3, 2023

6:30 PM

Council Chambers

PRESENT: Mark Carstensen, Mike Bachand, Kevin Forrester, Aaron Jordan, Dean Sigman, Angela Wilkerson, Beka Zerbst, Tony Dargatz, and Preston Williams, City Attorney, Mark Marshall, City Manager, Daniel Ainslie, and Finance Officer, Fay Bueno

ABSENT: None

Call to Order

Approval of the Agenda

Moved by Zerbst, seconded by Dargatz, to approve the agenda as posted
Members present carried unanimously.

Pledge of Allegiance

Announcements and Praise

- Mayor Carstensen stated his concern about Exit 32 Recycle Center. This is truly a recycle center not trash facility. It causes more work for City staff when it is not properly used right. It is 100% paid for by the Citizens of Sturgis and should only be used by them, nobody else. Others need to find somewhere else to get rid of their trash.
- The next meeting will be held on Tuesday the 17th of January due to the holiday.
- Councilor Sigman announced that Sturgis AAU wrestling group will be having their tournament this next weekend. There will be many people in town this weekend. This will be held on Sunday.

City Manager's Report

Listing the volunteers of the various Boards and Commissions in the Council minutes for workers' compensation and liability coverages in 2023

PLANNING COMMISSION - Dustin Bostrom, Richelle Bruch, Rachel Hale, Alex Moravec, Aaron Rabenberg, and Alex Usera.

MUNICIPAL UTILITY BOARD - Ken Sabers, Shawn Mechling and Ron Waterland.

Effective: 02/02/2023

Resolution 2023-08 - signing Contracts for Supplies, Services and Employee Contracts

RESOLUTION 2023 - 08

A RESOLUTION AUTHORIZING THE SIGNING OF CONTRACTS FOR SUPPLIES, SERVICES AND EMPLOYEE CONTRACTS

WHEREAS, the City makes use of numerous vendors throughout the year to provide supplies and services not subject to the State bid law requirements to help the City effectuate the day to day operation needs of the organization;

WHEREAS, the said vendors may require the signing of contracts before the goods or services are provided;

WHEREAS, all departments of the City are required to follow the Council adopted Purchasing Policy and must strictly abide by the appropriated authority within each year's budget;

WHEREAS, the City may enter differing contracts with employees to further the City's interests;

WHEREAS, the City has adopted the City Manager form of government whereas City staff are hired to complete administrative tasks in an efficient expedited manner;

NOW THEREFORE, City Manager Daniel Ainslie or Mayor Mark Carstensen are hereby authorized to execute said contracts for goods or services that comply with the parameters of the City Council adopted Purchasing Policy and employee contracts throughout calendar year 2023.

Dated this 3rd day of January 2023.

Published: 01/12/2023

Effective: 02/02/2023

Resolution 2023-09 - Writing off Insufficient Funds and Accounts Receivable

RESOLUTION 2023 - 09

A RESOLUTION AUTHORIZING WRITING OFF INSUFICIENT FUNDS AND ACCOUNTS RECEIVABLE

WHEREAS, the City receives numerous payments for the Community Center, Ambulance Service and the Liquor Store and the Rubble Site throughout the year within the established internal controls document;

WHEREAS, the Finance Officer develops the internal control practices for each department ensuring minimal risk of non-payment; and

MINUTES
City Council Meeting
City of Sturgis, SD

Tuesday, February 21, 2023

6:30 PM

Council Chambers

PRESENT: Mark Carstensen, Mike Bachand, Kevin Forrester, Aaron Jordan, Dean Sigman, Angela Wilkerson, Beka Zerbst, Tony Dargatz, and Preston Williams, City Attorney, Mark Marshall, City Manager, Daniel Ainslie, and Finance Officer, Fay Bueno

ABSENT: None

Call to Order

Approval of the Agenda

Moved by Zerbst, seconded by Wilkerson, to approve the agenda as posted
Members present carried unanimously.

Pledge of Allegiance

Informational Reports

- **Amanda Anglin, Director of SEDC gave the 4th Quarter Update of 2022. The PowerPoint is in the packet.**
- **Department of Transportation contracted with the consulting firm JEO which gave a presentation on the Junction Avenue Corridor Study. This will be an ongoing process and there will be several more meetings with the public.**

Announcements and Praise

- **A donation check for \$6500 was presented to the Animal Shelter from the 3rd annual Challenge for Charity Gala.**

Mayor's Update

Mayor Carstensen explained the process to recruit the hiring of the Executive Officer. He welcomes public input on this subject but asks everyone to be considerate of everyone's time.

City Manager's Report

BE IT FURTHER RESOLVED that upon such approval that the following described real property shall be annexed to the City of Sturgis:

Lot 1-A, Lot 2R and Lot 3-A in Block C of West Sturgis Fourth Addition, Meade County, South Dakota.

Dated this 21st day of February, 2023

Published: 02-28-2023

Effective: 03-21-2023

Consideration to approve Amendment to the Professional Design Services for the Adventure Park

Moved by Jordan, seconded by Dargatz, to approve the proposed amendment to the Professional Services Agreement for the Lake Side Adventure Development.
Members present carried unanimously.

Discussion was had on consideration of Succession Plan for an Executive Officer: City Manager vs City Administrator.

Recess

8:25 pm

Return to Regular Session

8:48 pm

Consideration of Resolution 2023-20 to recruit for the hiring of an Executive Officer.

Moved by Zerbst, seconded by Williams, to approve Resolution 2023-20 authorizing the Recruitment of an Executive Officer as a City Manager.

Carried by the following votes:

Ayes: Carstensen, Bachand, Forrester, Jordan, Sigman, Wilkerson, Zerbst, and Williams

Nays: Dargatz

**RESOLUTION 2023-20
RESOLUTION AUTHORIZING THE
RECRUITMENT OF AN EXECUTIVE OFFICER**

WHEREAS, a municipal election was held in the City of Sturgis on April 10, 2007, and

WHEREAS, on April 16, 2007, the Sturgis Common Council canvassed the votes from the April 10, 2007, election and found a ballot initiative to employ a city manager in the City of Sturgis passed with 1,224 votes in favor of employing a city manager, and 768 votes in opposition to the measure, and

WHEREAS, after the official canvassing, the Sturgis Common Council employed a City Manager, and continues to do so, and

WHEREAS, on January 18, 2022, the Sturgis Common Council adopted Resolution 2022-13, A Resolution in Support of the Office of City Manager, and

WHEREAS, in that resolution the Sturgis Common Council strongly affirmed its support and its use of the Office of City Manager within its municipal organizational staff, and

WHEREAS, February 6, 2023, the Sturgis Common Council adopted Resolution 2023-17, in which it reaffirmed its support and its use of the Office of City Manager within its municipal organizational staff, and

WHEREAS, on February 6, 2023, City of Sturgis City Manager Daniel Ainslie departed the City Manager office effective as of April 7, 2023, and

WHEREAS, the Sturgis Common Council has determined that it is in the best interest of the residents of the City of Sturgis, and in the best interest of the City itself that the Sturgis Common Council recruit and hire a city manager to succeed Mr. Ainslie.

THEREFORE, IT IS HEREBY RESOLVED that the City Attorney revise municipal ordinance and policy procedures to provide that the Mayor appoint members of outside boards, commissions, and City Council committees with the advice and consent of the members of the Sturgis Common Council, and

IT IS FURTHER RESOLVED that the duties of the City of Sturgis city manager are as described in South Dakota statute, City of Sturgis municipal ordinance, the City of Sturgis Policy and Procedure Manual, as well as in the job description for the position, and

IT IS FURTHER RESOLVED that the City of Sturgis Common Council must not change, alter or amend the duties of the city manager for a period of eighteen months from the posting date on the City of Sturgis website, and

IT IS HEREBY RESOLVED that that the City of Sturgis Director of Administrative Services recruit highly qualified applicants for the position of City Manager of the City of Sturgis, and

IT IS FURTHER RESOLVED that this Resolution is subject to referendum within the meaning of that term under the laws of the State of South Dakota, and, within the meaning of SDCL § 9-20-7.

Dated this 21st day of February 2023.

Published: 02-28-2023

Effective: 03-21-2023

Appointment of Interim Management Team

Moved by Jordan, seconded by Dargatz, to appoint interim Management Team members, Police Chief Geody VanDewater, Public Works Director Rick Bush, Administrative Services Lisa Katzenstein, Communications Deb Holland, City Attorney Mark Marshall and Director of Finance Fay Bueno. Members present carried unanimously.

Executive Session

a. Pursuant to SDCL 1-25-2 (1), Personnel: 3

b. Pursuant to SDCL 1-25-2 (3), Legal: 3

c. Pursuant to SDCL 1-25-2 (4), Contracts: 2

d. Pursuant to SDCL 1-25-2 (5), Marketing: 0

e. Pursuant to SDCL 1-25-2 (6), Security: 0

Moved by Bachand, seconded by Williams, to enter Executive Session for 3 personnel, 3 legal cases, 2 contracts, 0 marketing, and 0 security issues at 9:05 pm.

Members present carried unanimously.

Moved by Dargatz, seconded by Sigman, to leave Executive Session at 10:30 pm.

Carried

Return to Regular Session

Termination buy-outs, per established City policy (vacation and sick leave) (Informational only, no action required)

Consideration of additional termination payment

After discussion there will be no action at this time from the Council.

Other matters that may come before the Council

Bonnie Alberts wanted to let the Council know that what they did tonight was a good process and that it opened the door for input. The Council also acknowledge the committees and a process for that. She wants the Council to continue to try to draw citizens in and get them to participate in the process.

Adjourn

Moved by Jordan, seconded by Sigman, to adjourn the meeting at 10:38 pm.

Members present carried unanimously.



How Can We Help You?

Sturgis will move forward with hiring city manager



STURGIS – A faction of Sturgis citizens has failed to submit a petition to refer recent Sturgis City Council action to a vote.

The 20-day referendum period has expired, and the Sturgis City Council Resolution 2023-20 becomes effective today, March 21, 2023. The resolution authorizes the Sturgis Administrative Services Director to recruit the next Sturgis city manager.

Some in the community believed that the issue of hiring a Sturgis city manager was a decision citizens should vote on.

State law doesn't allow a city council to call an election on the issue.

Sturgis City Council member Preston Williams said he heard from multiple Sturgis residents who wanted the city council to call a special election on the question of employing a city manager.

"I explained to them that as a council, we are not allowed by law to set a special election

SuppApp 007

on the matter,” Williams said.

While under no legal requirement to do so, the Sturgis City Council passed Resolution 2023-20 with the intent of opening the discussion as to which executive officer the city would recruit. With passage of the resolution, the council provided a path forward for city manager opponents to organize a referendum and force an election on whether the city should continue operating with a city manager, or shift to a system characterized by a strong mayor with a city administrator.

Sturgis city manager opponents have pushed a campaign beginning around November 2021 to remove the city manager position including filing two unsuccessful court actions which are currently being appealed to the South Dakota Supreme Court.

In a news release on Feb. 22, local Sturgis resident and attorney Eric Davis announced an effort to refer Resolution 2023-20 to a vote of the residents of Sturgis.

Davis said: “The city should not be taking any action on this matter until the lawsuits regarding the petitions are resolved. This vote is going to determine the future of Sturgis. It is a question of critical importance in this community, and it needs to be answered by its citizens. We’re going to have a vigorous, informed, and respectful debate; and then we are going to have an election.”

The petitioners needed just 254 valid signatures from registered voters who are also residents of the city to force an election. The number represents 5% of the 5,080 registered voters who reside in Sturgis. As of the 6 p.m., Monday, March 20 deadline, the Sturgis Finance office had not received a petition.

In a post on the Sturgis Kitchen Table Facebook page – a page for a podcast in which Davis participates – it said that as of March 13, the petitioners still needed to gather about 150 signatures.

Had the petition been filed with the City Finance Office, the finance officer would have had to verify the signatures on the petition and if valid, submit the referendum at the next municipal election or general election. The Finance Officer at the direction of the Sturgis City Council also could have scheduled a special election.

Sturgis Mayor Mark Carstensen said the city passed the resolution knowing that a referendum was a possibility and wanted to extend the opportunity of referendum to citizens of Sturgis.

“We had hoped that we could have had a healthy civic discussion on the merits of whether or not the city of Sturgis should have a city manager,” the mayor said.

More: [Home News](#)

Contact Us

City of Sturgis
1040 Harley-Davidson Way
Sturgis, SD 57785

Our Mission:

To provide an attractive, growing community being served by a professional staff that offers reliable, quality municipal services.

Website By EvoGov

SuppApp 009

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF MEADE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

TAMMY BOHN, JUSTIN BOHN, and)
BRENDA VASKNETZ,)
)
Petitioners,)
)
vs.)
)
FAY BUENO, in her capacity as)
Finance Officer for the City of)
Sturgis; MARK CARSTENSEN, in his)
capacity as Mayor for the City of)
Sturgis; and MIKE BACHAND,)
ANGELA WILKERSON, DAVID)
MARTINSON, BEKA ZERBST, JASON)
ANDERSON, AARON JORDAN,)
DEAN SIGMAN, and KEVIN)
FORESTER, in their capacities for)
the City of Sturgis,)
)
Respondents.)

46CIV22-000005

**AFFIDAVIT OF
FAY BUENO**

State of South Dakota)
) SS
County of Meade)

Fay Bueno, being first duly sworn on her oath, deposes and states:

1. I am the duly appointed Finance Officer for the City of Sturgis and a Respondent in this matter.
2. I have personal knowledge of the facts stated in this Affidavit.
3. December 16, 2021, a Petition for Election to Change Municipal Government was presented to my office.

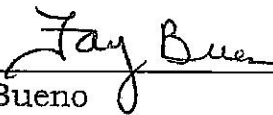
4. The Petition posed the following proposition:

The form of government for the municipality of Sturgis should be changed from the current form of municipal government (aldermanic with a city manager form of government) to an aldermanic aldermanic form of government without a manager.

5. On January 12, 2022, I advised Petitioners that's I had declined to certify the Petition because the question posed in the Petition is legally not subject to referendum. A copy of my determination is attached as Exhibit A.

Further your affiant sayeth naught.

Dated this 31st day of January 2022.

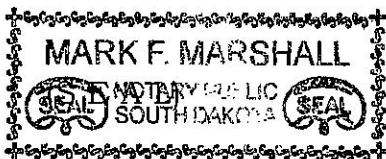



Fay Bueno
City of Sturgis Finance officer

State of South Dakota)
) SS
County of Meade)

On this the 31st day of January 2020, before me, Mark F. Marshall, the undersigned officer, personally appeared Fay Bueno, Finance Officer of the City Sturgis, South Dakota, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.





Notary Public – South Dakota
My Commission Expires 5/29/2025



FINANCE & UTILITY OFFICE
1040 Harley-Davidson Way
Sturgis, SD 57785
605-347-4422
www.sturgis-sd.gov

January 12, 2022

Justin W. Bohn
1616 Elk Court
Sturgis, SD 57785

Tammy A. Bohn
1616 Elk Court
Sturgis, SD 57785

Brenda L. Vasknetz
1510 Jackson St.
Sturgis, SD 57785

On December 16, 2021, a document entitled "Petition to Change Municipal Government in the Municipality of Sturgis" was filed in my office. The Petition poses the following question:

The form of government for the municipality of Sturgis should be changed from the current form of municipal government (aldermanic with a city manager form of government) to an aldermanic form of government without a city manager.

I requested an opinion of the Sturgis City Attorney as to whether the question posed was a proper subject of referendum. I was advised that a city manager is not a "form of government" within the meaning of South Dakota law but is instead a special power granted to municipal government to employ a city manager.

Prior to 1939, a contract employing a city manager was a proper subject of referendum. However, in 1939 state legislature granted due process rights to city managers and vested the exclusive power to employ and discharge city managers with the municipal governing body. Employment decisions are administrative decisions within the meaning of South Dakota law and are not subject to referendum.

Because the question posed is not subject to referendum, I decline to certify the Petition for Election to Change Municipal Government in the Municipality of Sturgis.

Fay Bueno
Finance Officer
City of Sturgis



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(Not all prohibited bases apply to all programs.)*

SuppApp 013