



**each and every Lot owner referenced herein a twenty "20" feet easement across each Lot for ingress and egress in perpetuity."**

Consistent with the Pope Order, Pope Estates Way extends directly to the Cemetery and is a platted twenty-foot (20') access. Testimony from Plaintiffs' own funeral home witness confirmed that cemetery vehicles, including vault trucks and hearses, require substantially less width than twenty feet. Accordingly, Pope Estates Road is more than adequate to accommodate all necessary cemetery-related traffic.

Plaintiffs therefore cannot satisfy either prerequisite for temporary relief. First, they have suffered no immediate or irreparable harm because they can use Pope Estates Way, and any claimed access issues are the result of unlawful decisions made by fellow Plaintiffs who own both the Cemetery and Pope Estates Road. Second, Plaintiffs have an adequate remedy at law under S.C. Code Ann. § 27-43-310, which independently bars temporary equitable relief.

The equities further weigh against Plaintiffs. While Plaintiffs criticize gates maintained by Defendants on private property, they simultaneously justify gates controlling access across their own land. Plaintiffs' representations that they were "cut off" from the Cemetery were inaccurate; the only impediments to access are gates erected by those legally responsible for providing it. Equity does not favor such conduct. One who seeks equity must do equity.

#### **Post-Hearing Factual Clarification and Site Visit**

Following the December 16, 2025, hearing, counsel for all parties, along with the parties themselves, traveled to the Big House Cemetery to physically observe and traverse the access routes discussed before the Court. The group first traveled by vehicle and on foot down Everest Lane, which crosses Defendants' private property, to reach the Cemetery. The group then proceeded down Pope Estates Way, which crosses Plaintiffs' property, in order to compare the two routes.

This site visit made clear that Pope Estates Way provides a significantly shorter, and more direct route to the Cemetery than Everest Lane. The road surface along Pope Estates Way is more suitable for vehicular traffic, requires fewer turns, travel on higher, dryer ground, and avoids the need to cross multiple residential properties. In contrast, Everest Lane requires travel through Defendants' private residential property, as well as the private property of additional landowners who are not parties to this action, and is less direct. Further, Everest Lane as walked, drops into the marsh area, which is unsuitable for vehicles.

A remaining issue raised during the hearing concerned whether a vault truck could access the Cemetery via Pope Estates Way. The post-hearing site visit resolved this issue. Pope Estates Way has a twenty-foot (20') right-of-way, with approximately twelve (12) feet of paved roadway. During the site visit, the parties observed that a vault truck, measuring approximately eight (8) feet wide, can safely and physically travel down Pope Estates Way to reach the Cemetery without obstruction. The concern regarding feasibility of burial operations via Pope Estates Way is therefore unfounded.

**Plaintiffs Own Affidavit Confirm the Availability of Pope Estates Way**

Plaintiffs post-hearing affidavits further undermine their claim of irreparable harm. In her sworn affidavit, Plaintiff Sherike Bennett confirms that she owns property along Pope Estates Way, that she installed a locked gate across Pope Estates Way in approximately 2017 or 2018, and that the gate remains in place. Ms. Bennett further admits that the gate was installed for her own purposes and that she also erected an additional barrier within the Cemetery boundaries to control where funeral homes and hearses may travel. These admissions establish that any limitation on access via Pope Estates Way is the result of Plaintiffs' own actions, not Defendants'.

Ms. Bennett's affidavit also confirms that Pope Estates Way was formally established as a roadway after prior access routes were blocked by neighbors and that her home address was changed to reflect Pope Estates Way as an official access road. These facts directly contradict Plaintiffs' assertion that Pope Estates Way is not a viable or recognized access route to the Cemetery.

**Lack of Personal Knowledge in the Affidavit of Emily Early**

Plaintiffs' reliance on the Affidavit of Emily Early is misplaced because it is not based on personal knowledge, as required for sworn testimony to be considered by the Court. Ms. Early is counsel for Plaintiffs and does not purport to have personal familiarity with the construction, condition, maintenance, or historical use of Everest Lane or Pope Estates Way. Her affidavit reflects that she contacted third-party vendors by telephone and email to obtain generalized estimates for hypothetical erosion control on Everest Lane, based on rough measurements derived from public GIS maps and assumptions regarding road length and composition, rather than first-hand observation or experience. An affidavit offered in support of injunctive relief must be made on personal knowledge and set forth facts that would be admissible in evidence. *Rule 56(e), SCRPC; Hall v. Fedor.*, 349 S.C. 169, 174, 561 S.E.2d 654, 657 (Ct. App. 2002). Statements grounded in hearsay, estimates, or second-hand information do not satisfy this standard.

Moreover, Ms. Early's affidavit does not address the dispositive issue before the Court, whether access to the Big House Cemetery is available via Pope Estates Way, but instead presumes, without factual foundation, that Everest Lane must continue to be used. Because Ms. Early lacks personal knowledge of the physical conditions observed during the post-hearing site visit and offers only speculative cost estimates premised on continued use of Defendants' private road, her affidavit cannot support a finding of irreparable harm or justify temporary relief.

### **Supplemental Evidence Submitted**

Defendants also submitted the Affidavit of Robert Walter Harper, Jr., filed with the Court on January 6, 2025. Mr. Harper's sworn testimony establishes that Everest Lane and Everest Road are private, non-public access roads maintained at his personal expense for residential use. The affidavit details that beginning in early 2024, oversized funeral vehicles and excavation equipment used Everest Lane in connection with cemetery activity, causing significant damage to the roadway.

Mr. Harper attests that this heavy traffic crushed and collapsed a culvert beneath Everest Road, resulting in erosion, standing water, and deterioration that rendered portions of the road unsafe, including for emergency vehicles. He further attests that no cemetery representatives or funeral homes offered to repair the damage, and that he incurred more than \$6,000 in out-of-pocket expenses attempting temporary repairs. This evidence confirms that routing cemetery traffic through Everest Lane is unsafe and inequitable, particularly when a safer and more direct access route exists.

### **Requirement Of Bond to Protect Defendants from Damages**

Should the Court nevertheless consider granting any form of temporary or interim relief, Defendants respectfully request that such relief be conditioned upon Plaintiffs posting a substantial bond sufficient to protect Defendants from the damages that would foreseeably result from continued cemetery traffic across Defendants' private property. Rule 65(c), SCRCP expressly requires the posting of security in an amount the Court deems proper for the payment of costs and damages incurred by a party who is wrongfully restrained or compelled to act.

South Carolina courts have repeatedly emphasized that the purpose of a bond is to protect the enjoined party from losses proximately caused by the injunction. In *Atwood Agency v. Black*,

374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007), the Supreme Court held even a nominal bond does not satisfy Rule 65(c). The Court found the nominal amount was improper “because it erroneously assume[d] the injunction [was] proper instead of providing an amount sufficient to protect appellants in the event the injunction [was] ultimately deemed improper.” *Id.* at 73, 646 S.E.2d at 884.

Here, the evidence establishes that Defendants face substantial and recurring damages if Plaintiffs are permitted to route funeral and cemetery traffic across Everest Lane. Mr. Robert Walter Harper, Jr. testified by sworn affidavit that he has already incurred more than \$6,000 in out-of-pocket expenses to repair damage caused by a single period of funeral-related traffic, including collapse of a culvert, erosion, standing water, and roadway deterioration. That repair was temporary and did not restore the road to its prior condition. The affidavit further establishes that Everest Lane is a private residential road maintained at Mr. Harper’s personal expense and not designed to accommodate repeated heavy vehicles.

Accordingly, continued use of Everest Lane for cemetery purposes would expose Defendants to repetitive and foreseeable damage. At a minimum, each funeral event presents the potential for damage equal to or exceeding the \$6,000 already incurred by Mr. Harper for a single repair effort. Plaintiffs have offered no evidence that they will assume responsibility for future damage, reimburse Defendants for prior repairs, or otherwise mitigate the financial burden imposed by their requested relief.

Where, as here, the requested relief would require Defendants to allow repeated heavy vehicular traffic across private property and where damages are not speculative but have already occurred, a nominal bond would be inadequate as a matter of equity. Any bond must be set at an

amount reasonably calculated to cover anticipated roadway repairs, drainage remediation, and related damages resulting from each funeral or burial event.

Defendants therefore respectfully submit that, if any temporary relief is granted, Plaintiffs should be required to post a bond in an amount sufficient to protect Defendants from the full measure of potential damages, including but not limited to a minimum of \$6,000 per funeral or burial event, or such higher amount as the Court deems necessary to ensure Defendants are not left without recourse for foreseeable and ongoing harm.

**Compliance with S.C. Code Ann § 27-43-310**

In the event the Court were to grant Temporary Relief, Defendants respectfully submit that such relief must comply with the standards of S.C. Code Ann. § 27-43-310 (Law. Co-op. 2007).

**Procedure for family member/descendent to seek ingress/egress to a cemetery, burial ground or grave on private property. § 27-43-310; \$80 filing fee required.<sup>1</sup>**

1. Family member / descendant must first provide to the landowner or occupant a written request for access to the cemetery, burial ground or grave for one of the following purposes as provided § 27-43-310 (B):
  - visiting a grave(s)
  - maintaining the gravesite or cemetery
  - lawfully burying a deceased person in a cemetery or burial plot by those granted rights of burial to that plot
  - conducting genealogy research
2. Landowner/occupant is allowed 30 days to respond to the written request for access. If no response has been made within the 30 days, petitioner may file a **Petition and Motion for Access to Cemetery, Burial Ground, or Grave (SCCA 680)** with the magistrate's court having jurisdiction over the property on which the cemetery, burial ground, or grave is located.

Any relief ordered should comply with § 27-43-310.

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<sup>1</sup> From S.C. Code Ann. § 27-43-310 (Law. Co-op. 2007), attached hereto.

**Conclusion**

The post-hearing site visit confirmed what Defendants have consistently maintained: access to the Big House Cemetery is readily available via Pope Estates Way, which crosses Plaintiffs' own property and provides a superior, shorter, and more practical route for all necessary cemetery access, including vault trucks. The physical inspection of the property eliminated any remaining factual dispute regarding access feasibility and further supports Defendants' position that use of Everest Lane across Defendants' private property is unnecessary and unwarranted.

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