

3. Wholestone insists that it should be allowed to build this industrial slaughterhouse within city limits, near churches, office buildings, homes, the Big Sioux River, and recreational areas – and on land intended for entirely different development in the future, which city planners anticipate will be a thriving part of an expanding city.

4. Sioux Falls voters have a different vision for the future of their city. With over 10,000 signatures, Sioux Falls voters placed an initiative banning new slaughterhouses on the November 2022 ballot (the “Initiative”). Polling indicates that nearly 4 in 5 voters support “requiring any new industrial meat processing facility to be located outside of city limits.”¹

5. Sioux Falls residents and project developers will spend the next two months vigorously debating the environmental, quality of life, and economic impacts of Wholestone’s proposed industrial slaughterhouse, and then vote on the Initiative at the November 2022 election. Under the initiative process, this matter is now in the hands of the voters of Sioux Falls.

6. Wholestone prefers that the citizens of Sioux Falls not have that debate. To preempt the ordinance that would ban its proposed industrial slaughterhouse, Wholestone is pursuing a plan intended to undermine the democratic process and prevent the voters of Sioux Falls from exercising their right to have input on the direction of their city.

7. Wholestone has admitted that no matter the outcome of the vote, it intends to move forward with its planned industrial slaughterhouse, with Wholestone executive Luke Minion saying, “No matter the ballot, Wholestone is moving forward.”²

8. Wholestone’s scheme to circumvent the will of the voters involves fast-tracking the construction of a small, 1,800 square-foot custom butchering shop (the

¹ <https://citizensforasustainablesiouxfalls.com/new-survey-raises-alarm/>.

² <https://www.dakotanewsnow.com/2022/09/05/governor-noems-comments-sioux-falls-pork-processing-plant-spark-reaction/>.

“Butcher Shop”) before the November 2022 election. Wholestone believes that operating this Butcher Shop prior to the November 2022 election will allow it to later “expand” to a full-fledged industrial slaughterhouse notwithstanding the result of the election.

9. To execute on its Butcher Shop plan, Wholestone needs numerous permits, licenses, certificates, and approvals. Wholestone also needs to satisfy a variety of state and federal regulations governing these types of facilities.

10. Thus, standing between Wholestone’s efforts and the will of the people is—or should be—the City of Sioux Falls itself (collectively with the Sioux Falls City Council, its members, and Mayor TenHaken, the “City”). Under South Dakota law, the City may not take any action that would alter or preempt the effect of the Initiative. SDCL § 9-20-11; SDCL § 9-20-4. Because a petition has been submitted to the City, and voters will decide the Initiative in less than two months, the City is prohibited from issuing any permits, licenses, certificates, or approvals until after the November election.

11. The Butcher Shop is, by Wholestone’s own admission, intended to preempt the effect of the Initiative. Yet the City has refused to withhold action on the Butcher Shop until after the election, and has allowed construction to proceed.

12. Smart Growth Sioux Falls (“Smart Growth”) asks this Court to issue a declaration that any action by the City to advance or issue permits, licenses, certificates, or approvals related to the Butcher Shop prior to the November 2022 election is in violation of South Dakota law, and to enjoin the City from issuing or moving forward any new permits, licenses, certificates, or approvals related to the Butcher Shop prior to the November 2022 election. Smart Growth also asks this Court to declare that any permits, licenses, certificates, or approvals issued after the submission of the Initiative petition are void and must be revoked, canceled, or withdrawn.

13. Should Sioux Falls voters adopt the Initiative at the election in November 2022, Wholestone remains free to build its proposed slaughterhouse outside city limits, closer to the farmers it serves and farther from Sioux Falls and the already-impaired

waters of the Big Sioux River. But, under South Dakota law, Wholstone may not impose its will on Sioux Falls citizens while silencing their ability to participate in the democratic process.

PARTIES

14. Smart Growth is a non-profit municipal ballot question committee. It is an advocacy organization that, as set forth in its organizational filing, “supports measures to prohibit certain Slaughterhouses from being constructed, or being permitted to operate, within Sioux Falls city limits.”³ This includes not only the Wholstone project but any and all new industrial-scale slaughterhouses proposed within the city’s boundaries. In addition to its work on the Initiative, Smart Growth is dedicated to ensuring sustainable and healthy growth for Sioux Falls that is aligned with Sioux Falls’ 2040 Comprehensive Plan.

15. As a ballot question committee, Smart Growth has an interest in participating in the petition process. This interest is protected by South Dakota law and by the state and federal constitutions. Because Smart Growth invested substantial time and resources in gathering the signatures to place the Initiative on the November ballot, Smart Growth has a unique interest in ensuring that the Initiative is presented to voters in a constitutional and legal manner. The City’s failure to preserve the status quo after the petition was filed and pending the November 2022 election violates South Dakota law and impairs Smart Growth’s constitutional right to advocate and participate in the political process.

16. Smart Growth’s membership also has a protected legal interest in ensuring that the Initiative is properly presented to the electorate. Smart Growth’s members signed and circulated the petition initiating the Initiative, and Smart Growth’s members deserve the opportunity to advocate for and vote on the Initiative as part of a fair, legal, and

³ <https://www.documentcloud.org/documents/21698501-smart-growth-sioux-falls-statement-of-organization?responsive=1&title=1>.

constitutional process. Those interests relate directly to Smart Growth's purpose. The City's failure to preserve the status quo leading up to the November 2022 election undermines those interests, and Smart Growth's membership are entitled to a ruling instructing the City that it may not undermine or preempt the effect of the Initiative.

17. The City of Sioux Falls is a first-class municipality encompassing portions of Minnehaha and Lincoln counties. The City of Sioux Falls acts through its City Council and its Mayor.

18. The Sioux Falls City Council consists of eight elected members, David Barranco, Sarah Cole, Alex Jensen, Rich Merkouris, Greg Neitzert, Marshall Selberg, Curt Soehl, and Pat Starr, who are named as defendants in their official capacities only.

19. Paul TenHaken is the Mayor of Sioux Falls and is named as a defendant in his official capacity only.

20. Wholestone Farms II, LLC is a Delaware limited liability company with its principal office and place of business at 900 South Platte Avenue, Fremont, Nebraska. Wholestone Farms II, LLC is authorized by the South Dakota Secretary of State to transact business in South Dakota. Wholestone Farms II, LLC is listed as the owner of record of Tract 1 Wexford Addition to the City of Sioux Falls, also known as 3001 North Bahnson Avenue, Sioux Falls.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this action pursuant to S.D. Const. art. 5, § 5, SDCL 16-6-9, and SDCL 15-7-2.

22. Venue is proper under SDCL 15-5-2 and 15-5-6. Upon information and belief, each Defendant has taken actions related to the allegations made in this Complaint in Sioux Falls, and the subject of this action is in Sioux Falls.

ADDITIONAL ALLEGATIONS

I. The Voters Of Sioux Falls Have Exercised Their Right To Initiate A Proposed Ordinance Prohibiting New Slaughterhouses Within City Limits.

23. In June 2021, Wholestone announced plans to construct a massive industrial slaughterhouse in Sioux Falls.⁴ The proposed facility would slaughter and process approximately six million hogs each year.

24. Wholestone's proposed slaughterhouse is not aligned with Sioux Falls' future development or the Shape Sioux Falls 2040 Comprehensive Development Plan aimed at maintaining and improving the quality of life for Sioux Falls citizens.⁵

25. The citizens and voters of Sioux Falls do not want massive new slaughter facilities in their city. Smart Growth, along with other grassroots groups like Citizens for a Sustainable Sioux Falls, believe that the Wholestone project and any other new slaughterhouse facility should be built outside of city limits, closer to the farmers they serve, and farther from Sioux Falls and the already-impaired waters of the Big Sioux River.

26. South Dakota law provides a mechanism for the voters to express their views through the petition and ballot initiative process.⁶

27. The Sioux Falls voters have exercised their right to have their voices heard. While only 6,089 signatures were required, over 10,000 Sioux Falls voters signed a petition to put the Initiative on the November 2022 ballot that would ban new slaughterhouses within city limits. This overwhelming response is no surprise—recent

⁴ <https://www.argoleader.com/story/news/2021/06/15/northeastern-sioux-falls-pork-processing-plant-planned-wholestone-farms-nebraska-i-229-benson-road/7700081002/>.

⁵ <https://www.siouxfalls.org/planning-dev/planning/comp-plan>.

⁶ SDCL § 9-20-4 provides that “[w]hen 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.”

polling indicates 78% of Sioux Falls citizens agree that any new meat processing plant should not be located within city limits.

28. The Initiative asks voters to enact the following proposed ordinance:

Section 1. That the Code of Ordinances of Sioux Falls, South Dakota, Chapter 160: Zoning, is hereby amended by adding a new section, to be numbered 160.045, which section reads as follows:

§ 160.045 SLAUGHTERHOUSE

- (a) Notwithstanding any other provision of this Code to the contrary, no new Slaughterhouse may be constructed, or be permitted to operate, within the city limits.
- (b) This section does not apply to any existing Slaughterhouse constructed and operating before the effective date of this section. This section does not apply to the expansion or alteration of any Slaughterhouse constructed and operating before the effective date of this section so long as such expansion or alteration occurs at the existing site.

29. The petition was submitted on July 7, 2022, and the City Clerk validated that it had enough signatures to place the question on the ballot. On August 2, 2022, the City Council completed the process to formally place the Initiative on the November 2022 ballot.

II. South Dakota Statue Bars The City From Taking Any Action To Preempt The Initiative.

30. The state legislature, recognizing the importance of the initiative and referendum process, adopted SDCL § 9-20-4 and SDCL § 9-20-11 in tandem. SDCL § 9-20-11 provides that “pending the election, the governing body *may take no action* with respect to the subject matter of the petition *that would alter or preempt the effect of the petition.*” SDCL § 9-20-4, in turn, provides that an initiative is treated the same way as a referendum, therefore extending the protections provided in SDCL § 9-20-11 to initiatives. Both provisions protect the democratic process.

31. In other words, SDCL § 9-20-11 bars the City from taking actions—including advancing or issuing necessary permits, licenses, certificates, or approvals—that would “alter or preempt” the effect of the Initiative by allowing Wholestone to evade or undermine the purpose of the Initiative.

32. Any action by the City to advance or issue any of the necessary permits would violate SDCL §§ 9-20-11 and 9-20-4.

III. Wholestone’s Butcher Shop Plan Attempts To End-Run The Initiative And The Will Of The Voters.

33. Instead of waiting to see the results of the November election, Minion announced that Wholestone would be “accelerating [its] plan” to build the Butcher Shop by late October.⁷ Minion further stated, “Wholestone’s decision is made. We are building our plant. The ballot won’t change that.”⁸ In fact, Wholestone has already scheduled a “ribbon cutting” event for October 25, 2022.⁹

34. City records show that after Smart Growth started circulating the Initiative petition on April 15, 2022, Wholestone commenced its scheme to build the Butcher Shop. As of the date of this Complaint, Wholestone has applied for one commercial project and five permits, the first of which was applied for on June 16, 2022—two months after Smart Growth began circulating the Initiative petition.

35. Wholestone has not started construction on its planned industrial slaughterhouse, and the industrial slaughterhouse would not be completed until 2025 at the earliest. Wholestone appears to believe that operating the small-scale custom Butcher Shop before the November election will allow it to fall into an exemption in the Initiative

⁷ <https://www.msn.com/en-us/news/us/sioux-falls-councilors-takes-1st-vote-to-send-slaughterhouse-ban-to-november-ballot/ar-AAZLwGN>.

⁸ <https://www.mitchellrepublic.com/news/south-dakota/noem-vote-on-future-sioux-falls-slaughterhouses-puts-projects-in-jeopardy-statewide>.

⁹ <https://siouxfallschamber.com/event/wholestone-farms-ribbon-cutting/>.

for expansion of existing slaughterhouses. Wholestone has repeatedly and publicly stated that its Butcher Shop is an attempt to sidestep the election. Minion explicitly stated that the Butcher Shop is “a way to preserve our option to build on our site in the future.”¹⁰

36. Wholestone’s website continues to promote their building of the massive industrial slaughterhouse that will process “3 million hogs annually, per shift,” not just the Butcher Shop.¹¹

37. There is no ambiguity here. If Wholestone is permitted to move forward with its Butcher Shop, it will later attempt to override the will of the voters after the election.

38. At bottom, Wholestone is rushing to beat an election clock by using an 1,800 square-foot project to shoehorn an entirely new industrial-scale slaughterhouse into an exception intended to preserve the status quo.

39. The City cannot act in any manner that would alter or preempt the effect of Initiative—including by allowing Wholestone to build and operate its proposed Butcher Shop.

40. Nonetheless, the City has issued at least a handful of construction permits for the Butcher Shop. The City apparently continues to perform inspections and update permits. Further, the City Council has refused calls to issue a moratorium—which the City Council has done in the recent past.¹²

¹⁰ <https://www.sfsimplified.com/lets-unpack-sioux-falls-slaughterhouse-wholestone-farms-smart-growth-sioux-falls-november-election/>.

¹¹ <https://wholestonefarms.com/sioux-falls/>.

¹² In 2014, regulations governing locations of billboards changed and billboards began appearing in residential areas. In April 2015, recognizing the need to maintain the status quo while assessing the best path forward, the City Council unanimously approved a billboard moratorium ordinance which provided that “[t]he City shall not accept or process applications, issue permits for, or allow the installation of any Billboard for a period of 180 days, or sooner if this Ordinance is repealed by the City at the completion of the above study.”

IV. Wholestone Has Not Secured The Required Permits To Open The Butcher Shop.

41. Opening a custom exempt butcher shop requires myriad permits from city, state, and federal regulatory bodies. Operating such a facility also requires that Wholestone meet specific criteria in order to be considered exempt from various requirements.

42. On information and belief, Wholestone has not yet obtained some or all of the city permits, licenses, certificates, and other approvals and/or complied with certain regulations that may be necessary for Wholestone to construct, occupy, or operate the Butcher Shop, including the following:

- a. Use of Public Sewers Required (§ 53.015);
- b. Wastewater discharge permit (§ 53.050);
- c. Hauled liquid waste (§ 53.065);
- d. Rendering of animal matter (§ 92.008);
- e. Septic tanks (§ 92.007) (in absence of a city sewer hookup);
- f. Driveway approach construction permit (§ 96.051);
- g. Food processing license (§ 112.015);
- h. Meeting Building Code requirements including: International Fire Code, 2021 edition (§ 91.015); International Building Code, 2021 edition (§ 91.015); International Mechanical Code, 2021 edition (§ 150.030); National Electrical Code, 2020 edition (§ 150.201); Uniform Plumbing Code, 2015 edition (§ 150.301);
- i. Comprehensive Plan Requirements (§ 154.031); and
- j. Conditional Use Permit (§ 160.605).

43. This list is by way of example and is not intended as an exhaustive or conclusive list.

44. Sioux Falls Code § 160.725(a) mandates that “[n]o building, structure, or land shall be used or occupied and no change in the existing use of a building, structure or land shall be made until a certificate of occupancy has been issued.” A certificate of occupancy can only be issued “[a]fter final inspection, if it is found that the building, structure, or land complies with the provisions of this chapter and other laws of this jurisdiction.” Sioux Falls Code § 160.727. Sioux Falls Code § 160.775(3) mandates that “no building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any structure or land be used . . . [e]xcept in conformance with any federal, state, or municipal codes as may be applicable.” It further directs that “[w]here this chapter and another ordinance conflict or overlap, whichever imposes the more stringent restrictions shall prevail.” Therefore, the City cannot issue a certificate of occupancy to Wholestone for the Butcher Shop unless the Butcher Shop also complies with all applicable municipal, state, and federal laws and regulations.

45. On information and belief, Wholestone has not yet obtained some or all of the following state permits, licenses, certificates, and other approvals that may be necessary for Wholestone to construct, occupy, or operate the Butcher Shop:

- a. Meat Plant Inspection and License (S.D. Animal Industry Board);
- b. Rendering Plant License (S.D. Animal Industry Board);
- c. Air Pollution Control Permit (S.D. Dept. of Agriculture & Natural Resources);
- d. Construction Storm Water Discharge Permit (S.D. Dept. of Agriculture & Natural Resources);
- e. Ground Water Discharge Plan (S.D. Dept. of Agriculture & Natural Resources);
- f. Hazardous Waste Permit (S.D. Dept. of Agriculture & Natural Resources);
- g. Industrial Storm Water Discharge Permit (S.D. Dept. of Agriculture & Natural Resources);

- h. Wastewater Plans and Specifications Approval (S.D. Dept. of Agriculture & Natural Resources);
- i. Pretreatment Industrial User Permit (S.D. Dept. of Agriculture & Natural Resources);
- j. Surface Water Discharge Permit (S.D. Dept. of Agriculture & Natural Resources);
- k. Food Service License (S.D. Dept. of Health); and
- l. Sales, Use and Service Tax License (S.D. Dept. of Revenue).

46. This list is by way of example and is not intended as an exhaustive or conclusive list.

47. To meet federal requirements, Wholestone must also either comply with the inspection requirements of 9 C.F.R. Subchapter A or demonstrate that it is exempt from such requirements. Upon information and belief, Wholestone has not complied with the inspection processes of Subchapter A, which includes submitting an application for inspection pursuant to 9 C.F.R. § 304.1, developing a written Sanitation Standard Operating Procedure pursuant to 9 C.F.R. § 304.(a) and part 416 of Subchapter A, and conducting a hazard analysis and having a developed and validated HACCP plan pursuant to § 304.3(b)-(c) and §§ 417.2 and 417.4.

48. Based upon the publicly available statements from Wholestone, the Butcher Shop also does not satisfy the requirements of 9 C.F.R. 303.1 for the Butcher Shop to qualify as a “custom exempt facility” not subject to the mandatory inspection processes of 9 C.F.R. § 302.1.¹³

¹³ In July 2022, Minion stated that “we’ve already got people who’ve ordered hogs from us.” See <https://www.keloland.com/keloland-com-original/as-ballot-question-looms-wholestone-farms-to-start-construction-on-butcher-shop/>. Minion said that the Butcher Shop plans “to process 10 to 20 pigs a week” and “will be open to anyone in the community who wants to purchase one.” <https://www.grandforksherald.com/news/south-dakota/legal-fight-over-sioux-falls-pork-plant-would-focus-on-definition-of-slaughterhouse>. He also explained that the Butcher Shop will include some specialty products and “for those with interest, it’s going to be really easy (to order).”

49. Because Wholestone has not obtained the required state or city permits, licenses, certificates, or approvals, nor has it met the criteria for an exemption under federal law, the City may not issue a certificate of occupancy.

V. Injunctive And Declaratory Relief Are Appropriate To Redress Smart Growth's Injuries.

50. Injunctive and declaratory relief are appropriate means to redress Smart Growth's injuries.

51. If the Butcher Shop is operational prior to the November election, Wholestone, by its own admission, will attempt to circumvent the effect of the Initiative. Allowing the Butcher Shop to operate in violation of South Dakota law prior to November will unquestionably cause Smart Growth to incur significant delay and expense to prevent Wholestone from altering or preempting the effect of the Initiative. This will specifically harm Smart Growth as the key proponent of the Initiative. It also is precisely the type of harm that South Dakota law is designed to prevent.

52. If the City issues any type of permit, license, certificate, or other approval for the Butcher Shop without Wholestone being in compliance with all applicable federal, state, and municipal laws, this will likewise injure Smart Growth because it will permit occupancy of the Butcher Shop that Wholestone is attempting to use to preempt the effect of the Initiative. Such operation would also allow Wholestone to violate myriad laws and regulations designed to protect the public and regulate land use, which illegal use impacts Smart Growth and its members.

53. This controversy is ripe and not merely hypothetical or speculative. Wholestone continues to move forward with its plan to open the Butcher Shop and has a publicly stated anticipated opening date in late October 2022.

<https://www.siouxfalls.business/wholestone-farms-to-open-custom-butcher-shop-at-future-processing-plant-site/>. Sales of slaughtered hogs to the public is not covered by the exemption under 9 C.F.R. 303.1.

54. Alternatively, writs of prohibition and mandamus are proper against the City to, respectively, restrain the City from committing further violations of SDCL § 9-20-11 and Sioux Falls Code § 160.775, and to force the City to perform its required legal duty and withdraw or cancel permits issued in violation of SDCL § 9-20-11.

**COUNT I
DECLARATORY RELIEF
(Against the City and Wholestone)**

55. Smart Growth realleges all prior paragraphs of this Complaint.

56. For the reasons set forth above, any action by the City to consider, advance, or issue permits, licenses, certificates, or other approvals that facilitate Wholestone's building or operation of the Butcher Shop could alter or preempt the effect of the Initiative to ban new slaughterhouses within city limits.

57. Therefore, any such action is in violation of SDCL §§ 9-20-11 and 9-20-4.

58. Smart Growth, as the primary proponent of the Initiative, and having expended considerable time and effort to collect the petition signatures, will be harmed if Defendants take action to alter or preempt the effect of the Initiative.

59. For the reasons set forth above, any action by the City to permit Wholestone to occupy the Butcher Shop without Wholestone's compliance with all federal, state, and municipal codes, is in violation of those laws and Sioux Falls Code § 160.775.

60. Pursuant to SDCL 21-24 *et seq.*, this Court has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

61. Wholestone has an interest in the permits, licenses, certificates, and approvals pursuant to SDCL § 21-24-7.

62. Pursuant to SDCL 21-24 *et seq.*, the Court should declare that any action by the City to consider or issue permits, licenses, certificates, or other approvals related to the Butcher Shop is in violation of SDCL §§ 9-20-11 and 9-20-4 and Sioux Falls Code § 160.775, and any permits, licenses, certificates, or other approvals issued by Defendants

related to the Butcher Shop prior to the certification of the November 2022 election are void and without effect.

**COUNT II
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF
(Against the City)**

63. Smart Growth realleges all prior paragraphs of this Complaint.

64. For the reasons set forth above, any action by the City to consider, advance, or issue permits, licenses, certificates, or other approvals to Wholestone that facilitate Wholestone's building or operation of the Butcher Shop could alter or preempt the effect of the Initiative to ban new slaughterhouses within city limits.

65. Therefore, any such action is in violation of SDCL §§ 9-20-11 and 9-20-4.

66. Pursuant to SDCL Chapter 21-8, this Court should temporarily and/or permanently enjoin the City from issuing any permits, licenses, certificates, or other approvals, including but not limited to a Certificate of Occupancy, associated with Wholestone's Butcher Shop prior to the certification of the November 2022 election.

**COUNT III
WRIT OF PROHIBITION
(Against the City)**

67. Smart Growth realleges all prior paragraphs of this Complaint.

68. For the reasons set forth above, any action by the City to consider or issue permits, licenses, certificates, or other approvals to Wholestone that facilitate Wholestone's building or operation of the Butcher Shop could alter or preempt the effect of the Initiative to ban new slaughterhouses within city limits.

69. Therefore, any such action is in violation of SDCL §§ 9-20-11 and 9-20-4.

70. Wholestone is in the process of seeking permits to open its Butcher Shop, so this harm will be immediate and could occur imminently.

71. As an alternative to Counts I and II, Smart Growth has no plain, speedy, and adequate remedy in the ordinary course of law.

72. Pursuant to SDCL ch. 21-30 *et seq.*, this Court should issue an alternative or peremptory writ of prohibition prohibiting the City from issuing any permits, licenses, certificates, or other approvals to Wholestone that facilitate Wholestone's building or operation of the Butcher Shop prior to the certification of the November 2022 election.

**COUNT IV
MANDAMUS
(Against the City)**

73. Smart Growth realleges all prior paragraphs of this Complaint.

74. For the reasons set forth above, any action by the City to consider, advance, or issue permits, licenses, certificates, or other approvals to Wholestone that facilitate Wholestone's building or operation of the Butcher Shop could alter or preempt the effect of the Initiative to ban new slaughterhouses within city limits.

75. Therefore, any such action is in violation of SDCL §§ 9-20-11 and 9-20-4.

76. Wholestone is in the process of seeking permits to open its Butchering Facility, so this harm will be immediate and could occur imminently.

77. The City should not have issued any permits, licenses, certificates, or approvals as soon as the Initiative was submitted to the City.

78. The City has already issued at least some building permits, allowing Wholestone to begin construction of the Butcher Shop.

79. The City did not have discretion to issue any permits or take any action that would alter or preempt the effect of the Initiative. Because the City was prohibited by statute from taking any action that could have the effect of preempting the Initiative, the law compels the City to withdraw or cancel the improperly issued permits.

80. As an alternative to Counts I and II, Smart Growth has no plain, speedy, and adequate remedy in the ordinary course of law.

81. Pursuant to SDCL ch. 21-29 *et seq.*, this Court should issue an alternative or peremptory writ of mandamus requiring the City to cancel or otherwise withdraw any permits, licenses, certificates, or other approvals to Wholestone that facilitate Wholestone's building or operation of the Butcher Shop prior to the certification of the November 2022 election.

WHEREFORE, Smart Growth respectfully prays for judgment against Defendants as follows:

- (1) A Declaration that any action by the City to consider, advance, or issue any permits, licenses, certificates, or other approvals relating to the Butcher Shop prior to the certification of the November 2022 election is in violation of SDCL §§ 9-20-11 and 9-20-4 and any such permits, licenses, certificates, or other approvals issued related to the Butcher Shop prior to the certification of the November 2022 election are void and without effect;
- (2) Entering a temporary and/or permanent injunction prohibiting the City from taking any action to consider, advance, or issue any permits, licenses, certificates, or other approvals related to the Butcher Shop until after the certification of the November 2022 election;
- (3) Alternatively, issuing a Writ of Prohibition prohibiting the City from taking any action to consider, advance, or issue any permits, licenses, certificates, or other approvals related to the Butcher Shop until after the certification of the November 2022 election;
- (4) Alternatively, issuing a Writ of Mandamus directing the City to cancel or otherwise withdraw any permits, licenses, certificates, or other approvals to Wholestone that facilitate Wholestone's building or operation of the Butcher Shop prior to the certification of the November 2022 election.

- (5) Awarding Smart Growth its attorneys' fees, costs, and disbursements, along with pre- and post-judgment interest, where permitted by law; and
- (6) Awarding such other and further relief as the Court deems just and equitable.

ROBINS KAPLAN LLP

DATED: September 8, 2022

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